

Policy Regarding Employment After the Enactment of Law Number 11 of 2020 Concerning Omnibus Law

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ABSTRACT

Law Number 11 of 2020 concerning Omnibus Law as a law formed to raise one big issue of the worsening Indonesian economy. The changes in the policy related to employment make this research necessary to be conducted as a comparative investigation. This study aims to reveal Indonesia's employment policies after enacting Law Number 11 of 2020 concerning the Omnibus Law. This study uses a normative juridical method. The results of data analysis show that the policy regarding employment after the enactment of Law Number 11 of 2020 concerning the Omnibus Law is a legal product that seeks to provide more relief to employers and is more binding on workers. Moreover, with the many government regulations that must be made in the Omnibus Law on Job Creation, the government is forced to immediately complete the government regulation formation to achieve legal certainty in the Omnibus Law.

Keywords: *Employment, Omnibus Law, Policy.*

1. INTRODUCTION

The 1945 constitution of the republic of indonesia has mandated that every citizen shall be entitled to a job and a decent living for humanity [1]. the provisions in article 27 paragraph (2) of the 1945 constitution of the republic of indonesia expressly specify that everyone has the equal right to obtain work that does not conflict with human values. Therefore, the protection of labor rights appears as part of the protection of human rights (*ham*), which is the state's responsibility.

Law number 11 of 2020 concerning ominus law as a law appears to raise one big issue of the indonesian economy, which is getting worse [2]. economic growth, which is currently experiencing a slowdown and only reached around 5 percent, is considered incapable of avoiding the threat of the middle income trap (mit). One of the essential steps for the government to take is to create new policies that encourage investment.

One of the things regulated in the ominus law is the issue of employment. Ominus law seeks to reform regulations to ensure that these regulations remain fully responsive to changing economic, social, and technological conditions that surround them. Human resources development is carried out to realize prosperous, just, affluent, and equitable indonesian people and society, both materially and spiritually [3]. Before indonesia established the omnibus law, several other countries such as the philippines, the united states, australia, and the uk adhered to the law because they

followed the standard law system. It is in contrast to indonesia, which adheres to a civil law system. several weaknesses emerged when the omnibus law was implemented: firstly, its creation did not take long even though it had to ratify multi-sectors; second, because of the fast times, the value of participatory and aspiration is not maximized.

Discussions related to employment in the manpower act, compared to the ominus law, underwent significant changes. this situation prompted the conduction of the present study to conduct a comparative study between policies regarding employment in indonesia before and after implementing the omnibus law. The object that can be used as a legal comparison is the legal system or field in a country having more than one legal system/field. there are two ways to compare laws, such as macro and micro. Macro comparison is a way of comparing legal issues in general. micro comparison is a way of considering specified problems. There is no limit to the search for each problem. the known law that will be compared is called "comparatum" [4].

This study aims to reveal the policies regarding employment in indonesia after the enactment of law number 11 of 2020 concerning the omnibus law. Theoretically, the study serves for efforts to develop scientific insight, especially the development of legal science theory, in addition to providing benefits in the development of reading materials concerning legal education to readers. Practically, the study can be used as

a guide in solving relevant problems for anyone interested.

2. METHOD

The research method used to compile this paper is the normative legal method. The method consists of finding the rule of law, legal principles, and legal doctrines to answer the legal problems encountered [5]. The normative juridical research is a research method applied to investigate secondary materials [6]. Therefore, this means that normative legal research has a role in maintaining critical aspects of legal science as a normative science [7].

3. RESULT AND DISCUSSION

Initially, the law regarding employment was referred to as labor law, and to date, both are still used, both by legal experts and in the academic world. Labor law is derived from the word "arbeidsrecht," and the term arbeidsrecht itself has many definition limitations [8]. In terms of equating the concept of the term labor with the worker. In Article 1 Number 2 of Law No. 13 of 2003 concerning Manpower [9], it is prescribed that workers contain a general definition: everyone who can carry out work to produce goods and services to meet their needs and the community [10].

In essence, Omnibus Law contains a concept unrelated to the applicable legal system. However, its substance makes the concept very appropriate to be used as a solution in forming laws and regulations [11].

In Indonesia, the concept of the Omnibus Law, as specified in the Ominus Law itself, is believed to solve the problem of overlapping regulations. The law is designed as a law governing job creation capable of balancing three general types of regulation: the first is economic regulation, which is intended to ensure market efficiency - partly through the promotion of good competitiveness among business actors. The second is social regulation, which is intended to promote actors' internalization of all relevant costs. Finally, administrative regulation aims to ensure public and private sector operations [12].

Based on Article 3 of the Omnibus Law, the purpose of the law is to create the broadest possible employment opportunities for the people of Indonesia on an equal basis. The formation of this law shows that the legal politics of the executive has existed to be continued through a legislative process [11]. Currently, the government is carrying out activities to determine the pattern or method of forming laws and updating the law through the legislative process. A legal policy - which will be applied to job creation - is formed. This means the legal politics of the Omnibus Law is the formation of law by applying it in law formulation to increase investment, so jobs are created [11].

After the implementation of the Ominus Law, many changes occurred in regulations related to employment. The Ominus Law amends 31 articles, deletes 29 articles,

and inserts 13 new articles in the Law of Manpower. In this case, employment serves the welfare of society in meeting the needs of life. The matters regulated in the Ominus Law relating to employment are as follows:

1. Fixed-term Employment Agreement (PKWT)

In the Manpower Act concerning PKWT, companies are only allowed to make a work contract for a maximum of 3 years. The Ominus Law abolishes Article 59 of the Manpower Act related to the time limit for freelance workers. Every employee has the right to work within a certain period, not limited to making unilateral decisions. The government's reason for removing Article 59 is that workers can work more flexibly in its implementation. This causes a misunderstanding in private companies because they have complete authority. Moreover, other countries have implemented it because it is not regulated to be more flexible. On the other hand, the Ominus Law adds to Article 61, which can be considered a provision that provides workers with benefits. For every work decision made unilaterally by a company, the company is obliged to provide direct wages/compensation in the form of money. This provides benefits for workers, so there is no booming unemployment. Regulation regarding the number of wages is submitted to the government through regulations they made.

2. Outsourcing

According to Article 66 paragraph (2) letter (c) of Law No. 13 of 2003, the settlement of disputes that arise is the company's responsibility to provide employment services. Therefore, even though the regulation violated by the outsourced worker is the regulation of the employer, the authority to resolve the dispute is the labor service provider company. In the proposed formulation of this Ominus Law, further provisions are left entirely to the President, in this case, the President has considerable power in regulating laws, whereas, when it comes to duties and authorities, the President only performs the mandate of the law, the regulations made in the people's representative council which are technically regulated by the government appropriately.

Regarding the abolition, the public's concern is on the abolition of Article 65, in that, regarding outsourcing companies, there is no limit in submitting piece work to other institutions. However, in practice, there are many violations committed by service companies. Unfortunately, after this article was abolished, outsourcing has absolute freedom of authority in executing production work.

3. Working Hours

Article 77 of Omnibus Law stipulates that employers apply working hours that exceed the provisions as referred to in Article 77 paragraph (2) for the type of specified work or business sector. However, suppose the pre-arranged working time is sufficient and can be carried out according to regulations that might be better. In that case, it is not in line with human provisions for the working time which is already regulated is 8 hours in 1

day. The rest is regulated in the employment contract. That is to say, and the company has more authority in regulating the employee working time.

4. Remuneration

The central government will set the minimum wage that many people have been talking about. Speculation regarding the elimination of the Regional Minimum Wage is speculation containing errors. There is indeed a change in the article concerning wages in the period of work that is applied. However, the provision regarding wage protections for workers was abolished as it was considered an amendment to the previous article. This is explained in the provisions regarding decent income, wage policies, decent living needs, and wage protection as referred to in Article 88.

5. Job Loss Insurance

The Ominus Law contains a new provision that does not exist in the Manpower Act, namely regarding Job Loss Insurance (JKP). The government ensures that severance pay is indeed a right and shall be accepted by workers/laborers. JKP contains a new scheme related to employment insurance that does not reduce the benefits of various other social security such as Work Accident Insurance (JKK), Death Security (JKm), Old Age Security (JHT), and Pension Security (JP).

6. Foreign Workers

Foreign workers can be employed only in a working relationship for a specified position and a specified time and have competence according to the position to be occupied. Every employer is required to have a Foreign Worker Employment Plan (RPTKA). Individual employers are prohibited from employing foreign workers as stipulated in Article 43 of the Manpower Act.

However, in the Ominus Law, the contents of Article 43 of the Manpower Law and the formulation of the proposed results are removed because they are considered articles contained in the previous article. In simple terms, the abolition of Article 43 makes it easier for foreign workers not to have plans reported to the relevant ministers within a specified period.

Changes can be seen in Article 42, paragraph 1, which stipulates that every employer who employs foreign workers shall be required to approve the plan to use foreign workers from the Central Government. In the previous law, every employer who employs foreign workers were required to have written permission from the ministry or appointed official. Meanwhile, written permits are only replaced with plans to use foreign workers approved by the central government in the new regulation. In the new regulation, the exception to the condition in paragraph 1 is widened. It means that exceptions are no longer only for diplomatic and consular employees but also directors or commissioners. The directors or commissioners in question refer to those who own specific shares or those who are shareholders and foreign workers needed by employers in the production

activities that are stopped due to emergencies, vocational, start-up companies, business visits, and research for a specified period.

On the other hand, it is the right of every human being to get humanitarian protection wherever they are. Based on these humanitarian principles, every country must protect people whose lives are threatened, even if they are not citizens of the concerned country [13]. This is the nature of the law that protects its citizens in any form. The ease for foreign workers in advancing the economy as a big issue in the Omnibus Law becomes a default when a legal product cannot emphasize the role of Indonesian Citizens.

If examined from the perspective of Theory of Justice, Benefit, and Legal Certainty by Gustav Radbruch, the law has three fundamental values, such as Justice (*Gerechtigkeit*), Benefit (*Zweckmassigkeit*), and Legal Certainty (*Rechtssicherheit*) [14]. Until now, the pros and cons of implementing the Ominus Law in the employment division are still happening. Principally, the Ominus Law is, of course, made to provide justice, benefit, and legal certainty for all Indonesian citizens. However, the implementation of its concept is still really span-new. The Ominus Law causes many errors in interpretation for a few parties. Coupled with the existence of the Ominus Law, it triggers many government regulations that must be made. As a result, the government must work extra to realize legal certainty, especially employment. If the government regulations as implementing Omnibus Law are not immediately completed, of course, it will cause legal uncertainty for Ominus Law itself.

4. CONCLUSION

After enacting Law Number 11 of 2020 concerning the Omnibus Law, the employment policy is a legal product that seeks to provide entrepreneurs more facilitation and bind the workers. There are significant changes related to employment in the Ominus Law when compared to Manpower Act. Moreover, many government regulations must be made in the Ominus Law, which causes the government to immediately complete the government regulations to achieve legal certainty in the Ominus Law.

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