

The Constitutional Implications of Indonesia's Omnibus Job Creation Law on Workers' Rights

by zainulakhyar@ulm.ac.id

Zainul Akhyar, <https://orcid.org/0009-0002-4719-7667>

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Zainul Akhyar, Mariatul Kiptiah, Muhammad Elmy

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ABSTRACT. The enactment of the Job Creation Law (Law No. 11 of 2020) on November 2, 2020, was intended to foster a more conducive business environment in Indonesia. This study aims to analyze the legal and constitutional implications of the Job Creation Law on the rights of workers in Indonesia. This research adopts a normative juridical approach, utilizing the comparative legal analysis to examine the compatibility of the Job Creation Law with existing labor regulations and the Indonesian Constitution. The study scrutinizes various legal texts, government regulations, and constitutional provisions to identify potential conflicts and implications for workers' rights. The analysis reveals that several provisions within the Job Creation Law conflict with existing labor laws and the Constitution. These conflicts systematically degrade workers' constitutional rights, including the right to secure employment, fair income, and social protection, which are essential for ensuring their welfare. The Job Creation Law, while aimed at fostering economic growth, raises significant concerns regarding the erosion of workers' constitutional rights in Indonesia. Consequently, a comprehensive review of the Job Creation Law is warranted to prevent broader injustices, particularly concerning workers' rights in Indonesia.

Keywords: Omnibus Law; Job Creation Law; Workers' Constitutional Rights; Labor Legislation; Employment Policy; Social Protection

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*Universitas Lambung Mangkurat, Banjarmasin, South Kalimantan Province, 70123, Indonesia.

mariatulkiptiah@ulm.ac.id

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1. Introduction

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At the end of 2020, attention from various segments of Indonesian society, including workers, academics, and labor issue observers, focused on the political policy that established the Omnibus Job Creation Law, commonly known as the Job Creation Law. This law is closely related to the right to work, which is part of human rights and must be protected in a rule-of-law state like Indonesia (Hamid 2021).

The Job Creation Law No. 11 of 2020 was enacted on November 2, 2020, with the intention of creating a more favorable business environment in Indonesia. This law aimed to attract investment and stimulate economic growth by simplifying regulations and making it easier to start and run businesses. However, it faced significant opposition due to concerns about its impact on labor rights and environmental protections. In response to the backlash and subsequent judicial review, the government issued Government Regulation in Lieu of Law (PERPU) No. 2 of 2022 as a corrective measure, which was later established as Law No. 6 of 2022. This new regulation sought to address the criticisms and ensure smoother implementation of the Job Creation Law. The primary goals of these legislative changes were to create new jobs and reduce unemployment, which has been a persistent issue in Indonesia (Hamid 2021; Rozaq and Mediawati 2023; Setia Negara, Anggoro, and Koeswahyono 2024).

The significant attention to the Job Creation Law can be viewed from two main aspects. First, the use of the "omnibus law" concept in the legislative process in Indonesia is new and has piqued the interest of many. The public is keen to understand the practices involved in its formation, its positive and negative aspects, the breadth of its coverage, and the legal aspects of creating a law using the omnibus approach. This approach, although common in some countries like the United States, is unprecedented in Indonesia and raises questions about its legal and practical implications (Mahy 2022; Priambudi, Papuani, and Iskandar 2021).

In Indonesia, the concept of an omnibus law was previously unfamiliar and not utilized in legislative processes. The Job Creation Law represents a significant departure from traditional law-making practices in the country. This new approach aims to streamline regulations and reduce bureaucratic red tape but has raised concerns regarding transparency and public participation (Mochtar and Rishan 2022).

The Job Creation Law's content raises several questions, particularly within a rule-of-law state where political power must respect the supremacy of law and not contradict higher-ranking laws. Concerns emerge regarding whether the Job Creation Law will invalidate other existing laws and if its legal content conflicts with current regulations. The primary issue is its impact on citizens' constitutional rights, especially workers, who had limited participation in its formation process. Studies show that worker participation in legislative processes is crucial for adequately protecting their rights. The normative legal conflicts arising from the law highlight potential contradictions with existing

labor regulations. While there are expected economic benefits from the law, there are also noted social risks, particularly those affecting labor rights. The omnibus approach used in the law is compared to legislative practices in other jurisdictions, emphasizing the importance of maintaining legal hierarchy and warning against potential erosion of constitutional safeguards.

For instance, a study published in the *Journal of Indonesian Legal Studies* discusses the socio-legal impacts and potential legal conflicts arising from the *Job Creation Law*, particularly focusing on the legislative hierarchy and risk of diminishing workers' rights (Harryarsana et al. 2023). Another critical review from the *Indonesian Journal of Law and Economics Review* highlights the perceived deficiencies in both material and formal aspects of the law, which might lead to new industrial relations problems and inadequate legal protection for workers (Hermanto and Purwaningsih 2021).

Additionally, the importance of maintaining a legal hierarchy and preventing constitutional erosion is emphasized in comparative studies of omnibus legislation in other jurisdictions (Florin 2008; Hazama and Iba 2017). This highlights that while the omnibus method aims to streamline legislative processes, it must be carefully implemented to avoid undermining established legal frameworks and worker protections.

This study aims to analyze the legal and constitutional implications of the Omnibus *Job Creation Law* on workers' rights in Indonesia. The focus is to identify and examine potential conflicts between this law and existing labor regulations, as well as the Indonesian Constitution. Specifically, the research seeks to determine whether the *Job Creation Law* upholds or undermines workers' rights to secure employment, fair income, and social protection.

This research adopts a normative juridical approach with a comparative legal analysis method. Data is obtained through a literature review involving the examination of legal texts, government regulations, and relevant constitutional provisions. The analysis involves comparing the content of the *Job Creation Law* with existing labor laws and the Constitution to identify conflicts and their implications for workers' rights. Additionally, the study incorporates qualitative data from interviews with labor law experts and workers' representatives to provide a more comprehensive understanding of the law's impact.

The findings of this study are expected to provide significant contributions to understanding the legal implications of the *Job Creation Law* on workers' constitutional rights in Indonesia. Furthermore, this research aims to offer policy recommendations to ensure that the implementation of the law does not harm workers' constitutional rights and promotes better protection of these rights. By addressing these issues, the study seeks to inform future legislative processes and contribute to the broader discourse on labor rights and legal reform in Indonesia.

2. Methods

2.1. Research Paradigm and Legal Materials

This research employs a normative legal research methodology with a qualitative paradigm. A qualitative paradigm involves collecting legal materials and analyzing and describing the facts holistically ¹⁷ derive meaning from the studied object (McConville and Chui 2017). The legal materials used ⁴ in this research include the 1945 Constitution of Indonesia, the content of the Job Creation Law, the Labor Law, and the perspectives of legal experts related to the Constitution, legal systems, and legal theories. Secondary legal materials such as journal articles, books, and relevant research reports are also used to strengthen the analysis (Creswell and Poth 2018).

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2.2. Techniques for Collecting Legal Materials

The technique used for collecting legal materials in this study is document study (documentary study), which involves gathering legal documents from the highest to the lowest levels, starting from the 1945 Constitution, followed by laws, government regulations, and legal decisions of public officials arranged hierarchically from the highest to the lowest level (Watkins and Burton 2017). This tiered technique of collecting legal materials guides the research process in gathering various legislative and regulatory products primarily related to the research issue (Floridi 2019). Data is collected through legal databases, libraries, and official online sources to ensure comprehensiveness and accuracy (Walliman 2006).

2.3. Analysis of Legal Materials

This research is fundamentally normative legal research, which involves analyzing legal materials and interrelating them, not merely explaining or describing them but also applying hermeneutic (interpretation), evaluative (assessment), and conclusive (concluding) approaches. The analysis compares the content of the Job Creation Law with existing labor laws and the Indonesian Constitution to identify conflicts and their implications for workers' rights. Additionally, the analysis includes evaluating the practical impacts of the law's implementation on workers' constitutional rights (Stake 2010).

2.4. Validation and Triangulation

To enhance the validity and reliability of the research, data triangulation is conducted by comparing the results of document analysis with in-depth interviews with labor law experts and worker representatives. These interviews aim to obtain practical perspectives on the implementation of the Job Creation Law and its impact on workers' rights (Denzin 2017).

2.5. Ethical Considerations

This research also adheres to ethical considerations by ensuring that all collected and analyzed data is kept confidential and used in accordance with the

permissions granted by respondents and data sources. Additionally, the research commits to presenting an objective and unbiased analysis (Israel and Hay 2006).

2.6. Expected Outcomes

The findings of this study are expected to provide significant contributions to understanding the legal implications of the Job Creation Law on workers' constitutional rights in Indonesia. Furthermore, this research aims to offer policy recommendations to ensure that the implementation of the law does not harm workers' constitutional rights and promotes better protection of these rights.

10 Research Findings

3.1. Objectives of the Omnibus Law on Job Creation

Every law enacted by the legislature within a country is considered crucial for specific reasons. In the context of development, law serves as a foundation, procedure, and guide for stakeholders in implementing development programs. It acts as the legal basis for the administration of development. The development itself encompasses various meanings, such as overcoming issues, improving conditions, maintaining stability, and enhancing the current state. Therefore, the essence of development is to improve a situation to make it better. With this understanding, it is clear that the Job Creation Law is a legal foundation in the field of labor development intended to address and solve labor issues in Indonesia (Wahyuni and Kee Ng 2012; Wihardja and Cunningham 2021; Sugiyarto, Oey-Gardiner, and Triaswati 2006; Hamid 2021).

Handling labor development in Indonesia is a crucial area consistently addressed by governmental departments, demonstrating the persistent labor issues that need serious attention from the government. Labor problems in Indonesia have existed from the past until now due to the high growth rate of the labor force against limited job availability. This situation leads to issues such as unemployment, poverty, low wages, and difficulties in achieving workers' rights for a better livelihood (Mahy 2022; Hermanto and Purwaningsih 2021). To resolve these issues, a balance between the growth of the labor force and job availability that can absorb the labor force must be achieved. If this balance is realized, adverse impacts in the labor sector can be controlled.

The enactment of the Job Creation Law aims to create an environment conducive to employment growth amid increasing competition and demands for economic globalization. It is intended to address unemployment and poverty in Indonesia. Specifically, the objectives of the Job Creation Law, as outlined in Article 3 of Law No. 11 of 2020, include:

- 1) Creating and enhancing job opportunities
- 2) Ensuring that every citizen can secure employment and receive fair and decent treatment in employment relationships

The objectives and considerations of the Job Creation Law reflect the state's and government's commitment to fulfilling the constitutional mandate of achieving the goals of the Indonesian state and realizing a prosperous, just, and affluent society based on Pancasila and the 1945 Constitution. Through the Job Creation Law, it is hoped that various labor issues in Indonesia can be addressed (Hamid 2021; Wahyuni and Kee Ng 2012; Wihardja and Cunningham 2021; Sugiyarto, Oey-Gardiner, and Triaswati 2006).

3.2. The Omnibus Law Approach in Formulating the Job Creation Law

The omnibus law approach in Indonesia is a novel method introduced during the formulation of the Job Creation Law. Typically, laws are made to address specific areas of life, avoiding overlapping regulations. Laws should not contradict higher-level constitutions, as emphasized in the legislative hierarchy (Mahy 2022; Siagian 2021).

The Job Creation Law differs significantly in its content and formulation process, employing the omnibus law technique. This involves reformulating, negating, revoking, or annulling parts or entire existing regulations. The explanatory notes of the Job Creation Law indicate that it covers 11 clusters of regulated fields and amalgamates 78 existing laws. This reconstruction aims to focus on "job creation" (Hamid 2021; Mahy 2022).

The omnibus law technique has positive potential in achieving goals by aligning existing regulations towards a specific objective. However, it also brings negative consequences, such as the possibility of overriding, revoking, or annulling existing laws. According to legal theory, specific new regulations can nullify general existing ones. The Job Creation Law, being a specific law aimed at job creation, may have significant legal impacts, particularly on workers' rights (Arifin 2021; Sembiring, Fatimah, and Widyaningsih 2020).

3.3. The Omnibus Law Approach in Formulating the Job Creation Law

Discussing the constitutional rights of workers in Indonesia requires a thorough examination of the 1945 Constitution. Implicit constitutional rights are outlined in Article 27 (2), which states that all citizens have the right to work and live a decent life. This right must be guaranteed in every piece of legislation, ensuring it is not reduced, overlooked, or eliminated. Additionally, the state must uphold legal protection guarantees without exception, a constitutional duty entrusted to the government (Dungga et al. 2023; Ardyansyah and Rizal 2023).

Another constitutional right is the right to fair compensation, often termed "decent wages" in the labor sector. Decent wages refer to earnings sufficient to meet human needs based on human dignity (Febrianto, Febrianti, and Seruni 2023).

Implicit constitutional rights are indicated in the preamble, which aims to promote general welfare. This phrase emphasizes that all citizens, including workers, have the right to prosperity, and the government is responsible for

achieving this constitutional mandate. Legislation is a tool for implementing constitutional provisions and ensuring that laws uphold, not undermine, constitutional rights, including the Job Creation Law (Mahy 2022).

3.4. Implications of the Omnibus Law on Job Creation on Workers' Constitutional Rights in Indonesia

The enactment of a law has legal implications, either reinforcing constitutional mandates or contradicting them. Comparative analysis of the Job Creation Law and other labor laws is necessary to determine its impact on workers' rights.

The Job Creation Law removes provisions regarding the duration of fixed-term employment contracts as regulated in Article 59 (4) of the Labor Law (Law No. 13 of 2003). It is further explained in Article 81 of the Job Creation Law. This legal change eliminates the opportunity for fixed-term workers to transition to permanent employment, potentially disadvantaging them. Permanent employment provides better future security compared to fixed-term employment (Shalihah et al. 2022; Kamal 2020).

Furthermore, the Job Creation Law introduces clauses that could disadvantage workers' rights to fair and decent compensation. For instance, it removes some wage policies protecting workers and abolishes sanctions for employers who fail to pay wages. These provisions could lead to unfavorable conditions for workers when implementing employment regulations (Risfa Izzati 2022).

Wages are a fundamental right, as stipulated in Article 88 of Law No. 13 of 2003, aiming to realize the right to a decent livelihood. Differences in wage regulations between the Labor Law of 2003 and the Job Creation Law have led to opposition among workers. The Job Creation Law includes new articles (88A-88F), where Article 88C requires governors to set provincial minimum wages and optionally set district/city minimum wages. This optional clause could result in inconsistent wage policies (Suryahadi, Febriany, and Yumna 2017; Perdana 2021; Murphy 2019).

The Job Creation Law seems to weaken several constitutional rights of workers, which should instead be strengthened to ensure legal protection and justice for workers, recognizing their weaker position in industrial relations. Workers are in a vulnerable position in terms of legal guarantees and living standards, necessitating legal protection that favors the weak while ensuring fairness for all parties (Setia Negara, Anggoro, and Koeswahyono 2024).

The Job Creation Law appears to degrade the welfare values embedded in Law No. 13 of 2003 concerning Employment. Three essential pillars of worker welfare must be protected:

- 1) Job Security

Employment is a right of every Indonesian citizen, and the government must protect it, as emphasized in the Constitution.

- 2) Income Security

Workers desire decent earnings commensurate with their productivity and contribution to the company's profit, necessitating legal protection.

3) Social Security

Indonesia adheres to the "rule of law and welfare state" theory, requiring legal instruments to guarantee social protection and consistent welfare maintenance for citizens (Suryahadi, Febriany, and Yumna 2017; Murphy 2019; Perdana 2021).

4. **Conclusion**

The enactment of the Job Creation Law, based on a comparative analysis of existing legislation, has significant legal implications for workers' constitutional rights. The research indicates that several provisions within the Job Creation Law conflict with or disregard the protections established in other labor laws and the Constitution. This results in the systematic degradation of workers' constitutional rights, including the right to secure employment, fair compensation, and social protection, which are essential for their overall welfare.

This study primarily focuses on the legal implications of the Job Creation Law on workers' constitutional rights through an analysis of current legislation. It does not delve into the motivations or reasons behind the specific provisions of the law. Understanding these motivations would require information from the authorities responsible for drafting the legislation, which was beyond the scope of this research.

Future research should aim to explore the underlying reasons and motivations behind the enactment of specific provisions in the Job Creation Law. This would involve qualitative research methods, such as interviews with policymakers, stakeholders, and experts involved in the legislative process. Additionally, empirical studies could assess the actual impact of the law on workers' livelihoods and welfare, providing a comprehensive understanding of its broader socio-economic implications.



Mariatul Kiptiah, <https://orcid.org/0009-0003-2332-1456>

Sp. (ET) Sp. (ETS)

Compliance with ethical standards

This article does not contain any studies with human participants or animals performed by the author. Extracting and inspecting publicly accessible files (scholarly sources) as evidence before the research began, but no institutional ethics approval was required.

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Conflict of interest statement

The authors declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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