

## **Juridical Analysis of Labor Protection in Indonesia (Perspective of Labor Copyright Law Number 11 of 2020)**

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### **Abstract**

*The government and legislature enacted Law Number 11 of 2020 concerning Job Creation, which amended the previous Employment Law. This article aims to understand what labor protection will look like after the Job Creation Law is passed. The research method applied is qualitative with a normative juridical approach, using descriptive analysis. The research results show that justice in providing better protection to Indonesian workers has not been achieved, due to the imbalance in bargaining positions between employers and workers. Therefore, regulations are needed that can accommodate a balance between the two parties. One form of legal protection for workers in the event of termination of employment due to pandemic efficiency, based on labor law, is realized in compensation. This is regulated in Article 164 paragraph (3) of the labor law, which states that workers have the right to severance pay twice the applicable provisions, referring to the length of service and rights in accordance with Article 156 paragraph (2), Article 136 paragraph (3), and Article 156 paragraph (4). Industrial relations courts, in handling cases of termination of employment due to efficiency, need to pay special attention to workers' rights to receive double severance pay. If layoffs cannot be avoided, especially in emergency situations such as a pandemic, the company must prove reasons for efficiency with audited financial reports for the last two years. The government needs to monitor and check that layoffs are not driven by employers' desire to reduce operational costs. Legal protection for workers is the implementation of basic rights guaranteed by the constitution, as stated in Article 27 paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution.*

Keywords: *Labor Protection, Justice, Job Creation Law*

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### **I. INTRODUCTION**

In his inauguration speech on 20 October 2019, Joko Widodo planned an omnibus law with the House of Representatives, proposing two laws: job creation and empowerment of Micro, Small and Medium Enterprises. In February 2020, the Job Creation Bill was submitted to the DPR with a target of 100 days. Protested by various

elements, it was passed on October 5 2020, three days ahead of the target, and received support from 7 parties. This law amends 82 laws, including labor laws, limits minimum wages, and details severance pay. Outsourcing was permitted without a direct link to production, and rules protecting workers' rights were removed. In President Joko Widodo's second term, the aim was to increase investment and encourage industrialization in Indonesia by cutting through bureaucratization and making licensing new activities difficult. The government and the House of Representatives proposed this draft law in the 2020 legislative program. Even though it attracted controversy and criticism over the shackles of people's aspirations, this law was passed as a valid and binding work copyright law. The focus of this writing is to outline the conception of the Job Creation law related to labor protection, changes from previous labor laws, and its impact on workers. The aims of the writing include analyzing the complexity and impact of the Job Creation law in the legal framework, understanding changes in content between previous laws, and the application of the Job Creation law to labor protection in Indonesia.

According to the Minister of Manpower, the passing of the Job Creation Law was influenced by several crucial factors. First, related to the transfer of employment opportunities abroad. Second, the competitiveness of workers is relatively low compared to other countries. Third, the growth of the population who have not or are not working. Fourth, Indonesia is trapped in the middle income category. The pandemic adds complexity for companies in protecting their workforce with the enactment of the Job Creation Law. Especially in the context of employment relations, termination of employment is a crucial issue, because it results in loss of livelihood and potential misery for workers and their families. As a developing country, Indonesia is faced with demands for innovation and creativity to increase competitiveness. Making legislation as a legal basis for improving the business climate is a necessary step, but its impact must be considered comprehensively, both economically and socially. Legal independence often conflicts with ideals and reality, especially when the law regulates various aspects of human life. In facing changing times, legal changes that are holistic and responsive to rapid developments are important. In an effort to provide ease of doing business, changes in regulations that support it are needed. Globalization influences a country's view of balancing itself with other countries, including Indonesia. The impact of globalization brings significant changes in various aspects of human life and automatically has an impact on changes in law. Therefore, legal changes must be able to respond to societal dynamics and anticipate changing times to remain relevant and effective.

## **II. LITERATURE REVIEW**

### **1. Job Creation and Labor Protection Law**

The government's responsibility to encourage workforce empowerment is still a matter of debate, especially with the enactment of the Job Creation Law which is considered to override workers' rights. This law is considered vulnerable to issues of exploitation and discrimination in the work environment, especially regarding the rights of female workers as regulated in Law Number 13 of 2003 concerning Employment. These rights involve safety aspects during pregnancy, wages for special working hours during production, as well as the right to leave for menstruation, childbirth, miscarriage and breastfeeding at work. In the Job Creation Law, there have been cuts to workers' rights, especially in changes to Article 93 Paragraph (1) which regulates wage rights when workers are absent from work. This can have an impact on the protection of workers, especially women, including the right to worship and believe. Uncertainty in work is increasing, especially with mass layoffs becoming easier. Even though the Employment Law has not met workers' expectations, the substance of the Job Creation Law is considered increasingly detrimental, especially regarding the prohibition on terminating employment relations under certain conditions that are not clearly regulated.

### **2. Transformation from the Employment Law to the Job Creation Law**

The Job Creation Law does not provide provisions prohibiting companies from terminating workers as regulated in the Manpower Law, because there is no legal basis that regulates it. This situation creates difficulties for workers, especially if they face conditions as described in Article 158 of the Manpower Law. Apart from that, there is discriminatory treatment towards prospective workers and workers who are already working, which is not clearly regulated in the formulation of the Job Creation Law. In contrast to the Employment Law which guarantees wages for permanent workers even if they are not working, the Job Creation Law does not regulate this explicitly. In this context, workers who are unable to work due to limitations are at risk of not receiving wages or even being fired, potentially detrimental, especially for female workers who are on maternity leave or miscarriage leave, because they may be considered unable to work and this will have an impact on the wages they receive.

### **3. Formalization of Labor Protection in the Form of Legislation**

Legal protection includes preventive and repressive efforts provided to legal subjects, both written and unwritten. Legal protection for workers is the goal of employment development, ensuring the welfare of workers who are the backbone of companies and have an important role in national development. The existence of social, technical and economic protection, such as social security, work safety and decent wages, is the focus of comprehensive policies to protect workers.

However, in the job copyright law, there are significant changes to labor protection norms. Several articles have been changed, such as article 56 concerning fixed-term work agreements, which previously had a time limit, can now be extended without a time limit. Likewise, the long rest rule is optional. These changes indicate a reduction in state oversight of labor regulations, seen as an attempt to support investment at the expense of some legal protection and certainty for workers.

Issues related to employment relations, such as the term of contract agreements and long breaks, are now left to the agreement mechanism between workers and employers through work agreements, collective work agreements, or company regulations. However, this can be detrimental to workers because their position tends to be weak. The dominance of employers in regulating employment relations creates an imbalance that is difficult to avoid, because workers' living needs make them accept the conditions set by employers.

In job creation law, significant changes to labor protection norms give rise to debate and struggles for workers' rights. Although the amendment to the Employment Law was expected to provide additional protection, the Job Creation Law actually reduces it. One striking example is the amendment to Article 151 paragraph (2) of the Employment Law which was amended in the Job Creation Law, providing flexibility for employers to terminate employment relationships unilaterally.

This change reflects the orientation of legislators who tend to prioritize business and investment aspects by simplifying employment issues. Although at first glance it does not appear that there is a wrong norm, in reality, workers find it difficult to resist layoffs because of the power imbalance between employers and workers. Although the law includes bipartite bargaining procedures, employers' greater economic power often influences workers' decisions. The potential for arbitrary action by employers is increasing, especially if negotiations do not

reach an agreement, allowing employers to take unilateral decisions regarding termination of employment.

### **III. METHODOLOGY**

This research adopts a qualitative method with a normative juridical approach which discusses doctrine or principles in legal science. An analytical descriptive approach is used to describe each legal regulation related to legal theory as the object of research, by providing an examination of actual problems based on real facts. The data sources used consist of primary legal materials, such as the Job Creation Law and the Employment Law, as well as secondary legal materials in the form of books, scientific writings, electronic newspapers and electronic magazines. The data collection method applied is library research, and data analysis is carried out by reviewing and describing the applicable rules to conclude objectively in understanding and answering the problems in this research.

### **IV. RESULT AND DISCUSSION**

One form of legal protection for workers in the event of termination of employment due to pandemic efficiency, based on labor law, is realized in compensation. This is regulated in Article 164 paragraph (3) of the labor law, which states that workers have the right to severance pay twice the applicable provisions, referring to the length of service and rights in accordance with Article 156 paragraph (2), Article 136 paragraph (3), and Article 156 paragraph (4). Industrial relations courts, in handling cases of termination of employment due to efficiency, need to pay special attention to workers' rights to receive double severance pay.

If layoffs cannot be avoided, especially in emergency situations such as a pandemic, the company must prove reasons for efficiency with audited financial reports for the last two years. The government needs to monitor and check that layoffs are not driven by employers' desire to reduce operational costs. Legal protection for workers is the implementation of basic rights guaranteed by the constitution, as stated in Article 27 paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution. The state must prioritize workers who are in a weak position, considering the right to work and a decent living. is the right of every citizen.

The job creation law should not only make investment easier but also promote general welfare, worker protection and prosperity for the Indonesian people. Violations of these basic rights are considered human rights violations. Handling of layoffs must be based on the principle of justice, considering that workers are not

commodities, but rather main partners in production. The government needs to be involved in drafting regulations that reflect the principles of justice, both substantively and procedurally, to protect workers' rights and prevent unfair termination of employment.

## **V. CONCLUSION**

Law Number 13 of 2003 concerning Employment has regulated procedures for terminating company employment. Likewise, in the civil law book, it is explained that termination of employment due to efficiency can be carried out in urgent situations. Labor law stipulates three elements related to work agreements: work, wages and orders, as stated in Article 1 number 15. These elements are then completed with the time element, as regulated in the civil code. Even though the Labor Law does not require specific proof, in resolving industrial relations conflicts, the government's role as a mediator, conciliator or arbitrator is very important. This involves the labor service, a panel of industrial relations court judges, and the Supreme Court, who together prove that the implementation of labor laws is in accordance with applicable provisions.

Massive restrictions on social activities to prevent the spread of Covid-19 and restrictions on community activities have resulted in the closure of company operations, potentially triggering layoffs due to the impact of the pandemic. In Law Number 11 of 2020 concerning Job Creation, dismissing workers no longer receive double severance pay due to efficiency considerations. To maintain the principles of justice and create good industrial relations, termination of employment should be the final action in an employment relationship. Therefore, both parties need to consider it carefully so that its implementation does not harm to either of them. Reviewing the draft agreement or work contract between the employee and the employer needs to be carried out with the principle of justice, so that a balance can be achieved between the rights and obligations of both parties.

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