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ALIENATION OF LABOUR REGULATIONS IN THE JOB CREATION LAW WITH INTERNATIONAL HUMAN RIGHTS

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Abstract
Job creation regulated in Law 6 of 2023 still leaves legal problems at the norm level, especially regarding workers' rights. This study analyses the workers' rights regulations regulated in the International Covenant on Economic, Social, and Cultural Rights 1976 (ICESCR) and the ILO Convention associated with labour clusters. This research uses normative legal research. The results of this study are first, the rights of workers/labourers regulated in the Eco Covenant and the ILO Convention are the right to work, get a decent wage, not forced to work; leave; the right to be free from forced labour; get weekly breaks; and the role of the state represented by the government to guarantee the rights of workers/labourers. Second, there is a discrepancy between the Eco Covenant and the ILO Convention regarding the regulation of labour in the labour cluster, so it is contrary to human rights principles. The state should pay more attention to the provisions of the Eco Covenant and the related ILO Conventions, and the internal regulation of the employment cluster must be inclined to workers/labourers with a lower bargaining position than employers.

Keywords: Human Rights, ICESCR, Job Creation Law, Labour,

Abstrak
Cipta kerja yang diatur dalam Undang-Undang 6 Tahun 2023 masih menyisakan permasalahan hukum dalam tataran norma, khususnya dalam wilayah hak pekerja/buruh. Tujuan dari adanya penelitian ini adalah untuk menganalisis peraturan tentang hak-hak pekerja/buruh yang diatur dalam Kovenan Ekosob dan Konvensi *ILO* yang dikaitkan dengan klaster ketenagakerjaan. Penelitian ini menggunakan penelitian hukum normatif. Hasil penelitian ini adalah *pertama*, hak-hak pekerja/buruh yang diatur dalam Kovenan Ekosob dan Konvensi ILO adalah hak bekerja; mendapatkan upah yang layak; tidak dipaksa bekerja; cuti; hak terbebas dari kerja paksa; mendapatkan istirahat mingguan; dan peran negara yang direpresentasikan oleh pemerintah untuk menjamin hak-hak bagi para pekerja/buruh. *Kedua*, terdapat ketidaksesuaian antara Kovenan Ekosob dan Konvensi ILO dengan pengaturan ketenagakerjaan yang diatur dalam klaster ketenagakerjaan, sehingga bertentangan dengan prinsip-prinsip dari hak asasi manusia. Seharusnya negara lebih melihat lagi kepada ketentuan Kovenan Ekosob dan Konvensi ILO yang terkait dan pengaturan dalam pada klaster ketenagakerjaan harus condong kepada pekerja/buruh yang memiliki posisi tawar yang lebih rendah daripada pengusaha.

Kata Kunci: Ketenagakerjaan, Hak Asasi Manuisa, UU Cipta Kerja.

Introduction

As a duty-bearer,[1] The state, which in this case is represented by the government, be it legislative, executive, or judicial powers, must provide guarantees for the fulfilment, protection, and respect of human rights, both positive and negative rights.[2] However, this is not seen in the regulations related to labour law that are regulated in Law Number 6 of 2023. As is known, regulation at the legal level is a form of legal protection provided by the state to the community,[3] There is no arbitrariness because it has been guaranteed in the form of legal certainty and provides justice in substance.[4] The legal relationship in the context of labour law is not the same as in the civil realm in general.[5] As a lex specialis, labour law emphasises the difference in legal relations between employers who are higher than workers/labourers who are inferior,[6] The importance of the state's role in providing legal protection to workers/labourers at the legal level is emphasised so that the rights of workers/labourers benefit more normatively than employers with a higher legal position.[7]

This is what is not seen in the labour cluster of the Job Creation Law, which substantially and overall benefits employers rather than workers, thus contradicting the principles of international human rights law, which emphasises the importance of the role of the state in carrying out its duties or obligations to ensure related to the recognition, fulfilment, protection and respect of human rights.[8] In the context of labour, the state should be more on the side of

1 Gamze Erdem Türkelli, "Extraterritorial Human Rights Obligations and Responsibility under International Law," in *The Routledge Handbook on Extraterritorial Human Rights Obligations*, ed. Mark Gibney et al. (London: Routledge, 2022), 40.

2 Mirza Satria Buana, "Kelindan Antara 'Hak Negatif' Dengan 'Hak Positif' Dalam Diskursus Hak Asasi Manusia," *Veritas et Justitia* 9, no. 1 (July 1, 2023): 34–57, https://doi.org/10.25123/vej.v9i1.6042.

3 Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara* (Surabaya: PT. Bina Ilmu, 1987).

4 Fatmawati Fatmawati, Muhammad Shuhufi, and Anita Chaturvedi, "Defamation in the New Criminal Code: A Review of Substantive Justice," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 3 (December 28, 2023): 465–480, https://doi.org/10.29303/ius.v11i3.1288.

5 Qi Zheng and Jianning Su, "Subordination Theory in Practice: An Empirical Analysis of Chinese Courts' Approaches to Classifying Labour Relationships in Platform Cases," *Industrial Law Journal* 52, no. 3 (September 1, 2023): 721–750, https://doi.org/10.1093/indlaw/dwad015.

6 Anastasia Tataryn, "Re-Conceptualizing Labour Law in an Era of Migration and Precarity," *Law, Culture and the Humanities* 16, no. 3 (October 1, 2020): 477–498, https://doi.org/10.1177/1743872116683381.

7 Valerio De Stefano et al., "Does Labour Law Trust Workers? Questioning Underlying Assumptions Behind Managerial Prerogatives," *Industrial Law Journal* 53, no. 2 (June 1, 2024): 206–238, https://doi.org/10.1093/indlaw/dwad022.

8 Aswanto Aswanto and Wilma Silalahi, *Perlindungan, Penghormatan Dan Pemenuhan Hak Asasi Manusia: Hak Asasi Manusia Domestik Dan Internasional* (Depok: Rajawali Pers, 2021).

workers/labourers than employers as a form of legal protection.[9] The legal issues that occur in the Job Creation are critical to discuss and analyse because there are so many conflicts of legal norms that arise, especially in the labour cluster, which is conflicts in the fundamental human rights domain, namely the right to work[10] and other worker/labourer rights which are regulated in general within the scope of labour law and also in international human rights law as provided for in the International Covenant on the Economy, Social and Cultural Rights (ICESCR)[11] as well as in the International Labour Organization Conventions (ILO Conventions). By changing, revoking, and enacting legal norms or articles regarding employment in the Job Creation, several fundamental human rights have been violated and have damaged the legal aims or ideals of the labour law.

The legal problems with the Job Creation Law raised in this research are those related to work for an indefinite period; the right to rest and wages, which is being regulated in article 59 paragraph (1); article 77 paragraph (4); article 78; article 79; article 88B; article 88C paragraph (2); article 88D paragraph (2); article 89; article 90; article 91; article 92 and article 95. All of these articles are the point of problem in the labour cluster, which is substantially contrary to international human rights law as stipulated in the International Covenant on Economic, Social and Cultural Rights and also in the International Labour Organization Conventions, which guarantee the fundamental rights of workers/labourers so as not to be discriminated against normatively and empirically. Other issues, namely regarding work agreements for a specific time, minimum wages, layoff processes, layoff compensation and Job Loss Benefits, are also submitted to the Government Regulations in detail. Supposedly, the norms related to constitutional rights must be regulated by law, not by government regulations. The right to a decent life, decent work, and proper social security are implemented in employment relations, minimum wages, layoff processes, and layoff compensation, so these norms are regulated by law.[12]

The legal consequence of the existence of a Job Creation Law in the Labour Cluster is that in each company, there will be differences in the subordination of treatment by employers to workers/labourers, even though the establishment of labour law is due to an unequal bargaining position that exists in employment

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9 Mykola Inshyn et al., "Protection of Workers' Rights in the Processing Industry," *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 13, no. 3 (August 1, 2021): 03121002, https://doi.org/10.1061/(ASCE)LA.1943-4170.0000462.

10 Tom Baum and Nguyen Thi Thanh Hai, "Hospitality, Tourism, Human Rights and the Impact of COVID-19," *International Journal of Contemporary Hospitality Management* 32, no. 7 (January 1, 2020): 2397–2407, https://doi.org/10.1108/IJCHM-03-2020-0242.

11 Virginia Brás Gomes, "The Right to Work and Rights at Work," in *Research Handbook on Economic, Social and Cultural Rights as Human Rights*, ed. Jackie Dugard et al. (Cheltenham: Elgar, 2020), https://www.elgaronline.com/edcollchap/edcoll/9781788974165/9781788974165.00020.xm.

12 Marulak Pardede, *Omnibus Law Dalam Grand Design Sistem Hukum Indonesia (Studi Kasus: UU No. 11 Tahun 2020 Tentang CIPTAKER)* (Jakarta: Papar Sinar Sinanti, 2021).

relations (between workers/labourers and employers) as Otto Kahn Freund stated that the primary purpose of labour law is to eliminate the imbalance in the relationship between the two that arises in work relations.[13] According to Soetiksno, all regulations in the field of labour should provide protection to workers/labourer's (inferior) against employers (superior) because in essence the two legal subjects have an unequal bargaining position.[14]

This is contrary to the principles of international human rights law, especially in the International Covenant on Economic, Social and Cultural Rights, which guarantees the right for workers/labourers to earn decent wages and adequate rest. Moreover, labour law also moves on the same argument as international human rights law, that workers/labourers and employers have an unequal legal relationship; unlike civil law relations in general, workers/labourers have a lower legal position (inferior) than employers with higher legal status (superior).[15] So, the state should be present to intervene and carry out its obligations as an obligor to fulfil the positive rights of citizens, namely the rights of these workers/labourers.

Previous research discusses the Job Creation Law, namely research conducted by the author on behalf of Agus Suntoro, whose research title is "Implementasi Pencapaian Secara Progresif dalam Omnibus Law Cipta Kerja." This research discusses how the Government and the DPR formed Law Number 11 of 2020 concerning Job Creation using the omnibus law method, aiming to increase investment by establishing new norms and changing and removing several regulations.[16] The following research is by the author on behalf of Muh Sjaiful, whose research title is "Problematika Normatif Jaminan Hak-Hak Pekerja Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja". This research is oriented to find out the substance of the article on labour aspects in Law number 11 of 2020 concerning Job Creation, whether it has provided guarantees for workers/labourers of their rights, and to find out and analyse the philosophical basis that underlies the characteristics of the labour-related articles in the Law number 11 of 2020 concerning Job Creation.[17]

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[13] Paul Davies and Mark Freedland, *Kahn-Freund's Labour and the Law*, Third Edition (London: Stevens & Sons, 1983).

[14] Mohammad Fandrian Adhistianto, "Politik Hukum Pembentukan Rancangan Undang-undang Cipta Kerja (Studi Klaster Ketenagakerjaan)," *Pamulang Law Review* 3, no. 1 (August 15, 2020): 1–10, https://doi.org/10.32493/palrev.v3i1.6530.

[15] Adalberto Perulli, "The Legal and Jurisprudential Evolution of the Notion of Employee," *European Labour Law Journal* 11, no. 2 (June 1, 2020): 117–130, https://doi.org/10.1177/2031952520905145.

[16] Agus Suntoro, "Implementasi Pencapaian Secara Progresif dalam Omnibus Law Cipta Kerja," *Jurnal HAM* 12, no. 1 (April 22, 2021): 1–18, https://doi.org/10.30641/ham.2021.12.1-18.

[17] Muh Sjaiful, "Problematika Normatif Jaminan Hak-Hak Pekerja Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Media Iuris* 4, no. 1 (February 11, 2021): 37–60, https://doi.org/10.20473/mi.v4i1.22572.

So, based on these two previous studies, there are still legal issues that have not been analysed about the substance of the Job Creation Law. Moreover, there is still no substantial analysis of the Job Creation Law, especially in the labour cluster, regarding the aspects of the ICESCR and the ILO Convention, so there is a novelty in this research article. The purpose of labour law is to prioritise the rights of workers/labourers because they have a weak bargaining position. After all, if employers are prioritised, the legal consequence is that in every company, there will be differences in the subordination treatment carried out by employers towards workers/labourers, even though labour law was formed aims to balance the unequal bargaining position (bargaining position) contained in the employment relationship (between workers/labourers and employers).[18]

Given the context provided, the author's objective is to conduct a comprehensive analysis of how workers' rights are regulated in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and ILO Conventions. The focus will be on the alignment of labour law in the Job Creation Law with these international standards, particularly in the Labour Cluster. This analysis is significant as it will provide a deeper understanding of the legal framework governing workers' rights.

Research Methods

With legal issues related to the Job Creation Law causing so many legal polemics, ranging from making and ratifying lawsuits in the Constitutional Court to violating the principles and theories of the law itself, the research method used is normative legal research methods.[19] Based on the legal issues raised to be analysed in this scientific research it is studied with analytical prescriptive research methods to provide other solutions related to the problem of legal matters of this Job Creation Law, like work for an indefinite period, the right to rest and wages, which is being regulated in article 59 paragraph (1); article 77 paragraph (4); article 78; article 79; article 88B; article 88C paragraph (2); article 88D paragraph (2); article 89; article 90; article 91; article 92 and article 95. The approach in this research is statute approach and conceptual approach, which are being used in such a way as to research the object of studying laws relating to labour regulations in Job Creation Law on Labour Cluster according to ICESCR and ILO convention as an instrument of international law in the context of human rights, in which later hope there will be new scientific understanding input as a contribution to Job Creation Law in the Labour Cluster and a whole law in Indonesia.

[18] Adhistianto, "Politik Hukum Pembentukan Rancangan Undang-undang Cipta Kerja (Studi Klaster Ketenagakerjaan)."

[19] Derita Prapti Rahayu dan Sulaiman, *Metode Penelitian Hukum* (Yogyakarta: Thafamedia, 2020).

Result and Discussion

Regulation of Worker/Labour Rights in the International Convention on Economic, Social and Cultural Rights (ICESCR) and ILO Conventions

Rights related to social welfare are included in the second generation of Human Rights, which is the right to work, the right to equal and decent wages, the right to a comfortable place to live, the right to food, the right to social security, the right to health services, and more communal rights, in which these rights become the fundamental rights of workers/labourers. This is motivated by the rampant misuse of the development of capitalism and the notion of individual freedom that underlies it, which tends to allow and even justify the exploitation of the working class and colonial nations. In this second generation, the active or positive role of the state is more emphasised than its passive or negative role. The state must act more actively to fulfil or make these rights available. Because of this, the rights of the second generation are formulated in positive language: "right to", and not in negative language: "freedom from". The state's duty, according to the rights of the second generation, is to ensure the fulfilment of the right to work, social security, food, housing, health, education, etc., by providing positive benefits.[20]

Workers/Labourers Rights in International Covenant on Economic Social and Cultural Rights

The rights of workers/labourers are generally regulated in the International Covenant on Economic, Social and Cultural Rights, ratified by Law 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social and Cultural Rights. This Covenant contains 31 Articles that regulate fundamental rights related to the Economy, Social and Culture. Overall, in this second generation, the social and economic rights elaborated in the International Covenant on Economic, Social and Cultural Rights concern, among others, the right to work, right to equal pay, right not to be forced to work, right to leave, right to food; right to housing; right to health; and proper to education.[21]

The right to work is explicitly normalised in several articles in the International Covenant on Economic, Social and Cultural Rights, which was ratified by Law Number 11 of 2005, as in Article 1 paragraph (1) and (2):

> "All peoples have the right of self-determination. By that right, they freely determine their political status and pursue economic, social, and cultural development.
>
> For their own ends, all peoples may freely dispose of their natural wealth and resources without prejudice to any obligations arising from

[20] Eko Riyadi, *Hukum Hak Asasi Manusia: Perspektif Internasional, Regional Dan Nasional* (Depok: Rajawali Pers, 2020).

[21] Marojahan JS. Panjaitan, *Politik, Hak Asasi Manusia, Dan Demokrasi: Dalam Bingkai Negara Kesejahteraan Dan Kebahagiaan Menurut UUD 1945* (Bandung: Pustaka Reka Cipta, 2018).

international economic cooperation based on the principle of mutual benefit and international law. In no case may a people be deprived of its means of subsistence."

They are fulfilling the right to workplaces with more emphasis on access to the world of work without discrimination based on religion, ethnicity, etc. At the same time, the fulfilment of the right to work concretises and implements normative rights for workers/labourers, such as salary, security and safety facilities, and their future. The consequence is that the state is obliged to provide facilities for openness and availability of employment and space for the actualisation of dignified life in the world of work.[22]

The constitution guarantees everyone the right to a decent and fair job, without exception, as stated in Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia."Everyone has the right to work and receive fair and proper compensation and treatment in a working relationship."

Law number 39 of 1999 concerning Human Rights also guarantees the right to get a decent job, namely in Article 38 paragraph (1): "Every citizen has the right to decent work according to their talents, skills and abilities."

In Law no. 13 of 2003 concerning Labour, which regulates the right to work as the legal basis for fulfilling the right to work as a fundamental human right for the people of a country, it is stated in Article 4 letter b: "Realizing equal distribution of employment opportunities and supply of labour by the needs of national and regional development."

Article 28D Paragraph (2) of the 1945 Constitution of the Republic of Indonesia emphasises that everyone has the right to work and receive compensation. The above article begins with the phrase "everyone". The meaning of "everyone" is every legal subject attached to its rights and obligations.[23] So, with no exceptions to the article, this person is specifically for people of social caste, race, religion, descent, and so on. Everyone has the right to get a fair and decent job.

Fulfilment of the right to work correlates with other rights guaranteed in the Constitution, including the right to education, health, and so on. So that a worker/labourer can be competent in what is expected of the company. The guarantee of the right to work indicates that humans are respected as creatures capable of developing and determining themselves. By working, humans also free themselves from negative dependence on others. At the same time, he asserts his identity and existence through work. In other words, work is related to human

[22] Sekar Anggun Gading Pinilih, "Hak Bekerja bagi Penyandang Cacat Ditinjau dari Konstitusi Indonesia," *Jurnal Ilmiah: Hukum dan Dinamika Masyarakat* 14, no. 1 (2016): 60–69, http://dx.doi.org/10.56444/hdm.v14i1.444.

[23] Rifyal Tahmil, "Hak Konstitusional Mantan Narapidana Tindak Pidana Korupsi untuk Mendapatkan Pekerjaan," *Tadulako Master Law Journal* 5, no. 1 (February 2021): 39–54.

dignity as human beings. Therefore, work must be considered a human right.[24] The ICESCR states that economic rights are guaranteed to all without discrimination, such as race, colour, sex, language, religion, political or another opinion, national or social origin, property, birth or another status. This list is not exhaustive, and discrimination is also prohibited for other reasons, including disability, sexual orientation, gender identity, marital or family status, or socio-economic status.[25]

Article 10, paragraphs (2) and (3) of Law no. 11 of 2005, contains several guaranteed rights, namely the right to leave, the right to get the same wages, the right to health and the right not to be forced to work, as it reads:

> "The most comprehensive possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
>
> Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period, working mothers should be accorded paid leave or leave with adequate social security benefits."

Elucidation of Law Number 11 of 2005 concerning Ratification of the International Covenant On Economic, Social and Cultural Rights Articles 6 to 15 recognises the fundamental rights of every person in the economic, social and cultural fields, namely the right to work (Article 6), the right to enjoy just and favourable working conditions (Article 7), the right to form and join trade unions (Article 8), the right to social security, including social insurance (Article 9), the right to the most comprehensive possible protection and assistance for the family, mothers, children and young people (Article 10), the right to an adequate standard of living (Article 11), the right to enjoy the highest attainable standard of physical and mental health (Article 12), the right to education (Articles 13 and 14), and the right to participate in cultural life (Article 15).[26]

Workers/Labourers Rights in ILO Conventions

The ILO, as the global authority in setting international labour standards, fulfills its mandate by establishing operational programs and providing labour

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[24] Duwi Handoko, "Kajian Terhadap Hak atas Kebebasan Beragama dan Berkeyakinan serta Hak atas Pekerjaan," *Ajudikasi: Jurnal Ilmu Hukum* 3, no. 1 (July 2, 2019): 53–74, https://doi.org/10.30656/ajudikasi.v3i1.987.

[25] Maya Nur Indah Sari, "Aspek Hukum Internasional Pemenuhan Hak Menerima Upah yang Sama Terhadap Pekerja Perempuan dan Implementasinya di Indonesia" (Skripsi, Medan, Universitas Sumatera Utara, 2019), http://repository.umsu.ac.id/handle/123456789/1570?show=full.

[26] Irwansyah Reza Mohamad, "Perlindungan Hukum atas Hak Mendapatkan Pelayanan Kesehatan Ditinjau dari Aspek Hak Asasi Manusia," *Akademika* 8, no. 2 (November 26, 2019): 78–94, https://doi.org/10.31314/akademika.v8i2.401.

trainings. This responsibility, entrusted to the ILO by the international community, is the core of its existence. These international labour standards, in the form of conventions and recommendations, establish minimum standards. It's important to note that for an ILO convention to be legally binding, it must be ratified in advance by ILO member countries, making it a primary source of labour law.[27] The form of labour protection can be seen in ILO legal products, including the ILO Declaration on Fundamental Principles and Rights at Work (ILO Declaration on Fundamental Principles and Rights at Work) signed on June 19, 1998, which states that all those who have not ratified the convention -the convention, has an obligation arising from the fact of membership in the organisation to respect, promote, and realise in good faith, the principles of fundamental rights which are the subject of the convention (referred to as the core convention or core convention), namely: freedom of association and effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labour; effective elimination of child labour/labour; and elimination of discrimination in terms of employment and position.[28]

The ILO convention that researchers use in this research is only 3 (three) conventions that have been ratified by the Indonesia Government, which is the Abolition of Forced Labour Convention, 1957 (No. 105); Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106); and Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

The relevance of these 3 (three) ILO Conventions to the legal issues that the researcher analyses are related to the existence of articles in the Job Creation Law specifically for the Employment Cluster that are sustainable with fundamental human rights for workers/labourers. This right is guaranteed for its fulfilment, protection, and respect by the ILO Convention as an international labour standard. Implementing fulfilment, protection, and respect for fundamental human rights for workers/labourers is regulated by a new regulation in the Job Creation Law on the Labour Cluster.

Abolition of Forced Labour Convention, 1957 (No. 105)

Forced labour is doing work under the threat of sanctions or punishment where workers/labourers do not have the freedom to agree to carry out work that is done voluntarily, such as threats of violence or delayed payment of wages. Forcing someone to do something against their will with the threat of punishment can be a sign of forced labour, even if the compulsion to work is

[27] Dede Agus, "Kedudukan Konvensi ILO Sebagai Sumber Hukum Perburuhan/Ketenagakerjaan Indonesia," *Jurnal Hukum Internasional Fakultas Hukum Universitas Hasanuddin* 1, no. 1 (2013).

[28] Cheryl Michelia Valerie Japian, Fernando J.M.M. Karisoh, and Deicy N. Karamoy, "Eksistensi Organisasi Buruh Internasional (ILO – International Labour Organization) dalam Memberikan Perlindungan terhadap Hak-Hak Pekerja Berdasarkan Konvensi ILO Nomor 111 Tahun 1958 tentang Diskriminasi dalam Pekerjaan dan Jabatan dan Implementasinya di Indonesia," *Lex Privatum* 9, no. 2 (March 31, 2021): 28–39.

done during regular or overtime work. The Government of Indonesia ratified this convention with Law Number 19 of 1999 concerning the Ratification of ILO Convention No. 105 Concerning the Abolition of Forced Labour. This Convention was based on the occurrence of deviations from the Convention on Forced or Compulsory Labour No. 29 of 1929.

> Article 1: Each Member of the International Labour Organization which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour: (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system. (b) as a method of mobilising and using labour for purposes of economic development. (c) as a means of labour discipline. (d) as a punishment for having participated in strikes. (e) as a means of racial, social, national, or religious discrimination.

Regulations regarding fundamental human rights related to the elimination of forced labour are only regulated in one article, Article 1, as cited above. This convention is so crucial for Indonesia because it guarantees that the state represented by the government is the bearer of responsibility for the fulfilment, protection, and respect of fundamental human rights for workers/labourers to guarantee the elimination of forced labour for any reason, be it for economic growth, discrimination, as political education because of different ideological viewpoints, punishment for joining a strike and so on. The Indonesian government has a vital role in fulfilling, protecting, and respecting the right not to be forced to work.

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)

The ILO ratified the convention regarding weekly breaks in trade and offices to fulfil the rights of workers/labourers to leave, which is one of the fundamental human rights. Workers/labourers are not tools to be exploited for maximum profit for employers; they have had a human right since they were born, and no legal instrument can reduce this fundamental right. What is there is an obligation from a state to fulfil, respect, and protect these fundamental human rights.

Article 6 (1) All persons to whom this Convention applies shall, except as otherwise provided by the following Articles, be entitled to an uninterrupted weekly rest period comprising not less than 24 hours during each period of seven days. (2) The weekly rest period shall be granted simultaneously to all the persons concerned in each establishment, wherever possible. (3) The weekly rest period shall be granted simultaneously to all the persons concerned in each establishment, wherever possible. (4) The traditions and customs of religious minorities shall, as far as possible, be respected.

This convention emphasises the importance of workers/labourers having the right to leave to rest their bodies after work. The government and employers

must accommodate this right to fulfil the rights of workers/labourers to get leave because that is a fundamental human right for workers/labourers. Subsequent articles regulate exceptions from granting the right to rest, which is regulated in Article 7: Article 7 (1) Where the nature of the work, the nature of the service performed by the establishment, the size of the population to be served, or the number of persons employed is such that the provisions of Article 6 cannot be applied, measures may be taken by the competent authority or through the appropriate machinery in each country to apply special weekly rest schemes, where applicable, to specified categories of persons or specified types of establishments covered by this Convention, regard being paid to all proper social and economic considerations. (2) All persons to whom such special schemes apply shall be entitled, in respect of each period of seven days, to the rest of a total duration at least equivalent to the period provided for in Article 6.

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

This convention was ratified by the Government of Indonesia by Presidential Decree No. 26 of 1990 concerning Ratification of Convention 144 Convention Concerning Tripartite Consultations to Promote the Implementation of International Labour Standard. The purpose of promulgating this Convention is to affirm the right of employers and workers/labourers to establish free and independent organisations and to develop effective consultation at the national level between government officials and employers and workers/labourers organisations. With the implementation of this tripartite working relationship pattern, the government has a third role in intervening to guarantee the provisions of international labour law so that there is no imbalance of legal interests between employers and workers/labourers.

The purpose of the tripartite consultation between the government, employers, and workers/labourers for the implementation of the provisions of the International Labour Organization to improve the implementation of international labour standards is regulated in Article 5 paragraph (1) of Presidential Decree No. 26 of 1990:

> Article 5: The purpose of the procedures provided for in this Convention shall be consultations on: (a) government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference. (b) The proposals are to be made to the competent authority or authorities in connection with submitting Conventions and Recommendations under Article 19 of the Constitution of the International Labour Organization. (c) The re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given is to consider what measures might be taken to promote their implementation and ratification as appropriate. (d) questions arising

from reports to be made to the International Labour Office under Article 22 of the Constitution of the International Labour Organization. (e) proposals for the denunciation of ratified Conventions.

This convention is important because it maximises the role of each legal subject regulated in the legal relationship between the government, employers, and workers/labourers to create a balanced working relationship between employers and workers/labourers without an unequal legal relationship due to differences. The bargaining position places the worker/labourer in a weak position (inferior) compared to the entrepreneur as the owner of capital (superior). Indonesia has been a member of the ILO since 1950 by ratifying 8 (eight) ILO core conventions and 11 other conventions; Indonesia must enforce these conventions. The basic conventions of the ILO are all things that every worker/labourer in Indonesia must own. By implementing these basic conventions, labour standards in Indonesia will also improve. Legal protection in Indonesia is getting better by ratifying these conventions.[29]

Labour Regulations in the Job Creation Law on Labour Cluster According to the Economic and Social Covenant Perspective (ICESCR) and ILO Conventions

The philosophy of labour/employment law is to guarantee a balanced working relationship between employers and workers/labourers because, in essence, the working relationship that occurs between employers as employers and workers/labourers as executors of work for the sake of running the existing business in the company is subordinated,[30] in which the bargaining position[31] between employers and workers/labourers is unequal.

Workers/labourers aim to earn the highest wages to ensure welfare for themselves or their families. The inequality of working relations between employers and subordinate or levelled workers/labourers becomes the basis for the conclusion that the balance of working relations between employers and workers/labourers must be realised by a third party, which is the government.[32]

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[29] Theddy, "Tinjauan Yuridis Terhadap Perlindungan Hukum oleh International Labour Organziation (ILO) Kepada Pekerja/Buruh Perempuan dan Anak di Indonesia" (Skripsi, Medan, Universitas Sumatera Utara, 2019), https://repositori.usu.ac.id/handle/123456789/14112.

[30] The employment relationship is a subordinative (*dienstverhoeding*) relationship, which places the worker/labourer in a weak bargaining position. See more on Abdul Khakim, *Dasar-Dasar Hukum Ketenagakerjaan Indonesia* (Bandung: Penerbit PT. Citra Aditya Bakti, 2020).

[31] The emergence of labour law is due to inequality that exists in the employment relationship (between workers and employers) as Otto Khan Freund stated that the main purpose of labour law is to eliminate inequality in the relationship between the two that arises in employment relations. See more on Adhistianto, "Politik Hukum Pembentukan Rancangan Undang-undang Cipta Kerja (Studi Klaster Ketenagakerjaan)."

[32] The government as a regulator or policy maker has an interest in creating industrial relations to find a balance between the interests of workers/labourers, employers, and the government. See

As the maker of laws or statutory regulations to guarantee the balance of the work relationship, labour/employment law no longer only regulates the working relationship based on a bipartite relationship pattern or two legal subjects. With the reality of this imbalance in bargaining positions, the relationship pattern changes to a tripartite relationship or three legal subjects in an employment relationship.[33] These legal subjects include employers, workers/labourers, and the third party, the government, as the bearer of the obligation to ensure a balanced working relationship between employers and workers/labourers.

At the time of the formation of Job Creation Law, it was essential to discuss this, especially when the Law of Job Creation was so strategic for public discussion, because the Law of Job Creation looked pretty rushed, without seeing the importance of substance/material and the process of its formation. Because as we know, the process of making a law takes a long time to become a law.[34] Several articles have been amended, and new regulations established in the Job Creation Law on this Labour Law have impacted the emergence of legal issues of conflicting norms that occurred with the promulgation of the Job Creation Law on Human Rights. The researcher will take three sub-discussions, namely those related to the Specific Time Work Agreement, Wages, and the Right to Rest because these three sub-discussions are closely related to fundamental human rights for workers/labourers, which are basic human rights for workers. Workers/labour guarantees are regulated in the International Covenant on Economic Social and Cultural Rights (ICESCR) and ILO Conventions.

Specific Time Work Agreement

Article 59 concerning Contract Worker/Labour is a provision that has been amended and revoked in this Job Creation Law, which is considered to provide uncertainty for the time limit for worker/labour contracts.[35] Law number 13 of 2003 concerning Labour Article 59 concerning Contract Workers, which was amended and revoked, can be seen in paragraph (1) letter b, which initially determined the maximum limit for work with short qualifications, namely three years at the most. In the new regulation Job Creation Law, there is no limit on how long the job qualifications are not too long. Article 6 of Government Regulation number 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment

more on Taufiq Yulianto, "Hukum Sebagai Sarana untuk Melindungi Pekerja/Buruh dalam Hubungan Industrial," ORBITH 8, no. 2 (Juli 2012): 104–108.

33 Nikolas Budi Arianto Wijaya, "Pelaksanaan Hubungan Kerjasama Tripartit di Propinsi Daerah Istimewa Yogyakarta," *Justitia et Pax* 29, no. 1 (June 2009): 1–24.

34 Nur Alfiyani, "Perbandingan Regulasi Ketenagakerjaan dalam Undang-Undang Ketenagakerjaan dan Undang-Undang Cipta Kerja," *AN-NIZAM Jurnal Hukum dan Kemasyarakatan* 14, no. 2 (December 28, 2020): 121–139, https://doi.org/10.44633/an-nizam.v14i2.318.

35 Pardede, *Omnibus Law Dalam Grand Design Sistem Hukum Indonesia (Studi Kasus: UU No. 11 Tahun 2020 Tentang CIPTAKER)*.

explains the period associated with work agreements for a specific time, which changes with the provisions of work agreements for a particular time in the Labour Law, which was initially at least 3 (three) years to 5 (five) years at the most.

Article 59 also contradicts the International Covenant on Economic, Social and Cultural Rights (ICESCR), which regulates fundamental human rights for workers/labourers, namely the right to obtain decent and fair work and the right not to be forced to work. With this provision, there is a broad opportunity for employers to exploit workers/labourers because there is no minimum year in the specific time work agreement. After all, it is only regulated in the Government Regulation and without the knowledge of the workers/labourers, it further provides opportunities for employers to abuse the fixed employment provisions to specific time work agreements.

Article 59 also contradicts the ILO Convention on the Abolition of Forced Labour, stating that every member country that ratifies the Convention must suppress and will not use forced labour in any form, including for the company's economic development. Because with the abolition of the minimum 3 (three) year provisions in the specific time work agreement, the maximum limit is only regulated in Government Regulation, namely 5 (five) years, and employers often abuse work agreements which should be the type and nature of work for those who are permanent but use specific time work agreement, will make a wider loophole for employers to exploit the workers/labourers who work in their companies for the personal benefit of the authorities.

Regarding Article 6 in the PP derivative of the Job Creation Law, which stipulates that a specific time work agreement is a maximum of 5 (five) years, this matter should be regulated in the Job Creation Law because if such an important matter is handed over to a Government Regulation, its legal force cannot be enforced. It is only the implementing regulations of the law that have a binding legal nature because it has the function to force it to be enforced; otherwise, you will get sanctions because there are only three laws and regulations that have sanctions provisions, namely laws; Provincial Regulation; or Regency/City Regional Regulations.

Right to Rest

Article 77 regarding the provisions on working hours also becomes an issue discussed because it is considered to exploit workers/labourers. Article 77 paragraph (2), which contains a maximum working time of seven hours, is removed and replaced with eight hours per day. However, Article 77 paragraph (2) of the Job Creation regulates the same thing as Article 77 paragraph (2) Law number 13 of 2003, but what is different is the addition of an additional paragraph, namely in paragraph (4) regarding the freedom granted by the law regarding the implementation of working hours for workers/labourers, in which the delegation of authority is left to work agreements, company regulations or

collective bargaining agreements. Related to overtime work time has also been changed in this Job Creation Law. In Law number 13 of 2003 in Article 78, overtime work can only be enforced for a maximum of 3 (three) hours in 1 (one) day and 14 (fourteen) hours in 1 (one) week, but in Article 81, number 22 which changes the provisions of Article 78 stipulates that overtime work time can only be enforced for a maximum of 4 (four) hours in 1 (one) day and 18 (eighteen) hours in 1 (one) week.

Article 26 paragraph (1) Government Regulation number 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Work Relations explains the same thing as the Job Creation Law, that overtime work can only be enforced for a maximum of 4 (four) hours in 1 (one) day and 18 (eighteen) hours in 1 (one) week. This provision becomes a concession for employers to extend the overtime period for workers/labourers who work in their company. As described above, the provisions for increasing overtime work also affect the reduction of the right to rest owned by workers/labourers; it is contained in Article 81 number 23, which changes the provisions in Article 79 of the Labour Law. Initially, Article 79 paragraph (2) letter b explains that there are two options for weekly rest, namely 1 (one) day weekly rest for 6 (six) working days in 1 (one) week or 2 (two) days for 5 (five) days' work in 1 (one) week.

The provisions regarding the right to rest are contrary to the ICESCR, which regulates the right to rest or to take leave. If we relate it to the wage system, which is based on units of time and results that make workers/labourers earn more wages, it means that workers/labourers must reduce their right to rest. There is a discrepancy between the minimum wage provisions for units of output and time and the reduction in the provision for the right to rest. If one concludes that because workers/labourers fight for their welfare by obtaining the highest wages, a right is indirectly violated, namely, the right to rest. There is no fulfilment, protection, or respect for fundamental human rights for these workers/labourers; what happens is that there must be a sacrifice of rights to obtain other rights even though human rights have principles that are universal, indivisible, interdependent, and interrelated, which means that these rights cannot be separated from one another and must be fulfilled by the government thoroughly because it is their responsibility.

Wages

Wages determined based on a unit of time or unit of output are also an issue of norm conflict law that is discussed. It is feared that employers will easily take advantage of this to lower wage payments when production capacity is reduced. Entrepreneurs who do not pay the minimum wage are not legally sanctioned because the article that regulates it is revoked, namely Article 90.

This provision is an additional article as a new regulation in the Job Creation Law, which explains that wages are determined based on a unit of time

and/or unit of output, and further provisions are regulated in a Government Regulation. The purpose of wages being determined based on the unit of time and unit of production is that the salaries received by the worker/labourer will be more significant if the working time is longer and the work output is more significant. The new wage regulation stipulated in the Job Creation Law also requires the Provincial Government to set district/city minimum wages as specified in Article 88C. However, what is a legal issue in this article is the use of a diction which interprets that the Provincial Government is not obliged to set a district/city minimum wage; the article regulates only with the diction "could" that the Provincial Government can set a district/city minimum wage. This means that Article 88C of the Job Creation Law provides convenience for the Provincial Government because it is only an option or option for the government to set district/city minimum wages, not an obligation.

Determination of the minimum wage is a step to obtaining a decent income to achieve worker/labour welfare based on aspects of company productivity and progress. Minimising the minimum wage has always been a legal issue between employers, the government, and trade/labour unions. The fact is that there are always differences in interpretation. Workers/labourers tend to demand the highest possible minimum wage. In contrast, employers tend to make the minimum wage the standard wage that applies in the company without considering the length of service and status of workers/labourers, whether single or family.[36] The main objective of setting the provincial minimum wage is to prevent wages from declining below the purchasing power of workers/labourers. The purpose of district/city minimum wages, which are constantly increasing, is to reduce the gap between the highest and lowest wages paid by companies; the increase in the provincial minimum wage is expected to increase the income of workers/labourers at the lowest position in the company; and from a broader aspect, it is hoped that it will help boost people's purchasing power and the people's economy.[37]

Related to the duties/obligations of the government to create a balance in the working relationship between employers and workers/labourers by providing more protection to workers/labourers, in the following arrangement, namely Article 88D paragraph (2) which stipulates that the calculation of the minimum wage must be based on economic growth or inflation. The wording of this article does not mention that the regulation of minimum wages must be based on the interests of workers to improve their standard of living and that of their families but for the sake of industrial profits. Article 89, which regulates minimum wages

[36] Himawan Estu Bagijo, "Kewenangan Gubernur Menetapkan Upah Pasca Pemberlakuan Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja (Studi Kasus Penetapan UMP dan UMK Tahun 2021 di Jawa Timur)," *Sosio Yustisia: Jurnal Hukum dan Perubahan Sosial* 1, no. 1 (April 5, 2021): 1–20, https://doi.org/10.15642/sosyus.v1i1.63.

[37] Nila Shintia and Syahrizal Abbas, "Penetapan Upah Minimum Provinsi Aceh," *Jurnal Justisia* 3, no. 1 (2018): 164–182, http://dx.doi.org/10.22373/justisia.v3i1.5091.

based on provincial or district/city areas and based on sectors in provincial or city-district areas, is deleted in this Job Creation Law. Even though the minimum wage setting is based on the conditions stipulated in the Labour Law, it aims to overcome the income gap between workers/labourers who work for a company; this provision also affects income increases and has a significant impact on reducing poverty, so that obtain welfare for workers/labourers.[38]

Regarding the prohibition against employers paying wages lower than the stipulated minimum wage and employers who cannot pay the minimum wage, a suspension can be imposed, as specified in Article 90 in this Job Creation Law is also revoked. However, this provision is regulated in Article 88E paragraph (2). However, it is only prohibited for entrepreneurs who cannot pay based on the minimum wage determined by laws and regulations without any provisions regarding suspension. The elimination of provisions regarding suspension means that if the company is unable to pay salaries as its obligation, there is no need to postpone payment of wages to workers/labourers. If we trace back to the regulation of minimum wages, this arrangement increasingly favours employers who treat workers/labour arbitrarily to get as much wealth as possible.

Article 91 in Law Number 13 of 2003 states that wage arrangements based on agreements between employers and workers/labourers or workers/labourers' unions cannot be low, with the minimum wage set by applicable laws and regulations being deleted in the Job Creation Law. Previously, it had been regulated that employers were prohibited from paying wages lower than the minimum wage. However, the deletion of this article is a continuation of the removal and amendment of the previous articles related to wage arrangements, which make the employment arrangements in the Job Creation Law not in favour of workers/labourers or workers/labourers unions.

The provisions of Article 92 have also been amended in the Job Creation Law in Article 81, point 30. Initially, Article 92 of Law Number 13 of 2003 explained that employers compile the structure and scale of wages by considering class, position, years of service, education, and competence. However, the Job Creation Law changed it to be in accordance with company capabilities and productivity, which was initially used as the basis for periodic wage reviews. The implementing regulation also explains further the obligation of employers to determine the structure and scale of wages in the company by considering the company's capabilities and productivity.

The government determined the differences in alignments in this article. In the Labour Law, the structure and scale of wages still favour the self-quality of workers/labourers. Still, the Job Creation Law has changed that the structure and

[38] Kadek Agus Sudiarawan and Putu Ade Hariestha Martana, "Implikasi Hukum Pengaturan Upah Minimum Sektoral Kabupaten Badung terhadap Pelaku Usaha pada Sektor Kepariwisataan di Kabupaten Badung Provinsi Bali," *Supremasi Hukum: Jurnal Penelitian Hukum* 28, no. 1 (February 6, 2019): 33–56, https://doi.org/10.33369/jsh.28.1.33-56.

scale of wages depend on the company's capabilities and productivity. This article is evident in favour of employers rather than workers/labourers, which violates the purpose of the labour law itself, which protects workers/labourers by fulfilling, protecting, and respecting basic human rights for workers/labourers to overcome inequality work relations that are subordinate or levelled between employers and workers/labourers.

In general, it can be considered a straight line about the articles regarding wages regulated in the Job Creation Law on Labour Cluster, which amends, revokes, and establishes new regulations against Law Number 13 of 2003 that these articles reduce aspects regarding the fulfilment, protection, and respect of human rights. The welfare of a decent life for workers/labourers, in which to get the welfare and a decent life, namely by fulfilling the right to obtain a respectable and satisfactory wage, according to the objectives of the International Labour Organization (ILO).

Seen from the perspective of ICESCR, which regulates the guarantee of the right to a decent wage, the articles in the Job Creation Law regarding wages are contradictory. Because there is the fulfilment of rights that are not comprehensive, where it is implicitly explained that if workers/labourers want to get a high wage, then the right to rest of workers/labourers is violated because wages in this Job Creation Law are determined by the unit of time and unit of output, which if workers/labourers want to get high wages, then the work must take longer, and the results will be more. This is contrary to the principle of human rights that cannot be divided and interdependent, meaning that human rights must be fulfilled as a whole because all fundamental human rights are essential; therefore, it is prohibited to issue certain rights or only partially fulfil because each human right is interrelated, interdependent, inseparable.

This contradicts the ILO Convention on Tripartite Consultation to Improve the Implementation of International Labour Standards. The working relationship in labour law is no longer between two legal subjects (bipartite). Still, as labour law develops, the working relationship in labour law becomes three legal subjects (tripartite), in which the third party is the government, which intervenes in the working relationship to ensure the implementation of standards of international labour, in which the international labour standard is the guarantee of a balanced working relationship between employers and workers/labourers.[39]

The value referred to by international labour standards is contained in the ILO Conventions, which have been ratified by each member country, especially Indonesia. The substance/content material of the ILO Conventions is the basic human rights of workers/labourers. The state represented by the government must carry out this responsibility by carrying out its function as a third party in a tripartite working relationship between employers and workers/labourers for the

[39] Fithriatus Shalihah, "Implementasi Perjanjian Kerja Waktu Tertentu (PKWT) dalam Hubungan Kerja di Indonesia," *Jurnal Selat* 4, no. 1 (October 2016): 70–100.

sake of proper and comprehensive implementation of international labour standards.

So, it can be concluded from the results of the researcher's analysis above regarding Labour Regulations in Job Creation Law, especially on the Labour Cluster, which changed, revoked and established new regulations for Law number 13 of 2003 concerning Labour, which the researcher takes as a sub-discussion regarding the Specific Time Work Agreement; Right to Rest; and Pay conflicts with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Labour Organization (ILO) Conventions.

The Labour Regulation in Job Creation Law on Labour Cluster are contrary to the fulfilment, protection and respect for fundamental human rights for workers/labourers as regulated in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and ILO Conventions, which is the right to work correctly and fairly; get a decent wage; the right not to be forced to work and the guarantee of the elimination of forced labour; the right to weekly leave and rest; and the right to be able to fulfil, protect and respect their fundamental human rights from the state more broadly represented by the government as the bearer of obligations and responsibilities in balancing the unequal working relationship between employers (superior) and workers/labourers (inferior).

Conclusion

The results of the analysis in this research regarding Job Creation Law, especially on labour cluster with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and ILO Conventions, related to Fixed Time Work Agreements; Right to Rest and Remuneration is inappropriate because it conflicts with the fulfilment, protection and respect for basic human rights for workers/labourers, which is the right to work properly and fairly; get a decent wage; the right not to be forced to work and the guarantee of the elimination of forced labour; the right to weekly leave and rest; and the right to be able to fulfil, protect and respect their fundamental human rights from the state more broadly represented by the government as the bearer of obligations and responsibilities in balancing the unequal working relationship between employers (superior) and workers/labourers (inferior). The state must emphasise the affirmation act in the Job Creation Law to emphasise that the legal relationship between employers and workers/labourers is unbalanced, so there is a need for government partiality to weaker parties so that there must be firm arrangements related to supporting the welfare of workers/labourers. The state should pay more attention to the provisions of the ICESCR and related ILO Conventions. The Job Creation Law on Labour Cluster regulations must be inclined towards workers/labourers with a lower bargaining position than employers.

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