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***WAGE REGULATION OF OUTSOURCED WORKERS AFTER THE  
OMNIBUS LAW OF THE LABOR CLUSTER BASED ON WAGE THEORY***

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**ABSTRACT**

This research investigates the effects of the enactment of the Job Creation Law (Law Number 11 of 2020) in Indonesia on labor regulations, specifically focusing on wage regulation for outsourced workers and its implications for human rights. Employing a normative juridical approach, the study examines legal materials such as laws, regulations, court decisions, and expert opinions. Through qualitative analysis techniques, the pre- and post-Job Creation Law regulations concerning outsourced workers' wages are explored. The findings uncover significant changes in wage provisions, including the elimination of sectoral minimum wage regulations and the reduction in types of wages for outsourced workers. Moreover, the research reveals discrepancies between the Job Creation Law and international conventions' indicators of freedom, availability, accessibility, and suitability. Concerns are raised regarding the adequacy of workers' rights protection, accessibility to fair wages, and the inclusivity of vulnerable groups within the legal framework. This study contributes to understanding the Job Creation Law's implications for labor and human rights in Indonesia, highlighting areas where the law may fail to ensure equitable treatment and fair compensation for outsourced workers. Policy recommendations aimed at upholding human rights standards in labor regulations are proposed based on the study's findings.

**Keywords: Wage Regulation, Workers, OMNIBUS Law, Labor Cluster, Wage Theory.**

**INTRODUCTION**

Development in the field of labor is part of the development of Indonesian people as a whole, as mandated by Pancasila and the 1945 Constitution of the Republic of Indonesia (Febriani et al., 2022). Government policy in manpower development is principally contained in Law Number 13 of 2003 concerning Manpower, as an implementation of Article 27 paragraph (2) of the Constitution of the Republic of Indonesia Year 1945 which states that "Every citizen has the right to work and a decent living for humanity" Later in its development, the Government issued Law Number 11 of 2020 concerning Job Creation known as the Omnibus Law on Job Creation which was passed on October 5, 2020 (Anggusti, 2021).

Since the establishment of the Job Creation Law with the omnibus law method, several changes and deletions have been made to the regulatory provisions contained in Law Number 13 of 2003 concerning Manpower (Ramadhan & Diamantina, 2020), especially those relating to wages. Based on preliminary observations, it can be seen that several factors contribute to labor

wages after the job creation law is enacted, namely legal influence factors where government policies that regulate business responsibility can affect work performance and productivity. Wage decisions that are not in accordance with market conditions and the set work rate may indicate a violation of the right of citizens to obtain fair wages (Chan, 2016). As well as the limitations of government authority in maintaining the continuity of commitment and motivation of entrepreneurs can affect work performance and productivity (Rahim & Jam'an, 2018).

The Job Creation Law removes the obligation to apply the Provincial Minimum Wage (UMP) for each province. This means that the minimum wage is now more national and can be determined by the central government (Lukiyanova & Vishnevskaya, 2016). The social rights of informal workers are also a point that is not considered in the Job Creation law's new regulations. Informal workers are often not accommodated in the new regulatory system. Adjustment to social rights, such as the right to fair wages, is an important concern (Tyler & Bies, 2015). In the recently enacted Job Creation law, many points reduce or even eliminate workers' rights to get maximum wage rights, per the workload. This can be a source of concern for workers and trade unions. The policy can potentially violate the human rights of outsourced workers and injure the sense of justice aimed at the purpose of development in the field of labor as mandated by Pancasila and the Constitution of the Republic of Indonesia Year 1945 (Linna et al., 2023).

Based on these concerns, it is necessary to study how the concept of regulating the wages of outsourced workers before and after the Job Creation Law and how human rights guarantees in regulating the wages of outsourced workers in the Job Creation Law (omnibus law of labor clusters) (Law Number 11 of 2020) based on wage theory.

## **RESEARCH METHODS**

This research was carried out with a normative juridical approach. The data that are the object of research in this study are laws and regulations, agreements between workers and companies/employers, court decisions, and opinions of legal experts (Dirhamfathurusi, 2019). Secondary legal materials in the form of various relevant books, scientific papers in the form of law journals, articles in magazines, or lecture textbooks. While tertiary law materials are in the form of relevant dissertations and dictionaries (ANYAEGBU, 2016).

The technique of analysis of legal materials applied in this study is a qualitative technique, which describes a condition and various facts about the object of research related to the use of various legal theories. Legal materials will be collected in the DKI Jakarta area using literature analysis techniques (Muhashiby et al., 2021).

## **RESULTS AND DISCUSSION**

### **Wage Regulation for Outsourced Labor Before and After the Job Creation Law**

#### ***Minimum wage***

The minimum wage is a means of protection for workers/workers in maintaining the value of wages obtained so as not to decrease in meeting daily needs (Hamid, 2020). The establishment of this minimum wage is a state intervention in providing protection for workers' rights in protecting workers based on decent living standards. In Article 1, paragraph 1 of the Regulation

of the Minister of Manpower No.1/1999, the minimum wage is the lowest, including basic salary and fixed allowances. The minimum wage aims to provide a safety net in the labor sector and keep workers earning a decent wage (Soares, 2018). The determination of the minimum wage is also to avoid workers/workers from the arbitrariness of employers in providing wages. Article 89 paragraph (1) of Law No. 13 of 2003 has stipulated that the minimum wage consists of:

1. minimum wage based on the area of the district/city province;
2. The minimum wage is based on the sector in the district/city area.

The district/city sectoral minimum wage policy is formed after the district/city minimum wage and provincial minimum wage are determined, after the implementation of UMK and UMP, an agreement is formed between employers' associations in the leading sector and trade unions/workers. Suppose a district/city has a superior sector (Nurriyanti & Setyowati, 2023). In that case, the district/city wage board will notify the results of the study to the employers' association in the sector concerned and conduct discussions to discuss companies included in the leading sector and discussions related to the nominal amount of the district/city sectoral minimum wage.

According to Article 15, point (6) of Minister of Manpower and Transmigration Regulation No. 15 of 2018, the governor is not authorized to establish a sectoral minimum wage if a district or city does not have a superior sector. The district or city minimum wage will be applied instead in such cases (Simon & Wilson, 2021). Additionally, Article 90 regulates the minimum wage requirements, stating that employers are prohibited from paying wages below the minimum wage. Employers who fail to meet the minimum wage requirement may face suspension (Razavi et al., 2020).

The provincial sectoral minimum wage must exceed the provincial minimum wage by at least 5%. Similarly, the district or city sectoral minimum wage must exceed the district or city minimum wage by at least 5%. The suspension of the minimum wage implementation for companies that are unable to afford it is intended to provide temporary relief to the concerned company (Gerard et al., 2020). During the suspension period, the minimum wage in effect at that time does not need to be fulfilled. However, once the suspension is lifted, the company must comply with the minimum wage applicable at that time, without the obligation to retroactively fulfill the minimum wage provisions that were in force during the suspension period.

### ***Overtime Pay***

Overtime pay is if the employer hires workers/workers in excess of the stipulated working time provisions, then the workers/workers are entitled to overtime pay (Thomas et al., 2019).

As explained in the Manpower Law in article 78, paragraph (2), "Employers who employ workers/laborers beyond working time must pay overtime wages". Where overtime work can only be done at most 3 (three) hours in 1 (one), day and 14 (fourteen) hours in 1 (one) week, and of course, overtime work time must be agreed upon between employers and workers.

### ***Wages do not come to work because they are unable and do not come to work because they carry out other activities outside their work***

Wages are not coming to work because they are unable to do so, and wages are not coming to work because they carry out other activities outside their work. Article 93, paragraph (1) states that wages are not paid if workers/laborers do not do work. Furthermore, in paragraph (2) it is affirmed that this does not apply, and the employer is obliged to pay wages if:

- a. workers/laborers are sick so they cannot do work;
- b. female workers/laborers who are sick on the first and second days of their menstrual period so that they cannot do work;
- c. workers/workers do not come to work because workers/workers marry, marry, circumcision, baptize their children, wives give birth or miscarriage, husband or wife or children or daughters-in-law or parents or in-laws or family members in one house die;
- d. workers/laborers cannot do their work because they are carrying out obligations to the state;
- e. workers/laborers cannot do their work because they carry out the worship ordered by their religion;
- f. workers are willing to do the work that has been promised but the employer does not hire them, either because of his own fault or obstacles that the employer should be able to avoid;
- g. workers/laborers exercise the right to rest;
- h. workers/workers carry out the duties of trade unions/trade unions with the approval of employers;
- i. Workers/laborers carry out educational duties from the company.

#### ***Wages for exercising the right to rest his work***

It has been explained in the previous description in Article 93 that employers are obliged to pay wages if workers do not do their work because they exercise the right to rest their work.

##### 1. Forms and ways of payment of wages

The labor system in Indonesia has provisions that require each company to establish rules on the structure and scale of wages that apply to all employees (Hamid, 2021). The structure and scale of wages is an arrangement of wage levels from lowest to highest, which contains a nominal range of wages from smallest to largest for each class of positions. The structure and scale of wages describe the level of wages in the company that is used as a guideline in determining employee salaries, which aims to create fair wages, reduce pay gaps, and help companies have a standard payroll scale as part of a good compensation system.

##### 2. Wages for severance payments

The Manpower Law has required or required every company to assist or at least reduce the burden on laid-off workers/workers by providing severance pay, award money, and rights replacement money. Severance pay is money given to employees when there is a termination of employment based on the length of service that has been taken by the worker (Djuwito, 2022).

#### **Wage Provisions for Outsourced Workers in Law Number 13 of 2003 concerning Manpower**

One of the striking changes to the omnibus law of the labor cluster is the abolition of the sectoral minimum wage provision which was later replaced by the provisions in Article 81 number 26 of Law Number 11 of 2020 concerning Job Creation ("Job Creation Law").

In the wage provisions in Article 88 of the Manpower Law, 11 kinds of policies have been regulated including minimum wage, overtime pay, wages for not coming to work because they are unavailable, wages for not coming to work due to carrying out other activities outside their

work, wages for exercising the right to rest their work, forms and methods of payment of wages, fines and deductions for wages, things that can be calculated with wages, the structure and scale of wages, wages for severance payments, and wages for the calculation or payment of other things and obligations. Meanwhile, in the Job Creation Law, wage provisions only regulate 7 kinds of policies, namely minimum wages, wage structures and scales, overtime pay, wages for not coming to work and not doing work for certain reasons, forms and methods of wage payments, things that can be calculated with wages; and wages as the basis for calculating or paying other rights and obligations and wages as the basis for calculating or paying other rights and obligations (Flambonita et al., 2019).

There are several things that are highlighted because of changes with significant impacts and are considered detrimental to workers, including:

1. Reduced types of wages

In the Job Creation Law, there are several points missing from the Manpower Law, namely points about wages for not coming to work because they are unavailable, wages for exercising their right to rest work, wages for severance payments, and wages for calculating income tax. Reducing this type of wage also reduces the income of workers/laborers, which is one of the elements causing the rejection of the job creation law (Hamid, 2021).

2. Non-inclusion of the decent living component

The Job Creation Law contains provisions on the determination of the minimum wage stipulated in Article 88D, which was previously not in the Manpower Law. The calculation of the minimum wage listed in article 88C and paragraph (2) is calculated by:

The minimum wage calculation formula, as referred to in paragraph (1), contains economic growth or inflation variables.

The government regulation regulates further provisions regarding the minimum wage calculation formula (Eldring & Alsos, 2012).

The difference in minimum wage standards between the Manpower and Job Creation Law is in the point of decent living needs.

The Manpower Law states that one of the minimum wage setting standards is based on the needs of a decent life, but the Job Creation Law negates this point in the provisions for setting the minimum wage.

3. Length of service is not considered

Article 92 of the Job Creation Law reads:

Employers are obliged to draw up the structure and scale of wages in the company with due regard to the company's capabilities and productivity.

The structure and scale of wages are used as guidelines for employers in setting wages (Krueger & Summers, 1988). Further provisions regarding the structure and scale of wages are regulated in the Government Regulation.

The Manpower Law states that the preparation of the structure and scale of wages must pay attention to the class, position, length of service, education, and competence of workers.

However, the Job Creation Law negates these considerations and delegates the preparation of structures and wage scales based only on the ability and productivity of the company.

Among the articles related to wages that are highlighted as a form of problem for workers / workers, are as follows:

**a. Minimum Wage**

The Job Creation Law eliminates article 88D regarding decent living needs in the provisions for the application of wages in the Manpower Law by replacing these provisions with calculations based on economic growth/infection variables regulated in article 88D of the Job Creation Law.

The Job Creation Law eliminates the provisions of Article 89 of the Manpower Law and adds several points to Article 88C. It is contained in article 88C paragraph (1), which states that "The Governor shall determine the provincial minimum wage." further in article 88C paragraph (2), which states that "The Governor may determine the minimum wage of the district/city with certain conditions."

**b. Wage Structure and Scale**

The difference in the preparation of the structure and wage scale between the Manpower Law and the Job Creation Law lies in the consideration of class, position, length of work, education, and competence of workers which then only these considerations are eliminated by making the preparation of the structure and scale of wages based only on the ability and productivity of the company.

**c. Severance Pay Wages**

There are several articles that have been abolished in the Job Creation Law, including the following:

- a) The Job Creation Law abolishes the provisions in Article 156 related to the provision of money in lieu of rights that should be received by laid-off workers/workers
- b) The Job Creation Law abolishes the provisions in Article 161 related to the provision of severance pay for workers/workers who are laid off because of warning letters
- c) The Job Creation Law abolishes the provisions in Article 163 related to the provision of severance pay for workers/workers who are laid off due to amalgamation, change of company ownership status
- d) The Job Creation Law abolishes the provisions in articles 164 and 165 related to the provision of severance pay for workers/workers who are laid off because employers lose money for 2 years and go bankrupt, then later if workers/workers who are laid off because the company has suffered losses for 2 years and bankruptcy they are no longer entitled to receive severance pay.
- e) The Job Creation Law abolishes the provisions in Article 166 related to the provision of compensation in the form of severance pay for heirs or families if the worker/worker dies.
- f) The Job Creation Law abolishes the provisions in Article 167 related to the provision of severance pay for workers/workers who are laid off because they have entered retirement age
- g) The Job Creation Law abolishes the provisions in Article 172 related to the provision of severance pay for workers/workers who are laid off due to prolonged illness, disability, or work accidents that cause an influx for 12 months / 1 year.

Law No. 11 of 2020 and Government Regulation No. 35 of 2021 have abolished the distinction between job supply and labor supply in outsourcing. Previously, outsourcing was limited to supporting work or non-core business processes. However, these restrictions have been lifted, allowing for a wider range of work to be outsourced based on sector-specific needs (Jaehrling & Méhaut, 2013). Consequently, the remuneration of outsourced workers is determined through agreements between the workers and labor supply providers.

Under Article 61A of the Job Creation Law, employers have a legal obligation to provide compensation to workers when a certain time work agreement expires. This provision ensures that workers or laborers receive the compensation they are entitled to. The specific regulations regarding compensation are outlined in Government Regulation No. 35 of 2021, which covers certain time work agreements, outsourcing, working time and rest time, and termination of employment.

### **Human Rights Guarantee in Regulating Wages for Outsourced Workers in the Job Creation Law Based on Wage Theory**

#### **Wage Protection as a Guarantee of Constitutional Rights of Indonesian Citizens**

The protection of wages, which is a constitutional right of Indonesian citizens, is directly linked to the provisions of the 1945 Constitution. Article 28 of the Constitution guarantees the right to work and receive fair and decent compensation in employment relationships. Additionally, Article 39 grants individuals the right to form trade unions without any hindrance, enabling them to protect and advocate for their interests (Abbott & Snidal, 2021).

Furthermore, Article 41 of the 1945 Constitution ensures the right to social security, which is essential for a decent standard of living and personal development. Article 27, paragraph (2), emphasizes that every citizen has the right to work and a respectable livelihood. Additionally, Article 28 H, paragraph (2), asserts that everyone has the right to self-protection, family, honor, dignity, and property, including the right to decent employment and a respectable livelihood.

The right to welfare, including the right to wages, is covered in Article 36 and Article 42 of Law No. 39 of 1999. However, it is worth noting that previous laws such as Constitutional Court Decision Number 100/PUU-X/2012 and Constitutional Court Decision Number 50/PUU-XI/2013 have been declared legally non-binding as they conflict with the provisions of the 1945 Constitution.

Law Number 13 of 2003 concerning Manpower and laws and regulations related to labor also regulate workers' rights, including the right to a decent wage in accordance with applicable regulations (Hudiana & Susetyo, 2020). Then the Job Creation Law clearly stipulates in Article 88 paragraph (1) that "Every worker/laborer has the right to a decent living for humanity." In addition to the protection that previously consisted of as many as 11 (eleven) rights, the Job Creation Law is still the same after the explanation of the article.

The wage system in Indonesia is generally based on three functions, namely:

1. Ensure a decent life for workers and families.
2. Reflects the reward for the results of one's labor.
3. Provide incentives to encourage and increase work productivity.

Government Regulation No. 35 of 2021 addresses wage protection for outsourced employees. This regulation ensures that outsourcing companies are responsible for safeguarding the rights of workers, including their wages, welfare, working conditions, and resolution of disputes arising from work agreements. The regulation stipulates that outsourcing companies must adhere to the laws and regulations regarding labor protection. Specifically, Article 23, paragraph (3) of Government Regulation No. 36 of 2021 prohibits employers from paying wages below the minimum wage.

### **Human Rights Guarantees in Wage Regulation of Outsourced Labor**

Ensuring wages serve as a safeguard for the constitutional entitlements of Indonesian nationals pertains to the government's responsibility to uphold human rights, encompassing the right to employment and the mitigation of unemployment (Adiningtyas, 2018). The assurance of Human Rights (HAM) in stipulating wage standards for contracted employees in Indonesia aligns with the provisions outlined in Article 9 of Law Number 39 of 1999 concerning Human Rights. Contracted employees possess the entitlement to subsist, sustain their livelihoods, and enhance their quality of life, inclusive of the right to dignified employment and means of sustenance.

According to Law Number 11 of 2020 concerning Job Creation, outsourced workers have the same rights as permanent workers, including the right to a decent wage and social security. However, in practice, the protection of outsourced workers in fulfilling wages and working hours is still neglected.

The minimum wage determination policy as stipulated also in Law Number 13 of 2003 is directed to achieve Decent Living Needs (KHL) in addition to guaranteeing workers/wage earners to meet the needs of life. The minimum wage achievement program for Decent Living Needs (KHL) shows real improvement. It is intended that the fulfillment of the needs of life will be achieved gradually (Flambonita et al., 2019).

In terms of wages, the decline in workers' rights can be seen in the wage mechanism. Previously, the Manpower Law still regulated the existence of sector minimum and minimum wages for provinces and districts/cities (Article 89 paragraph 1, letters a and b). But now, the Job Creation Law is not regulated anymore. The Job Creation Law only regulates the governor's obligation to make the provincial minimum wage. Furthermore, regarding the district/city minimum wage, the authority is transferred to the governor and it is optional by complying with certain conditions. (Chapter IV of Manpower Part Two on Manpower Article 81 Number 25 concerning the stipulation of Article 88C paragraphs 1 and 2, as stated above, is part of the insert article between Articles 88-89 of the Manpower Law in the Job Creation Law). Specifically with regard to the abolition of the sector's minimum wage, according to experts, the abolition led to the practice of flattening the wages received by workers with specific skills and workers without skills.

In human rights discourse, the state is the stakeholder. The obligation to promote human rights can be found in Article 28I paragraph 4 of the 1945 Constitution. In addition to promotion,



there are other obligations imposed on the state, namely protection, enforcement, and fulfillment. The norm of state obligations on human rights in the 1945 Constitution is unique because so far, the obligations on human rights that apply to the state only focus on respect, protection, and fulfillment. With the advancement, this indicates that the state's obligation is not enough to carry out protection, enforcement, and fulfillment for a while, but is required to carry it out repeatedly to show a progressive increase in the quality and quantity of implementation of obligations.

This norm of the promotion of human rights is in accordance with the principle of advanced fulfillment as stipulated in the International Covenant on Economic, Social, and Cultural Rights, which has come to be known as the Ecosob convention, as stated in Law number 11 of 2005. Indonesia is obliged to implement the Covenant because it is one of the countries that has ratified it.

Some indicators that can be included in advanced fulfillment standards for economic rights are freedom, availability, accessibility, and compatibility.

**a. Right to Freedom**

The Job Creation Law does not meet the freedom indicator because there is material that does not liberate the vulnerable and weak. The Job Creation Law does not provide adequate protection for outsourced workers in terms of freedom and rights of outsourced workers (Berg, 2019).

**b. Right of availability,**

The Job Creation Law can also be said not to meet the availability indicator because there is material that regulates wage policies that have not been committed to increasing the availability of workers' needs.

The Job Creation Law does not explicitly stipulate a commitment to increase the availability of outsourced workers' needs. Wage arrangements that have not committed to increasing the availability of outsourced workers' needs may cause such workers to continue to be in uncertain and vulnerable conditions.

**c. Accessibility rights**

The material of the Job Creation Law has not created affirmative policies and legal frameworks, which respond to the needs and weaknesses that result in certain groups being hampered in accessing their rights.

Outsourced workers' limited access to education and training also limits their ability to upskill and obtain better jobs. It can also reduce the freedom of outsourced workers to find jobs that match their talents and interests. Limited access to social security and welfare can also limit the freedom of outsourced workers to choose jobs and safeguard their own welfare and that of their families (Germano, 2018).

**d. Right of conformity**

The Job Creation Law does not meet the indicators of conformity because there is material that does not reflect a partiality for vulnerable people in accordance with a comprehensive

understanding of the fulfillment of rights. The Job Creation Law has been the subject of debate due to various issues related to workers' rights, including wages for outsourced workers.

## CONCLUSION

The omnibus law on labor clusters undergoes a notable transformation concerning wage elements, particularly with the elimination of sectoral minimum wage provisions and the subsequent insertion of provisions found in Article 81 number 26 of Law Number 11 of 2020 regarding Job Creation. Furthermore, the law reduces the number of wage policies from 11 to 7 compared to previous labor laws. Several significant changes, perceived as disadvantageous to workers, include the reduction in entitlements for outsourced workers such as wages for absence, rest time, severance payments, and income tax calculations. Moreover, the exclusion of decent living components in wage considerations and the neglect of working periods in wage determinations are highlighted. According to the analysis, the Job Creation Law falls short of meeting international convention indicators such as freedom, availability, accessibility, and suitability. Specifically, it fails to ensure freedom by not adequately protecting vulnerable individuals, lacks provisions to enhance the availability of workers' needs, neglects to establish policies for accessibility that cater to disadvantaged groups, and doesn't demonstrate a commitment to fairness towards vulnerable populations in line with comprehensive human rights principles.

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