

## JURIDICAL REVIEW OF THE COMPARISON OF REMUNERATION POLICIES IN OMNIBUS LAW WITH LABOR LAW NUMBER 13 OF 2003

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### ABSTRACT

Demand is growing rapidly, but the economy is still weak, employment is limited, unemployment continues to increase. Effective regulation is needed in the recovery of various sectors of the economy. The government formed the Omnibus Law to face the challenges of the times, reduce unemployment and attract new entrepreneurs. The research method is empirical law. The research characteristic is descriptive analysis with qualitative research. The research shows that the omnibus law was formed because the government felt there was a lack of implementation of policies by Law Number 13 of 2003, especially the provision of severance pay so that there were still widespread differences in interests between workers and employers. As a result, many people do not dare to start a business. The difference in remuneration arrangements in Omnibus Law is arrangements for workers' severance pay and compensation for contract workers. The time limit for contract workers is a maximum of 3 (three) years of work being changed to 5 (five) years and extended to a maximum of 5 (five) years. The advantages of Omnibus Law are mobilization of the investment climate and employment opportunities, providing compensation for workers, increasing overtime wages. Lack of public participation in the formation of laws, and weak legal transparency make rejection of workers who feel disadvantaged by the lack of severance pay, the elimination of district/city minimum wages, and wages during leave. Hope that government will form regulations openly and pay attention to workers' rights without prejudice to common interests.

**Keywords: Remuneration; Omnibus Law; Employment; Contract Worker.**

### INTRODUCTION

In managing company resources, employers must fulfill the rights of every worker by applicable policies. The most basic right for the welfare of workers is remuneration. Workers are entitled to receive remuneration in return for their work following the applicable labor regulations. Remuneration is the company's expense as agreed in the work agreement. The work agreement is regulated based on a work agreement that contains rules, remuneration, and rules of conduct. Employment agreements are divided into fixed-time employment agreements and unlimited time work agreements (contract workers). Remuneration is a reward payment or reimbursement for services rendered.

Previously, remuneration was regulated in Law Number 13 of 2003. With the development of the needs of society, the State, and globalization, economic growth has slowed down.

This can be seen from the limited employment opportunities, so there is a need for new regulations, especially for labor, which at the same time can provide opportunities for foreign investors to enter Indonesia which will provide opportunities for the creation of employment opportunities for the Indonesian people to be able to encourage economic recovery.

The omnibus law was formed due to disharmony of regulations and ineffective implementation of the rules. In addition, the government sees a slowdown in economic growth due to the coronavirus outbreak which has an impact on social, economic, and welfare aspects so that economic transformation and structural reforms are needed to solve critical legal problems so that there is no legal vacuum.

The impact of the covid-19 is prolonged labor market recession and an acute rise in unemployment are expected. Because every year, the unemployment rate continues to increase, both from workers who have been laid off and with new-age residents so that the need for large employment opportunities is urgent. The government needs strategic and urgent efforts to immediately increase Indonesia's economic growth. The Government of the Republic of Indonesia harmonizes laws through the omnibus law to create reliable entrepreneurs to reduce the unemployment rate and improve the welfare of workers in Indonesia.

However, many people still feel that in the formation of the omnibus law there is still a lack of transparency towards society, especially workers and that the remuneration arrangements in the labor law are considered to be more pro- employers. The public should be allowed to participate and provide input in the formation of a democratic constitution in the State of Indonesia. The public held demonstrations to voice freedom of opinion against the formation of the omnibus law.

The inconsistency between *das sollen* (hopes and ideals) and *das sein* is nothing new. Likewise, the implementation of the labor law did not go as expected by the government in designing policies. The government also fulfills the need for entrepreneurs because many employees are replaced by self-employed workers, who integrated as a necessary link in the management of flexible production processes and low-cost labor without having to comply with the Labour Laws. Of course, the background for the inability to achieve the implementation of the law, namely the gaps in the law enforcement process and other factors (current developments, and certain global conditions). So it is necessary to know whether to create an omnibus law so that labor regulations can keep up with the current developments and become a solution for people in a lack of vocation.

## CONCEPTUAL FRAMEWORK

This research was conducted in March 2021 using a qualitative descriptive approach. This type of research is empirical law (socio-logical). Qualitative research analyzes social life by describing the social world from natural interpretations of individuals (informants). The data collection technique was done by interviewing informants. Qualitative research is measured using theory to provide a series of ready-made hypotheses to be tested with existing literature. The results of this research will be later used as input in building a better understanding of the government's efforts to design regulations.

## DISCUSSION

### A. Comparison of Remuneration Regulation in Labor Law Number 13 of 2003 with Omnibus Law

The right of workers to remuneration arises from the existence of a working relationship between the worker and the entrepreneur and ends when the work contract is completed [6]. Remuneration is a form of motivation for workers to work and is used to meet the needs of each individual which is growing from time to time. The amount of remuneration received becomes the status, recognition, and also the level of fulfillment of the needs of employees for their work performance. The purpose of the Omnibus Law method is to reduce conflicts, distortion of norms, and obesity of legislation that can hinder the development of the country.

#### Principles of Remuneration

##### a. Principle of Justice

Fair means that the provision of remuneration must be used as a basis for assessment, treatment, and reward or punishment for each employee. This does not mean that the remuneration must be the same amount. This means that each remuneration is given according to work performance, type of work, risks at work, job responsibilities, and work status. The benefit of the principle of justice is to create a good atmosphere, enthusiasm for work, discipline, loyalty, and guaranteed employee stability.

##### b. Principles of Feasibility and Fairness.

Remuneration is intended to meet the needs of workers at an ideal normative level. Remuneration must be appropriate in relative terms, the amount is based on the minimum wage imposed by the government. Before it was amended, the wage policy protecting workers' rights as set forth in Article 88 Paragraph (3) of Law Number 13 of 2003 concerning wages stipulating eleven policies, four of which were abolished payment policies, namely:

1. Wages to exercise their right to take time off from work
2. Wages for severance pay
3. Wages for calculating income tax
4. Fines and deductions from wages

So far, the condition of State is experiencing hyperregulation with the existence of disharmony between legal norms with each other so that this situation creates legal uncertainty for all groups of society which leads to injustice. The government regulates strategies to support economic growth through optimizing investment regulations and business licensing. Problems in the fields of investment and entrepreneurship are convoluted bureaucratic chains and there are still many policies for entrepreneurs that are still not in harmony with labor industrial relations. So that the government formulates the law so that it can become a fulfillment of legal needs in social life by revoking several laws and regulations that are less effective and efficient, and containing new material to align legal functions with the needs of the State. The method used is the omnibus law

method, the goal is to reduce conflicts, distortion of norms, and obesity of legislation that can hinder the development of the country.

There are many views based on the creation of the omnibus law. The initial formation of the omnibus law was because Law Number 13 of 2003 was deemed or deemed to be less accommodating to the needs of society today. So, there are many deficiencies in Labor Law Number 13 of 2003 concerning labor which finally after approximately 17 years later it was rearranged through the omnibus law method to make it more effective today. This means that there are many weaknesses in Labor Law Number 13 of 2003 concerning labor that are deemed necessary to be renewed. The omnibus law further protects all parties.

It is a fact that developments in society are fast compared to the law. Industrial relations have been shown to move quickly. So that Labor Law Number 13 of 2003 concerning Manpower is deemed inappropriate to meet the needs of the millennial era, but what is clear is that the remuneration given is following the performance of the workforce and the discipline of the worker in and regarding severance pay is now easier because it can already use insurance products. Therefore, what is a basic need for many people is work, many jobs must be opened. Labor Law Number 13 of 2003 concerning Manpower makes employers afraid to open jobs. Meanwhile, the high unemployment rate in Indonesia has not been able to be knocked out. So, the hope is that the drafting of the omnibus law will be able to provide or create a wider job field. So far, many companies have complained about moving to Vietnam, because in Law Number 13 of 2003 concerning Manpower, if traced, it is considered to protect workers' rights so that it only pays little attention to the condition of the company owners. Whereas the labor law should have several elements that must be protected, namely:

1. Workers / Laborers
2. Entrepreneurs

The positions of the two elements are of the same magnitude. Workers as citizens whose sustainability must be protected are workers and entrepreneurs. So that the government decided to renew the regulations according to today's needs. The remuneration arrangement in the Omnibus Law which is different from the Labor Law Number 13 of 2003 regulates:

1. Wages based on the unit yield and time  
Previously, it was not set to be the unit wage of results determined based on the agreed results and time of work
2. Minimum Wage  
The minimum wage setting based on the Regency / City and Sectoral Minimum Wage is abolished using only the Provincial Minimum Wage.
  - a. Previously the minimum wage formula in Law Number 13 of 2003 used the following calculations:  
$$UM_t + \{UM_t, x (INFLATION + \% \Delta PBD_t)\}$$

Where:  
**UM<sub>t</sub>** is the minimum wage set in the current year  
**INFLATION** is the annual inflation  
**Δ GDP<sub>t</sub>** is the annual Gross Domestic Product Growth
  - b. The minimum wage in the omnibus law uses the following calculation formula:  
$$UM_{t+1} = UM_t + (UM_t \times \% PE_t)$$

Where:

UMt is the minimum wage in the current year  
Pet is an annual economic growth

3. Bonuses

Employee bonuses and rewards are determined based on the employee's tenure and remuneration in the form of rewards according to the length of service.

4. Calculation of the Minimum Wage

Previously, inflation as a reference for calculating the minimum wage was changed to using regional economic growth, for companies that previously provided wages above the minimum wage, companies were not allowed to reduce wages.

5. Severance pay

Contract laborers who have worked for at least 1 (one) month are entitled to receive compensation based on the work agreement:

- I. Workers with a working period of less than 1 (one) year, are entitled to receive 1 (one) month of wages;
- II. Workers with a work period of 1 (one) year or more but less than 2 (two) years are entitled to receive 2 (two) months of wages;
- III. Workers with a work period of 2 (two) years or more but less than 3 (three) years are entitled to receive 3 (three) months of wages;
- IV. Workers with a working period of 3 (three) years or more but less than 4 (four) years are entitled to receive 4 (four) months of wages;
- V. Workers with a working period of 4 (four) years or more but less than 5 (five) years are entitled to receive 5 (five) months of wages;
- VI. Workers with a work period of 5 (five) years or more, but less than 6 (six) years, are entitled to receive 6 (six) months of wages;
- VII. Workers with a work period of 6 (six) years or more but less than 7 (seven) years are entitled to receive 7 (seven) months of wages;
- VIII. Workers with a work period of 7 (seven) years or more but less than 8 (eight) years are entitled to receive 8 (eight) months of wages;
- IX. Workers with a work period of 8 (eight) years or more are entitled to receive 9 (nine) months of wages.

6. Permanent workers' wages from 32 times was reduced to 25 times the wage. Employers provide 19 times the wages and 6 times the wages covered by the Job Loss Guarantee program [9].

Previously, Labor Law Number 13 of 2003 did not regulate compensation for contract workers.

7. Overtime pay

The provisions regarding working hours in The Omnibus Law which are still in line with the provisions in Law Number 13 of 2003 concerning Manpower are described in two schemes.

1. The scheme of 6 working days per week, namely 7 hours per day for a total of 40 hours per week.
2. The scheme of 5 working days per week, namely 8 hours per day for a total of 40 hours per week.

Previously, the maximum overtime was 3 hours. In-Law Number 11 of 2020 the omnibus law is regulated in Article 78 paragraph (2) where workers are willing to work overtime and can be done for a maximum of 4 (four) hours in 1 (one) day, or 18 (eighteen) hours a week. Workers who work overtime are entitled to pay overtime (regulated in Article 88).

### **Benefits and Weakness of Remuneration Regulation in Omnibus Law**

The state of Indonesia is a welfare state that gives full rights to the government to advance a sustainable and institutionalized economy, so the State needs an omnibus law in improving the quality of national development with the hope that investment can someday improve the national economy and reduce the continuously increasing unemployment rate. The benefits of Law 11 of 2020 (omnibus law):

1. Leave remains. (regulated in Article 79).
2. The provision of simplified compensation supports employers in creating jobs for prospective workers. (regulated in Article 156).
3. Contract workers who are laid off are entitled to compensation for job loss benefits by the length of service (as stipulated in Article 46 Part Seven).
4. Bonuses are given in the form of a period of service pay (regulated in Article 156)
5. Overtime wages are provided with a maximum of 4 hours of overtime per day. Previously, overtime was set to a maximum of 3 hours per day. (regulated in Article 78).

Weaknesses of Law 11 of 2020 (omnibus law):

1. Wage during work breaks (leave) is erased (regulated by Article 156) [10].
2. The provision of severance pay to permanent workers from 32 times reduced to 25 times wages. Employers provide 19 times the wages and 6 times the wages covered by the Job Loss Security program. Employers only finance 19 times the worker's wages. The remainder is paid through the Job Loss Security (JKP) program which is managed by the government through BPJS for the worker. Workers who experience termination of employment (PHK) are entitled to take advantage of the Job Loss Security (JKP) program organized by the Social Security Administration for Employment (BPJS for worker) and the Central Government. . This government program was created to maintain a decent life for workers who have lost their jobs. Benefits of job loss insurance in the form of cash, and is given a maximum of 6 (six) months of wages. (regulated by Article 156).
3. The provision of severance pay benefits employers more than workers. Severance pay is not given as compensation for rights and rewards for years of service (as stipulated in Article 156).
4. Elimination of minimum scale districts/cities (UMK) and UMSK (regulated in Article 156).
5. The establishment of an omnibus law policy does not provide room for workers to participate.

The weaknesses of the omnibus law are the answer to the reason why workers refuse. Workers' concerns arise because the omnibus law has the potential to harm labor rights, especially on:

1. Minimum wage;
2. Severance pay;
3. Workers' rights violations committed by employers.

Practically, the omnibus law must pay attention to the following matters:

1. The formation of the omnibus law must involve community participation;
2. Harmonization between laws and regulations as the goal of law formation must be clear; and
3. Pay attention to and evaluate laws and regulations that will be revised using the omnibus law method.

### **Contract Worker's Terms in Omnibus Law**

There are several provisions in Labor Law Number 13 of 2003 concerning Employment for a Specific Time Work Agreement (contract worker) which are amended, deleted, and new provisions are stipulated. This is aimed at increasing the role and welfare of workers in supporting investment in the State of Indonesia.

The Specific Time Work Agreement (contract worker) is not defined in Labor Law Number 13 of 2003, but it is stated in Article 1 number 1 of the Decree of the Minister of Labor and Transmigration of the Republic of Indonesia Number: KEP100 / MEN / VI / 2004 concerning the Provisions for the Implementation of a Specific Time Work Agreement.

Article 56 in Law Number 11 of 2020 regulates the basis for a Specific Time Work agreement (contract worker), namely:

- a. Period; or
- b. The completion of a certain job.

Fixed Term Work Agreement (contract worker) must be made in writing in Indonesian and Latin letters and there is no conditional probation for work. If there is a probationary period, the required probationary period is null and void. In Labor Law Number 13 of 2003 the division of types of work for a Specific Time Work Agreement (contract worker), namely:

1. Once completed or temporary work
2. Once completed or temporary work, the completion of which is a maximum of 3 (three) years
3. Work that is Seasonal
4. Work-Related to New Products
5. Daily or Freelance Work Agreement

As casuals, most labor hires employees are not entitled to annual leave, paid personal/carer's leave, paid compassionate leave, paid jury service leave, a notice of termination, payment instead of notice, or redundancy pay under the national employment standards provisions.

In Law Number 11 of 2020 Article 61A, workers receive compensation assistance for contract workers and this is agreed in writing in the work contract. Provisions for working period award money if the worker experiences a termination of employment (PHK) is regulated in Article 156 paragraph (3) of Law Number 11 of 2020:

1. The working period of 3 years <6 years, workers are entitled to 2 months of wages;
2. The working period of 6 years <9 years, workers are entitled to 3 months of wages;
3. The working period of 9 years <12 years, workers are entitled to 4 months of wages;
4. The working period of 12 years <15 years, workers are entitled to 5 months of wages;
5. The working period of 15 years <18 years, workers are entitled to 6 months of wages;
6. The working period of 18 years <21 years, workers are entitled to 7 months of wages;
7. The working period of 21 years <24 years, workers are entitled to 8 months of wages;
8. With a working period of <24 years, workers are entitled to 10 months of wages.

The term of work for contract workers in Law Number 13 of 2003 has a period of 3 (three) years, namely:

1. The first contract of 2 (two) years, and
2. Can be extended for 1 (one) time for 1 (one) year on the second contract, or renewed for 2 (two) years so that it becomes a working period of 4 (years).

Whereas in the omnibus law the contract can be for 5 (five) years and can be extended according to the agreement with the entrepreneur with the extension period not exceeding the 5 (five) year time limit. In other words, the first 5 (five) years and the second 5 (five) years, so the contract can reach 10 (ten) years. This means that before the term ends, the contract ends, the compensation must be given by the entrepreneur. In Government Regulation Number 35 of 2021 concerning Specific Time Work Agreements, Transfer, Working Time and Rest Time, and Termination of Employment, contract employees receive legal protection in the form of compensation for employees who are terminated during their contract period by what has been set out in the work contract. In addition, the setting of a maximum work time limit of 3 years in Article 59 of Law Number 13 of 2003 is abolished. In Article 8, paragraph 2 of the omnibus law, the time limit after the contract ends, the contract can be extended not to exceed 5 (years) of work.

Settlement of Conflicts or Disputes between Contract Workers and Employer regulated in Omnibus Law. The worst case, if there are industrial relations dispute between business actors and workers, industrial relations settlements resolved through arbitration, as one of the proceedings of dispute resolution, considered as a faster, and less costly form of dispute resolution than resolutions trials in general courts.

For a number of contract workers who do not understand the content and purpose of the establishment of The Omnibus Law, they tend to reject the establishment of The Omnibus Law. This is due to the two different interests of workers and business actors because it turns out that the number of unemployed in Indonesia is very large. While those who have got jobs are not so many.

The Omnibus Law seeks to accommodate the unemployed so that they can find employment by creating opportunities for companies to streamline their remuneration arrangements. The workers rejected The Omnibus Law because the severance rate had decreased, those who refused were the workers who worked so that they had certain interests because The Omnibus Law focuses on general issues.

The Omnibus Law mandates that all derivative regulations, both Government Regulations (PP) and Presidential Regulations (PER PRES) be completed in a short time. The derivative regulations mentioned by the City Government are that there are 39 (thirty-nine) regulations, consisting of 34 (thirty-four) Order Regulations and 5 (five) Presidential Regulations which are finalized by the Sector Ministry which is in charge of the main supervisor of regulatory settlement.

The refusal was certainly due to a reduction in the severance pay rate, the interests of labor unions who did not understand The Omnibus Law. While The Omnibus Law protects widely so that it is beneficial for all people. In addition, the creation of The Omnibus Law regardless of politics was rejected because it was drafted in a hurry and did not include sufficient public consultation so that the public did not receive good information.



Discussions on the ratification of The Omnibus Law were also conducted behind closed doors so that a lot of information circulating that was not necessarily known.

The root of the anxiety of workers who reject the establishment of The Omnibus Law is due to differences in interests and not knowing the regulations as a whole. What is objected to in the preparation of The Omnibus Law can be the cause of disputes between workers and business actors when operationalizing the Law.

## **CONCLUSIONS**

The provision of remuneration in Labor Law Number 13 of 2003 uses a sectoral minimum wage scale and a district/city minimum wage based on the inflation rate. Severance pay is given as compensation for entitlements. Meanwhile, The Omnibus Law regulates the provision of wages based on units of yield and time for contract workers, there is an award for years of service and for workers who continue to use the Provincial Minimum Wage (UMP) scale with the calculation of annual economic growth from the Central Statistics Agency data. There is no compensation for entitlements, but compensation for job loss guarantees according to the working period. The benefits of the omnibus law are deregulation and debureaucratization so that there are no more overlapping regulations and focus on providing the greatest possible investment opportunities so that large job opportunities are formed. Remuneration arrangements are in the form of severance pay and compensation for workers who experience termination of employment, reward pay for working years, and overtime pay. However, the omnibus law tends to favor investors because workers' severance pay is reduced, wages during work breaks or leaves are removed, district/city minimum wages and leading sectors are set to become the Provincial Minimum Wage. The Omnibus law provides a work contract period for a maximum of 5 (five) years of work in the first contract and can be extended for another 5 (five) years and workers who are dismissed are still in the contract period will get compensation according to the period of service, while in Law Number 13 Years 2003, the service period of 2 (two) years can be extended for 1 (one) year. Workers tend to work on long contract terms.

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