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The Dynamics of Labor Law in Indonesia after the Issuance of the *Undang-Undang Cipta Kerja*

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Abstract

In the past 3 (three) years, the field of labor law in Indonesia has witnessed numerous dramas and controversies since the introduction of legal policies such as the *Undang-Undang Cipta Kerja*. The perceived imposition of these policies makes it an intriguing subject for discussion.

Keywords:

Labor Law; Cipta Kerja.

Introduction

One crucial aspect of national development is the welfare and prosperity of its people, particularly in the field of labor aimed at ensuring the well-being of the working population. Indonesia is a legal state formed based on the constitution, namely the *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (1945 Constitution of the Republic of Indonesia, hereinafter referred to as "*UUD NRI Tahun 1945*"). The preamble of the constitution declares that protecting all the people of Indonesia and the entire homeland of Indonesia, advancing the public welfare, enlightening the life of the nation, and participating in upholding a world order based on freedom, eternal peace, and social justice are the goals of the state.

These state objectives are further elaborated in the body of the *UUD NRI Tahun 1945*. Article 27 paragraph (2) of the *UUD NRI Tahun 1945* states that the state aims to guarantee the rights of each citizen to work and a decent life for humanity. The implementation of these objectives is manifested in various provisions of the legislation, including legislation in the field of labor. Therefore, labor law must

be able to provide legal certainty, ensure protection for workers, adhere to the principles of utility, order, protection, and law enforcement.[1]

Employment law is the legal framework that governs the rights and obligations between workers or laborers and employers. It encompasses matters related to employment relationships arising from bilateral employment agreements, as well as industrial relations that create a triangular relationship among workers, employers, and the government. Additionally, it covers aspects related to occupational health and economic protection, including occupational accident insurance, old-age benefits, death benefits, pensions, unemployment benefits, social insurance, and wage protection.

Furthermore, employment law deals with the resolution of industrial relations disputes and termination of employment, which are addressed through bilateral discussions, conciliation, mediation, arbitration, and litigation in the Industrial Relations Court. Therefore, labor law must be capable of providing legal certainty, ensuring the protection of workers, adhering to the principles of utility, order, protection, and law enforcement.[2] Therefore, in every formulation of legislation, it must be based on Pancasila and the *UUD NRI Tahun 1945*. Furthermore, regulations regarding the formation of laws, for example, have been stipulated in the *Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan* (Republic of Indonesia Law Number 12 of 2011 concerning the Formation of Laws), most recently amended by *Undang-Undang Republik Indonesia Nomor 13 Tahun 2022* (Law Number 13 of 2022). Consequently, the formation of labor laws, including the *Undang-Undang Cipta Kerja*, must adhere to these provisions.

Employment law has undergone twists and turns, starting from the draft of *Undang-Undang Cipta Kerja* that used the omnibus law method until its enactment as *Undang-Undang Republik Indonesia Nomor 11 Tahun 2020* (Law Number 11 of 2020, hereinafter referred to as "*UU No. 11 Tahun 2020*"). The omnibus law method is not a new legal concept. However, *UU No. 11 Tahun 2020* is the first law in

[1] Laurensius Arliman S, "Perkembangan Dan Dinamika Hukum Ketenagakerjaan Di Indonesia," *Jurnal Selat* 5, no. 1 (2017): 74–87.

[2] Ibid.

Indonesia to use this method. Omnibus law is generally known as the "world-sweeping law" method because of its role in replacing several provisions, regulations, and laws in a single regulation.[3] In its subsequent development, the law was conditionally declared unconstitutional by the Mahkamah Konstitusi Republik Indonesia (Constitutional Court of the Republic of Indonesia, hereinafter referred to as "*MKRI*").

The *MKRI*'s asserted that *UU No. 11 Tahun 2020* was formally flawed. Therefore, the *MKRI*'s declared *UU No. 11 Tahun 2020* conditionally unconstitutional. The government was required to rectify *UU No. 11 Tahun 2020* within a period of 2 (two) years. The MK also instructed the government to suspend all actions or policies that were strategic and had broad impacts. Additionally, issuing new implementing regulations related to *UU No. 11 Tahun 2020* was not allowed. However, instead of fixing the law, the government issued a *Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022* (Government Regulation in Lieu of Law Number 2 of 2022, hereinafter referred to as "*Perppu Nomor 2 Tahun 2022*") at the end of 2022. *Perppu Nomor 2 Tahun 2022* was also deemed procedurally flawed, as the government issued it during the period of rectifying *UU No. 11 Tahun 2020*, which was conditionally declared unconstitutional, resulting in procedural defects in the Perppu.

On March 21, 2023, the *Dewan Perwakilan Rakyat Republik Indonesia* (People's Consultative Assembly of the Republic of Indonesia, hereinafter referred to as "*DPR RI*") ratified *Perppu Nomor 2 Tahun 2022* into *Undang-Undang Republik Indonesia Nomor 6 Tahun 2023* (Law Number 6 of 2023, hereinafter referred to as "*UU No. 6 Tahun 2023*"). The *UU No. 6 Tahun 2023* has sparked controversy because it contains provisions regarding the rights of workers that are considered highly detrimental and do not create justice for workers. Concerns have been raised that *UU No. 6 Tahun 2023* may have adverse effects on workers in Indonesia. In this regard, the government appears to be arbitrary and hasty in issuing the job creation law.

[3] Winsherly Tan, "Analisis Yuridis Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Dalam Bidang Ketenagakerjaan," *Dialogia Iuridica* 13, no. 2 (2022): 046–064.

In essence, the position between employers and workers is equal before the law. However, sociologically, the position of employers holds a stronger social and economic standing. Moreover, *UU No. 6 Tahun 2023* prioritizes investments, which differs significantly from several principles in *Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 tentang Ketenagakerjaan* (Law Number 13 of 2003 concerning Manpower) that relatively provides more protection for workers. The *UU No. 6 Tahun 2023* fails to resolve legal policy issues regarding labor, instead introducing new problems. This highlights the importance of the government or the state in creating labor laws to achieve a balanced approach in line with national goals.

Some parties argue that the process of forming *UU No. 6 Tahun 2023* neglected the principles in the formation of legislation. However, these principles are crucial as they serve as the foundation for the ideas within its content. This is intended to ensure that, in practice, the enacted law does not lead to conflicts or rejection from various parties in the future.

This raises a question among the public: what is the actual goal of the government in taking such actions? The government claims that the birth of *UU No. 6 Tahun 2023* is a breakthrough to accelerate the national development process, especially by providing ease of doing business and fostering investment to create employment opportunities, promote justice, and improve the welfare of the people. *Wakil Menteri Keuangan Republik Indonesia* (Deputy Minister of Finance of the Republic of Indonesia), Suahasil Nazara, stated that *UU No. 6 Tahun 2023* aims to create a new economic landscape in the future. It encompasses various dimensions within economic activities that strive to generate job opportunities for the entire Indonesian population.[4]

Looking at the above, the dynamics of labor law in Indonesia do not run optimally, especially after the legal policy on job creation, which was later enacted through *UU No. 6 Tahun 2023*, sparked controversy and various rejections.

[4] Kementerian Keuangan Republik Indonesia, "Wamenkeu: Undang-Undang Cipta Kerja Menciptakan Kesempatan Kerja Bagi Seluruh Rakyat Indonesia," last modified 2022, https://kemenkeu.kemenkeu.go.id/informasi-publik/publikasi/berita-utama/Kesempatan-Kerja-bagi-Seluruh-Rakyat-Indonesia.

Therefore, the dynamics of labor law are crucial to be discussed and studied more deeply because, in essence, the formation of labor law must be based on the constitution, which mandates the realization of welfare guarantees for its people.

Method

This article is prepared using a juridical-normative research method with a legislative approach. With such a method and approach, this article will present, analyze, and evaluate legislation related to labor law issues, especially those related to job creation. The analysis is conducted through legal materials collected according to the researched problems and then analyzed qualitatively, aiming to produce a conclusion that addresses the discussed issues.

The Development of Labor Law before the Independence Era

The Indonesian nation was familiar with the system of mutual cooperation, which involved mobilizing additional labor from outside the family circle to fill labor shortages. This system was considered to have noble values and was believed to bring benefits, various goods, policies, and wisdom for all, later becoming the foundation for the formation of customary labor law.[5] Even though the rules were not in a written form, customary labor law is an identity of the nation that reflects the Indonesian personality from century to century.

Before entering the era of independence, one common employment relationship was slavery. This is because there was a caste system, and workers' rights were controlled by employers. Moreover, the treatment of workers was extremely cruel and inhumane. Workers had no rights over their lives at all. At that time, labor law had already been made in writing by the Dutch East Indies government through Staatsblad 1817 Number 42.

The term “kerja rodi” also became common during slavery in Indonesia during the colonial period. Initially, “kerja rodi” was an example of mutual cooperation for common purposes, and the results were for the benefit of the king. However, later,

[5] Mohammed Salleh Lamry, *Migrasi Pekerja Indonesia Ke Malaysia. Sebuah Pengantar, Dalam Edisi M. Arif Nasution, Mereka Yang Ke Seberang,* (Medan: USU Press, 1997), 1.

"kerja rodi" turned into forced labor for the benefit of the Dutch East Indies government and its officials. These forced laborers were not paid, not even a penny.[6]

Development of Labor Law after the Independence Era

In the era of Indonesian independence, labor laws established by the Dutch East Indies government were significantly modified by the Indonesian government, as seen in Article 27, paragraph (2) of the *UUD NRI Tahun 1945*, "*Tiap warga negara berhak atas penghidupan dan pekerjaan yang layak selayaknya makhluk hidup* (Every citizen has the right to a life and livelihood worthy of a living being)". For instance, through *Peraturan Pemerintah Republik Indonesia Nomor 3 Tahun 1947* (Government Regulation of the Republic of Indonesia Number 3 of 1947), an institution named the Ministry of Labor was established to handle labor issues in Indonesia.

During President Soekarno's administration (1945-1958), labor law policies provided relatively more social guarantees and protection for workers. This included laws such as *Undang-Undang Republik Indonesia Nomor 12 Tahun 1948 tentang Kerja Buruh* (Republic of Indonesia Law Number 12 of 1948 concerning Labor), *Undang-Undang Republik Indonesia Nomor 33 Tahun 1947 tentang Kecelakaan Kerja* (Republic of Indonesia Law Number 33 of 1947 concerning Work Accidents), *Undang-Undang Republik Indonesia Nomor 23 Tahun 1948 tentang Pengawasan Perburuhan* (Republic of Indonesia Law Number 23 of 1948 concerning Labor Supervision), *Undang-Undang Republik Indonesia Nomor 21 Tahun 1954 tentang Perjanjian Perburuhan antara Serikat Buruh dan Majikan* (Republic of Indonesia Law Number 21 of 1954 concerning Agreements between Labor Unions and Employers), *Undang-Undang Republik Indonesia Nomor 22 Tahun 1957* tentang Penyelesaian Perselisihan Hubungan Industrial (Republic of Indonesia Law Number 22 of 1957 concerning the Settlement of Industrial Relations Disputes), *Undang-Undang Republik Indonesia Nomor 18 Tahun 1956 tentang Persetujuan Konvensi Organisasi Perburuhan Internasional (ILO) Nomor 98 mengenai Dasar-Dasar dari Hak Untuk*

[6] Wahyu Susilo, *Selusur Kebijakan (Minus) Perlindungan Buruh Migran Indonesia* (Jakarta: Migrant CARE, 2015), 22.

Berorganisasi dan Berunding Bersama (Republic of Indonesia Law Number 18 of 1956 concerning the Approval of the International Labour Organization (ILO) Convention Number 98 on the Right to Organize and Collective Bargaining), and *Peraturan Menteri Tenaga Kerja Republik Indonesia Nomor 90 Tahun 1955 tentang Pendaftaran Serikat* (Regulation of the Minister of Labor of the Republic of Indonesia Number 90 of 1955 concerning the Registration of Unions).

However, during that period, labor conditions could be considered disadvantageous under the existing system. Workers were controlled by the military, including the formation of company councils in enterprises taken over from the Netherlands as part of the nationalization program to prevent the increasing takeover of Dutch companies by workers. Furthermore, the *Peraturan Penguasa Perang Tertinggi Nomor 4 Tahun 1960 tentang Pencegahan Pemogokan dan/atau Penutupan (Lock Out) di Perusahaan-Perusahaan, Jawatan-Jawatan, dan Badan-Badan Vital* (Supreme Commander's Regulation Number 4 of 1960 on the Prevention of Strikes and/or Lockouts in Companies, Positions, and Vital Bodies) was issued.

During the Soeharto administration, in the New Order era, the government's industrialization policy balanced the policy that placed national stability as the goal by implementing industrial peace, especially since the early Pelita III (1979-1983), using a means referred to as HPP (*Hubungan Perburuhan Pancasila* (Pancasila Labor Relations)). Workers' unions were unified under the *Serikat Pekerja Seluruh Indonesia* (All-Indonesia Workers' Union or “SPSI”). Referring to *UU No. 18 Tahun 1956* and the *Peraturan Menakertranskop Nomor 8/EDRN/1974 dan Nomor 1/MEN/1975 perihal Pembentukan Serikat Pekerja/Buruh di Perusahaan Swasta dan Pendaftaran Organisasi Buruh* (Minister of Manpower and Transmigration Regulation Number 8/EDRN/1974 and Number 1/MEN/1975 concerning the Establishment of Workers' Unions in Private Companies and the Registration of Labor Organizations), it can be seen that during this period, freedom of association was not fully implemented by the government. Instead, the military played a significant role, for example, in the resolution of labor disputes.

The Development of Labor Law after the Reform Era

During the administration of President B.J. Habibie (1998-1999), as a response to the reform era marked by the resignation of President Soeharto, legal policies in the field of labor were emphasized to boost international confidence that Indonesia could address its issues without violating human rights and play a significant role in implementing Indonesian democracy. Due to external pressures, Indonesia reluctantly ratified Convention Number 182 Concerning the Immediate Action to Abolish and to Eliminate the Worst Forms of Child Labor through *Undang-Undang Republik Indonesia Nomor 1 Tahun 2000* (Law Number 1 of 2000). With this ratification, Indonesia acknowledged the severe mistreatment of child labor. Additionally, many political prisoners were released during this period.

Under President B.J. Habibie's leadership, *Keputusan Presiden Nomor 83 Tahun 1998* (Presidential Decree Number 83 of 1998) was issued, endorsing *Konvensi ILO Nomor 87 Tahun 1948 tentang Kebebasan Berserikat dan Perlindungan Hak untuk Berorganisasi* (ILO Convention Number 87 of 1948 concerning Freedom of Association and Protection of the Right to Organise). The ratification of ILO Convention Number 138 of 1973 on the Minimum Age for Admission to Employment, providing protection for the rights of children by setting a minimum age for employment, was also enacted through *Undang-Undang Republik Indonesia Nomor 20 Tahun 1999* (Law Number 20 of 1999).

Subsequently, during President Abdurrahman Wahid's administration, *Undang-Undang Republik Indonesia Nomor 21 Tahun 2000 tentang Serikat Pekerja/Serikat Buruh* (Law Number 21 of 2000 concerning Labor Unions) was enacted. Unfortunately, this legal policy exacerbated industrial relations between employers and workers, leading to discrimination and even criminalization.

During President Megawati Soekarnoputri's tenure (2001-2004), *Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 tentang Ketenagakerjaan* (Law Number 13 of 2003 concerning Manpower) was successfully enacted. This legal policy replaced several regulations related to labor, becoming a comprehensive framework for other regulations. Another fundamental legal policy during this period was *Undang-Undang Republik Indonesia Nomor 2 Tahun 2004 tentang*

Penyelesaian Perselisihan Hubungan Industrial (Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes), which was ratified on January 14, 2004.

The subsequent administration of President Susilo Bambang Yudhoyono aimed to improve the investment climate, address unemployment issues, and boost economic growth. Efforts were made through *Instruksi Presiden Republik Indonesia Nomor 3 Tahun 2006 tentang Perbaikan Iklim Investasi* (Presidential Instruction Number 3 of 2006 on Investment Climate Improvement). Although there was an agenda to revise *UU No. 13 Tahun 2003* during this period, it faced opposition from workers.

Dynamics of Labor Law in Indonesia after the Issuance of *UU No. 11 Tahun 2020*

UU No. 11 Tahun 2020 is a law drafted using the omnibus law method. This method originates from the practice of law formation in the tradition of common law countries. This method can be seen as an important example for civil law countries to organize their legal systems to be harmonious and integrated, making it easier to apply in practice with better utility, certainty, and justice.[7]

Based on expert opinions and legal dictionaries, omnibus law is a method of creating regulations by combining several rules with different substantive regulations into a comprehensive regulation that functions as legal umbrella (umbrella act). When this regulation is enacted, it consequently repeals several rules resulting from the merger, and its substance is then declared invalid, either partially or entirely.[8]

Law No. 11 of 2020 is a regulation that addresses efforts to create jobs through labor-intensive work with the facilitation, protection, and empowerment of cooperatives and micro, small, and medium-sized enterprises, the improvement of the investment ecosystem and ease of doing business, as well as central government investments and the acceleration of national strategic projects.

[7] Jimly Asshiddiqie, *Ombinus Law Dan Penerapannya Di Indonesia* (Jakarta: Konstitusi Press, 2020), 219.

[8] Luthvi Febryka Nola, “Penerapan Omnibus Law Dalam Hukum Ketenagakerjaan Di Indonesia,” *Kajian* 25, no. 3 (2023): 217.

In its formation process, *UU No. 11 Tahun 2020* went through various twists and turns, facing significant opposition but was still ratified. According to President Joko Widodo, during his second-term inauguration speech, omnibus law was necessary to address regulatory overlaps in Indonesia, especially those related to investment and employment.

Shortly after, the concept of omnibus law took the form of the draft of *Undang-Undang Cipta Kerja*. This draft faced resistance from various groups, particularly labor unions. Protests against the draft of *Undang-Undang Cipta Kerja* Law were held in many places because it was feared to disadvantage workers' rights and only benefit employers. Despite widespread opposition, the *DPR RI* seemed to proceed with the legislative process, and on October 5, 2020, the draft of *Undang-Undang Cipta Kerja* was enacted, noted in the official gazette as *UU No. 11 Tahun 2020*, covering 11 clusters related to employment.

Numerous criticisms and rejections continued even after the enactment of *UU No. 11 Tahun 2020*. Since its enactment, waves of protests rejecting the law have occurred. *Konfederasi Serikat Pekerja Indonesia* (The Indonesian Confederation of Trade Unions (KSPI)), for example, called for the *MKRI*'s to annul *UU No. 11 Tahun 2020*, particularly concerning the employment cluster, as it was deemed detrimental to labor. Judicial review efforts were also made by academics and students.

The *MKRI*'s deemed *UU No. 11 Tahun 2020* formally flawed, as its formulation process did not comply with regulations and lacked transparency. In its decision, the *MKRI*'s declared *UU No. 11 Tahun 2020* conditionally unconstitutional, requiring lawmakers to rectify it within two years of the decision being announced.

Instead of implementing this decision, one year after the Constitutional Court's decision, the government issued *Perppu No. 2 Tahun 2022* to replace *UU No. 11 Tahun 2020*. This *Perppu No. 2 Tahun 2022* was urgently issued due to Indonesia and all countries facing food, energy, financial crises, and climate change, as well as to expedite anticipation of global economic conditions. The *Perppu No. 2 Tahun 2022* also faced significant opposition from labor unions, students, and even political elites.

Perppu No. 2 Tahun 2022

On December 30, 2022, the government announced the issuance of *Perppu No. 2 Tahun 2022*. The government stated that Indonesia was in a state of anticipating a state of emergency and claimed it was in accordance with *MKRI*'s Decision No. 138/PUU-VII/2009. The background for the issuance of *Perppu No. 2 Tahun 2022* is a follow-up to *MKRI*'s Decision No. 91/PUU-XVII/2020, which declared *UU No. 11 Tahun 2020* conditionally unconstitutional. This decision was further emphasized by *MKRI*'s Decision No. 64/PUU-XIX/2021, stating that *UU No. 11 Tahun 2020* is formally not valid until there is a correction within the statutory 2-year grace period.

Normatively, after the *Perppu* is established and promulgated, the president must submit it in the form of a "*Rancangan Undang-Undang tentang Penetapan Perppu menjadi Undang-Undang* (Draft Law on the Ratification of Perppu into Law)" to the *DPR RI*. This submission must be made in the next session after the *Perppu* is ratified by the president. The term next session refers to the *DPR RI* session, which includes only one recess period. The discussion of the draft law is conducted through the same mechanism as the general legislative process. The *DPR RI* can only accept or reject the Perppu.

The president's authority to issue a *Perppu* must be based on objective circumstances. However, the existence of *Perppu No. 2 Tahun 2022* does not meet the requirements, as there has been no urgent need and no legal vacuum during this period.

UU No. 6 Tahun 2023

On March 21, 2023, *Perppu No. 2 Tahun 2022* was enacted into *UU No. 6 Tahun 2023*. This immediately faced widespread opposition from the public, especially from those who had previously rejected labor-related legal policies, as certain articles were deemed controversial and detrimental to workers' rights.

For instance, Article 64 of *UU No. 6 Tahun 2023* was criticized for potentially making the labor market more flexible, particularly in its emphasis on the provisions regarding outsourcing. Labor unions expressed concern that the use of outsourced

labor would be allowed in all types of work, as the limitations would only be determined through government regulations.

Moreover, the granting of extended leave is no longer obligatory for companies but optional. This is stipulated in Article 79 of *UU No. 6 Tahun 2023*, which specifies that employers are only required to provide annual leave, breaks between working hours, and weekly holidays. Extended breaks become a choice for companies.

Additionally, the introduction of the term “specific index” in Article 88D, paragraph 2 of *UU No. 6 Tahun 2023*, was seen as potentially facilitating lower wages. A new article, Article 88F of *UU No. 6 Tahun 2023*, allows the government to establish a different minimum wage formula under certain circumstances.

In general, the labor law policies related to job creation have both advantages and disadvantages. Firstly, there is job loss protection. Many workers, especially in the industrial sector, do not fully receive their entitlements when facing termination. However, *UU No. 6 Tahun 2023* guarantees benefits for workers who lose their jobs, including compensation, cash benefits, training, and skill placement in the job market.

Secondly, maternity and menstrual leave provisions remain intact. Concerns were raised about the potential removal of maternity and menstrual leave since the draft of the Omnibus Law on Job Creation was made public. However, these provisions are maintained and apply as outlined in *UU No. 13 Tahun 2003*. Companies are obligated to grant these rights to female employees as needed.

On the flip side, the labor law policies also come with some drawbacks. Firstly, the outsourcing of labor. The regulations regarding outsourced workers still apply in *UU No. 6 Tahun 2023*, leading to protests. Outsourced workers are perceived to lack strong expertise in a specific field, impacting their future careers. The absence of work scope limitations further disadvantages workers who lack specialized skills.

Secondly, the adjustment of the regional minimum wage based on the global economy. The impact of the global economy affects government regulations, and the regional minimum wage, which is currently adjusted according to the law, must now

be adapted to the fluctuating global economic conditions. This adjustment is considered detrimental to workers, as it means they no longer have a fixed monthly income.

Conclusion

The legal policy in the form of the omnibus law on job creation has triggered numerous changes and controversies in the dynamics of labor law in Indonesia. The impression that the enactment of *UU No. 6 Tahun 2023* to replace *UU No. 11 Tahun 2020* was forced and rushed can be considered as merely changing the surface without substantial alterations.

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