

Model of Supervision of Letter Notification of Termination of Investigation Results in Providing Legal Certainty

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Abstract

The impact of the Job Creation Law (UU Cipta Kerja) in Indonesia from a labour law perspective. This research analyses specific articles of the Job Creation Law that affect changes in the regulation of employment contracts, industrial relations, and termination of employment. In addition, it evaluates the extent to which the implementation of the Job Creation Law is consistent with international norms of fundamental labour rights, such as those contained in the UN Declaration of Human Rights and the International Labour Organization (ILO) Conventions. In looking at the impact of the Job Creation Law, this research adopts a critical approach, not only a normative review of the text of the law, but also involves an analysis of the practical consequences in the labour field. The concept of critical legal theory is used to understand the social and political implications of the law, beyond the technical aspects of the law. The overview covers the understanding of the Job Creation Law, the controversies surrounding its legislative process, and the diverse perspectives of industry players, trade unions, and labour rights activists. Some articles, such as those related to flexibility of working hours, industrial dispute resolution, and termination of employment, are the focus of debate. The importance of fundamental labour rights in the context of international and national law is outlined, with emphasis on the UN Declaration of Human Rights and ILO Conventions. An evaluation is made of the consistency of the implementation of the Job Creation Law with international norms, referring to labour rights such as freedom of association, prohibition of forced labour, and the right to equal pay. In legal thinking and critical analysis theory, critical legal theory is used as a tool to understand the impact of laws in depth, involving social and political dimensions. This allows researchers to explore the power dynamics, conflicts of interest, and inequalities that may arise. The discussion involves analysing the articles of the Job Creation Law that affect the regulation of labour contracts, industrial relations, and termination of employment. Controversies surrounding the Job Creation Law's legislative process, support, and criticism from various parties are carefully presented. An in-depth analysis of the extent to which the Job Creation Law is consistent with international norms highlights the differing views of legal experts such as Philip Alston and Virginia Mantouvalou. Criticisms of some articles of the Omnibus Law emphasise the potential rollback of workers' rights and the risk of modern slavery. The conclusion highlights the complexity of the impact of the Job Creation Law, the divergence of

views among stakeholders, and the need to maintain a balance between business freedom and labour rights protection within a binding legal framework.

Keywords: *Job Creation Law, workers rights, labour contract regulation*

I. INTRODUCTION

Stemming from academic concerns over the significant impact of law-making on the world of labour, it is understood that this process often reflects the complex dynamics between government policies and stakeholders' interests. Amidst this context, Law Number 11 of 2020, known as the Job Creation Law (Kemsetneg RI, 2020), emerges as a key focus. This law is recognised as a legal instrument designed to transform and optimise the regulatory framework in Indonesia, particularly in the area of employment. As a legal regulation undergoing significant changes, the Job Creation Law attracts widespread attention, particularly from a labour law perspective. This research aims to analyse the impact of the Job Creation Law on labour rights by adopting a labour law perspective. This approach is taken to open up a deeper space of understanding, with the hope of making a significant contribution to the existing literature, especially in detailing the concrete implications of the implementation of the law.

The critical analysis of the Job Creation Law carried out in this research is not only limited to a normative review of the text of the law. Moreover, this research will also explore the practical consequences that may arise in the reality of the labour field. This holistic approach enables a comprehensive understanding of the law's impact on the legal relationship between workers and employers. As a theoretical foundation, this research will refer to the concepts of labour law, workers' fundamental rights, and the principles of relevant labour laws. A holistic understanding will also involve comparisons with labour law practices in other countries. Through these efforts, this research aims to provide a more detailed view of the normative and practical shifts in the labour law framework following the implementation of the Job Creation Law.

The formulation of this research problem is: How do certain articles in the Job Creation Law affect changes in the regulation of employment contracts, industrial relations, and termination of employment from a labour law perspective? And to what extent is the implementation of the Job Creation Law in Indonesia consistent with international norms relating to the fundamental rights of labour, such as those contained in the United Nations (UN) Declaration of Human Rights and the International Labour Organization (ILO) Conventions?

II. LITERATURE REVIEW

1. The Job Law and Its Impact on Labour Rights

The Job Creation Law is an initiative to increase employment through efforts involving the facilitation, protection, and empowerment of cooperatives and micro, small, and medium enterprises. It includes efforts to improve the investment ecosystem, ease of doing business, and investment from the central government, as well as the acceleration of national strategic projects (source). The concept of Omnibus Law, applied in Indonesia's legislative system, refers to the revision of several statutory norms through a single law. This approach is referred to as a sweeping law because it simplifies the process of revising norms that are considered no longer in line with the development of society and detrimental to the interests of the state (Munawar, Marzuki, and Affan, 2021).

Omnibus Law allows the revision of articles in several laws at once, offering efficiency and effectiveness in simplifying legislation. Sofyan Djalil considers that this concept has been applied in several developed countries such as the United States and is suitable to be applied in Indonesia, which has overlapped regulations and a complex legislative process. However, since the beginning of the discussion of the Omnibus Law, many parties, including labour activists, academics, and community leaders, have voiced opposition, concerned that labour rights are not represented in the law (Munawar, Marzuki, and Affan, 2021).

The disapproval of the Omnibus Law can be seen in the legislative process of the Job Creation Bill. This process is considered non-transparent, non-participatory, too hasty, and ignores the principles of democracy. Despite the controversy and rejection among the public, the government and the Indonesian Parliament still passed the Job Creation Bill into the Law of the Republic of Indonesia Number 11 of 2020, even though it is considered a bad legislative practice (Munawar, Marzuki, and Affan, 2021).

A critical analysis of the Job Creation Law means that we need to investigate this law carefully. It is not only about reading the text, but also understanding the situation behind its creation and how its implementation may affect the world of work. Some parts of the law are of major concern, especially if we look at it from a labour law perspective, as Simamora (2021) explains.

It is important to evaluate how this law may affect workers' rights. To do so, we need to deeply understand the changes it brings about in terms of labour contract regulations, the relationship between workers and companies, and the process of terminating employment relationships, as emphasised by Kusuma (2020).

2. Fundamental Labour Rights in the Context of International and National Law

The concept of fundamental labour rights reflects the basic rights recognised internationally and nationally as inherent in every worker. The discussion of these rights is particularly important in the legal context at both the international and national levels. The United Nations (UN) Declaration of Human Rights and the International Labour Organisation (ILO) Conventions are two important documents that provide a legal foundation for viewing and assessing these workers' rights, as described by Jones (2019).

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Within the international framework, the UN Declaration of Human Rights sets out the basic principles of human rights, including workers' rights, which are universally recognised. Meanwhile, the ILO, as a specialised UN agency that focuses on labour issues, develops and oversees international standards related to workers' rights (Komnas, 2021).

When discussing the Indonesian context, the implementation of the Job Creation Law can be analysed by detailing the extent to which it conforms or is consistent with international norms recognised by the UN and ILO, as noted by Santoso (2022). This analysis includes an assessment of how the Job Creation Law treats internationally recognised fundamental labour rights, whether there are any discrepancies or to what extent they are maintained.

3. Legal Thinking and Critical Analysis Theory in Legal Research

In evaluating the impact of the Job Creation Law through a critical analysis perspective, critical legal theory becomes an important tool that can provide deep insights into the consequences and implications of the law. Critical legal theory, as described by Gill (2018), involves an approach that not only focuses on the technical aspects of the law, but also takes into account the social and political factors that may affect the implementation of the law.

The insights provided by critical legal theory can assist researchers in delving beyond the meaning of legal texts. It enables an in-depth understanding of how laws can impact society and political structures. By engaging the social and political

dimensions, researchers can identify and analyse power dynamics, conflicts of interest, and inequalities that may arise as a result of the implementation of the Job Creation Law.

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Critical legal theory also opens up opportunities to question the underlying assumptions that the law may contain. This could include research into how the law might reflect or reinforce social inequalities, the extent to which the interests of different groups of people are accommodated, or how the law might create or reduce opportunities for active community participation (Dairani & Ibad, 2022).

This approach, as explained by Turner (2020), provides a more comprehensive and contextualised picture of the impact of the Job Creation Law. Beyond just understanding the legal rules, researchers can explore how the rules inspire or change social dynamics, as well as how political decisions in the law-making process may be reflected in its consequences.

III. METHODOLOGY

This research uses a qualitative research approach. Qualitative analysis is used to analyze unique findings in research. The qualitative research approach that will be used is normative juridical research, namely a research method that includes research on the identification of laws and legal events based on the legal aspects of a law and its application in the field. In this research the author uses normative juridical legal research, so that the data and legal materials used are of two types, namely primary data and secondary data. In addition, this research uses primary and secondary data collection techniques.

IV. RESULT AND DISCUSSION

1. Articles in the Job Creation Law that affect changes in the regulation of employment contracts, industrial relations, and termination of employment from a labour law perspective.

According to Article 1 Paragraph 3 Chapter 1 of Law Number 13 Year 2003 on Manpower, worker or labourer refers to any individual who performs work by receiving wages or compensation in other forms. However, there is a category referred to as an independent worker, which involves a person who performs work for his or her own benefit, such as a doctor who opens a private practice, a lawyer, a satay seller in his or her own cart, or a farmer who works his or her own rice field. The definition of labour includes individuals who work for others or for themselves for the purpose of producing goods or services to meet their daily needs, as long as they meet the age requirements set by law. People are considered labourers if they have reached working age, which in Indonesia is between 15 and 64 years old (Khair, 2021).

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In the scope of employment, the term "employer" refers to an individual, entrepreneur, legal entity, or other entity that employs workers by paying wages or other forms of compensation, as stipulated in Article 1 point 4 of Law No. 13 Year 2003 on Manpower. Labour law applies to legal relationships arising from agreements between employers and workers or labourers, where both are bound by terms of employment, rights, and obligations stipulated in the agreement, as explained in Article 1 point 14 of Law No. 13 of 2003 on Manpower.

The explanation of employment agreements is also regulated in Article 1601 a of the Civil Code, which describes an employment agreement as an agreement in which a worker surrenders his/her energy to an employer for a wage for a certain

period of time. Within the Indonesian legislative framework, employment agreements are divided into fixed-term employment agreements (PKWT) and indefinite-term employment agreements (PKWTT). According to Article 15 of Kepmenakertrans 100 Year 2004, PKWT can change into PKWTT if it does not fulfil certain conditions, and PKWTT must be made in writing (Matompo, 2020). A work agreement for an indefinite period ends under several conditions, including the death of the worker, the expiry of the agreement period, the completion of certain work, a court ruling or dispute settlement institution, or certain circumstances stated in the work agreement, company regulation, or collective labour agreement. Special conditions that can cause the end of the employment relationship include events that were previously difficult to avoid, such as natural disasters, social unrest, or security disturbances (certain circumstances or events that are force majeure) (Aritonang et al., 2022).

The impact of the Job Creation Law on the regulation of labour contracts, industrial relations, and termination of employment stimulated heterogeneous opinions among stakeholders, involving industry players, legal analysts, and workers' groups. Article 34, which introduces flexibility in working hours, gained particular support from the industrial sector and business freedom advocates. This view is based on the belief that adjusting working hours provides productivity gains and economic competitiveness. On the other hand, trade unions and labour rights advocates view this article critically, considering it potentially exploitative and detrimental to workers' welfare (Tuegeh, 2021).

Article 59, which deals with the settlement of industrial disputes at the national level, generated debate between employers and trade union groups. Employers responded positively to the move, appreciating the effort to provide legal certainty and efficiency. Meanwhile, trade unions and some labour activists argued that Article 59 could threaten the independence of trade unions at the local level and create potential inequalities in dispute resolution.

Article 62, which addresses employers' special obligations in terminating employment, has the support of those committed to workers' rights. This view is rooted in the belief that this measure provides substantial additional protection for workers. However, from an employer's perspective, Article 62 may be perceived as an economic burden that could threaten business continuity, especially in the midst of unstable economic conditions (Anggraeny & Hidayah, 2021).

2. The implementation of the Job Creation Law in Indonesia consistent with international norms relating to the fundamental rights of labor, as contained

in the United Nations (UN) Declaration of Human Rights and the International Labor Organization (ILO) Conventions

The discussion on the extent to which the implementation of the Job Creation Law in Indonesia is consistent with international norms, particularly those contained in the United Nations (UN) Declaration of Human Rights and the International Labor Organization (ILO) Conventions, is an interesting and in-depth discussion. The Job Creation Law, enacted with the aim of increasing investment and creating jobs, demands a critical evaluation regarding the protection of fundamental labor rights. In the context of UN Human Rights, questions arise to what extent this regulation provides adequate protection of workers' rights, such as the right to work without discrimination and the right to form trade unions. Similarly, an evaluation of consistency with ILO Conventions is an important step. Freedom of association, the elimination of forced labor, and the creation of decent working conditions are the main focus in understanding whether the Job Creation Law meets recognized international standards (Pratiwi & Harianto, 2021).

Philip Alston, in his article "Core Labor Standards (CLS) and Transformation of the International Labor Rights Regime," proposes the concept of assessing decent and fair working conditions. The assessment is based on indicators of the fulfillment of fundamental (normative) rights, the prohibition of forced labor, the right to assemble and organize, the right to equal pay, and the principle of non-discrimination. Alston refers to Paragraph 2 of the Declaration on Fundamental Principles and Rights at Work (1998), which emphasizes the need to safeguard and promote respect for workers' fundamental rights, including the prohibition of forced and child labor, freedom of assembly and the right to organize and collectively bargain, equal pay for men and women in work of equal value, and non-discrimination in employment (Frey, 2018). Virginia Mantouvalou, in her article "Are Labour Rights Human Rights?", emphasizes the importance of a positivist approach through the establishment of domestic regulations to ensure the fulfillment of the right to work and a decent livelihood. She refers to international legal literature, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social, and Cultural Rights (ICESR), the European Convention on Human Rights (ECHR), and the San Salvador Protocol in the Area of Economic, Social, and Cultural Rights (1999).

Based on the views of these two experts and ICESR General Comment 18 on the Right to Work, the principle of the right to work and an adequate livelihood can be realized if the conditions are met: availability of work, accessibility without discrimination, and acceptability and quality of fair and comfortable working

conditions, including job security, the right to form trade unions, and the right to freely choose and accept employment. The concept of a rights-based state states that the state, through the government, has primary responsibility for the right to work and a decent livelihood. This is in accordance with the mandate of Article 28I Paragraph (4) of the 1945 Constitution jo. Article 71 of Law Number 39 of 1999 concerning Human Rights. In the context of the Omnibus Law on Job Creation, there have been criticisms of the labor arrangements in several articles (Articles 81-84), which are considered to weaken the principles of workers' rights. Some of the changes include the removal of provisions on the use of foreign labor, changes to the type of employment contract, weaker arrangements for leave and rest rights, wage arrangements that are considered to be less protective of workers, and ease in the process of termination of employment by companies (Suntoro, 2021b).

The impact of the Omnibus Law on Job Creation, according to several experts, includes a decrease in standards and guarantees for workers' rights, the potential for modern slavery related to outsourcing of labor, and the risk of a decrease in the quality of working relationships between employers and workers. Criticism was also aimed at the lack of involvement of workers' organizations in the planning and drafting process of the Omnibus Law. Timboel Siregar from the Indonesian Workers' Organization (OPSI) and Dr. Aloysius Uwiyono from the University of Indonesia provided a critical evaluation of several articles of the Omnibus Law, highlighting the potential negative consequences on workers and their rights (Suparman & Septiadi, 2021).

After conducting an in-depth analysis based on the views of Philip Alston, Virginia Mantouvalou, and the 18th Right to Work Commentary on the substance of the Omnibus Law on Job Creation, there are indications of setbacks that do not lead to progressive realization towards full realization. Influencing factors include a reduction in the availability of foreign labor that does not promise technology transfer, a decrease in accessibility by putting the employment relationship into the private sphere, a change in the nature of the PKWT employment relationship for all types of work, and the ease of the layoff process that harms workers and threatens the continuity of the right to work. Acceptability and quality of work are also affected by the decline in decent and fair working conditions, including reduced wage and social security arrangements, reduced rest and leave rights, and the weakening of trade unions and labor unions in running organizations and defending workers' interests (Suntoro, 2021).

Although Komnas HAM's complaint data shows that Law No. 13/2003 provides justice and workability, the number of labor cases in 2019 reached 213 cases, including structural and individual cases. The most complained issues relate to the non-fulfillment of normative rights such as wages, unilateral termination of employment, and obstruction of activities to organize (Komnas, 2021).

Therefore, it is important to encourage efforts to fulfill economic, social and cultural (ESC) rights by ensuring that the state, through the government, takes the necessary measures to the extent possible within available resources. Such measures should be geared towards the gradual achievement of the full realization of the right to work and a decent livelihood. The adoption of legislative measures is also part of the effort, but must pay attention not to weaken efforts to protect, fulfill and uphold human rights, especially for workers, through the formulation of norms in the Omnibus Law on Job Creation. In the labor law system, the disparity of position between employers and workers still occurs. The difference in bargaining position becomes the normative basis in the theory of the welfare state concept, which shifts the realm of private law into public law. Therefore, the role and intervention of the state is still needed to protect workers as a group that has a weaker position. Legal protection aims to ensure justice and protect the human rights of workers, both of which are the main objectives of legal protection in labor relations.

V. CONCLUSION

Based on the discussion, the author concludes that the Job Creation Law in Indonesia includes several important points. First, the definition of labor includes individuals who work for others or for themselves, and employment agreements are divided into Fixed-Term Employment Agreements (PKWT) and Indefinite-Term Employment Agreements (PKWTT). The impact of the Job Creation Law on the regulation of employment contracts, industrial relations, and termination of employment has triggered mixed views among stakeholders. Some articles, such as Article 34 on working hour flexibility, received support from industry and business freedom advocates, while trade unions criticized it. The incompatibility of the Job Creation Law with international norms, such as the UN Declaration of Human Rights and ILO Conventions, became a point of contention. Analysis from Philip Alston and Virginia Mantouvalou highlighted the need to ensure the protection of workers' fundamental rights. Criticism of some provisions of the Omnibus Law emphasized potential rollbacks in workers' rights and the risk of modern slavery. In the face of disparities

between employers and workers, legal protections are considered essential to ensure fairness and workers' human rights. There is a need to take gradual steps towards the full realization of the right to work and decent livelihood, taking into account international norms and human rights protections. Thus, this conclusion highlights the complexity of the impact of the Job Creation Law, the divergence of views among stakeholders, and the need to maintain a balance between business freedom and the protection of workers' rights within a legally binding framework.

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