

Differences in Labor/Employee Severance Pay Before and After the Job Creation Law (Omnibus Law)

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Abstract

The Job Creation Omnibus Law was passed in 2020 and has caused a lot of controversy and debate in society. Several parties support this omnibus law because they believe that this step will have a positive impact on economic development and job creation in Indonesia. They argue that by simplifying business regulations and procedures, investors will be more interested in investing their capital, which in turn will bring benefits to the country's economic growth. The controversy surrounding the Omnibus Law reflects differences in views about the approach that should be taken to advance economic and social development in Indonesia. While the government argues that these legal reforms will provide long-term benefits for the country, opposition groups question the long-term impact of the changes. In this context, it is important to carry out an in-depth analysis of the implications of the omnibus law for the various sectors and interests of the affected communities. Careful evaluation and active participation from various related parties is needed to ensure that the steps taken through the omnibus law actually produce a positive, balanced and sustainable impact on national development

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Abstract

Omnibus Law Cipta Lapangan Kerja disahkan pada tahun 2020 dan telah menimbulkan banyak kontroversi dan perdebatan di masyarakat. Beberapa pihak mendukung omnibus law ini karena percaya bahwa langkah ini akan membawa dampak positif bagi pembangunan ekonomi dan penciptaan lapangan kerja di Indonesia. Mereka berargumen bahwa dengan menyederhanakan peraturan dan prosedur bisnis, investor akan lebih tertarik untuk menanamkan modalnya, yang pada gilirannya akan membawa manfaat bagi pertumbuhan ekonomi negara. Kontroversi terkait Omnibus Law mencerminkan perbedaan pandangan tentang pendekatan yang sebaiknya diambil untuk memajukan pembangunan ekonomi dan sosial di Indonesia. Sementara pemerintah berpendapat bahwa reformasi hukum ini akan memberikan keuntungan jangka panjang bagi negara, kelompok oposisi mempertanyakan dampak jangka panjang dari perubahan tersebut. Dalam konteks ini, penting untuk melakukan analisis mendalam terhadap implikasi omnibus law terhadap berbagai sektor dan kepentingan masyarakat yang terdampak. Evaluasi yang cermat dan partisipasi aktif dari berbagai pihak yang terkait diperlukan untuk memastikan bahwa langkah-langkah yang diambil melalui omnibus law benar-benar menghasilkan dampak yang positif, seimbang, dan berkelanjutan bagi pembangunan nasional.

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A. BACKGROUND

The Job Creation Regulation is a regulation that was passed in the form of a law, namely Law No. 11 of 2020, in which there are various new regulations to create legal unification. However, with the Job Creation Law, various changes, repeals and additions of new clauses have been made based on laws that have previously been in force in Indonesia, such as the Job Creation Law.

To ensure legal certainty in using regulations, legal principles are used to avoid conflicting laws, namely the principle of *lex posterior derogate legi priori*, namely newer laws override old laws. This applies to the Job Creation Law which regulates employment.

The material change regulated in the Employment Law with the Job Creation Law is that the Job Creation Law comprehensively regulates various business sectors and does not only discuss employment. There are several provisions that have been changed in the Job Creation Law. Employment law has been regulated in Law No. 13 of 2003 concerning Employment, where with the Job Creation Law, several changes have been made, adding articles to the Employment Law, so that the applicable law is the law that more recently, namely the Job Creation Law.

If there are clauses in the Employment Law that conflict with the Job Creation Law, then the newer law, namely the Job Creation Law, is used as a legal basis. This is called the principle of preference, namely a legal principle to designate which law takes precedence/applies in the event of related legal events and violations of regulations, such as several articles in the Employment Law as follows:

Article 81 number 15 of the Job Creation Law amends the provisions of Article 59 paragraph (4) of Law Number 13 of 2003 concerning Employment. The Job Creation Law which amends Article 59 paragraph (4) of the Manpower Law regulates that further provisions regarding the type and nature or activity of work, the time period and the time limit for extending a certain term work agreement are regulated by government regulations.

The advantages and disadvantages of the Job Creation Law in terms of material changes that have been regulated are that it protects domestic workers because the use of foreign workers must go through approval from the central government, not only based on written permission, so that their use can be limited, monitored based on the sectors and sections that are allowed to use them. TKA as a transfer of knowledge.

Articles that are in accordance with Law No. 11 of 2020 for the employment cluster are:

1. Working and rest times and hours are regulated in Article 7, in accordance with the Employment Cluster Job Creation Law in terms of working time of 8 hours if there are 5 working days.
2. Wages regulated in Article 3, in accordance with Article 88 paragraph (3) after being changed to Job Creation, namely wages and the basis for calculating them.

So with the existence of the Job Creation Law there is a difference between providing severance pay to workers who have been laid off, where the rules of the Job Creation Law must be implemented in order to create legal certainty.

B. PROBLEM FORMULATION

1. How will the provisions in the Employment Law change after the Job Creation Law?
2. What is employee severance pay like after and before the Job Creation Law?

C. PURPOSE OF WRITING

This writing aims to, as follows:

1. To find out and analyze changes to provisions in the Employment Law after the Job Creation Law.
2. To find out and analyze employee severance pay after and before the Job Creation Law

D. BENEFITS OF WRITING

This research aims as follows;

1. Theoretical Benefits

It is hoped that this writing can contribute knowledge in the field of legal science, especially employment law.

2. Practical Benefits

a. For Workers

It is hoped that this writing will enable workers to know their rights to severance pay before and after the enactment of the Job Creation Law.

b. For Companies

This writing aims to enable companies to be aware of changes in providing severance pay to employees with the enactment of the Job Creation Law, so that this new regulation can be implemented within the company.

E. RESEARCH METHODS

The research method used in this research is normative juridical or legal research which only examines library materials so it is also called library legal research.

a. Approach Method

The approach method used in this research is the statutory approach method. A normative research must of course use a legislative approach, because what will be researched are various legal regulations which are the focus and central theme of the research. The approach in this research was carried out by looking at the Civil Code, Employment Law, Omnibus Law, and regulations related to the legal issues studied.

b. Research Specifications

The research specifications used in this research include research on the inventory of statutory regulations by analyzing statutory regulations (positive law) that are related and relevant to the legal norms contained in statutory regulations relating to building construction permits, in addition to This research uses research specifications for legal discovery in concreto, namely an effort to find appropriate laws or laws that are actually implemented or obeyed by the community. Legal discovery in concreto can be carried out after carrying out an inventory of positive law.

c. Data source

The data source in this research uses secondary data. Secondary data is data obtained directly from library materials. The data consists of 2 legal materials, namely as follows:

a. Primary Legal Materials

1. The 1945 Constitution of the Republic of Indonesia;
2. Code of Civil law;
3. Law Number 13 of 2003 concerning Employment;
4. Law Number 11 of 2020 concerning Job Creation;
5. PP Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations

b. Secondary Legal Materials

Legal materials that provide explanations of primary legal materials such as research results in the legal field, results of scientific work in the legal field such as legal journals, legal cases, opinions of scholars, etc. Apart from the two legal materials above, this research also uses other legal materials such as legal dictionaries and encyclopedias as analytical tools.

d. Methods for Collecting Legal Materials

The method of collecting legal materials used in this research is the library method and documentation method. The library method is a way of collecting data by searching library materials such as literature, research results, scientific magazines, scientific bulletins, scientific journals. The Documentation Method is a way of collecting material by examining government and non-government documents, such as court decisions, agreements, decrees, the internet, agency regulations, agency regulations, reports, government archives and others.

e. Legal Material Processing Methods

The method for processing legal materials in this research uses data reduction, namely an activity of selecting, summarizing and focusing on the main and important things from a collection of legal materials, so that it becomes concise, arranged systematically and easy to understand. After reducing the data, data presentation is carried out. Data presentation in a study can be done in the form of a short description or relationships between categories. This

research is presented in descriptive narrative form with descriptions arranged systematically so that all the data obtained will be connected to each other according to the problems studied.

f. Legal Material Analysis Method

This research uses a normative analysis method, namely a way of interpreting and discussing research material based on legal understanding, legal norms, legal theories and doctrines related to the subject matter. Legal norms are needed as major premises, then correlated with relevant facts (legal facts) which are used as minor premises and through a syllogism process a conclusion will be obtained regarding the problem.

F. DISCUSSION

1. Changes to provisions in the Employment Law after the Job Creation Law

The regulations made by this legislative body fulfill philosophical elements, especially Pancasila and the 1945 Constitution, where the Job Creation Law creates a legal umbrella that accommodates various aspects of life such as employment, mining, construction, etc. so as to create legal certainty which is the principle of The rule of law, as regulated in Article 1 paragraph (3) of the 1945 Constitution. The Job Creation Law has the spirit of advancing the country's economy, to create a prosperous country as stated in Article 33 of the 1945 Constitution, where the Job Creation Law makes it easier and facilitates MSMEs. to develop a business, such as legal aspects (licensing), capital, and business entities. Not only that, foreign investment will also promote economic growth with certain restrictions on the use of foreign workers which will protect Indonesian workers, where foreign workers can only occupy strategic, non-operational positions for the purpose of transferring knowledge. So, if it is seen that there is a lack of synchronization between the philosophical basis on which the regulation is made as if it is in conflict with the 1945 Constitution, a judicial review can be submitted to the Constitutional Court according to Article 24C paragraph (1) of the 1945 Constitution. This cannot be separated from the imperfection of legal products made by humans, so as to To realize justice for the rights of citizens, judicial review of the law can be carried out at the Constitutional Court.

The enactment of the Job Creation Law does not merely make Law Number 13 of 2003 concerning Employment no longer valid, but there are certain clauses that are stated explicitly if it is revoked. Article 81 number 15 of the Job Creation Law amends the provisions of Article 59 paragraph (4) of Law Number 13 of 2003 concerning Employment. The Job Creation Law which amends Article 59 paragraph (4) of the Manpower Law regulates that further provisions regarding the type and nature or activity of work, the time period and the time limit for extending a certain term work agreement are regulated by government regulations.

The way an employment relationship is created is if the parties, namely the employee and the employer, agree to enter into an employment relationship in an agreement for an unspecified working time, as the terms of a valid agreement are regulated in Article 1320 of the Civil Code, namely in Article 1 with the presence of an agreement. Agreed to be stated in the form of an agreement, there are 2 as follows:

No	Comparison	PKWT	PKWTT
1.	Characteristics	Used for work certain or for a certain time (temporary in nature). Done by manufacturing employment agreement. Time period: PKWT can be held for a maximum of 2 (two) years. PKWT extensions are only permitted extended 1 (one) time for	Used for work its nature is permanent. Done by Letter Appointmentor making a Work Agreement

		<p>maximum period of 1 (one) year. (Art. 59 paragraph (4) Law No.13 2003).</p> <p>UpdatePKWT can be done 1 (one) time, according to the time period beforehand, no later than 2 (two) year. (Ps.59 paragraph (6) Law No.13 of 2003).</p>	
	<p>Rights workers who must accepted</p> <p>When Layoffs</p>	<p>Worker Rights: Wages up to the limit expiry of the term agreement.</p> <p>Legal Basis: Article 62 of Law No.13 2003:</p> <p>If one of the parties end the employment relationship before the end of the period specified in fixed term work agreement, or the end of the employment relationship not because of provisions as intended in Article 61 paragraph (1), the party that end the employment relationship obliged to pay compensation to the other party amounting to workers/laborers' wages arrive deadline for expiry of the term time of employment agreement</p>	<p>Workers' rights: Money Severance Pay (UP) + Money Long Service Awards (UPMK)+ Money replacement of rights should be accepted (UPH).</p> <p>Legal Basis: Article 156 of the Law No.13 of 2003:</p> <p>(1)In case of disconnection employment relations, entrepreneurs obliged to pay money severance pay (UP) and or money long service awards (UPMK)and replacement money rights (UPH) that should be accepted*.</p> <p>*Based on layoff calculations.</p>
	<p>Workers' rights that should accepted</p> <p>When resignation</p>	<p>The party who decides employment relationship (in this case workers who resign self) is obliged to compensate for the loss to the company.</p>	<p>Entitlement Replacement Money should be accepted (UPH) + Split Money (UPs).</p>
	<p>Probational period</p>	<p>Article 58 Law No.13 of 2003:</p> <p>(1) Work agreement for a certain time cannot be done</p>	<p>1. Article 60 paragraph (1) of the Law No.13 of 2003: Agreement work for no time</p>

		requires time work trial. (2) If required in-service probationary period work agreement as referred to in paragraph (1), work probation period required to be null and void by law	certain conditions may require most work probation period 3 (three) months long. 2. Article 1603I BW: Each stipulating agreement the probationary period is not the same amount of time for both parties or longer from three months and also every promise. The one who held it a new trial period for the same parties, is void.
	Layoffs during the trial period	(no layoffs because there are none probational period).	There is no payment obligation whatever.

Then the method for ending the employment relationship is regulated in Article 8 of the employment agreement, namely due to an agreement between the parties, resignation, violations and criminal acts carried out in accordance with labor laws and regulations.

2. Employee Retirement Pay After and Before the Job Creation Law

The calculation of severance pay based on the Job Creation Law is as follows:

Years of service	Severance Pay Received
Less than a year	1 month's wages
1 year or more or less than 2 years	2 months wages
2 years or more or less than 3 years	3 months wages
3 years or more less than 4 years	4 months wages
4 years or less than 5 years	5 months wages
5 years or more less than 6 years	6 months wages
6 years or more less than 7 years	7 months wages
7 years or less than 8 years	8 months wages
8 years or more	9 months wages

Meanwhile, the severance pays regulated in Law No. 13 of 2003 concerning Employment is:

- work period of less than 1 (one) year, 1 (one) month's wages;
- work period of 1 (one) year or more but less than 2 (two) years, 2 (two) months' wages;
- work period of 2 (two) years or more but less than 3 (three) years, 3 (three) months' wages;
- work period of 3 (three) years or more but less than 4 (four) years, 4 (four) months wages;
- work period of 4 (four) years or more but less than 5 (five) years, 5 (five) months wages;
- work period of 5 (five) years or more, but less than 6 (six) years, 6 (six) months wages;
- work period of 6 (six) years or more but less than 7 (seven) years, 7 (seven) months wages.
- work period of 7 (seven) years or more but less than 8 (eight) years, 8 (eight) months wages;
- work period of 8 (eight) years or more, 9 (nine) months wages.

The following are the provisions for the amount of severance pay according to Government Regulation Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing,

Working Time and Rest Time, and Termination of Employment Relations, based on the reason for the employee's termination of employment:

Reasons for layoffs	Worker Rights
Companies carry out mergers, mergers, separations, or company takeovers.	1 time UP provisions, 1 time UPMK provisions, and UPH
Takeover of a company resulting in changes to working conditions and workers not being willing to continue their employment relationship.	0.5 times UP provisions, 1 times UPMK provisions, and UPH
Efficiency due to losses.	0.5 times UP provisions, 1 times UPMK provisions, and UPH
Efficiency to prevent losses	0.5 times UP provisions, 1 times UPMK provisions, and UPH.
The company closes due to continuous losses for 2 years or non-continuous losses for 2 years.	1 time UP provisions, 1 time UPMK provisions, and UPH.
The company closed but not because it suffered losses.	0.5 times UP provisions, 1 times UPMK provisions, and UPH
The company closed due to force majeure.	1 time UP provisions, 1 time UPMK provisions, and UPH.
The company closed due to force majeure.	0.5 times UP provisions, 1 times UPMK provisions, and UPH.
Force majeure circumstances that do not result in the company closing.	0.75 times UP provisions, 1 times UPMK provisions, and UPH.
The company is in a state of delay in debt payment obligations due to the company experiencing losses.	0.5 times UP provisions, 1 times UPMK provisions, and UPH
The company is in a state of delay in debt payment obligations, not because the company has suffered a loss.	1 time UP provisions, 1 time UPMK provisions, and UPH
Bankrupt company.	0.5 times UP provisions, 1 times UPMK provisions, and UPH.
There is a request for layoff submitted by a worker on the grounds that the entrepreneur committed the act referred to in Article 81 number 42 of the Job Creation Law which contains new Article 154A paragraph (1) letter g of the Manpower Law	1 time UP provisions, 1 time UPMK provisions, and UPH
There is a decision by the industrial relations dispute resolution institution which states that employers have not carried out the actions referred to in Article 81 number 42 of the Job Creation Law which contains new Article 154A paragraph (1) letter g of the Manpower Law regarding applications submitted by workers.	UPH and separation money
Employees resign of their own accord and meet the requirements.	UPH and separation money
The worker is absent for 5 working days or more in a row without written information	UPH and separation money.

accompanied by valid evidence and has been summoned by the employer twice properly and in writing.	
Workers violate the provisions stipulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement and have previously been given the first, second, and third warning letters respectively.	0.5 times UP provisions, 1 times UPMK provisions, and UPH
Workers/Labourers commit urgent violations as regulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement.	UPH and separation money.
The worker was unable to carry out work for 6 months due to being detained by the authorities for allegedly committing a criminal act that caused company losses.	UPH and separation money.
The worker was unable to carry out work for 6 months due to being detained by the authorities because he was suspected of committing a criminal act that did not cause losses to the company.	1 time UPMK and UPH provisions
The court decided the criminal case that caused the company's losses before the end of the 6 month period, and the worker was found guilty.	UPH and separation money.
The court decides criminal cases that do not cause losses to the company before the end of the 6 month period, and the worker is found guilty.	1 time UPMK and UPH provisions.
Workers experience prolonged illness or disability due to work accidents and are unable to carry out their work after exceeding the limit of 12 (twelve) months.	2 times UP provisions, 1 time UPMK provisions, and UPH
Workers are entering retirement age.	1.75 times UP provisions, 1 time UPMK provisions, and UPH
The worker died	2 times UP provisions, 1 time UPMK provisions, and UPH

Here there are special provisions if a worker resigns of their own accord, they must fulfill the following conditions:¹

- a. submit a written resignation request no later than 30 days before the resignation start date;
- b. not bound by official ties; And
- c. continue to carry out his obligations until the start date of resignation.

So that workers who experience layoffs as a result of resigning of their own accord are entitled to the separation pay and UPH that they should receive.

G. CONCLUSION

With the publication of the Job Creation Law, several articles were changed, deleted and added to labor law, namely Law No. 13 of 2003 concerning Employment, including the calculation

¹Article 81 number 42 of the Job Creation Law which includes new Article 154A of the Employment Law

of severance pay. The calculation of the new severance pay must be adjusted at this time, considering the principle of legal certainty regarding the granting of rights to workers, in an employment relationship, both PWKT and PKWTT, where there are rights and obligations between employers and workers which must be complied with in the Employment Law and Job Creation Law.

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