



Protection of Post-Employment Period Indonesia after Omnibuslaw: Better or Worse?

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Abstract. This study aims to conduct a comparative study related to worker protection after employment for Indonesian workers After Omnibus law. This study employed a statutory method, a comparative approach and a conceptual approach, by comparing the provisions of worker protection after employment from time to time and analyzing them through the purposes of labor development. The results show that the protection of workers after the period of work for Indonesian workers is getting worse, including the removal of the calculation of clauses pertaining to severance compensation and wages for service period awards associated with the cause of termination of employment relations, and now the provisions have changed to be as agreed between workers and employers. This is certainly detrimental to workers because the bargaining position of workers is lower than employers. This provision also does not support the realization of the principle of labor development which aims to prosper workers and their families. There must be revisions related to worker protection after employment, if the state wants the improvement of workers' and their families' welfare, especially in the current era of technological disruption.

Keywords: Worker Protection, After A Period of Service, Severance, Wages

1 Introduction

Changes in Indonesia's labor regulations through the Job Creation Law have led to various debates and in-depth analyses related to the protection of workers' rights, especially after they are out of service [1],[2]. Through a number of reforms, including one in the labor sector, the Job Creation Law seeks to increase employment and enhance the investment climate [3].

Before the Job Creation Law was created, several laws, including the Manpower Law No. 13 of 2003, governed measures pertaining to workers' post-employment protection. As a result of the Constitutional Court's Decision Number 91/PUU-XVIII/2020, which effectively declares that the Job Creation Law is conditionally illegal, the regulation of the law itself has also changed, including Law No. 11 of 2020. In addition, the President issued a Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation a year after the Constitutional Court's ruling. This regulation was subsequently ratified into law by Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation.

However, significant regulatory changes with the enactment of the Job Creation Law raise concerns about the extent to which workers' rights are protected, especially after they stop working [4],[5].

One important aspect that is highlighted is protection for post-employment workers, one of which is related to Right Replacement Money, service award money, and severance pay, which are workers' rights that must be paid by employers after termination of employment [6],[7]. Severance pay, tenure appreciation money, and reimbursement money are three important components in a worker's compensation and protection system after their service period ends [8]. Each has a strategic role in maintaining economic stability and social justice for workers who have ended their working period, whether due to termination of employment (layoffs), retirement, or other reasons.

Severance pay, tenure award money, and Entitlement Reimbursement Money serve as financial collateral for laid-off workers, providing them with the economic resources to survive the transition period of finding a new job. With the obligation to pay the 2 components of the above aspects, employers will be more careful in making termination decisions, which in turn can reduce layoff practices without a valid reason. The payment of the 3 components of money is also considered a recognition of the time and effort that workers have invested in the company, making it an ethical and moral component in business practices.

Severance pay, service period appreciation money and Right Replacement Money as part of protection in the post-employment period are part of the realization of employment development. Labor Development based on the explanation of labor law is an essential component of national development founded on Pancasila and the Republic of Indonesia's 1945 Constitution, carried out within the framework of the development of Indonesian society overall and the development of Indonesian people as a whole in order to enhance the self-worth and dignity of workers as well as create favorable business environments.

Provisions regarding severance money, service period award money and Right Replacement Money are revised rules in the Job Creation Law and are regulated more technically through Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time, Work Relations and Rest Time, and Termination of Employment. This change must be analyzed to see the direction of change, whether it is better or worse, especially when juxtaposed with the goal of labor development which has the aim of realizing an economically and spiritually wealthy, just, equitable, and prosperous society.

2. Method

The normative legal research approach is the research methodology employed [9],[10]. The approaches used include: first, the legislative approach, in the form of rules regarding severance pay, service period award money and Right Replacement Money in Law Number 13/2003 concerning Manpower, Law Number 11 of 2020 concerning Job Creation, PP 35/2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment, and Law

No. 6/2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 about Job Creation into Law. Second, a conceptual approach in the form of labor development principles which will be the basis for assessing changes in provisions related to service period award funds and severance pay and rights replacement money. Third, a comparative approach in which all provisions are compared and assessed through the concept of labor development principles. Primary legal sources in the form of labor-related legislation and regulations were employed in this study. and secondary legal materials sourced from journal articles and books.

3. Results and Discussion

3.1 Protection After Employment Based on the Provisions of Law and Government Regulations

The results showed that laws and regulations provide significant protection for employees who are let go from their jobs, in the form of Severance money, Period of Service Award Money, and Entitlement Reimbursement. Regulations on Severance money, Period of Service Award Money and Entitlement Reimbursement were originally regulated in Articles 156 to Article 172 of the Manpower Law. However, these provisions were changed and many were removed based on the provisions of the Job Creation Law. Furthermore, through Government Regulation Number 35 of 2021, implementing provisions related to the amount of Severance money are regulated. The researcher then identified all these provisions and presented them in the table below:

Table.1. Comparison of Layoff Compensation Provisions

Reasons for layoffs	Amount of Compensation based on Manpower Law	Amount of Compensation based on Job Creation Law	Amount of Compensation based on Government Regulation 35/2021
Resign without pressure	Entitlement Reimbursement	Deleted	Entitlement Reimbursement and Farewell Money
Completion of PKWT	Not Entitled to Compensation	Compensation money	Entitled to compensation 1 year 1 month wages
Workers commit Violations of Work Agreements, Collective Labor Agreements, or Company Regulations	1 time Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement	Deleted	0,5 time severance, 1 timi Period of Service Award Money, and Entitlement Reimbursement
Workers apply for layoffs due to employer violations	2 time Severance, 1 time Period of Service	Deleted	1 time Severance, 1 time Period of Service Award Money, dan

	Award Money, and Entitlement Reimbursement		Entitlement Reimbursement
Marriage between workers/blood relations (if arranged or agreed)	1 time Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement	Amended and clauses regulated/agreed upon, deleted	Deleted
The Company performs efficiency due to the Company experiencing losses	Unregulated	Unregulated	0,5 time Severance, 1 time Period of Service Award Money, dan Entitlement Reimbursement
The Company performs efficiency caused by the Company preventing losses	Unregulated	Unregulated	1 times Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement
Force majeure	Unregulated	Unregulated	0,75 times Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement
The company closes due to company loss or force majeure	1 time Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement	Deleted	Loss: 0.5 times Severance, 1 kali Period of Service Award Money, and Entitlement Reimbursement Force majeure:
The company closed because the company made efficiency	2 times Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement	Deleted	1 time Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement
Amalgamation, merger, change of status and Worker unwilling to continue employment relationship	1 time Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement	Deleted	1 time Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement
Amalgamation, Merger, change of status and Employer unwilling to continue employment relationship	2 times Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement	Deleted	1 time Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement
Changes in working circumstances brought about by	Unregulated	Unregulated	0,5 times Severance, 1 time Period of Service

a company takeover make employees unwilling to maintain their employment relationship.			Award Money, dan Entitlement Reimbursement
Insolvent company	1 time Severance, 1 kali Period of Service Award Money, and Entitlement Reimbursement	Deleted	0,5 times Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement
The business experiences losses and is in a state of suspension of debt payment obligations.	Unregulated	Unregulated	0,5 times Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement
The business is not experiencing any losses and is in a state of suspension of debt payment obligations.	Unregulated	Unregulated	1 time Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement
Worker dies	2 times Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement	Deleted	2 times Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement
Absent workers of 5 days or more and have been duly summoned 2 times	Entitlement Reimbursement and Farewell Money	Deleted	Entitlement Reimbursement and Farewell Money
Workers are sick for a long time or due to a work accident (after 12 months)	2 times Severance, 2 times Period of Service Award Money, and Entitlement Reimbursement	Deleted	2 times Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement
Workers entering retirement age	Optional	Deleted	1,75 times Severance, 1 time Period of Service Award Money, and Entitlement Reimbursement
Workers are imprisoned and unable to perform work (after 6 months)	1 time Period of Service Award Money and Entitlement Reimbursement	Deleted	1 time Period of Service Award Money and Entitlement Reimbursement
The worker is imprisoned for harming the company	Unregulated	Unregulated	Entitlement Reimbursement and Farewell Money

and cannot perform the work
(after 6 months)

Workers detained and found guilty	1 time Period of Service Award Money and 1 kali Period of Service Award Money dan Entitlement Reim- bursement	Deleted	Entitlement Reim- bursement and Farewell Money
Special regulations of micro-entrepreneurs and small businesses	Unregulated	Unregulated	Agreement between Entrepreneurs in micro and small businesses with Workers / Laborers

It is evident from the above table that the severance money arrangement, the Period of Service Award Money, and the Entitlement Reimbursement have changed. These changes include the abolition and increase of conditions / situations that cause termination of employment, as well as changes in the sum of money that employers give their employees.

First, related to the elimination of conditions that cause termination of employment, regulations related to the amount of Severance money given due to termination of employment by employers due to marriage between workers / blood relations are removed in the Job Creation Law. This can be understood considering that the Constitutional Court gave decision Number 13 / PUU-XV / 2017 which basically states that there should be no agreement on termination of employment due to marriage/blood relations either in employment contracts, corporate policies, or group bargaining agreements. The removal of this provision in the law that creates jobs shows legal compliance with the decision of the constitutional court.

Second, related to the addition of conditions that cause termination of employment, which include:

1. Termination of employment because the company makes efficiency caused by force majeure, the company experiences losses and to prevent losses;
2. Completion of a Certain Time Work Agreement
3. Termination of employment due to the takeover of the Company which results in changes in working conditions and Workers
4. Employment termination as a result of the suspension of debt payment obligations whether the operator suffered a loss or did not experience a loss;
5. Workers are detained for harming the company and cannot perform work (after 6 months);
6. Exemptions to the payment of Severance, Period of Service Award Money and Entitlement Reimbursement for micro entrepreneurs and small businesses.

Increased provisions related to the conditions and amount of payment of Severance money, Period of Service Award Money and reimbursement of rights on the one hand provide certainty to workers about how much compensation workers will get when termination of employment by employers. But on the other hand, it indirectly implies the addition of the cause of termination of employment legalized by law. The labor law through Article 154 only regulates the cause of termination of employment because the

company suffered a loss, and the same thing is also regulated in both the Job Creation Law and PP 35/2021/. However, the regulation in detail of the amount of Severance, Period of Service Award Money and Entitlement Reimbursement for companies that fire their workers on the grounds of preventing losses certainly provides room for employers to fire under this pretext.

Third, related to changes in the amount of Severance money and Period of Service Award Money, which covers almost all conditions that cause termination of employment, except for termination of employment by workers due to Merger, Merger, change of company status, on Workers absent 5 days or more and have been summoned 2 times properly, and Workers are detained and unable to perform work (after 6 months). The results of the researchers' analysis show that the changes that occurred in PP 35/2021 were in the form of a decrease in the amount of Severance money and Period of Service Award Money to half of what was previously regulated in the Manpower Law.

3.2 Analysis of Post-Employment Protection based on Employment Development Principles

The development of the Indonesian people as a whole serves as the foundation for labor development [11]. Therefore, labor development is carried out to achieve an Indonesian society that is affluent, just, equitable, and prosperous in both material and and spiritually. The principles of employment development contained in article 4 of the Manpower Law can provide deep insight into how the termination of employment policy (PHK) and the rights subsequently granted to workers have the potential to support or hinder the achievement of these labor development goals.

First, regarding the objective of empowering and making the best and most humanitarian use of the workforce, it means providing the widest possible job opportunities for Indonesian workers. Termination of employment, especially those not based on serious violations by workers, such as "Resigning without pressure" and "Completion of PKWT", often leaves workers in uncertain situations. However, changes in the amount of compensation money, which is halved from what was previously arranged, certainly cannot help workers in the transition period and support their empowerment to find new jobs with more humane conditions.

Second, in terms of the goal of achieving fair job opportunities and allocating labor in line with the demands of regional and national growth, it means providing equal opportunities to obtain jobs and job placements for every Indonesian employee based on their skills, interests, and aptitudes. Regulations on fair compensation after layoffs can support equal employment opportunities by ensuring that workers have the financial resources to survive while they look for new jobs. This is in line with the aim to match the supply of labor to development needs, reducing the risk of long-term unemployment that can hamper regional economic growth. However, the addition of arrangements related to compensation money indirectly also adds to the legal basis for termination conditions that employers can make to their workers. Instead of equalizing job opportunities, employers get more legal grounds to fire workers.

Third, judging from the aim of providing protection to workers in realizing welfare, it means that labor development must be able to protect the welfare of workers and families. The amount of compensation money that is increasingly concretely regulated in PP 35/2021 provides protection and legal certainty for workers after termination of employment. It is important to ensure that workers are not treated as mere tools, but as individuals who have rights and needs. However, the number that is reduced by half, on the other hand, certainly cannot help workers realize the welfare of themselves and their families.

Fourth, judging from the aim of enhancing employees' and their families' well-being, compensation given to workers after layoffs, especially in the case of resignations or layoffs that are not caused by worker violations or due to the expiration of a Certain Time Work Agreement helps in alleviating the financial impact of job loss. Money Severance, segregated money, and other rights stipulated in the law aim to provide a financial safety net that helps workers and their families cope with periods without a fixed income. It contributes directly to efforts to improve the general the well-being of employees' families, in line with the legislative goal of creating more just and humane working conditions. However, as with the analysis of the third goal, the reduced amount of compensation regulated by PP 35/2021 certainly makes efforts to achieve the fourth goal of employment development more difficult.

It should be understood that compensation funds in the shape of severance pay, Period of Service Award Money and Entitlement Reimbursement, is entirely aimed at strengthening the social safety net for workers after their service period ends. In the context of equitable and sustainable employment development, these three things are critical. So, when PP 35/2021 regulates more conditions for the causes of termination of employment and the amount of compensation money obtained by workers, it will help the stability and welfare of workers after termination of employment.

However, reducing the amount of Severance money compensation and Period of Service Award Money in PP 35/2021 is certainly not a good thing for workers, because it will reduce their welfare [12] and opportunities to get a decent new job as the goal of labor development. Severance, Period of Service Award Money and Entitlement Reimbursement are not only tools to ensure the financial stability of post-employment workers, but also tools to maintain ethical business practices and raise standards of fairness in the workplace. Therefore, the government must review PP 35/2021 and change the provisions for the amount of compensation money by adding the amount of Severance money and the Period of Service Award Money, at least the same as previously regulated. This is merely to enhance the well-being of employees and give workers more time to get a decent job, without sacrificing a decent life as well.

4. Conclusion

One form of after-employment protection for workers is the existence of compensation money in the form of Severance money, Period of Service Award Money and Entitlement Reimbursement, which is designed not only as a reactive mechanism for termination of employment, but also as a proactive measure to support labor development goals. The current regulation regulates more conditions that cause

termination of employment and the amount of compensation obtained by workers, but the amount is less than the previous regulation. The smaller regulation related to the amount of compensation money does not help realize the improvement of workers' welfare after termination of employment, nor does it make workers have a shorter time to get decent work for themselves and their families. Regulators must change regulations related to the amount of Severance money to be at least the same as previously regulated, even better if regulated larger.

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