

Challenges to the Implementation of the Job Creation Law on Workers' Constitutional Rights

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ABSTRACT – The implementation of the Job Creation Law in Indonesia has changed the regulatory landscape regarding layoffs. This regulation brings flexibility in the labor market, but is often perceived as reducing worker protection. Using a normative juridical approach, this research explores the impact of regulatory changes on workers' rights and the challenges of implementation. Constraints such as weak legal supervision, declining role of labor unions, and uncertainty of legal procedures are highlighted. The research also suggests strategies based on "flexicurity" and social dialogue to balance the interests of companies and the rights of workers in order to create a more equitable and sustainable labor market.

Keywords: layoffs, job creation law, labor flexibility, worker protection, flexicurity, labor unions, social justice.

A. INTRODUCTION

In Indonesia, the regulation of layoffs underwent a significant transformation after the enactment of Law Number 11 Year 2020 on Job Creation (Omnibus Law). Mahy (2021) states that this regulation was designed to increase labor market flexibility and attract investment, but its implementation has caused controversy, particularly regarding its impact on the protection of workers' rights. The changes in the Job Creation Law, including the reduction of severance pay obligations and the modification of dispute resolution procedures, are considered by many as weakening workers' bargaining position before companies. Syahiruddin, Isnaini, and Ramadhan (2023) added that the role of labor unions in the dispute resolution process was also reduced, which directly affected workers' collective support to negotiate their rights.

The layoffs, as an employment law phenomenon, has broad implications for the protection of human rights, especially as it relates to the right to decent work as recognized

in Statute 28D Clause (2) of the 1945 Constitution. Regulations that allow layoffs without clear reasons or not in accordance with procedures can be considered to violate this basic constitutional principle. Statute 153 of Law Number 6 Year 2023 on Job Creation provides explicit provisions regarding the prohibition of layoffs for certain reasons, such as illness, carrying out state obligations, worship, or trade union activities. However, there is evidence that some companies still conduct layoffs by ignoring this provision, which shows a discrepancy between the rule of law (das sollen) and the practice in the field (das sein).

Kasih et al. (2021) criticize the existence of a legal vacuum in the implementation of the Job Creation Law that allows companies to get around the rules through "construction layoffs," where workers are faced with conditions that force them to accept termination without adequate protection. The decrease in minimum standards of compensation, such as severance pay, award money, and replacement rights, further worsens the legal position of workers. These conditions indicate that the implementation of labor regulations that balance labor market flexibility and worker protection is far from being achieved.

The urgency of legal protection for workers affected by layoffs is increasingly evident given the close relationship between the right to work and the basic necessities of life. As a form of human rights violation, layoffs carried out without legitimate reasons result in the loss of workers' income, and reflect the failure of the legal system to protect their fundamental rights. Regulations such as Statute 153 of the Job Creation Law are designed to prevent discrimination and abuse of power by companies, but in practice there are still frequent violations of this provision. Syahiruddin et al. (2023) highlighted that workers' limited access to dispute resolution mechanisms exacerbates the imbalance between workers' rights and company interests.

Regulatory changes through the Job Creation Law also pose challenges to ensuring effective legal protection for workers. For example, the declining role of trade unions to defend the rights of their members reflects the shifting power structure in the workplace, which increasingly favors companies. With weak collective support, workers facing unilateral dismissal have limited access to justice, either through industrial relations courts or mediation channels. This condition shows that although regulations have been designed to achieve balance, implementation in the field is still far from ideal.

In dynamic labor law, the protection of workers to face layoffs is a very crucial issue. Research conducted by Mahy (2022) highlighted that the changes in regulations through the Job Creation Law changed the legal position of workers, and challenged the principle of justice that is the basis of employment relations. Noting that the Job Creation Law aims to create labor market flexibility, there is an urgent need to reassess the implementation of this regulation to respect workers' rights as an integral part of a sustainable employment system.

Furthermore, Mahy (2022) emphasizes that the impact of this regulatory transformation is felt by workers, and creates new dynamics in employment relations. One of the main problems is the interpretation of the law by industrial relations courts, which often show inconsistencies in deciding layoff cases. This uncertainty exacerbates the already weak position of workers due to the reduced role of trade unions and limited access to legal protection. In some cases, the courts tend to give room for companies to justify layoffs based on general economic reasons, without regard to the significant impact on workers' lives.

Kasih et al. (2021) highlight that the flexibility given to companies through the Job Creation Law is often used as a legal loophole to reduce their responsibilities towards workers. For example, companies can avoid the obligation to provide full severance pay by pressuring workers to sign unfair collective agreements. This situation demonstrates the government's weak oversight of the implementation of layoff regulations, which should aim to protect both parties equally.

Violations of Statute 153 of the Job Creation Law which prohibits layoffs for certain reasons also reflect the challenges faced by the labor law system in Indonesia. Syahiruddin et al. (2023)

underline that structural constraints, such as lack of access to legal aid and workers' lack of understanding of their rights, become significant factors to exacerbate the inequality between workers and companies. This is exacerbated by the lack of strong enforcement mechanisms to ensure that companies that violate provisions are appropriately sanctioned. In the labor law framework, the transformation brought about by the Job Creation Law has sparked a debate regarding the balance between labor market efficiency and the protection of workers' rights. Regulatory changes that reduce worker protection are often justified on the grounds of increased economic competitiveness, but this ignores the social and legal consequences that can arise. For example, the reduction of severance pay obligations reduces workers' rights, and creates precedents that weaken their legal position in future employment relationships.

Meanwhile, Tajuddin et al. (2023) stated that the implementation of Statute 153 of the Job Creation Law faces major challenges to ensure that the principles of fairness are consistently applied. One of the main obstacles is the lack of an effective monitoring mechanism to ensure that companies comply with the rules regarding the prohibition of layoffs without valid reasons. In many cases, workers dismissed for improper reasons often have no clear recourse to adequate redress.

Internationally, a comparison with labor standards in other countries shows that Indonesia still has great room to improve its worker protection system. Layoff regulations in many other countries prioritize stronger protection of workers, including in terms of compensation, dispute resolution mechanisms, and supervision of companies. As such, the legal reforms undertaken through the Job Creation Law should be assessed within a global framework to ensure that these changes support labor market flexibility, and adhere to internationally recognized principles of protection.

Overall, the problems faced in the implementation of layoff regulations under the Job Creation Law reflect the fundamental challenge of achieving a balance between economic needs and social justice. The discrepancy between existing regulations and implementation in the field shows that efforts to ensure worker protection still require serious attention, especially related to strengthening legal mechanisms and effective supervision.

This research emphasizes the importance of reassessing the impact of these regulations to create a more sustainable and equitable employment system.

B. METHOD

This research uses a normative juridical approach to explore regulatory changes related to layoffs in Indonesia after the enactment of the Job Creation Law. This approach focuses on analyzing laws and regulations, including Law Number 11 Year 2020 on Job Creation and its implementing regulations, such as Government Regulation Number 35 Year 2021. The normative juridical approach is used to understand the structure and dynamics of regulations that affect workers' rights and their implications for the settlement of layoff disputes. Syahiruddin et al. (2023) is one of the important references to illustrate the impact of this new regulation on the rights of workers affected by unilateral layoffs by companies, especially in relation to the flexibility and legal protection provided.

The data sources in this study involved both primary and secondary data. Primary data includes direct analysis of key legal documents, including the Job Creation Law and its implementing regulations, to identify changes in layoff regulations and their impact on workers' rights. Secondary data was obtained from relevant scientific literature, journal articles, and research reports. The study by Kasih et al. (2021) provides a foundation for understanding the challenges of implementing constructive dismissal regulations in Indonesia, including comparisons with relevant international practices for comparative analysis. This source provides perspectives on barriers and opportunities in the implementation of layoff regulations at the national and global levels.

Data collection techniques are conducted through document studies, including the collection of texts of laws, government regulations, and court decisions in layoff cases. Secondary data in the form of journal articles and academic research reports are also analyzed to enrich the perspective of this research. Another important reference is Maiyestati's research (2023), which outlines the layoff procedure in accordance with the provisions of the Job Creation Law and its derivative regulations, providing a comprehensive view of workers' rights in layoff

cases. This study becomes relevant to highlight the legal dimensions and dispute resolution procedures stipulated in the new regulation.

The collected data was analyzed using a descriptive-qualitative method. This method allowed for the classification of key aspects of the changes in layoff regulations to be thoroughly evaluated. Hamzani et al. (2021) stated that descriptive-qualitative analysis is very effective for evaluating the implications of regulatory changes on worker protection and labor dispute resolution procedures. By using this method, the research can identify gaps between legal regulations and their implementation in the field, as well as assess the influence of regulatory changes on the dynamics of labor relations in Indonesia.

The research procedure involves three main steps that are conducted systematically. The first step is the identification of relevant legal documents and academic literature, including the Job Creation Law, Government Regulation Number 35 Year 2021, as well as previous studies that discuss layoff regulations. The second step involves classifying and analyzing the data based on aspects of the PHK regulations that have undergone changes, with a focus on the implications for workers' rights. The third step is the synthesis of findings, which aims to draw conclusions that answer the research questions and provide insights into the changes in layoff regulations.

Through this normative juridical approach, this research aims to provide a comprehensive analysis of the impact of the transformation of layoff regulations on workers' rights in Indonesia. This analysis is expected to strengthen the understanding of the legal structure underlying the regulation of layoffs, as well as its implications for employment relations under the prevailing legal system.

C. RESULTS AND DISCUSSION

Application of the Job Creation Law in Layoff in Indonesia Affects Workers' Rights

The Job Creation Law brought major changes in Indonesia's termination procedures, which now make it easier for companies to conduct layoffs with more flexible standards. These regulatory changes simplify layoff procedures, including the reduction of severance pay obligations as well as the classification of workers based on their rights, which has a direct impact on the level of job security and legal certainty for workers (Maiyestati, 2023).

The new regulation reduces the collective influence of workers' organizations in dispute resolution, potentially weakening workers' protection against unilateral layoffs. This change raises concerns that workers' rights will be increasingly difficult to defend in the event of a dispute with the company (Syahiruddin et al., 2023).

The implementation of Law Number 11 Year 2020 on Job Creation (Omnibus Law) regarding termination of employment (PHK) in Indonesia brings significant changes that impact workers' rights. The Job Creation Law aims to create labor market flexibility and attract investment, but its implementation has sparked controversy as it is considered to reduce the protection of workers. Mahy (2021) states that this regulatory change directly affects workers' rights that were previously regulated in Law Number 13 Year 2003 on Manpower, especially in the aspects of severance pay, dispute resolution mechanisms, and the right to fair treatment.

One of the fundamental changes in the Job Creation Law is the reduction of companies' severance pay obligations. Based on the provisions of Statute 156 of the Job Creation Law and its implementing regulations in Government Regulation Number 35 Year 2021, the maximum amount of severance pay that companies are obliged to provide to laid-off workers is reduced compared to the previous provisions. Kasih et al. (2021) highlighted that this reduction raises concerns that workers' rights to adequate compensation will be eroded, considering that severance pay is a form of socio-economic protection for workers who lose their jobs.

The Job Creation Law changes the dispute resolution procedure for layoffs. The dispute resolution process that previously involved trade unions and formal mediation has now become more centered on faster mechanisms and tends to reduce the involvement of workers' organizations. Syahiruddin et al. (2023) state that this change reduces workers' bargaining position to resolve disputes, as workers often have to face shorter legal processes that provide less room for fair negotiations.

The implementation of the Job Creation Law also affects workers' protection from unilateral layoffs. Statute 153 of the Job Creation Law prohibits layoffs for certain reasons, such as religious discrimination, union activities, or workers' health conditions. However, the

implementation of this rule in the field often shows inconsistencies. Tajuddin et al. (2023) underline that weak supervision of the implementation of this article creates loopholes for companies to ignore the provisions without significant legal consequences.

On the other hand, there are positive aspects in the implementation of the Job Creation Law, such as the ease for workers to file a lawsuit through the industrial relations court. However, Maiyestati (2023) emphasizes that the efficiency of this procedure has not been fully balanced with the protection of workers' rights, especially due to the lack of access to legal aid for vulnerable workers.

Overall, the implementation of the Job Creation Law regarding layoffs shows that the labor market flexibility promoted by this regulation has an ambivalent impact on workers' rights. On the one hand, these changes give companies room to adjust their labor policies to be more economically competitive. However, on the other hand, this regulation also creates the risk of weakening legal protection for workers, especially in the aspects of compensation and dispute resolution. These implications emphasize the importance of a thorough evaluation of the implementation of the Job Creation Law to ensure that labor market flexibility remains in line with the principles of fairness and protection of workers' rights.

Obstacles Faced by Workers to Obtain Legal Protection in the Event of Termination of Employment Based on the Job Creation Law

The changes brought about by the Job Creation Law do not fully accommodate various aspects of worker protection, especially in terms of constructive dismissal, a situation where workers are forced to resign due to pressure from the company. Provisions regarding constructive dismissal are still unclear in Indonesian regulations, which makes workers vulnerable to exploitation and difficult to obtain justice. This study also compares this situation with Japanese regulations, which have stronger protection for workers who experience constructive dismissal (Kasih et al., 2021).

Gaffar et al. (2021) emphasized the importance of legal certainty in the implementation of collective labor agreements, especially in layoffs. Lack of legal certainty regarding layoff provisions can weaken workers' bargaining position and result in losses for those who are dismissed without a transparent process.

The implementation of Law Number 11 Year 2020 on Job Creation (Omnibus Law) has raised a number of obstacles to providing adequate legal protection for workers, especially regarding layoffs. One of the main obstacles is the lack of effective supervision of the implementation of existing regulations. For example, Aryani et al. (2022) highlighted that regulatory changes in the employment cluster of the Job Creation Law tend to weaken worker protection due to its focus on labor market flexibility to attract investment, often at the expense of pre-existing worker rights.

Changes in the industrial relations dispute resolution mechanism also pose new challenges. Based on research by Harryarsana et al. (2023), workers often face difficulties in accessing adequate legal assistance, particularly in areas without industrial relations courts. This means that workers who are dismissed tend to not have a strong bargaining position when dealing with companies.

Another obstacle lies in the inconsistency of law enforcement, where companies can utilize loopholes in regulations to avoid their obligations, including providing proper severance pay to workers. Dewi and Basir (2023) point out that the lack of involvement of workers and labor unions in the law-making process creates conditions that are more favorable to employers, while worker protection becomes weaker.

This condition is exacerbated by the lack of access to information and education for workers regarding their rights under the new regulation. Sarjana et al. (2023) state that many workers do not fully understand the legal procedures for fighting for their rights, which are often complicated and require high costs. As a result, many workers are reluctant or unable to pursue legal channels to resolve disputes.

As such, these constraints reflect the gap between the regulatory goal of increasing labor flexibility and the real need for strong legal protection for workers. Without strengthened supervision, legal education, and consistent enforcement, legal protection for laid-off workers will remain an issue that requires serious attention.

Possible Strategies for Balancing Company Interests and Workers' Rights Regarding Labor Flexibility

Despite changes in regulations, providing the rights of workers affected by layoffs remains a

crucial issue. The termination process in Indonesia often involves an assessment of gross misconduct by workers. Following the amendment of the Job Creation Law, there is a legal vacuum regarding the classification of gross misconduct, resulting in uncertainty for workers about the reasons for their dismissal and the rights they should receive (Hamzani et al., 2021).

Labor conflicts involving unilateral layoffs require more assertive intervention from the government to protect workers' rights. The effect of the Job Creation Law to make layoffs easier is considered to weaken the position of workers in disputes with companies, as they lose the right to full compensation that should be part of the layoff process (Yusuf et al., 2022).

Balancing the interests of companies and the rights of workers regarding labor flexibility requires a strategy that integrates the protection of workers' rights with the need for companies to adapt to market changes. One widely discussed approach is the concept of "flexicurity," which aims to create a balance between labor flexibility and social security. Wilthagen (1998) states that flexicurity can be implemented by linking labor market deregulation with social protection so that workers still have job security even under flexible employment conditions.

Another strategy is to increase social dialogue between workers, labor unions, and employers. Bell (2012) highlights the importance of social dialog to create fair regulations for all parties, particularly in the setting of atypical workers. This dialog allows workers and employers to negotiate work arrangements that meet the flexibility needs of the company, and guarantee workers' basic rights, such as living wages and humane working conditions.

A study in Korea by Yang (2006) shows that the main challenge in labor flexibility is the inequality of protection between permanent and contract workers. The proposed strategy to address this issue is to strengthen social security policies for all types of workers so that contract workers have equal access to health protection, training, and job security.

Auer (2007) states that investment in labor market policies, such as training and continuing education, can help workers adapt to market changes without losing competitiveness. This strengthens the position of workers, and benefits firms with a more skilled and flexible workforce.

Finally, Sin (2015) emphasizes that legal system reform needs to create fair bilateral flexibility, where changes made by companies must also consider the impact on workers. This can be achieved with better law enforcement, including protection against unfair termination and easier access to dispute resolution mechanisms.

With these strategies, a balance between labor flexibility and worker protection can be achieved, creating a fairer and more productive work environment for both parties.

Worker protection related to layoffs in Indonesia requires a review of existing regulations, particularly to ensure transparency and fairness in the layoff process. Mulyeni and Vatahilla (2020) suggest a more definite minimum standard of severance pay so that companies do not easily carry out unilateral layoffs without fulfilling workers' rights. This study also shows that stricter implementation of layoff rules can reduce the unemployment rate and minimize industrial conflicts.

D. CONCLUSIONS

The implementation of the Job Creation Law shows an imbalance between labor market flexibility and the protection of workers' rights. Although this regulation is designed to support economic efficiency, its impact on workers, especially in the case of termination of employment, poses various challenges. Reduced severance payment obligations, weak legal oversight, and a decreased role for labor unions weaken workers' bargaining power. This creates a gap between what is legally stipulated and implementation on the ground. The right of workers to decent work as stipulated in Article 28D paragraph (2) of the 1945 Constitution is often neglected, creating conditions that make workers vulnerable to exploitation. The lack of access to legal aid and effective dispute resolution mechanisms adds to the burden on workers to fight for their rights.

The government and stakeholders need to conduct a thorough evaluation of the implementation of the Job Creation Law, especially regarding worker protection. One of the steps that can be taken is to strengthen supervisory mechanisms to ensure that companies comply with the rules, including provisions regarding the prohibition of unilateral layoffs. Social dialogue between companies, labor unions, and the government needs to be intensified to create a better balance

between labor flexibility and worker protection. The concept of "flexicurity" can be an innovative solution to provide flexibility to companies without reducing social security guarantees for workers. Investments in worker training and education are also important to improve the competitiveness of the workforce amidst market changes. Finally, stronger legal protection, including enforcement of sanctions for regulatory violations, should be a priority to ensure that the goal of social justice in labor is achieved.

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