
Employment Law Reform: A Responsive and Participatory Approach to Create Laws that Achieve Social Justice

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ABSTRACT

Social justice is a key measure of whether Indonesia, as a welfare state, is capable of realizing true prosperity. The numerous judicial reviews of the Employment Cluster of the Job Creation Law, both the 2020 Job Creation Law and the 2023 Job Creation Law, reflect public doubts about the country's ability to achieve social justice. This paper reviews the Job Creation Law from a social justice perspective and then explains how responsive law achieves social justice. The research method is normative juridical, using both a statutory and conceptual approach. The secondary data sources consist of primary legal materials, various legal regulations and court decisions, and secondary legal materials, namely books and articles related to the research. The results of the study indicate that the Job Creation Law, specifically the Employment Cluster, has shortcomings in terms of social justice. The numerous judicial reviews from the public are due to the lack of public participation and transparency in the law-making process, and are considered to not provide social justice for applicants, most of whom are workers. Responsive law offers advantages that can address the shortcomings of the Job Creation Law, as it better accommodates the needs and aspirations of the community and brings the desired benefits to realize social justice by prioritizing the principles of openness, efficiency and effectiveness, clarity of objectives, and meaningful community participation.

INTRODUCTION

The objectives of the Indonesian are stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, paragraph 4 "then therefrom to form an Indonesian state government that protects all the Indonesian people and all of Indonesia's homeland and to advance general welfare, educate the nation's life, and participate in implementing world order", meaning that Indonesia is a welfare state (Marshall & Moolchand, 2024; Novak, 2024; Vosko et al., 2016). Budi Setiyono summarizes several definitions of the Welfare State from the opinions of Pierson (1998), Briggs (1961), Linbeck (2006) as follows "the Welfare State is a concept of government in which the state plays an important role in protecting and promoting the economic and social welfare of its citizens as a whole, based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those who are unable to utilize the minimum provisions for a good life" (Setiyono, 2018). Social justice is a key measure to assess whether Indonesia, with its welfare state status, can realize true welfare. According to the

nation's founder, Sukarno, social justice is a just and prosperous society, one that brings happiness to all, without humiliation, oppression, or exploitation, and a state founded "for all, for all." (Pusdatin, 2021)

The numerous judicial reviews of Law Number 11 of 2020 concerning Job Creation and Law Number 6 of 2023 concerning the Enactment of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as the Job Creation Law) throughout 2020 and 2023 reflect public doubts about the state's ability to realize social justice for its people. Data from the Constitutional Court of the Republic of Indonesia website shows that there are 6 judicial reviews of the 2020 Job Creation Law, Employment Cluster: Case 91/PUU-XVIII/2020, Case 103/PUU-XVIII/2020, Case 105/PUU-XVIII/2020, Case Number 107/PUU-XVIII/2020, and Case Number 4/PUU-XIX/2021 (www.mkri.id, 2021); and there are 7 judicial reviews of the 2023 Job Creation Law Employment Cluster: Case Number 39/PUU-XXI/2023, Case Number 40/PUU-XXI/2023, Case Number 41/PUU-XXI/2023, Case Number 46/PUU-XXI/2023, Case Number 49/PUU-XXI/2023, Case Number 50/PUU-XXI/2023, and Case Number 54/PUU-XXI/2023 (www.mkri.id, 2023). Most recently, the Constitutional Court, through Decision Number 168/PUU-XXI/2023 (dated October 2024), ordered legislators to draft a separate Employment Law from the Job Creation Law within two years (www.mkri.id, 2024).

The judicial review essentially requested a formal review due to the lack of public participation and transparency in the lawmaking process, and a material review due to its perceived failure to provide social justice for the applicants, most of whom are workers. Responsive legal products offer advantages that can address the shortcomings of the Job Creation Law. In responsive law, the law serves as a facilitator of responses or a means of responding to social needs and aspirations, as argued by Bernard Arief Sidharta in Ni'matul Huda (2023; 30). Legal products that will be or are being drafted should facilitate responses or a means of responding to social needs and aspirations, so that their enactment is beneficial, purposeful, and rational.

METHOD

The type of research in this paper was normative juridical research that examines document studies, using various secondary data in the form of laws and regulations, court decisions, legal theories, and various opinions of scholars/experts. The approaches employed are the legislative approach and the conceptual approach. The conceptual approach is used to combine practical concepts that can be implemented into a particular perspective and become a solution to the problem. The sources of legal materials in this study are secondary data sources consisting of: primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2011 concerning the Formation of Legislation, Law Number 11 of 2020 concerning Job Creation, Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, Constitutional Court Decisions; and secondary legal materials, namely books and articles related to the topics of the welfare state, social justice, and responsive law. The analytical method used in this research is descriptive qualitative, namely analyzing, describing, and summarizing various situations from the data collected regarding the problem being studied.

RESULTS AND DISCUSSION

Welfare State and Social Justice

A state governed by law is a state based on law and guaranteeing justice for its citizens. In the past, a state governed by law (in the narrow sense) functioned as a "night watchman" or *nachtwakerstaat*, guaranteeing or maintaining state security. It then evolved into a modern state governed by law, a welfare state (*welvaarstaat*), or social service state, where the state is obligated to actively participate in various aspects of social life to achieve state goals. The state is responsible for and promotes the welfare of its citizens. Mochtar Kusumaatmadja, in Juanda & Ogiandhafiz Juanda, states that the purpose of law is order, achieving justice, and striving for legal certainty. Law also functions as a means of societal renewal or development (law as a tool of social engineering), in the sense of channeling the direction of human activity toward the desired goals of development and renewal (Juanda & Juanda, 2022).

The Preamble to the 1945 Constitution of the Republic of Indonesia contains the philosophy of the Indonesian nation, Pancasila, which serves as the *rehcstidee* and grundnorm for the Indonesian legal state, and contains the goal of the Indonesian State, which is to realize social welfare/justice for its people. In the context of national legal development, all national legal regulations at various levels must be imbued with Pancasila as a legal ideal (*rechtsidee*) as well as an ideal basis, and based on the 1945 Constitution of the Republic of Indonesia as a constitutional basis. In realizing the vision of a just and prosperous state, Juanda & Ogiandhafiz Juanda stated that the development of legal politics must be oriented towards justice and prosperity, meaning that the planning, formation, implementation and enforcement of law as part of the national legal political process are directed towards realizing a just and prosperous society, not making society and the nation miserable, burdensome, unjust and unprosperous (Juanda & Juanda, 2022). Article 33 of the 1945 Constitution of the Republic of Indonesia, Chapter IV concerning "Indonesian Economy and Social Welfare" mandates that the economy is structured as a joint effort based on the principle of family and based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental awareness, independence, and maintaining the balance of progress and national economic unity (Hariram et al., 2023; Izah et al., 2025).

Job Creation Law and Social Justice Aspects

The widespread public resistance to the Job Creation Law, in the form of judicial reviews of Law No. 11 of 2020 concerning Job Creation and Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation as the Employment Cluster Law, suggests that the Job Creation Law contains numerous formal and material issues. Articles in the Job Creation Law that are perceived as unfair by the public include: minimum wages (Regency/City Minimum Wage and Regency/City Sectoral Minimum Wage) that are full of conditions, unlimited employment contracts, lifetime outsourcing, which is also applied without restrictions on the type of work previously limited to five types, working hours deemed exploitative and excessive, and the loss of maternity leave pay.

There is a consideration of the Constitutional Court Judge in Case Number 91/PUU-XVIII/2020 in paragraph [3.20.2] (MKRI, 2020; 413) "That the Court's choice to determine Law 11/2020 is declared conditionally unconstitutional, because the Court must balance the

requirements for the formation of a law that must be met as formal requirements in order to obtain a law that meets the elements of legal certainty, benefit and justice. In addition, it must also consider the strategic objectives of the formation of the a quo Law. In another part of the decision, Constitutional Justice Arief Hidayat, Constitutional Justice Anwar Usman, Constitutional Justice Manahan M.P. Sitompul, and Constitutional Justice Daniel Yusmic P. Foekh expressed a dissenting opinion in paragraph [6.1.5] (MKRI, 2020; 422-423) "That in the context of progressive law, the method of forming laws through the omnibus law method does not question good or bad values. Because it is a method that is value-free. Therefore, the method of forming laws using the omnibus law method can be adopted and is suitable for application in the concept of a Pancasila rule of law as long as the omnibus law is made in accordance with and does not conflict with the values of Pancasila and the principles contained in the 1945 Constitution." The author interprets that the Constitutional Court has made "corrections" to the Job Creation Law by balancing the formal requirements for forming laws and to obtain laws that materially fulfill the elements of legal certainty, benefit and justice (Florczak-Wątor, 2020; Hadiyati, 2022). The Constitutional Court has also played a role as the guardian of the constitution, guarding the supremacy of the constitution to prevent the occurrence of legal norms that contain constitutional issues (unconstitutional) (Barroso, 2019; Junaidi & Aziz Zaelani, 2021).

Examining the judicial review of the 2020 Job Creation Law, the Constitutional Court in Decision Number 91/PUU-XVIII/2020 paragraph [3.17.8] considered the importance of meaningful public participation (MKRI, 2020; 2992-293) so that genuine public participation and involvement will be realized. This public participation is primarily intended for community groups directly affected by or concerned with the draft law being discussed. Unfortunately, in the Constitutional Court Decision Number 54/PUU-XXI/2023 (against the 2023 Job Creation Law) decided on October 2, 2023, the issue of the principle of openness and meaningful participation did not get a place in forming a better legal product, because the argument of meaningful participation was deemed irrelevant to test the Law originating from the Perppu (Government Regulation in Lieu of Law). The Constitutional Court in its considerations, among others, stated that the urgent aspect of the issuance of the Perppu caused the process of forming laws originating from the Perppu to have time limitations, then in the Decision paragraph [3.15.6] (MKRI, 2023; 230) the Constitutional Court stated "... Therefore, in the process of forming a law (ordinary), meaningful participation must be carried out at all stages, especially at the stages of submission, discussion, and approval. However, in the process of approving a bill originating from a Perppu, the implementation of meaningful participation is no longer relevant. Thus, according to the Court, the Petitioners' argument that Perppu 2/2022 as the forerunner to the birth of Law 6/2023 was stipulated by the President in violation of Decision Number 91/PUU-XVIII/2020 regarding meaningful participation is legally groundless."

Ni'matul Huda (2023; 11) in his book "Legal Politics and the Development of the National Legal System" examines several laws that are not in favor of justice, including criticizing Law Number 11 of 2020 concerning Job Creation, which was marked by rejection from workers, students, environmental activists, and civil society coalitions because the deliberations of this law lacked public participation and were deemed to be biased against workers and the environment in favor of attracting investors. He also criticized Law Number 3

of 2020 concerning Mineral and Coal Mining (an amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining), which, during its deliberations in 2019, was met with mass demonstrations by students and the public because several of its articles were deemed to only benefit certain parties, especially businesspeople.

Looking back, it turns out that many legal products in Indonesia still fall far short of the goal of social justice. Elli Ruslina, in her thought writings, assesses that the economic system in Indonesia since independence until more than 60 years later is practically similar to when the Indonesian nation was under foreign colonialism, namely a liberalistic/ capitalist/ free market economic system that emphasizes the interests of individuals or groups of capitalists, so that the interests of society become residual. (FH-UI, 2019; 212) In the period after the 1998 reformation, the national development plan was outlined in Law Number 25 of 2004 concerning the National Development Planning System in conjunction with Law Number 17 of 2007 on the National Long-Term Development Plan for 2005-2025. The target of economic development was apparently based on economic growth. Elli Ruslina again criticized, if the target is economic growth, then the people do not participate in the development, development does not elevate the people but displaces them (FH-UI, 2019; 210). The author believes these criticisms are well-founded, considering that Article 33 of the 1945 Constitution of the Republic of Indonesia mandates that social welfare is based on economic democracy, prioritizing the prosperity of society, not the prosperity of individuals. The shortcomings of the Job Creation Law and several other legal instruments mentioned above in realizing social justice constitute a miscarriage of justice, a failure to achieve the legal goal of justice.

Responsive Law for Social Justice

Responsive law offers advantages that can address the shortcomings discussed in the review of the Job Creation Law above. The character or nature of legal products is distinguished between orthodox law and responsive law according to the thinking of John Henry Merryman. It is substantially similar to the repressive and responsive law (another is autonomous law) proposed by Philippe Nonet and Philip Selznick (Huda, 2023; 26-31):

- a. In orthodox or repressive law, the role of state institutions, parliament, and government is dominant in the legal development of a society. Legal products are more positivistic and function more as instruments. Procedural justice becomes more important, namely for the purpose of legal order.
- b. In autonomous law, the legal order is centered on the rule of law. Official decisions are subject to the law and legal integrity, and procedural justice is prioritized.
- c. In responsive law, the law acts as a facilitator or means of responding to social needs and aspirations, as Bernard Arief Sidharta argues in Ni'matul Huda (2023; 30). Substantive justice remains crucial in responsive law, while simultaneously maintaining procedural justice.

Nonet and Selznick's responsive legal theory aligns with American legal realism, which is grounded in the philosophy of pragmatism, such as the Social Interest Theory developed by Roscoe Pound. Good law must represent both procedural and substantive justice, legitimizing responsive law (Atmaja & Budiarta, 2018; 135). Responsive law, in its implementation, will be functional (applicable), pragmatic (providing utility/benefit), and have clear and rational

goals. Legislation with a responsive character will better accommodate the needs and aspirations of society and bring about the desired benefits to realize social justice.

According to Article 1 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, last amended by Law Number 13 of 2022, the stages of creating legislation are planning, drafting, discussion, ratification or determination, and promulgation. In all stages of the formation of the legal product, from the stage of preparing the legislative program, research and study, preparation of the academic paper, to the stage of discussion and ratification, it should facilitate the widest possible response or means of response to the needs and social aspirations of the community, so that the resulting legislation is responsive. Responsive legal products will be implemented effectively/beneficially (pragmatic) and have clear and rational goals. Regarding how to realize legal products with a responsive character in Indonesia, Law Number 12 of 2011 concerning the Formation of Legislation (last amended by Law Number 13 of 2022) has included the principles for the formation of legislation, including:

- a. The principle of transparency, regulated in Article 5, letter g and the Explanation, means that the formation of legislation, from planning, drafting, discussion, ratification or stipulation, and promulgation, is transparent and open. Thus, all levels of society have the broadest possible opportunity to provide input in the formation of legislation.
- b. The principle of utility and effectiveness, regulated in Article 5, letter e, and the Explanation. Effectiveness means that every legislation created is truly needed and beneficial in regulating the life of society, the nation, and the state.
- c. The principle of clarity of purpose, regulated in Article 5, letter a and the Explanation, indicates that every legislation created must have a clear objective to be achieved.

The broadest possible meaningful participation of the community is one of the essential elements in producing responsive laws (Hajiji & Wahjudin, 2024; Hämäläinen & Salminen, 2025; Renn et al., 2026). That the law is a facilitator of response or a means of responding to social needs and aspirations is the opinion expressed by Bernard Arief Sidharta. Moreover, community participation in the formation of laws is a constitutional right of citizens guaranteed by the 1945 Constitution of the Republic of Indonesia in Article 1 paragraph (2) "Sovereignty rests with the people and is implemented according to the Constitution" and Article 27 paragraph (1) that all citizens have equal status in law and government, and also Article 28C paragraph (2) of the 1945 Constitution of the Republic of Indonesia which gives every person the right to advance themselves in fighting for their rights collectively to build society, nation, and state.

CONCLUSION

The Job Creation Law's Employment Cluster has shortcomings in terms of social justice. Numerous judicial reviews from the public requesting formal review stem from the lack of public participation and transparency in the law-making process, while material review occurs because it is perceived as not providing social justice for the applicants, most of whom are workers. The Constitutional Court Judges' considerations in Case Number 91/PUU-XVIII/2020 confirm that the Constitutional Court has made "corrections" to the Job Creation Law to balance the formal requirements for the formation of a law and to obtain a law that materially fulfills the elements of legal certainty, benefit, and justice. A responsive law offers

advantages that can address the shortcomings of the Job Creation Law. The formation of legislation that has a responsive character will better accommodate the needs and aspirations of the community and bring the benefits that are aspired to in realizing social justice, by prioritizing the principles of openness, the principles of efficiency and effectiveness, the principle of clarity of objectives, as well as meaningful community participation, especially for community groups that are directly affected or have concerns about the draft law being discussed.

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