

# Position Of Collective Working Agreement Post Related Constitutional Court Decisions UU No. 11 Year 2020 Concerning Creation Of Work

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**Abstract.** The Constitutional Court (MK) has decided on the application for a formal and material review Law No. 11 of 2020, related to Job Creation. As a result, from 12 applications for both formal and/or material tests, only 1 application was granted, namely the formal examination of case No. 91/PUU-XVIII/2020. The decision states that Law No. 11 of 2020 is still valid until it is repaired for 2 years. The Constitutional Court also suspended all strategic and broad-impact policies, and did not issue new implementing regulations related to the Job Creation Law. The Constitutional Court (MK) decided that Law No. 11 of 2020 on Job Creation was constitutionally conditional. The establishment of Law No. 11 of 2020 on Job Creation is in breach of the 1945 Constitution, it has only As long as it is not interpreted, that has conditionally binding legal force as such as not being corrected within two years of this decision being pronounced. The strategic position of Collective Labor Agreement/ Collective Labor Agreement, in a company organization that is jointly drawn up between representatives of employers and representatives of trade unions, is one of the means and infrastructures of industrial relations within the organization. All rules and governance related to HR refer to the agreement. If it is not addressed immediately after the Constitutional Court's decision, it will greatly support the laughter of employees through their unions.

**Keywords:** Collective Labor Agreement; Collective Labor Agreement; Post-MK Decision; Position.

## 1 Introduction

The House of Representatives (DPR) finally passed the Job Creation Bill (Ciptaker) into a Law (UU). The ratification was still carried out despite many rejections from the trade unions and laborers on Monday, October 5, 2020. The ratification provoked a reaction from the workers, followed by students and students to this day. Researchers at the Parliamentary Concerned Community Forum (Formappi) assessed that the acceleration of the schedule for the ratification of the Ciptaker Bill yesterday was like making things up. According to him, the DPR should postpone the discussion and ratification of the bill in the midst of the Covid-19 pandemic rather than rushing to make it a law. This can be seen as using Covid-19 as a shield to trick the public.

This is seen as strange, the DPR is using the Covid-19 pandemic as an excuse to advance the plenary schedule for the ratification of the Ciptaker Bill. In fact, council members from the

start have taken advantage of the covid pandemic to smoothen the rapid deliberation of the bill. He admitted that the DPR is currently manipulating and deceiving community groups who reject the Ciptaker Bill by speeding up its ratification.

However, on the other hand, the Ciptaker Bill is a separate mission from the government and the DPR. In addition, the government and the DPR have actually agreed on the contents of the Ciptaker Bill since the first draft was submitted to the DPR last February. Meanwhile, the National Executive Director of WALHI, said that with the ratification of the Job Creation Bill by the DPR together with the Government, the level of people's trust has decreased. Ratification of the Ciptaker Bill as a betrayal of the state against the will of the people. "The ratification The adoption of the Job Creation Omnibus Acts Bill is the apex of the state's accomplishments betrayal of individuals' rights workers, farmers, indigenous peoples, women, and the environment as well as future generations.

The Job Creation Law was signed by President Joko Widodo, Monday (2/11/2020). Now, the law is listed enacted as Law No. 11 of 2020 The Creation for Employment The law consists of ten chapters and 186 articles. It regulates a job market in relation to its environment. Kompas.com noted several articles of the Job Creation Law's Chapter IV on Manpower that were considered problematic and controversial. Article 81 Article 2 of the Job Creation Law controls this, modifying Many articles in the Manpower Law, including the following: The law that governs the length of a specific time work agreement (PKWT) or contract workers is to be abolished by Article 59 of the Law No. 13 on Manpower (Job Creation Law) is established on 2003, article 59, paragraph (4) were modified by Article 81 number 15 of the Job Creation Law.

### **The Problem's Formulation**

Based on the above description, the question for the author is how is the position of the Agreement/Mutual Agreement after the Constitutional Court's Decision related to the Manpower aspect, While the Constitutional Court examines the Law, which has very basic implications for legal certainty. Therefore, in this study, the problem is: What is the position of the PKB/KKB after the Constitutional Court Decision Number is given MK No. 91/PUU-XVIII/2020 which was pronounced on November 25, 2021, related to work relations, including:

- a. Guarantee for a certain time work agreement (PKWT);
- b. Guarantee of Wages
- c. Guarantee on Outsourcing
- d. Guarantee for Termination of Employment

## **2 Research Method**

This research uses an approach, namely, normative legal studies (normative-legal study). In this study, what is examined is the provisions of in the laws and regulations governing manpower especially with regard to the arrangement of the Mutual Employment Agreement consisting of: Ratification Indonesia is a party to the International Labour organization ( ilo Group's Convention No. 98 of the International Labour Organization (ILO) on the Fundamentals of the Right to Organize and Negotiate (ILO) were signed on 1949.

Law No. 18 of 1956 Indonesian Manpower Law No. 13 is established in 2003. Indonesian Trade Unions/Labour Unions were regulated by Law No. 21 of 2000. Law No. 11 of 2020, related to a creation of jobs in Indonesia. Regulation No. 28 of 2014 of the Indonesian Republic's Minister of Manpower on Company Formation and Legalizing marijuana Procedures

Regulations and Making and Registration of Collective Labor Agreements PERMEN No. 28/2014.

This research is descriptive analytical. It is said to be descriptive because the results of this research are expected to obtain a factual picture or painting of the state of the object under study. The analysis is then carried out after a factual description of the object under study has been obtained.

### **3 Discussion**

In answering the above problems, the description is carried out by discuss systematically with the following procedures:

#### **Definition of Collective Labor Agreement/ Collective Labor Agreement**

The employment agreement is the basis for the formation of an employment relationship. A Collective Labor Agreement (PKB) is an agreement usually contains the working conditions, rights, and obligations of both parties as a result of negotiations between a trade/labor union or several trade/labor unions registered with the agency responsible for the field of manpower and the entrepreneur or several entrepreneurs or associations of entrepreneurs, according to Article 1 number 21 of Law Number 13 of 2003 concerning the field of manpower Manpower.

The CLA is drawn up by registered employers and trade unions and is carried out through deliberation to reach consensus. As a result, the parties or subjects who make the CLA are the workers/workers in the company who are represented by the trade/labor union and the entrepreneur. The rights of workers to form trade unions are also strengthened in Law Number 21 of 2000 concerning Trade Unions. Every worker/labor has the right to form a trade union, according to Article 5 paragraph (1) of Law Number 21 of 2000 Concerning Trade Unions a trade union and formulate PKB/KKB.

#### **Benefits of Collective Labor Agreement**

- a. Basically, the CLA is not a document that must be owned by all companies, but a means to include a new agreement if this is needed by both parties (company and workers). Although not mandatory, Haiyani Rumondang as Director General of Labor Social Security and Industrial Relations (PHI and Social Security) said that ideally every company has a PKB. It is with this PKB that harmonious and just industrial relations can be realized. For this reason, it is highly recommended to make CLAs to provide several benefits for workers and entrepreneurs themselves. What are the benefits?
- b. Workers and employers will have a better understanding of their respective rights and obligations;
- c. Reduce the occurrence of labor disputes or industrial disputes in order to maintain a smooth production process and increase business;
- d. Employers can budget for labor costs that must be reserved or adjusted according the CLA's validity period.

#### **The parties involved in the preparation of the CLA**

The two parties involved in the preparation of the CLA are entrepreneurs or associations of entrepreneurs and workers' unions or associations of workers' unions. According to Article 116 paragraph (2) of the Manpower Law, the preparation of this CLA is carried out between the trade union and the company by deliberation.

Number of CLAs Allowed Applicable in the Company. In one company, only one collective labor agreement is applicable to all workers. Meanwhile, for companies that have branch offices, the parent CLA applies to all branches and derivative CLAs may be made for each branch. As for companies that are members of one group and have their respective legal entities, then the CLA is made and negotiated by each company.

The validity period of the CLA is The CLA is valid for a period of 2 years and The company and the labor union signed a written agreement, it can be extended for a maximum with one year, as according Article 123 of the Manpower Law. Negotiations to make a new CLA begin no later than 3 months before the expiration of the current CLA. However, If it turns out that no agreement was reached during in the negotiations, then the PKB which was still valid at that time will remain in effect for the next 1 year.

Article 30 Regulation No. 28 of 2014 Concerning by Minister of Manpower, paragraph (1) Procedures for Making and Legalizing Company Regulations and Making and Registering Company Regulations PKB, the company is the party responsible for registering PKB with the authorized agency, namely the manpower office. This registration is done by attaching the PKB manuscript which has been stamped and signed by the company and the trade union. If the PKB has been received and examined, the authorized official from the Manpower Office will issue a decision on the PKB registration.

#### **The decision of the Constitutional Court on the Job Creation Law**

The Constitutional Court, which has been created as a result of reform and therefore is based on the third amendment to the 1945 Constitution, has the authority to based on Article 7 B and 24C, covering five things, namely: (1) to test The position of the Collective Labor Agreement after the Decision of the Constitutional Court Number MK No. 91/PUU-XVIII/2020.

The Constitutional Court noted in Decision No. 91/PUU-XVIII/2020 that job creation is a goal. For the purpose of strengthening and showing that the creation of the job creation law was indeed a great idea does not meet the provisions of the formation of laws based on the 1945 Constitution and Law 12/2011 (formal defects/procedural defects), the Job Creation Act contradicts the There is no binding legal force to a 1945 Constitution. If it turns out that no agreement was reached during in the negotiations.

The Employment Creation Act is Contrary to the Principles of Formation of Legislation Article 5 of Law 12/2011 1. That UUP3 has also affirmed a number of The Constitutional Courts ruled in Decision No. 91/PUU-XVIII/2020 that the creation of employment is a goal. For the aim of strengthening and showing that the establishment of the job creation law was a good idea:

- a. clarity of purpose;
- b. appropriate forming institutions or officials;
- c. suitability of the material's type, hierarchy, and content;
- d. practicality;
- e. usability and usability;
- f. clarity of formulation; and
- g. openness

The contradiction between the purpose of the creation of the Job Creation Law and the regulation on manpower can be proven by looking at several regulations. The Legal Facts in question are:

Protecting the entire Indonesian nation and Indonesia's entire homeland, and to promote public welfare based on Pancasila in order to create social justice for all Indonesians. is a general goals of the Indonesian nation as contained in the Preamble 1945 Constitution. The right to

work and an adequate livelihood for humanity has been Since its inception, this country has been designated as a citizen's human right state which has specifically been contained in the 1945 Constitution which is constitutional basis of this country and the right to work and get paid and fair and proper treatment in employment relationships are also established as a citizen's human right which has been specifically in the 1945 Constitution which is the constitutional basis of this country.

The government as the main implementer of the constitution is obliged to implement this mandate, with the maximum possible effort so that citizens Indonesia can really get the fulfillment of these human rights and This mandate is also closely related to the general goals of the Indonesian people.

Agreement on Working Time (PKWT) The provision regarding the length of the Specific Time Work Agreement was one of the most significant changes made to the Employment Chapter of the Employment Act (PKWT). Article 59 of the Manpower Act previously regulated the PKWT time limit, which is now repealed by the Job Creation Law. The repercussions of missing these verses are severe.

Workers would no longer be able to change their status from contract to permanent under this new provision, in addition to removing the maximum period and limitation on extension. Workers on contract work were, in fact, in a much more vulnerable position than permanent staff.

On the other hand, the new The Job Creation Law's PKWT provisions include the employer's obligation if the work agreement for a specific period of time expires, to provide compensation money to workers/laborers who are employed on a contract basis (see Article 61A paragraphs (1) and (2) of the Copyright Law. Work).

This pay is based on the length of service of the worker/laborer in the company concerned. At first glance, this provision is like a breath of fresh air that benefits contract workers. Unfortunately, this arrangement is still very gray and depends on further provisions in a Government Regulation (see Article 61A paragraph (3) of the Job Creation Law), so it is still difficult to imagine the regulation and its implementation in the field. As is well known, so far many labor provisions that on paper look good, but implementation in the field is zero. Do not let this provision related to compensation money also become an empty message that gives false hope for contract workers.

Wages There are several things that have changed in terms of wages. First, the loss of "decent living needs" as a consideration for setting minimum wages. Wage policy essentially cannot be separated from the state's obligation to live a decent life for its people. As also stated in Article 88 of the Manpower Act. It's important to note that the Job Creation Law's provisions for finding the minimum wage no longer use "necessities for a decent living" as a criteria consideration.

The calculation is based solely on the variable of economic growth or inflation. The question is, can these Which variables represent the needs of workers for a decent living? It's ironic that this provision will actually hinder from the wage policy's original goal of ensuring a fair standard of life for all people. According to "The governor is obligated to decide the province minimum wage," according to Article 88C paragraph (1) of the Job Creation Law. Furthermore, "the governor can decide the district/city minimum wage with certain conditions," according to the paragraph (2).

This means that the Job Creation Law applies to newly created positions, making the minimum wages obligatory at the provincial level but optional at the district/city level. The Law of Manpower 48 had a sectoral minimum wage, which was abolished by the Job Creation Law. The repeal of the sectoral min wage is not based on clear reasons.

In fact, so far, sectoral minimum wages are considered more representative because they represent conditions in certain sectors. The sectoral minimum wage was previously required to be set higher than the provincial minimum wage. So again, the abolition of sectoral minimum wages tends to harm workers. The Job Creation Law changes the scope of the wage policy in Article 88 paragraph (3).

Previously, in the Manpower Act. In the Job Creation Law, these types of wage policies are trimmed down so that they only cover:

- a. minimum wages;
- b. wage structure and scale;
- c. overtime wages;
- d. wages do not come to work and/or do not do work for certain reasons;
- e. form and method of payment of wages;
- f. things that can be calculated with wages; and
- g. wages as the basis for calculating or paying other rights and obligations.

There is no adequate explanation regarding the reasons for reducing the wage policy in the Job Creation Law. For example, why the wage policy related to wages for severance payments should be abolished, even though this is very relevant to the interests of workers. The Employment "Employers shall According to "Prepare the wage structure and scale by taking into account class, position, tenure, education, and competence," states Article 92 paragraph (1) of the Manpower Law. "Employers are required to establish the structure and scale of pay in the company by taking into account the capabilities of an organization and productivity," according to the amendments.

This shift should be opposed since it eliminates class, position, years of service, education, and competency from the wage structure and scale. In reality, by offering rewards in the form of wage increases, the structure and size of salaries can be used to drive workers to upgrade their abilities competencies. This reward will be lost under the new laws, which may be counterproductive to the goals of increasing the quality of life of Indonesian workers' human resources.

Outsourcing Another thing The abolition of the provisions of Articles 64 and 65 of the Manpower Act should be criticized in the Job Creation Act. Because it regulates the delivery of work implementation to other companies through work chartering agreements or the provision of worker/labor services, Article 64 is the foundation for the implementation of outsourcing in Indonesia. Articles 64 and 65 were revoked, but was also stated in the Job Creation Law that Article 66 would "(1) The outsourcing company's employment relationship with workers/labourers it employs is based on a written work agreement, either a work agreement or a work agreement," must be changed to "(1) The outsourcing company's employment relationship with workers/labourers it employs is based on a written work agreement, either a work agreement or a work agreement." a set period of time or a work agreement that really is indefinite in length."

By keeping Article 66 alive, it can be concluded that outsourcing is still permitted by the Job Creation Law. Then what is the real purpose of abolishing Articles 64 and 65. It should be understood that in the Manpower Act, Articles 64, 65 and 66 are a unity that must be seen as a whole. By deleting Articles 64 and 65 but still keeping Article 66 alive, this will create legal uncertainty and confusion for business actors and workers which will actually disrupt the business and investment climate in Indonesia. In addition, another problem that arises from this Article is the loss of restrictions on the types of work that can be outsourced.

This means that the Manpower Act provides an explicit limitation that outsourcing may not be carried out for jobs that are central in the company. This limitation is no longer found in Article 66 paragraph (1) of the Law on Job Creation. Even if it has been proven that the triangular form of employment relationship (employment relationship involving a third party as an intermediary) such as outsourcing is unprofitable for workers, the implication is clear: outsourcing work relationships will proliferate.

Termination of Employment (PHK) Another article that also causes a lot of polemic is the provision related to Termination of Employment (PHK) in the Job Creation Law. Philosophically, layoffs in the concept of employees' relations Pancasila are things which should be avoided at all costs. As a result, it's only logical that the Manpower Act's layoff provisions are made as strict as possible in order to avoid layoffs as much as it necessary. One of the rigidities of this layoff rule is found in Article 151 paragraph (2) of the Manpower Act, which states that if all sensible efforts have been made but termination of employment is unavoidable, the entrepreneur and the trade union must negotiate the intention of terminating the employment relationship.

If the worker/laborer on issue is not a member of a trade union/labor union, or if the worker/laborer at question is not a member of a trade union/labor union. Furthermore, Article 151, paragraph (3), states that "in the event that the negotiations referred to in paragraph (2) fail to result in an agreement, the entrepreneur can only terminate the employee laborer's relationship after obtaining a judgment from the industrial relations dispute settlement institution.

As much as it possible. One of the rigidities of this layoff rule may be found in Article 151 paragraph (2) of the Manpower Act, which states: If every effort has been made but termination of employment is unavoidable, then Every kind of layoff must be negotiated by both sides, and if no agreement is reached, the layoff can only actually occur after a determination is received from the industrial relations dispute settlement institution. The decision of this industrial relations dispute settlement agency is also a form of government involvement in ensuring that layoffs do not affect one party. This image changed dramatically just after passage of the Job Creation Act. If it goes horribly wrong termination of employment is unavoidable, entrepreneur should inform the worker/laborer and/or the trade union/labor union of the purpose and reason for the termination of employment."

This paragraph raises concerns about the possibility of unilateral layoffs because layoffs can only be carried out through notification from the entrepreneur without having to be preceded by prior negotiations. The contradiction between the objectives of the Job Creation Law and the content that regulates the convenience, protection, and empowerment of cooperatives and MSEs, which include: The formulation of Article 153E paragraph (2) of the Job Creation Law, that: "Company founders can only establish Limited Liability Companies for Micro and Small Businesses. Small 1 (one) company for micro and small businesses in 1 (one) year." Based on the formulation of Article a quo, it is possible for the same individual MSE business actor to establish a company every year.

This is because the formulation of Article a quo only stipulates the minimum establishment limit each year, not the minimum establishment limit per individual. This of course raises new problems, namely the risk of branching creditors and opens the possibility for individuals with limited actual capabilities to continue to establish new companies every year on the basis of seeking profit and relying on the limited liability nature of the company. Even though with the argument that it is easy to do business to empower MSEs in Indonesia, the ease of establishing a company for MSEs as regulated by the Job Creation Law (can be established by one person and there is no minimum authorized capital limit) should be questioned about its effectiveness

in creating job opportunities and improving community welfare which cannot be separated from of the philosophy and purpose of the Job Creation Act itself.

The establishment of a company by one person and with a very minimal authorized capital is made possible by the Job Creation Act, but there is no guarantee or being pessimistic that such a business will be able to create jobs or absorb the existing workforce. Funding is difficult and one founder does not give confidence in the sustainability of the company itself, moreover, the possibility of the company in absorbing workers.

The above conditions are legal facts, if the government does not immediately take steps to change the Constitutional Court's decision on this lawsuit, the impact will greatly affect the strategic role of the PKB. PKB is a basic rule that is central to the views of all stakeholders in the organization. Made together with representatives of employers and workers. Where the contents may not come out of a higher regulation, namely the Job Creation Law. But on the other hand, looking at the legal facts that related to the main working relationship discussed starting from Guarantees for a certain time Work Agreement (PKWT), Guarantees for Wages, Guarantees for Outsourcing (Outsourcing), Guarantees for Termination of Employment can harm the bargaining power of workers through negotiations. unions, which in turn can create legal uncertainty for the future of workers, which is at the heart of Indonesia's economic growth.

#### **4 Conclusion**

Based on the results of the study, it can be concluded that the strategic position of the P/KKB can weaken the bargaining power of workers through negotiations represented by the union. Considering the legal facts that form the basis of the employment relationship, if the Job Creation Law is not immediately followed up to take corrective steps. Or if you refer to the ruling, basically there is no Employment Copyright Act, because the procedure was flawed from the start, and we can go back to Law No. 13 of 2003 concerning Manpower.

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