

The Impact of Labor Law Reform on Indonesian Workers: A Comparative Study After the Job Creation Law

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Abstract

This study is expected to have significant implications for policymakers and stakeholders in Indonesia and other developing countries seeking to reform their labor laws. The study can validate the development of new policies and programs to protect the rights of the workers, promote decent work, and provide greater access to social protection. The discussion on comparing labor regulations before and after implementing the Job Creation Law (The Law Number 6 Year 2023) in Indonesia covers several key aspects, including wage arrangements, outsourcing, social protection, and fixed-term employment agreements (PKWT). The Job Creation Law reflects the trend to provide more flexibility to employers, allowing them to customize working conditions according to business needs. While a push exists to improve the investment climate and create jobs, these changes raise serious questions about workers' rights and welfare, particularly concerning about social protection and job

security. This comparison indicates significant changes in Indonesia's labor regulations, providing a clearer picture of workers' challenges and opportunities. Labor law reform in Indonesia has impacted workers' perception and responses. While some perceive it as a positive step that strengthens legal protection against unfair termination of employment, many workers still experience inequalities in access to health insurance, pensions, and workplace accident insurance. The government and stakeholders should work to improve workers' access to social security and strengthen law enforcement and oversight to minimize potential implementation failures that could harm the rights of the workers.

KEYWORDS *Labor Law Reform, Indonesian Workers, Job Creation Law, Comparative Study*

Introduction

Indonesian labor law has undergone significant changes in recent years. The Indonesian Government has implemented several labor law reforms to improve the economic competitiveness, encourage job creation, and improve the welfare of the Indonesian workforce. However, the impact of these reforms on Indonesia's work environment emerges, and further research is needed to assess the effectiveness of these reforms.¹

Employment in Indonesia is governed by a series of labor laws and regulations developed over decades, such as regulating employment through The Law Number 13 of 2003 concerning Manpower, and The Law Number 2 of 2004 concerning Industrial Relations Dispute Resolution. These laws and regulations protect the rights of the workers and ensure the employers treat them fairly.² In this period, regulation included the provisions on minimum wage, overtime pay, and severance pay, and the protection against discrimination and harassment in the workplace. It also strengthened the rights of the workers to establish and join trade unions and to engage in collective

¹ Petra Mahy, "Indonesia's Omnibus Law on job creation: legal hierarchy and responses to judicial review in the labour cluster of amendments." *Asian Journal of Comparative Law* 17, no. 1 (2022): 51-75; Petra Mahy, "The evolution of company law in Indonesia: An exploration of legal innovation and stagnation." *The American Journal of Comparative Law* 61, no. 2 (2013): 377-432.

² Laurensius Arliman, "Perkembangan dan Dinamika Hukum Ketenagakerjaan di Indonesia." *Jurnal Selat* 5, no. 1 (2017): 74-87.

bargaining.³ In addition, labor legislation and regulations still have significant challenges facing workers in Indonesia. Many workers are employed in informal sector, which still has little job security and limited access to social protection such as health care and pensions.⁴ In addition, labor laws are often not enforced, particularly for small and medium-sized enterprises (SMEs).⁵

In 2019, the Government of Indonesia enacted the Job Creation Law, which seeks to simplify and streamline regulations pertaining to employment and investment within the country. This legislation, formulated through the Omnibus Law approach—designed to amend multiple existing laws through a single legislative framework—has generated considerable controversy. Critics argue that the Law undermines protections for workers, such as job security and workplace safety, and diminishes their bargaining power by making it easier for employers to implement layoffs and alter employment terms.

Moreover, the Law has faced significant resistance from labor unions, which view it as a direct threat to workers' rights. In response, these unions have organized protests and strikes, reflecting widespread concern among workers regarding potential erosion of labor standards. The debate surrounding the Job Creation Law highlights the tension between economic development objectives and the protection of workers' rights in Indonesia's evolving labor landscape.

The Job Creation Law introduced a series of changes to Indonesia's labor laws, including changes to minimum wage regulations, changes to severance pay provisions, and the introduction of more flexible employment contracts. The Law is intended to provide a more conducive environment for businesses to invest and create jobs while improving overall working conditions for Indonesian workers. However, the impact of these reforms on workers' working

³ Asri Wijayanti, "Rights to the freedom of trade unions in the constitution and its implementation." *International Journal of Applied Business and Economic Research* 15, no. 7 (2017): 107-115; Joe Isaac, and Sari Sitalaksmi. "Trade unions in Indonesia: From state incorporation to market orientation." *Trade Unions in Asia*. (London: Routledge, 2008), pp. 254-273.

⁴ Fauziah Zen, and Astrid Dita. "Social protection system in Indonesia: an assessment." *Social Protection Goals in East Asia*. (London: Routledge, 2018), pp. 98-132; Muliadi Widjaja, "Indonesia: in search of a placement-support social protection." *ASEAN Economic Bulletin* (2012): 184-196; Sarah Cook, and Jonathan Pincus. "Poverty, inequality and social protection in Southeast Asia: An Introduction." *Journal of Southeast Asian Economies* (2014): 1-17.

⁵ Tulus TH. Tambunan, "Development of micro, small and medium enterprises and their constraints: A story from Indonesia." *Gadjah Mada International Journal of Business* 13, no. 1 (2011): 21-43.

conditions, job security, and access to social protection remains a topic of debate.⁶

After the Constitutional Court Decision Number 91/PUU-XVIII/2020, the Job Creation Law was declared unconstitutional and is still conditionally valid as long as it is not interpreted as "*no improvements have been made within 2 (two) years of this decision being pronounced*". In its development, the Government issued Government Regulation instead of The Law Number 2 Year 2022 on Job Creation, which was then passed by the DPR through Law Number 6 Year 2023 on the Stipulation of Government Regulation instead of The Law Number 2 Year 2022 on Job Creation into Law.⁷

The impact of labor law reform on Indonesian workers is a complex issue that requires further investigation. While these reforms aim to increase labor market flexibility and create new jobs, they may also negatively affect workers' rights and job security. For example, labor market flexibility may lead to increased precarious employment on short-term contracts or through informal arrangements without access to social protection.⁸

A comparative study of the impact of labor law reform on Indonesian workers is expected to give valuable insights on the effectiveness of the reform. By comparing labor arrangements before and after the implementation of the labor law reforms, this study can assess whether the reforms have led either to better or worse working conditions. The study can also analyze workers' experiences in different sectors and industries to understand on how the reforms have affected different groups of workers.

The findings of this study are critical for policymakers and stakeholders in Indonesia and other developing countries urgently seeking labor law reform. The insights can drive the creation of new policies and programs that protect

⁶ Chris Manning, and Kurnya Roesad. "The Manpower Law of 2003 and its implementing regulations: Genesis, key articles and potential impact." *Bulletin of Indonesian Economical Studies* 43, no. 1 (2007): 59-86.

⁷ Kukuh Tejomurti, and Sukarmi Sukarmi. "The Critical Study of the Omnibus Bill on Job Creation Based on John Rawls View on Justice." *Unnes Law Journal* 6, no. 2 (2020): 187-204; Nyoman Mas Aryani, Ayu Putu Laksmi Danyathi, and Bagus Hermanto. "Quo Vadis Protection of The Basic Rights of Indonesian Workers: Highlighting the Omnibus Legislation and Job Creation Law." *Pandecta Research Law Journal* 17, no. 1 (2022): 104-120; Abdul Hakim Siagian, "Omnibus law in the perspective of constitutionality and legal politics." *Jambura Law Review* 3, no. 1 (2021): 93-111.

⁸ Arpangi Arpangi. "Political Reform of Labor Protection Law in The Globalization Era." *International Journal of Law Reconstruction* 4, no. 1 (2020): 1-11; Asri Wijayanti, "Access to Justice and Labor Law Reform in Asia." *Rechtsidee* 3, no. 1 (2016): 17-26; Kukuh Pambudi, "Quo Vadis Indonesian Labor Act: How Far the Protection for Labors?." *Journal of Law and Legal Reform* 2, no. 4 (2021): 591-602.

workers' rights, promote decent work, and enhance access to social protection. Furthermore, this study is essential for advancing the broader debate on labor law reform and its profound impact on workers in developing nations. Immediate attention to these findings could pave the way for transformative changes that are desperately needed.

This study employs a mixed-methods approach to assess the impact of labor law reform in Indonesia, particularly following the implementation of the Job Creation Law. Quantitative data is gathered through surveys administered to workers across various sectors, measuring changes in job security, wages, and access to benefits before and after the law's enactment. Additionally, qualitative interviews with labor rights advocates, policymakers, and workers provide deeper insights into the lived experiences and perceptions surrounding these reforms. By combining statistical analysis with personal narratives, the research aims to comprehensively evaluate the law's effects on workers and contribute to the ongoing dialogue on labor rights in Indonesia.

Analysis of Impact of Job Creation Law (*Omnibus Law*) in Surabaya

The survey was distributed through email, and responses were collected at different times. There were 102 respondents providing information on their gender, age, tenure at their current workplace, employment status, and the location of their companies in Surabaya. The main part of the survey consisted of a series of questions regarding the impact of the Job Creation Law on various aspects of respondents' working lives, such as:

- 1) The easiness of obtaining health insurance, pension, and work accident insurance.
- 2) Whether the minimum wage set by government is enough to fulfill their needs
- 3) The effectiveness of trade unions in representing workers' interests and protecting workers' rights.
- 4) The easiness of raising complaints or work-related issues with the employer or management.
- 5) Whether the law has helped protect workers from unfair or arbitrary termination.
- 6) Respondents' overall views on the impact of the Job Creation Law on industrial relations.

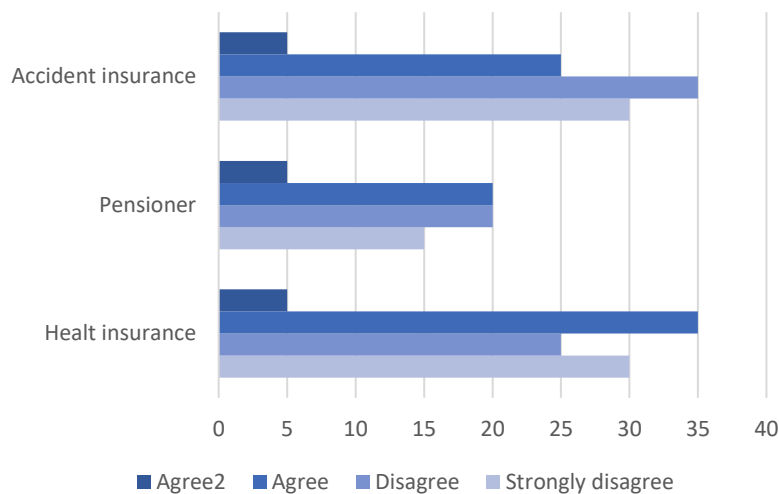


FIGURE 1. The impacts of Job Creation on Worker Convenience
Source: Authors (edited)

The survey results provide a mixed picture of the impact of the Job Creation Law on the easiness of workers to obtain health insurance, pension, and work accident insurance. Starting with health insurance, 35.29% of respondents agreed that the Job Creation Law has made it easier for them to obtain health insurance. This suggests that a third of workers surveyed have seen an improvement in their access to health insurance since the Law was enacted. However, it is essential to note that a large proportion, 30.39%, disagreed completely and 27.45% disagreed with this statement. This suggests that for more than half of workers, access to health insurance has remained the same under the new Law.

Regarding pensions, the response was more pessimistic with only 25.49% of respondents agreed and strongly agreed that the Job Creation Law makes it easier for them to obtain a pension. This proportion suggested that the new Law still needs to improve workers' access to pensions. On the other hand, 74.51% disagreed and strongly disagreed to the idea whether the new Law allowed them to have better access to pensions. This suggests a strong sentiment among workers that their ability to secure a pension has not improved and even have worsened under the Job Creation Law.

Similar trend was also in terms of accident insurance that only 32.35% of the respondents agreed and strongly agreed that the Job Creation Law makes obtaining work accident insurance easier. This proportion is slightly higher than for pension, indicating that most workers have yet to see any improvement in this area. The majority of the respondents (67.65%) disagreed and strongly disagreed, suggesting that many workers still face difficulties obtaining this type of insurance.

In conclusion, the survey results show that the Job Creation Law has not significantly improved the ease workers to obtain health, pension, and work accident insurance. Only a few workers have experienced such improvements. This suggests that much work remains to ensure all workers have easy access to these essential benefits. Most respondents’ uncertainty or lack of information also indicates the need for better communication and education regarding the Law and its impact.

The results of the survey regarding the workers’ perceptions on whether the minimum wage set by the government is sufficient to meet their living needs. The responses varied, showing the variety of experiences and perceptions among workers. 17.65% agreed and strongly agreed that the minimum wage was sufficient for their needs. This shows that for most workers, the minimum wage is considered adequate. These workers may be in industries or occupations where the minimum wage is relatively high or have a lower cost of living due to location, family size, or lifestyle.

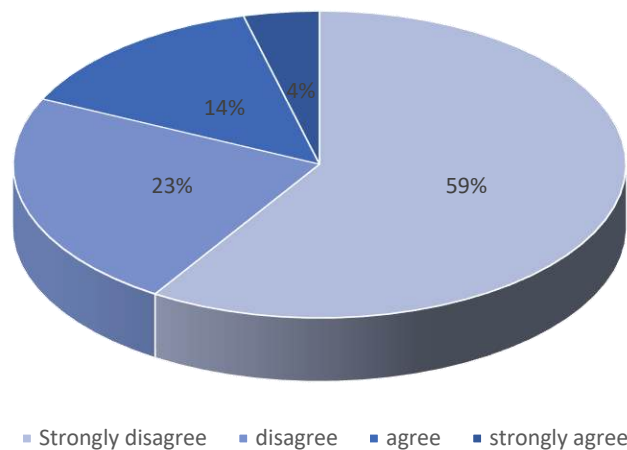


FIGURE 2. The minimum wage is sufficient to meet living needs
 Source: Authors (edited)

However, most respondents (82.35%) disagreed or strongly disagreed whether the minimum wage sufficient. This shows that the minimum wage needs to meet the living needs of more than a third of workers. These workers may struggle to cover basic expenses such as housing, food, healthcare, and education. They may also face financial stress and insecurity, which can negatively impact their physical and mental health, job performance, and overall quality of life.

In conclusion, the survey results show that while the minimum wage is sufficient for some workers, more is needed for most workers. This suggests the need for further review of the minimum wage and cost of living, and possible adjustments to the minimum wage or other policies to ensure that all workers

can meet their basic needs. The level of uncertainty among most respondents also points to the need for better communication and education regarding the minimum wage and cost of living.

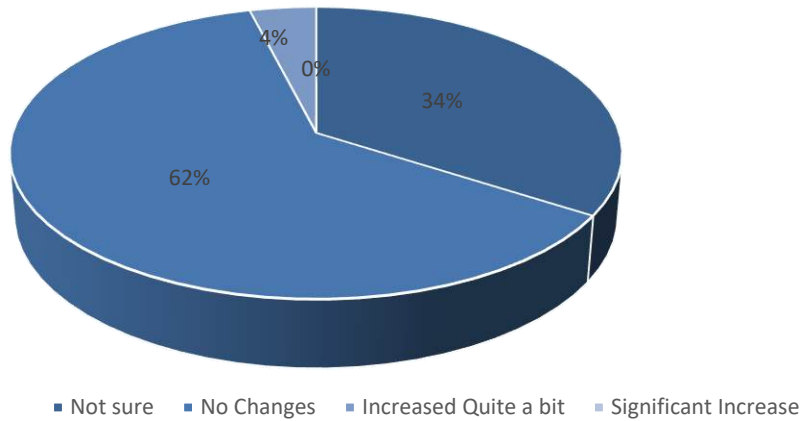


FIGURE 3. Leave, rest periods, wages, bonuses, and working hours
Source: Authors (edited)

The results also provide a comprehensive view of workers’ perceptions on the changes in leave, rest periods, wages, bonuses, and working hours since the enactment of the Job Creation Law. In terms of the leave, 61.77% of respondents reported no change, indicating that the amount of leave they might receive remains the same for most workers. However, 34.31% needed clarification, suggesting uncertainty or needing more information regarding their working conditions. Only 3.92% reported an increase in leave.

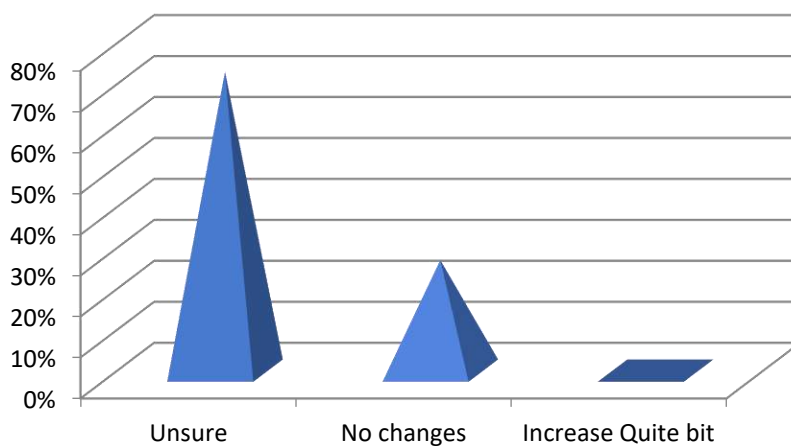


FIGURE 4. Break time
Source: Authors (edited)

In terms of the period for rest, 72.55% of respondents reported no change, indicating that the duration for the rest remained the same for most workers.

However, 27.45% were unsure, indicating a degree of uncertainty or lack of information.

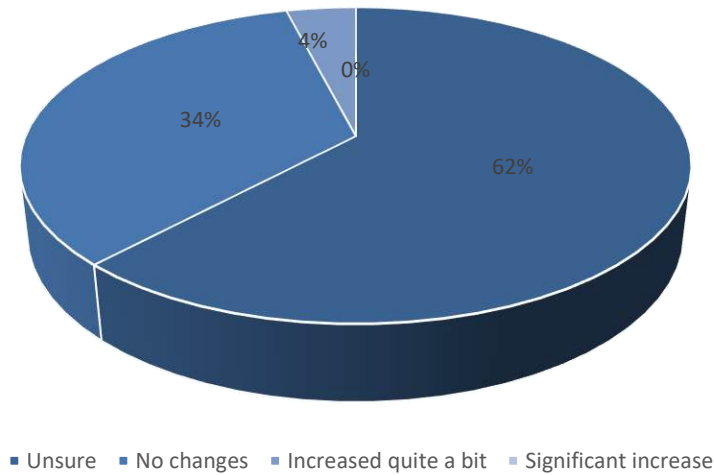


FIGURE 5. Salary
Source: Authors (edited)

In terms of the salary, the responses were similar to those on leave with 61.76% of respondents reported no change in salary, while 34.31% were unsure. Only 3.92% reported a wage increase. This suggests that most workers' wages have remained the same since the enactment of the Law.

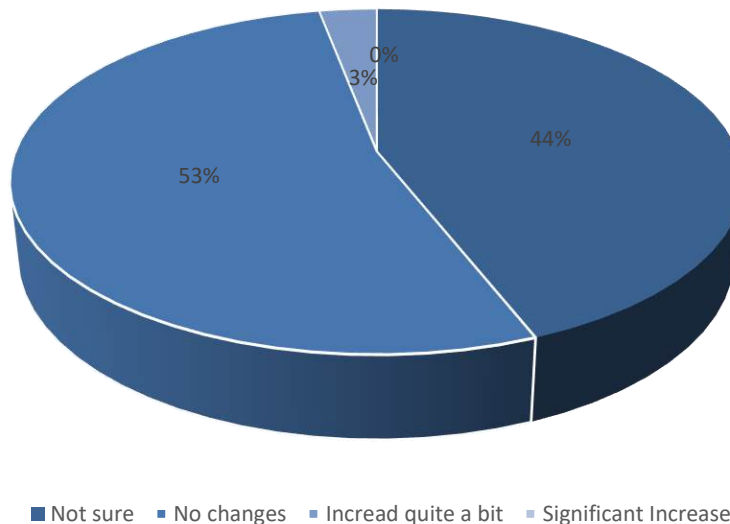


FIGURE 6. Bonus
Source: Authors (edited)

Responses were slightly more varied for bonuses that 52.94% of respondents reported no change to their bonus, while 44.12% were unsure. Only 2.94% reported an increase in bonuses. This shows that their bonuses remained the

same among half of the workers, but most needed clarification about their working conditions.

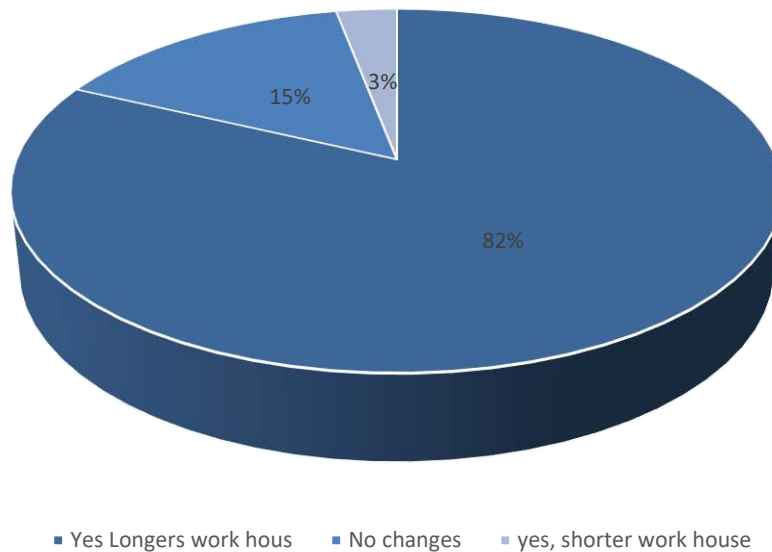


FIGURE 7. Working Hours

Source: Authors (edited)

Finally, most respondents (82.35%) reported no change regarding working hours. This suggests that most workers' working hours have remained the same since the enactment of the Law. However, 14.71% reported longer working hours, indicating that for a minority of workers, their working hours have increased. Only 2.94% reported shorter working hours.

In conclusion, the results show that for most workers, there have been no significant changes in terms of leave, rest periods, wages, bonuses, or working hours since the enactment of the Job Creation Law. However, most workers need clarification in terms of working conditions, suggesting better communication and education regarding the Law and its impact. The increase in working hours for a minority of workers also becomes concern that requires further investigation.

The effectiveness of trade unions in representing workers' interests and protecting workers' rights is an essential aspect of labor matter. In Indonesia's context of the Job Creation Law, this survey shows a mixed reception. On one hand, most respondents perceived that trade unions have become more effective in representing workers' interests and protecting their rights since implementing the Job Creation Law as reflected by respondents who gave strongly agree ratings to questions regarding the effectiveness of trade unions in representing workers' interests in negotiations with employers (40.2%) and their respective roles in protecting workers' rights (45.1%). On the other hand, many respondents did not share the optimistic view as seen from those who gave a

completely disagreeing rating regarding the effectiveness of trade unions in representing workers' interests (27.45%) and protecting their rights (25.49%). These respondents may feel unions have become less effective since the implementation of the Job Creation Law.

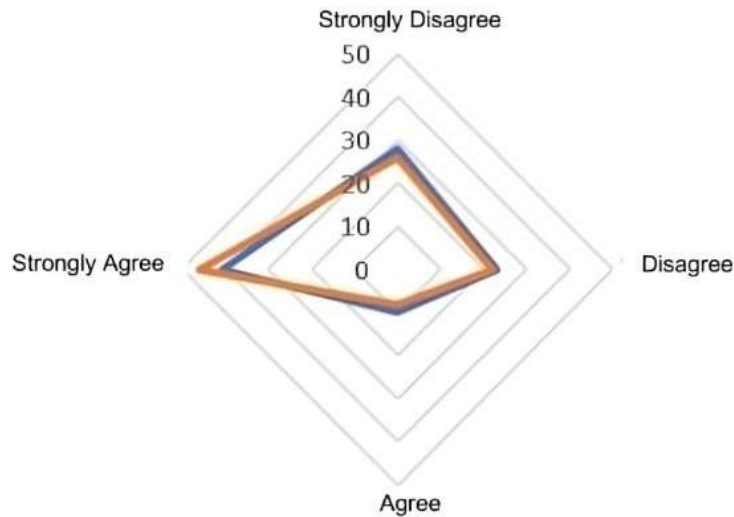


FIGURE 8. Effectiveness and the Role of Trade Unions

Source: Authors (edited)

The survey results also show that most respondents had mixed or neutral views. This suggests that many workers may need clarification about the impact of the Job Creation Law on the role and effectiveness of trade unions, or may experience different impacts depending on their specific circumstances. The mixed stance by the respondents can be due to a variety of reasons. Some workers perceived that unions should be more independent and robust to represent their interests and protect their rights effectively. In addition, others may consider that the Job Creation Law has weakened unions' position, such as making it easier for the employers to undermine the unions in decision-making processes or reducing legal protections for unions and workers' rights.

In conclusion, this survey reveals a complex picture of workers' perceptions on the effectiveness of trade unions after the Job Creation Law. Some workers perceived an improvement while many are still unsure. This situation underscores the need for further research to understand the specific factors influencing the perceptions and to identify ways to improve the role and effectiveness of trade unions in representing workers' interests and protecting their rights. It also highlights the importance of ongoing dialogue and cooperation among workers, unions, employers, and policymakers to address labor issues and promote positive labor relations. The ability of workers to easily communicate their work-related complaints or concerns to their employer or management is an essential aspect of a healthy and productive work

environment. It allows for open communication and problem-solving, improving place conditions, and worker satisfaction. In the context of Indonesia's Job Creation Law, this survey provides insight into workers' perceptions of their ability to voice their concerns or issues.

The survey results show mixed trends that most respondents submitting complaints or problems related to their work has become easier since the implementation of the Job Creation Law as reflected in the 35.29% of respondents who strongly agreed with the ease of submitting complaints or problems. In addition, the respondents may believe that the Job Creation Law has improved mechanisms or channels to voice their concerns, or that employers or management have become more receptive to their complaints or concerns. On the other hand, many respondents did not share optimistic responses as seen from the 30.39% of them who strongly disagreed with the ease of raising complaints or concerns. These respondents may feel that voicing their concerns or issues has not become more accessible or even more complicated since the implementation of the Job Creation Law. This could be due to various reasons, such as lack of response from the employer or management, fear of retaliation, or lack of awareness or understanding of the mechanisms for raising complaints or concerns as shown on Figure 9.

The results of the survey also show that most respondents had mixed or neutral views as indicated by scores of 2 and 3 on the Likert scale. This suggests that many workers may feel uncertain about the impact of the Job Creation Law on their ability to voice their concerns or issues or may experience varying impacts depending on their specific circumstances.

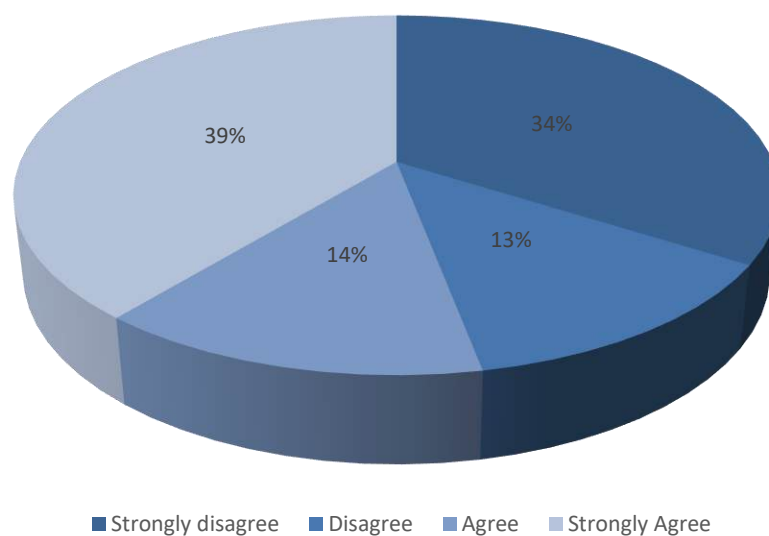


FIGURE 9. Ease of submitting complaints
Source: Authors (edited)

In conclusion, this survey reveals a complex picture of workers' perceptions of their rights to raise concerns or issues related to their work after the Job Creation Law. While some workers perceive an improvement in the channel to speak, the others do not feel it. This underscores the need for further research to understand the specific factors influencing these perceptions and to identify ways to improve mechanisms for workers to voice their concerns. The report also highlights the importance of ongoing dialog and cooperation among workers, employers, and policymakers to address workplace issues and promote positive employment relations.

Protecting workers from unfair or arbitrary termination is fundamental to workers' rights. In the context of Indonesia's Job Creation Law, this survey provides insight into workers' perceptions of the extent to which this Law has helped protect them from such unfair practices.

The results show a mixed picture. On one hand, most respondents thought that the Job Creation Law has helped protect workers from unfair or arbitrary termination as reflected in the 30.39% of them who gave a beneficial rating to the question on the impact of the Law on the job protection. These respondents may feel that the Law has strengthened legal protection against unfair termination, or that the Law has brought improvements in employer practices or in enforcing workers' rights. On the other hand, many respondents did not share this optimistic view. This can be seen from the 35.29% of respondents who gave an unsure view on the question regarding the impact of the Law on protection from unfair termination. These respondents may need to be convinced that the Job Creation Law has improved, or even worsened, the protection of workers from unfair termination. This could be due to various reasons, such as low perception on the Law, including lack of enforcement or rampant unfair practices by employers.

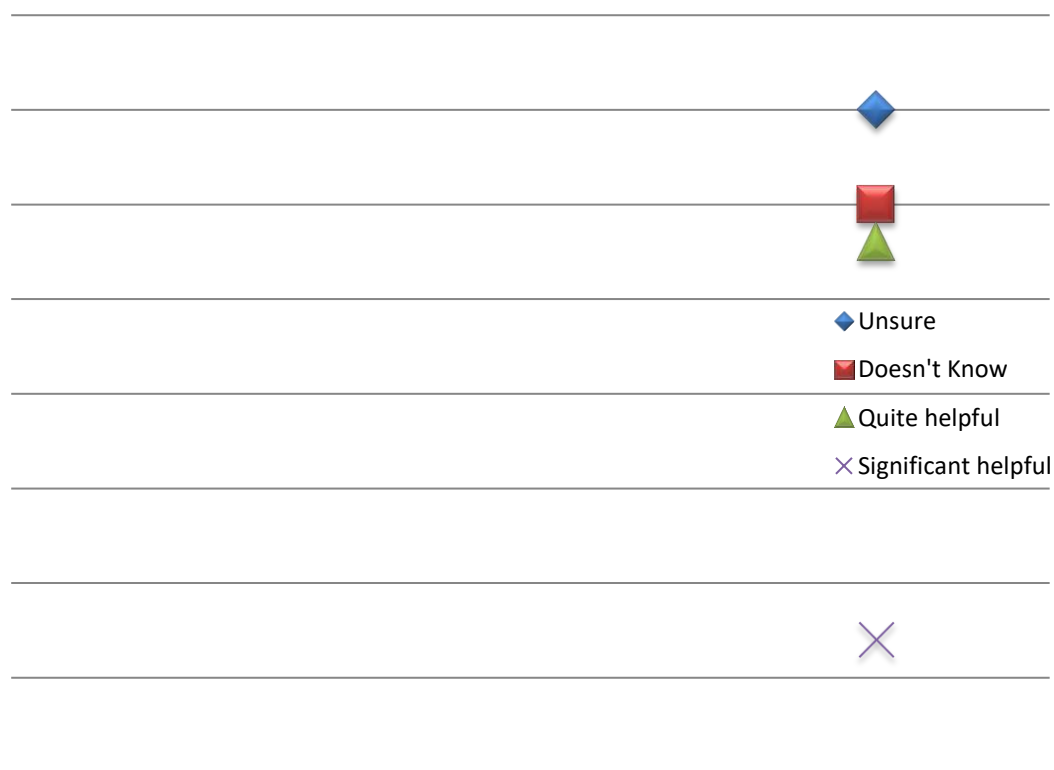


FIGURE 10. Protection of Workers from Unfair Termination
Sources: Authors, 2022 (edited)

The survey results also show that most respondents had mixed or neutral views, answering not knowing and quite helpful. Many workers may still be deciding about the impact of the Job Creation Law on protection from unfair termination or may have experienced different impacts depending on their specific circumstances.

In conclusion, this survey reveals a complex picture of workers' perceptions of how the Job Creation Law has helped protect them from unfair or arbitrary termination. While some workers perceive an improvement, many remain unsure. It underscores the need for further research to understand the specific factors influencing these perceptions and to identify ways to improve workers' protection from unfair termination.

Comparison of Labor Regulations: Before and After the Implementation of the Job Creation Law

Concern about law enforcement in Indonesia is part of the demands for legal reform, which should become the responsibility of all parties, especially relevant policyholders and authorities in the administration of this country. Law enforcement reform requires reviewing, managing, or reorganizing the entire

structure of state administrators. Law enforcement should be distinct from the legal culture of knowledge and education; the hope of creating the managers of this country to be accountable and authoritative in the legal culture is a demand that should be addressed⁹. Law reform or legal reform is analyzing current laws and advocating for and making changes in the legal system, with the purpose to improve fairness or efficiency. There are four main methods to reform the Law¹⁰:

- 1) Repeal (removal or reversal of a law)
- 2) Creation of new Law
- 3) Consolidation (merging several laws into one)
- 4) Codification (the systematic collection and organization, usually by subject, of the laws of a state or country).

Law reform requires law reformers. With all its shortcomings, law reform efforts in Indonesia have been continuing with the existence of legal reformers and leaders scattered everywhere. However, law reform needs both drivers and leaders on the government side to make direct policy changes effectively¹¹. In some other countries, this role is usually carried out by the Minister of Law, or a unique agency (law reform agency) which is established to drive legal reform in the country. It still needs to be improved in Indonesia's legal reform context.

The role needed is undoubtedly more than just a role as an implementing agency listed in development planning documents, but rather as an initiator who is genuinely committed to legal reform in Indonesia, willing to cooperate with legal change drivers outside the Government, understanding the substance, being consistent with the agreed path of change, providing leadership by example, and effectively realizing the legal reform agenda in government policy.

According to Gustav Radbruch, Seow Hon Tan¹², there are three main elements of law enforcement objectives, namely:

- a. Justice is an expectation that should be met in law enforcement. Based on its characteristics, justice is subjective, individualistic, and not equalizing.

⁹ Wibren Van der Burg, "From Ethical Analysis to Legal Reform," *De Ethica* 7, no. 1 (2022): 41–59, <https://doi.org/10.3384/de-ethica.2001-8819.227141>.

¹⁰ Teguh Prasetyo and Tri Astuti Handayani, "Theory of Dignified Justice as A Legal Foundation of Law Reform in Indonesia," *Surakarta Law and Society Journal* 1, no. 1 (2018): 46–54.

¹¹ Andrew Harding, "Theories of Law and Development," *Asian Journal of Social Science* 46, no. 4–5 (2018): 421–44, <https://doi.org/10.1163/15685314-04604003>.

¹² Seow Hon Tan, "Radbruch's Formula Revisited: The Lex Injusta Non Est Lex Maxim in Constitutional Democracies," *Canadian Journal of Law & Jurisprudence* 34, no. 2 (2021): 472.

- b. Legal certainty is a judicial protection against arbitrary actions, meaning a person can obtain something expected in certain circumstances. Society expects legal certainty because, with legal certainty, society will be more orderly.
- c. Legal expediency is a principle that accompanies the principles of justice and legal certainty. In implementing the principle of legal certainty and justice, expediency should be considered.

Other efforts and alternatives for better law enforcement. There is more than one path that can be taken to achieve the objectives of the Law; such paths include¹³

1. Organizing the Law, namely starting with making legal regulations and applying legal sanctions, which is called the juridical pattern. The actors in this juridical pattern are lawmakers, police, prosecutors, advocates, and judges, through the efforts of the sociological pattern. In contrast to the so-called juridical pattern which emphasizes the thought of carrying out the Law as it should, the sociological pattern is looking for alternatives.
2. In the sociological pattern, what is emphasized is the success of achieving the legal objectives of the Law, or in other words, emphasizing efficiency. The concern of this pattern is the achievement of legal objectives rather than the orderly execution of the Law from A to Z just like that. Thus, the question to be answered is not whether the Law has been implemented, but whether the legal objectives are achieved and in order to achieve legal objectives, various alternatives are sought.

The Job Creation Law has come a long way before officially being passed as The Law Number 6 of 2023. Initially, the Job Creation Law was passed in 2020 through The Law Number 11 of 2020¹⁴. As it received massive opposition, the Job Creation Law was subjected to formal testing at the Constitutional Court. One of the legal issues raised in the formal review at the Constitutional Court is whether the omnibus law method used in drafting The Law Number 11 of 2020 is by the guidelines for forming laws and regulations¹⁵.

¹³ Ade Mahmud et al., “Keadilan Substantif Dalam Proses Asset Recovery Hasil Tindak Pidana Korupsi,” *Jurnal Suara Hukum* 3, no. 2 (2021): 227–50.

¹⁴ Restu Gusti Monitarsi, Eki Furqon, and Enis Khaerunnisa, “Implikasi Penerapan Metode Omnibus Law Dalam Sistem Pembentukan Perundang-Undangan Indonesia Ditinjau Dari Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan,” *Jurnal Dialektika Hukum* 3, no. 1 (2021): 21–44, <https://doi.org/10.36859/jdh.v3i1.562>.

¹⁵ Fiqih Rizki Artioko, “Pengadopsian Partisipasi Masyarakat Yang Bermakna (Meaningful Participation) Dalam Undang-Undang Nomor 13 Tahun 2022 tentang Perubahan Kedua

Through Constitutional Court Decision Number 91/PUU-XVIII/2020, it was declared that The Law Number 11 of 2020 was conditionally unconstitutional¹⁶. After the Constitutional Court Decision, however, the President issued Government Regulation instead of The Law Number 2 of 2022 concerning Job Creation which stipulates the substance of the Job Creation Law on the grounds of facing the development of global economic and investment dynamics¹⁷. Government Regulation was later passed into The Law Number 6 of 2023. One of the critical clusters discussed in the Job Creation Law is the employment cluster. The employment cluster is one of the leading clusters that substantially supports the spirit of the Job Creation Law to expand employment for the community¹⁸.

In the context of legal policy regarding wages, the Job Creation Law confirms that Article 88 paragraph (2) of the Job Creation Law regulates the Central Government to establish a wage policy to realize the right of workers/laborers to a decent livelihood for humanity. The policy includes setting the minimum wage every year. The governor is obliged to set the provincial minimum wage (UMP) and can set the city minimum wage (UMK)¹⁹.

The governor can set UMK if the results of the calculation of the UMK are higher than the UMP. The minimum wage is determined based on economic and labor conditions using data from the Central Statistics Bureau (BPS). Furthermore, wage regulations, including minimum wages, are regulated in The Government Regulation (PP) Number 36 of 2021 concerning Wages. The PP Number 36 of 2021 concerning Wages emphasizes that the lowest monthly wage is either a wage without benefits or a basic wage and fixed benefits. If the wage component in the company consists of basic wages and fixed allowances, the basic wage is at least the minimum wage. Even Article 23 paragraph (3) of The PP Number 36 Year 2021 concerning Wages emphasizes

Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan,” *Al Qisth Law Review* 6, no. 1 (2022): 56.

¹⁶ Humas MKRI, “MK: Inkonstitusional Bersyarat, UU Cipta Kerja Harus Diperbaiki Dalam Jangka Waktu Dua Tahun” (www.mkri.id, 2021).

¹⁷ Tohadi, “Perpu Cipta Kerja Dalam Perspektif Negara Hukum” (nasional.kompas.com, 2023).

¹⁸ Agus Suntoro, “Implementasi Pencapaian Secara Progresif Dalam Omnibus Law Cipta Kerja,” *Jurnal HAM* 12, no. 1 (2021): 1–18, <https://doi.org/10.30641/ham.2021.12.1-18>.

¹⁹ Agus Surya Manika, “Kajian Yuridis Terkait Penentuan Besar Upah Pekerja Berdasarkan Pasal 88 C Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja,” *Jurnal Komunikasi Hukum (JKH)* 8, no. 2 (2022): 628–39, <https://doi.org/10.23887/jkh.v8i2.52010>.

that “Employers are prohibited from paying wages lower than the minimum wage”.

The minimum wage is the lowest standard for workers with less than a year of service in the company concerned²⁰. Economic and labor conditions are taken into consideration in setting the minimum wage. The provisions of Article 26 paragraph (2) of The Government Regulation Number 36 of 2021 concerning Wages emphasize that “Adjustments to the minimum wage value are determined within a certain range of values between the upper and lower limits of the minimum wage in the region concerned”. One of the significant changes in the Job Creation Law is related to changes in the provision of wages as seen in Article 88D, paragraph (2) of the Job Creation Law, stipulating that the minimum wage calculation formula considers economic growth variables, inflation, and specific indices. Furthermore, Article 88F of the Job Creation Law states, “In certain circumstances, the government may determine a minimum wage calculation formula that is different from the minimum wage calculation formula as referred to in Article 88D paragraph (2)”.

One of the essential orientations formulated in the Job Creation Law is that minimum wage provisions are excluded for medium and small enterprises (MSEs) that UMK wages are determined based on an agreement between employers and workers/laborers in the company. The wage agreement is at least a certain percentage of the average community consumption based on data sourced from the institution authorized in the field of statistics. This is emphasized in Article 36 paragraph (2) of The Government Regulation Number 36 of 2021 concerning Wages, stating that “Wages in micro and small businesses are determined based on an agreement between the Employer and Workers/Laborers in the Company with the provisions:

- 1) at least 50% (fifty percent) of the average public consumption at the provincial level, and
- 2) the agreed wage value is at least 25% (twenty-five percent) above the poverty line at the provincial level.”

In addition, two things are considered for MSEs exempt from paying the minimum wage. Namely, relying on traditional resources and/or not engaging in high-tech and non-capital-intensive businesses.

The arrangement in the Job Creation Law related to wages above is different from the wage arrangement in The Law Number 13 of 2003 concerning Manpower that the minimum wage is determined by the governor

²⁰ Evi Kongres Erny Kartikasari, Made Warka, “Penyelesaian Masalah Ketenagakerjaan Bagi Pekerja Yang Mendapat Upah Tidak Layak Di Masa Pandemi Covid-19 Secara Mediasi,” *Jurnal Hukum Bisnis Bonum Commune* 4, no. 1 (2021): 77.

consisting of minimum wages based on provincial or city areas as well as minimum wages based on sectors in provincial or city areas²¹. In The Law Number 13 of 2003 concerning Manpower, there is no regulation regarding wages above the minimum wage, and the minimum wage applies to all employers; there are no exceptions for MSEs as in the Job Creation Law. The following substantive arrangement in the Job Creation Law that is different from the Manpower Law is the arrangement related to outsourcing which is defined as transferring part of the work to another company²².

The transfer of part of the work is carried out through two mechanism options, namely a work contracting agreement or the provision of worker/labor services. However, the Job Creation Law changes the outsourcing provisions by deleting Article 64 and Article 65 and amending Article 66 of the Manpower Law. Outsourcing in the Job Creation Law is known as outsourcing²³.

The Government Regulation Number 35 of 2021 concerning Specified Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment (PP PKWT-PHK) states that an outsourcing company is a business entity in the form of a legal entity that meets the requirements to carry out specific work based on an agreement concluded with the company providing the work. The Job Creation Law regulates the rights and obligations of outsourcing companies and their workers. Outsourcing companies are fully responsible for everything that arises from work relations. Labor protection, wages, welfare, working conditions, and disputes that arise are carried out by regulations and are the responsibility of outsourcing companies²⁴. These matters are regulated in work agreements, company regulations or collective labor agreements. In addition, the working relationship between outsourcing companies and hired workers is based on PKWT or non-permanent work agreements (PKWTT). What is also emphasized in the Job

²¹ Agus Pramono, "Settlement of Industrial Relations Disputes and Termination of Work Relations According to the Applicable Legislation," *Walisongo Law Review (Walrev)* 2, no. 2 (2020): 169, <https://doi.org/10.21580/walrev.2020.2.2.6671>.

²² Yoshi Erlina and Ramlani Lina Sinaulan, "Fixed Term Work Agreement in Law No.11/2020 Concerning Job Creation: A Juridical Analysis," *Aksara: Jurnal Ilmu Pendidikan Nonformal* 7, no. 2 (2021): 395, <https://doi.org/10.37905/aksara.7.2.395-404.2021>.

²³ Nabiyla Risfa Izzati, "Deregulation in Job Creation Law: The Future of Indonesian Labor Law," *Padjadjaran Jurnal Ilmu Hukum* 9, no. 2 (2022): 191–209, <https://doi.org/10.22304/pjih.v9n2.a3>.

²⁴ Alwyn Chaisar Perwira Nanggala Pratama and I Gusti Ayu Agung Ari Krisnawati, "Kedudukan Mediasi Dalam Perselisihan Hubungan Industrial Pekerja Outsourcing Di Indonesia," *Jurnal Kertha Negara* 8, no. 3 (2020): 33–47.

Creation Law is that PKWT or PKWTT must be made in writing, it cannot be made orally.

In the case of the outsourcing company employs workers based on PKWT, the work agreement must include a condition for transferring rights protection for workers when there is a change of outsourcing company as long as the object of work remains. This is by the mandate of Constitutional Court Decision Number 27/PUU-IX/2011 related to the judicial review of Article 59, Article 64, Article 65, and Article 66 of the Labor Law. Previously, the Labor Law set limits on the types of activities that outsourced workers could undertake. For example, outsourced workers could not carry out basic activities or be directly related to the production process; they could only work on supporting activities or not be directly related to the production process. However, the Job Creation Law removes these restrictions so that outsourcing companies are able to carry out any works.

Regarding social protection or the provision of social security, the Job Creation Law adds one type of right for workers, namely a job loss guarantee. Job loss guarantee is another protection in the Job Creation Law²⁵. Workers/laborers who experience termination of employment are entitled to a job loss guarantee as stated in Article 46A Part Seven on Job Loss Guarantee in the Job Creation Law. Article 46C of the Job Creation Law stipulates that participants of the job loss guarantee are everyone who has paid contributions²⁶.

Workers' benefits from job loss guarantees are cash, job training, and access to information. Based on this description, the Job Creation Law confirms in Article 18 that social security programs include²⁷:

- a. health insurance;
- b. work accident insurance;
- c. old-age security;
- d. retirement security;
- e. death insurance;
- f. job loss guarantee.

Compared to the Labor Law, social security is not explicitly regulated in the Law. Social security for workers is regulated through The Law Number 40

²⁵ Fahrurozi Muhammad, "Enforcing Omnibus Law: Formalizing Micro, Small, and Medium Enterprises in Indonesia Using Behavioural Science," *Indonesian Law Journal* 14, no. 2 (2021): 95–118, <https://doi.org/10.33331/ilj.v14i2.70>.

²⁶ Qurbani Indah Dwi Zuhdi Achmad, Safa'at Muchammad Ali, "Legis Ratio Omnibus Law On Job Creation In Law And Development In Indonesia," *RJOAS* 2, no. 99 (2022): 47–54, <https://doi.org/10.18551/rjoas.2022-02.07>.

²⁷ Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi* (Jakarta: Sinar Grafika, 2017).

of 2004 concerning the National Social Security System, which only emphasizes five social guarantees for workers, namely:

- a. health insurance;
- b. work accident insurance;
- c. old-age security;
- d. retirement security;
- e. death insurance.

TABLE 1. The comparison of Labor Law and The Job Creation Law

Aspects	The Labor Law	The Job Creation Law
Wage Setting	The governor sets the minimum wage	Setting the minimum wage calculation formula
	There are no exceptions for MSEs	MSEs can set their wages.
	There are no specific provisions for outsourcing	Special arrangements for outsourcing
Outsourcing	Using the term outsourcing	Using the term outsourcing
	There are restrictions on the types of outsourcing activities	Removing restrictions on types of work for outsourcing
Social Protection	There is no guarantee of job loss	Adding job loss coverage
	Only five types of social security (health insurance, work accident insurance, old age, insurance, pension insurance, death insurance, and job loss insurance)	Listing six types of social security (health insurance, work accident insurance, old age insurance, pension insurance, death insurance, job loss insurance)
Time Work Agreement	Time Work Agreement	Regulates fixed-term employment agreements.
	There are provisions on the type and nature of work.	No longer regulates the renewal of non-permanent contracts

It confirms that the guarantee of job loss is the main idea of the Job Creation Law and what distinguishes the substance of the Job Creation Law from previous laws.

One of the other substantive changes in the Job Creation Law is in Article 81, number 15 of the Job Creation Law, which amends the provisions of Article

59 of the Labor Law related to PKWT²⁸. The changes as made through Article 81, The Law Number 15 Year the Job Creation Law so that it reads:

1. A Fixed-Term Employment Agreement can only be made for specific work which, according to the type and nature or activities of the work, will be completed within a specific time, namely as follows:
 - a. work that is one-off or temporary;
 - b. Work that is expected to be completed in a short period;
 - c. seasonal work;
 - d. work related to new products, new activities, or additional products that are still being tested or explored; or
 - e. work that is irregular in type and nature or activity.
2. A Fixed-Term Employment Agreement cannot be entered for permanent employment.
3. A Fixed-Term Employment Agreement that does not fulfill the provisions in paragraphs (1) and (2) becomes an indefinite employment agreement by operation of Law.
4. Further provisions regarding the type and nature of work activities, the period, and the time limit for the extension of a specific time work agreement are regulated in a Government Regulation.

The result is that since the enactment of the Job Creation Law, the renewal of fixed-term employment agreements is no longer regulated. What is being regulated is only the provision for the extension of PKWT. Based on the previous description, the following is a table of differences between the Job Creation Law (The Law Number 6 of 2023) and the previous Labor Law (The Law Number 13 of 2003): The Job Creation Law has gone through a complex journey, starting from The Law Number 11 of 2020, judicial review at the Constitutional Court, to revision into The Law Number 6 of 2023. In this context, several issues need to be considered and addressed to ensure the implementation of the Job Creation Law positively impacts society. Some suggested problems in the Job Creation Law can be identified from labor, wages, outsourcing, and social security.

First, the minimum wage calculation formula in the Job Creation Law, which includes variables of economic growth, inflation, and specific indices, can cause uncertainty. Therefore, the minimum wage calculation formula must provide justice and certainty for workers and consider the impact on workers' lives. Second, the Job Creation Law has changed the provisions on outsourcing

²⁸ Asri Wijayanti Wulan Afrianti, "Pengaturan Batas Waktu Masa Kerja Perjanjian Kerja Waktu Tertentu (Pkw) Pasca Undang-Undang No 11 Tahun 2020," *Maleo Law Journal* 5, no. 2 (2021): 58.

and removed restrictions on the types of work that outsourcing companies can perform. Therefore, it is necessary to improve the protection of outsourced workers by ensuring that outsourcing companies are fully responsible for the rights of their workers. It is also essential to develop effective monitoring mechanisms to prevent abuse of the outsourcing system. Third, the guarantee of job loss is added as an additional right, but needs to be clarified in its arrangement. However, it is necessary to clarify further the implementation and procedures of job loss guarantees, including fulfillment criteria, registration requirements, and benefits that workers can receive. Fourth, eliminating the obligation to pay minimum wages to micro and small enterprises (MSEs) needs to be scrutinized, considering that MSEs can contribute significantly to the economy. Therefore, the flexibility of wages for MSEs must be monitored so as not to provide a loophole for employers to utilize it adversely to workers' rights.

The Impact of Labor Law Reform on Indonesian Workers: Workers' Perspectives and Responses

According to Article 1 of The Law Number 14 of 1969, labor is “every person who is capable of doing work” (from within or outside the employment relationship) in order to produce goods and or services to meet the needs of the community, so there is a broad meaning here. The Civil Service Law binds those who have worked for government agencies. Meanwhile, those who have worked in companies are bound and or protected by the Labor Law or what is commonly called Labor Law²⁹.

Historically, the development of regulations on industrial relations involving employers and employees underwent a significant overhaul after the ouster of President Soeharto and Habibie. During the Old and New Order periods, the Government had firm control over the labor system. It was evident when, prior to 2000, there was only one officially and legally recognized labor union in Indonesia, the all Indonesian Workers Union (SPSI)³⁰.

In its journey, SPSI was under the control of the Government at that time. However, after Indonesia ratified ILO Convention Number 87 through The Law Number 21 of 2000 on Trade Unions (Trade Union Law), the concept changed and became the entry point of new trade unions as a home for workers. As a follow-up to the enactment of the Trade Union Law, the Government enacted Law Number 13 of 2003 on Manpower (Manpower Law). The

²⁹ Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*.

³⁰ Enggartiasti Sherly Anggraini, “Peran Serikat Pekerja Dalam Hal Perselisihan Hubungan Kerja Yang Berdampak Pada Pemutusan Hubungan Kerja,” *Syntax Admiration* 4, no. 3 (2023): 349–61.

presence of The Law Number 13 of 2003 on Manpower has provided new nuances in the repertoire of labor/labor law, namely³¹:

- a. Aligning the terms worker, the term employer is changed to employer and employer; this term has long been sought to be more in line with Pancasila Industrial Relations.
- b. Replacing the term labor agreement with the term collective labor agreement (CLA), which seeks to be replaced because labor agreements originated in liberal countries and often create conflicts of interest between workers and employers.
- c. By the times, providing equality between male and female workers, especially for night work. Women workers under this Law are no longer prohibited from working at night. Employers are given signs that must be adhered to regarding this matter.
- d. Providing adequate sanctions and use minimum and maximum limits to ensure legal certainty in enforcement.
- e. Regulating administrative sanctions ranging from reprimands, written warnings, restrictions on business activities, suspension of business activities, cancellation of approval, cancellation of registration, temporary suspension of part or all of the production equipment, and revocation of licenses. In the previous laws and regulations, this sanction was not regulated.

However, the Labor Law tends to favor employers and exclude workers which triggers disputes between employers and workers; therefore, there is a government effort to overcome these labor disputes by passing The Law Number 2 of 2004 concerning Industrial Relations Dispute Resolution (PPHI Law)³². The regulation of PPHI had been introduced previously which was initially regulated in Law Number 22 of 1957 through the Regional Labor Dispute Resolution Committee (P4D) and the Central Labor Dispute Resolution Committee (P4P). However, in its development, it turned out that more than this method was needed. Because the nature of P4D and P4P decisions is fragile because they are not final (they can be challenged at the State Administrative Court/PTUN), there is often government intervention. It is also not uncommon for the Government to side with employers. In addition, the Industrial Relations Court was established as a breakthrough step to replace the roles of P4D and P4P and perfect the shortcomings in the old industrial relations dispute resolution concept. The presence of the Industrial Relations

³¹ Asri Wijayanti et al., "Industrial Relations Mediator As an Effort to Settle Industrial Relations Disputes After the Covid-19 Pandemic," *KnE Social Sciences* 2022 (2022): 525–36, <https://doi.org/10.18502/kss.v7i15.12127>.

³² Pramono, "Settlement of Industrial Relations Disputes and Termination of Work Relations According to the Applicable Legislation."

Court is also significant because the court is not only an institution that must be independent and have integrity but is also expected to be able to provide fair services to all levels of society.

Labor issues have been primarily determined by the world economic system, which affects the direction of labor law policy and affects the type of labor law as proposed by Tamara Lothian, who distinguishes the type of labor law into contractualist type and corporatist type³³, described below:

1. *Contractualist* type. Work relations are more based on the bargaining position of workers against employers; the government is not an active party in making labor regulations but only acts to facilitate labor organizations by guaranteeing the right to organize. This type is a capitalist concept that wants the state not to interfere too much with the problems of workers and employers. However, it is left to the market mechanism with a flexible worker system, returning to the objectives of labor law. The role of the government is still very much needed, and there are better solutions than eliminating state intervention.
2. Corporatist type in the field of labor law is carried out through the practice of legislative policy in the form of the formation of laws and regulations as a government effort to foster national Law. It is further justified if it is linked to the legal system adopted by Indonesia since the beginning of independence based on the principle of concordance (from Dutch Law) which adheres to the Continental European legal system (Civil Law).

In this context, an in-depth understanding of the two types of labor law described by Tamara Lothian is required, namely the corporatist and contractualist types. The corporatist type reflects the practice of legislative policy in forming laws and regulations by the Government to foster national Law. It is by the Continental European legal system (Civil Law) adopted by Indonesia since the beginning of the independence. On the other hand, the contractualist type focuses on employment relations that are more dependent on the bargaining of workers against employers, in which the government is

³³ Khikmatul Fikriyah, "Peran Mediator dalam Penyelesaian Perselisihan Hubungan Industrial di Masa Pandemi Covid-19 (Studi Kasus: Dinas Tenaga Kerja Kabupaten Gresik)," *Jurnal Inovasi Penelitian* 1, no. 3 (2020): 1–4. See also Tri Hartini, "Legal Policy of Protection COVID-19 Patients in Hospitals." *Journal of Human Rights, Culture and Legal System* 2, no. 1 (2022): 45-57; Abdul Malik Bram, and Kaharuddin Syah. "Kriminalisasi Pekerja dalam Hubungan Industrial." *Maleo Law Journal* 4, no. 1 (2020): 43-55; Ismail Rahmatyudi, "Peran Pemerintah dalam Mitigasi Dampak Corona Virus Disease (Covid-19) Terkait Hubungan Industrial." *Jurnal Suara Hukum* 5, no. 1 (2023): 1-18.

being more facilitative towards labor organizations without too much intervention in labor regulations.

When discussing the Indonesian context, a shift in focus occurred in introducing the 2020 National Legislation Program for Priority Laws, specifically the Job Creation Bill (*RUU Cipta Kerja*). That bill was heading towards the corporatist type with the government's role in creating labor regulations, the Job Creation Bill also creates a contractualist dynamic by encouraging a flexible worker system. The Government submitted the draft Job Creation Law to the House of Representatives on February 12, 2020, carrying the Omnibus law concept³⁴.

Moza, et al (2022) mentioned that the Omnibus law is taken from the words omnibus and law. Omnibus itself comes from the word “*omnis*” in Latin which means “all” or “many”. It can be concluded that Omnibus law is a law that regulates all things in one field³⁵. The word omnibus, which comes from Latin, is used for several legal terminologies. The use of “Omnibus” spliced with the word “Law” is rarely used, not even in Black's Law Dictionary. The term used is Omnibus Bill³⁶. Therefore, from a legal perspective, the term of Omnibus is usually juxtaposed with the word Law or Bill, which means a regulation based on compiling several rules with different substances and levels. In this context, legal experts often make the term Omnibus law as an umbrella law. In this case, the Omnibus Law, referred to in the Indonesian legal system, is a form of Law that regulates various objects in one legal instrument. So, there is a spread of discourse related to the Omnibus Law, which is equated with the Umbrella Law, which is the parent of other laws still in the same sector. However, if the Omnibus Law is narrated as an Umbrella Law, then the Omnibus Law is not regulated in The Law Number 12 of 2011 concerning the Formation of Legislation. Therefore, the Omnibus Law in the Indonesian context is narrated as a law³⁷.

³⁴ Moza Dela Fudika, Ellydar Chaidir, and Saifuddin Syukur, “Konfigurasi Politik Lahirnya Undang-Undang Cipta Kerja,” *Jurnal Legislasi Indonesia* 19, no. 2 (2022): 185–97, <https://e-jurnal.peraturan.go.id/index.php/jli/article/view/4>.

³⁵ Adam M. Dodek, “Omnibus Bills: Constitutional Constraints and Legislative Liberations,” *Ottawa Law Review* 48, no. 1 (2017): 42.

³⁶ Kaharudin, Gatot Dwi Hendro Wibowo, and M. Ilwan, “Structuring Legislation Through Omnibus Law: Opportunities And Challenges In The Indonesian Legal System,” *Journal of Legal, Ethical and Regulatory Issues* 24, no. 7 (2021): 1–11.

³⁷ Imam Asmarudin, “Struggle of Legal Positivism Versus Progressive Thoughts in the Formal Tests of the Job Creation Act (Legal Development through Hermeneutics),” *Dinamika Hukum* 22, no. 1 (2022): 144–53, <https://doi.org/10.20884/1.jdh.2022.22.1.3178>.

On its way, the Job Creation Law received sharp criticism from various parties. In some aspects, the Job Creation Law brings moderation in articles that look advanced. However, there are still several normative provisions in the Job Creation Law that are substantially not pro-people who should have more potential to have a positive impact of this Law, including³⁸:

- 1) In the Job Creation Law, which changes the regulation of the maximum ownership limit provisions in the formulation of Article 9 paragraph (3) of the Islamic Banking Law in Article 79 of the Job Creation Law, the change in the article has an impact on the existence of a legal vacuum (*rechtsvacuum*) governing the maximum limit of ownership of Islamic commercial banks by foreign nationals. This has the potential for foreign nationals to control Islamic commercial bank ownership fully.
- 2) In Article 81 of the Job Creation Law related to Manpower, there is a norm provision that removes the rules regarding the PKWT Period for Contract Workers; this certainly removes the opportunity for citizens to obtain an Indefinite Work Agreement.
- 3) Articles related to the Basic Agrarian Law in the Job Creation Law do not simplify the regulation because in the Job Creation Law Articles 125 and 147, the formulation is copied only from the Draft Land Law, not referring to the Basic Agrarian Law Number 5 of 1960.
- 4) The provisions of Government Administration are regulated explicitly in CHAPTER XI of the Job Creation Law in which Article 174 concerning authority and Article 175 amends The Law Number 30 of 2014, the regulation related to the authority of the President and Regional Governments in Article 174 which is not supported by an explanation, raises concerns about the loss of the existence of decentralization; In decentralization, the Central Government should have the authority to supervise regional policies, while this supervision is not in the capacity to intervene, but should be constructive for the progress, growth, and development of capabilities in the respective regions.
- 5) The Job Creation Law amends the provisions of Article 25 Letter c of The Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH), which explicitly regulates the files that must be included in the EIA document. One changed document requirement is regarding input suggestions and responses from the community. The PPLH Law stipulates that one of the EIA documents must contain input

³⁸ Luthfia Hidayah Winda Fitri, "Problematika Terkait Undang-Undang Cipta Kerja Di Indonesia: Suatu Kajian Perspektif Pembentukan Perundang-Undangan," *Komunitas Yustisia Universitas Pendidikan Ganesha* 4, no. 2 (2021): 725–35.

suggestions and responses from directly-affected communities relevant to the business/activity plan, while in the Job Creation Law input suggestions and responses are from the community, not necessarily directly-affected communities.

- 6) The Law Number 32 of 2009 provides space for people who object to EIA documents to file objections or legal remedies, while the Job Creation Law does not regulate such mechanism, namely by removing the provisions regarding the EIA assessment commission as regulated in Article 29, Article 30, and Article 31 of Law 32 of 2009. The absence of this objection mechanism has sparked debate in the community as it is considered very important to ensure environmental sustainability, which mainly to keep the EIA document from being made carelessly or just a formality.

The Job Creation Law has been heavily criticized by various parties, highlighting several aspects that raise substantial concerns. In employment, Article 81 of the Law has been criticized for removing the regulation on the duration of fixed-term employment agreements (PKWT) for contract workers. This move is considered detrimental to citizens, removing their opportunity to obtain an Indefinite Employment Agreement, which was guaranteed by previous regulations leading to uncertainty and a potential decrease in worker security.

The labor law reform, mainly reflected in the Job Creation Law, is a significant move that has significantly impacted the dynamics of industrial relations in Indonesia. Through workers' perspectives, it is identified through the changes in daily working life including the potential challenges faced by the workers. This analysis covers various aspects, including labor arrangements, standard wages, working conditions, and the role of trade unions.

Access to Health Insurance, Pension, and Work Accident Insurance

The data from the survey showing significant differences in the workers' perceptions on the access to health insurance, pensions, and work accident insurance clearly illustrates the inequalities and unclear stance that persist in implementing the Job Creation Law in Indonesia. The focus on workers' access to these forms of social protection and benefits reflects the complexity of labor law reform. The survey highlights the unequal access of the workers to health insurance, pensions, and work accident insurance in the era of labor law reform, mainly through the implementation of Job Creation Law. Despite the % reported improved access to health insurance by the 35% of the participants, this figure is considered still low, suggesting that the majority workers have yet

to experience positive changes. In particular, access to pensions received a significant negative response with only 25% of respondents finding it more accessible. This reflects the urgent need for improvements in workers' social security.

To understand this phenomenon, we can refer to the distributive justice theory proposed by Adams (1963) which argues that justice is achieved when individuals perceive the distribution of resources as fair³⁹. In this context, workers who feel they are benefiting from the reforms may perceive the distribution of resources as fair, and vice versa. Therefore, differences in perceptions can be explained by relevant factors involving industry structure, job type, and economic inequalities. Different industry structures may affect to what extent the workers benefit from labor law reforms. Industries with high wages or well-organized sectors may provide more significant benefits to workers in terms of health insurance and worker safety. In contrast, in industrial sectors with low wages or less-organized structures, the impact of reforms may be perceived differently. In addition, job type also determines the perception on distributive justice. Workers with jobs that carry a high level of risks or require a specialized level of skill may have different interests in health insurance and employment protection. Such reforms that advocate to the needs and risks of certain workers may create a more equitable perception of the distribution of benefits. Another factor is the economic inequality among workers also explains why small proportion of the workers experience improved access to health insurance; workers with lower income levels may still need help benefiting from the reforms, while those with higher incomes can take advantage of them more easily.

In addition, differences in perceptions of distributive justice may also be influenced by workers' understanding of their rights and the information they receive about the reforms. In some cases, uncertainty or lack of knowledge about changes may undermine workers' perceptions of distributive justice. Therefore, further efforts should be made to advocate the labor law reforms so that workers have better understanding on their rights and the benefits.

The results are slightly different from the perspective of John Rawls' justice which is important as it is a central virtue of the presence of social institutions⁴⁰. Rawls' criticizes utilitarianism for which it calls for individual sacrifice for the benefit of the public good so that the idea of the common good for the whole

³⁹ J. Stacy Adams, "Towards an Understanding of Inequity." *The Journal of Abnormal and Social Psychology* 67, no. 5 (1963): 422-436.

⁴⁰ John Rawls, *Rawls, John. A Theory of Justice*. (Harvard UK: Harvard University Press, 2009).

society should not harm the individual's sense of justice. This sense of justice integrates the diverse interests shared by all members of society in agreement with social institutions. This approach is known as justice as fairness, where the principle of justice achieves harmony and justice in the original position of society.

According to Samuel Freeman, justice as fairness was developed by Rawls by combining two different concepts of equality, namely equality in distribution and equality in respect for individuals⁴¹. Social cooperation and reciprocity are fundamental aspects in distributive justice, which set the standard for the equitable distribution of social primary goods arising from social cooperation in society. Social primary goods include civil and political rights, freedom, income and welfare, and self-respect. When examined through Rawls' perspective, the results showing more than half of workers feel access to lack of health insurance indicates that the Job Creation Law has not fulfilled the principles optimally. If the majority of workers, especially those who may be at lower social and economic strata, do not experience the increase in access to health coverage, the policy does not succeed in providing the greatest benefits to the most disadvantaged. The principle of Rawls distinction is also not achieved in relation to access and implication. With a large majority of respondents feeling access to pension funds is not improving, the Job Creation Law does not appear to provide significant benefits for workers, especially those who may rely heavily on pensions for their future financial security.

Based on the analysis, there is a major difference between John Rawls and Adams J. Stacey's perspectives on distributive justice in terms of the focus and approach. Rawls focuses on the principles of social justice on a broad and structural scale, with an emphasis on designing social institutions to provide justice for all, especially the most disadvantaged; Rawls' views are more normative and seek to create an overall fair system. In contrast, Adams highlights justice in the context of individual and organizational interactions that focus on individuals' perceptions of relative fairness based on comparisons between their inputs and outputs with others in similar situations. Adams' theory of justice is more pragmatic and psychological, seeing justice as subjective and is influenced by social comparisons. By understanding these two perspectives, the distributive justice in the context of the Job Creation Law in Indonesia requires an approach that considers both aspects, namely ensuring that legal reform and social institutions support justice for all workers and also understanding and managing perceptions of justice at the individual level. This

⁴¹ Samuel Freeman, "Rawls on Distributive Justice and the Difference Principle", in Serena Olsaretti (Ed.), *The Oxford Handbook of Distributive Justice*. (Oxford Academic, 2018).

helps reduce inequality and increase workers' access to different forms of social protection more equitably.

Views on Minimum Wage and Living Needs

The survey revealed the impact of the Job Creation Law on workers' access to health insurance, pensions, and work accident insurance. It also explored workers' perceptions of the minimum wage and its ability to meet their needs. The survey results show that only 17.65% of respondents agree that the minimum wage is sufficient, while 82.35% disagree or strongly disagree. In the framework of welfare theory, Amartya Sen emphasizes that welfare should not only be measured in terms of economic aspects, but also involves the ability of individuals to achieve a life of dignity⁴². A critical indicator of welfare is a sufficient wage to meet basic daily needs. If the minimum wage cannot make ends meet, this can lead to dissatisfaction, financial stress, and a negative impact on workers' well-being, resulting in financial instability and hindering their ability to meet basic needs, such as housing, food, healthcare, and education. Given that the survey results show that most workers doubt the adequacy of the minimum wage, there is a need to explore the impact from a welfare theory perspective. Therefore, it is worth further analyzing whether this difference in perception is related to factors such as industry structure, education level, or geographical region.

David Neumark's research deepens this analysis by showing that the impact of the minimum wage on workers' well-being, particularly in terms of health, is complex and varied⁴³. In his survey, Neumark found mixed evidence of how the minimum wage affects workers' physical and mental health, such as the relationship between higher minimum wage and reduced suicide rates and improvement in mental health. Other studies, however, higher wages also lead to negative impacts such as increased smoking, alcohol consumption, and reduced exercise. These impacts reflect the conflicting effects of higher incomes on various aspects of worker health.

It is essential to understand that wage adequacy relates to meeting essential needs and impacts workers' psychological well-being. Wages deemed

⁴² Amartya Sen, *Commodities and Capabilities*, OUP Catalo, 1999.

⁴³ David Neumark, "The effects of minimum wages on (almost) everything? A review of recent evidence on health and related behaviors." *Labour* 38, no. 1 (2024): 1-65. See also Himawan Estu Bagijo, and Hendrawan Dendy Santoso. "The Meaning of Wage Justice During the Covid-19 Pandemic." *Jurisdictie: Jurnal Hukum dan Syariah* 12, no. 2 (2021): 169-189; Lynn Ng, "Forgotten and Invisible Laborers: Domestic Workers in Singapore and Taiwan." *Human Rights in the Global South (HRGS)* 1, no. 2 (2022): 79-94.

insufficient can create dissatisfaction and financial insecurity and even lead to stress and mental health disorders. Therefore, when most respondents disagreed with the adequacy of the minimum wage, it indicates a deeper issue that could affect overall well-being. Certain aspects that need to be considered in further analysis include the industry structure in which workers are employed. Industries with high wages or well-organized work may be better able to provide adequate wages for workers. Conversely, sectors with low wages or less-organized structures indicates the needs for wage adequacy. Therefore, policies related to minimum wages should consider these structural differences to ensure that all workers have equal access to adequate wages.

In this context, disagreements over the adequacy of the minimum wage may also reflect more significant economic disparities among workers. Workers with lower incomes may face more significant economic challenges, whereas those with higher incomes can more easily deal with financial issues. Therefore, further analysis is needed to understand whether this difference in perception is related to the growing economic inequality in society. In addition, it should be noted that workers' perceptions of wage adequacy might also be influenced by the economic and geographical conditions in which they reside. The varying living costs in different regions may also affect their perceptions on the adequacy of the minimum wage. Therefore, policies related to the minimum wage should consider the regional conditions to ensure fairness in the wage distribution. Besides economic and geographical aspects, the education level can also be instrumental in terms perception on wage adequacy. Workers with higher levels of education may have different expectations about the fairness of wages and their adequacy to meet their living needs. Therefore, it is necessary to analyze whether there is a correlation between workers' education level and their views on minimum wage.

From a policy standpoint, the finding that most workers doubt the adequacy of the minimum wage should be taken as a signal to reflect on the minimum wage standard and evaluate the extent to which the policy can achieve workers' welfare goals. This rethinking also involves dialog and active engagement between the government, trade unions, and employers to identify solutions that can improve fairness in the wage system.

Evaluation of Working Condition Aspects

The surveys on the implementation of Job Creation Law in Surabaya on working condition, most workers do not feel any significant changes in their working conditions. However, the results also indicate high level of uncertainty and require for more information felt by several respondents, particularly

regarding changes in leave, rest periods, salaries, bonuses, and working hours. This uncertainty could negatively impact workers' confidence in the changes in the labor regulatory framework. Buchanan and Huczynski explain that organizational uncertainty may lead to anxiety, resistance to change, and decreased performance.⁴⁴ If workers feel they need to be more informed about changes in work rules, this may create adverse uncertainty. Therefore, organizations and employers should manage such uncertain condition by providing precise and transparent communication about changes.

In the Job Creation Law context, employers are responsible for conveying clear and accurate information to workers regarding changes in working conditions. Shockley-Zalabak states that good organizational communication would create trust, reduce uncertainty, and increase worker engagement.⁴⁵ By providing adequate information, employers are able to build workers' trust in the changes and reduce the uncertainty that may arise. However, the survey results show that around 30% of respondents should be more informed about working conditions. This indicates an urgent need to improve communication between employers and workers in regards the impact of the Job Creation Law; employers should ensure that workers understand the changes, including their benefits and how they will affect their working conditions. Lack of information or uncertainty regarding changes in work rules can create dissatisfaction, especially if workers assume that the unfair or disadvantageous condition is as the results of the new regulation. Therefore, it is essential to ensure that workers are given sufficient information and that the policies implemented are fair and favorable to all parties. As for implementing employment policies, the Job Creation Law should consider these aspects to ensure the impact is positive and sustainable. For example, employers may adopt an open communication approach, providing training to workers regarding policy changes and soliciting input from workers in planning and implementing the changes.

Based on the above survey findings, it is essential to emphasize that the implementation of the labor policies should consider workers' psychological and social aspects. Uncertainty and lack of information may create an unstable work environment and lower workers' well-being. Therefore, employers and policymakers should work together to create effective communication strategies, provide adequate information, and ensure that the policies implemented are fair and beneficial to all parties.

⁴⁴ David A. Buchanan, Andrzej A. Huczynski Buchanan, David A., *Organizational Behaviour*. (London UK: Pearson, 2017).

⁴⁵ Pamela S. Shockley-Zalabak, *Fundamentals of Organizational Communication: Knowledge, Sensitivity, Skills, Values*. Pearson, 2015.

Trade Union Effectiveness and Role

Views on the effectiveness of trade unions after the implementation of the Job Creation Law in Indonesia are complex. While many believe unions still have an influential role in representing the interests and protecting workers' rights, some groups view unions skeptically. Different opinions on the effectiveness of trade unions after enacting the Job Creation Law reflect the complexity of the changes in the labor framework. Most respondents feel that the unions have become more effective in protecting workers' rights and representing their interests. They perceive the unions as a powerful tool to negotiate better working conditions, confronting potential inequalities and providing legal protection to workers.

However, others show skeptical views regarding the effectiveness of the trade unions. This skepticism may arise from the need for more clarity regarding the role of trade unions after the implementation of the Job Creation Law. Some may feel that the change in legal policy has reduced labor unions' power or even harmed workers' interests in general. The independence of trade unions is one of the factors that can influence views on their effectiveness. Independent unions should be able to determine their strategies, goals, and tactics, which creates a strong foundation for representing workers and fighting for their rights.

Trade union independence is critical in understanding their role and effectiveness in protecting workers' rights. It reflects the extent to which the unions can act without excessive dependence on employers or intervention by other parties. This independence includes financial aspects, policies, and organizational actions that can affect the union's ability to represent its members. One indicator of trade union independence is their source of funding. Financially independent unions are better able to make decisions that are in the best interest of their members without worrying about relying too much on donations or external support that could limit their freedom of action. A balanced funding source can increase a union's stability and independence.

Trade union independence is also related to internal policies and organizational structures. Unions with democratic structures and precise policies can make decisions more independently. Active involvement of members in the decision-making process can increase the sense of belonging and adherence to organizational goals. Strengthening internal self-reliance is, therefore, an essential step in improving union effectiveness. However, trade union independence can also be challenging to implement in real life. Some unions may face external pressures that curb their moves. These pressures may

come from employers, government, or even other unions. Therefore, the role of laws and policies that support trade union independence is essential.

In this context, Mundlak's writing highlights how rivalries between trade unions, as in the Netherlands, can complicate efforts to strengthen union independence and effectiveness.⁴⁶ These rivalries often occur because of differences in views and interests among various unions, including smaller and more radical unions. In addition, the "divide-and-conquer" strategy used by employers to reach more favorable deals with smaller unions may weaken the position of larger, established unions. The Dutch system, which requires negotiations with all unions that have members in the bargaining unit, encourages the proliferation of unions and results in agreements that are often more favorable to employers but detrimental to workers as a whole. This phenomenon shows that rivalry between unions does not only arise in the context of negotiations at the corporate level, but also in the broader structure of social bargaining, resulting in fragmentation and reducing the effectiveness of workers' representation.

In applying these lessons to Indonesia, it is important to consider how trade union policies and structures may support or hinder union independence and effectiveness in representing workers' interests. Policymakers need to ensure that unions have sufficient support to operate independently and effectively in advocating workers' rights and fighting for better working conditions.

Protection from unfair and arbitrary dismissal

The survey conducted to evaluate the impact of the Job Creation Law on worker protection presents a mixed standing, reflecting different views among respondents. The survey results shed light on workers' perceptions of the Law's success in protecting them from unfair or arbitrary termination. Around 30.39% of respondents stated that the Job Creation Law significantly strengthened legal protection against unfair termination of the employment. They may see this Law as a positive step that changes in employer practices and enforcement of workers' rights. This result could reflect the hope that labor law reform can substantially improve job security. On the other hand, a group of respondents show a more skeptical view of the effectiveness of the Job Creation Law in the context of protection from unfair termination. A total of 35.29% of respondents expressed their uncertainty regarding the impact of the Law on worker protection.

⁴⁶ Guy Mundlak, *Organizing Matters: Two Logics of Trade Union Representation* (Cheltenham, UK: Edward Elgar Publishing, 2020).

The skeptical view towards worker protection in the context of the Job Creation Law can be further elaborated by analyzing the perspective of law implementation failure. Respondents who feel that the Law has failed to succeed in protecting them may reflect various failures in the implementation and enforcement system. First, the failure of the implementation law could be related to ineffective implementation processes. While a law may be well-designed, challenges arise when its implementation fails to match its original purpose, such as gaps in the understanding of the rules, lack of clear guidance, or administrative constraints that hinder the efficiency of implementation. Respondents who consider worker protection suboptimal may feel the negative impact of such chaos or shortcomings in the implementation process.

Secondly, respondents' dissatisfaction with worker protections may also reflect ineffective law enforcement. While laws may provide rights and protections, if enforcement is weak or inconsistent, it may reduce their effectiveness. Uncertainty in law enforcement may put workers vulnerable and unsure whether their rights will be protected. This can create an environment where violations of workers' rights become more likely. Thirdly, a skeptical view of worker protection may reflect the existence of legal loopholes that employers may exploit. Respondents who feel that the Law does not prevent unfair termination may detect weaknesses or loopholes in the rules that can potentially be exploited. These could include flaws in the regulations governing termination procedures, or even ambiguous interpretations of fairness criteria. Employers who have an interest in maximizing their flexibility may exploit such loopholes.

The failure of law implementation to protect workers directly affects social justice and worker welfare. Within the framework of Rawls' theory of justice, the success or failure of a law can affect people's "original position" and "veil of ignorance." If laws are not effectively implemented, gaps in worker protection can be potential source of adverse inequality for less empowered individuals. In response to this skeptical view, government and relevant stakeholders should identify and address failures in the implementation of new laws. Increased transparency, legal education for workers, and increased oversight of the implementation of the Law may be necessary steps to improve the system. In addition, changes or improvements in the Law to plug loopholes exploited by employers should be considered to ensure more effective worker protection.

Conclusion

A comparison of labor regulations before and after implementing the Job Creation Law (Law Number 6 of 2023) in Indonesia covers several key aspects, including wage arrangements, outsourcing, social protection, and fixed-term employment agreements (PKWT). The Job Creation Law reflects the trend to provide more flexibility to employers, allowing them to customize working conditions according to business needs. While a push exists to improve the investment climate and create jobs, these changes raise serious questions about workers' rights and welfare. Social protection and job security are of particular concern. This comparison shows significant changes in Indonesia's labor regulations, providing a clearer picture of workers' challenges and opportunities.

Labor law reform in Indonesia has impacted workers' views and responses. While some see it as a positive step that strengthens legal protection against unfair termination of employment, many workers still experience inequalities in access to health insurance, pensions, and workplace accident insurance. Government and relevant stakeholders should work to improve workers' access to social security and strengthen law enforcement and oversight to minimize potential implementation failures that could harm workers' rights.

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