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Study of the Effectiveness of the Job Creation Law in Improving Workers' Welfare from the Perspective of Roscoe Pounds' Sociological Jurisprudence Theory

Wibowo Pujiarno ^{1*}, Markus Suryoutomo ²

¹⁻² Master of Laws Study Program, Faculty of Law, University 17 Agustus 1945 Semarang, Indonesia

* Corresponding Author: **Wibowo Pujiarno**

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Abstract

This article discusses the Effectiveness of the Job Creation Law in terms of workers' welfare after the issuance of the Job Creation Law. Of course, the Job Creation Law still raises problems in it, including in the process of forming legislation with the Omnibus Law concept which is not clearly regulated in Law Number 12 of 2011 concerning the formation of legislation. This is because the Omnibus Law is a concept of thinking that has the characteristic of being able to change and eliminate several regulations into one regulation that can cover all aspects. The research method for studying this article is Normative Jurisprudence. The results of the study are from a sociological perspective regarding the welfare of workers in the Job Creation Law, it can be analyzed using modern sociological theory from Roscoe Pounds on Sociological Jurisprudence. The functionalist theories that describe early societies are valuable because they show that law is a social phenomenon that depends on other factors in society (because the legal system is formed by forces outside the system). Structural functionalism is the system that has had the greatest influence on social science in this century. Structural functionalism also chooses goals to achieve social order. Adherents of this theory assume that all events and all structures are functional in society. Change can occur slowly in society. If there is a conflict, structural functionalist theorists will focus on how to solve the problem so that society remains balanced.

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1. Introduction

Since this country was founded, the Indonesian people have realized that work is a basic need of citizens as mandated in Article 27 paragraph (2) and Article 28 of the 1945 Constitution which states: Every citizen has the right to work and a decent living for humanity. In the amendments to the 1945 Constitution relating to Manpower, it is also mentioned in Article 28d paragraph (2) of the 1945 Constitution. This has implications for the state's obligation to facilitate citizens so that they can obtain decent work for humanity. Therefore, careful planning is needed in the field of manpower to realize the state's obligations.

Improving worker welfare is an obligation that must be fulfilled by employers. This is in line with the national goals of the Unitary State of the Republic of Indonesia in Article 27 of the 1945 Constitution which clearly states that every citizen has the right to work and a decent living for humanity. In addition, in Law Number 33 of 2004 concerning the Financial Balance Between the Central Government and Regional Governments, it is clearly stated that as a goal of workforce development, it is necessary to obtain protection in all aspects, including protection to obtain employment at home and abroad, protection of basic worker rights, protection of occupational safety and health, as well as protection of wages and social security so as to guarantee a sense of security, peace, fulfillment of justice, and the realization of a prosperous life both physically and mentally, in harmony, harmonious, and balanced.

In Law Number 21 of 2000 concerning Trade Unions, it is stated that laborers or workers are very important partners of employers in the production process in order to improve the welfare of workers or laborers and their families, ensure the continuity of the company, and improve the welfare of the Indonesian people in general.

Improving the welfare of the Indonesian people can be realized by forming a labor union or labor union.

Labor Law or employment is a set of rules and norms, both written and unwritten, that regulate the pattern of industrial relations between employers, on the one hand, and workers or laborers on the other. The requirement for achieving the success of national development is the quality of Indonesia's human resources themselves, which determines the success or failure of efforts to meet the take-off stage. Improving human quality cannot be achieved without providing a guarantee of life, conversely, a guarantee of life cannot be achieved if humans do not have jobs, where from the results of that work they can obtain compensation for services to support themselves and their families ^[1].

Legal protection for workers themselves in practice is still very minimal, this is proven by the many arbitrary actions of employers against their workers. Based on the number of complaints of alleged violations of labor norms by companies in West Java throughout 2019, there were 268 cases, the most concerning wages, employment relations concerning fixed-term contract workers (PKWT), Jamsotek and freedom of association. The Head of the Manpower Supervision Division of the Manpower and Transmigration Office of West Java Province stated this when opening the workshop on Work Norms, Women, Children and Jamsostek ^[2].

Most of the complaints have been resolved and only a few have been brought to court. However, it was not explained what cases were brought to court. He only emphasized that his party prioritizes coaching companies to comply with labor norms. Meanwhile, projustitia actions are a final effort if there is no common ground in resolving cases through mediation. Regarding violations of wages, he said, they generally occur in labor-intensive companies such as garments. In certain areas such as Karawang, the minimum wage is set quite high at 4.8 million per month. For labor-intensive companies, this is felt to be quite heavy, so they are thinking of relocating their factories to Central Java where the minimum wage is lower than in Karawang. Moreover, the Regent of Kendal, Central Java, put up quite prominent advertisements on the toll road inviting entrepreneurs to invest in his area.

Government On Monday, October 5, 2020, the DPR passed Law No. 11 of 2020 concerning Job Creation, which regulates wage provisions ^[3]. Unit wages and time. The Employment Law does not regulate unit wages and time. Meanwhile, in the Job Creation Law, unit wages and time are regulated in Article 88 B. In paragraph (2) of Article 88 B, it is also explained that further provisions regarding unit wages and time are regulated in government regulations (pp).

The issuance of the Job Creation Law certainly still raises problems in it, including in the process of forming legislation with the Omnibus Law concept which is not clearly regulated in Law Number 12 of 2011 concerning the formation of

legislation. This is because the Omnibus Law is a concept of thinking that has the characteristic of being able to change and eliminate several regulations into one regulation that can cover all aspects. Although a concept like this is still new, the regulation for the formation of laws should have been regulated so that the good message contained in the concept can be implemented properly so as not to cause new problems in society. With a fairly short formation process, this bill was able to be born by replacing dozens of laws into one regulation that is in line. However, this achievement is not balanced with the substance of the regulations that we created which should be able to become a new solution to avoid the conflicts that have occurred so far. This Job Creation Bill still has many weaknesses that have the potential to create new problems in society ^[4].

John Austin said that law is a command from the ruler: Law is a command of the Law giver, in the sense of a command from those who have the highest power or who hold sovereignty, as quoted by Lili Rasyidi ^[5]. law is nothing other than a product of politics or power, Moh. Mahfud Md, also said that law as a political product is a crystallization of political wills that interact and compete with each other ^[6].

Based on the background as mentioned above, the author is interested in studying in this article regarding "improving workers' welfare after the issuance of the job creation law from the perspective of roscoe pounds' sociological jurisprudence"

2. Research methodology

The research method used in writing this paper is normative juridical, while the analysis method is done descriptively. According to Irwansyah, "normative research" refers to the practice of conducting research by considering a set of relevant norms or guidelines. Research in the field of normative law or jurisprudence includes works on the topic of "Effectiveness of the job creation law in improving workers' welfare in the perspective of sociological jurisprudence roscoe pounds"

3. Discussion

Fulfillment of workers' rights has implications for labor protection. According to Soepomo, labor protection is divided into three types ^[7], that is:

- Economic protection, namely protection of workers in the form of sufficient income, including if workers are unable to work against their will.
- Social protection, namely protection of workers in the form of occupational health insurance, and freedom of association and protection of the right to organize.
- Technical protection, namely protection of workers in the form of work safety and security.

Article 28D Paragraph (2) of the 1945 Constitution explicitly states that everyone has the right to work and receive fair and

¹Sholahudin, Umar. "Testing the Sociological Basis of a Legal Product; Legal Sociological Analysis of Presidential Regulation No. 20 of 2018," no. 20 (2018): 50–68.

²Erwan M. Nakeronline.com. The Indonesian Industrial Relations Institute (IHI) submitted several proposals for improving performance. <https://www.nakeronline.com/2019/07/25/pelanggaran-soal-upah-terbanyak-diadakan-pekerja-di-jawa-barat/>, accessed on March 17, 2024.

³Dipna Videlia Putsanra. Points in the Omnibus Law on Job Creation. 2020. <https://tirto.id/poin-poin-isi-uu-cipta-kerja-omnibus-law-soal-pesangon-hingga-upah>, accessed on March 17, 2024 at 03.15 WIB

⁴Fajar Kurnia. Journal of Legal Panorama Vol. 5 No. 0. June 1, 2020. Accessed March 17, 2024 WIB

⁵Moh.Mahfud Md, Legal Politics in Indonesia, Revised Edition, Jakarta: LP3ES, 2001

⁶Purnama, Nizar Sukma, Gunawan Gunawan, and Fahmi Ali Ramdhani Ali Ramdhani. "Effectiveness of Labor Wage Regulation Based on Law Number 11 of 2020 Concerning Job Creation." JOURNAL OF LAW IMPROVEMENT 4.1 (2021): 63-82.

⁷Abdul Khakim, Indonesian Employment Law, (Bandung: PT. Citra Aditya Bakti, 2003), p. 61.

proper compensation and treatment in employment relationships. This basic provision is emphasized in Article 88 Paragraph (1) of Law Number 13 of 2003 concerning Manpower, that: Every worker/laborer has the right to receive income that meets a decent living for humanity. In order to fulfill this, the government establishes wage policies to protect workers/laborers. Through its authority as regulated in the provisions of Article 102 paragraph (1) of Law Number 13 of 2003, the government has the right to intervene in order to provide services, supervision, and legal action. In a welfare state, the government is considered responsible for guaranteeing the minimum standard of living for every citizen in order to achieve a prosperous life. This is in line with Gooding's statement that in a welfare state, state intervention is very necessary in order to improve general welfare and optimize social welfare ^[8].

These three aspects are crystallized in the legal ideals of Pancasila. Thus, law and justice have a close relationship with each other, and cannot be separated because the essence of law is justice.

In contrast to the conception of legal positivism or normative legal studies, law is identified or "congruent" with society (law is society) and has legal-formal legitimacy. In sociological studies and conceptions, what has been punished in the law (the law) is not the same or not congruent with what applies in society (the society) or from a sociological or anthropological perspective, it is called law is not always society or even law is not society. Therefore, Wignyosoebroto (2013a:6-7) said that law as a statutory text is not always the same or congruent with the reality that exists in the socio-cultural context ^[9].

The effectiveness of a legal product according to Friedman in *The Legal System A Social Science Perspective* (1975), states that the legal system consists of a set of legal structures (in the form of legal institutions), legal substance (statutory regulations) and legal culture or legal culture. These three components support the operation of the legal system in a country. In social reality, the existence of the legal system in society experiences changes as a result of the influence of what is called modernization or globalization, both in terms of evolution and revolution. In Ahmad Ali's explanation (2005:1), legal substance is related to the rules, norms, and real behavior patterns of humans who are in the legal system. Legal substance is also related to the products produced by people who are in the system, including the decisions they make, the new rules they formulate. Legal substance also includes living law, not the rules in law books (Ali: 2005:2). In Wignyosoebroto's language (2008:5), living law is defined as law in society (law that lives and develops in society).

As mentioned above, it is known that normatively, a product of legislation is made not only to provide legal certainty, but more than that, it is to provide justice and legal benefits for society at large. Even philosophically, the substance or spirit of the law is justice. Law without justice is not called law. The study of the sociology of law which is characterized by empirical characteristics, emphasizes more on the aspects of justice and legal benefits. Justice is not only formal-

procedural justice, but also substantial justice. Substantive justice is justice that is based more on aspects of conscience and human morality, not on rigid articles. Meanwhile, Wignyosoebroto stated that just law is national law which in its application from case to case is able to address the moral rules that apply in local society.

In relation to the right to decent work for humanity, Article 27 paragraph (2) of the 1945 Constitution states: "Every Citizen Has the Right to Work and a Living that is Decent for Humanity". From a human rights perspective, the state (in this case the Indonesian government) has responsibilities and obligations, namely: to respect; to protect; and to fulfill. In the context of the right to decent work and a living for humanity, the state or government is obliged to protect; the state protects and guarantees the socio-economic rights of its citizens (the right to decent work and a living), guarantees that third parties (read: employers) do not violate the individual rights of its citizens, and the state imposes sanctions on third parties who violate the individual rights of its citizens, including ensuring the availability of regulations that protect the individual rights of its citizens, especially the right to decent work and a living for humanity.

So, in relation to the above, the implementation of the Job Creation Law in order to realize welfare for workers in Indonesia is still considered sociologically not to provide a sense of welfare for workers, so that in this regard the government needs to re-emphasize the mandate of the Constitution of the Republic of Indonesia in Article 27 paragraph (2) that a regulation made by the government should properly carry out the mandate of the provisions of the Constitution above, namely to realize welfare, work and a decent living for workers.

Omnibus law is a new concept used in the legal system in Indonesia. This system is usually referred to as the universal law because it is able to replace several legal norms in one regulation. In addition, this concept is also used as a mission to cut several norms that are considered inappropriate to the times and detrimental to the interests of the state. Countries with the Anglo Saxon Common Law legal system have previously used the omnibus law concept in making their laws and regulations. For example, America, Canada, Ireland, and Suriname. Meanwhile, in Southeast Asia, Vietnam became the first country to try to implement the application of the omnibus law as a result of accession to the WTO in 2006. The rules that are considered overlapping and causing obstacles to investment and the country's economic growth are one of the reasons for the initiation of the omnibus law concept, making it easier to synchronize large legal products ^[10].

From a sociological perspective, resistance or resistance from society to the ratification of the Job Creation Law can be analyzed using Robert K. Merton's modern sociological theory of functional structuralism. The types of functionalism that describe early society are very valuable, because these types can show that law is a social phenomenon that depends on other factors in society (because the legal system is formed by forces outside the system ^[11]).

⁸M. Syamsudin, *Operationalization of Legal Research*, Jakarta: Raja Grafindo Persada, 2007, p. 133.

⁹ Agus, Agus. The wage system of the brick business in improving the welfare of workers in Pacuan Kuda Hamlet, Sidrap Regency (analysis of Islamic economic law). Diss. STAIN Parepare, 2017.

¹⁰ Agus, Agus. The wage system of the brick business in improving the welfare of workers in Pacuan Kuda Hamlet, Sidrap Regency (analysis of Islamic economic law). Diss. STAIN Parepare, 2017.

¹¹ Antoni, Syarif, Saryono Hadi, and Nurani Ajeng Tri Utami. "Implementation of the Family Hope Program (PKH) Law in Improving Community Welfare (Study in Onje Village, Mrebet District, Purbalingga Regency)." *Soedirman Law Review* 1.1 (2019).

Structural functional theory is a system that has the greatest influence on social science in this century. This structural functional also chooses goals to achieve social order. The adherents of this theory assume that all events and all structures are functional in society. Changes can occur slowly in society. If there is a conflict, structural functional theorists will focus on how to solve the problem so that society remains balanced. Robert K. Merton explains that the focus of functional structure analysis is on groups, organizations, communities, and cultures. Function according to Robert K. Merton is defined as a consequence that can be achieved and brings adaptation to the system. Consequences can be defined as the result or impact of an action taken. Robert K. Merton introduced the concept of manifest function and latent function. Manifest function is defined as what is needed or desired, while latent function is defined as what is not desired. According to this theoretical view, in research on behavior or social order or law, what is actually related to manifest function, meaning that manifest function is the expected result of social behavior; and related to latent function.

The concept of both functions can be seen from the ratification of the Job Creation Law. The manifest function of the ratification of the Job Creation Law is to provide more opportunities for investors who will enter Indonesia, increase economic growth, facilitate business licensing, open new jobs, increase worker productivity, empower Micro, Small and Medium Enterprises (MSMEs) and cooperatives. In addition, there is also a latent function in the ratification of the Job Creation Law, namely that the licensing instruments regulated in the Job Creation Bill are more dominant for investors and foreign workers, which makes it easier to enter Indonesia and has an impact on Indonesian workers who will find it increasingly difficult to find work. This is due to the increasing competitiveness, the loss of minimum wages, the increasing ease for employers to lay off workers, and the potential for exploitative working hours. Therefore, the emergence of the manifest function must be accompanied by the emergence of the latent function.

To conduct a study of the effectiveness of the Job Creation Law in improving workers' welfare from the perspective of Roscoe Pounds' Sociological Jurisprudence theory, we need to understand several main elements. Roscoe Pounds' theory emphasizes the importance of law in serving the needs of society and achieving social goals. Pounds argues that law must function to meet social needs and adapt to changes in society. The relationship is as follows:

1. **Social Needs Analysis:** First, we need to analyze whether the Job Creation Law meets the social needs of workers. This can involve research on working conditions, wages, social security, and other factors that affect workers' welfare.
2. **Social Objective Analysis:** Next, we need to analyze whether the Job Creation Law achieves the expected social goals, namely improving workers' welfare. This can involve research on the effects of the Job Creation Law on workers' welfare, such as changes in wage levels, employment levels, and working conditions.
3. **Community Response Analysis:** Finally, we need to analyze how society, especially workers, respond to the Job Creation Law. This can involve research on public opinion, protests, and other actions taken by workers and

labor organizations in response to the Job Creation Law.

4. Closing

4.1. Conclusion

From a sociological perspective, the welfare of workers in the Job Creation Law can be analyzed using Roscoe Pounds' modern sociological theory of Sociological Jurisprudence. The various functionalists who describe early society are very valuable, because these types can show that law is a social phenomenon that depends on other factors in society (because the legal system is formed by forces outside the system. Structural functional theory is the system that has the greatest influence on social science in this century. This structural functional also chooses goals to achieve social order. Adherents of this theory assume that all events and all structures are functional in society. Change can occur slowly in society. If a conflict occurs, structural functional theorists will focus on how to solve the problem so that society remains balanced. Robert K. Merton explains that the focus of functional structure analysis is on groups, organizations, society, and culture. Function according to Robert K. Merton is defined as a consequence that can be achieved and brings adaptation to the system". Consequences can be defined as the result or impact of an action taken. Robert K. Merton introduced the concept of manifest function and latent function. Manifest function is defined as what is needed or desired, while latent function is defined as what is not desired. According to this theoretical view, in research on behavior or social or legal order, it must actually be related to manifest function, meaning that manifest function is the expected result of social behavior; and related to latent function. The concept of both functions can be seen from the ratification of the Job Creation Law. The manifest function of the ratification of the Job Creation Law is to provide more opportunities for investors who will enter Indonesia, increase economic growth, facilitate business licensing, open up new jobs, increase worker productivity, empower Micro, Small and Medium Enterprises (MSMEs) and cooperatives. In addition, there is also a latent function in the ratification of the Job Creation Law, namely that the licensing instruments regulated in the Job Creation Bill are more dominant for investors and foreign workers, which makes it easier to enter Indonesia and has an impact on Indonesian workers who will find it increasingly difficult to find work. This is due to the increasing competitiveness, the loss of minimum wages, the increasing ease of employers laying off workers, and the potential for exploitative working hours. Therefore, the emergence of the manifest function must be accompanied by the emergence of the latent function.

4.2. Suggestion

The suggestion given by the author is that considering that Indonesia is a country based on law, it is only right that every existing regulation should be made in an orderly manner and adjusted to the mandates contained in the Laws Above, especially in the mandate contained in the 1945 Constitution of the Republic of Indonesia so that no conflict is created in society.

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