

# **LEGAL PROTECTION OF NON WAGE WORKERS RIGHTS AFTER OMNIBUS LAW**

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## **Abstrak**

Penelitian ini bertujuan untuk menganalisis perlindungan hukum terhadap hak-hak pekerja bukan penerima upah setelah diberlakukannya omnibus law. Jenis penelitian yang digunakan adalah penelitian hukum normatif. Analisis hukum normatif mengutamakan penelitian kepustakaan dengan mengumpulkan data dari perpustakaan dan tempat lain. Data penelitian yang digunakan adalah data sekunder. Alat pengumpulan data sekunder berupa buku-buku yang berkaitan dengan teori dan konsep objek penelitian, artikel terkait, karya tulis ilmiah kepustakaan, dan sebagainya melalui penelitian kepustakaan. Hasil kajian menunjukkan bahwa perlindungan hukum terhadap hak-hak pekerja non-upah pasca omnibus Law sangat minim dan tidak mencerminkan ketentuan Pasal 28 D ayat (2) UUD 1945.

**Kata kunci: Perlindungan; Upah; Pekerjaan.**

## **Abstract**

This study aims to analyze the legal protection of non-wage workers' rights after enacting the omnibus law. The type of research used is normative legal research. Normative legal analysis prioritizes library research by collecting data from libraries and other places. The research data used is secondary data. Secondary data collection tools in the form of books related to the theory and concept of the object of research, related articles, scientific writing literature, and so on through library research. The study results show that the legal protection of the rights of non-wage workers after omnibus Law is very minimal and does not reflect the provisions of Article 28 D paragraph (2) of the 1945 Constitution.

**Keyword: Protection; Wage; Employment.**

## **INTRODUCTION**

Companies and employees have rights and obligations that are applied in a balanced way. Human resources must work following the field, expertise, and skills and is entitled to wages or salaries from the work he does. Companies are required to pay wages or salaries and provide guarantees as required by Law Number 13 of 2003

concerning Manpower. The company also has the right to get work results to maintain the stability of the company.<sup>1</sup>

In fact, in carrying out its operations, the company does not always show growth and profit (profit) because of the risks that can arise from the business, be it investment risk, financing risk, and operational risk. All risks can threaten the sustainability of the company's finances, and the fatal thing the company can go bankrupt (bankrupt) because it cannot pay all its debt obligations. When a company has been declared bankrupt by a commercial court decision, the company is still a legal entity, even though the curator has taken over the management of the company's assets from the hands of the board of directors.<sup>2</sup>

The takeover of the authority of the board of directors includes the management paying attention to the interests and welfare of the workers/laborers of the company. The curator is authorized to carry out the task of managing and settling the bankruptcy estate from the date the bankruptcy decision is pronounced, even though an appeal or judicial review is filed against the decision.<sup>3</sup> The authority of the company management to provide wages, severance pay, and the rights of workers/laborers are also transferred to the curator. Furthermore, it is the responsibility of the curator to provide workers/labor rights.<sup>4</sup>

According to Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower and Article 1149 of the Civil Code, wages and severance pay are receivables tied with special rights. Although the nature of the privilege takes precedence, the license holder is still subordinate to that of the holder of liens and mortgages. Even in the ranks of creditors holding benefits, workers/laborers are ranked fifth after tax bills, court fees, auction fees, and curator fees. Even though it is prioritized, it turns out that the provisions regarding the privileges of workers/laborers still have to be defeated by the existence of separatist creditors. This can be seen from Article 55 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.<sup>5</sup>

Article 28D of the 1945 Constitution states that everyone has the right to receive fair and proper remuneration and treatment in an employment relationship. The Unitary State of the Republic of Indonesia guarantees protects and fulfills the rights of its citizens through its Constitution, namely the 1945 Constitution. Some of them are the right to legal certainty and the right to proper protection in employment relations, as regulated in Article 28 paragraph (1) of the Constitution. 1945 that everyone has the right to

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<sup>1</sup>Sutarto Eddhi, 2009, *Rekonstruksi Hukum Pabean Indonesia*, Erlangga, Jakarta, hlm. 1

<sup>2</sup>Ahmad Dwi Nuryanto, Adi Sulistiyono, Pujiono, "Legal Protecton for Laborers with Non-Wage Rights After the Constitutional Court Decision Number 67/PUU-XI/2013", *International Journal of Advanced Science and Technology*, Volume 28, No.20 Tahun 2019.

<sup>3</sup>*Ibid.*

<sup>4</sup>Luthvi Febryka Nola, "Implementasi Putusan Mahkamah Konstitusi Nomor 67/PUU-XI/2013 Terkait Kedudukan Upah Pekerja dalam Kepailitan", *Negara Hukum*, Vol. 10, No. 2, November 2019

<sup>5</sup>*Ibid.*

recognition, guarantee, protection, fair legal certainty, equal treatment before the law, and Article 28 paragraph (2) of the 1945 Constitution, which reads that everyone has the right to work and receive fair remuneration and therapy. and worthy of a working relationship.<sup>6</sup>

The right to receive wages is also recognized as the right to welfare as stated in Article 38 paragraph (4) of Law Number 39 of 1999 concerning Human Rights, which says that everyone, both men and women, in doing work commensurate with their human dignity has the right to for fair wages following their achievements and can ensure the continuity of their family life. Furthermore, the Indonesian government has also ratified the ILO Convention Number 111 of 1958 concerning Discrimination in Employment and Occupation through Law Number 21 of 1999, as part of protecting the human rights of workers and workers. Based on the two provisions in Law Number 13 of 2003 concerning Manpower and Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligation to Pay Debt, it is regulated regarding the position of workers in bankruptcy. However, the problem is that the two settings have different settings. In-Law Number 13 of 2003 concerning Manpower, it is regulated regarding the right to precede workers. In other words, workers/workers are privileged and prioritize fulfilling their wages compared to other creditors.<sup>7</sup>

The disparity of these arrangements makes the provisions brought to the Constitutional Court. Then the Constitutional Court decided through the Constitutional Court Decision Number 67/PUU-XI/2013 regarding the status of workers' wages which has now become apparent, and this is a breakthrough to the problems faced by workers after a long period of uncertainty in their fate because Article 94 paragraph (5) states, "If the company is declared bankrupt or liquidated based on the prevailing laws and regulations, the wages and other rights of the worker/laborer are the debts that have priority in payment."

The Constitutional Court in its decision Number 67/PUU-XI/2013 clearly states: "Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia of 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279) contrary to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted: "Payment of wages owed to workers/laborers takes precedence over all types of creditors, including claims for separatist creditors, claims for state rights, auction offices, and public bodies established by the government, while payments for other workers' rights take precedence over all claims including claims for state rights, auction offices, and public bodies found by the government, except claims from separatist creditors."<sup>8</sup>

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<sup>6</sup>Ahmad Dwi Nuryanto, Adi Sulistiyono, Pujiono, "Reconstruction Of Bankruptcy Method To Bank Problem After Constitution Court Decision Number 1/Puu-XVI/2018", *International Journal of Advanced Science and Technology*, Volume 29, No.4 Tahun 2020.

<sup>7</sup>*Ibid.*

<sup>8</sup>*Ibid.*

Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia of 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279) does not have binding legal force as long as it does not mean: "Payment of wages of workers/laborers owed. Priority is given to all types of creditors, including claims for separatist creditors, state rights, auction offices, and public bodies established by the government. In contrast, payments for the rights of other workers/laborers take precedence over all claims, including claims for state rights, auction offices, and public bodies formed by the government, except for claims from separatist creditors."<sup>9</sup>

Constitutional Court Number 67/PUU-XI/2013 only protects the basic wage so that other rights of workers are neglected. On the one hand, the Constitutional Court Number 67/PUU-XI/2013 decision is a breath of fresh air for workers regarding the clarity of wage status, which is the right of workers. Still, on the other hand, it creates uncertainty regarding other rights such as severance pay, as the Constitutional Court ruling the priority is only workers' wages and other rights (severance pay) except for claims from separatist creditors.

The legal protection of non-wage rights of workers after the enactment of the omnibus law is also increasingly unclear, considering that the provisions of the omnibus Law change many conditions regarding wages that the Manpower Act previously regulated. For example, in determining the minimum wage, the future measure is no longer a component of decent living needs (KHL). At the same time, the minimum wage guarantees meeting the needs of a decent life as mandated by the constitution. Another problem is that sectoral minimum wages are also removed. The structure of the wage scale only refers to the condition of the company without paying attention to the workers' state. The formula for calculating the minimum wage has also been changed to only include the variables of economic growth or inflation.<sup>10</sup>

The Omnibus Law also makes it easier for employers to terminate their employment (PHK). Amendment to Article 51 of the Manpower Law regulates the reasons for layoffs far from the provisions of the Constitutional Court's Decision. The Omnibus Law can terminate workers unilaterally, whereas previously in the Manpower Law it was regulated that if every effort had been made, but layoffs were unavoidable, the intent of the layoffs had to be negotiated by employers and labor unions or with workers. If the negotiations do not result in an agreement, the entrepreneur can only terminate his/her job after obtaining the determination of the industrial relations dispute settlement institution.<sup>11</sup>

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<sup>9</sup>Mahkamah Konstitusi, Putusan Nomor 67/PUU-XI/2013 Tentang Pengujian Undang – Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, hlm 16.

<sup>10</sup>Hukum Online, "Akademisi FH UGM Ini Sebut UU Cipta Kerja Malah Menambah Masalah Ketenagakerjaan", Access: <https://www.hukumonline.com/berita /baca/lt5fc0ab405ce64/ akademisi-fh-ugm-ini-sebut-uu-cipta-kerja-malah-menambah-masalah-ketenagakerjaan?page=2> pada tanggal 25 April 2021.

<sup>11</sup>*Ibid.*

Whereas in the provisions of Article 28 D paragraph (2) of the 1945 Constitution, it is stated that everyone has the right to work and receive fair and proper remuneration and treatment in an employment relationship. The implication of these provisions is the obligation of the state to facilitate and protect citizens from earning income with a decent standard of living so that they can meet their daily needs reasonably based on human dignity. Therefore, in providing legal protection in wages for workers/laborers, it must be constitutionally based on Article 28D paragraph (2) of the 1945 Constitution, which is a constitutional right.<sup>12</sup>

Therefore, it is also a constitutional right to receive fair and proper treatment in an employment relationship. The legal implication is that human resources development as an integral part of national development based on Pancasila and the 1945 Constitution, is carried out in the context of fully Indonesian human development and the development of Indonesian society as a whole to increase the dignity, dignity, and self-esteem of the workforce and to create a prosperous, just, successful and profitable organization. Evenly, both materially and spiritually. The provisions contained in Article 28 D paragraph (2) of the 1945 Constitution indicate that workforce development has been explicitly regulated in our constitution. Human resources development must be controlled in such a way that fundamental rights and protections for workers are fulfilled and, at the same time, can create conditions conducive to business development.<sup>13</sup> Based on the things that have been described in the background, the problems that arise are how to protect the legal rights of non-wage workers after the enactment of the omnibus law. ?

## **METHOD**

The type of research is normative legal research. Normative legal research prioritizes library research by collecting data from libraries and other places.<sup>14</sup> This study focuses on legal principles, legal systematics, legal synchronization in the legal protection of non-wage workers' rights after the enactment of the omnibus law.<sup>15</sup>

The research data used is secondary data. Secondary data collection tools in the form of books related to the theory and concept of the object of research, related articles, scientific writing literature and so on through library research.<sup>16</sup> This study's data is

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<sup>12</sup>Siti Ummu Adillah, "Regulasi Perlindungan Hukum Jaminan Sosial Ketenagakerjaan Bagi Pekerja Informal yang Berkeadilan", *Disertasi*, Program Doktor Ilmu Hukum Program Pasca Sarjana Fakultas Hukum Universitas Sebelas Maret Surakarta 2020.

<sup>13</sup>Juanda Pangaribuan, *Hakim Ad Hoc Pengadilan Hubungan Industrial pada Pengadilan Negeri Jakarta Pusat*, Senin, 09 Pebruari 2015, Hukum Online, diakses tanggal 25/10/2016.

<sup>14</sup>Hermawan Wasito, 1997, *Pengantar Metodologi Penelitian Buku Panduan Mahasiswa*, PT. Gramedia Pustaka Utama, Jakarta, hlm. 1.

<sup>15</sup>Soerjono Soekanto, 2018, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Rajawali Press, Jakarta, hlm. 51.

<sup>16</sup>Maria SW. Sumardjono, 2014, *Metodologi Penelitian Ilmu Hukum*, Gadjah Mada Press, Yogyakarta, hlm. 16-25.

analyzed qualitatively before being given in a descriptive format. The categorization of the problems researched and the data gathered is used in qualitative analysis.<sup>17</sup>

## **RESULTS AND DISCUSSION**

### **A. Legal Protection of Non Wage Workers' Rights After Omnibus Law**

The decision of the Constitutional Court Number 67/PUU-XI/2013 was issued so that workers/laborers get legal protection in the event that the company where they work experiences bankruptcy. In Law No. 13 of 2003 concerning Manpower states that legal protection for workers is intended to guarantee the rights of workers/laborers and guarantee opportunities and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families while taking into account the progress of the business world.

The term legal protection theory comes from English, namely legal protection theory, while in Dutch it is called *theorie van de wettelijke bescherming*, in German it is called *theorie der rechtliche schutz*. Grammatically, refuge is a refuge; or things (actions) protect. To protect is to cause or cause to take refuge. The meaning of taking refuge includes: (1) placing oneself so as not to be seen, (2) hiding, or (3) asking for help. Meanwhile, the notion of protecting includes: (1) covering so that it is not visible or visible, (2) guarding, caring for or maintaining, (3) saving or providing help.<sup>18</sup>

According to Maria Theresia Geme, protection is law:<sup>19</sup> "Regarding the actions of the state to do something by (enforcing state law exclusively) with the aim of providing guarantees for the certainty of the rights of a person or group of people".<sup>20</sup> The definition of protection in the above description is incomplete because the form of protection and the subject of protection differ from one another. According to the author's opinion are: "efforts or forms of services provided by law to legal subjects and things that are protected objects." Theoretically, legal protection is divided into two states, namely preventive protection; and repressive protection.<sup>21</sup>

Preventive legal protection is preventive legal protection. Protection provides the opportunity for the people to file objections (*inspraak*) on their opinions before a government decision gets a definitive form. So that this legal protection aims to prevent disputes and is very meaningful for government actions based on freedom of movement, and with this preventive legal protection, encourages the government to be careful in

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<sup>17</sup>Suharsimi Arikunto, 2018, *Prosedur Penelitian Suatu Pendekatan*, Rineka Cipta, Jakarta, hlm. 205.

<sup>18</sup> Pendidikan dan Kebudayaan, Departemen. 1989, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, hlm. 526.

<sup>19</sup> Dr. H. Salim HS dan Erlies Septian Nurbani, 2016, *Penerapan Teori Hukum Pada Penelitian Tesis dan Desertasi*, PT. Raja Grafindo Persada, Jakarta, hlm. 262

<sup>20</sup> Maria Theresia Geme, 2012, *Perlindungan Hukum Terhadap Masyarakat Hukum Adat Dalam Pengelolaan Cagar Alam Watu Ata Kabupaten Ngada, Propinsi Nusa Tenggara Timur*, Desertasi Program Doctor Ilmu Hukum Fakultas Hukum Universitas Brawijaya, Malang, hlm. 99

<sup>21</sup> Philipus M. Hadjon, 1987, *Perlindungan Hukum Bagi Masyarakat Indonesia*, PT. Bina Ilmu, Surabaya, hlm. 2



making decisions related to the freies Armisen principle, and the people can file objections or be asked for their opinions regarding the planned decision. Meanwhile, repressive legal protection functions to resolve disputes in the event of a dispute.

Philosophically, the birth or enactment of Law Number 13 of 2003 concerning Manpower is to protect workers who are in a weak position. So that the existence of this Law will defend the same rights and obligations between workers/laborers and employers, this Law regulates the form of protection provided to workers/labor, which includes protection of the fundamental rights of workers/laborers to negotiate with employers, occupational safety and health, female workers/laborers, children and persons with disabilities, wages, welfare, and social security. labor.<sup>22</sup>

In principle, legal protection for the weak party is always associated with the safety of the rights of the vulnerable party or victim. Law as a protector of human interests is different from other norms. Because the law contains orders and prohibitions, as well as dividing rights and obligations. Sudikno Marto Kusumo stated the purpose of the law and the function of law and legal protection. He believes that "In its function as a protector of human interests, the law has a purpose. The law has a goal to be achieved, while the primary purpose of the law is to create an orderly society, create order and balance. With the achievement of charge in the community, it is hoped that human interests will be protected. In achieving this goal, the law is tasked with dividing rights and obligations between individuals in community, dividing authority and regulating legal problem solving, and maintaining legal certainty.<sup>23</sup> Three things can be analyzed from the point of view of Sudikno Martokusumo. These three things include legal functions, legal objectives, and duties.

The function of law is to protect human interests. The primary purpose of the law is to create an orderly and orderly society and balance. An orderly society is a society that is organized, polite, and obeys the laws and regulations that live and develop in a community. Order is a condition in which people live in an excellent orderly manner. Balance is a state of society where the people live in a balanced and comparable state, meaning that no community is distinguished from one another (same taste). The legal method further protects human interests that have received protection from the other three ways and protects human interests that have not received protection from the three different methods.<sup>24</sup>

In its efforts to regulate, the law adapts individual interests to the interests of society as well as possible and tries to find a balance between giving freedom to individuals and protecting the community against individual liberty. Given that organization consists of individuals who cause interaction, there will always be conflicts

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<sup>22</sup> Penjelasan umum undang-undang Nomor 13 tahun 2003 tentang Ketenagakerjaan

<sup>23</sup> Sudikno Martokusumo, 1999, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, hlm. 71.

<sup>24</sup> Sudikno Martokusumo, 2005, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, hlm.12

or tensions between personal interests and private interests and the community's interests. The law tries to accommodate the pressure or competition as well as possible.<sup>25</sup>

Workers/laborers have a significant role and position in national development, both as actors and as the goal of evolution. In this regard, it is essential to increase the protection of workers and their families following human dignity. The safety of workers is intended to guarantee the fundamental rights of workers/laborers and to guarantee equality, opportunity, and treatment without discrimination on any basis to realize the welfare of workers/laborers by taking into account the progress of the business world.<sup>26</sup> On March 25, 2003, the government promulgated Law Number 13 of 2003 concerning Manpower to replace various laws in Manpower that were deemed no longer appropriate to the needs and demands of human resources development. This law is also expected to create fair industrial relations to realize protection guarantees for the weaker parties to learn a balance.(equality).<sup>27</sup>

Article 4 of Law Number 13 of 2003 concerning Manpower states that "Manpower development aims to empower and utilize the workforce optimally and humanely, to realize equal distribution of employment opportunities, to provide protection to workers in realizing welfare and improving the welfare of workers and their families." A worker/Labourer is a person who is not free to determine his/her will towards the entrepreneur because, in a working relationship, the entrepreneur has given boundaries that the worker must follow.<sup>28</sup> As a result of such sociological conditions, if there is a dispute in industrial relations between the labor/labor party and the company, especially regarding rights disputes and disputes over the termination of employment, the position of the worker/laborer with the entrepreneur is not balanced in litigation in court.

The problem that most often arises from conflicts regarding wages as compensation for termination of employment (PHK). There are several components of layoff compensation, namely:<sup>29</sup> severance pay, service pay, compensation for entitlements, severance pay. The intentional element of the entrepreneur causes the trigger for the conflict to avoid the responsibility to pay compensation for layoffs. Still, sometimes it is also due to the ignorance of the parties, both the entrepreneur and the laid-off worker.

Based on the Constitutional Court Decision Number 67/PUU-XI/2013 stipulates that Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia of 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279) is contrary to the Law. The 1945 Constitution of the Republic of Indonesia, as long as it is not interpreted as "Payment of wages owed to workers/laborers takes precedence over all types of creditors including

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<sup>25</sup> *ibid*

<sup>26</sup> Lihat Bagian Menimbang Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 tentang Ketenagakerjaan Tentang Ketenagakerjaan, Lembaran Negara Republik Indonesia Tahun 2002 Nomor 109

<sup>27</sup> Sehat Damanik, 2005, *Hukum Acara Perburuhan*, Dss Publishing, Jakarta, hlm. 3

<sup>28</sup> *Ibid*, hlm. 2.

<sup>29</sup> *Ibid*, hlm. 2.



claims for separatist creditors, claims for state rights, auction offices, and public bodies established by the Government, while payments for workers' rights / other workers take precedence over all claims including claims for state rights, auction offices, and public bodies established by the Government, except claims from separatist creditors.”<sup>30</sup>

The legal protections provided by the Constitutional Court to the rights of non-wage workers/laborers with the decision No. 67/PUU-XI/2013 already exists but not entirely because the rights of non wages are excluded from the position of payment by Separatist creditors. In other words, decision Number 67/PUU-XI/2013 does not fully guarantee the non-wage rights of the workers/laborers as the basic wages of the workers/laborers themselves, which are clearly stated, are prioritized over all claims. Before going any further, it would be nice to know first the types of creditors. In-Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations Article 1 number 2 states that creditors are people who have receivables due to agreements or laws that can be billed at Court face.

As it is known that the Constitutional Court Decision Number 67/PUU-XI/2013 concerning “Payment of wages owed to workers/laborers takes precedence over all types of creditors, including claims for separatist creditors, claims for state rights, auction offices, and public bodies established by the Government, while payments for rights of other workers/laborers take precedence over all claims including claims for state rights, auction offices, and public bodies established by the Government, except claims from separatist creditors. According to the author, the Constitutional Court Decision Number 67/PUU-XI/2013 has not fully protected the interests of the workers/laborers.

Legal protection of non-wage rights of workers/laborers after the Constitutional Court Decision Number 67/PUU-XI/2013 has not been fully fulfilled. Once again, this proves that the government very weakly protects the position of workers/laborers. In practice, there are several things that workers can do for the actions of employers who do not want to pay severance pay, gratuity for years of service, compensation for entitlements, and other rights. However, there has been a decision of the Industrial Relations Court that has been Inkracht. One of them is reporting the businessman to the police on at least two counts. First, the alleged embezzlement, while the second is the alleged violation of Article 216 of the Criminal Code where the actions of entrepreneurs who do not want to carry out the decisions of the Industrial Relations Court that have been Eintracht are considered as actions that hinder orders from officials or general authorities.<sup>31</sup>

The decision of the Constitutional Court Number 67/PUU-XI/2013 only protects basic wages so that the "other rights" of workers are ignored or hindered by the interests of Separatist creditors. The author agrees that the Constitutional Court Decision Number

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<sup>30</sup> Putusan Mahkamah Konstitusi Nomor 67/PUU-XI/2013

<sup>31</sup>Imam Hadi Wibowo, *Putusan PHI Yang Telah Berkekuatan Hukum Tetap*, diakses dari <http://www.hukumonline.com/pada> 1 Desember 2020 Pukul 14:23 WIB.

67/PUU-XI/2013, on the one hand, is a breath of fresh air for workers/laborers regarding the clarity of wage status, which is the right of workers. Still, on the other hand, it creates ambiguity regarding other rights, as the decision of the Constitutional Court that the priority is only workers' wages and other rights are excluded from claims from separatist creditors.

### **B. Analysis of the Legal Protection of Non-Wage Workers' Rights After the Enforcement of the Omnibus Law**

The Omnibus Law amends 31 articles, deletes 29 articles, and inserts 13 new articles in the Manpower Law. The 31 amended articles include Articles 13, 14, 37, 42, 45, 47, 49, 56, 57, 58, 59, 61, 66, 77, 78, 79, 88, 92, 94, 95, 98, 151, 153, 156, 157, 160, 185, 186, 187, 188, and 190 of the Manpower Act. For example, the amendment to Article 56 of the Manpower Law regulates, among other things, a certain time work agreement (PKWT) which states that the period or completion of a PKWT job is determined based on a work agreement. Article 59 of the Manpower Law is amended and no longer contains the previous provision, which stipulates that the PKWT period is a maximum of 2 years and maybe extended once for a maximum period of 1 year.<sup>32</sup>

The Omnibus Law increases the length of overtime hours, which were initially 3 hours a day and 14 hours a week to 4 hours a day and 18 hours a week. This is regulated in the amendment to Article 78 of the Manpower Law. The question of leave is held in the amendment to Article 79 of the Manpower Law, leave or long breaks are not mandatory, and it is not held how long the long break is given. This is different from the previous provision where long leaves are required, at least two months, and carried out in the seventh and eighth year for one month each for workers who have worked continuously for six years at the same company. Amendments to Article 88 of the Manpower Law have an impact on the direction of regulation regarding wages. The Omnibus Law amends Article 88 of the Manpower Law so that the wage policy is only aimed at realizing workers' rights to a decent living for humanity. The previous provisions more firmly mandated the government to establish a wage policy that protects workers.<sup>33</sup>

The form of the wage policy as regulated in Article 88 was also cut from 11 to 7. Not only that, the omnibus law amended Article 88 paragraph (4) of the Manpower Law which essentially sets the minimum wage based on the need for a decent living (KHL) by taking into account productivity and economic growth "Further provisions regarding the wage policy are regulated in a Government Regulation," this can be seen in the chart below:

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<sup>32</sup>Hukum Online, "Mengintip Isi Klaster Ketenagakerjaan dalam UU CILAKA", *Access: <https://www.hukumonline.com/berita/baca/lt5fa14c6fd08ab/mengintip-isi-klaster-ketenagakerjaan-uu-cipta-kerja?page=all>* pada tanggal 25 April 2021.

<sup>33</sup>*ibid.*

No	Pasal 88 ayat (3) setelah diubah UU Cipta Kerja	Pasal 88 ayat (3) UU Ketenagakerjaan
1	Upah minimum	Upah minimum
2	Struktur dan skala upah	Upah lembur
3	Upah kerja lembur	Upah tidak masuk kerja karena berhalangan
4	Upah tidak masuk kerja dan/atau tidak melakukan pekerjaan karena alasan tertentu	Upah tidak masuk kerja karena melakukan kegiatan lain di luar pekerjaannya
5	Bentuk dan cara pembayaran upah	Upah karena menjalankan hak waktu istirahat kerjanya
6	Hal-hal yang dapat diperhitungkan dengan upah	Bentuk dan cara pembayaran upah
7	Upah sebagai dasar perhitungan atau pembayaran hak dan kewajiban lainnya	Denda dan potongan upah
8		Hal-hal yang dapat diperhitungkan dengan upah
9		Struktur dan skala pengupahan yang proporsional
10		Upah untuk pembayaran pesangon
11		Upah untuk perhitungan pajak penghasilan

Amendments to Article 156 of the Manpower Law through the omnibus law also impact the severance compensation received by workers. For example, Article 156 of the Manpower Law only regulates three components of compensation payments given to workers regarding compensation payments. The previous provision stipulates that there are four components in the compensation money given to workers.<sup>34</sup>

No	Pasal 156 ayat (4) setelah diubah UU Cipta Kerja	Pasal 156 ayat (4) UU Ketenagakerjaan
1	Cuti tahunan yang belum diambil dan belum gugur	Cuti tahunan yang belum diambil dan belum gugur
2	Biaya atau ongkos pulang untuk pekerja/buruh dan keluarganya ke tempat pekerja/buruh diterima bekerja	Biaya atau ongkos pulang untuk pekerja/buruh dan keluarganya ke tempat di mana pekerja/buruh diterima bekerja
3	Hal-hal lain yang ditetapkan dalam perjanjian kerja, peraturan perusahaan, atau perjanjian kerja bersama	Penggantian perumahan serta pengobatan dan perawatan ditetapkan 15% (lima belas perseratus) dari uang pesangon dan/atau uang penghargaan masa kerja bagi yang memenuhi syarat
4		Hal-hal lain yang ditetapkan dalam perjanjian kerja, peraturan perusahaan atau perjanjian kerja bersama

In addition, the omnibus law abolished 29 articles of the manpower law including Articles 43, 44, 46, 48, 64, 65, 89, 90, 91, 96, 97, 152, 154, 155, 158, 159, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, and 184. For example, the omnibus law abolishes the norm of handing over part of a job to another company through a job charter agreement as stipulated in Articles 64 and 65 of the Manpower Law. Regarding

<sup>34</sup>Kompas.Com, “Ketentuan Upah dalam UU Ketenagakerjaan dengan UU CILAKA”, *Access: <https://www.kompas.com/tren/read/2020/11/04/162000665/ketentuan-upah-di-uu-ketenagakerjaan-dan-uu-cipta-kerja-apa-bedanya-?page=all>* pada tanggal 25 April 2021.

wages, the omnibus law abolishes the sectoral minimum wage and the mechanism for the suspension of the minimum wage as previously regulated in Article 90 of the Manpower Law. The omnibus law also abolished Article 158 of the Manpower Law, which previously regulated serious mistakes that could be used as a reason for terminating employment (PHK). The omnibus law also removes several provisions in the Manpower Law, which regulates the reasons for layoffs and the amount of compensation—for example, abolishing Article 162 of the Manpower Law, which stipulates that workers who resign voluntarily get compensation and separation fees.<sup>35</sup>

Likewise, the reasons for layoffs are due to changes in status, mergers, consolidations, or changes in ownership as regulated in Article 163 paragraphs (1) and (2) of the Manpower Law. The omnibus law abolishes this provision and the amount of severance compensation that workers can receive, either one or two times the amount. The same thing also removes other requirements for layoffs, such as Article 166, which previously regulated layoffs because workers died, their heirs received severance compensation of 2 times the conditions. The omnibus law inserts 13 articles in the Manpower Law, including Articles 61A, 88A, 88B, 88C, 88D, 88E, 90A, 90B, 92A, 151A, 154A, 157A, and 191A. For example, Article 61A provides for compensation for PKWT workers whose contracts have ended. Article 88B stipulates that wages are set based on units of time or units of results. Article 90B confirms that the minimum wage does not apply to micro and small businesses, further regulated in a Government Regulation.

#### **A. Conclusion**

Based on the results of the discussion above, it can be concluded that the legal protection of the Non-Wage Rights of Workers after the Job Creation Law already exists, but not yet entirely. The lack of protection of other non-wage rights also does not reflect Article 28 D paragraph (2) of the 1945 Constitution, stating that everyone has the right to work and receive fair and proper remuneration and treatment in an employment relationship. This can be seen in the uncertainty of law and justice as a result of the implementation of the decision requiring implementing regulations to regulate in more detail the rules regarding payment of bankrupt employees' salaries

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<sup>35</sup>Hukum Online, “Melek Omnibuslaw: Mengurai Problematik Pengupahan”, *Accesst: <https://www.hukumonline.com/berita/baca/lt5e5ce458777e6/melek-omnibus-law--mengurai-problematika-pengupahan/>* pada tanggal 25 April 2021.

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