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OMNIBUS LAW EMPLOYMENT CLUSTER: IS IT A FORM OF LABOR EXPLOITATION IN THE INDONESIAN CONTEXT?

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ABSTRACT

Omnibus legislation is the crucial method used when enacting the Law on Job Creation and it is concerned with providing further protection for Indonesia workers. This article aims to identify the new regulations pertaining to the Job Creation Law, especially in the Labor cluster. In addition, this article will also try to analyze the relevant labor cluster regulations of the Job Creation Law, paying special attention to the issue of legal protection for workers. This is normative legal research that has applied the statutory approach, conceptual approach, and factual approach. The findings of the research show that there are various changes related to labor issues in the Job Creation Law,

including regulations related to foreign workers, work relations, working time, rest and leave time, wages, termination of employment, and severance pay. An analysis of the legal implication that arises from several indicators of change then shows that the characteristics of the Labor Cluster arrangement in the Job Creation Law are potentially detrimental to workers. Although several new regulations benefit workers in an industrial relationship, in general, the Job Creation Law, especially the Labor Cluster, still reflects the main orientation of its formation, namely to facilitate investment through the creation of a flexible working relationship, causing uncertainty and the more marginalized status of workers. There is a need to ensure further certainty in the laws in order to ensure a broader protection for the status and rights of Indonesian workers.

Keywords: Omnibus law, exploitation, labour cluster, legal protection, Indonesia Labor Law.

INTRODUCTION

The legal protection for Indonesian labour is a constitutional mandate, as it has been stipulated in Article 27, paragraph (2) of the 1945 Indonesia Constitution. The law has affirmed that the state ensures that every citizen has the right to their work and adequate living standard (Hosen, 2007). These provisions have been challenged over time, more recently by the rapid pace of globalization, especially in light of the 4.0 industrial revolution era. This global phenomenon has impacted every aspect of one's work life as it has created disruptive conditions (Azmi, 2020). This inspite of the fact that liberal investment still flows and other economic activities continue to directly involved labour as the substantive economic elements (Li, 2017). These recent global developments have forced many countries in the world to arrange, to manage, and to mediate in any aspects regarding labour issues with the aim of national economic acceleration in line with the welfare state idea (Pierson, 1998). In this regard, especially in the Indonesia context, the labor issues in Indonesia cannot be understood and dealt with without giving due attention to the role of the 1945 Indonesia Constitution Preamble and the Pancasila (Suartha et al., 2021).

Indonesia as a third-world country is still struggling with any national development issues (Suartha et al., 2020), especially to compete in a

borderless world and very rapidly changing pace of economic issues (Thalib, 2014), like competitiveness, effectiveness, and efficiency in economic liberalization (Kusumastuti, 2016). These issues were identified by the national development plan (Chalabi, 2014), both the long-term and mid-term plans cannot be separated from any form of legislations and regulation problems that may arise (Suryahadi & Izzati, 2018), especially the massive number of ineffective, inefficient, sectoral, conflicting and disharmonious regulations at all statutory laws level (Voermans et al., 2015). Indonesia's government has decided to introduce a new legislation called an omnibus legislation, commonly referred to as the omnibus law. Recently, this legislation was proposed in the Bill on Job Creation drafting process, and subsequently it was enacted as the Law on Job Creation (*Undang-undang Nomor 11 Tahun 2020 tentang Cipta Kerja*).

The Law on Job Creation is drafted using the omnibus legislation method, which is understood as a law-making method to arrange bills that amended or revoked several statutory laws with broader subjects, issues, and legal elements that are sometimes uncorrelated to one another in content (Tarmizi, 2020). This law has amended and revoked seventy-eight laws which have been divided into eleven clusters. The main objectives of Article 4 of the Law on Job Creation enactment are related to the following government efforts, namely to boost investment climate, create further labour protection in Indonesia, develop a comprehensive economic cooperation system, protect small and micro businesses, and solve other sector issues with the view of enhancing the economic development of Indonesia.

The scope of this Law *inter alia* improves the investment ecosystem and business activities in terms of issues such as the following: employment, convenience, protection, and empowerment of cooperatives and SMEs; ease of doing business; research and innovation support; land acquisition; economic growth; central government investments and the acceleration of national strategic projects; enhancement of government administration; and the imposition of sanctions.

One of the most crucial issues during the law-making process leading to the enactment of the Law on Job Creation is on labour issues. The labour cluster was regulated in Chapter IV concerning Labour Article 80 to Article 84 of the Law on Job Creation. These articles are concerned with amending, regulating, and revoking

several arrangements, such as the Law Number 13 of 2003 concerning Manpower (Law on Manpower), Law Number 40 of 2004 concerning the National Social Protection System (Law on Social Protection System), Law Number 24 of 2011 concerning Social Protection Institution (Law on Social Protection Institution), and Law Number 18 of 2017 concerning Indonesia Migrant Workers Protection (Law on Indonesia Migrant). These provisions are made into one regulation as the main objective is aimed at providing the space for investors to see the regulations that have been amended without worrying about overlapping regulations and causing losses to investors. However, various diverse views have emerged, one of which had focused on the Manpower Sector Job Creation Law, a law which has nothing to do with the protection of the rights of workers, but a guise to favor the entrepreneur group, a pretext about the facilitation of investment for economic growth.

While these four laws cannot be separated from issues concerning the labour cluster in the Law on Job Creation, the main crucial issues raised were mostly related to the amendments and revocation of the Law on Manpower which had directly caused problems in implementing labour protection, especially for Indonesian labour. Previously, the Law on Manpower reflected the efforts at labour law reforms in Indonesia after the *Reformasi* (Hoesein, 2012). The Law on Manpower is recognized as a legacy labour legislation product and has an important role in recent times (Caraway, 2009). This law is also recognized as a legal framework for employment issues including human rights (Hadiprayitno, 2010), democratization in the workplace, and public participation, especially in relation to protection for the weak, placing oneself in an adequate position based on humanity (Yusa et al., 2020), and create a specific framework for access to social justice for workers (Warnecke & De Ruyter, 2012).

However, there is some arrangement that needed to be amended while it should be re-arranged to create broader access to the transfer of technology and transfer of knowledge, while this re-arrangement of this Law should be tackling any obstacles and resistance faced by Indonesia labourer. Caused by this importance, the amendment and revoke in the Law on Job Creation raises any debate and disagreement cause injustice substance-related with the work permit, termination from work, outsourcing labourer, foreign labour, remuneration, discontinuation from work, and severance payment.

Nevertheless, the Law on Job Creation has generated some interesting discourses both in the academic and social context, in terms of the labour cluster. The provisions in the Law on Job Creation does not truly reflect the actual issues on Indonesian labour protection. Although granted that in the Academic Draft, there were some statements reflecting the stance of the government to pursue further labour protection and more access to social justice for workers in Indonesia. To be fair, this Law has been able to boost the ease of doing business, ease of investment, and the acceleration of the economic agenda for the future of Indonesia.

Nevertheless, various views have appeared where some people have assumed that the Job Creation Law discussions held in Parliament were done in haste and seemed forced for the sake of ease of investment in Indonesia under the guise of economic advancement (Chandranegara & Bakhri, 2021), and by prioritising the essence of capitalism in its economic policy model (Chang, 2018). Economic interests often conflict with labor laws, this creates differences in perceptions between regulators and operators (Bellis, 2011), leading to coordination failures which lead to misallocation of resources (Weill, 2016).

On the other hand, the Government claims that it has conducted an Omnibus Law roadshow on the draft of the Job Creation Law and held comprehensive and tiered discussions so that it has met the provisions of the formation of statutory regulation. The Government claims to have held a total of 64 discussion meetings between the Government and the People Representative Council, consisting of 56 work committee meetings and six formulation team meetings (Idris, 2020). The problem of rejection in various regions, the massive demonstrations carried out by the dominant labor unions, have made the Omnibus Law on Job Creation (Chandranegara, 2020), especially in the employment sector, a very interesting issue to be analyzed comprehensively.

Based on the background of the problems raised above, this article focuses on the employment cluster in the Employment Creation Law in the context of radical reforms that gave birth to and had an impact on every revision of the Manpower Law. Therefore, the authors are interested in conducting legal research with the title: Omnibus

Law Employment Cluster: Is it a Form of Labor Exploitation in the Indonesian Context?

METHODOLOGY

This research is a normative legal research (Sudiarawan et al., 2020), which views the conceptualized law as a norm or rule that applies in society and becomes a reference for everyone's behavior (Siems & Mac Sithigh, 2012). Thus, normative legal research focuses on an inventory of positive law, principles, legal doctrine, comparative law, and legal history (Choudhury, 2017). This article is reflected as a legal journal article that has academic contribution as reputable article (Yeon, 2021), The article examines and analyzes the omnibus legislation practice into Law on Job Creation, especially in the context of employment cluster that raises discourse, to ensure legal protection for Indonesian labour. This article uses a statutory regulatory approach, namely examining the Job Creation Law, especially the Labor Cluster with the concept of Omnibus Legislation method and Omnibus Law in a positive legal system in Indonesia, a conceptual approach by providing an analytical point of view on the problem from the aspect of legal concepts behind it and approaching the facts by bringing up real facts about the implementation of the Omnibus Law on Job Creation in Indonesia.

RESULTS AND DISCUSSION

Legal Political Context of the Omnibus Law used in the Law on Job Creation

The enactment of the Law on Job Creation can be seen as the first mega-omnibus bill proposed within the National Mid-Term Development Plan 2020-2024. It is a comprehensive piece of legislation designed to create a strong economic structure based on competitiveness and support for qualified and competitive human resources as development pillars. The government's willingness to implement the omnibus legislation approach via a mega-omnibus bill is showing that the government is serious in its efforts to fix any legislation and regulation problems both in the quantitative and qualitative sense,

with the final purpose being to improve social welfare and increase economic growth. On the one hand, the Government believes that this approach is a revolutionary legal leap in national regulation as the omnibus legislation will amend, revoke, or re-arrange several legal norms in several laws just into one new Law to amend several problematic Laws, reflecting effectiveness and efficiency during law-making process. However, there were criticisms such as the lack of participation from all sectors of the public and any legal substance that contrary to democracy, human rights, constitutions, and judicial decisions that cause long-term impact for any crucial sector, including environment, labour, natural resources, and other critical sectors (Arifin, 2021).

The causes of legislative and regulatory problems are ineffectiveness, inefficiency, and legal issues aimed at accelerating economic development. In this regard, a by-pass method is needed to overcome problematic regulations. The by-pass method that was proposed is the use of the omnibus legislation method (Gluck et al., 2016). The inclusion of this method in the law-making process of the Law on Job Creation is to revoke and amend provisions in several statutory laws and arrange new norms that are more in line with the Government agenda (Perekonomian, 2020).

The legal-political context of the omnibus law practice in Indonesia formally started with the five working priorities of the Joko Widodo second presidential term and these were related to human resource development, infrastructure development, regulation simplification, bureaucracy simplification, economic growth, and boosting investment flow into Indonesia. The Government, in this case, has been concerned with accelerating social welfare development by creating new career fields in the job sector. However, this is resisted by three conditions as identified by the Academic Draft of the Bill on Job Creation. First, there is a large number of statutory laws that regulates investment and small micro-enterprises that contradicts each other, are disharmonious, and raises legal problems. As a result it is difficult to start new businesses and also thus, prevents new job creations in Indonesia. Second, investment and small micro-enterprises regulations are not in step with recent global conditions and social needs. The third condition is that several laws and regulations have been found to be inadequate and ineffectively implemented.

In light of these problematic state of affairs, the omnibus legislation method was proposed to be implemented as the four mega-omnibus bills. The four mega-omnibus bills consisted of the Bill on Job Creation, the Bill on the Provisions and Ease Facility of Taxation for Economy, the Bill on the State Capital, and the Bill of Pharmaceutical. All of these bills are stipulated in the National Legislation Program in 2020. During these periods, the Government together with the House of Representatives have come to an agreement to ratify the Job Creation Law, a law which has been claimed to be a futuristic legal framework for developing national technology. This ratification was seen as increasingly urgent considering the current needs and conditions of the labor sector in Indonesia. There were also other obstacles, in addition to the labor problems, especially in the era of the Industrial Revolution 4.0, such as digitalization, and the changing demographics in Indonesia. Together, these issues urgently need solutions for the range of employment problems (Amengual & Chirot, 2016).

In general, *Omnibus Law* receives enormous support from policymakers, so it is often seen as legislation that “must be legalized”. Omnibus legislation is described as a bill that amends or revokes existing laws, covering several diverse subjects and contents with unrelated issues (Sinclair, 2016). This is also known as a joint package that includes one or a combination of various subjects incorporated into a document approved through a parliamentary vote (Goertz, 2011). The concept is regarded as a draft law with several major and minor substantive matters compiled and combined into a single large bill (Brabazon & Kozolanka, 2018). Massicotte as quoted by Hanson further reported that its practice has two advantages. First, omnibus legislation pursues efficient legislative process enactment and avoids dozens of distinct bill drafts. Second, it is also used to generate a controversial draft bill for tackling opposition parties (Hanson, 2014). On the contrary, the unifying purpose is an important normative justification of the omnibus bills, asymmetric with public acceptance and needs (Kotyck, 2017). Irrespective of the fact that these bills pursue economic benefits and government interest (Huusko, 2018), this practice can cause fundamental problems. It compromises Government and Parliament’s abilities, commitments, and responsibilities, however political desires cause a difficult situation that potentially scrutinizes legislative activities (Mucciaroni & Quirk, 2010).

The Law on Job Creation was also criticized by various parties, including civil society, social leaders, and other parties that were directly or indirectly impacted by the enactment of this Law. The arguments representing the counter position *inter alia* are that the People Representative Council does not publicly publish all the minutiae and statutory documents from all the meetings and discussions in the the Job Creation Bill that are ratified by the council. Second, the People Representative Council also does not publicly publish the final draft of the Bill on Job Creation that was passed by parliament. Third, the People Representative Council and President did not evaluate the effectiveness of the omnibus legislation method and the benefits derived from the implementation the said legislation. Fourth, the People Representative Council and President seems not to focus on Covid-19 countermeasures and have failed to provide access for public participation during the legislation drafting process from the beginning until the legislation was passed. Fifth, the enactment of this Law was controversion and to be pressed not more than one year to be passed as the Law on Job Creation, and sixth, the process of drafting until the enactment of this Law. Despite that, lack of democratic values and it cannot be accepted caused as formal problems that raise (Riyanto et al., 2020).

Due to its very complex and lengthy nature, the Omnibus Law often raises many problems in its drafting process, especially regarding the understanding of the Omnibus Law policymakers themselves. Similar problems have surfaced in Indonesia. It was when members of the People Representative Council did not even receive a physical copy of the Job Creation Bill during the Plenary Session. This is a violation of the formal procedures for drafting legislation which obliges the Government as the initiating agency for the law to reproduce the draft law in the required number of printed copies (Kosti et al., 2019). The ability to divert the attention of policymakers to certain things can of course dramatically influence political choices and the resultant policy products (Mahmod, 2013). The Omnibus law is a technique to direct the attention of policymakers to only to certain things and distract policymakers from other crucial matters (Carbonara & Parisi, 2007).

Nevertheless, this mega-omnibus bill became the legal policy framework that struggled to tackle any inhibiting factors related to national development acceleration in the context of the legislation and regulatory reform in Indonesia (Hazama & Iba, 2017). This law is faced

both material and formal side during drafting until enactment process (Hutahayan, 2021). Critiques were arose from public while this law has the noble purpose to accelerate job creation by amending several laws provisions that were regarded as counterproductive to the national development agenda in Indonesia as a legal breakthrough for any problematic legislation and regulations that revoked, amended, and re-arrange with the Law on Job Creation.

Provisions in the Employment Cluster of the Law on Job Creation and Its Relations for Indonesia Labourer

The Law on Job Creation as explained previously regulates the Employment Cluster provisions in Chapter IV. It starts from Article 80 to Article 84 of the Employment Creation Law. The Employment Cluster with its four sub-clusters are aimed at strengthening the protection of workers and increasing their participation in their own welfare through support for the investment ecosystem (Marilang et al., 2021). The sub-cluster consists of the national social protection system and the State Social Protection Agency, Article 82 and Article 185 letter (b) of the Job Creation Law. This article regulates the delegated regulations, in the form of a Government Regulation to accommodate and stipulate the Job Loss Protection Program as social security received by workers who experience termination of employment.

These protection programs include cash payments, access to job market information, and job training. This program is one form of new protection in the context of labourer social protection program, judging from the previous arrangements such as Law on Employment, Law on National Social Protection System, and Law on Institutions of Social Protection. The benefit from this protection is intended for those who faced work termination as a result of ambiguous working agreements and certain working agreements. In a new arrangement, the government integrates Working Lost Protection data with participants' data both in the Labourer Social Protection Institutions and Health Social Protection Institutions data.

Article 81 and Article 185 letter b Law on Job Creation has been amending any provisions regarding Indonesia Migrant Workers protection, that delegating further regulations in the form of

Government Regulation concerning the Use of Foreign Workers. This Government Regulation aims to accommodate several amendments related to the protection of migrant workers, including obligations and prohibitions imposed on employers of foreign workers ; renewal, change, and validate the application of the use of foreign workers plan; foreign workers resident permit, work education, and training for foreign workers facilitators especially in terms of technology transfer and skill transfer as well as their repatriation to their homelands.

The Law on Job Creation specifically does not regulate any amendment to other laws concerning labourers, for example, Law Number 21 of 2000 concerning Workers Union (Law on Workers Union) and Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement (Law on Industrial Relations). However, any amendment that regulates in the Law on Job Creation especially in the material law segment has contributed significantly to the industrial relations dispute settlement system in Indonesia. Hence, the Law on Job Creation also specifically amending any basic arrangement of employment, as regulated in the Article 80 Law on Job Creation, that amending, revoking and re-arrange provisions in the Law on Employment, related to foreign workers, working relations and outsourcing, working hour, rest and leave, remuneration, discontinuation of workers relations, and severance payment, that would be observed in Table 1.

The Employment Creation Act is aimed at providing further protection for Indonesian workers. However, as explained in Table 1 above, it can be seen that what has been emphasized by the Government, i.e., to ensure that Indonesian workers are better protected does not seem to be entirely true. There have been many more opportunities provided for investment and business purposes through the enactment of this Job Creation Law. Employment is often based on economic factors, education, and social conditions (Dessing, 2008), which makes it difficult to assess worker rights based on the laws and regulations in workers' working relationship with the company (Dau-Schmidt et al., 2009).

68 **Table 1**

Comparison of Manpower Law and Job Creation Law Related with Employment Cluster Reformulation

No.	Indicators	Law on Manpower	Law on Job Creation
Foreign Workers (TKA as abbreviation of the <i>Tenaga Kerja Asing</i>)			
1.	Assignment of Foreign Workers	<p>Article 42 paragraph (1)-(6) regulates that every employer (except individual employer) who employs foreign workers shall secure a written license from the minister or an appointed official. The foreign workers can be employed in Indonesia just within working relations for certain positions and period (as regulates in further with Ministerial Decree). If they whose working period is over and may not extended can be replaced by other foreign employees.</p>	<p>Article 81 Point 4 regulates amended provisions of the Article 42 paragraph (1)-(6) Law on Employment states that every employer who employs foreign workers is required to have a plan for the use of foreign workers that is approved by the Central Government.</p>
2.	The Use of Foreign Workers Plan	<p>Article 43 paragraph (1) regulates that employers employing foreign workers shall have an assignment plan ratified by the Minister/Officer.</p>	
3.	Obligation to comply with the terms of position and the competency standards in force	<p>Article 44 paragraph (1) regulates that employers of foreign workers shall abide by job positions and the competence standards.</p>	Revoked

(continued)

No.	Indicators	Law on Manpower	Law on Job Creation
Working Relations (Limited Time Work Agreement – PKWT as abbreviation of <i>Perjanjian Kerja Waktu Tertentu</i> and Outsourcing)			
1.	Limited Time Work Agreement	Article 59 paragraph (4) regulates that this agreement is for a specified or certain period and can be applied for two years at the maximum.	Article 81 Point 15 regulates that further arrangement of this work agreement is regulated in further with Government Regulation.
2.	Restriction on the use of Outsourcing	Article 65 paragraph (2) restrict outsourcing with fulfilling some requirements: a. Being executed separately from the main activities; b. Being executed by direct or indirect order of job providers; c. Being supporting activities of companies as whole; and d. Not discouraging production directly.	Revoked
Working Hour			
1.	Working Hour	Article 77 paragraph (2) regulates working hours should be seven hours in one day and forty hours in one week for the six-day working period, or eight hours in one day and forty hours in one week for the five-day working period.	According to Article 77 paragraph (2), working hour is maximum for eight hours in one day and forty hours in one week for a-five day working period.
2.	Overtime	Article 78 paragraph (1) stipulates that overtime work can be accepted if the worker/laborer concerned agrees that overtime work can only be done for three hours in one day and fourteen hours in one week.	Article 78 paragraph (1) regulates that overtime could be accepted if the worker/laborer concerned agrees; and the overtime can only be done four hours in one day and eighteen hours in one week.

(continued)

No.	Indicators	Law on Manpower	Law on Job Creation
Rest Time and Leave			
1.	Weekly Rest	Article 79 paragraph (2) point b regulates weekly rest for one day (for a six-day working period) or two days (for a five-day working period).	Article 81 point 23 regulates that the rest period should be given at least a weekly rest of one day for six working days.
2.	Long-term Rest	Article 79 paragraph (2) point c regulates that long-term rest at least for two months (executed when the labourer reach the seventh and eighth years), or one month (for labourer who has attained six working years continuously with the same company).	Article 81 point 23 regulates that apart from the time off and leave, certain companies can provide long breaks as regulated in work agreements, company regulations, or collective working agreements.
3.	Leave for Religious Worship	Article 80 regulates that the employer could give a permit for leave to attend to religious worship.	
4.	Menstruation Period	Article 81 paragraph (1) regulates that the employer could give a permit for leave during the menstruation period, female workers shall not be obliged to work in the first and second days of the menstruation period.	The Job Creation Law does not make changes or revoke any related article.
5.	Leave for Giving Birth	Article 82 paragraph (1) regulates that female workers shall receive a permit for rest time in one and a half months (before and after giving birth respectively) according to the estimate of the doctor or nurse.	

(continued)

No.	Indicators	Law on Manpower	Law on Job Creation
6.	Breastfeeding Leave	Article 83 regulates that female workers whose newborns are still breastfeeding must be given the appropriate opportunity to breastfeed.	
	Remuneration		
1.	Unit wages and/or yield units	Unregulated	Article 81 point 25 regulates that Wages are determined based on: a. Time unit; and/ or b. Unit of yield.”
2.	Minimum Wage	Article 88 paragraph (4) shift the government to arrange minimum wage based on adequate life needed by observing economic productivity and growth.	Article 88 D regulates that the minimum wage calculation formula contains the growth variable economy or inflation.
3.	The Minimum Wage by Sectors in Province or Regencies/ Cities.	Article 89 paragraph (1) regulates that the minimum wage by provinces or regencies/cities, and by sectors.	Revoked Article 88C regulates regencies/cities minimum wage should be higher than the minimum wage in the province. Article 90B paragraph (1) regulates Regencies/Cities minimum wage are excluded for Micro and Small Enterprises. Article 90B paragraph (2) then regulates that wages for Micro and Small Enterprises are set based on an agreement between the entrepreneur and labourers.

(continued)

No.	Indicators	Law on Manpower	Law on Job Creation
			<p>Article 92 paragraph (1) regulates that the employer should review wages periodically by observing corporate capability and productivity. These are government regulatory guidelines for the employer in determining wages.</p>
	<p>Discontinuation of Working Relation (<i>Pemutusan Hubungan Kerja</i> abbreviated as PHK)</p>	<p>1. Reasons employers can layoff workers</p>	<p>Article 81 point 42 "Layoffs can occur for reasons:</p> <ul style="list-style-type: none"> -Companies carry out a merger, consolidation, takeover, or separation of companies; -Corporate efficiency; -Companies go bankrupt; -Companies are closed due to suffering losses; -Companies are closed due to <i>force majeure</i>; -The company is in a state of postponement of debt payment obligations; -Company becoming bankrupt; -The company commits an act that is harming the worker / laborer; -Workers/labor tendering resignation on the basis of their own will; -Workers/labors being absent; - Workers / laborers violate work agreements, company regulations, and/ or collective agreements;

(continued)

No.	Indicators	Law on Manpower	Law on Job Creation
	<ul style="list-style-type: none"> -Corporate efficiency (Article 165); -Companies go bankrupt (Article 166); -Workers/laborers passing away (Article 167); -Workers/laborers enter the mandatory age of retirement (Article 168 paragraph (1)); -Workers/laborers being absent for 5 (five) working days or more (Article 172); 	<ul style="list-style-type: none"> -Workers/labor being detained by the authorities; -Workers / laborers experience prolonged illness or disability due to work accidents and cannot perform their work after exceeding the 12-month limit. -Workers/laborers entering the mandatory age of retirement; -Workers/laborers passing away. 	<p>Article 81 point 44 regulates that compensation includes:</p> <ul style="list-style-type: none"> a. annual leave that has not been taken and has not expired; b. cost or return fee for the worker / laborer and their family to the place where the worker / laborer is accepted to work; c. other matters stipulated in the work agreement, company regulations, or collective labor agreement.
	<p>Severance Pay</p> <p>1. Severance Pay or Right to Compensation</p>	<p>Article 156 paragraph 4 regulates that compensation should include:</p> <ul style="list-style-type: none"> a. Annual leave not yet taken and null; b. Expense or cost of workers/laborers and their family to return to the place where the workers/laborers are accepted to work; c. Compensation for housing or medical treatment and care is set at fifteen percent of the severance pay and/or gratuity for those who fulfill requirements; d. Others stipulated in the working agreement, corporate rule, or collective working agreement. 	

No.	Indicators	Law on Manpower	Law on Job Creation
2.	Severance pay	<p>Article 161 paragraph 3 regulates that workers facing work termination should receive severance pay amounting to one time, or gratuity entitled, or right compensation.</p> <p>Article 163 paragraph 1 regulates that the employer can terminate workers in the event of a change in the status, merger, consolidation or change in the ownership of companies, they shall be entitled to severance pay amounting one time, gratuity as much as one time, and right compensation.</p> <p>Article 165 regulates that the employer can terminate workers/laborers because the companies are bankrupt, workers shall be entitled to severance pay amounting one time, gratuity as much as one time, and right compensation.</p>	Revoked

Note. Sourced from the Indonesia Manpower Law, and Job Creation Law

For almost two decades, several issues have surfaced in the Manpower Law, along with the Social Protection System Law, the Social Protection Agency Law, and the Indonesian Manpower Protection Law. This is the reason for the urgent need for an amendment to these laws to become the Job Creation Law. The Law on Job Creation will also discuss the pros and cons caused by the presence and number of foreign workers in Indonesia who compete with Indonesian workers; the phenomenon of outsourcing in public life that raises pros and cons related to the unusual treatment and conceptions in the previous law; the unbalanced conditions regarding the working time and rest time for workers; minimum wage disparities in each region caused by non-technical factors that do not reflect regional conditions; problems in implementation related to the termination of employment and severance pay; the lengthy payment process and the uncertainty of the nominal severance pay; and how to create conducive conditions for trade unions and the business world.

However, various labor-related statutory instruments that apply as positive law in Indonesia, such as the various derivative rules (Chen, 2010), which are then supported by autonomous laws imposed by companies. However, to date in practical reality these laws are still confronted with various polemics and disputes (rights, interest, layoffs, Labor Union/Worker Union) that occur in the work environment (Setiyono & Chalmers, 2018). Sensitive issues such as contracts, outsourcing, wages, layoffs, and severance pay remain problematic in Indonesia industrial relations. Even until now, workers in Indonesia are considered the weakest party who always face tremendous difficulty fighting for their rights (Spranz et al., 2012). Under these conditions, it seems that workers are again surprised by the birth and ratification of the Job Creation Law, one of which regulates the Labor Cluster in a fairly short time with various changes and updates to sensitive matters related to the position of workers in an industrial working world. Ironically, although the purpose of establishing labor regulations is to help workers, the regulations in practice often harm workers (Chopra, 2015). This problem also forces the government to immediately regulate more labor issues and review other related aspects in existing legislative laws and government regulations so that a strong basic framework can be built for access to work and implementation of basic workers' rights (Van Lochem, 2017), and confronting labourer issues in any correlated sectors, including enacting amended statutory laws like the Law on Job Creation (Kaharudin et al., 2021).

Foreign Workers Segment

In this segment, regulations related to expatriates' permits, the absence of mandatory competencies, and job requirements will certainly make it easier for foreigners to enter Indonesia. In other words, they can become competitors to prospective domestic workers (Caraway, 2010), the latter though still need jobs with relatively low levels of education and expertise (Gillespie, 2016). The emergence of easy access for an expatriate may become a challenge for prospective domestic workers, who are greater in numbers and still desperately need work, especially in a pandemic situation. Hence, the empowerment of domestic workers should be prioritized.

The use of foreign workers in Indonesia has been expanded with the Law on Job Creation as the law now provides legal certainty for the Foreign Workers Employer relations, ensuring ease in doing business, ease of permit system to use foreign workers including for sector permit or risk-based businesses. This is implemented with prerequisites that must be met by the employer, which has been simplified in the Plan of Use of Foreign Workers (*Rencana Penggunaan Tenaga Kerja Asing*). The purpose of this prerequisite is to improve access to employment and wider investment flows in Indonesia. Employers who in this context tend to be reluctant and do not meet the prerequisites will be subject to administrative sanctions.

Working Relation Segment

A good working relationship should be built based on the principle of “*standard employment relationship*”. This principle does not accept the existence of a subordinate relationship in an employment relationship (De Munck & Supiot, 1999). Several changes in working relationship arrangements, especially related to the PKWT and the Outsourcing in the Job Creation Law shows that the government intends to emphasize the creation of flexible working relationships through the PKWT and outsourcing work relationships. According to the Job Creation Law, the arrangement of working time for the PKWT will be regulated through a government regulation, but it still raises public suspicion regarding the potential for these contract-bound workers. In addition, with no limitation on the types of work that can be carried out through outsourcing, more work relationships will be carried out by companies through outsourcing, these things will certainly further weaken the position of workers industrial relations. This occurs as a

result of the enforced implementation of basic principles of company formation, namely to get the maximum profit (Sen, 1997).

In the Constitutional Court decision on Case Number 27/PUU-IX/2011, it was mentioned that “By applying the principle of transfer of protection, when the employing company no longer provides part-time work or the provision of worker/labor services to an old outsourcing company, and gives the job to a new outsourcing company, the new service provider company must continue the existing work contract, without changing the provisions in the contract and without the consent of the parties concerned, except for changes to increase profits for workers/laborers due to increased experience and years of work”. In short, the principle of protective action/the principle of *Transfer of Undertaking Protection of Employment* is a guarantee for the continuity of work relations and working conditions for workers/laborers. There will be an award for years of service and welfare provisions in the form of wages based on the the performance of a worker (Sudiarawan & Ari Hernawan, 2014). However, in the Law on Job Creation arrangement, the restrictions on outsourcing were lifted by revoking article 65 paragraph (2) on the Law on Manpower, which has stated that every company or employer could employ outsourced workers without any restrictions. The critique was raised especially because it was related to the readiness and new potential competition between fixed and outsourced workers.

Remuneration Segment

In the absence of regulations regarding the Regency/City Minimum Wage (UMK) in the Job Creation Law, in which case only the Provincial Minimum Wage (UMP) is set, entrepreneurs in the large industrial sector and large companies to equate the value of the same minimum wage with entrepreneurs in the small industrial sector. This is a particular concern for workers when referring to the necessities of a decent life (An et al., 2019). The calculation of minimum wage increases no longer applies nationally but uses the UMP standard where the formula for the increase is determined by economic growth in each region. If an area experiences negative economic growth or a decline occurs, the minimum wage in the following year may decrease, which can result in a decrease in the purchasing power of the people and workers. Besides, the addition of Articles 88A, 88B,

88C, 88D, and 88E in the Law on Job Creation led to changes in the wage scheme in the Manpower Law, where now wage determination can be based on the unit of time and/or unit of output. It is feared that this will lead to an hourly wage scheme (based on time units), so that workers' reproductive rights, such as time to rest during menstruation and childbirth, will no longer be borne by companies under the new wage scheme in the Job Creation Law. If it was simplified, the Job Creation Law regulates the Minimum Wage by Province ("UMP") set by the Governor. In the Job Creation Law, the minimum wage by regencies/cities (UMK) is higher than that in the UMP. According to the Job Creation Law, the provision regarding minimum wage is excluded for micro and small enterprises. The wage for micro and small enterprises are set based on an agreement between workers/laborers and the entrepreneur. The entrepreneurs shall review the wage periodically by monitoring the corporate capability and productivity.

The Law on Job Creation arrangement has created more certainty in the context of elements of determining wages that unregulated with Law on Manpower with determining time unit as wages based on daily, weekly and monthly basis, and unit of the result as wages based on the result of agreed work. The Job Creation Act is a help in enabling ease of doing business and accelerating the flow of investment in Indonesia, as it has regulated the calculation of the minimum wage, which must contain indicators of macroeconomic growth. When viewed under the labor law, the minimum wage is only based on an adequate standard of living, both productivity, and growth.

Discontinuation of the Working Relation (Layoff) and Severance Pay Segment

Recognition of the scarcity of resources and its accumulation in line with developing law has led to hypotheses related to phenomena in the labor market, one of which is layoffs (Boyd, 2010). Layoffs and severance pay arrangements have become one of the most important issues in industrial relations practice, especially those closely related to the issues of human rights and economic interests in a working relationship (Allen et al., 2007).

The Job Creation Law regulates the regulation of layoffs and severance pay with several changes, as shown in Table 1. There are additional

reasons for layoffs in the Job Creation Law and the submission of several reformulations in regulating severance pay for workers. The Job Creation Law also regulates legal provisions that can be taken if a company neglects to pay severance pay. There is a paradigm shift that termination of employment or layoff is made easier because it opens the possibility of layoffs only through notification from employers to workers without prior negotiation. The Job Creation Law removes the for-housing replacement, as well as treatment and care, which is set at 15 percent (fifteen) of the severance pay and/or service pay for those who meet the requirements. The Job Creation Law also removes the provision of severance pay for workers/laborers who are laid off for violating the provisions of work agreements, company regulations, or collective working agreements. The Job Creation Law eliminates the provision of severance pay for workers/laborers who are laid off because companies are merging, consolidating, taking over, or party ways, causing the company to be in a bankruptcy state, and causing worker/laborer dies.

The role of the government in layoffs is reduced because government intervention in layoffs has been trimmed, so that government protection in layoffs is reduced (Wenzelburger, 2019). The reduced scope of government intervention in the field of work termination as is regulated in the Job Creation Law opens up opportunities for companies to carry out unilateral work termination based solely on the interests of the company. This indirectly violates the substance and procedural principles that underlie the idea that every work termination must be based on rational reasons where workers have the right to defend themselves against this treatment, as a work termination executed might be considered arbitrary and unfounded.

Referring to the previous description, it can be said that the regulation of work termination in the Law on Job Creation has deviated from the principle of substance and procedural fairness that applies in the general employment relationship. Moreover, the simplification of work termination in the Job Creation Law has a significant tendency to cause greater legal irregularities, namely the exploitation of workers on a large scale. In other words, there is every possibility that the future fate of workers will be increasingly and unfairly dominated by oppressive company policies.

Working Hours, Rest Time and Leave Segment

The stipulation of working time and rest time arrangements along with some of their changes as shown in Table 1 indicates a change related to an increase in overtime hours. This may bring risks to the health of workers, whereby the risk of accidents at work may also increase due to fatigue. The amendment to the Employment Creation Law concerning Weekly Rest states that breaks can be taken from 1 day to 6 working days, while the Job Creation Law related to the Long-Term Rest arrangement allows employers to approve long breaks. However, all types of leave regulated in the Law on Manpower remain unchanged or unrevoked, including leave for worship, menstruation, maternity leave, and breastfeeding. It can be seen that the interests of employers are prioritized without paying attention to the humanitarian needs of workers. Therefore, a decrease in worker productivity may occur (Carmalt, 2007). This also applies to the regulation of rest periods, namely the Job Creation Law has an impact on the uncertainty of working hours for workers by employers. In addition, the return of leave arrangements to work agreements, collective labor agreements, or company regulations reflected a decline in the role of the state to protect workers' rights. The formulation of this regulation is prepared without paying attention to the sociological-empirical conditions of the current unequal work relationship. In the unequal relationship between workers and employers, the possibility of making an agreement that is detrimental to workers is very high.

Social Security Segment

In the Job Creation Law, in social programs which included health insurance, work accident insurance, old-age insurance, pension security, death benefits, and job loss insurance, we can see here that there is an additional job loss guarantee. The concept of job loss security is that it applies to those who experience layoffs (Sujarwoto, 2017). This guarantee is provided by the Social Security Administering Body (*Badan Penyelenggaraan Jaminan Sosial*) and is in essence to maintain a decent standard of living for workers who have been laid off and have paid contributions (Visser, 2019). Article 28H paragraph 3 of the 1945 Indonesia Constitution, has stated that “Each person is entitled to social security enabling him to develop his entire self unimpaired as a dignified human being”. The state provides social security, one of which is in the form of cash per month until workers

who are laid off get a job, but there are concerns regarding this Job Loss Guarantee, namely, this can have implications for the state coffers because the budget used will be taken from the State Budget.

Industrial Relations: Disputes and Settlement System

The Indonesian labor law system is enforced through various positive legal instruments, such as the Manpower Law, the Trade Union/Labour Union Law, the Industrial Relations Dispute Settlement Law and its various derivative regulations (Sudiarawan et al., 2019). These legal instruments are supported by the autonomous laws that the company has enforced to date. However, in practical reality, employment in Indonesia is still faced with various polemics and disputes (rights, interests, termination of employment, trade unions/labor unions) (Farbenblum, 2017). Labor law regulation through various legal instruments still places workers in a weak position and makes it difficult for workers to fight for their rights through the Industrial Relation Dispute Settlement system (Sukma, 2011). The regulation of several changes and/or renewal of various sensitive issues related to foreign workers, employment relations, wages, termination of employment, severance pay in the Law on Job Creation, have had an impact on making it more difficult for workers to fight for their rights in the settlement system of industrial relations disputes.

Based on the regulation and analysis of the various indicators above, it can be concluded that the Job Creation Law will potentially weaken the position of workers in the framework of industrial relations. Based on the analysis of the various segments that are regulated, especially in the Employment Cluster, the Law on Job Creation appears to be more oriented towards the interest of entrepreneurs. Although several articles regulate the improvement of protection for workers (Palmer & Missbach, 2019), in general, the direction of regulating the Law on Job Creation, especially the Labor Cluster, is to create flexible work relationships to support increased investment and job creation. Unfortunately, the noble desire of the government is not accompanied by the spirit of providing optimal protection for workers. The regulation of the Law on Job Creation, especially the Employment Cluster, indirectly shows the government is actually more in favor of the entrepreneur group as its primary focus is on creating more investments for economic growth.

CONCLUSION

The enactment of the Job Creation Law or also known as the Omnibus Law is aimed at strengthening the protection of workers, enhancing the role and welfare of workers or laborers in supporting the investment ecosystem. This goal is then realized in the arrangement of various related clusters regulated within the scope of the Job Creation Law. There are various changes and/or new arrangements regulated in the Employment Creation Law, especially on the Cluster of Labor, including regulations related to Foreign Workers, Employment Relations, working hours, rest and leave periods, wages/remuneration, termination of employment and severance pay. Analysis of the legal implications that arise from several indicators or parameters of change shows that the characteristics of the arrangement of Labor Clusters in the Law on Job Creation are potential and dominant which in the end will only harm workers. Although several new regulations benefit workers in an industrial relationship, in general, the Job Creation Law, especially the Labor Cluster, still reflects the main orientation of its formation, namely to facilitate investment through the creation of a flexible working relationship. This will certainly lead to the weaker and more marginalized position of workers in fighting for their rights.

The gentle recommendation that is proposed in this article is related to government efforts to enhance the status of labourers, especially workers in Indonesia who are in need of more protection. The government must play a more active role in the matter of reforming regulations to ensure broader protection of the basic rights of workers, while at the same time still committed to boosting investment and ease of doing business.

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