

A CRITICAL ANALYSIS OF THE IMPLEMENTATION OF THE JOB CREATION LAW IN INDONESIA'S LABOR SECTOR

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Abstract

The implementation of the Job Creation Law has sparked debates in Indonesia's labor sector. Aiming to enhance work flexibility and investment competitiveness, this regulation alters various aspects of worker protection. However, these changes are perceived as compromising workers' rights and creating job insecurity. This study examines the implications of the UU Cipta Kerja on workers' rights protection and its alignment with social justice principles. Using a normative juridical method with statutory and case approaches, the research identifies the social and economic impacts of the law's implementation. The findings indicate that, while benefiting employers through flexibility and investment attractiveness, the law poses serious challenges, including potential labor exploitation and instability in industrial relations. This study recommends reforming public participation in policymaking and strengthening regulatory enforcement to ensure better protection of workers' rights.

Keywords: Job Creation Law, Labor sector, Social Justice

INTRODUCTION

Globalization and digitalization have significantly impacted traditional work patterns worldwide, including in Indonesia. Globalization has opened access to international markets but has also pressured the workforce to adapt to competitive global standards. On the other hand, digitalization has transformed traditional work patterns by introducing new technologies that demand enhanced digital skills across almost all economic sectors. This has created new opportunities, such as work flexibility through digital platforms, but also challenges in the form of job losses due to automation and widening digital skill gaps among workers (Wahyuni & Setiawan, 2020).

For Indonesia, the challenge of labor competitiveness is becoming increasingly urgent. Despite having a large working-age population, the competitiveness of Indonesian workers is hindered by productivity and skill quality issues. The digital economic transformation and the evolving demands of the global labor market require Indonesia not only to improve workforce skills but also to design labor regulations that are more adaptive to these dynamics.

Before the enactment of the Omnibus Law on Job Creation, Indonesia faced various challenges in the labor sector. One major issue was the high unemployment rate, accompanied by a significant level of informality in the labor market. Data shows that most workers are in the informal sector, which often offers low wages and limited job protection compared to the formal sector. This condition not only affects the economic stability of workers but also hampers overall economic growth due to low productivity and tax contributions from the informal sector.

Moreover, pre-existing labor regulations were considered too rigid and burdensome for employers, particularly regarding severance pay, minimum wage policies, and mechanisms for recruitment and termination. Such rigidity reduced the attractiveness of investment, both domestic and foreign, slowing down the creation of new jobs. The inflexibility of the labor market also hindered companies from adapting to constantly changing economic dynamics.

The drafting of the Job Creation Law was driven by the government's need to simplify regulations through an omnibus law approach, particularly to improve the ease of doing business. This initiative was expected to make Indonesia more competitive in the global market by harmonizing overlapping regulations that were perceived to obstruct investment. This strategy became a key priority for President Joko Widodo's administration during his second term, as highlighted in his inauguration speech in 2019. The government also viewed this reform as a step to

boost economic growth and enhance competitiveness through regulatory simplification in the labor sector and small and medium enterprises (Puspitasari & Hidayat, 2021).

However, this approach faced criticism for its lack of public participation and minimal transparency during the drafting process. Despite this, the government remained committed to creating a more conducive business climate and improving regulatory efficiency as part of Indonesia's structural economic reforms. The Job Creation Law sparked widespread controversy since its enactment. Massive protests from labor unions, academics, and civil society erupted across regions, highlighting concerns that the law disproportionately favored employers over workers. Disputed points included reduced labor protection, perceived unfair flexibility in employment contracts, and limited public participation in the legislative process. Other criticisms involved the rapid deliberation process, which allegedly compromised transparency and democratic accountability.

The Job Creation Law has been one of Indonesia's most controversial regulations, particularly concerning the labor cluster. A critical review of this law is crucial to evaluate its impact on various stakeholders. First, an in-depth analysis is needed to assess how well the law balances the interests of workers and employers. In this context, criticisms suggest that certain provisions of the law reduce worker protections, such as wage flexibility and employment contracts, which are seen as more beneficial to employers than employees. This raises questions about whether the regulation aligns with the principles of social justice mandated by the 1945 Constitution (Ramadhani & Syahputra, 2022).

Moreover, Indonesia's evolving socio-economic dynamics necessitate an evaluation of the law's relevance and sustainability. In the context of globalization and the digital era, the provisions of the Job Creation Law must address the challenges of Indonesian labor competitiveness on an international scale while ensuring the protection of workers' rights (Kurniawan, 2020). Given the protests and resistance from various societal groups, analyzing the drafting process and substance of the law is also essential to improve public participation mechanisms in future policymaking. A critical review is not only important to understand the direct impact of the Job Creation Law on labor but also its relevance to Indonesia's long-term socio-economic development.

Based on these realities, this study aims to address the following research questions:

1. What are the implications of the Job Creation Law on the protection of workers' rights?
2. How does the implementation of the Job Creation Law align with the principles of social justice?

METHOD

The research method employed in this study is normative juridical, focusing on applicable regulations, empirical facts, sociological facts, and the issues analyzed in this research. The writing approach utilized includes the statutory approach and the case approach. These approaches are selected to comprehensively elaborate on the problems being studied and to find concrete solutions to those issues.

The legal materials consist of primary and secondary legal materials. Primary legal materials refer to statutory regulations, while secondary legal materials are sourced from credible readings such as books and journals. The collection of legal materials is conducted through a library research technique, which involves gathering information from library literature or online sources. This technique is carried out by reviewing relevant written sources to provide a framework for discussion and a legal basis for further analysis. The study also employs descriptive analysis, which critically examines the implications and implementation of the Job Creation Law and identifies concrete solutions to the issues at hand.

RESULTS AND DISCUSSION

Implications of the Job Creation Law on the Protection of Workers' Rights

The Job Creation Law, currently regulated under Law Number 6 of 2023, is a revision of previous regulations to improve Indonesia's labor climate. The government formulated this law using the omnibus law system, encompassing various aspects of the labor sector, including provisions related to employment relations, wages, and termination of employment (TOE). The Job Creation Law aims to enhance national competitiveness, create new job opportunities, and provide flexibility in workforce management amidst global challenges. The labor sector's primary focus is to balance protecting workers' rights with the business sector's need to grow more competitively in the international market.

Regarding protecting workers' rights, the Job Creation Law introduces significant changes. One key modification is simplifying the TOE process while maintaining severance pay rights for employees (Rudi Febrianto Wibowo & Ratna Herawati, 2021). However, the amount of severance pay stipulated is considered lower than previous regulations, attracting criticism from various labor groups. Additionally, changes in wage systems have also been introduced. The government has implemented a result- and time-based wage system, offering employers flexibility in determining wages. However, concerns arise that this may reduce worker protection if not implemented transparently.

Harmonizing labor regulations through the Job Creation Law aims to create a better investment climate while ensuring worker protection. The government hopes this law will attract foreign investments, boost productivity, and accelerate economic growth. However, its implementation faces challenges, including potential violations of workers' rights due to weak supervision and a lack of understanding among employers and employees. Moreover, criticisms of the law focus on the perception that some provisions favor employers, raising concerns about weakening workers' bargaining positions.

Overall, the Job Creation Law can improve labor governance in Indonesia if implemented correctly and fairly. However, this regulatory harmonization effort must be accompanied by firm policy enforcement and adequate supervision to ensure it benefits certain parties and protects workers' rights in accordance with the principles of social justice.

Law Number 6 of 2023, or the Job Creation Law, brings significant changes to labor regulations in Indonesia, aiming to simplify various rules to support investment and create job opportunities. Nevertheless, these changes have implications for protecting workers' rights, particularly in provisions regulating termination of employment (TOE), employment contracts, fixed-term employment agreements (PKWT), and more flexible working hours.

Regarding TOE, the Job Creation Law provides greater flexibility for employers to terminate employment, such as for efficiency or corporate restructuring. While the law still requires employers to provide severance pay, the amount has been reduced compared to previous regulations from a maximum of 32 months' salary to 19 months, plus an additional 6 months' salary paid by the government through the Job Loss Insurance (JKP) program. This reduction has sparked concerns among workers regarding inadequate financial protection after TOE.

The law also addresses PKWT, extending employment contracts without a precise time limit. This differs from the previous Labor Law, which limits contract durations to provide job certainty. Under the new system, workers may remain in contract positions for more extended periods, raising concerns about weakening rights to job security.

Changes to working hours are another significant aspect. The Job Creation Law introduces the concept of flexible working hours, enabling employers to adjust working schedules based on operational needs. While this flexibility is intended to boost productivity, it poses a risk of labor exploitation without strict oversight. For instance, workers could be compelled to work beyond normal limits without fair compensation.

Other changes include expanded outsourcing regulations, which now cover all job types instead of being limited to support activities. This could lead to broader use of outsourced labor, potentially diminishing access to rights such as social security and severance pay.

While the Job Creation Law is designed to enhance business flexibility, the primary challenge lies in balancing business needs and workers' rights protection. Without proper monitoring

and fair implementation, the law risks weakening workers' bargaining power and increasing job uncertainty in Indonesia.

Implementing Law Number 6 of 2023 has significantly impacted workers and employers in the labor sector. The law creates various conveniences for employers, such as regulatory simplification to support investment, workforce management flexibility, and operational cost efficiency. These changes aim to attract more domestic and foreign investments and enhance the competitiveness of Indonesia's workforce in the global market. Businesses can dynamically adapt their operations by introducing flexible working hours and a result- or time-based wage system, ultimately promoting productivity and economic growth.

On the other hand, the Job Creation Law raises concerns about its negative implications for workers' rights protection. One primary concern is the threat to workers' social security. Changes to the PKWT system, which allows contracts to be extended indefinitely, create job uncertainty for many workers (M. Bagus Basofi & Irma Fatmawati, 2023). Prolonged contract status can reduce workers' access to rights such as pensions, severance pay, and other protections. Furthermore, expanded outsourcing regulations allow more jobs to be delegated to third parties, often failing to protect workers' rights adequately.

While work flexibility under this law supports business efficiency, it risks reducing job security and fair wages without stringent oversight. For instance, flexible working hours and a result-based wage system could lead to excessive workloads without proper compensation. These concerns highlight the potential for labor rights violations, especially in informal sectors and for workers with weaker bargaining positions.

Although the Job Creation Law has the potential to drive economic growth and foster innovation in the labor market, achieving a balance between protecting workers and addressing business interests remains a significant challenge. Weak oversight of the law's implementation could widen the gap between workers and employers, ultimately leading to inequality and labor conflicts (Otti Ilham Khair, 2021). Therefore, the government must ensure that the law is implemented fairly, prioritizing workers' rights protection in line with the principles of social justice.

The Implementation of the Omnibus Law on Job Creation about the Principles of Social Justice

The enactment of the Omnibus Law on Job Creation (UU Cipta Kerja) has sparked significant controversies, which began even during the drafting phase of the bill (RUU). Drafted in 2020, the bill provoked strong resistance from the Indonesian public, particularly labor groups. Massive demonstrations involving workers and students failed to sway the government. Many feared that if passed, the law would oppress society. The fifth principle of Pancasila emphasizes social justice for all Indonesians, yet the government appears to need to pay attention to this fundamental value.

Aristotle defines justice as a phenomenon inherent in large communities, focusing on laws and norms. Justice becomes paramount when it relates to the social dimensions of human life. Aristotle further posits that law is the foundation of power. By observing the implementation of laws in Indonesia, one can discern whether a government prioritizes public welfare or self-interest. Ideally, the law should be followed, implemented, and safeguarded against arbitrary actions. For Aristotle, law equates to intelligence: using laws to govern reflects rationality, while relying solely on human judgment risks disaster (Salsabila et al., 2023, p. 8).

Social justice and legal certainty are interconnected. "Certainty" implies clarity and predictability; laws should provide certainty and justice (Fithri, 2022, p. 124). According to Gustav Radbruch, the three objectives of law are justice, certainty, and utility. Legal certainty, he argues, is a product of law, often derived from statutes and regulations. However, Roeslan Saleh notes a frequent tension between legal certainty and justice, as meeting one often compromises the other. This tension can be mitigated by interpreting laws in real-world contexts. When justice and certainty clash, judges must prioritize justice over certainty (Siregar, 2008).

Legal certainty also acts as judicial protection against arbitrary actions, ensuring satisfactory outcomes for individuals facing specific situations. People often demand legal certainty as it promotes order and guarantees rights (Moho, 2019, p. 7).

Public reactions to the Job Creation Bill in 2020 were documented through a national survey by Saiful Mujani Research & Consulting. The survey revealed that 52% of respondents supported the bill, citing potential benefits such as increased employment opportunities. Meanwhile, 37% opposed it, and 11% refrained from commenting. The survey involved 2,215 randomly selected respondents across Indonesia. Supporters believed the bill would ensure legal certainty by expanding job opportunities and benefiting businesses.

However, a subsequent survey regarding the enacted Omnibus Law showed contrasting results. Around 60.5% of respondents felt the law failed to represent public aspirations, while only 30.5% believed it did, with 8.9% expressing no opinion. This disparity indicates initial optimism towards the bill dissipated once it became law. Furthermore, the Constitutional Court deemed the law conditionally unconstitutional in Decision No. 91/PUU-XVII/2020.

The Omnibus Law on Job Creation has not fully achieved Radbruch's legal objectives. While it delivers legal certainty, this certainty appears to harm society, leaving public aspirations unaddressed. The law was declared conditionally unconstitutional in 2020, and it faced further scrutiny after its amendments through Law No. 6 of 2023, which was also deemed inconsistent with the 1945 Constitution.

Implementing the Job Creation Law has raised concerns about its impact on social justice principles, particularly in labor relations. One contentious issue is the provision for indefinite employment contracts under Article 59 of Law No. 11 of 2020, granting employers excessive flexibility at the expense of job security for workers. This undermines stability in labor relations. Additionally, weak regulatory oversight poses a significant challenge. The law's flexibility diminishes the state's responsibility to ensure fair labor standards—insufficient mechanisms to protect outsourced and contracted workers open avenues for exploitation.

Critics argue that the law potentially violates human rights principles, particularly in ensuring worker welfare. For instance, reductions in weekly rest periods and the elimination of long-term leave entitlements contradict Article 27(2) of the 1945 Constitution, which guarantees the right to work and decent living conditions. These issues highlight a perceived prioritization of investment over labor rights.

Harmonizing the Job Creation Law with pre-existing regulations, such as Law No. 13 of 2003 on Manpower, has also proven inadequate. Substantial amendments related to wages and employment termination have created legal ambiguities, exacerbating tensions in industrial relations. Overall, the law's implementation reveals numerous challenges to achieving social justice. Without significant reforms, it risks deepening social inequalities and weakening workers' positions amid increasing economic competitiveness. This necessitates governmental evaluation and enhanced labor protection to balance investor interests with workers' rights.

One strategic measure to address issues within the Job Creation Law is to strengthen labor protection mechanisms through specific policy revisions. For instance, the government could set clear boundaries on flexible employment contracts to prevent exploitation. Ensuring minimum wage regulations that promote worker welfare while fostering industrial efficiency could also create a fairer work environment without deterring investments.

Effective regulatory reforms and oversight improvements are essential. Expanding the workforce of labor inspectors and providing sufficient resources could bolster monitoring efforts. Digital solutions, such as online complaint systems, may enhance the detection of labor violations. Additionally, involving local governments in oversight processes could ensure the law's implementation aligns with local contexts and prevent abuse of power.

To balance labor protection and investment, a social dialogue approach should be strengthened. Facilitating discussions among workers, employers, and policymakers could lead to mutually beneficial agreements, minimizing industrial conflicts and fostering inclusive regulations. Involving all stakeholders ensures policies reflect diverse needs and expectations.

Regular evaluations of the implementation of the Job Creation Law are crucial. These assessments enable the government to identify regulatory gaps and adapt policies to address them, upholding social justice principles. Responsive legal reforms aligned with global and local developments can support investment while safeguarding worker welfare. These steps can redirect the Job Creation Law into an effective tool for equitable economic development.

CONCLUSION

Implementing the Job Creation Law through Law No. 11 of 2020 and Law No. 6 of 2023 has brought significant changes to the labor sector in Indonesia. While the law aims to enhance investment attractiveness and improve the work climate, it has also posed numerous challenges. On the one hand, the policy supports flexibility in labor relations, such as more dynamic fixed-term employment agreements (PKWT), and provides ease for employers in adjusting operations. On the other hand, it has negatively impacted workers, reducing their rights and job insecurity and increasing the potential for exploitation due to weak oversight and regulations on outsourcing practices.

Regarding social justice, the Job Creation Law often lacks balanced protection for workers, as mandated by the principles outlined in the 1945 Constitution. Insufficient public involvement in the legislative process and inconsistencies in regulation enforcement have also been significant points of criticism. These shortcomings have led to dissatisfaction and resistance from various groups, particularly workers and labor unions, who feel that their aspirations have not been accommodated.

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