



## ARTICLE

# Renewal of Criminal Provisions in the Employment Cluster Job Creation Law

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## Abstract

This study aims to analyze the reform of criminal provisions in the Job Creation Law concerning labour. The amendments, which eliminate and modify criminal provisions, raise concerns about the potential erosion of legal enforcement regarding labour rights violations. This research employs a normative legal approach, focusing on conceptual frameworks and legislative regulations. Data were collected through literature review from primary legal sources, including relevant labour laws, and secondary sources such as legal books and journals. The findings indicate that while the reform of criminal provisions has positive impacts, it also presents negative consequences due to the regulation of these provisions outside the labour law framework. This duality underscores the need for careful consideration in balancing legal protections for workers with the objectives of efficient law enforcement in the evolving labour landscape.

## Keywords

Job Creation Law; Labor Law; Reform of criminal provisions

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## Introduction

The presence of Law Number 6 of 2023 Concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 Concerning Job Creation into Law (hereinafter referred to as the Job Creation Law) has brought great reform to Indonesian law. The Job Creation Law was formed using the omnibus law method,



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which is a concept of legal products that serves to unite various themes, materials, subjects and laws and regulations in each different sector to become a large and holistic legal product.<sup>1</sup> The Job Creation Law is divided into several clusters of regulations that specifically change or revoke previous regulations, one of which is the labour cluster which in more detail has changed some of the contents of Law Number 13 Year 2003 on Labour (hereinafter referred to as the Labour Law). The implications of the changes to some of the substance of the Labour Law then triggered various actions and rejection from the workers and the general public who were against the various regulations. Since the first enactment of the Job Creation Law, especially the labour cluster, there have been many judicial reviews to the Constitutional Court for both formal and material testing of the Law.

Most recently, several trade union alliances, namely the Labour Party, the Federation of Indonesian Metal Workers Unions (FSPMI), the Confederation of Indonesian Trade Unions (KSPSI), the Confederation of Indonesian Trade Unions (KPBI), and the Confederation of Indonesian Trade Unions (KSPI) conducted a judicial review to the Constitutional Court with application number 168/PUU-XXI/2023 which basically examines the Job Creation Law on the employment cluster which changes, deletes, or establishes new regulatory arrangements in the Labour Law, the result of which the Constitutional Court finally granted part of the petition submitted by the applicant. In line with this, the Constitutional Court itself in its legal reasoning argued that based on current factual conditions, the substance related to employment is regulated in two laws, namely the Labour Law and the Job Creation Law. Although these two laws regulate various aspects of labour, there is a possibility of disharmony between the two regulations, which could trigger problems in their legal application. This is exacerbated by various decisions of the Constitutional Court stating that several norms in the Labour Law and Job Creation Law are contrary to the 1945 Constitution of the Republic of Indonesia, thus triggering inconsistencies in the regulations that can confuse actors in the labour sector.<sup>2</sup> Thus, it is important to evaluate and harmonise the two laws to ensure the protection of workers' rights and compliance with the Constitution. The Constitutional Court itself suggests that the legislator should be able to make a new labour law, in this case the substance regulates the material in the Labour Law, the Job Creation Law, as well as the Constitutional Court's decision relating to employment, which in the formation process involves active community participation.

The position of labour law in the Indonesian legal system is in the context of administrative/state law, civil law and criminal law.<sup>3</sup> Criminal law in labour law serves to sanction any crime or violation committed by any legal subject regulated in labour law, both employers and workers. The renewal of labour law as stipulated in the Labour Law which is then amended and spread in the Job Creation Law as well as the Constitutional Court's decree has also caused changes to some of the criminal

<sup>1</sup> Fitryantica, "Harmonisasi Peraturan Perundang-Undangan Indonesia Melalui Konsep Omnibus Law."

<sup>2</sup> Mahkamah Konstitusi Republik Indonesia, "Putusan Mahkamah Konstitusi Republik Indonesia Nomor 168/PUU-XXI/2023."

<sup>3</sup> Junaidi et al., "Dasar Hukum Ketenagakerjaan."

provisions in labour law. The most worrying thing is if the criminal provisions are removed so as to weaken the position of workers who basically have lower bargaining power than employers. Articles or criminal provisions that are changed or even deleted are certainly very detrimental because workers or everyone who feels harmed by the actions of someone who violates or commits a crime that is not in accordance with the Labour Law do not get sanctions for the actions that have been committed, because criminal law is very strict in regulating the rules based on the principle of legality, namely *nullum delictum nulla poena sine praevia lege poenali* which means that no action can be punished except based on criminal rules that already exist before the act is committed.

Research discussing the renewal of this criminal provision itself has been conducted previously by Yohanes Baptista Cahaya Misjuan and Kristofer Tampubolon in the *Sapientia Et Virtus Journal* in 2021 entitled 'Analysis of the Criminal Provisions of the Employment Cluster Job Creation Law in View of the Welvaarstaat Principle' which discusses changes in criminal provisions in the Employment Cluster Job Creation Law seen from the *welvaarstaat* principle, namely the formation of laws and regulations as a vehicle to achieve public welfare. Similar research has also been conducted by Sugeng Santoso in the *Jatiswara Journal* in 2024 entitled 'Changes in Criminal Provisions of Labour in Law Number 6 of 2023 Concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 Concerning Job Creation into Law' which discusses articles related to criminal provisions that have changed in the Labour Law in the Job Creation Law and the characteristics of criminal provisions in the field of employment. The difference between this paper and the two previous studies is that it will analyse changes in criminal provisions in the Labour Cluster of the Job Creation Law after the Constitutional Court Decision Number 168/PUU-XXI/2023 and its impact on labour law in Indonesia. Based on the background and factual conditions of criminal provisions in labour law previously described, the author is interested in analysing the renewal of criminal provisions in the Job Creation Law which has changed the criminal provisions in the Labour Law accompanied by an analysis of the renewal of criminal provisions after the Constitutional Court Decision Number 168/PUU-XXI/2023 and the impact of the renewal of criminal provisions on labour law in Indonesia.

## Methods

In this paper, the research method used is a type of normative or doctrinal legal research, namely legal research conducted by examining library materials (secondary data) which includes: research on legal principles, legal systematics, horizontal and vertical legal synchronisation, legal comparison and legal history.<sup>4</sup> This research was conducted with a conceptual approach and statute approach. The statutory approach is carried out by examining all laws and regulations relating to the legal issues

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<sup>4</sup> Soekanto, *Pengantar Penelitian Hukum*.

studied.<sup>5</sup> Data collection techniques are carried out by library research with data sources obtained through primary legal sources and secondary legal sources. Primary legal sources are Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, Law Number 13 of 2003 concerning Labour, and other laws and regulations relating to the issues studied. Secondary legal sources come from books, legal journals, previous research results and judges' decisions that discuss similar issues. used in this study. Data analysis is described descriptively and carried out using inductive techniques, namely analysis carried out by comparing library sources related to the focus of research or it can be said that inductive analysis techniques are data analysis that departs from factors that are specific to draw general conclusions.<sup>6</sup>

## Result and Discussion

### A. Renewal of Criminal Provisions in the Employment Cluster Job Creation Law

In the Indonesian Labour Law, sanctions imposed on someone who violates the rules are regulated in Chapter XVI of the Labour Law. The form of sanctions stipulated in the regulation consists of criminal sanctions and administrative sanctions, furthermore in the regulation it is also stated in article 189 that 'Criminal sanctions of imprisonment, confinement, and / or fines do not eliminate the obligation of employers to pay rights and / or compensation to workers or workers / labourers' so that in labour law aggrieved workers can claim compensation to employers who have violated their rights. Specifically, the rules regarding criminal sanctions in the Labour Law are mentioned in articles 183-189 which will be analysed more deeply article by article and what kind of reforms have occurred from the formulation of criminal provisions in the Labour Law.

Criminal offences in labour are included in special criminal law, special criminal law is a translation of the term *her bijzonder strafrecht* in Dutch criminal law literature.<sup>7</sup> Thus, when juxtaposed with the Criminal Code, the position of criminal provisions in the Labour Law follows the principle of *lex specialis derogat legi generali*. Labour crime itself refers to a violation of labour law regulations that can result in criminal sanctions for the perpetrator.<sup>8</sup> The sanctions are regulated to create justice for employers and workers, as well as to avoid arbitrariness of employers to workers who have lower bargaining power in the company/workplace. There are two types of criminal offences in the Labour Law, namely criminal offences and criminal offences. *Mala per se* or crime is interpreted as the act is considered a crime even though it has not been specifically regulated in the law because it is

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<sup>5</sup> Marzuki, *Penelitian Hukum*.

<sup>6</sup> Hadi, *Metodologi Riset*.

<sup>7</sup> Zurnetti, "Hukum Pidana Khusus Faktor Penyebab Dan Upaya Penanggulangan Tindak Pidana KDRT."

<sup>8</sup> Panggabean and Nadapdap, "POLITIK HUKUM PIDANA DAN PROSES PENEGAKAN HUKUM PIDANA TERHADAP TINDAK PIDANA DI BIDANG KETENAGAKERJAAN."

contrary to justice and is considered bad and detrimental to society.<sup>9</sup> Meanwhile, an offence or *mala quia prohibita* is an act that is only considered an offence after it is regulated in law. Crimes are regulated in articles 183-185, while offences are regulated in articles 186-188. Criminal provisions in the Labour Law are not entirely updated through the Labour Cluster Job Creation Law. There are still criminal provisions that are maintained or only undergo minor changes in terms of the substance of the article. The presence of the Job Creation Law is related to the principle in law that new legislation overrides old legislation or *lex posterior derogat legi priori*.<sup>10</sup> So that the current criminal provisions are criminal provisions that have undergone reforms in the Job Creation Law.

The type or amount of punishment, both imprisonment and fine, between the criminal provisions in the Labour Law and the Job Creation Law itself has not changed with the following formulation: Article 183 is unchanged, Article 184 is deleted by the Job Creation Law, Article 185 paragraph (1) becomes: 'Any person who violates the provisions as referred to in Article 42 paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 88A paragraph (3), Article 88E paragraph (2), Article 143, Article 156 paragraph (1), or Article 160 paragraph (4) shall be subject to imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least Rp 1,000,000,000.00 (one hundred million rupiah) and a maximum of Rp 400,000,000.00 (four hundred million rupiah).'

Article 186 paragraph (1) reads: 'Any person who violates the provisions as referred to in Article 35 paragraph (2) or paragraph (3), or Article 93 paragraph (2), shall be subject to imprisonment for a minimum of 1 (one) month and a maximum of 4 (four) years and/or a fine of at least Rp10,000,000.00 (ten million rupiah) and a maximum of Rp400,000,000.00 (four hundred million rupiah).'

Article 187 paragraph (1) reads: 'Any person who violates the provisions as referred to in Article 45 paragraph (1), Article 67 paragraph (1), Article 71 paragraph (2), Article 76, Article 78 paragraph (2), Article 79 paragraph (1), paragraph (2), or paragraph (3), Article 85 paragraph (3), or Article 144 shall be subject to imprisonment for a minimum of 1 (one) month and a maximum of 12 (twelve) months and/or a fine of at least Rp10,000,000.00 (ten million rupiah) and a maximum of Rp100,000,000.00 (one hundred million rupiah).'

Article 188 paragraph (1) reads: 'Any person who violates the provisions as referred to in Article 38 paragraph (2), Article 63 paragraph (1), Article 78 paragraph (1), Article 108 paragraph (1), Article 111 paragraph (3), Article 114, or Article 148 shall be liable to a fine of at least Rp5,000,000.00 (five million rupiah) and a maximum of Rp50,000,000.00 (fifty million rupiah).'

The renewal of criminal provisions in the Labour Law in the Job Creation Law can be seen through deletions, additions and changes in substance. Deletions are made for Article 167 paragraph (5) jo Article 184, Article 160 paragraph (7) jo Article

<sup>9</sup> Tetehuka, "Tindak Pidana Kejahatan Di Bidang Ketenagakerjaan Menurut Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan."

<sup>10</sup> Ciputat and Cirendeu, "Paradigma Undang-Undang Dengan Konsep Omnibus Law Berkaitan Dengan Norma Hukum Yang Berlaku Di Indonesia."

185, Article 137 jo Article 186 (Article 137 remains, but the criminal provisions are deleted), Article 138 jo Article 186 (Article 138 remains, but the criminal provisions are deleted), Article 37 jo Article 187 (Article 37 remains, but no longer subject to criminal sanctions), Article 44 paragraph (1) jo Article 187, Article 14 jo Article 188 (Article 14 remains, but no longer subject to criminal sanctions). The added criminal provisions consist of the addition of Article 88A jo Article 185 and Article 88E jo Article 185 replacing the deleted Article 90, as well as the addition of Article 156 jo Article 185. The formulations of articles that have been reformed consist of Article 185, Article 42 jo Article 185, Article 160 paragraph (4) jo Article 185, Article 186, Article 187, Article 45 paragraph (1) jo Article 187, Article 67 paragraph (1) jo Article 187, Article 78 paragraph (2) jo Article 187, Article 79 paragraphs (1) and (2) jo Article 187, Article 188, and Article 78 paragraph (1) jo Article 188.

Based on the reforms that occur in these articles, there are several articles that have important points of change and have a significant impact on the criminal provisions in the Labour Law. The deletion of Article 184 which previously imposed criminal sanctions on any person who violated the provisions of Article 167 paragraph (5) which reads ‘In the event that the employer does not include workers/labourers who experience termination of employment due to retirement age in the pension program, the employer is obliged to provide workers/labourers with severance pay amounting to 2 (two) times the provisions of Article 156 paragraph (2), long service award money 1 (one) times the provisions of Article 156 paragraph (3) and compensation money in accordance with the provisions of Article 156 paragraph (4)’. Therefore, with the abolition of Article 184, any employer who does not include workers who are laid off due to retirement age in the pension programme is no longer subject to criminal sanctions. This certainly has implications for the loss of the company's obligation to provide severance pay to workers who are dismissed due to retirement.

The rules related to the provision of severance pay do not completely disappear in Indonesian regulations, in the renewal of Article 185, article 156 paragraph (1) has been included as an article that anyone who violates its provisions will be subject to criminal sanctions. Article 156 paragraph (1) after the amendment reads ‘In the event of termination of employment, the Employer is obliged to pay severance pay and/or long service pay and compensation for rights that should have been received’ so there are still criminal sanctions for companies that do not provide severance pay to their workers. Another regulation that regulates severance pay is also contained in Government Regulation Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations. However, it should be noted that PP 35/2021 does not include criminal sanctions or even administrative sanctions for companies that do not provide severance pay to workers who are terminated due to retirement.

Furthermore, the amendment to Article 186 eliminates criminal sanctions for violators of Articles 137 and 138 of the Labour Law. Article 137 and Article 138 themselves broadly regulate the right of workers to conduct a strike in an orderly

manner and without violating statutory provisions, the two rules themselves in the Job Creation Law have not changed and are still maintained, it's just that the sanctions for violators who do not comply with these rules have changed from previously included in criminal sanctions, now eliminated because they are in accordance with the Constitutional Court Decision Number 012/PUU-I/2003 dated 28 October 2004 which states that Article 137 and Article 138 paragraph (1) are contrary to the constitution with the consideration that the presence of these sanctions reduces the basic rights of workers to carry out strikes.

Other changes also occur in Article 187 of the Labour Law which in the Job Creation Law eliminates criminal sanctions for violators of Article 37 paragraph (2) and Article 44 paragraph (1). Article 37 paragraph (2) reads "Private labour placement agencies as referred to in paragraph (1) letter b in carrying out labour placement services must have a written permit from the Minister or a designated official." In the Job Creation Law, the formulation of the article has not changed, but the sanctions given to violators of article 37 paragraph (2) have changed with the amendment of article 190 of the Labour Law which includes violators of article 37 paragraph (2) to be subject to administrative sanctions by the central or regional government according to their authority, no longer given criminal sanctions. In addition, criminal sanctions against violators of Article 44 paragraph (1) which reads "Employers of foreign workers are obliged to comply with the provisions regarding positions and applicable competency standards" are also abolished, because Article 44 of the Labour Law itself has been abolished by the Job Creation Law and replaced with a new formulation in Article 42 paragraph (4) which reads "Foreign Workers can be employed in Indonesia only in Employment Relations for certain positions and certain times and have competence in accordance with the position to be occupied". Furthermore, this provision is regulated in Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers, it should be noted that in PP 34/2021 it does not include criminal sanctions for violators, but only administrative sanctions in the form of fines, temporary suspension of the application process for the ratification of the Plan for the Use of Foreign Workers (RPTKA), and/or revocation of the ratification of the Plan for the Use of Foreign Workers (RPTKA).

Furthermore, the amendment to Article 188 eliminates criminal sanctions for violators of Article 14 paragraph (2) of the Labour Law. Article 14 paragraph (2) itself is not deleted by the Job Creation Law, it's just that the formulation of the article changes from what previously read 'Private vocational training institutions as referred to in paragraph (1) must obtain a permit or register with the agency responsible for labour in the district / city' then changes to 'For private vocational training institutions that have foreign capital participation, Business Licensing as referred to in paragraph (1) is issued by the Central Government.' So that there is a transfer of authority related to obtaining business licences for private vocational training institutions that have foreign capital participation. Criminal sanctions that should be applied to violators of article 14 paragraph (2) have changed to

administrative sanctions with the change of article 190 of the Labour Law in the Job Creation Law.

After the decision of the Constitutional Court No. 168/PUU-XXI/2023, there are few changes that intersect with the criminal provisions in the Labour Law. There are two articles that intersect with criminal provisions based on the decision of the panel of judges, namely Article 42 jo Article 185 and Article 79 jo Article 187 of the Labour Law. Based on the Constitutional Court's decision Number 168/PUU-XXI/2023, Article 42 of the Labour Law, which was previously changed in the Job Creation Law, the authority to grant work permits for foreign workers from the minister or a designated official to become the authority of the central government, has now returned to the authority of the minister responsible for labour, in this case the minister of labour. Meanwhile, the changes to Article 79 changed the time period for employers to provide break section and leave time to workers, in this case workers' rights are still fulfilled and criminal provisions for violators of Article 79 are still subject to criminal sanctions. So that the decision of the Constitutional Court Number 168/PUU-XXI/2023 in terms of criminal provisions can be said to intersect because it changes the substance of articles that have criminal sanctions for violators, but does not significantly change the criminal provisions in the Labour Law itself.

## **B. The Impact of the Renewal of Criminal Provisions in the Employment Cluster Job Creation Law**

The reform of criminal provisions in the Labour Cluster Job Creation Law has implications for the fulfilment of the rights of workers/labourers in a company. Juridically, based on Article 27 of the 1945 Constitution, the position of workers is the same as employers, but socially and economically the position of both is not the same.<sup>11</sup> According to Senjun H. Manulang, as quoted by Hari Supriyanto, the objectives of labour law are as follows:<sup>12</sup> To achieve or implement social justice in the field of employment; To protect workers against the unlimited power of employers, for example by making agreements or creating regulations that are compelling so that employers do not act arbitrarily against labour as a weak party. So that the provision of sanctions, including in this case criminal sanctions, is one way to provide legal protection for workers and create justice for workers and employers in fulfilling their rights and completing their obligations. In general, there are several labour rights that are considered fundamental and must be guaranteed, although their application can be highly determined by economic and socio-cultural developments and the society or country in which a company operates, including:<sup>13</sup> The right to work, the right to fair wages, the right to association and assembly, the right to protection of safety and health, the right to legal proceedings, the right to be

<sup>11</sup> Sinaga and Zaluchu, "Perlindungan Hukum Hak-Hak Pekerja Dalam Hubungan Ketenagakerjaan Di Indonesia."

<sup>12</sup> Supriyanto, *Perubahan Hukum Privat Ke Hukum Publik: Studi Hukum Perburuhan Di Indonesia*.

<sup>13</sup> Keraf and Imam, "Etika Bisnis."



treated equally, the right to privacy, the right to freedom of conscience. All of these have been accommodated in the Labour Law, and violations of these rights can be subject to criminal sanctions as a reward.

The provision of criminal sanctions for violators of labour crime itself cannot be separated from the theory of punishment objectives. In general, there are two types of theories of punishment objectives including absolute theory and relative theory. The absolute theory views punishment solely to provide retribution for the actions committed by the perpetrator. As stated by Hugo Grotius who stated that *malum passionis (quod inglitur) propter malum actionis*, meaning that evil suffering afflicts caused by evil actions.<sup>14</sup> According to Karl O. Christiansen, retributive theory or retaliation theory, has specific characteristics, which are:<sup>15</sup> The purpose of punishment aims only to provide retribution to the perpetrator; b. Retribution is the main goal as the only goal to be achieved; c. There must be a mistake made or committed; d. Criminal punishment must be adjusted to the offender's mistake; e. Criminal punishment looks at the classical goal, namely pure defamation and does not aim to educate, correct, or socialise. Criminal punishment must be adjusted to the offender's mistake; e. Criminal punishment looks at the classical purpose, which is pure defamation and does not aim to educate, correct, or socialise. Meanwhile, the relative theory views that punishment is not merely to retaliate against the perpetrators of crime, but has certain useful purposes. This theory is also called utilitarian theory.<sup>16</sup> According to Karl O. Christiansen, relative theory or goal theory (utilitarian theory) has the following main characteristics: a. The purpose of punishment is prevention; b. Prevention is not the ultimate goal, but only as a means to achieve a higher goal, namely the welfare of society; c. Only violations of the law can be blamed on the perpetrator (for example, intentionally); d. Criminal punishment must have the aim of preventing the crime from recurring; e. Criminal punishment is prospective in nature. Criminal punishment must have the purpose of preventing the crime from recurring; e. Criminal punishment is prospective in nature. When viewed from these characteristics, criminal sanction in labour tends to adhere to the theory of relative criminal purpose because retaliation against the perpetrator is not the main purpose of the criminal sanction, but rather to fulfil labour rights and public welfare. The renewal of criminal provisions in the Labour Cluster Job Creation Law which amends Article 37 paragraph (2) jo Article 187 and Article 14 jo Article 188 of the Labour Law, from previously subject to criminal sanctions for violators to administrative sanctions, actually does not reduce the essence of the purpose of punishment itself. Administrative sanctions are applied to everyone who violates these provisions because the two rules are related to the licensing process, so the provision of administrative sanctions makes more sense than criminal sanctions which will certainly burden and extend the series of affairs that should be carried out by the company. Changes to the criminal provisions are certainly in line with the principles and objectives of the Job Creation Law, namely to

<sup>14</sup> Poernomo, "Asas-Asas Hukum Pidana Indonesia."

<sup>15</sup> Utrecht, "Rangkaian Sari Kuliah Hukum Pidana I."

<sup>16</sup> Rivanie et al., "Perkembangan Teori-Teori Tujuan Pemidanaan."

improve the national economy through job creation, ease in granting business licences, increasing investment, all of which lead to efforts to prosper the community and provide equal rights and legal certainty for all parties.

The reform does not always lead to negative effects. In substance, the changes to the criminal provisions in the Labour Cluster Job Creation Law also have a positive impact. The deletion of Articles 137 and 138, for example, which are no longer subject to criminal sanctions for violators, is the right thing to do to harmonise existing regulations with the Constitutional Court's decision that has been decided previously. In addition, the deletion of these articles further strengthens the position of workers/labourers so that they are not criminalised when exercising their basic right to strike as long as it is carried out in an orderly, peaceful manner, and is not contrary to the law.

However, the impact of the renewal of the criminal provisions in the Job Creation Law itself is also due to the many decisions of the Constitutional Court which also intersect with the criminal provisions in the Labour Law. Until 2018 alone, based on the analysis of the National Law Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia, there are eleven Constitutional Court Decisions that have amended and revoked articles in the Labour Law.<sup>17</sup> Changes that tend to be rapid and scattered in various decisions and regulations outside the Labour Law, have an impact on the difficulty of workers/labourers to understand the criminal provisions in the Labour Law. The regulations that bind workers/labourers are not only the applicable laws and regulations, but there are also company regulations and work agreements that also bind and regulate various rights and obligations between the employer company and workers/labourers, so it will be even more difficult for workers/labourers if there is a buildup of regulations at the national level, which is currently happening.

Now sanctions against violators of labour crimes are regulated in the Job Creation Law which replaces the criminal provisions in the Labour Law so that the principle of legality is very close in providing legal certainty for employers and workers/labourers regarding the types of criminal acts and criminal sanctions that can be imposed on anyone who violates these criminal provisions. Apart from the reforms that have been enacted, in the process of law enforcement, the criminal provisions in the Labour Law cluster must also be guided by Law Number 1 of 2023 concerning the Criminal Code which will soon be enacted in 2026. One of the reforms to improve law enforcement in Indonesia with the reform is to accommodate and recognise unwritten law in society in the case of criminal acts of employment. In a study conducted by Beni Puspito and Ali Mashyar entitled 'Dynamics of Legality Principles in Indonesian National Criminal Law Reform' explains that the concept of the rule of law in Indonesia today can be understood as a prismatic state of law, which integrates positive elements of *rechtsstaat* and the rule of law. The aim is to provide ample room for the fulfilment of justice, which means that actions deemed

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<sup>17</sup> Nasional, NASIONAL, and RI, "Laporan Akhir Kelompok Kerja Analisis Dan Evaluasi Hukum Terkait Peraturan Perundang-Undangan Ketenagakerjaan."

inappropriate or contrary to societal values can be sanctioned, even if there is no written law prohibiting them. Thus, judges have the authority to impose punishment if the act is deemed reprehensible and contrary to justice and other social norms. Therefore, implicitly, criminal law in Indonesia has adopted the doctrine of material lawlessness in the context of its positive function.<sup>18</sup> The renewal of criminal provisions in the Labour Cluster Job Creation Law must therefore also be adjusted to the renewal of criminal law not only in terms of substance, but also the entire criminal law system including law enforcement and the implementation of criminal sanctions to achieve maximum results and the purpose of punishment or the presence of criminal provisions is right on target not widening from the way it should be.

## Conclusion

The renewal of the criminal provisions of the Labour Law that changed after the presence of the Labour Cluster Job Creation Law has brought both positive and negative implications for the development of labour law in Indonesia. The criminal provisions in the Labour Law are actually present not only to provide a deterrent effect for lawbreakers, but also to ensure that the rights and obligations of employers and workers/labourers are fulfilled and implemented according to their respective corridors, which ultimately leads to increased national economic growth and increased community welfare with legal certainty and justice in the employment sector. It is still a homework for lawmaking institutions in Indonesia to again overcome the impact of the renewal of criminal provisions that are scattered in various regulations, making it difficult for workers/labourers to understand the regulations as a whole. This is because the problem of labour law reform in Indonesia is not only separated from changes in criminal provisions, but more complex other provisions that have been criticised by the community. Law enforcement agencies must also work extra to ensure that the enforcement and implementation of criminal sanctions can be implemented wisely in accordance with the purpose of the presence of criminal sanctions in the Labour Law. Cooperation from all parties involved, including companies, workers/labourers, the government, and society in general, is needed to ensure that the reform of criminal provisions in the Labour Cluster Law is not misinterpreted and detrimental to many parties, especially workers, but rather as the best means to obtain their full rights.

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<sup>18</sup> Puspito and Masyhar, "Dynamics of Legality Principles in Indonesian National Criminal Law Reform."

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