

Legal Politics Of Job Creation Law Number 6 Of 2023 Concerning Workers' Rights To Wages

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Abstract

The formation of laws and regulations should ideally uphold the principles of participation, transparency, and accountability. However, these principles came under scrutiny during the legislative process of Law No. 11 of 2020 on Job Creation, which was enacted through the omnibus law method by the Government and the House of Representatives. The rapid deliberation process, lack of public participation, and substantial changes in content triggered widespread controversy and constitutional challenges. The Constitutional Court, in Decision No. 91/PUU-XVIII/2020, declared the law conditionally unconstitutional and granted a two-year period for revision. In response, the Government issued Government Regulation in Lieu of Law (Perppu) No. 2 of 2022, which was later ratified as Law No. 6 of 2023. This study aims to analyze the legislative process of the Job Creation Law from the perspective of constitutional law and the principles of sound regulatory drafting. Using a normative juridical approach, the study finds that the main issues lie in the lack of public engagement and procedural inconsistencies, which ultimately affect the law's legitimacy and enforceability.

Keywords: *Job Creation Law; Constitutional Court; Legislative Process; Public Participation; Legal Reform.*

A. Introduction

Laws and regulations are written regulations that contain legal norms 1 Ahmad Redi, the Law on the Formation of Laws and Regulations that are generally binding and are formed or determined by State institutions or authorized officials through procedures stipulated in laws and regulations.¹ The formation of laws and regulations itself has a series of processes that include the stages of planning, drafting, discussion, ratification or determination, and promulgation.

After being inaugurated as President of the Republic of Indonesia for the 2019-2024 period, President Ir. H. Joko Widodo (Jokowi), made many new breakthroughs In the second period of his leadership as President, Jokowi will simplify related to the convoluted regulations and at the same time revise several laws (UU) through the Omnibus Law, namely the Law on Taxation, the Law on Job Creation and the Law on the Empowerment of Small

¹ "Ahmad Redi, Law on the Formation of Laws and Regulations, Sinar Grafika, East Jakarta, 2018, p.

and Micro Medium Enterprises (MSMEs). To realize the simplification of regulations, Jokowi invited the House of Representatives to discuss the three laws.²

The Job Creation Law is one of the laws and regulations in Indonesia formed by the government with a very short deadline and discussions in it that are fairly fast compared to other bills, such as the Bill on the Elimination of Sexual Violence (PKS) and the Domestic Workers Bill (PRT). In the process of forming the Job Creation Law, there are several legal problems that arise, one of which is the existence of legal norms that are considered to be contrary to the constitutional rights of citizens as guaranteed in the 1945 Constitution of the Republic of Indonesia.

Apart from that, the formation of laws and regulations does not take into account the effectiveness in society and the principle of openness, in order to provide opportunities for the public to convey input either in writing or orally on the formation of laws and regulations.³ Participatory democracy is expected to guarantee the realization of responsive legal products, because the community participates in making and owning laws and regulations.⁴

In the process of drafting the formation of this law itself, it has caused various kinds of controversies and the public expressed their opinions that they do not agree with the existence of the Job Creation Bill. The reason why the public does not agree with this change is not because there is a deadline of 100 days in making it set by President Jokowi and at the time the manufacturing process does not involve many parties, but because it is for important reasons and needs to be considered because it is a main problem in this Draft Law. This problem is due to the reduction of wages for workers whose employment relationships are decided by the employer.⁵ It is evident that after the passage of the Job Creation Law on October 5, 2020 which reaped a lot of controversy, although there have been many revisions from reducing the number of widths to the elimination of several articles that have reaped a lot of controversy as well as the final process of this draft law is on October 12, 2020. With the number of pages that have increased to a lot compared to the manuscripts that have been circulated previously amounting to 905 pages, it has increased to 1,035 pages.⁶ How many factors were mentioned because the making of laws was made in a short time so that many were not relevant to the situation and also the lack of community participation was also the main factor in the problem.⁷

With the many controversies that occurred after the ratification of the Job Creation Law number 11 of 2020, there were several parties who reported this to the constitutional

² Ramanata Disurya and Layang Sardana, "Legal Review of the Omnibus Law of the Copyright Law. Work,".

³ Sundari and Zulfatul Amalia, "The Formation of Job Creation Law in a Democratic Perspective," *Journal of Rechten : Legal and Human Rights Research* 2, no. 3 (December 30, 2020): 21-30, <https://doi.org/10.52005/rechten.v2i3.66>.

⁴ "Saifudin, Public Participation in the Formation of Laws and Regulations, Yogyakarta, FHUII Pres, 2009, p. 33.,".

⁵ "Aprilio Akbar, Omnibus Law Bill Agreed, <https://www.bbc.com/indonesia/indonesia-53734169>, Accessed on August 18, 2021,".

⁶ *Ibid* p. 2

⁷ Aprillia Jultje Saiya, Saartje Sarah Alfons, and Heillen Martha Yosephine Tita, "Community Participation in the Formation of Job Creation Law" 1, no. 6 (2021): 6.

court, then the Constitutional Court ruled that this law was contrary to the constitution by the Constitutional Court, where the Constitutional Court said that if this law is not amended for 2 years or no later than November 25, 2023, then this law is permanently unconstitutional.⁸ So on December 30, 2022, the Government stipulated PERPPU Number 2 of 2022 which replaced Law No. 12 of 2020, and officially Law No. 12 of 2020 concerning job creation was declared invalid. Furthermore, the law currently in force is Law No. 6 of 2023 concerning job creation as a replacement for Law No. 2 of 2022.

B. Research Methods

This research employs a normative juridical approach, which relies on library-based research by examining applicable laws and regulations, Constitutional Court decisions, and relevant legal literature. The study focuses on analyzing the legislative process of Law No. 11 of 2020 on Job Creation, including its judicial review by the Constitutional Court, as well as its implications for public participation and the fundamental principles of good legislative drafting.

The sources of legal data consist of primary legal materials (statutes, constitutional provisions, and court decisions), secondary legal materials (legal doctrines, scholarly articles, and legal commentaries), and tertiary legal materials (legal dictionaries and encyclopedias). The collected data is analyzed using qualitative descriptive analysis, aiming to interpret legal norms and practices in the context of the formation, annulment, and substitution of the Job Creation Law through Government Regulation in Lieu of Law (Perppu) No. 2 of 2022, and subsequently Law No. 6 of 2023.

C. Results and Discussion

The people are part of the elements of the administration and implementation of the State. All authority, power, and policies are in the hands of the people, because the people are the interests of the State. All regulations and the formation of laws must be in accordance with the legal objectives. There are several omnibus law bills included in the 2020 national legislation, namely: the Bill on Tax Provisions and Facilities for Strengthening the Economy and the Bill on the State Capital, the Bill on Pharmaceuticals, the Bill on Job Creation.⁹

The Job Creation Bill which uses the omnibus law concept approach raises many concerns in various circles of the people. Some articles that are considered problematic, as a result.¹⁰ Article 59

⁸ Gn, Rd Mila Gartina, and Agung Iriantoro. "The Influence of Business Scale Provisions on the Accuracy of MSME Legality

In accordance with the mandate of Government Regulation in Lieu of Law of the Republic of Indonesia (Perppu) Number 2 of 2022 concerning Amendments to Law Number 11 of 2020 concerning Job Creation." Authentic:

Journal of Notary Law 5, no. 1 (2023): 23-38.a

⁹ Winda Fitri and Luthfia Hidayah, "e-Journal of the Judicial Community of Ganesha Education University of Law Study Program (Volume 4 Number 2 August 2021)" 4 (2021): 6.

¹⁰ "Lia Riesta Dewi, Questioning the Omnibus Law Bill, <https://www.radarbanten.co.id/>, accessed on April 30, 2021," n.d.

Job Creation removes the rules regarding the term of a fixed-time employment agreement (PKWT) or contract workers. Article 81 number 15 of the Job Creation Law amends the provisions of Article 59 paragraph (4) of Law Number 13 Year 2003 on Manpower. The Job Creation Law which amends Article 59 paragraph (4) of the Employment Law regulates, further provisions regarding the type and nature or activity of work, the term, and the deadline for the extension of a work agreement for a certain time are regulated by government regulations.: Job Creation Law Removes the Maximum Limit of PKWT, Workers Threatened with Lifetime Contracts While the Employment Law stipulates that PKWT can be held for a maximum of two years and can only be extended once for a maximum period of one year. This new provision has the potential to provide power and flexibility for employers to maintain the status of contract workers indefinitely.

Article 79

The right of workers to get two days off in one week which was previously regulated in the Labor Law was cut. This provision is regulated in Article 81 number 23 of the Job Creation Law which amends Article 79 of the Employment Law. Article 79 paragraph (2) letter (b) of the Job Creation Law stipulates that workers must be given one day of weekly rest for six working days in one week. In addition, Article 79 of the Job Creation Law also removes the obligation for companies to provide two months of long rest for workers who have worked for six consecutive years and applies in multiples of six years of employment.

Article 88

The Job Creation Law changes policies related to workers' wages. This provision is regulated in Article 81 number 24 of the Job Creation Law which amends Article 88 of the Manpower Law. The seven policies are minimum wage; wage structure and scale; overtime wages; wages of not coming to work and/or not doing work for certain reasons; the form and manner of payment of wages; things that can be counted on wages; and wages as the basis for calculating or paying other rights and obligations. Several policies related to wages that were eliminated through the Job Creation Law include wages for exercising their right to work breaks, wages for severance payments, and wages for income tax calculations. Article 88 Paragraph (4) then states, "Further provisions regarding wage policy are regulated by Government Regulation". In addition, 5 articles were inserted, namely Article 88A, Article 88B, Article 88C, Article 88D, and Article 88E which regulate the determination of wages.¹¹

Of the 3 articles above, the author focuses more on this article, namely article 88 article 1 which reads "Every Worker/Laborer has the right to decent livelihood for humanity" and article 88c paragraph 1 which reads that the Governor can set a minimum wage district/city".¹²Is the job creation law after being ratified again by the president on March 21, 2023 still detrimental to workers/laborers With strict rules related to wage and severance arrangements, workers/laborers feel that their rights are guaranteed, the rules contained are also on the basis of meeting the needs of two parties,

¹¹ "The Job Creation Law Applies, These Are Controversial Articles in the Employment Cluster All - Kompas.Com Page," accessed February 22, 2024, <https://nasional.kompas.com/read/2020/11/03/10285541/uu-cipta-kerja-berlaku-ini-pasal-pasal-kontroversialdi-klaster?page=all>.

¹² "Job Creation Law," On Manpower", p. 561, 2023," n.d.

both from the workers/laborers and from the employers/employers.¹³ The worker is a worker who works in a company where the workers must follow the rules made by the company (employer) who is responsible for the company environment where the worker gets wages and life insurance.¹⁴

The minimum wage policy is a wage system that has been widely implemented in several countries, which can basically be seen from two sides. First, the minimum wage is a protective tool for workers to maintain that the value of the wages received does not decrease in meeting the needs of daily life¹⁵. In the work environment, wages simultaneously have a significant effect on the variables of Employee Work Productivity¹⁵. It can be proven that the higher the wages received by a person can increase the work spirit of an employee/laborer. Wages play a very important role for workers and also for the survival of the industry. Wages are a form of compensation, where workers receive rewards from their employers for work or services that have been done to meet their living needs¹⁶. Because generally each individual needs an income to run his or her life¹⁷. Because every worker or worker has the right to earn an income that fulfills his future life which includes many aspects such as food, children's education and old age insurance.¹⁸ If the rights of workers or laborers have not been fulfilled, then it is not in accordance with the reading of the Job Creation Law article 88 paragraph 1, then also if the minimum wage set by the government is not in accordance with the standard of living in the area, then it is still important to the second party, namely the employer.

In the academic text of Law no. 6 of 2023 challenging job creation, article 88 paragraph 1 concerning wages states "that every worker/laborer has the right to earn an income that meets a life worthy of humanity", which in the academic text proposes an amendment to article 1 which states that "every worker/laborer entitled to a decent livelihood for humanity", workers/laborers are not only worthy of wages but also for livelihood that is also proposed to be replaced because the scope of life that is suitable for humanity is very broad, not only about income, but also about social security, welfare facilities, health, work safety and so on.

Then in article 88A paragraphs 1,2,3 in the academic text, the government affirms the principle of amendment principles such as article 88A paragraph 2 that employers are obliged to pay wages to workers/laborers according to agreements or in accordance with

¹³ Moh Hamzah Hisbulloh and Ruslina Dwi Wahyuni, "Deregulation of Wage Rights and Severance Pay Workers in the Job Creation Law Through the Concept of Omnibus Law," *Lisyabab :Journal of Islamic and Social Studies*3, no. 1 (June 30, 2022): 67–80, <https://doi.org/10.58326/jurnallisyabab.v3i1.121>.

¹⁴ Najmi Ismail and Moch. Zainuddin, "The Law and Phenomenon of Manpower," *Focus: Journal of Social Work*1, no. 3 (January 23, 2019): 3, <https://doi.org/10.24198/focus.v1i3.20494>. ¹⁵ Rini Sulistiawati, "The Effect of Minimum Wage on Labor Absorption and Community Welfare in Provinces in Indonesia" 8 (2012).

¹⁵ V A J Rampisela and G G Lumintang, "The Influence of Work Motivation, Work Environment and Wages on the Work Productivity of Pt Dayana Cipta Employees," 2020.

¹⁶ Akmal Umar, "The Influence of Wages, Work Motivation, and Job Satisfaction on Worker Performance in the Manufacturing Industry in Makassar City," no. 66 (n.d.).

¹⁷ Agus Surya Manika, "Juridical Studies Related to the Determination of the Amount of Workers' Wages Based on Article 88 C of Law Number 11 of 2020 concerning Job Creation," *Journal of Legal Communication (Jkh)*8, No. 2 (August 1, 2022): 628–39, <https://doi.org/10.23887/jkh.v8i2.52010>.

¹⁸ "Hardijan Rusli, "Employment Law", (Ghalia Indonesia 2003) P. 115," n.d.

the provisions of laws and regulations, then it is affirmed that the principle of wage payment is based on agreements or laws and regulations, then if it violates this, criminal sanctions will be imposed because the right to wages is a human right human.¹⁹ Then many articles in wages were deleted that were not in accordance with the current situation of the community, such as articles 89, 90, and so on, which were considered as articles that did not prioritize the interests of workers but the interests of the government and employers.

Regarding the minimum wage that is applied in various regions which is also controversial, all of them are given the right to governors in all regions in Indonesia as explained in article 88C paragraph (1) the governor sets the minimum wage as a safety net, as explained in the academic manuscript that wages restore the concept of minimum wage to a net safety net possibility of a decrease in UM as currently the new provisions can be regulated and only apply to workers or workers who have just been employed. This minimum wage is excluded for micro and small businesses mentioned in article 90B explained in the academic paper that why UMKN is excluded in UM because it considers the aspect of financial ability, therefore it is excluded for micro and small businesses. Also in this academic manuscript, many laws were deleted after being studied for the umpteenth time because they were detrimental to the community. With the revision of the content of the Job Creation Law on wages, does it answer our discussion about the right to a decent livelihood for workers to the wages provided by the government, if this law is implemented, according to the author, it can be fulfilled if the government really studies when the determination of wages for workers/laborers does not only prioritize personal interests and rulers.

Entering the Job Creation Law on Wages that basically before it was changed many pros and cons occurred in the community, which made the public not believe in this word for the sake of the people while in fact this Job Creation Law is for political interests and the interests of the rulers. If we look at *sollen* and *sein*, *sollen* is like *kelsen* who always believes that the law is needed to regulate political activities, then the law is the result of political compromise according to the author in Indonesia adheres to the legal *sein* system is the result of political compromise not made to regulate political activities.²⁰

D. Results and Discussion

At the beginning of the formation of law number 11 of 2020, there was a lot of controversy in terms of making laws that were not participatory and from many harms to workers or laborers who made many protests from the public and this law was not aspirational, then there were several parties who reported to the constitutional court after it was decided by the constitutional court, then the government changed and ratified law number 6 of 2023 concerning job creation in this law, not It also involves the community, which means that in this act it is centralistic in the sense of the dominance of the government as an executive institution. The government as a single player does not have a community in it. Therefore, many controversies arose after the ratification, including the article that the author mentioned above. So according to the author, the character that was created was instrumentalist positivist in the sense that the

¹⁹ "See the Academic Statement of the Job Creation Law Number 6 of 2023 concerning Job Creation Article 88 paragraph 1 and Article 88C paragraph 2," n.d.

²⁰ *Eid al-Rishan "Constitutional Law Application". (FH UII Press 2020) Chapter 1,*

government made a regulation or a program without involving the community. Based on these prepositions, the creation and content that produces the character of a conservative/orthodox/elitist legal product.²¹

²¹ Moh.Mahfud MD, *Legal Politics in Indonesia, Print to* (Jakarta : PT Rajagrafindo Persada, 2011), 32.

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