



The Omnibus Law's Conception on the Protection of Female Employee A Study in Indonesian smes

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Abstract

The purpose of writing this article is to analyze the omnibuslaw Conception on the Protection of Female Employees in Indonesian SMEs. The research method is a qualitative method. This type of research is analytical descriptive in nature, namely describing every statutory regulation relating to legal theory as an object of research. by providing studies or studies of various kinds of current issues based on actual facts. The data sources required in this paper are secondary data sources consisting of primary legal materials, secondary legal materials and tertiary legal materials. The primary legal materials used are the regulations that are the object of research, namely the omnibus law, the Labor Law and other written regulations. The secondary legal materials used are books and scientific papers related to the object of this research. While the secondary legal materials used consist of newspapers in electronic form and magazines in electronic form. The Omnibus Law, in the employment cluster, has created uncertainty and narrowed the participation of women

workers in the world of work. Where are the rights contained in the Labor Law in accordance with Articles 81, 82 and Article 83 which regulate that female workers or laborers can get holidays during their menstrual days The first and second terms are not included in the draft Job Creation Law (UU CK) which clearly regulates binding mechanisms and laws regarding the rights to leave for menstruation, childbirth and breastfeeding for women workers. Under these conditions new problems will emerge, such as the high rate of stunting (malnutrition) that will occur, due to a mother prioritizing her work rather than paying attention to the nutritional intake of her baby.

Keywords

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Introduction

Labor policy in Indonesia is regulated in Law Number 13 of 2003 concerning Manpower, which in this regulation clearly stipulates what are the rights and protections of women workers. In Article 81, Law Number 13 of 2003 regulates the issue of protection during menstruation, where female workers who are in their menstrual period are not required to work on the first and second day of menstruation with full wages. According to Aryani et al. (2022); Arifin (2021) The Indonesian Women's Coalition as a mass organization consists of women from various background understands the spirit of the formation of this law as a good effort to improve various policies that have been overlapping and disharmony so that the implementation of human development, economic reform and people's welfare is felt to be less than optimal. According to Aswindo et al. (2021); Azizah (2022) Especially how to solve the problem of poverty that arises from the employment sector so that this Law is expected to provide opportunities for the community to obtain a better economic life. So that a package Policy is needed that touches all aspects of people's lives, so that this Law is formed using the Omnibus Law method, contains a very broad cluster with 11 (eleven) discussion clusters, and a total of 79 laws are affected, and there are 1,244 Articles, 1,028 pages . However, it is unfortunate that the process has been accelerated and has sidelined the many inputs that have come from various elements of society since the policy began to be discussed by both the Indonesian Parliament and the Government.

According to Aryani et al. (2022); Azizah (2022) The impact that will be experienced by women as part of cross-sector workers, women farmers, fishermen, professionals, students, and small and medium business actors and others that are directly related to this policy. Difficulties in implementing gender mainstreaming and promoting an equality and inclusion perspective were actually still a big "homework" long before the Job Creation Law was passed. Meanwhile, various information has developed that certain articles in the Job Creation Law have actually been weakened compared to the previously regulated policies. As one

example is the regulation of menstruation/maternity leave, although it is not abolished, the substance regarding hourly wages eliminates the essence of menstruation leave and maternity leave because if a female worker takes the leave, it is automatically not counted as working, so she does not get leave pay. While reproductive health is something inherent in women that affects women in carrying out activities as workers. According to Koto et al. (2021) Apart from that, it is also related to the regulation of overtime which is left to the decision of the company and the employer, which has the potential to be understood in multiple interpretations, as well as other arrangements which are still confusing in society.

The Indonesian Women's Coalition suspects that statements made by members of the legislature and the government using the argumentation of the COVID-19 pandemic as an excuse to speed up the process are contradictory to the commitment to reduce the transmission rate of the COVID-19 virus. legislation when the public questions the process of drafting other laws such as the Bill on the Elimination of Sexual Violence, the Bill on the Protection of Domestic Workers and others. So that the public's perception is getting stronger that the Job Creation Law process is loaded with the interests of large capital owners, or as many opportunities as possible for investment. According to Kusumawardana et al. (2021);Koto et al. (2021) Legislation using the Omnibus Law method is a positive step and a solution to problems of policy, implementation and law enforcement which so far has not been effective in Indonesia. However, this good step also needs to be accompanied by the spirit and principles of policy formulation which are truly based on justice, equity, non-discrimination, participatory and transparent so that improvements in the legal and policy fields also bring about significant changes for all people as well as resolve the problem of gender inequality in development and development. According to Banjaransari et al. (2022);Foni et al. (2022) raise the quality of the entire community without exception. So that wisdom and strong commitment from the government and DPR RI are needed to process policy-making that adheres to legal ethics and policies, not just a legislative process that departs from the interests of certain groups.

Method

The research method is a qualitative method. This type of research is analytical descriptive in nature, namely describing every statutory regulation relating to legal theory as an object of research. by providing studies or studies of various kinds of current issues based on actual facts. The data sources required in this paper are secondary data sources consisting of primary legal materials, secondary legal materials and tertiary legal materials. The primary legal materials used are the regulations that are the object of research, namely the omnibus law, the Labor Law and other written regulations. The secondary legal materials used are books and scientific papers related to the object of this research. While the secondary legal materials used consist of newspapers in electronic form and magazines in electronic form. The selected data collection method is the library

research method and the data analysis method used is to review and describe the applicable principles to be analyzed thoroughly in order to obtain objective conclusions in understanding and answering the problems in this writing.

Result and Discussion

According to Hamid (2020);Koto et al. (2021);Kusumawardana et al. (2021);Koto et al. (2021) In the Omnibus Law, the government adds 5 reasons for companies to layoffs, including: Companies carry out efficiency, Companies carry out mergers, consolidations, takeovers, or separation of companies, Companies are in a state of postponement of debt payment obligations, Companies have committed acts that are detrimental to workers/laborers , Workers/laborers experience prolonged illness or disability as a result of work accidents and are unable to carry out their work after exceeding the 12 (twelve) month limit. industrial disputes. Furthermore, in Article 79 paragraph 2 letter b of Law No.13/2003 (UUK) it is stated that weekly rest is 1 (one) day for 6 (six) working days in 1 (one) week or 2 (two) days for 5 (five) working days in 1 (one) week. whereas in the Job Creation Law, it was changed to 1 (one) day weekly rest for 6 (six) working days in 1 (one) week. In which the government changed the conditions for workers' holidays, which were originally 2 days to 1 day every week. This is considered by the workers as something that is detrimental to them. Not only that, the Omnibus Law has an even greater impact on women workers/workers. The first is related to menstruation leave. In the Job Creation Bill, it is stated that (1) Female workers/laborers who feel sick during their menstruation period and inform the employer are not obliged to work on the first and second day of menstruation. (2) The implementation of the provisions referred to in paragraph (1) is regulated in work agreements, company regulations or collective work agreements. In this case, there is no mention of the right to menstruation leave for female workers, moreover the implementation and provisions depend on company regulations, so that female workers have a weak position regarding menstrual leave regulations. According to Santy (2023);Santosa et al. (2021);Saifullah (2020) As for other articles related to the mechanism for maternity leave and childbirth for female workers as well as giving women workers the opportunity to breastfeed their children if this has to be done during working hours. the two articles do not include discussion, amendment, and also the status of abolition. Thus, quoting from the Syndication, the substance regarding hourly wages eliminates the essence of menstrual leave and maternity leave because if women workers take the leave they are automatically not counted as working, so they do not get leave wages. According to Muhammad (2021);Mahy (2022);Perdana (2021) Overall the omnibus law has 11 clusters discussed in the Job Creation Bill, the first concerning simplification of land permits, investment requirements, employment, ease and protection of MSMEs, ease of doing business, research and innovation support, government administration, imposition of sanctions, land control , facilitation of government projects, However, the thing

that is most burdensome to workers, especially women workers, is the discussion cluster on employment. This is because there are several articles in the Omnibus Job Creation Law which reap a lot of controversy. The first is regarding working time and overtime which is automatically extended. This has an impact on reduced vacation time. Article 79 paragraph 1 b states that the weekly rest period is only 1 day for 6 days in a week. Elimination of the minimum wage, Article 88 of the Ciptaker Law removes detailed provisions regarding the calculation of wages, namely that there is no longer a minimum wage provision. From this article, we can see that the wages for workers are potentially far from decent, so the calculation of wages will change.

Furthermore, regarding wages for menstruation and maternity leave, it will be abolished. Indeed, the provisions of the Job Creation Law do not eliminate the article in Law No. 13 of 2003 concerning menstruation and maternity leave. Then, what if the female worker is menstruating on the first day or the second day. During the first and second day of menstruation, most women will feel abdominal pain and pain in the abdomen. According to Sujono et al. (2023); Sulistina et al. (2022) The meaning of being sick here is that the company must provide leave permits for female workers, not by issuing sick notes because most women who are menstruating on the first and second days need to rest at home without doing any activity. Menstruation is a reproductive phase that is experienced by every woman and must be respected by companies where women work. It is very unfortunate that the work copyright law seems to weaken the reproductive health rights of women workers. Therefore, women workers agreed to reject the job copyright law. Apart from that, what makes it sad is that the representation of women workers seems not to have been considered in the process of drafting the work copyright law formed by the government. According to Suprpti et al. (2020); Sihombing et al. (2020); Ramadhan et al. (2021) the women's trade unions in Indonesia were not involved in the drafting of the job creation bill Linking the impact of the omnibus law on women with the theory of feminism, in which the goal of feminism as a political movement is to make women and men more equal. Therefore, the importance of gender equality is because gender equality is equal opportunity for men and women in terms of economic participation, equal access to education, health and political empowerment. In the work copyright law, there is a clear gap in gender equality and it is almost said that the work copyright omnibus law is not friendly to women. If the work copyright law imposes wages per unit of time.

The substance of the Job Creation Law changed working hours, namely the elimination of the five working days and two weekly rest days. In the provisions of Article 79 of the Ciptaker Law paragraph 1b it is stated that 1 day weekly rest for 6 working days. Apart from working for 6 days, workers are also forced to extend overtime. In the Job Creation Law it is stated that overtime is carried out 4 hours in 1 day and 18 hours in a week. Overtime was extended from the provisions of the Manpower Law 32/2003 article 78 which states that overtime work can only be done for a maximum of 3 (three) hours in 1 (one) day and 14 (fourteen) hours in 1 (one) week.

According to Ramadhan et al. (2021);Saifullah (2020);Sujono et al. (2023);Sulistina et al. (2022) Changes in working hours also have an impact on vacation time, which is only one day a week for 6 working days. Article 79 paragraph 1 b of the Ciptaker Law states that the weekly rest period is only 1 day for 6 days a week. Meanwhile, holidays in the Labor Law stipulate weekly breaks of 1 (one) day for 6 (six) working days in 1 (one) week or 2 (two) days for 5 (five) working days in 1 (one) week. Article 88 of the Ciptaker Law removes detailed provisions regarding the calculation of wages, namely that there is no longer a minimum wage provision. The calculation of wages will be based on the national wage policy regulated in government regulations. With this provision, wages are potentially far from decent. The provisions regarding the minimum wage in article 89 of the Manpower Law were also removed by the Ciptaker Law. Apart from that, a fundamental change in wages in the Ciptaker Law is a calculation based on a unit of time. Although the unit of time is not specified, this provision will have an impact on wages calculated per hour. With this calculation, automatically the minimum wage is no longer relevant for wages. In addition, the calculation of hourly wages will eliminate wages that are usually received on a regular basis each month.

According to Widiatedja et al. (2022);Widjaja et al. (2022) The provisions of the Job Creation Law do not eliminate the articles in Law No. 13 of 2003 concerning menstruation and maternity leave. However, the substance regarding hourly wages eliminates the essence of menstruation leave and maternity leave because if a female worker takes the leave, it is automatically not counted as working, so she does not get paid leave. A number of leave such as sabbaticals are no longer regulated by the government, but are regulated by companies with work agreements, company regulations and with Collective Bargaining Agreements. If you are not careful and ready to negotiate and ask the company where you work, then your leave will be determined by the company unilaterally. Article 79 of the Ciptaker Law, paragraph 5, also eliminates the right to long rest (long leave) for workers. Where, sabbaticals are only determined by company regulations/work agreements, not mandated by law as stipulated in Law No. 13 of 2003.

According to Siagian (2021);Tejomurti (2020);Widyaningsih et al. (2021) Companies can terminate employment relations (PHK) unilaterally through Article 154A of the Ciptaker Law, namely that layoffs can be carried out on the grounds that the company has merger, consolidation, acquisition or separation of companies; efficiency; closed due to loss, force majeure, postponement of debt, and bankruptcy. Termination of employment is also facilitated through article 151 of the Ciptaker Law which removes the provision "all efforts must be made to prevent termination of employment". Companies can also make layoffs without going through negotiations with unions. In addition, the Job Creation Law abolished the provisions of Article 161 of the Manpower Law which previously regulated warning letters before layoffs. Therefore, companies can make layoffs without going through a warning letter mechanism. Provisions in the Ciptaker Law article 156 reduce the amount of severance pay if workers are laid off for eliminating

compensation money. Article 156 of the Manpower Law stipulates that housing reimbursement and treatment and care are set at 15% (fifteen percent) of severance pay and/or long service pay for those who meet the requirements. In addition, the Ciptaker Law abolished articles 162-166 in the Manpower Law which detailed the amount of severance pay and the calculation of long service awards and compensation money for workers who resigned.

The law has sparked waves of protest since it was issued because it was deemed to have ignored people's aspirations. The composition of the Task Force that was compiled, did not include elements of workers, peasants, or other elements of the people. On the contrary, it is filled with groups of businessmen who have big interests in stripping down labor rights and are greedy in exploiting nature. The pretext of opening jobs is nonsense. According to Widjaja et al. (2022) The Investment Coordinating Board/BKPM noted that in the period 2013-2018 investment continued to increase, but not linearly with employment. This can be seen from the data for 2016, an investment of USD 28.96 billion absorbed only 951,939, and in the first quarter of 2019 USD 29.31 billion was only able to absorb 490,368 workers. In fact, opening jobs and fulfilling people's welfare are not the responsibility of investors. but government. The government's failure to prosper the people only shows who the government and people's representatives side with. Starting from the ratification of the Labor Law No. 13/2003 which legalized outsourcing contracts (labor flexibility), Government Regulation or PP 78/2015 which legalized low wages, to the Cilaka Bill which abolished various labor rights such as the abolition of all leave rights including maternity leave and menstruation leave, ratification of special solid wages work, abolition of City/UMSK Sectoral Minimum Wages, wages per unit of time per hour. In addition, the impact on women in other sectors will be felt as a consequence of the ease of land grabbing for the mining and palm oil businesses and the extension of business use rights/HGU for 90 years, the procurement of a land bank, all of which exacerbate land monopoly in a handful of corporations and environmental damage.

Then in Article 82 it also regulates the mechanism for maternity or maternity leave for women workers or laborers. It also includes leave for rest for workers or laborers who experience a miscarriage, where female workers have the right to rest for 1.5 months before giving birth and 1.5 months after giving birth. The same thing in Article 83 states that women workers or laborers who a child who is still breastfeeding should be properly given the opportunity to breastfeed her child if this has to be done during working time. Even though it has been guaranteed in various laws and regulations, until now not all of the rights of these women workers have been fulfilled by the company. On the other hand, with the presence

The Minister of Manpower considers that maternity leave for women workers are not abolished, it's just that they are not included in the Job Creation Omnibus Law. Which abolished is the wages or salaries of women at the time certain. So that the provisions of Article 84 in the Law Labor has really been

abolished, namely rights women workers to continue to get paid when on leave menstruation, pregnancy, and childbirth. The reason is because of the Omnibus Law is a law that focuses on issues creating jobs and also adhering to a no-work system no pay. This was emphasized by Febri Jaya in his writings that leave rights in certain circumstances for women not abolished in the Job Creation Omnibus Law. The consequence of not clearly stating the right to leave for menstruation, giving birth/breastfeeding for women workers creates a greater potential for violations of the right to leave for women workers. Especially with the regulation of hourly wages for workers, then of course if workers don't work they don't get a salary. Automatically the female workers are taking their right to leave under the circumstances menstruation, pregnancy and so on will not get a salary. Even though the purpose of the laws issued by the state is of course for the benefit of its people.

The right to leave for female workers during menstruation, pregnancy, giving birth, and breastfeeding which were previously regulated in the Act It turns out that employment is not included in the law Job Creation Omnibus Law. Some argue that on In essence, leave rights for women workers still remain in the Labor Law. But according to the opinion of the author based on the principle of *lex posterior derogate legi priori*, substance law of the Omnibus Law which will be prioritized if compared to the Labor Law. No the inclusion of leave rights for women workers in certain circumstances provide loopholes as well as the potential for breach leave rights for women workers in certain circumstances. Because, the facts on the ground so far show, even though In the Labor Law, women workers have the right to leave regulated, but there are still violations of workers' leave rights Woman. Apart from that, the Omnibus Law on Job Creation regulates hourly worker pay. This will have an impact on women workers who are on menstruation leave, childbirth and breast-feed. For women workers who are taking rights leave in the circumstances mentioned above automatically does get wages, this is different from the law policy Previous employment. It can be concluded that the substance of the Omnibus Law on

.Legislators should review again for reinstating the articles on menstruation leave rights, pregnant, giving birth, and miscarriage for women workers in the Job Creation Omnibus Law and continue to pay wages in women under certain circumstances. And deliver strict sanctions against entrepreneurs or companies that ignoring the rights of women workers. Besides that, the wage policy with the no works no pay system is being reviewed again specifically for the situation of female workers who are on leave menstruation, pregnancy, childbirth and breastfeeding

Conclusion

The Omnibus Law, in the employment cluster, has created uncertainty and narrowed the participation of women workers in the world of work. Where are the rights contained in the Labor Law in accordance with Articles 81, 82 and Article 83

which regulate that female workers or laborers can get holidays during their menstrual days. The first and second terms are not included in the draft Job Creation Law (UU CK) which clearly regulates binding mechanisms and laws regarding the rights to leave for menstruation, childbirth and breastfeeding for women workers. Under these conditions new problems will emerge, such as the high rate of stunting (malnutrition) that will occur, due to a mother prioritizing her work rather than paying attention to the nutritional intake of her baby. This will have a negative impact on the productivity and future of the new workforce which will determine the fate of the world of work in the midst of the Industrial Revolution 4.0. Therefore, legal protection for women workers or laborers must be maximized in accordance with the regulations that are managed (UU No. 13 of 2003), thereby increasing the bargaining position of the younger generation in the business world.

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