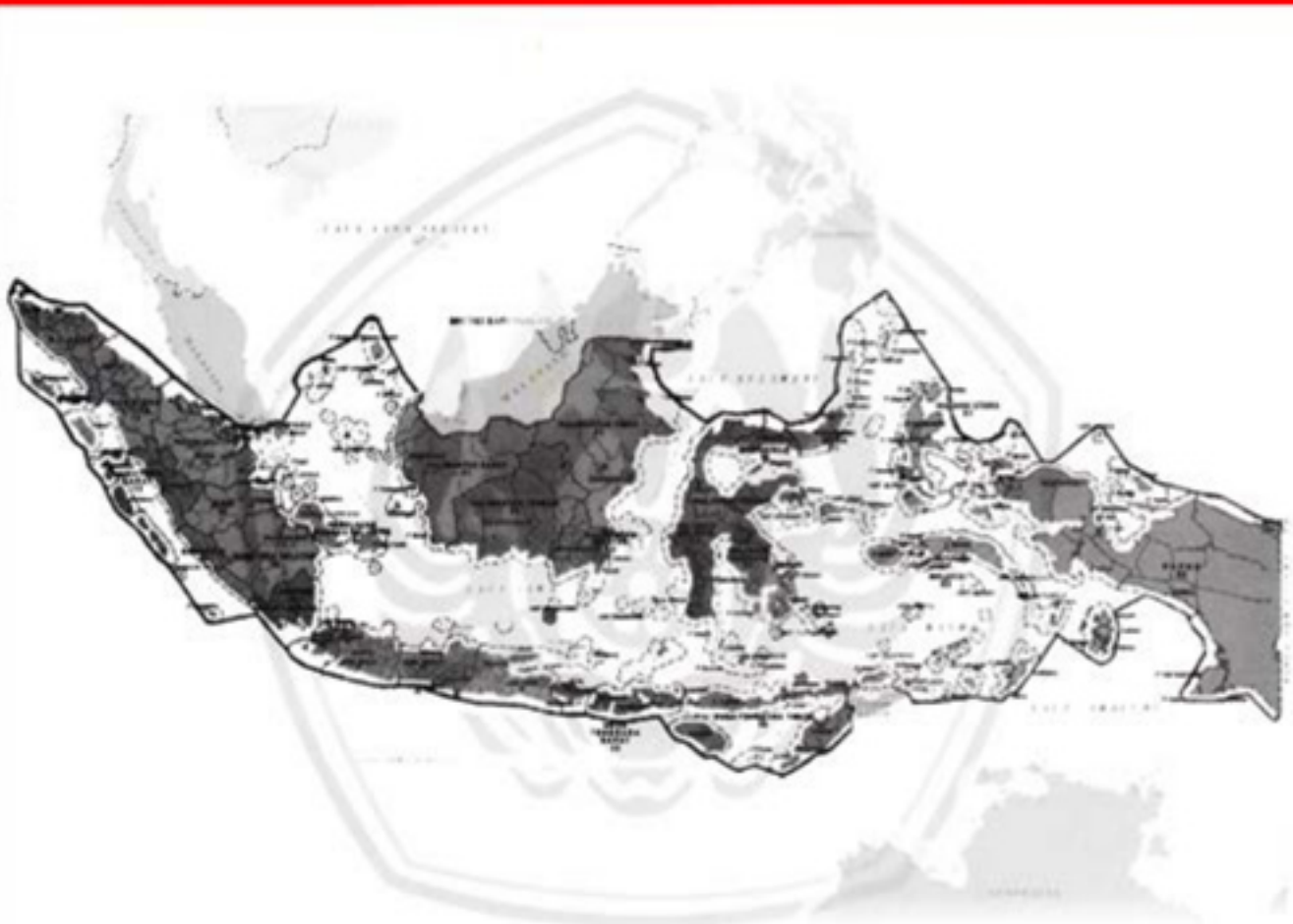
PADJADJARAN

Jurnal Ilmu Hukum

Journal of Law



Volume 9 Number 2
August 2022

Accredited based on Decision of Directorate General of Research and Development in Ministry of Research, Technology, and Higher Education No. 158/E/KPT/2021 of 9 December 2021

PADJADJARAN

Jurnal Ilmu hukum
Journal of Law

ISSN 2460-1543 e-ISSN 2442-9325

Volume 9 Number 2 August 2022 Page 152 - 296

Accredited based on Decision of Directorate General of Research and Development in Ministry of Research, Technology, and Higher Education No. 158/E/KPT/2021

Office:
Fakultas Hukum Universitas Padjadjaran
Gedung Sri Soemantri Fakultas Hukum Universitas Padjadjaran
Jl. Imam Bonjol No. 21 Bandung 40132
Telp/Fax. 022 2508514
Email: padjadjaranjournal@gmail.com
Website: http://jurnal.unpad.ac.id/pjih/index

PADJADJARAN Jurnal Ilmu Hukum (Journal of Law) is an online scientific journal that publishes three editions year-round, namely on April, August, and December. This journal is published as means for communication and scientific development. Pursuant to PJIH mission, submissions manuscript can be in the form of research report, conceptual articles, case study, and book review. All submitted manuscript are subjected to blind peer review. Submitted manuscripts shall consist of original ideas from author and is not a representation of PJIH editorial team of Faculty of Law Universitas Padjadjaran. Editorial team may edit or make changes towards submitted manuscripts without undermining the essence of the article.

PADJADJARAN

Jurnal Ilmu Hukum

Journal of Law

ISSN 2460-1543 e-ISSN 2442-9325

Editorial Board

PADJADJARAN

Jurnal Ilmu Hukum
Journal of Law

ISSN 2460-1543 e-ISSN 2442-9325

Volume 9 Number 2 August 2022 Page 152 - 296

Table of Contents

Articles

Deregulation in Job Creation Law: The Future of Indonesian Labor Law

Nabiyla Risfa Izzati*

DOI: https://doi.org/10.22304/pjih.v9n2.a3

Submitted: April 19, 2022 | Accepted: July 2, 2022

Abstract

A new era in Indonesian labor policy has begun with the recent passage of Law Number 11 of 2020 on Job Creation. The Law modifies dozens of legislations to make business performance easier and strengthen the national investment climate. In doing so, the Law deregulated some key Indonesian labor law policies, reducing previous labor rights formerly governed by Law Number 13 of 2003 on Manpower. The Job Creation Law also seems to increase labor market flexibility. It makes businesses simpler by the provision to hire workers through an outsourcing system or legalizing longer fixed-term contracts, which will make the labor market more precarious for workers in the long run. The study aims to analyze whether deregulation is a way forward for Indonesian labor law and what impact it might bring on workers. The study found solid evidence that the Indonesian government is currently underway on its mission to deregulate labor regulations. This may impact badly on workers, as many labor protections previously mandated by law are reduced. Therefore, workers must strengthen their bargaining position through collective bargaining and reinforcing the trade union to survive in the post-Job Creation Law era.

Keywords: deregulation, job creation law, labor policy.

A. Introduction

In October 2020, the Indonesian government enacted the Law Number 11 of 2020 on Job Creation (hereinafter referred to as 'Job Creation Law'). The Law modifies 77 current regulations in various areas and businesses, including energy and mining, plantations, telecommunications, healthcare, tourism, land and buildings, and employment. The amendment aims to improve Indonesia's investment climate and ease of doing business. The central government is required to issue 49 implementing regulations from the Job Creation Law, and by February 2021, it has enacted 45 Government Regulations and 4 Presidential Regulations. According to the elucidation part of the Job Creation Law, the Law is a part of the government's effort to create and expand employment opportunities in the context of reducing unemployment and accommodating new workers, as well as encouraging the development of micro, small, and medium scale businesses. In addition, it aims to boost the national economy, which will increase public welfare.[1]

* Lecturer on Labor Law, the Faculty of Law, Universitas Gadjah Mada, Jalan Sosio Justisia No. 1, Bulaksumur, Sleman, PhD Student (Queen Mary University of London), LL.M.(Adv). (Leiden University), S.H. (Universitas Gadjah Mada), nabiylarisfa@ugm.ac.id.

1 Elucidation of the Law Number 11 of 2020 on Job Creation.

The idea that Indonesia needs to create more jobs makes sense due to the high amount of unemployment in this country. Based on the statistical data, it reaches 45.86 million people, consisting of 7.05 million unemployed, 8.14 million half-unemployed, 28.41 million part-time workers, and 2.24 million new workforces.[2] Interestingly, the number of Indonesian population who works in the informal sector is higher, which is around 70.49 million people, equals to 55,72% of the total working population.[3] This statistic tends to rise, particularly during the COVID-19 pandemic, when the number of workers in the formal sector tends to fall.[4]

According to the Indonesian Minister of Law and Human Rights, the purpose of the Job Creation Law is to give a positive stimulus for the improvement and expansion of the national economy, resulting in more jobs for the people. The Law is also a significant change and a way for the government to capture foreign investment by reducing red tape and streamlining permits.[5] This statement reflects the law's main purpose to improve the Ease of Doing Business Index for Indonesia and boost the national investment climate.

Indonesia's desire to be more interesting to foreign investors is certainly good. High investment rate can lead to a prosperous economy and most jobs for Indonesia based on the previous statistic. Indonesia needs them especially due to the COVID-19 pandemic[6] since Indonesia's unemployment rate has surged to its highest level after 2011. The latest data from Indonesian Central Statistics Bureau (BPS –*Biro Pusat Statistik*) indicates that some 29.12 million people, or 14,2 percent of the Indonesian workforce, have been affected by the pandemic, with shorter work hours, furlough, lay-offs, and no longer being considered part of the workforce.[7]

One of the most significant changes made by Job Creation Law is the changes in Indonesian labor law. It is believed that the spirit of the revision is to do deregulation to make a more flexible labor law. Numerous clauses in the Job Creation Law limit previous labor rights, formerly governed by the Law Number 13 of 2003 on Manpower. Many other clauses increase labor market flexibility by making it simpler for businesses to hire workers through an outsourcing system or

---

2 Statistic Indonesia (BPS), "Open Unemployment Rate," *Badan Pusat Statistik*, August 2020, https://www.bps.go.id/pressrelease/2020/11/05/1673/agustus-2020--tingkat-pengangguran-terbuka--tpt--sebesar-7-07-persen.html.

3 Statistic Indonesia (BPS), "Work Statistic," *Badan Pusat Statistik,* December 2020, https://www.bps.go.id/subject/6/tenaga-kerja.html.

4 Agus Joko Pitoyo, et.al., "The Impacts of COVID-19 Pandemic to Informal Economic Sector in Indonesia: Theoretical and Empirical Comparison," (paper presented at The 1st Geosciences and Environmental Sciences Symposium, ICST, 2020), 2.

5 Office of Assistant to Deputy Cabinet Secretary for State Documents and Translation, "Government Issues 49 Job Creation Law Implementing Regulations," *Cabinet Secretariat of The Republic Indonesia,* April 10, 2022, https://setkab.go.id/en/govt-issues-49-job-creation-law-implementing-regulations/.

6 Robert Sparrow, Teguh Dartanto, and Renate Hartwig, "Indonesia under the New Normal: Challenges and the Way Ahead," *Bulletin of Indonesian Economic Studies* 56, no. 3 (2020): 269-299, https://doi.org/10.1080/00074918.2020.1854079.

7 Agus Joko Pitoyo, et.al.

legalizing longer fixed-term contracts, making it more difficult for workers to move to a permanent contract.

This is not the first time the Indonesian government made a move to amend the Manpower Law. President Susilo Bambang Yudhoyono has tried (and failed) to introduce labor legislation modifications on severance compensation, fixed-term contracts, holidays, and expanding opportunities for foreign workers between 2006 and 2010. Workers and unions also rejected and criticized this idea, but many of the same issues appear to have resurfaced in the Job Creation Law.[8]

In general, most labor-related changes in Job Creation Law were rejected by workers and civil society.[9] From the draft's submission at the beginning of 2020 until the law was passed in October 2020, the Job Creation Law has met several protests and criticism from trade unions, workers, students, and civil society organizations. Despite the broad range, the labor chapter became one of the most talked-about parts. Trade unions and workers widely criticized the content. Nonetheless, the government did not budge, and the law still passed despite fierce rejection from civil society. The government argues that passing this law is crucial to increase Indonesia's economic prosperity, especially after the Covid-19 pandemic has massively hit the economy and labor market.

Therefore, this study aims to analyze whether deregulation which can be clearly seen in Job Creation Law is a way forward for Indonesian labor law. This study addressed two main issues: (1) how far the Job Creation Law can be considered as a new form of labor law deregulation in Indonesia; and (2) what will be the impact of deregulations on the Indonesian labor market, in general, and workers' protection. The analysis is limited to the text of the Job Creation Law and does not consider its derivative regulations such as the Government Regulation Number 35 of 2021 on Employment Agreement for a Specified Period of Time, Outsourcing Working Time and Rest Time, and Termination of Employment or Government Regulation Number 36 of 2021 on Wages.

This paper will first lay out theoretical foundation of deregulation in labor law and then argue about the economy and political landscape of deregulation in Indonesia from a historical perspective. Afterwards, it will analyze the deregulation efforts in the revision of Manpower Regulation in the Job Creation Law and the impact it might bring on workers.

B. Deregulation and Labor Law

While there is no specific definition of deregulation, the general concept of it is that deregulation occurs when the scope of governmental control is reduced,

---

8 Petra Mahy, "Indonesia's Omnibus Law on Job Creation: Reducing Labour Protections in a Time of COVID-19", (LEAH Research Group Working Paper Series, Monash University, Australia, 2021), 3.

9 Michele Tiraboschi, "Deregulation and Labour Law in Italy," in R. Blanpain (ed.), *Deregulation and Labour Law: In search of a Labour Concept for the 21st Century (Bulletin of Comparative Labour Relations)*, (Britain: Kluwer Law International, 2000), 69-96.

particularly in the area where all types of behavior are governed to serve the public interest.[10] In terms of labor law, addressing deregulation is inseparably linked to the essential concept of labor law, which is that labor law exists to safeguard the weaker party (the employees) in response to the immense contractual power wielded by the employer.[11]

Even though sometimes considered controversial, the idea of deregulation of labor policy is not uncommon and in fact, has been done repeatedly by some countries. In the United Kingdom, for example, since 1979 British government has tried to "remove barriers to the effective functioning of markets in general and the labor market in particular". Scholars noted that in the guise of reducing rigidities and encouraging greater flexibility in pay and employment, the deregulation agenda has resulted in significant changes in labor law and social security in the United Kingdom.[12]

Another example of deregulation of labor policy can be seen in the Netherland. Interestingly, unlike other countries, deregulation in the Netherland was officially declared in 1982, when a center-right cabinet took office under Prime Minister Lubbers.[13] This was an era when the budget deficit of the Dutch government had reached its all-time high and unemployment was also increasing rapidly. While the Dutch government was open to deregulation, it turns out that the goal of 'deregulation' in the Netherland was only ideological. In the following years after the government declared the deregulations, its influenced-on labor law in the Netherland was relatively small. Most of the labor legislation was left unchanged, except for some small details. On the other hand, not many new labor legislations were established during the period. The most important effect of the 'deregulation' era is that there were cuts in social security benefits schemes to reduce government expenses.[14]

Another country that can be used as an example of the deregulation is Italy. After a lengthy period of relative stability marked by a progressive expansion of the status governing dependent work and a corresponding move away from the accepted legal framework of labor, Italian labor law underwent a major transformation in the late 1990s. Starting with the Law Number 196/1997 (known as '*Treu Package'*) and the ensuing regulations, the spectrum of atypical forms of labor, such as fixed-term contracts, part-time work, and temporary work through

---

10 Tremonti G, et.al., *Nazioni Senza Ricchezza: Ricchezza Senza Nazione,* (Bologna: il Mulino, 1985), 107.

11 Michele Tiraboschi, 79.

12 Simon Deakin and Frank Wilkinson, "Labour Law, Social Security, and Economic Inequality," *Cambridge Journal of Economics* 15, no. 2 (1991): 134, https://doi.org/10.1093/oxfordjournals.cje.a035161.

13 Gurstaaf Heerma van Voos, "Deregulation and Labour Law in The Netherland," in R. Blanpain, 137.

14 Gurstaaf Heerma van Voos, 146.

agencies, has been expanded and strengthened (outsourcing work).[15] Deregulation of individual labor relation in Italy are emphasized in three main points:[16]

1. The growth of independent contractors, self-employment subcontracting, insource and outsourcing;
2. Frequent derogation from legal norms set by protective labor legislation using collective bargaining agreement; and
3. The flexibilization of working-hours regulations.

C. Economy and Political Landscape of the Indonesian Labor Law: Historical Perspective of Deregulation

Before discussing the deregulation of labor law that is currently underway, the discourse regarding the character of labor law in Indonesia cannot be separated from the economic and political context of Indonesian labor policy at large. Economic and political considerations have always played an important role in determining the changes in labor laws and policies in Indonesia.[17] Therefore, this section will first highlight the historical progression of labor law in this country.

At the beginning of Indonesian independence (also called as "Old Order Era"), the economic motives of labor law were not too dominant because the government's focus was still on maintaining independence and consolidating domestic political power. This was when trade unions enjoyed their biggest political freedom, along with the liberalization of the pollical sector at that time. As an illustration, in the 1950s, there were around 150 trade unions at the national level and a hundred more at the regional level. Most of them were affiliated with political parties. Therefore, the trade union was heavily involved in making Indonesia's early labor law policies.[18] As a result, the labor regulations favored the union's role in labor relations.

These labor policies then shifted during the New Order Era under Soeharto, in which the government's economic and political motives were equally dominant. The economic conditions at the beginning of the New Order prompted the government to focus on reforming the economy. Since the economy was the main development goal, all the national policies must be in line with economic growth and development, including labor policies, which were conditioned to support industrialization.[19]

However, the Suharto era was the decrease period of labor movement and trade unions because the labor movement was depoliticized, and the state's

---

15 Michele Tiraboschi, 79.

16 Marco Biagi, *A Love-Hate Relationship: Regulating Non-Standard Work in Italy, in The Role of Private Agencies* (Leuven: Adapt University Press, 1998), 83.

17 Ari Hernawan, "Hukum dan Kekuasaan dalam Hubungan Industrial", *Mimbar Hukum*, Edisi Khusus (2011): 89-101, https://doi.org/10.22146/jmh.16159.

18 Vedi R. Hadiz, "Gerakan Buruh dalam Sejarah Politik Indonesia", *Majalah Prisma,* no. 10 (1994): 77.

19 Michele Ford, "Continuity and Change in Indonesian Labour Relations in the Habibie Interregnum", *Southeast Asian Journal of Social Sciences* 28, no. 2 (2020): 59-88, http://www.jstor.org/stable/24492958.

dominant role was getting stronger in labor relations. This then led to many labor regulations, such as the introduction of the minimum wages concept, social security for workers, and the state's involvement in determining the terms and conditions of work. Consequently, labor relations have become rigid since they were based more on the government's complex economic and political considerations.[20]

This rigid system of labor relations, exacerbated by strong control by the state is referred to by Stepan as 'exclusionary corporatism'. Exclusionary corporatism is an effort of elite groups in society, where the government reduces and changes the form of 'prominent working-class group' through coercive policies that suppress trade unions.[21]

Moving forward, the collapse of the New Order regime changed the landscape of labor relations in Indonesia. Under the so-called 'Reform era', the labor movement was freed again, in line with political liberalization in all fields. Hence, trade unions have re-emerged with the establishment of the Law Number 21 of 2000 on the Workers Union/Labor Union. The law has changed the single union model, introduced in the New Order regime, into the multi-union system. Indonesia also ratified the International Labor Organization Convention Number 87 on Freedom of Association and Protection of the Right to Organize.

Nonetheless, with the entry of the International Monetary Fund (IMF) into the Indonesian labor landscape due to the monetary crisis at the end of the New Order regime, the most visible change in Indonesian labor policies was the start of flexible labor policies.[22] State intervention through regulation, which was very strong in the New Order era, began to be reduced in the Reform era, leaving it to the market mechanism.

The Indonesian government began a labor law reform program with the help of the IMF and financial support from USAID (United States Agency for International Development). The program includes 'the review, revision, formulation, or reformulation of practically all labor legislation to modernize and make it more relevant to and in step with the changing times and requirements of a free market economy.'[23] The reform then led to the establishment of the Law Number 13 of 2003 on Manpower, which legalizes fixed-term work and outsourcing systems and started the labor market flexibility in Indonesia.

While the Manpower Law is not without flaws, it can be argued that the law is still protective towards workers. For example, the fixed-term work and outsourcing

---

20 Vedi R. Hadiz, "Buruh dalam Penataan Politik Awal Orde Baru," *Majalah Prisma,* no. 7 (1996): 1.

21 Alfred Stepan, *The State and Society: Peru in Comparative Perspective* (New Jersey: Princeton Legacy Library, 1978), 52-59.

22 Ari Hernawan, "Kajian terhadap Pengaturan Outsourcing Pasca Putusan Mahkamah Konstitusi Nomor: 27/PUU-1X/2011," *Jurnal Penelitian* 1, no. 1 (2011): 47, https://repository.ugm.ac.id/36010/1/JURNAL_PENELITIAN_Vol._1%2C_Nov_2012.pdf.

23 International Labour Organization, *Demystifying The Core Conventions of the ILO through Social Dialogue: The Indonesian Experience* (Jakarta: ILO, 1999), 12.

systems offered in the Law Number 13 of 2003 on Manpower are still limited by several government's restrictions and conditions. In comparison, plenty of these restrictions and conditions currently have changed or even erased under the new Job Creation Law, and thus, marking the new era of deregulation in Indonesian labor law.

D. Deregulation in the Job Creation Law

Since the first draft of the Job Creation Law appears publicly, it has drawn massive criticism and controversy from civil society, especially workers and trade unions. Trade unions stated that the law would degrade workers' rights and eliminate the comfort of working and social security.[24] According to the Indonesian Trade Union Confederation (KSPI –*Konfederasi Serikat Pekerja Indonesia*), international labor organizations support the state's fight against the Job Creation Law. The International Trade Union Confederation (ITUC) and many other worldwide trade unions were among the international organizations which sound their disagreement to the law.[25]

The criticism for Job Creation Law does not come solely from labor unions. Society at large, as well as several coalitions of labor, environmental, and civil society groups also opposed the law, believing that it would make it more difficult for Indonesia to meet the UN's Sustainable Development Goals (SDGs) by 2030, particularly Goal 8 on decent work and sustainable economic growth, as well as Goals 13 to 15 on climate action and environmental protection.[26]

Even before the law was enacted, Indonesia's two major trade unions filed a judicial review to the Indonesian Constitutional Court, challenging its validity. According to a union official, the organization is considering requesting an executive or legislative assessment of the process that led to the legislation's passage.[27] After the law passed on October 20, 2020, the fierce rejection continued as thousands of students, workers, and civil society flocked to the streets across the country.[28]

The phenomenon has brought a question, why is the law that is praised by the government official as a vital regulation to boost investment, and the economy

---

[24] Agustinus Beo Da Costaand Stanley Widianto, "Indonesian Unions File Judicial Review to Challenge Job Creation Law," *Reuters*, April 20, 2022, https://www.reuters.com/article/us-indonesia-economy-review-idUSKBN27J0D0.

[25] Dewi Elvia Muthiariny and Petir Garda Bhwana, "KSPI Warns Jokowi: International Labour Unions Highlight Job Creation Law," *Tempo.co*, April 20, 2022, https://en.tempo.co/read/1414647/kspi-warns-jokowi-international-labor-unions-highlight-job-creation-law.

[26] Randy Mulyanto, "Why the Omnibus Law is Not Only an Assault on Workers' Rights but Also on Indonesia's SDG Progress," *Equal Times*, April 20, 2022, https://www.equaltimes.org/why-the-omnibus-law-is-not-only-an?lang=en#.YK9ncO-mPDI.

[27] Agustinus Beo Da Costa and Stanley Widianto.

[28] Anna Suci Perwitasari, "Indonesian Unions File Judicial Review to Challenge Job Creation Law," *Kontan.co.id,* April 20, 2022, https://english.kontan.co.id/news/indonesian-unions-file-judicial-review-to-challenge-job-creation-law.

faces such massive criticism from the civil society? Apparently, the criticism from trade unions and civil society is legitimate since the text in the regulation has plenty of provisions and revisions that potentially can harm labor rights and decrease worker protection, as laid out below.

1. Employment Agreement for a Specified Period of Time (PKWT)

Indonesian labor law draws a clear distinction between an Employment Agreement for an Unspecified Period (PKWTT –*Perjanjian Kerja Waktu Tidak Tertentu*) and Employment Agreement for a Specified Period (PKWT –*Perjanjian Kerja Waktu Tertentu*). Workers under both types of agreements gain similar yet different rights under Indonesian labor law. The main difference is related to the security of employment terms and dismissal payment. Workers under an employment agreement for an unspecified period have rights to severance and reward-for-service payments. In contrast, workers under an employment agreement for a specified period do not get any of this if the contract ends its term.

There are two notable changes regarding the *PKWT* under the Job Creation Law. First, related to the types of work and maximum duration of *PKWT*, both the Manpower Law and the Job Creation Law regulate that a temporary employment agreement can only be used for certain types of work, which, because of the type and nature of the job, will finish in a specified time. According to Article 59 (1) of the Manpower Law, the *PKWT* may only be drawn up for certain works that, based on types and nature or work activities, will be completed in a specified period. They are:

1) work that must be performed and completed at the same time or work that is temporary in nature;
2) work that has an estimated completion time of fewer than three years;
3) seasonal work; or
4) work related to a new product, a new activity, or an additional product still in the experimental stage or try-out phase.

The Job Creation Law has slightly altered these types of work that may be done through *PKWT* into:

1) work that will be completed at once or its nature is temporary;
2) work that its completion is estimated not in a long time;
3) work that is seasonal in nature;
4) work that is in relation to new products, new activities, or additional products that are still in the experimental or try-out phase; or
5) work that its types and nature or its activities are not fixed.

The changes in point (b), which at first specifically restrict *PKWT* for the job with maximum completion of 3 years, into the job with "estimated completion not in a long time" is correlated with changes in the Article 59 (4). Previously, Article 59

(4) of the Manpower Law stipulates that the maximum period is two years, followed by a one-year extension or two-year renewal.[29] Under the Job Creation Law, this provision is removed, meaning that there are no more terms on the maximum period of the *PKWT*, along with the restriction on renewal. the change is criticized by many stakeholders since the term "estimated not in the long term" does not provide legal certainty.[30] Removing the phrase "no longer than three years" can also be used to justify any temporary job with unclear terms. The Job Creation Law also removes the restriction on the renewal of the *PKWT*, making it now possible for the employer to renew the *PKWT* continuously.

The above is a clear example of deregulation following the Law because it limits the government's intervention in the temporary employment agreement. The Job Creation Law continues to specify that no temporary employment agreement shall be entered into for a permanent job. It also contains a provision that eliminates the possibility of transfer from a fixed-term agreement to a permanent-term agreement, in which the output might lead to an increasing number of fixed-term contract/temporary workers.

Previous empirical evidence suggests that even when the law regulates *PKWT* in a stricter manner, employers frequently break the law in any circumstance. For example, businesses in various industries in Indonesia have frequently employed fixed-term contracts to avoid the higher benefits that permanent employees receive.[31] The misused of fixed-term contracts has been subjected to plenty of industrial relations disputes.[32] There have been instances of fixed-term contracts being utilized in sequences with one month's 'rest' in between or personnel being rotated between branches within the same group of enterprises or outsourcing organizations.[33] Cases where fixed-term contracts used repeatedly for the same task have also been found to have more evident non-compliance.[34]

Interestingly, the Job Creation Law also contains a provision regulating compensation for workers with the *PKWT*. Article 61A of the Job Creation Law states that "in the event that a temporary employment agreement is terminated, a business must provide compensation to workers/laborers". The compensation is given in accordance with the workers' term of office at the relevant company.

---

29 Article 59 (4) of the Law Number 13 of 2003 on Manpower.

30 Sigit Riyanto, et.al., *Kertas Kebijakan: Catatan Kritis Terhadap UU Nomor 11 Tahun 2020 tentang Cipta Kerja* (Yogyakarta: Faculty of Law Universitas Gadjah Mada, 2020), 43.

31 Petra Mahy, 6.

32 Petra Mahy, et.al., *The Plural Regulation of Work: A Pilot Study of Restaurant Workers in Yogyakarta Indonesia* (Melbourne: Centre for Employment and Labour Relations Law, University of Melbourne, 2017), 30-31. See also Apri Amalia, et.al., "Analisis Yuridis Perjanjian Kerja Waktu Tertentu Berdasarkan Undang-Undang Ketenagakerjaan dan Hukum Perjanjian," *USU Law Journal* 5, no. 1 (2017): 66-76, https://jurnal.usu.ac.id/index.php/law/article/view/15969.

33 Rina Herawati, Ratih Dewayanti, and Wulani Sriyuliani, *Penelitian Praktek Kerja Outsourcing Pada Sub-Sektor Perbankan: Studi Kasus Jakarta, Surabaya dan Medan* (Jakarta: AKATIGA – OPSI – FES, 2011), 30-31.

34 Indrasari Tjandraningsih, Rina Herawati, and Suhadmadi, *Praktek Kerja Kontrak dan Outsourcing Buruh di Sektor Industri Metal di Indonesia*, (Jakarta: AKATIGA–FSPMI–FE), 20.

Previously, in the Manpower Law, compensation for the PKWT workers was not provided. The new provision seems like an outliner from the tendency of Job Creation Law to deregulate the labor regulation in Indonesia, as it gives an added responsibility to employers to give compensation for their contract workers. Despite it seems good on paper, the compensations for PKWT workers have been drawing criticism from both the employer's and the worker's sides. Employers argue that the new rules will become a new burden for them, while the workers fears that the rules will be hard to enforce due to the lack of compliance from the company.

2. Outsourcing System

Another provision that can be considered as deregulation in Job Creation Law is the removal of articles in the previous Manpower Law that restricts the types of work. Article 64 of the Law Number 13 of 2003 defines outsourcing as the handover of part of the work implementation to another company, which is a legal entity, through a contract work agreement. Previously, Article 65 of the Law Number 13 of 2003 limited the work based on the following requirements:

1) The work can be kept separate from the main business activity of the enterprise that contracts the work to the other enterprise.
2) The work must be performed under direct or indirect orders from the original party commissioning the work.
3) The work is an entirely auxiliary activity of the enterprise that contracts the work to the other enterprise.
4) The work does not directly inhibit the production process.

The outsourcing arrangement is still recognized under the new law, but the types of work are no longer specified. The Job Creation Law erased Article 65 of the Manpower Law, which send message that allow businesses to freely subcontract any job to any third party on mutually agreed-upon commercial terms. The revocation of the types of jobs that can be outsourced under the Job Creation Law is projected to increase the number of persons working under the outsourcing system, thereby expanding labor market flexibility.[35] Although, one clear thing about the new provision is that it specifically states that the outsourcing firm (rather than the engaging company) is responsible for the outsourced employment.

3. Minimum Wages Setting

Another notable change in Job Creation Law which can also be argued as a deregulation is the provisions related to wages, especially in relation with minimum wages. Previously, under the Law Number 13 of 2003 and the Government

[35] Nabiyla Risfa Izzati, "Improving Outsourcing System in Indonesia: Fixing the Gap of Labour Regulation," *Mimbar Hukum* 29, no. 3 (2017): 529-541, https://dx.doi.org/10.22146/jmh.28372.

Regulation Number 78 of 2015 on Wages, there were four types of minimum wages. They are Provincial Minimum Wages, District Minimum Wages, Sectoral Minimum Wages, and District-Sectoral Minimum Wages. However, under the Job Creation Law, there is only one type of compulsory minimum wage, the Provincial Minimum Wages.

It is argued that many of the changes in the articles' regarding wages in Job Creation Law are a transformation from the provisions of the Government Regulation Number 78 of 2015.[36] One of the key changes in minimum wages that caused concern is the abolition of Article 89 of the Manpower Law that "the establishment of minimum wages shall be directed towards meeting the need for decent living (KHL –*Kebutuhan Hidup Layak*)*".* Instead, there is a new Article 88D, which stipulates that: (1) the minimum wage shall be calculated using the minimum wage formula; and (2) the minimum wage calculation formula shall contain economic growth or inflation variables. In other words, the decent living criteria have been removed from the Job Creation Law.

The removal of decent living criteria is concerning since it opens the possibility of a decrease in minimum wages when economic conditions are declining.[37] This is especially true in the current condition of the pandemic, where the economic turbulence is unpredictable. Furthermore, Article 88C of the Job Creation Law states that Governors must stipulate the provincial minimum wage yet may only stipulate the minimum wage at the regency/city level with certain conditions. It means that the Job Creation Law only provides the obligation to set minimum wages at the provincial level, while the minimum wages at the regency/city level are only optional. It is different from the previous regulation under the Manpower Law, which regulates that the district-level minimum wages are mandatory.[38] The changes also draw strong criticism from workers and labor academics because the previous system is considered successful.[39] Besides, the provincial minimum wage may not represent a decent living standard at the regency/city level due to the high disparities in socio-economic conditions between regencies/cities in the same province.

The Job Creation Law also removed the sectoral minimum wage that previously existed in the Manpower Law. There is no clear reason why the sectoral minimum wage no longer exists under the Job Creation Law because the sectoral minimum wage is more representative of certain sectors. The sectoral minimum wage was also required to be set higher than the provincial and district minimum wage under

---

36 Petra Mahy, 10.

37 Nur Putri Hidayah, et.al., "The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Right," *Bestuur* 9, no. 1 (2021): 72-73, https://dx.doi.org/10.20961/bestuur.v9i1.49252.

38 Teri L. Caraway, Michele Ford, and Oanh K. Nguyen, "Politicising the Minimum Wage: Wage Councils, Worker Mobilization and Local Elections in Indonesia," *Politics & Society* 47, no. 2 (2019): 251-276, https://doi.org/10.1177%2F0032329219838917.

39 Sigit Riyanto, et.al., 43.

the previous regulation. Although relatively rare, sectoral wages had been successfully negotiated in some provinces and industries.

Article 88D of the Job Creation Law states that the minimum wage should be calculated by using a minimum wage calculation formula. However, it leaves an important detail on the formula. It just mentions that the wage calculation formula shall contain economic growth or inflation variables and shall be regulated under different government regulations. The same ambiguous statement is found in Article 88B that wage shall be determined based on the unit of time and/or output. On the other hand, it does not specify further and only mentions that the further provisions regarding that shall be regulated under Government Regulation.

The exemption of small and micro businesses from the duty to pay minimum wages is another key reform in the Job Creation Law. Instead, wages in small and micro businesses must be set based on an agreement between the company and its employees, referring to a specified percentage of average public consumption based on data supplied from a statistical agency.[40] This amendment was made to consider the financial capabilities of micro and small businesses,[41] although these new provisions are clearly unbeneficial for workers in the small and micro-enterprises.[42]

4. Paid Leaves

Another clear example of deregulation in the Job Creation Law is the revocation of the provision under the Law Number 13 of 2003 Article 79 on long-service leave. Long service leave is governed by Article 79 of the Manpower Law. The article defines it as an entitlement granted to employees once they have worked for the same employer for six years in a row and is valid for every six years of service. The rest time is at least two months long and occurs in the seventh and eighth years (1 month per year).

Since the Job Creation Law revokes Article 79 of the Manpower Law, it will strip employees of the rights of long-service leave. It only mentions that the company may give the long service leave if it is agreed under an employment agreement, a company regulation, or a collective work agreement. This is not beneficial for workers since the lack of bargaining position might hinder them from actually negotiating long-service leave in the employment agreement.

From several examples and analyses above, it is clear that the Job Creation Law reflects the government's effort to deregulate labor law in Indonesia. The growth of independent contracting; self-employment subcontracting; insourcing and outsourcing; and frequent derogation from legal norms set by protective labor

---

40 Article 90B, The Law Number 11 Year 2020 on Job Creation.

41 The Academic Draft on Job Creation, 1223.

42 Nabiyla Risfa Izzati, "Indonesia Fair Wear Country Study 2021" (Jakarta, Fair Wear, 2022), 47.

legislation using collective bargaining agreements, are all in line with the theoretical characteristics of deregulation.[43]

The government seems to believe that labor law regulations that are too rigid are one of the barriers to investment entering Indonesia. Therefore, they reduce or loosen labor law regulations.[44] The reduced state control over labor law rules in the Job Creation Law can be seen in a lot of previsions, from the term of the fixed-term contract to paid leave, all the things that are previously regulated under the Law Number 13 of 2003 and its implementing regulations, are now returned as private matters that comes back to the agreement of parties, through labor agreement, company regulation, or collective labor agreement.

E. The Effect of Deregulation in the Job Creation Law on Workers

The Job Creation Law can be seen as the dawn of protective labor law in Indonesia and hence was met with fierce rejection from the workers' side. Right after the law has been enacted, several trade unions filed judicial reviews regarding the Law to the Constitutional Court. For example, the KSPI and the Confederation of All Indonesian Trade Unions (KSPSI –*Konfederasi Serikat Pekerja Seluruh Indonesia*) filed a lawsuit in November 2020 based on the idea that the law stripped many of the worker's rights, including minimum wages and severance payments. The Confederation of All Indonesian Workers Union (KSBI –*Konfederasi Serikat Buruh Seluruh Indonesia*) also submitted a plea to the Constitutional Court in April 2021, arguing that the formation of the Law did not involve labor unions and thus did not fulfill the principle of forming good legislation.

On November 25, 2021, the Constitutional Court decided that the Law Number 11 of 2020 on Job Creation is conditionally unconstitutional due to the process of its creation being contrary to the principles of good legislation. However, this unconstitutional status is temporary. This status is subject to the condition that the Government must remedy the procedural flaws within two years. If it is completed, the law will be constitutional.

Considering that the Constitutional Court did not invalidate this Law, the government consistently assures the public that the Job Creation Law and its implementing regulations will remain in effect.[45] But this decision creates potential uncertainties because it leaves rooms for the possibility that the substance of the Law will be changed again during the revision process. Moreover, the court has also ordered the government to stop making strategic decisions, which may deter it from implementing key measures mandated by this Law.[46] But overall, the

---

43 Marco Biagi, 83.

44 Sigit Riyanto, et.al., 52.

45 Nabiyla Risfa Izzati, 30.

46 Wimbanu Widyatmoko and Mochamad Fachri, "Indonesia: What to Expect After Constitutional Court Decision on The Omnibus Law," *Baker and McKenzie*, April 20, 2022, https://insightplus.bakermckenzie.com/bm/antitrust-competition_1/indonesia-what-to-expect-after-

Constitutional Court decree did not seem to change much of the situation, at least for now.

In general, the deregulation of labor law undeniably reduces the protection of workers in Indonesia. This is because while many of the provisions in the law state that labor relations must be governed privately through the agreement of the parties, it forgot about the reality of the unbalanced position of workers and employers. In reality, the imbalanced relationship between workers and employers will likely result in an agreement made at the cost of the workers. Therefore, if workers are not careful, this current labor law condition might lead to their doomsday.

To prevent this, the obvious solution is to empower trade unions and collective bargaining. Collective bargaining is defined in Indonesian labor law as the process of negotiating between trade unions and employers on working conditions, terms of employment, and other work-related issues such as union facilities, dispute resolution procedures, and mechanisms for cooperation, communication, and consultation. The regulations linked to trade unions and collective bargaining remain unaltered under the Job Creation Law. Thus, workers can continue to rely on the prior law to preserve their right to freedom of association and collective bargaining.

Many scholars argue that Indonesian labor law is providing some of the strongest guarantees for collective labor rights.[47] Unfortunately, the trade union density (the percentage of employees that are part of a union) in Indonesia remains very low.[48] There is no official data on this matter, but based on the OECD report, the trade union density in Indonesia is only about 7% (note that the latest data available is in 2012).[49]

With the current Job Creation Law regime, workers must understand that the trade union and collective bargaining have become more important than ever. After the establishment of the Job Creation Law, there will be many important labor relation matters that need to be agreed on through individual work agreements, company regulations, and collective work agreements. Among these three documents, the one most likely protects the workers' interest in the collective work agreement.[50]

---

constitutional-court-decision-on-the-omnibus-law#:~:text=On%2025%20November%202021%20the,procedural%20flaws%20within%20two%20years.

47 World Bank, *Doing Business in 2019, Creating Jobs* (Washington: BRD/the World Bank, 2020), 2.

48 Teri Caraway and Michele Ford, *Labor and Politics in Indonesia* (Cambridge: Cambridge University Press, 2020), 36.

49 OECD and AIAS*, Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts* (Paris: OECD Publishing, 2020), 4.

50 Chris Manning, "The Political Economy of Reform: Labour After Soeharto" in Edward Aspinall and Greg Fealy*, Suharto's New Order and its Legacy: Essays in Honour of Harold Crouch* (Australia: ANU, 2010), 163. See also Michele Ford and George Martin Sirait, "Workers' Participation in Indonesia" in S. Berger, et.al., *The Palgrave Handbook of Workers' Participation at Plant Level* (New York: Palgrave McMillan, 2019), 386.

A collective work agreement is an agreement reached through negotiations between a trade/labor union or several trade/labor unions registered in a government agency responsible for manpower affairs and an entrepreneur or several entrepreneurs or an association of entrepreneurs. It is defined by the Law Number 13 of 2003. Furthermore, Article 116 of the Law states that a collective work agreement must be made between a trade/labor union or several trade unions that have already been registered in a government agency responsible for labor/manpower matters and an entrepreneur or several entrepreneurs.

With these restrictions in place, only companies with a recognized trade union are eligible for a collective bargaining agreement. Article 119 (1) further regulates that if an enterprise has only one trade/labor union, the only trade/labor union in the enterprise shall have the right to represent workers/laborers in negotiating a collective work agreement with the enterprise's entrepreneur if more than 50% of the total number of workers/laborers who work in the enterprise are members of the trade/labor union in question. It emphasizes the importance of workers joining a trade union at their workplace because a trade union can only negotiate a collective bargaining agreement if it represents more than half of the company's employees.

Aside from collective work agreements, there are other forms of collective bargaining that are provided by law and have not been changed by the Job Creation Law, such as the bipartite cooperation forum, which refers to a communication and consultation forum on matters pertaining to industrial relations in an enterprise. The members consist of entrepreneurs and trade/labor unions that have been registered in a government agency and is responsible for manpower affairs or workers/labor unions.

There is also a tripartite cooperation institute, which is a communication, consulting, and debate forum on workforce problems. The members are representatives of entrepreneurs', workers, and government organizations. However, as Indonesia's labor policy shifts toward deregulation, it is more important than ever to improve collective bargaining amongst stakeholders consisting of workers, trade unions, and companies.

F. Conclusion

The Job Creation Law has set a new era of Indonesian labor law. While Law Number 13 of 2003 represented the beginning of labor market flexibility, the Job Creation Law era can be considered as the commencement of the deregulation era, in which the government began to reduce the scope of state-regulated labor relations and leave it to the agreement of the involving parties. Many provisions of the Job Creation Law reflect the government's effort to deregulate labor law in Indonesia. As far as we can foresee, deregulation will continue to become the future approach to Indonesian labor policies, as it is noticeably manifested in various government policies and regulations.

The apparent path is through strengthening the trade union and collective bargaining, to ensure that the worker's interest can still be protected in the post-Job Creation Law and/or deregulation era. Until now, the regulation and provisions related to trade unions and collective bargaining remain unchanged. Therefore, the workers can still use the current rules to protect their right to freedom of association and collective bargaining. In the end, despite the current situation, the effort must be continued.

References

Books

Biagi, Marco. "A Love-Hate Relationship: Regulating Non-Standard Work in Italy." in *The Role of Private Agencies.* Leuven: Adapt University Press, 1998.

Caraway, Teri and Michele Ford. *Labor, and Politics in Indonesia*. Cambridge: Cambridge University Press, 2020.

Ford, Michele and George Martin Sirait (eds). "Workers' Participation in Indonesia." in S. Berger, et.al. *The Palgrave Handbook of Workers' Participation at Plant Level*. New York: Palgrave McMillan, 2019.

G., Tremonti, et.al. *Nazioni Senza Ricchezza: Ricchezza Senza Nazione*. Bologna: il Mulino, 1985.

Herawati, Rina, Ratih Dewayanti, and Wulani Sriyuliani. *Penelitian Praktek Kerja Outsourcing Pada Sub-Sektor Perbankan: Studi Kasus Jakarta, Surabaya dan Medan.* Jakarta: AKATIGA – OPSI – FES, 2011.

International Labour Organization. *Demystifying the Core Conventions of the ILO through Social Dialogue: The Indonesian Experience*. Jakarta: ILO, 1999.

Mahy, Petra, et.al. *The Plural Regulation of Work: A Pilot Study of Restaurant Workers in Yogyakarta Indonesia Melbourne: Centre for Employment and Labour Relations Law*. Melbourne: University of Melbourne, 2017.

Manning, Chris, (eds). "The Political Economy of Reform: Labour After Soeharto" in Edward Aspinall and Greg Fealy*, Suharto's New Order and its Legacy: Essays in Honour of Harold Crouch*. Australia: ANU, 2010.

OECD and AIAS*. Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts*. Paris: OECD Publishing, 2020.

Riyanto, Sigit, et.al. *Kertas Kebijakan: Catatan Kritis Terhadap UU Nomor 11 Tahun 2020 tentang Cipta Kerja*. Yogyakarta: Faculty of Law Universitas Gadjah Mada, 2020.

Stepan, Alfred. *The State and Society: Peru in Comparative Perspective*. New Jersey: Princeton Legacy Library, 1978.

Tiraboschi, Michele. "Deregulation and Labour Law in Italy." in R. Blanpain (ed.). *Deregulation and Labour Law: In search of a Labour Concept for the 21st Century (Bulletin of Comparative Labour Relations).* Britain: Kluwer Law International, 2000.

Tjandraningsih, Indrasari, Rina Herawati, and Suhadmadi. *Praktek Kerja Kontrak dan Outsourcing Buruh di Sektor Industri Metal di Indonesia*. Jakarta: AKATIGA–FSPMI–FE, 2011.

Voos, Gurstaaf Heerma Van. "Deregulation and Labour Law in The Netherland." in R. Blanpain (ed.). *Deregulation and Labour Law: In search of a Labour Concept for the 21st Century (Bulletin of Comparative Labour Relations).* Britain: Kluwer Law International, 2000.

World Bank. *Doing Business in 2019, Creating Jobs*. Washigton: BRD/the World Bank, 2020.

Other Documents

Amalia, Apri, et.al. "Analisis Yuridis Perjanjian Kerja Waktu Tertentu Berdasarkan Undang-Undang Ketenagakerjaan dan Hukum Perjanjian." *USU Law Journal* 5, no. 1 (2017): 66-76. https://jurnal.usu.ac.id/index.php/law/article/view/15969.

Caraway, Teri L., Michele Ford, and Oanh K. Nguyen. "Politicising the Minimum Wage: Wage Councils, Worker Mobilization and Local Elections in Indonesia." *Politics & Society* 47, no. 2 (2019): 1-25. https://doi.org/10.1177%2F0032329219838917.

Da Costa, Agustinus Beo and Stanley Widianto. "Indonesian Unions File Judicial Review to Challenge Job Creation Law." *Reuters*, April 20, 2022. https://www.reuters.com/article/us-indonesia-economy-review-idUSKBN27J0D0.

Deakin, Simon, and Frank Wilkinson. "Labour Law, Social Security, and Economic Inequality." *Cambridge Journal of Economics* 15, no. 2 (1991): 125-148. https://doi.org/10.1093/oxfordjournals.cje.a035161.

Ford, Michele. "Continuity and Change in Indonesian Labour Relations in the Habibie Interregnum." *Southeast Asian Journal of Social Sciences* 28, no. 2 (2020): 59-88. http://www.jstor.org/stable/24492958.

Hadiz, Vedi R. "Gerakan Buruh dalam Sejarah Politik Indonesia." *Majalah Prisma*, no. 10 (1994).

_____. "Buruh dalam Penataan Politik Awal Orde Baru." *Majalah Prisma,* no. 7 (1996).

Hernawan, Ari. "Kajian terhadap Pengaturan Outsourcing Pasca Putusan Mahkamah Konstitusi Nomor: 27/PUU-1X/2011." *Jurnal Penelitian* 1, no. 1 (2012): 11-18. https://repository.ugm.ac.id/36010/1/JURNAL_PENELITIAN_Vol._1%2C_Nov_2012.pdf.

_____. "Hukum dan Kekuasaan dalam Hubungan Industrial." *Mimbar Hukum,* Edisi Khusus, (2011): 89-101. https://doi.org/10.22146/jmh.16159.

Hidayah, Nur Putri, et.al. "The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Right." *Bestuur* 9, no. 1 (2021): 68-76. https://dx.doi.org/10.20961/bestuur.v9i1.49252.

Izzati, Nabiyla Risfa. “Indonesia Fair Wear Country Study 2021.” Fair Wear, 2022.

_____. “Improving Outsourcing System in Indonesia: Fixing the Gap of Labour Regulation.” *Mimbar Hukum* 29, no. 3 (2017): 528-541. https://dx.doi.org/10.22146/jmh.28372.

Mahy, Petra. “Indonesia’s Omnibus Law on Job Creation: Reducing Labour Protections in a Time of COVID-19.” (LEAH Research Group Working Paper Series - Monash University, Number 03, 2021).

Mulyanto, Randy. “Why the Omnibus Law is Not Only an Assault on Workers’ Rights but Also on Indonesia’s SDG Progress”. *Equal Times*, April 20, 2022. https://www.industriall-union.org/why-the-omnibus-law-is-not-only-an-assault-on-workers-rights-but-also-on-indonesias-sdg-progress.

Muthiariny, Dewi Elvia and Petir Garda Bhwana. “KSPI Warns Jokowi: International Labour Unions Highlight Job Creation Law.” *Tempo.co*, April 20, 2022. https://en.tempo.co/read/1414647/kspi-warns-jokowi-international-labor-unions-highlight-job-creation-law.

Office of Assistant to Deputy Cabinet Secretary for State Documents and Translation. “Government Issues 49 Job Creation Law Implementing Regulations”. *Cabinet Secretariat of The Republic of Indonesia,* April 10, 2022. https://setkab.go.id/en/govt-issues-49-job-creation-law-implementing-regulations/.

Perwitasari, Anna Suci. “Indonesian Unions File Judicial Review to Challenge Job Creation Law”. *Kontan.co.id,* April 20, 2022. https://english.kontan.co.id/news/indonesian-unions-file-judicial-review-to-challenge-job-creation-law.

Pitoyo, Agus Joko, et.al. “The Impacts of COVID-19 Pandemic to Informal Economic Sector in Indonesia: Theoretical and Empirical Comparison.” (paper presented at the 1st Geosciences and Environmental Sciences Symposium, ICST, 2020).

Sparrow, Robert, Teguh Dartanto, and Renate Hartwig. “Indonesia under the New Normal: Challenges and the Way Ahead.” *Bulletin of Indonesian Economic Studies* 56, no. 3 (2020): 269-299. https://doi.org/10.1080/00074918.2020.1854079.

Statistic Indonesia (BPS). “Work Statistic”. *Badan Pusat Statistik,* December 2020. https://www.bps.go.id/subject/6/tenaga-kerja.html.

_____. “Open Unemployment Rate”. *Badan Pusat Statistik*, August 2020. https://www.bps.go.id/pressrelease/2020/11/05/1673/agustus-2020--tingkat-pengangguran-terbuka--tpt--sebesar-7-07-persen.html.

Widyatmoko, Wimbanu and Mochamad Fachri. “Indonesia: What to Expect After Constitutional Court Decision on The Omnibus Law”. *Baker and McKenzie,* April 20, 2022. https://insightplus.bakermckenzie.com/bm/antitrust-competition_1/indonesia-what-to-expect-after-constitutional-court-decision-on-the-omnibus-law.

Legal Documents

The Law Number 13 of 2003 on Manpower [*Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan*].

The Law Number 11 of 2020 on Job Creation [*Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja*]**.**

The Academic Draft on Job Creation [*Naskah Akademis Undang-Undang Cipta Kerja*].

Faculty of Law
Universitas Padjadjaran

ISSN: 2460-1453

e-ISSN: 2442-9325