

THE ROLE OF OMNIBUS LAW IMPLEMENTATION ON THE WOMEN WORKERS PROTECTION: AN DESCRIPTIVE ANALYSIS OF LABOR LAW IN INDONESIA

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Abstract - Regulatory problems and disharmony of laws and regulations in labor law in Indonesia have forced the government to reform regulations through the omnibus law which aims to reduce the unemployment rate in Indonesia. The concept of a rule of law (*rechtsstaat*) adopted by the state Indonesia includes the protection of human rights as well as legal certainty and based on the law. Economic development is very important for increasing the level of social welfare. The existence of the Omnibus Law actually has a negative impact on the Indonesian workforce, especially for women workers. Women workers as a vulnerable group of people are the object of study in this study. The purpose of this research is to find out the complexity, implications, and conception of the omnibus law for the protection of female workers in Indonesia. The research method used is descriptive-analytical, namely by providing an overview of actual problems based on concrete facts. The conclusions from this study are directed at the government to better protect workers belonging to vulnerable groups of society, especially women in the future regulation of the omnibus law. Working women are the most affected group of workers. The results and findings of this study find a bright spot, namely where the omnibus law specifically only benefits investors or corporations and forgets about fulfilling workers' rights, one of which is reducing minimum wages and termination of employment without demands.

Keywords: Protection, Women, Workers. Omnibus Law, Employment Law.

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1. INTRODUCTION

Realizing the creation of decent jobs is still a challenge and a problem for the government. Regulations regarding employment protection with a decent income are a must to be realized. However, current regulations in the manpower sector do not allow for the creation of decent jobs because regulations allow companies to recruit outsourced workers and apprentices. In fact, such a

non-permanent working relationship model actually provides opportunities for increased exploitation, lower labor costs and marginalized workers^{[1][2]}.

The formation of the Omnibus Law has received various kinds of rejection from workers/laborers because they are considered detrimental, especially for female workers/laborers. The formulation of the problem in this study (1) What is the conception of the Omnibus Law for the protection of female workers in Indonesia, (2) How is the transformation from Law Number 13 of 2013 concerning Employment into the Omnibus Law on Employment Creation^[3]. The involvement of women in the world of work is a form of participation in national development. The development of industrialization provides an opportunity for women to be able to be a part of meeting the needs of life. However, the fate of women workers is highly dependent on state concerns. It is possible that there are still controversies that occur, such as discrimination against women workers in terms of wages, menstruation and maternity leave, as well as violations of other rights. Research Objectives (1) To find out the complexity and implications of the Omnibus Law on Job Creation for female workers, (2) To know the transformation in the form of differences and contents between the Labor Law and the Omnibus Law on Job Creation, and (3) To know the conception of the Omnibus Law on Job Creation for the Protection of Women Workers in Indonesia.

2. METHOD

The type of research used in the preparation of this scientific paper is analytical descriptive, namely by providing an overview of actual problems based on concrete facts. Research methods that used in this research is juridical-normative. Normative juridical research is library law research. In this study, library materials are the basic research data which are classified as secondary data. Descriptive research is research that seeks to describe a symptom, event and incident that is happening at the present time where the researcher tries to photograph the events and incidents that are the center of attention to then describe them as they are. This research uses a qualitative descriptive method. Descriptive method is the method used for describe or analyze a research result but do not used to make broader conclusions. The qualitative research method is a type of research that is based on reality, used on natural object conditions, and the researcher is a key instrument, data grouping techniques are carried out by triangulation (combined), data analysis is inductive, and research results Qualitative emphasizes real reality rather than reasoning. This research is a research method used to clarify social phenomena of omnibus law implementation through various research variables that are interrelated with one another. Research conducted descriptively the researchers do not need to develop hypotheses. Because the research was carried out for the testing and writing process, the results were obtained directly from the field. This research method is a broader study in the use of omnibus law implementation, meaning that it is more inclined to a long analysis from beginning to end. Researchers have the right to conduct research using descriptive methods which are then required to have a strong commitment. Descriptive research methods aim to explain specifically related to omnibus law implementation. Specific explanations make research results more complex, descriptive methods become more varied because they can be in the form of numbers and can also be in words.

3. RESULT AND DISCUSSION

3.1. The Omnibus Law Role on the Protection of Women Workers in Indonesia

The Omnibus Law has an even greater impact on female workers/workers. The first is related to menstruation leave. In the Job Creation Bill, it is stated that (1) Female workers/laborers who feel sick during their menstruation period and inform the employer are not obliged to work on the first and second day of menstruation. (2) The implementation of the provisions referred to in paragraph (1) is regulated in work agreements, company regulations or collective work agreements. In this case, there is no mention of the right to menstruation leave for female workers, moreover the implementation and provisions depend on company regulations, so that female workers have a weak position regarding menstrual leave regulations ^{[4][5]}. As for other articles related to the mechanism for maternity leave and childbirth for female workers as well as giving women workers the opportunity to breastfeed their


children if this has to be done during working hours. the two articles do not include discussion, amendment, and also the status of abolition. Thus, quoting from the Syndication, the substance regarding hourly wages eliminates the essence of menstrual leave and maternity leave because if women workers take the leave they are automatically not counted as working, so they do not get leave pay [6]. The reduction of workers' rights is quite prominent in the amendment to Article 93 paragraph (1) which regulates the right to wages for workers if they do not enter or do work. These changes can even affect the protection of women workers when their menstrual period comes, freedom of religion and belief for workers, or freedom of association. In essence, changing such articles has the potential to abolish the rights of female workers/laborers, namely those who are sick on the first and second day of their menstrual period so they cannot work [7].

The Omnibus Law undermines the position of workers because the regulation eliminates the right to wages for female workers who are sick and forced to be absent from work in the early days of their menstrual period, workers who are married, marry, circumcisions, baptizing their children, wives giving birth and miscarriages, or the death of family members in the same house, workers who carry out their religious rituals and obligations, as well as workers who carry out union duties[8][9]. In another sense, it can also be interpreted that the provision for menstruation leave in Article 81 has not been deleted or changed in the Omnibus Law at all, but this provision emphasizes that a female worker will not receive her wages if she does not come due to illness in the first days of her menstrual period. Such changes also allude to freedom of association for workers where workers in exercising their freedom will be threatened due to an increasingly vulnerable position with the loss of provisions for the right to continue to get wages from carrying out union duties[10]. Termination of Employment (PHK) will occur due to a decrease in the number of severance pay that will be obtained later. Mass layoffs will threaten all workers because the cost of dismissing them is considered cheap compared to having to continuously pay workers, in which case there is no certainty in work. If you compare Law Number 13 of 2003 concerning Manpower with the content contained in the Omnibus Law on Job Creation, it is very different, even though the Manpower Law is considered to be far from good for workers. However, the substance in the Job Creation Omnibus Law will be far worse. The current Manpower Act stipulates a prohibition on companies terminating employment, one of which is if a woman worker becomes pregnant, gives birth, has an abortion, or breastfeeds her baby[11].

3.2. Transformation of Law Number 13 of 2013 concerning Employment into the Omnibus Law

The Employment Creation Bill does not regulate the prohibition of terminating workers from companies with the provisions stipulated in the current Manpower Law. This is clearly detrimental to workers because there is no legal basis for workers being laid off by the company because workers experience conditions as stipulated in Article 153 of the Manpower Law[12]. Based on this, of course it will be a breath of fresh air for the company to commit arbitrariness against the workers who work in the company. In addition, discriminatory treatment of prospective workers and workers who are already working is very likely to occur if you look at the provisions in the Manpower Law (pregnant workers, practicing religion according to their religion, disabled, sick, or religious or political differences) which are not regulated in the draft formulation on Omnibus Law Creates Job Opportunities. When compared with the Labor Law, there are a number of things that are not accommodated in this Job Creation omnibus law. Article 93 of the Manpower Law regulates workers who still receive wages even though they cannot work according to the conditions that have been set. Meanwhile, the Job Creation Bill does not regulate fixed labor wages paid even if the worker does not work in accordance with the provisions, so that if a worker cannot work for reasons stipulated in the Labor Law, then the worker has the potential not to receive wages[13]. This of course will be detrimental to workers, especially if these workers do not have other income posts. In addition, the potential for discrimination against women is also very likely to occur because female workers who apply for maternity leave, maternity leave, miscarriage leave will be considered unemployed and as a result will not receive a penny of wages[14].

The right to leave for female workers during menstruation, pregnancy, childbirth and breastfeeding, which were previously regulated in the Manpower Law, is apparently not included in the Omnibus Law



on Job Creation. There are those who argue that in essence, leave rights for women workers still exist in the Manpower Law. However, according to the author's opinion, based on the principle of *lex posterior derogate legi priori*, the legal substance of the Omnibus Law will be prioritized when compared to the Labor Law^[15]. The absence of leave rights for women workers in certain circumstances creates loopholes and has the potential to be violated leave rights for women workers in certain circumstances. This is because the facts on the ground so far have shown that even though the Labor Law has regulated the right to leave for women workers, there are still violations of the right to leave for women workers^[16]. In addition, the Omnibus Law on Job Creation regulates the payment of hourly workers. This will have an impact on female workers who are on menstrual leave, childbirth and breastfeeding. Legislators should review again to include the articles regarding the right to leave for menstruation, pregnancy, childbirth and miscarriage for women workers in the Omnibus Law on Job Creation and continue to pay wages to women in certain circumstances. And give strict sanctions to employers or companies that ignore the rights of their female workers. In addition, the wage policy under the no works no pay system has been reviewed specifically for the situation of female workers who are on menstrual leave, pregnancy, childbirth and breastfeeding.

Women workers who are paid hourly are the most affected group. Hourly wages are only applied when working women are carrying out production activities. Therefore, they will lose access to the right to leave for menstruation, childbirth, miscarriage, and the opportunity to breastfeed at work because they are considered unproductive. There is not a single article in the omnibuslaw that mentions women's rights. The right to maternity leave is not specified, which is usually given before and after giving birth for a total of three months^[17]. The right to maternity leave in Law 13 of 2003, 1.5 months before and after giving birth. In addition, Article 81 of the Labor Law states that women who are on their first and second day of menstruation are not required to work. However, in a wage system that can change and is based on productivity. The omnibus law regulates the provision of wages for women who are on menstruation or maternity leave. Women fall into work situations with targets, long working hours, inadequate wages, unclear status or not even being recognized as workers. This imbalance in relations makes women more vulnerable to experiencing physical and sexual violence in the workplace^[18]. The Omnibuslaw has the potential to exploit workers, including female workers, without considering women's rights. Arrangements regarding the special situation of women, giving birth, menstruation leave, getting equal benefits and guarantees not to be laid off when women take care of cases of violence experienced, including decent wages. Moreover, there is no regulation regarding state responsibility for physical and sexual violence experienced by working women. The government tends to forget its responsibility to provide the right to feel safe and free from violence.

3.3. Articles of the Omnibus Law which are being debated by women workers

The Omnibus Law on Job Opportunities does contain a number of problems in it such as articles related to labor rights being omitted, which results in workers raising several issues which are considered to only be concerned with the pragmatic interests of the government, which means that according to the workers the policies that should be made to solve the problem are actually on the contrary, the 254 regulations that were made became a nightmare for the lives of workers in Indonesia, in 2015 President Jokowi stipulated PP No. 78 regarding wages, but the PP was amended by the omnibus law because it overlapped with the previous law. The loss of leave for menstruating or pregnant women workers means the loss of fulfilling the primary needs of women workers who must be continuously forced to work so that there are no wage cuts that endanger their health female labourers.

The existence of the omnibus law actually has a negative impact on the workforce, especially laborers or workers. The government is preparing a Job Creation Law using the omnibus law concept, to be used as a scheme to develop the economy so that it is able to attract investors to invest in Indonesia^[19]. These changes further narrow the space for workers to fight for their rights. The employment cluster in the Omnibus Law on Job Creation received the most criticism because it was considered detrimental to workers or laborers. After its ratification, the Omnibus Law on Job Creation invited so much polemic in society that resulted in demonstrations in various regions in Indonesia which took place from October 6 2020 to On October 8, 2020, this demonstration took place because

there were several points in the work copyright law that were considered detrimental to the workers^[20]. The workers are of the opinion that their rights under the labor law will diminish if the Omnibus Law on Job Creation is passed.


Talking about the rights to leave for menstruation, pregnancy, childbirth/breastfeeding for women workers, this has been clearly regulated in the Manpower Law, namely in Articles 81 to Article 83. However, in contrast to the Law. The Omnibus Law on Job Creation is not clearly stated. The Omnibus Law on Job Creation also does not clearly state the special facilities that women workers should receive who are on menstruation leave, miscarriage and childbirth. Women workers should have the right to leave for 1.5 months or according to the recommendation of a midwife or obstetrician, apart from that they also still get a salary. The absence of mention and clarity regarding the right to leave for women workers in certain circumstances has subsequently received a strong reaction from various activists or women's and children's defenders. The reduction in workers' rights is felt in the revision of Article 93 paragraph (1) which regulates workers' wage rights when they do not come or work. These changes may also affect the protection of women workers during menstruation. In essence, the revision of this article can abolish the rights of women workers, namely those who are sick and unable to work on the first and second day of menstruation. The changes also deprive workers of their right to continue receiving wages.

4. CONCLUSION

The results and findings of this study find a bright spot, namely where the omnibus law specifically only benefits investors or corporations and forgets about fulfilling workers' rights, one of which is reducing minimum wages and termination of employment without demands. Working women are the most affected group of workers. How not, the loss of living space will also be very deep for women. Not only losing their source of livelihood and economy, but also destroying social values, social wisdom, knowledge and aspects of spirituality that have been guarded and preserved by women. The reduction of public participation both in the procedure for preparing this omnibus law will contribute to the strengthening of gender inequality and the further marginalization of women. The Omnibus Law does not regulate the prohibition of termination of employment by companies for workers. of course it will be a breath of fresh air for the company to commit arbitrariness to the workers who work in the company. In addition, it is very likely that discriminatory treatment of prospective workers and working women will occur in terms of menstrual leave, marriage leave, maternity leave, and leaves that are the right of women. Such potential discrimination against women is very likely to occur because female workers who apply for maternity leave, maternity leave, miscarriage leave will be deemed not working and as a result will not receive a penny of wages. Therefore, with this research, it is hoped that the government as a policy maker can form an Omnibus Law that protects the rights of workers or laborers, especially women workers or laborers.

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