

The Juridical Study of Act No. 11 of 2020 Concerning Job Creation (Employment Cluster) on Workforce Welfare

Indra Syahlan*)

*) Legal Director FSPMI PUK TDK, E-mail: indrasyahlan313@gmail.com

Abstract. *This study aims to find out and analyze labor welfare arrangements based on Act No. 11 of 2020 concerning Job Creation and whether these regulations have provided legal protection for workers. This research approach method is normative juridical, descriptive analytical research specifications. The type of data uses primary data and secondary data so that the data collection method is through field research and library research. The method of data analysis is qualitative analysis. Based on the results of the research it was concluded that welfare arrangements in the Job Creation Law have not fully provided legal protection for workers. Existing regulations are more profitable for employers and the position of the workforce is getting weaker so that they are vulnerable to losing their rights as workers.*

Keywords: *Creation; Protection; Welfare.*

1. Introduction

Manpower development is an integral part of national development based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Manpower law is very much needed in providing guarantees for citizens to obtain decent work and livelihood as mandated in Article 27 paragraph (2) of the Constitution. NRI 1945 which states that "Every citizen has the right to work and a life that is worthy of humanity."¹ Apart from that, Article 28 D paragraph (2) of the 1945 Constitution of the Republic of Indonesia also states that everyone has the right to work and to receive fair and proper compensation and treatment in a work relationship.

¹Anjas Pratama Mokoginta, Tommy F. Sumakul and Stevan Obadja Voges, Legal Protection of Workers' Rights according to Law Number 11 of 2020 concerning Job Creation, Journal of Lexcrimen, <https://ejournal.unsrat.ac.id>, accessed February 5, 2023

The articles above have implications for the state's obligation to facilitate its citizens in obtaining decent work. Therefore, careful planning is needed in the field of manpower to realize the country's obligations.²

To guarantee legal certainty governing the employment relationship between employers and workers, as well as to provide protection for the rights and obligations of each party, the government enacted Act No. 13 of 2003 concerning Manpower (Law on Manpower). The law is intended to provide legal certainty over the guarantee of labor rights.

Based on the provisions of Article 4 of the Labor Law, the objectives of employment are:

- a. empower and utilize manpower optimally and humanely;
- b. realizing equal distribution of employment opportunities and supply of manpower in accordance with the needs of national and regional development;
- c. provide protection to workers in realizing welfare; And
- d. improve the welfare of workers and their families.

Labor is the main factor in a company, where workers / laborers are the backbone of the company's wheels and it is appropriate for workers to get proper compensation.³ Even though the Labor Law has been passed, employment issues are still a thorny issue in Indonesia. INDEF researcher Enny Sri Hartati said that Indonesia has not been able to solve labor problems even though it has been independent for 70 years. This is very ironic, because constitutionally Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia has guaranteed the people's right to work.⁴

Labor issues such as annual wage increases, payment of wages, appointment of permanent employees whose contracts do not comply with the terms of the

²Adrian Sutedi, 2011, Labor Law, Jakarta: Sinar Graphic, h. 1.

³Muhammad Wildan, Legal Protection for Contract Labor in Certain Time Work Agreements based on Law Number 13 of 2003 concerning Manpower, Journal of Khaira Ummah Law, Vol.12 No. 4 December 2017, p.834.

⁴Ashabul Kahpi, "Wage: An Overview of Labor Issues in Indonesia", Jurisprudentie, Volume 5 Number 2, December 2018, p. 68.

workers are some of the most common issues that arise at the mediation level of the labor service and labor inspectors to the industrial relations court as a special labor court.

On November 2, 2020 the government passed Act No. 11 of 2020 concerning Job Creation (Omnibus Law). In a general sense, the Omnibus Law can be interpreted as a law made to target a major issue that might revoke or amend several laws at once so that they become simpler.⁵Omnibus law is a technique/method for formulating statutory norms through a new statutory regulation simultaneously correcting many articles in many laws to achieve very important state policies.

The Omnibus Law underwent formal review at the Constitutional Court and based on the Constitutional Court's decision Number 91/PUU-XVIII/2020 on November 25 2021 it was stated that the formation of the Job Creation Law was contrary to the 1945 Constitution of the Republic of Indonesia and did not have conditionally binding legal force as long as it was not interpreted as "not carried out". Improvement within 2 (two) years since this decision was pronounced. The Constitutional Court ordered the legislators to make corrections within a maximum period of 2 years after the Constitutional Court's decision was pronounced and if corrections are not made within that time limit, Act No. 11 of 2020 concerning Job Creation becomes permanently unconstitutional. Thus the Job Creation Law is only valid for 3 years, namely from the time it was promulgated up to two years after the Constitutional Court's decision was pronounced.⁶

The Job Creation Law is a product of legal regulations at the initiative of the government and the DPR to deregulate and de-bureaucratize regulations using the Omnibus Law method to attract investors to invest their capital in the country. The narrative that has been circulating is that investors are reluctant to invest in Indonesia because the rules are unclear and often change, overlap, convoluted bureaucracy to rigid labor regulations. Omnibus law has the characteristic of removing and changing several regulations into one regulation that can cover the entire scope.⁷

The employment cluster in the Omnibus Law on Job Creation received the most criticism because it was considered detrimental to workers or laborers. After its

⁵Yuni Nurkuntari, 2020, Omnibus Law Opportunities And Challenges In The Indonesian Legislation System, The 6th Proceeding International Conference And Call Paper Sultan Agung Islamic University, Semarang : Unissula Press, 118

⁶KemenkumHam, Yosanna: The government complies with the Constitutional Court's decision on the Job Creation Law for the sake of legal certainty, <https://bpsdm.kemenkumham.go.id>, accessed February 12, 2023.

⁷May Linda Iswaningsih, I Nyoman Putu Budiarta, Ni Made Puspasutari Ujianti, Legal Protection for Local Workers in Law Number 11 of 2020 Concerning the Omnibus Law on Job Creation, Journal of Legal Preferences, Vol.2 No 3, November 2021, h.479

ratification, the Job Creation Law invited so much polemic in society that resulted in demonstrations in various regions in Indonesia. This demonstration took place because there were several points in the Job Creation Law that were deemed detrimental to the workers. The workers are of the opinion that their rights in the Manpower Law are diminishing with the existence of the Job Creation Law.⁸

The Job Creation Law still harbors a number of normative problems, namely that it has not provided guarantees of legal certainty for guaranteeing workers' rights, such as the determination of proper wages and eligibility for severance pay. Likewise the provisions regarding layoffs, the law only accommodates the interests of employers so that it can have implications for layoffs for workers/workers unilaterally. The Job Creation Law does not regulate the prohibition of terminating workers' employment with the provisions stipulated in the Manpower Law. This is very detrimental to workers because there is no legal basis for workers being laid off by companies because workers experience conditions as stipulated in Article 153 of the Manpower Law.⁹

Based on the description above, this study aims to analyze labor welfare arrangements based on Act No. 11 of 2020 concerning Job Creation and whether these regulations have provided legal protection for workers.

2. Research Methods

This research approach method is normative juridical with statutory approach (statute approach). Normative research is one that places law as a building system of norms. The system of norms in question is regarding the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings).¹⁰ The specification of the analytical descriptive research, the type of data is secondary data while the data collection method is library research. Methods of data analysis using qualitative analysis.

⁸Ibid.

⁹Karo and Yana, A. F, 2020, Omnibus Law's Conception for the Protection of Women Workers in Indonesia, Scientific Magazine Warta Dharmawangsa, 14(4), h. 724.

¹⁰Mukti Fajar ND and Yulianto Achmad, 2013, Dualism of Normative and Empirical Legal Research, Yogyakarta: Student Library, h. 34.

3. Results and Discussion

3.1. Labor Welfare Arrangements Based on Act No. 11 of 2020 Concerning Job Creation

The Job Creation Law has made several changes to the Manpower Law. Related to the wage system, the industrial relations system in this case work agreements, social security in the form of JKP, and termination of employment. The regulation regarding the wage system in the Job Creation Law removes article 88D of the Manpower Law which regulates decent living necessities in the provisions for applying wages and replaces these provisions with calculations based on economic growth/inflation variables stipulated in article 88D of the Job Creation Law.¹¹

In setting work agreements, regarding the period of the Specific Time Work Agreement (PKWT), the Job Creation Law abolishes the PKWT time limit provisions previously regulated in Article 59 of the Manpower Law. This change correlates with the disappearance of paragraph (4) in Article 59 of the Manpower Law which stipulates that work agreements for a certain time based on a certain period of time can be held for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of time. 1 (one) year old. The Job Creation Law also abolishes the stipulation that a PKWT which has passed a maximum period of 2 years plus 1 year, legally changes to an unspecified time work agreement (permanent work agreement). This provision eliminates the opportunity for workers to change their status from contract workers to permanent workers. In fact, the position of workers in contract work status is far more vulnerable than permanent workers.¹²

The formulation of articles related to PKWT in the Job Creation Law does not provide legal certainty regarding the PKWT period. On the other hand, the new provisions regarding PKWT in the Job Creation Law contain the obligation of employers to pay compensation money to workers/laborers who are employed on a contractual basis, in the event that the specified time work agreement expires. This compensation money is given according to the working period of the worker/labourer in the company concerned. This provision is like a breath of fresh air that benefits contract workers. However, the arrangement of how to

¹¹Sigit Riyanto, et al, 2020, Critical Notes Against Law No. 11 of 2020 Concerning Job Creation (Approval of the DPR 5 October 2020), Working Paper, Edition 2/5 November 2020, Yogyakarta: Faculty of Law, Gadjah Mada University, p.44

¹²Ibid., p.42.

implement it in the field is not necessarily good. So far, many labor regulations have looked good, but their implementation in the field has not gone well.¹³

The provisions regarding layoffs have changed in the Job Creation Law. Article 151 paragraph (2) changes to: "In the event that termination of employment is unavoidable, the purpose and reasons for termination of employment are notified by the employer to workers/laborers and/or trade unions/labor unions". This paragraph raises concerns about the possibility of unilateral layoffs because it is enough for layoffs to be carried out through notification from the employer without having to be preceded by prior negotiations. UU Cipta Kerja also changed the provisions regarding the amount of severance pay and long service awards that workers can get in the event of a layoff. Under the Labor Law, the amount of severance pay and long service awards received when a layoff occurs is influenced not only by the length of time worked, but also the reason for the layoff. In the Job Creation Law, the correlation between the reasons for layoffs and the amount of severance pay and/or long service awards is eliminated, so that the multiplier of severance pay and/or long service awards which previously could have been up to 32 times wages also no longer exists. Under the Job Creation Law, the maximum limit for severance pay and/or long service awards required of employers is 19 times wages.¹⁴

The arrangements regarding worker welfare in the Job Creation Law are not in accordance with John Rawls's theory of justice which states that stating the principle of justice ythe principle of the same freedom; difference principle; principle of equal opportunity. Regarding the regulation of worker welfare in the Copyright Law, it is based on principlessocial and economic inequalities are regulated in such a way as to obtain maximum benefits for the most disadvantaged members of society. In this case there is no justice for the workers. The labor force's weak position and lack of bargaining value causes their rights to be often ignored

3.2. The Current Regulations Regarding Worker Welfare in Act No. 11 of 2020

Concerning Job Creation in Providing Legal Protection for Workers

The Job Creation Law has changed several articles in the Manpower Law. The Job Creation Law limits the setting of minimum wages by districts/cities and formulates them based on inflation and economic growth⁸. The district or city minimum wage is in accordance with the Job Creation Law with certain conditions. The determination of the minimum wage takes into account the eligibility of

¹³Ibid

¹⁴Ibid., p.49.

workers through consideration of aspects of economic growth and inflation. The Job Creation Law also reduced the limit for giving severance pay from 32 months of salary to 19 months plus 6 months of salary provided by the government. The specified amount of severance pay is also different from the Labor Law.¹⁵

The regulation regarding the structure and scale of wages in the Job Creation Law explains that "Entrepreneurs are required to compile a structure and scale of wages in the company by taking into account the company's capabilities and productivity". The difference in the formulation of the wage structure and scale between the Labor Law and the Job Creation Law lies in the considerations of class, position, length of service, education, and competence of workers, which are then only abolished by considering the formulation of the wage structure and scale based solely on ability and company productivity.¹⁶

Article 92 paragraph (2) explains that the structure and scale of wages are used as guidelines for determining wages, the provisions in determining wages are based on time units and output units as stipulated in Article 88B paragraph (1) that wages are determined based on time units; and/ or yield units. Output unit wages are wages that are determined based on units of time such as daily, weekly or monthly. Meanwhile, the output unit wage is the wage determined based on the results of the work that has been agreed upon. This is different from the wage provisions in the Manpower Law which previously did not stipulate the calculation of work wages based on time units and output units. Even though the Job Creation Law does not explicitly say hourly wages, but it is possible that legal instruments that will be used later with hourly wages have already been prepared. If the provisions on the wage structure and scale are used as a guideline for setting wages based on a unit of time and unit of output, then the worker/worker will lose because the take home pay received can be below the UMR.¹⁷

Mass termination of employment can threaten workers because the cost of dismissing is lower than having to always pay workers so that in this case there will be uncertainty at work. when compared to the law on manpower, the contents of the job creation law are different, although the law on manpower is considered to be far from the expectations desired by workers. Even so, it turns out that the substance of the copyright law is getting worse and worse. The manpower law stipulates that it is prohibited for companies to terminate employment when a woman worker is pregnant, gives birth, has a miscarriage or is breastfeeding.

¹⁵Otti Ilham Khair, Analysis of the Job Creation Law on the Protection of Workers in Indonesia, Widya Legal Institutions, Vol. 3 No. 2, September 2021, p.48.

¹⁶See Data on Wages Provisions in the Labor Law and the Job Creation Law. What's the Difference?<https://www.kompas.com>, accessed March 3, 2023

¹⁷Siti Solekhah, et al, Job Creation Omnibus Law and Islamic Economic Perspective on Labor, Ats-Tsarwal Journal, Vol, 1 No. 1 March 2021), p.23

Meanwhile, the work copyright law does not regulate the prohibition as referred to above.¹⁸

The employment protection program is very necessary if we want our workforce to get a decent living. There needs to be productive employment opportunities that bring in a decent income. In addition to social protection and better prospects for personal development and freedom to express complaints and concerns at work. The Job Creation Law is one of the obstacles in realizing decent job creation. Even though the law was issued to make it easier for companies to be able to adapt in situations of global economic conditions that are vulnerable to crises. However, on the other hand, loosening labor regulations. The more labor regulations, the more rigid. The rules that are supposed to protect workers have an impact on labor costs.¹⁹

The Job Creation Law establishes JKP with the aim of making it easier for workers who have experienced termination of employment (PHK) to get new jobs and at the same time maintain the standard of living of the workforce. One of the benefits that JKP offers is access to labor market information (GPA) provided by the Ministry of Manpower. However, to support the optimal implementation of JKP, the Ministry of Manpower must develop an inclusive Karirhub-Sisnaker.²⁰

Based on the description above, it can be said that the Employment Cluster Job Creation Law has not fully provided legal protection for workers. This is contrary to the theory of legal protection, namely protection of dignity and recognition of human rights owned by legal subjects based on legal provisions of arbitrariness or as a collection of rules or norms that can protect one thing from another.²¹

The Job Creation Law seeks to provide the best arrangements for workers. However, as is known, there are many gaps that weaken the position of the workforce. In preventive legal protection, the opportunity is given to submit opinions before the government's decision gets a definitive form to prevent disputes from occurring. However, in the Job Creation Law, the public is not given the opportunity to submit their opinion in drafting the law. This has resulted in many rejections from the public regarding the ratification of the Job Creation Law, especially the employment cluster.

¹⁸Ibid

¹⁹The Job Creation Law Keeps Workers from Getting a Decent Livelihood, <https://www.ugm.ac.id>, accessed March 3, 2023

²⁰Developing Labor Market Information, <https://smeru.or.id>, accessed March 3, 2023.

²¹ Philipus M. Hadjon, 1987, Legal Protection for the Indonesian People, Surabaya: Science Development

4. Conclusion

There are still many arrangements for workers' welfare based on Act No. 11 of 2020 concerning Job Creation which weaken the workforce, so that workers' rights are neglected, so they have not fully provided legal protection for workers. Therefore, there is a need for consequences from the government in implementing JPK by preparing jobs so that workers who have been laid off can return to obtain their right to a decent living, and there is a need for coordination between workers, trade unions and employers in discussing employment contracts.

5. References

Adrian Sutedi. (2011). Labor Law. Jakarta: Sinar Graphics.

Anjas Pratama Mokoginta, Tommy F. Sumakul and Stevan Obadja Voges, Legal Protection of Workers' Rights according to Act No. 11 of 2020 concerning Job Creation, Journal of Lexcrimen, <https://ejournal.unsrat.ac.id>, accessed February 5, 2023.

Ashabul Kahpi, "Wage: An Overview of Labor Issues in Indonesia", Jurisprudentie, Volume 5 Number 2, December 2018.

Developing Labor Market Information, <https://smeru.or.id>, accessed March 3, 2023.

Karo and Yana, AF (2020). The Omnibus Law's Conception for the Protection of Women Workers in Indonesia, Scientific Magazine Warta Dharmawangsa.

KemenkumHam, Yosanna: The government complies with the Constitutional Court's decision on the Job Creation Law for the sake of legal certainty, <https://bpsdm.kemenkumham.go.id>, accessed February 12, 2023.

May Linda Iswaningsih, I Nyoman Putu Budiarta, Ni Made Puspasutari Ujianti, Legal Protection for Local Workers in Act No. 11 of 2020 Concerning the Omnibus Law on Job Creation, Journal of Legal Preferences, Vol.2 No 3, November 2021.

Muhammad Wildan, Legal Protection for Contract Labor in Certain Time Work Agreements based on Act No. 13 of 2003 concerning Manpower, Journal of Khaira Ummah Law, Vol.12 No. December 4, 2017.

Mukti Fajar ND and Yulianto Achmad. (2013). Dualism of Normative and Empirical Law Research, Yogyakarta: Student Library.

Otti Ilham Khair, Analysis of the Job Creation Law on the Protection of Workers in Indonesia, Widya Legal Institutions, Vol. 3 No. 2, September 2021.

Philipus M. Hadjon, 1987, Legal Protection for the Indonesian People, Surabaya: Science Development

See Data on Wages Provisions in the Labor Law and the Job Creation Law. What's the Difference?<https://www.kompas.com>, accessed March 3, 2023.

Sigit Riyanto, et al, 2020, Critical Notes Against Law No. 11 of 2020 Concerning Job Creation (Approval of the DPR 5 October 2020), Working Paper, Edition 2/5 November 2020, Yogyakarta: Faculty of Law, Gadjah Mada University.

Siti Solekhah, et al, Job Creation Omnibus Law and Islamic Economic Perspective on Labor, Ats-Tsarwal Journal, Vol, 1 No. March 1, 2021.

The Job Creation Law Keeps Workers from Getting a Decent Livelihood,<https://www.ugm.ac.id>, accessed March 3, 2023.

Yuni Nurkuntari, 2020, Omnibus Law Opportunities And Challenges In The Indonesian Legislation System, The 6th Proceeding International Conference And Call Paper Sultan Agung Islamic University, Semarang : Unissula Press