

Juridical Impact for Parties in Employment Relations After the enactment of Law Number 11 of 2020 concerning Job Creation

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ABSTRACT

While running out of laws, legal discrepancies, and the existence of laws that have described developments that can no longer keep up with the dynamics of society at large, the government of the Republic of Indonesia enacted UU Cipta Kerja. UU Cipta Kerja has several articles that have caught the attention of the author. regarding PKWT protection rights and regarding termination of employment for employees. The main problem in this paper is how to assess the legal certainty regarding the entry into force of PKWT compensation rights in the Job Creation Law from a legal theory perspective. How is the legal protection for workers who pay off work relationships due to violations? The normative legal method was chosen for this study, which means that the research focus is on studying the application of positive legal norms or norms from the selection of objects in matters of legal rules (law or norms) that exist in society. It is very necessary to have protection for workers to guarantee the basic rights of workers and guarantee the convenience of locations and treatment without disturbance on any basis. the welfare of workers and laborers

Keywords: PKWT, UU Cipta Kerja, Legal Certainty

ABSTRAK

Ditengah terjadinya kekosongan hukum, ketidaksesuaian hukum dan terdapatnya Undang- Undang yang telah usang yang tidak lagi dapat mengikuti dinamika perkembangan masyarakat secara luas, Pemerintah Negara Republik Indonesia menetapkan berlakunya Undang- Undang Nomor 11 Tahun 2020 tentang Cipta Kerja. UU Cipta Kerja memiliki beberapa pasal yang menarik perhatian penulis. tentang hak kompensasi PKWT dan mengenai pemutusan hubungan kerja kepada karyawan. Hal yang menjadi pokok permasalahan dalam makalah ini adalah bagaimanakah kepastian hukum terhadap berlakunya hak kompensasi PKWT dalam UU Cipta Kerja berdasarkan perspektif teori hukum? bagaimanakah perlindungan hukum bagi buruh yang terdampak pemutusan hubungan kerja karena melakukan pelanggaran. Metode penelitian yang dipilih dalam penelitian ini adalah metode hukum normatif, yaitu fokus penelitian adalah mempelajari penerapan kaidah atau norma hukum positif dari pilihan objek dalam persoalan hukum (hukum adalah aturan atau norma) yang ada di masyarakat. Sangat diperlukan adanya perlindungan terhadap tenaga kerja dimaksudkan untuk menjamin hak-hak dasar pekerja/buruh dan menjamin kesamaan kesempatan serta perlakuan tanpa diskriminasi atas dasar apa pun untuk mewujudkan kesejahteraan pekerja/buruh

Kata Kunci: PKWT, UU Cipta Kerja, Kepastian Hukum

A. INTRODUCTION

Indonesia is a constitutional state in which the law serves as the protector and defender of Indonesian society. Fundamentally, the law must serve the purposes for which it exists, namely legal certainty, justice, and the advantages of law, in order for people to live in prosperity, justice, and prosperity. This conforms to the intellectual underpinnings of the Indonesian state, especially Pancasila and the 1945 Constitution.

According to the Republic of Indonesia's Constitution of 1945, all citizens have the right to equal treatment under the law and to obtain protection and assurances from the state. The law has norms and rules that have special characteristics, namely protection, then regulation and balance, to guarantee what is called the public good.

In an endeavor to attain legal principles, efforts to produce fairness, benefit, and justice are sometimes motivated by community expectations. Because, in reality, there are a great number of laws that reportedly do not meet the Indonesian people's expectations.

In the middle of a legal void, there is legal incompatibility and the existence of outmoded laws that are unable to keep up with the dynamics of community growth. The Government of the Republic of Indonesia mandates the implementation of Law Number 11 of 2020 about Job Creation (hence referred to as the Job Creation Law), also known as the Omnibus Law, which serves as a legal filling solution for Indonesian society. In accordance with Indonesia's IV Medium-Term Development Plan for 2020-2024, the Simplifying Regulations Omnibus Law has a number of noteworthy provisions.

According to the Job Creation Law, the government's objective is to create a wealthy and equitable Indonesia. In light of this, the state must utilize the Job Creation Law to fulfill the labor rights and quality of life of its citizens.

The DPR and the President of the Republic of Indonesia passed the Job Creation Law for this purpose. Approximately eighty laws make up the Job Creation Law. In the Job Creation Law, almost 1,200 provisions of the Law were concurrently changed. The modified laws cover the empowerment and protection of small and medium-sized enterprises (SMEs), investment and government initiatives, and special economic zones. Other components of the regulatory cluster include company licenses, investment requirements, employment, land purchase, research and innovation support, and land acquisition.

Several of the Job Creation Law's employment-related articles have captured the author's interest. Specifically, in reference to PKWT compensation rights and termination of employment for employees.

B. FORMULATION OF THE PROBLEM

In light of the above, this study will examine the following:

1. What is the legal certainty surrounding the implementation of PKWT Compensation Rights in the Job Creation Law from a legal theoretical standpoint?
2. What legal protections exist for employees whose jobs are terminated for committing violations?

C. RESEARCH PURPOSES

This research, which explores several facets of the aforementioned topic, is intended to:

1. Knowing legal certainty regarding the enactment of PKWT Compensation Rights in the Job Creation Law based on a legal theory perspective.
2. Knowledge of the legal protections afforded to employees whose jobs are terminated due to infractions.

D. BENEFITS OF RESEARCH

The benefits of this research may be divided into two parts: first, the theoretical value, and second, the practical value. Several applications are feasible based on the assumptions stated in this study.:

1. Increase the number of references in the subject of labor law.
2. Author's thoughts regarding the evolution of the labor market are beneficial to policymakers.

It is intended that this research would give beneficial insights for the Indonesian people in the area of labor law, particularly with regard to the establishment of rules and legal rights guarantees for those who engage in the formation of the law.

E. RESEARCH METHODS

This research utilizes the normative legal approach, which focuses on the study of the application of positive legal norms or norms derived from the selection of objects in legal affairs (law is a rule or standard) in society. So that, after legal

standards from the literature have been identified, they may be compared to the reality of the difficulties discussed in this work.

F. FINDING & DISCUSSION

1. Certainty Regarding the Applicability of PKWT Compensation Rights Under the Job Creation Law

Similar to Western nations, the legal system of Indonesia is founded on the concepts of fairness, benefit, and legal certainty. The relevant legal model, however, places a greater premium on features of legal certainty based on legal regulations. Consequently, the law must serve a purpose that considers justice, legal clarity, and expediency. All three must be possessed to accomplish the intended legal objectives.

There are two primary meanings of the phrase "legal certainty," both of which include the development of laws that bind individuals and those that dictate what they may or may not do. Legal certainty in the second sense is a rule that is general in nature and is imposed by the state on individuals regarding what they may and may not do in their daily lives. These general rules should be applied voluntarily by the community in order to achieve legal certainty and create peace in society.

This legal certainty is a framework that links one rule of law to another rule of law, ensuring that the individual cannot be arbitrarily executed by other individuals, such as law enforcement officials and others.¹

In other words, legal certainty assures the fair and efficient enforcement of a law. This absence of legal identity implies that it is no longer seen as a guide or model for anyone's behavior, despite the fact that legal certainty often results in positivism. However, the law is very strongly tied to the politics of power blowing, therefore that is where the law is grounded.

For example, under the Job Creation Law, the writer is particularly interested in the enactment of the PKWT Compensation Rights. The Job Creation Law is fundamentally grounded on the framework of development for the whole

¹ P. M Marzuki, *Pengantar Ilmu Hukum*. Jakarta: Kencana, 2010.

Indonesian population to achieve the foundation of the Indonesian state, namely prosperity and a prosperous, just, and equal material and spiritual distribution.² Workers are both actors and targets of national development initiatives. For this reason, we must defend the rights of employees and workers, consider their interests and those of their families, and eradicate all forms of discrimination in the workplace, without jeopardizing the company's ability to survive or its rights.

PKWT (work agreement for a specific period) is a work relationship with specific (binding) regulations governing both the duration of the partnership and the nature of the labor. Whereas PKWTT applies when the employment relationship is not governed by its provisions or when the parties have agreed to the conditions but they are not complied with, FLSA applies when the employment relationship is governed by its provisions (unlimited time work agreement). Work links are therefore extensive and cover the same ground as normal workers.³

Previously, PKWT compensation was governed by Law No. 13 of 2003 concerning Manpower (henceforth referred to as the Manpower Law), Article 62 of which stated: "If one party terminates the employment relationship prior to the expiration of the period specified in the work agreement for a certain time or if the employment relationship terminates for reasons other than those specified in Article 61 Paragraph (1), the terminating party is obligated to pay compensation.

The Job Creation Act has no effect on this clause. As a result, the provisions of Labor Law Article 62 remain effective. Article 61, which was adopted simultaneously with Article 62, require the employer to compensate the employee if the employment contract is terminated before to the expiration of the period stipulated in paragraphs (1) (b) and (c) of Article 61.

In accordance with the Job Creation Law, PKWT employees' rights are enhanced by receiving payment from businesses that employ them. To be more precise, the Job Creation Law on Manpower's Chapter IV, Part Two, Letter A of Article 61 specifies monetary compensation for employees/laborers in the case of

² D. Rahayu, *Buku Ajar Hukum Ketenagakerjaan*. Surabaya: Scopindo, 2019.

³ W Pitoyo, *Panduan Praktis Hukum Ketenagakerjaan*. Jakarta :Visimedia, 2010.

termination of the work agreement as described in Article 61 paragraph (1) letters (b) and (c) (c).

Additionally, Article 61 A is translated into Article 15 of Government Regulation Number 35 of 2021 (hereafter referred to as PP No. 35 of 2021), which mandates that businesses must pay contract employees remuneration when their contract time ends. Even if this requirement is not included in the PKWT work agreement since the foundation for paying this compensation money is not a work agreement, the firm is nonetheless required to offer it. The foundation, nevertheless, is governmental legislation. The work agreement, for instance, specifies that the corporation is not bound to pay compensation money after the contract time expires, even though the work agreement specifies the reverse.

On the one hand, employees will gain from the presence of this law. Because the employee has essentially dedicated himself to the employer's business for the duration of the contract. However, back to the basis of the existence of legal certainty that the law basically must be accepted by all levels of society. Because this rule seems to only benefit the workers. Legal certainty must pay attention to legal validity. For instance, if a rule of law is not recognized by society as a whole or if a rule of law is formed following legitimate procedures but proves to be unenforceable in practice, then it is worthless for those with legal power to create the rule of law. Therefore, laws that are not developed correctly, are not made by the relevant parties, are not accepted by society, or are unfair do not exist.⁴

Additionally, it is necessary to follow these guidelines as written in order to preserve the principles of equality and justice established in the employment agreement between employees and employers. According to Aristotle, justice is a virtue associated with human interactions. In this sense, "fair" may refer to a variety of distinct concepts. Being fair can refer to being fair or complying to legally established or socially accepted standards. Unfairness is demonstrated if a person is proven to be taking more than they should (Siddharta, 2006)

So in essence, legal rules should not be burdensome to either party. However, it can be willingly accepted by the parties and executed more effectively

⁴ Munir Fuady, *Teori- Teori Besar Dalam Hukum*. Jakarta : Prenada Media Group, 2014.

by everyone. To promote the social justice, welfare, and prosperity of the community.

2. Legal Protection for Employees Who Are Fired Due to Violations

The phrases "worker" and "labourer" are interchangeable when referring to someone above the age of 18 who conducts labor for compensation or other incentives. This concept consists of two parts: those who work and those who are reimbursed for their efforts. Producing goods and/or services that satisfy one's own and society's needs is distinct from labor, which is defined as anybody who is able to perform the activity.⁵

Essentially, this labor right is safeguarded by the state so that individuals can work freely and without fear. In line with Article 27 Paragraph 2 of the 1945 Constitution, all people are assured the chance to earn a living income and sustain themselves. Then, in Article 28 D, it is declared that everyone has the right to work and to be fairly compensated and treated in a work relationship. A person cannot revoke a worker's employment rights so long as they do not breach applicable laws and regulations. Even if an employee is terminated in violation of the law, he is still entitled to some legal safeguards.

Commonly, the termination of this job connection is referred to as layoffs. In accordance with Article 125 of Law No. 13 of 2003 on Manpower, rights and duties of both workers and employers expire upon termination of the employment relationship.,⁶

In accordance with Article 52 of Public Proclamation Number 35 of 2021, which acts as the implementation of the Job Creation Law. One of the reasons companies might terminate employees is for violating business policies. A company may cite a misbehavior clause as the rationale for terminating an employee for breaking company policy or obtaining disciplinary action.

However, the corporation cannot unilaterally lay off employees. There must be a protocol for laying off personnel that must be followed by the firm. According to article 52 of PP Number 35 of 2021, companies are obligated to present their

⁵ D.Rahayu, *Ibid*

⁶ Marbun, R. *Jangan Mau di-PHK Begitu Saja*. Jakarta : Transmedia Pustaka, 2010.

employees with warning letters, and there are three warning letters. Each warning letter has three items separated by six months. If the company's workers disregard the warning letter, they will face disciplinary action, Before the company terminates the employment, it must provide the employee written notice through a notice of dismissal that is sent no later than 14 days before the termination's effective date.

The difficulty lies in Article 52 paragraph (3) of PP No. 35 of 2021, which states that unilateral layoffs, i.e., that layoffs can be conducted by employers without a notification letter, are permissible. The article's contents are problematic.: " Entrepreneurs may terminate employment in accordance with paragraph (2) without providing the notice required by Article 37 paragraph (2)." This unilateral layoff material is identical to the layoff material that was once referred to as layoffs owing to an error in Article 158 UUK and was canceled by MK Decision No. 012/PUU-1/2003, When in the Constitutional Court's ruling it is mentioned that Article 158 UUK permits employers to behave arbitrarily against employees.⁷

Since a result, the laws regulating layoffs are now lax, therefore employees must be careful not to breach corporate policies in order to avoid being terminated quickly by their employer, as the existing regulations make it simple for employees to be terminated. The easiness of ending employment relationships further erodes the position of employees, leaving them defenseless, which naturally causes additional fears among employees that they may be terminated at any time if they are found to have committed an emergency violation.

In essence, this article manifestly breaches the Presumption of Innocence since it expressly permits employers to engage in arbitrary terminations of employment on the pretext that the employee has committed an offense. This breach must also be established previously to demonstrate that the employee is indeed guilty.

G. CONCLUSION

⁷ Nugroho, A. F. "Analisis Yuridis Pemutusan Hubungan Kerja Karena! Pelanggaran Bersifat Mendesak Yang Terkualifikasi Perbuatan Pidana Tanpa Pemberitahuan". *Fakultas Hukum Sriwijaya*, 2022.

Protection for employees designed to secure the fundamental rights of workers/laborers and provide equality of opportunity and treatment without discrimination on any grounds is essential for its realization. Improve the well-being of workers/laborers and their families while keeping an eye on the evolution of the economic sector. Regarding the rights of PKWT employees who are entitled to compensation money for workers/laborers, justice must be accorded to both sides as stipulated in the employment contract between workers and employers.

Moreover, regarding employees who were terminated unilaterally because they had committed infractions, this allowed the corporation to take arbitrary steps against individuals in order to terminate their job. In order to establish a prosperous society, it is important to revise Article 52 of PP No. 35 of 2021 so that it does not contradict the fundamental rights of employees.

H. SUGGESTION

There are sections of the Job Creation Law that should be submitted to a judicial review to determine the law's viability so that legal objectives may be met and the law can be executed effectively.

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