



Fair remuneration of workers in micro and small enterprises in Job Creation Act

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Abstract

Labor Protection is the ideal and purpose of the existence of labor law to provide legal protection in the omnibus law (Job Creation Act), which accommodates the interests of workers but also accommodates the ease of doing business in micro and small firms in the form of wages as seen in Article 90 B. the existing problems regarding the legal ratio of labor law in Indonesia based on the Job Creation Act and what are the forms of legal protection for workers in micro and small businesses based on the legislation?, the purpose of this study is to find out and analyze the ratio of labor law legislation in Indonesia. Indonesia is based on the Job Creation Act to find and explore forms of legal protection for workers in micro and small businesses. At the same time, the benefits of this research are divided into two, namely, theoretically, to provide a legal ratio to the wages of micro-enterprise workers. And small, while in practice, it is to provide legal protection for workers in Micro and Small businesses. The employment agreement is also a form of agreement regulated in the Manpower Act and the Law on Job Creation as an alternative to protecting workers' rights with the principle of proportionality which aims to increase workers' bargaining power.

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1. Introduction

Employment law is one of the crucial laws and has become a legal and political issue that continues to be debated; this is because employment law is also one of the laws that affect many people's lives and is very strategic in economic development and community welfare. In the Law of the Republic of Indonesia, Number 13 of 2003 concerning Manpower (Job Act), the workforce is an actor and goal in national development; national development aims to prosper the people, providing justice and prosperity to all people. The workforce law is also a lever that equates the power between employers and workers because the positions of employers and workers are not in a balanced bargaining position, with the law guaranteeing protection of workers' fundamental rights, equal opportunity, and worker welfare.

Employment in Indonesian, the word *affix ke-an* in labor means all / everything, so that it can be interpreted as everything related to labor. In contrast, labor is an individual who does a job that aims to produce goods / provide services. To meet the needs of the community, the company, or oneself, while wages are rights that have been previously agreed upon given to workers based on work to produce goods/provide services to the person/legal entity who employs them (employer) whose amount of payment is based on the worker's agreement. With the employer while still following the laws and regulations.

Because wages are a form of right that needs to be protected by the state, to avoid inequality and injustice in wages, it is the government that determines the minimum limit in wages so that this does not deviate from the objectives of the principle of proportionality and balance that the contract is unfair and one-sided. (Hernoko, 2010)

The determination of amount of a wage is determined in the work agreement; this is where there is a bargaining position where on the one hand, the worker offers his abilities, and on the

other hand, the entrepreneur offers a reward/wage that is commensurate with the power of the worker, but not every worker has a very high ability so that it can be used as a counterweight in the bargain so that This position makes the labor law the basis for implementing justice in wages. For educated workers, wages are the result of investment (rate of return) in human resources, and for certain groups, wages symbolize social status and rewards for workers (results). For entrepreneurs, wages and overall labor costs (labor costs) determine the company's continuity and affect the return of investment or production costs that must be kept as low as possible. (Zein, 2007) For the government, wages are macroeconomic variables such as inflation, employment opportunities, unemployment, income distribution, and growth in general.

In principle, paying wages is an absolute obligation for employers (Article 1602a of the Civil Code), which is, therefore, a right for workers/laborers. However, the amount and form are determined in the work agreement, or it may happen that it already exists in the employer's regulations. Thus, the worker/laborer only agrees to the amount and form the employer/employer has determined. Regarding this form of wages, sometimes laws/regulations oblige or prohibit employers from providing certain goods as a substitute or part of wages, as well as the possibility that wage provisions in the agreement or company regulations are not stated. (Soepomo, 1990)

Based on the research of Iswaningsih, M. L., Budiarta, I. N. P., & Ujiti, N. M. P. (2021), the concept of omnibus law is one of the breakthroughs for restructuring current regulations. To minimize disharmony and overlapping existing laws and regulations, the omnibus law is a good plan for structuring regulations. Regulatory reform is expected to help ensure that laws and regulations in all areas of activity are fully responsive to changing economic, social, and technological conditions surrounding them.

The issue of wages is in the personal realm between workers and employers, so the amount depends on the agreement of both parties. The problem that arises then is related to their respective bargaining positions, that workers/laborers are in a situation that is more in need, thus placing workers/laborers in a low position, so what happens is that workers are only asked to agree on things the employer wants. employers, including wages. (Kahpi, 2018)

This wage issue has become a national issue; in 2020, it was corrected through the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (Job Creation Act) which is a form of omnibus law; in this law, it does not fully regulate employment issues but also various kinds of regulations—Related to improving the investment ecosystem and business activities, convenience, protection, and empowerment of cooperatives and MSEs, ease of doing business, research and innovation support, land acquisition, economic zones, significant government investment and acceleration of national strategic projects, implementation of government administration and imposition of penalty. The form of the omnibus law is a comprehensive package of regulations in one direction whose purpose is to resolve problem issues in statutes that are spread across various rules and regulations into one limitation or streamline regulations but still based on a hierarchical system of rules and regulations. Legislation, procedures for forming rules and regulations, and their principles. (Fitryantica, 2019)

The state must also guarantee wage protection for workers who work in micro and small businesses. However, still, the security for workers in micro and small businesses is different from workers in othcompaniesses, which is stated in Article 90B paragraph 1 of the Law of the Republic of Indonesia Number 11 the Year 2020 concerning Job Creation which states that the minimum wage provisions are excluded for micro and small

businesses, furthermore in paragraph 3 says that the wage agreement is at least a certain percentage of the average public consumption based on data sourced from the authorized institution in the field of statistics, and in paragraph 4 states that further provisions are regulated in government regulations, while in Government Regulation of the Republic of Indonesia Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises does not explain at all how significant the minimum or maximum percentage is. So there is no clear wage protection for micro and small business workers.

Based on the background of the problems above, the formulation of the problem that will be discussed in this journal is what is the legal ratio of labor law in Indonesia based on the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation and what are the forms of legal protection for workers in micro and small businesses based on regulations legislation, the purpose of this research is to find out and analyze the legal ratio of labor law in Indonesia based on the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation and to find out and analyze forms of legal protection for workers in micro and small businesses, while The benefits of this research are divided into two, namely theoretically to provide a legal ratio to the remuneration of micro and small business workers while practically it is to provide legal protection for workers in Micro and Small businesses.

2. Methods

Law is a branch of science that is *sui generis*; as a branch of science, research is one of the outputs of science; good research must follow existing research methods, namely legal research methods. (Marzuki, 2008) This research is normative legal research; the approach used is conceptual,

and a state approach, namely a conceptual approach to legal science and a system based on applicable laws and regulations; the legal materials used are primary legal materials, namely rules and regulations, legal materials secondary law in the form of books and journals of law, and tertiary legal materials are KBBI and Black's Law Dictionary.

3. Results and Discussion

3.1. Legislation ratio of employment law in Indonesia based on the Job Creation Act

Labor protection is the ideals and goals of the existence of labor law and is the spirit of the formation of the Job Creation Act. To provide legal protection, a law must meet the following characteristics (Yetniwati, 2017): 1. Have a legal concept that is clear, 2. The regulation is made by the competent authority (DPR/Legislative Body), 3. Has a clear lawful purpose, 4. The law is not retroactive/retroactive, 5. The public, 6, understalawrmulation of the regulation. The code has been announced to the public. The community, 7. The law does not conflict with other laws, 8. The code must not have provisions that exceed the capabilities, 9. The code must not change frequently, 10. The community can accept the regulation so it can be implemented, 11. Some institutions/agencies have the authority to settle disputes due to these regulations, 1 2. The law has provisions governing sanctions.

Legal protection is based on a law (statutory regulations) on matters relating to labor rights; a fundamentfundamental labor rightsotected by codifying these rights in existing provisions. Laws and rules can be vital to lifting the position balance between workers and employers. (Suyanto & Andriyanto, 2003)

Protection of workers has several forms, but generally, it can be divided into physical, technical, social, and economic security; the defense can be implemented by implementing norms/regula-

tions in the workplace. These norms include (Asikin et al., 2002): a. Work safety norms protect workers in the process, work environment, and procedures for carrying out work. b. Occupational health and work environment health norms that regulate the practices for caring for and maintaining the cleanliness of the workplace as well as other actions needed to fulfill the cleanliness of the workplace to maintain the health of workers and their work environment. c. Work Norms, which contain the protection of workers' rights that arise because of the work carried out or based on work agreements so that this norm is a form of procedure for its implementation, in the form of protection against wages, rest hours, worship times, holidays, days off, leave pregnancy, working hours of children, and decency at work. d. The norm of compensation and rehabilitation for workers who suffer from illness or accidents due to work; the heirs are also entitled to this compensation and rehabilitation.

The forms of protection based on the above norms can be grouped into 3, namely (Asikin et al., 2002): a. Economic protection is a form of protection against the economic needs of workers, such as: providing income that can meet the welfare of workers and their families and other forms of payment needed by workers such as allowances and bonuses, besides this protection also protects workers who cannot work. Be unable to work permanently or temporarily due to a situation against his will. b. Social protection is in the form of protection against workers' social needs, which can be in the form of developing the social environment as widely as possible freely so that they can live and grow in society (protection against restraints of social development of workers) c. Technical protection protects workers from the dangers of work accidents that can occur in the workplace or against certain materials processed by the company that can pose a risk of harm to workers. This protection can be in the form of implementing SOPs and work safety and provid-

ing equipment or equipment to ensure worker safety.

The legal substance that is the basis for changes to the Manpower Act that is accommodated by the Job Creation Act is the Minimum Wage, Severance pays for Termination of Employment, Work Permits for Foreign Workers, Definitions of Work and Hours of Work, Partial Transfer of Work/Outsourcing, and Job Loss Guarantees for Workers the ratio legis underlying the above changes are a. If foreign workers are intended to facilitate licensing. The use of foreign workers to be able to contribute to the development of science, economy, and technology originating foreign workers, there are still clear restrictions that only foreign workers have the appropriate competence, so that not all foreign workers can enter quickly and threaten workers in Indonesia, such as specific technicians, commissioners, and directors with a share ownership threshold. b. In the case of a work agreement for a particular time, changes in the length of work can be determined through a work agreement intended to provide flexibility in bargaining between the entrepreneur and the worker. In addition, there is compensation for workers with a work agreement for a specific time who dies. c. In the case of outsourcing, the protection for outsourcing workers is the certainty of the existence of the outsourcing company, namely in the form of a legal entity that has fulfilled the business license in terms of outsourcing workers and all forms of responsibility for wages, labor welfare and working conditions are with the outsourcing provider company. . d. If work and rest times provide flexibility in determining work and rest times, but by still providing a minimum time limit that must be adhered to, the aim is to provide accommodation for certain types of work that are not carried out within 8 hours in one day but still provide protection. Against workers. e. In terms of wages, there is certainty in determining the minimum wage

where the district/city minimum wage must be higher than the minimum wage determined by the province; this new norm is a legal certainty regarding the minimum wage gap in the regions. In addition, the model allows micro and small businesses not to follow the minimum wage indicated for ease of business. f. In the case of termination of employment, there is a change in the method of termination of employment, where an employment relationship begins with a work agreement based on a contract; the termination of employment must also be carried out by mutual agreement between the employee and the employer.

This form of agreement is not required in the event of the following: 1) Workers/laborers on probation. 2) The PKWT has expired. 3) Resigned of his own accord. 4) Entering retirement age. 5) Died. 6) The company is closed due to force majeure. 7) The company is declared bankrupt.

3.2. Legal protection for workers in micro and small businesses

Micro and small entrepreneurs have a definition in the Law of the Republic of Indonesia Number 20 of 2008 concerning Micro, Small and Medium Enterprises, State Gazette of the Republic of Indonesia of 2008 Number 93, Supplement to the State Gazette of the Republic of Indonesia Number 4866 that micro businesses are categorized as businesses that have a limit on assets. net no more than Rp. 50,000,000, and the small business category's net worth is not more than Rp. 500,000,000 net worth itself in English is "net assets," which is calculated from total wealth (assets) with liabilities/liabilities (debt); the value of net worth can represent the company's real wealth after being used to pay obligations, other than that the criteria Another thing that describes micro and small businesses is the amount of income where the annual income for micro-businesses is not more than Rp. 300,000,000, which means monthly income is not more than Rp. 25,000,000 and small busi-

nesses not more than Rp. 2,500,000,000. which means a month no more than Rp. 208,333,333.3.

In Micro and Small businesses, labor is the part that becomes the backbone of production because micro and small businesses do not allow it to have sufficient assets and capital to automate with high technology to be able to carry out output so that the Job Creation Act provides facilities/specific incentives such as making it easier for Micro and Small businesses to be able to form individual legal entities (PT. Perseorangan Limited) which can be used to raise capital as well as facilities such as providing relief on wages for workers, namely the minimum wage limit given does not follow the minimum wage provisions so that remuneration in micro and small businesses is based on a specific limit from the statistical average of public consumption and work agreements.

The legislative ratio for determining the minimum wage is to meet the living needs of workers and their families. The minimum wage continues to grow with economic growth, so an increase in the minimum wage must happen to meet the needs of clothing, food, and housing, which are fundamental human rights protected. (Kirti & Priyono, 2018)

Legal protection for the remuneration of workers in micro and small businesses does not appear in Article 90 B paragraph 3 of the Employment Creation Act, which does not provide legal certainty as to the percentage of public consumption that is the threshold for the agreed wage, as well as in the said implementing regulation. In Article 90 B paragraph 4, namely Government Regulation of the Republic of Indonesia Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises, there is also no such percentage threshold, so that legal protection for workers in micro and small businesses lies in a proportional and fair employment agreement.

The employment agreement is one form of the understanding agreement from the Black's Law Dictionary agreement, namely "an agreement between two or more persons which creates an obligation, to do or not to do a particular thing." by this understanding, an agreement or contract has the conditions of validity contained in Article 1320 of the Civil Code, namely: agreement, skill, a particular subject/subject, and a cause that is not prohibited.

However, in a work agreement, several essential elements it from other contract forms, namely (Kosidin, 1999): 1. Doing specific work, that the content of the work agreement regulates what work is done by the workforce and agreed upon by him, and the work must do it yourself, and no one else can represent it. 2. Under the order or leadership of another person, the worker or laborer works under the demands of the employer/superior, which means that the worker must obey the rules relating to work and the rules that are shown to improve the order in the company. In the command element, there is an element of authority to govern, and the ruled means an unequal position. 3. The existence of Wages which are the rights of workers/laborers from employers (individuals or business entities) for producing goods or providing services in the form of money, where the wages are still based on statutory regulations. 4. For a specific time, the employment relationship must be adjusted to the time specified in the work agreement or statutory rules so that workers are not allowed to do work as they please. While employers are not allowed to employ their workers at will, the work must be carried out by a work agreement and must not conflict with statutory regulations.

The employment agreement is the basis of the birth of the working relationship between the worker and the employer and is also an applicable law and must be obeyed by both parties. (Santoso

& T, 2012) because if it is not understood and adhered to in good faith and is detrimental to the parties, intervention can occur by the government as a form of upholding justice and legal certainty. In a work agreement as a form of contract, it must fulfill the principles in the deal in general; the function of the code or regulation is as the basis of the agreement and provides an overview of the legal background of the value, which will be a guideline that leads to the purpose of the contract. (Sinaga, 2018)

The main principles in the agreement are the principle of freedom of contract, the principle of good faith, the principle of consensual, the principle of *pacta sunt servanda*, the principle of justice, the principle of balance, and the principle of proportionality, often the principle of credit and the principle of proportionality are equated, but the principle of proportionality must be understood as the distribution of rights and obligations that are equal. By the proportion/part in the contractual aspect in the whole process (Hernoko, 2016), so it is not the same as the principle of balance, where the principle of balance provides equality/comparable in number while the principle of proportionality can be interpreted as the distribution of rights and obligations according to proportion in all aspects contractual, (Hernoko, 2007) it is necessary to understand that the contractual element does not only include the making of contracts and their implementation but includes: Determining the contents of the contract, interpreting the contents of the agreement, carrying out obligations, failure to fulfill obligations, as a result of failure to fulfill obligations and settlement of debts.

Based on the contractual aspects above, if it is connected to making a proportional work agreement, it can be described as follows: (Hernoko, 2010) 1. In determining the content of the contract, the content of the contract specifies how the obligations and rights of workers and employers; in determining the contents of the contract, there are

negotiations between workers and employers to reach an agreement on demand (the need for workers' abilities) and supply (the skills possessed by workers desired by the employer), proportional conditions can be achieved at a certain point between supply and demand reaching acceptable suitability by both parties with a minimum limit of decency in the law and customs that exist in society. 2. A work agreement can accommodate interpretation of the contents of the contract, not all things because the nature of the agreement only regulates fundamental matters. (Hernoko, 2017)

Other things can occur outside the provisions in a work agreement that has been agreed/agreed before; then, the interpretation is one way to realize proportionality between workers and employers. Performance, according to the Blacks Law Dictionary, is "The art or process of discovering and expounding the meaning of a statute, will, contract, or other written document" in essence is one way to find and describe the intent of the agreement. 3. Implementation of contractual obligations is a form of fulfillment of the rights and obligations of employers and workers, which is the core and purpose of the establishment of the agreement, the implementation of the contents of the agreement based on good faith while taking into account appropriateness and decency in its implementation, proportionality will be formed between workers and employers. Work. 4. Failure to fulfill obligations and failure to fulfill contracts is one part of the contractual aspects where the forms of failure can be in the form of default, overmatch/force majeure, and hardship. In the event of default, the party who fails to fulfill its obligations must compensate for the losses borne by the party who fails to fulfill its obligations, either wholly or partially; in determining the compensation, the amount of the loss must be weighed by reducing the prestatie that has been fulfilled, for the situation of overmatch/force majeure it cannot be directly recognized by the party experiencing it but must be proven in court so that it is

not realized without legal certainty in the form of a court decision. In contrast, for arduous this situation provides concessions to parties who cannot fulfill their obligations because of something that is incriminating one of the parties, there is no proportionality to the fulfillment of obligations and rights, a pre-agreement can be made or partly amended the provisions by the agreement. 5. Consequences for failure to fulfill obligations. Failure to fulfill the agreement can cause the cancellation or termination of a work agreement, cancellation; cancellation on-fulfillment of the subjective or objective elements of the agreement, which can force the existence of the agreement never to exist, while the termination of the agreement occurs due to problems in fulfilling the agreement, termination of the agreement is the right of the parties.

However, it should be noted that to assess whether a failure to fulfill the obligations that form the basis for the termination of the contract must be evaluated proportionally. 6. Dispute resolution does not always have to be carried out in litigation. Other forms of dispute resolution are open, and the parties have the right to choose the dispute resolution chosen by the parties (judges, mediators, arbitrators, etc.) to the dispute.

4. Conclusion

The employment agreement is also a form of agreement regulated in the Manpower Act and the Job Creation Act, which can be alternative protection for workers' rights because a contract must be based on agreement principles that apply equally to the parties, especially in terms of the principle of proportionality which aims to increase the bargaining power of workers by taking into account the interests of employers, providing ease of doing business does not mean having to harm workers' rights to get fundamental wage rights. Wage limits for workers in micro and small enterprises.

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