

# Legal Protection against the Guarantee of the Normative Rights of Workers after the Issuance of Law Number 11 Year 2020 Concerning Copyright

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## ABSTRACT

*One problem that gets the most attention is the issue of fulfilling workers' rights. The emergence of disputes between workers and employers or employers is due to the existence of rights between workers and employers that are not carried out by each party. Although there has been Law (UU) No. 13 of 2003 concerning Manpower, this law has not been able to mediate when there are workers' rights that are not fulfilled by employers. The issuance of Law Number 11 of 2020 concerning Job Creation makes the fate of workers worse, because this law is more oriented towards increasing economic investment and facilitating business permits, but on the other hand, it ignores the normative rights of workers.*

## KEYWORDS

*Legal protection; guarantee of normative rights; job creation*

## INTRODUCTION

Providing employment opportunities is one of the Government's obligations under Article 27 (2) of the 1945 Constitution of the Republic of Indonesia: "Every citizen has the right to work and live a decent life". On this basis, the government issued various rules and policies to provide protection and opportunities for them.<sup>1</sup> This provision is then further elaborated in Article 5 and Article 6 of Law Number 13 of 2003 concerning Manpower. Article 5, namely that: "Every worker has the same opportunity without discrimination to get a job". Then Article 6 states that: "Every worker/labor has the right to receive equal treatment without discrimination from employers".

Aspects of labor law must be in line with the current development of manpower, which is already so rapid, so that the substance of the study of labor law does not only cover employment relations, but has shifted to legal relations between workers, employers, and the government whose substance of study does not only regulate relations. the law in the employment relationship (during employment), but after the employment relationship (post-employment). This conception of employment is used as a reference for reviewing the existing legal instruments, whether they already cover these fields or not.<sup>2</sup>

Enactment of Law No. 11 of 2020 on Job Creation Rejected from various elements of society, especially the workers through the demonstrations that have occurred to date, indicating that the Job Creation Law has not provided legal certainty and protection for the normative rights of workers. There are even some people who think that the norms contained in the Job Creation Law tend to lead to the degradation of the normative rights of workers. This means more simply, that the contents of the articles relating to workers and employers tend to side with employers. Based on the above discussion, the authors are

<sup>1</sup> Soedarjadi. 2008. *Labor Law in Indonesia*. Jakarta: Pustaka Yustisia.

<sup>2</sup> I Dewa Rai Astawa, "Aspek Perlindungan Hukum Hak-Hak Tenaga Kerja Indonesia Di Luar Negeri". *Tesis*. Semarang: Program Magister Ilmu Hukum Universitas Diponegoro. 2006, p. 2.

interested in conducting research related to the legal review of the legal protection of workers' normative rights after the promulgation of the Job Creation Law. The purpose of this article is to examine some provisions of the Jobs Creation Act that do not consider the interests of employees.

## **RESEARCH METHODS**

Data collection in this study according to normative law. This study uses primary and secondary data.<sup>3</sup> Primary data were legislation to ensure normative rights of workers following enactment of his Law No. 11 of 2020 on Job Creation, secondary data were cited from the literature supporting the analysis under study. This is the opinion of legal experts. Secondary legal sources are dissertations, dissertations, journals, relevant readers, dissertations, articles, articles, and dissertations dealing with issues related to securing the normative rights of workers in accordance with the enactment of Law No. 11 of 2020. Results of academic papers such as research reports. About copyright law. Using prescriptive legal methods, this study is able to reveal the subject matter of the issue and the main problems identified.

## **RESULTS AND DISCUSSION**

### ***Legal Relations between Workers and Employers***

A worker is a person who is already working or is working, is looking for work and is engaged in other activities such as: B. School attendance and household chores. The definition of labor above only explains the process of residents looking for work other than the routine that is always done, namely school and taking care of the household without any work that must be fulfilled by temporary labor in the following sense, Labor is a person capable of doing work to produce goods and/or labor. or services for both their own needs and the community.<sup>4</sup>

The definition of manpower in Article 1 paragraph (2) of Law Number 13 of 2003 concerning Manpower, is "Labor is anyone who can do work to produce goods and/or services both to meet their own needs and for the community". This is a reference so far in formulating the definition of manpower because previously workers in Indonesia were only referred to as laborers and finally through various government policies they were changed to manpower to pay respect for human rights in the Unitary State of the Republic of Indonesia. The definition of labor force is contained in Article 8(2) of Labor and Social Insurance Act No. 3/1992 as well as Labor Force Act No. 13/2003, the definition of manpower is expanded to include<sup>5</sup> workers in the Work Accident Insurance are:

- a. Interns and students working for companies, whether paid or not,
- b. Unless the acquiring party is a corporation, the person who acquires the work shall,
- c. Prisoners employed by companies.

From the above explanation, we can conclude that the term labor has been replaced by the term manual laborer, that is one who works for wages or other remuneration. Workers are part of the workforce, in this case, workers are people who have got permanent jobs, this is because the workforce includes unemployed people who are looking for work (labor force), housewives and other people who do not have or do not have permanent jobs.

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<sup>3</sup> Peter Mahmud Marzuki, Legal Research, Jakarta: Kencana Prenada Media Group, (2005), p. 35

<sup>4</sup> Myra M. Hanartani, dkk, 2010, *Pengantar Hukum Perburuhan*, Jakarta: Direktorat Jenderal Pembinaan Hubungan Industrial dan Jaminan Sosial Tenaga Kerja dan Transmigrasi R.I cetakan ke II, p. 1.

<sup>5</sup> Lalu Husni, 2012, *Pengantar Hukum Ketenagakerjaan Indonesia*, Edisi Revisi, Jakarta: Raja Grafindo Persada, p. 45.

Employers in Article 1 number 5 of Law Number 13 of 2003 concerning Manpower reads:

“Entrepreneurs are:

- a. An individual, partnership, or legal entity that runs a self-owned company.
- b. Individuals, partnerships, or legal entities that independently run a company that is not theirs.
- c. Individuals, partnerships, or legal entities residing in Indonesia representing the company as referred to in letters a, b domiciled outside the territory of Indonesia.”

An employment relationship is defined as the relationship between a person performing a particular job (worker or employee) and a person performing or ordering a job that needs to be done properly and accurately (employer) and, ultimately, the worker/worker Employment relationship between workers. Receive rewards in the form of rewards for work and performance. A work relationship must contain at least three elements, namely<sup>6</sup>:

1. Wages

Wage is the right of a worker to be received and expressed in monetary form as compensation from an employer or employer to a worker, determined and paid under a contract of employment, agreement or law, to provide work and/or Includes benefits for workers and their families for services. has been or will be.

2. Command

An order is that one party has the right to give an order and the other party is obliged to carry out the order.

3. Work

Work is a free work in accordance with the agreement between the worker and the entrepreneur, as long as it does not conflict with the laws and regulations, morality and public order.

The definition of an employment relationship is provided in Article 1.15 of the Labor Law No. 13/2003 as follows: “An employment relationship is a relationship between an entrepreneur and a worker/employee based on an employment contract containing elements of work, wages and orders.” In conclusion, the elements of an employment relationship are:

1. There is a job

Workers and employers are free to work as long as they do not violate laws, public order and morals. It is technically clear that it is impossible for an entrepreneur to recruit workers/labor if there are no available jobs by the capacity of the company's needs, this element is one of the conditions for a valid work agreement, In accordance with Article 52(1) of Law No. 13 of 2003 on Labor. Adopted Article 1320 of the Civil Code. Since the existence of work element is an objective condition of the contract of employment, the subject of the contract of employment must be clear, and if the objective conditions are not met, the contract of employment will be void.

2. There is a Wage

The minimum wage for Labor Regulations is the State Minimum Wage (UMP) or State Sectoral Minimum Wage (UMSP) as determined by the Governor in Section 90 (1) of Labor Law No. 13 of 2003, as follows: It has been. “Entrepreneurs are prohibited from paying low wages. Minimum wage under Article 89.”

3. There is an Order

An order is that one party has the right to give an order and the other party is obliged to carry out the order. The strategic location of the entrepreneur's position is here, the

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<sup>6</sup> Soedarjadi, 2009, *Hak dan Kewajiban Pekerja-Pengusaha*, Yogyakarta: Pustaka Yustisia, p. 12.

company has a fairly strong bargaining position compared to workers or workers. Entrepreneurs have the entrepreneur's prerogative rights, meaning that entrepreneurs usually have the right to form company regulations or work agreements with companies, so the company has the right to give orders to workers or workers in accordance with the company's operational needs so that workers or workers bind themselves to employers to work under the orders of the entrepreneur. According to legal experts, this is referred to as *dienstverhoeding*, meaning that workers/labor must be willing to work for others.

Existence of an employment contract between the worker/worker and the entrepreneur as the employer of course has an impact on the rights and obligations that must be obeyed by both parties. Rights are everything that must be obtained by everyone who has been there since birth, even from the womb. The rights of workers/laborers are always attached to everyone who works by receiving a salary. Because his work is under the orders of the employer, a worker needs to get guaranteed protection from arbitrary actions Depends on who pays the salary. Employee/worker rights arise as soon as an employee/worker commits to an employer to perform a job.

Some of the rights of workers are as follows: the right to wages, the right to get annual leave that can be carried out according to the regulations in force, the right to obtain equality before the law, the right to worship according to the teachings of their respective religions, and the right to express an opinion. These worker rights exist only when someone becomes an employee, and these rights apply to those who work. If the employee ceases to be an employee, the previous rights are automatically lost.

The emergence of an obligation for a person is when a person makes an agreement it contains rights and obligations when that right has become a must that is obtained, as well as obligations. Obligations are mandatory and must be obeyed without exception because the mutual attachment between rights and obligations is what underlies why everyone demands rights, we too should not be negligent of obligations.

Obligations as workers have been divided into three important parts, namely :

1. Obedience obligation is an obligation imposed on workers/laborers to comply with all regulations that have been stipulated or have been agreed upon by the worker or the trade union with the entrepreneur;
2. Confidentiality obligation is a form of obligation given to workers, in the sense that workers have an obligation in terms of being able to maintain company secrets;
3. Obligation of loyalty, employee loyalty to the organization means the willingness of workers to perpetuate relations with the organization, if necessary at the expense of their interests without expecting anything. The willingness of workers/laborers to maintain themselves working in the organization is important in supporting the commitment of workers to the organization where they work. This can be pursued if the worker feels a sense of security and satisfaction in the organization where the worker joins to work.

There are several obligations of employers including: First, the general obligation of the employer as a result of the emergence of an employment relationship is to pay wages.<sup>7</sup> Meanwhile, the additional obligation is to provide a certificate to workers who of their own free will want to stop working at the company. Likewise with other main obligations, namely regulating workers, regulating workplaces, holding a wage book, and holding a wage payment book. Second, the obligation to provide a certificate, this certificate is generally required by workers/laborers who stop working at a company as a sign of working experience. The certificate usually contains: the name of the worker/labourer, the

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<sup>7</sup> Zainal Asikin, et.al, 2004, *Dasar-Dasar Hukum Perburuhan*, Jakarta: PT RajaGrafindo Persada, p. 85.

date he started working and the date he stopped, the type of work he did or the expertise possessed by the worker/labourer.<sup>8</sup>

### ***Legal Protection of the Normative Rights of Workers After the issuance of Law Number 11 of 2020 concerning Job Creation***

The worker's position can basically be viewed from two perspectives: legal and socio-economic. From a legal point of view, the status of an employee is the same as that of an employer (employer). Socio-economically, workers' positions are not the same (especially in terms of unskilled workers). People with no other means of livelihood are forced to work for other people. The employer provides the terms of employment. Workers need legal protection from the state from arbitrary actions from employers (employers).<sup>9</sup>

Labor law, it regulates the employment relationship between the worker/employee and the employer (employer), i.e. the regulation of personal interests. The employment relationship regulating the employee and employer includes the rights and obligations of the parties. The understanding of rights and obligations is always mutual. Workers or workers' rights are obligations of employers and vice versa. The employment relationship cannot be separated from the employment contract concluded between the parties. Under Indonesian law, some translations are customary and others are mandatory.

The agreement is an agreement that has been agreed by the parties to do something. Engagement is defined as the relationship between the parties consisting of 2 (two) or more persons from which the parties must fulfil the demands and vice versa.<sup>10</sup> In the implementation of the provisions of the agreement by the parties who are bound as it should be, it is the embodiment of the agreement itself. The work agreement can run as it should if the parties who agree to the agreement carry out what has been agreed upon.<sup>11</sup>

Employment agreements that have occurred so far between workers and employers still leave many problems that have the potential to trigger conflicts in the future, for example, these agreements are individual so they tend to create one-sided conditions, and are relatively profitable for the entrepreneur. In addition, work agreements made unilaterally by employers that allow the contents of the agreement tend to favour the party making it so that it limits the interests of workers.<sup>12</sup>

The state through its government may determine by prohibiting the subject matter of the contract which is considered generally detrimental to the community because in principle there is no absolute freedom of contract. Although the basis for the free contract has been regulated by the Civil Code, the basic customs regarding the provisions of the agreement are still contained in the framework of the law. The promulgation of Law No. 13 of 2003 on Labor is of great importance in the implementation of the production mechanism, bridging the interests of the parties. With respect to labor law, it is stated that the employment relationship between the parties is based on an employment contract containing elements of labor, wages and contract law. In addition to not applying the

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<sup>8</sup> Zaeni Asyhadie, 2007, *Hukum Kerja Hukum Ketenagakerjaan bidang Hubungan Kerja*, Jakarta: PT RajaGrafindo Persada, p. 82.

<sup>9</sup> Ida Hanifah, "Kebijakan Perlindungan Hukum Bagi Pekerja Rumah Tangga Melalui Kepastian Hukum", *Jurnal Legislasi Indonesia*, Vol. 17, No. 2, Juni 2020, p. 196.

<sup>10</sup>Subekti, 1997, *Aneka Perjanjian*, Bandung: Citra Aditya Bakti, p. 1.

<sup>11</sup> Rahadiyan Purba, M. Zamroni, Fajar Rachmad Dwi Miarsa, "Perlindungan Hukum Terhadap Tenaga Kerja Dalam Perjanjian Kerja Waktu Tertentu Di PT Indopicri", *Jurnal Reformasi Hukum: Cogito Ergo Sum*, Vol. 3, No. 1, Januari 2020, p. 7.

<sup>12</sup> I Dewa Gede oka Nuryawan dan Ida Ayu Sadnyini, "Rekonstruksi Perjanjian Kerja Bersama Dalam Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan", *Jurnal Analisis Hukum*, Vol. 1, No. 2, September 2018, p. 256.



probationary period, the company is also required to pay compensation if the work contract expires before the contract period expires.<sup>13</sup>

The government believes that the promulgation of Law No. 11 of 2020 on Job Creation is expected to help guide Indonesia's investment climate in a better direction. According to the Minister of Manpower, the Employment Creation Law was ratified for a number of important reasons, namely related to employment migrating abroad; both relatively low competitiveness for workers when compared to other countries; third, the increasing number of people who do not or have not worked; Fourth, Indonesia is trapped in middle income.<sup>14</sup>

Jobs Creation Act job clusters have been most criticized for being seen as harmful to workers and workers, after its ratification, the omnibus work copyright law invited so many polemics in the community which resulted in demonstrations in various regions in Indonesia which took place from October 6, 2020, to 8 In October 2020, this demonstration occurred because there were several points in the work copyright law that were considered detrimental to the workers. The workers think that their rights in the labor law will decrease if the job creation law is passed.

Furthermore, the Job Creation Law still has several normative problems, namely that it does not provide legal certainty for guaranteeing workers' rights, such as determining a decent wage and appropriate severance pay. Likewise, regarding the provisions regarding layoffs, the law only accommodates the interests of entrepreneurs so it can have implications for unilateral layoffs of workers/workers.

Law No. 11 of 2020 on Job Creation, to ensure that all citizens receive fair compensation and treatment in decent jobs and employment regulates strategic policies for job creation, one of which includes employment, to prioritize the use of local workers, and improve the competence of the local workforce through education and training. It can be seen from the regulatory policy on investment companies that the use of foreign workers is a form of protection for local workers, by regulating the use of foreign workers with high qualifications can contribute to increasing productivity and transferring skills and knowledge to local workers.<sup>15</sup>

At least some norms can harm workers contained in the Job Creation Law. The first relates to workers' rights to wages. Determination of wages for workers or workers in the Job Creation Law is submitted based on an agreement between the employer (employer) and the worker and the applicable law. This is stated in the Manpower Chapter in Article 81 point 25 Addition to Article 88A. Based on these provisions, normatively, it opens up opportunities for determining wages which are set unilaterally by employers. This provision has the potential to open up a space for prolonged debate between workers and employers regarding the determination of wages, even though the law will become a corridor limit that stops the debate space between workers and employers.

The next issue is related to the determination of the minimum wage, which is contained in Article 81 for the addition of Article 88C concerning Manpower point 25 of the Cipta Kerja Law.<sup>16</sup> The most important rules are related to the determination of the minimum

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<sup>13</sup> Rahadiyan Purba, M. Zamroni, Fajar Rachmad Dwi Miarsa, *Op. Cit.*, p. 8.

<sup>14</sup> Rahmat Fauzan, "UU Ciptaker Disahkan, Ini Urgensi Yang Dijadikan Latar Belakang Oleh Pemerintah", <https://ekonomi.bisnis.com/read/20201011/12/1303557uu-ciptakerdisahkan-ini-urgensi-yang-dijadikan-latar-belakang-oleh-pemerintah>, accessed on October 10, 2020.

<sup>15</sup> May Linda Iswaningsih, I Nyoman Putu Budiarta, Ni Made Puspasutari Ujianti, "Perlindungan Hukum Terhadap Tenaga Kerja Lokal Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Omnibus Law Cipta Kerja", *Jurnal Preferensi Hukum*, Vol. 2, No. 3, November 2021, p. 481.

<sup>16</sup> 1) The governor is obliged to determine the provincial minimum wage; 2) The governor may determine the district/city minimum wage under certain conditions; 3) The minimum wage as referred to in paragraph (1)

wage which is submitted to the governor's authority and concerns regional economic growth and inflation conditions of each region. When viewed from the context of workers' wage guarantees, the method of setting these standards is very grey because the determination of the minimum wage for workers/laborers should also be linked to the professionalism or workload of workers based on the benefits obtained from the company's employer. Wage determination should not be based on economic growth that is fluctuating.<sup>17</sup> Impact on workers Minimum wages can be lower than before as determined by district/city minimum wages and sectoral minimum wages in micro and small businesses and labor-intensive industries can be lower than the applicable minimum wage requirements.

The regulation on determining the minimum wage for workers/laborers submitted to the governor has the potential to create a hidden agreement or conspiracy between the regional head and the entrepreneur. Especially for businessmen who became donors to the regional head during the election campaign. This means that the potential appetite for determining the minimum wage for workers or laborers can be adjusted to the tastes of the entrepreneur.

Another problem is regarding severance pay, as regulated in Article 81 point 44 amendments to Article 156 concerning Manpower, which stipulates that:

1. If employment is terminated, the entrepreneur is obliged to pay severance pay and/or bonuses and compensation for claims.
2. Retirement allowances according to paragraph 1 are allowed at maximum according to regulations.

Based on the provisions of the article, which contains the phrase "...given at most according to the provisions...". The previous regulation, namely Article 156 of Law Number 13 of 2003 concerning Manpower, regulates this with the phrase "at least". That is, if the phrase "at most" is used, then it is a form of siding with the entrepreneur. The workers will be disadvantaged because the employers are reluctant to pay severance pay. This provision has implications for reducing the rights of workers to get severance pay.<sup>18</sup>

Based on the arguments above, the substance contained in Law Number 11 of 2020 concerning Job Creation, especially those that regulate employment, is published based on the spirit of economic investment orientation, not based on professionalism and human resource development, so that if further examined Article In the revised and deleted articles, the spirit of the change does not touch, let alone intersect with efforts to increase the competence of workers. This means that the Job Creation Law has the potential to make the employment article marginalized, and attacked by investment and economic needs. Whereas supposedly, in industrial relations based on Pancasila, the protection of workers is a form of government responsibility.

## **CONCLUSION**

Law No. 11 of 2020 on Job Creation Underestimates Normative Rights of Workers. The Job Creation Act seems to be more in favour of investors who later become employers/entrepreneurs for workers. This means that the Cipa Work Law is even more liberal and capitalist, which is certainly contrary to Pancasila as the basis of the Republic of Indonesia. Articles related to employment are substantially more beneficial to entrepreneurs/employers, thereby harming workers' rights.

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and paragraph (2) is determined based on economic and labor conditions; 4) Certain conditions as referred to in paragraph (2) include regional economic growth and inflation in the regencies/municipalities concerned.

<sup>17</sup> May Linda Iswaningsih, I Nyoman Putu Budiarta, Ni Made Puspasutari Ujianti, *Op. Cit.*, p. 51.

<sup>18</sup> *Ibid.*, p. 54.

## REFERENCES

- I Dewa Gede oka Nuryawan and Ida Ayu Sadnyini. (2018). Reconstruction of Collective Labor Agreements in Law Number 13 of 2003 concerning Manpower", *Jurnal Analisis Hukum*, Vol. 1, No. 2
- I Dewa Rai Astawa. (2006). Aspects of Legal Protection of the Rights of Indonesian Migrant Workers Abroad. *Tesis*. Semarang: Program Magister Ilmu Hukum Universitas Diponegoro.
- Ida Hanifah. (2020). Legal Protection Policy for Domestic Workers through Legal Certainty, *Jurnal Legislasi Indonesia*, Vol. 17, No. 2
- Lalu Husni. (2012). Introduction to Indonesian Labor Law, Edisi Revisi, Jakarta: Raja Grafindo Persada.
- Law Number 13 of 2003 concerning Manpower.
- Law Number 11 of 2020 concerning Job Creation.
- May Linda Iswaningsih, I Nyoman Putu Budiarta, Ni Made Puspasutari Ujianti. (2021). Legal Protection for Local Workers in Law Number 11 of 2020 concerning the Omnibus Law on Job Creation, *Jurnal Preferensi Hukum*, Vol. 2, No. 3,
- Myra M. Hanartani et al. (2010). Introduction to Labor Law, Jakarta: Direktorat Jenderal Pembinaan Hubungan Industrial dan Jaminan Sosial Tenaga Kerja dan Transmigrasi R.I.
- Peter Mahmud Marzuki. (2005). Legal Research, Jakarta: Kencana Prenada Media Group,
- Rahadiyan Purba, M. Zamroni, Fajar Rachmad Dwi Miarsa. (2020). Legal Protection Against Workers in Certain Time Work Agreements at PT Indopicri ", *Jurnal Reformasi Hukum: Cogito Ergo Sum*, Vol. 3, No. 1
- Rahmat Fauzan. (2022). The Copyright Act is passed, this is the urgency that is used as a background by the government ", <https://ekonomi.bisnis.com/read/20201011/12/1303557uu-ciptakerdisahkan-ini-urgensi-yang-dijadikan-latar-belakang-oleh-pemerintah>, accessed 10 October 2022.
- Soedarjadi (2009). Worker-Employer's Rights and Obligations, Yogyakarta: Pustaka Yustisia.
- Soedarjadi. (2008). Labor Law in Indonesia. Jakarta: Pustaka Yustisia.
- Subekti. (1997). Various Agreements, Bandung: Citra Aditya Bakti.
- Zaeni Asyhadi. (2007). Employment Law Employment Law in the field of Employment, Jakarta: PT RajaGrafindo Persada.
- Zainal Asikin et al. (2004). Labor Law Basics, Jakarta: PT RajaGrafindo Persada. Kelas. Jakarta: PT Bumi Aksara