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## The Principle Of Balance In The Protection Of Workers And Employers Based On Labor Law Reform

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### Abstract

Industrial relations regulation is a fundamental aspect of the national employment system, aiming to bridge the interests of employers and workers fairly and reflect the principle of balance. This study aims to determine the principle of equitable balance between worker protection and business flexibility in the reform of national labor law. This research uses a normative juridical approach focused on a literature review and analysis of relevant legal principles, concepts, and theories. Previous regulations emphasized worker protection as an effort to prevent injustice to vulnerable workers. The reform of labor law through the Job Creation Law seeks to reposition the balance by providing greater flexibility for employers and reducing the burden of labor costs, for example through adjustments to severance pay and expansion of PKWT (Working Permit) contracts. The main finding is that the reform brings a shift in the value of normative balance, focusing more on economic efficiency and business certainty for employers, while still striving to maintain worker fairness through schemes such as the Job Loss Guarantee. This reform, while providing operational convenience for employers, raises crucial questions about whether an optimal and equitable balance has been achieved, or whether it has instead created a new imbalance in which basic worker rights are sacrificed for economic flexibility. A just balance demands recognition of the strengths and vulnerabilities of both parties, as well as the formulation of regulations that enable inclusive economic growth and adequate social protection.

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## INTRODUCTION

Industrial relations between employers and workers are one of the fundamental aspects of the national labor system. The existence of labor law is expected to be able to bridge the interests between employers and workers fairly and reflect the principle of balance between the rights and obligations of employers and workers. Essentially, an employment agreement will impact the proportion of rights and obligations for the parties who make it, considering

the imbalance of positions between two or more parties.<sup>1</sup> The context of the principle of balance does not only mean equality before the law but is also substantially related to the recognition of the position and contribution of each party in the process of fulfilling rights and obligations.

Labor regulations aim to govern private interests by arranging the employment relationship between workers/laborers and employers. This relationship is built upon a foundation of mutually binding rights and obligations. Its reciprocal nature ensures that the right of one party is the obligation of the other. The formal basis of this employment relationship is the work agreement made by those involved.<sup>2</sup>

Industrial relations are a reflection of a complex and dynamic relationship, which encompasses the professional, contractual, and interpersonal dimensions of the interaction of interests among workers, employers, and the government.<sup>3</sup> The basic philosophy underlying this relationship is the Pancasila industrial relations, which places deliberation (musyawarah) to reach consensus (mufakat) as the main foundation, with the ultimate goal of achieving social justice for all elements of society.<sup>4</sup>

The basic philosophy of industrial relations in Indonesia is Pancasila Industrial Relations. This philosophy fundamentally mandates the principle of balance in the form of an equal partnership between the interests of the Employer, such as investment and business continuity, and the interests of the worker/laborer, such as protection and welfare, while involving the Government as a regulator and facilitator. This principle of balance is rooted in the values contained in Pancasila, particularly the Fifth Principle, Social Justice for All Indonesian People, which seeks to eliminate class tension and achieve shared prosperity.

Law Number 13 of 2003 concerning Employment (hereinafter referred to as the labor Law) has become the main legal basis for regulating employment relations in Indonesia. Responding to the urgent need for changes to the labor law, and in order to increase business competitiveness and attract investment, the Indonesian Government issued a monumental

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<sup>1</sup> Noviana, Eva, Toto Tohir Suriaatmadja, and Rini Irianti Sundary. 2022. "Asas Keseimbangan dalam Perjanjian Kerja antara Pekerja dan Pengusaha dalam rangka Mewujudkan Keadilan bagi Para Pihak." *Jurnal Wawasan Yuridika* Vol 6 No 1, Maret 2022, page 87.

<sup>2</sup> Suhartoyo, "Perlindungan Hukum Bagi Buruh Dalam Sistem Hukum Ketenagakerjaan Nasional," *Administrative Law & Governance Journal*, No. 2 Issue 2, June 2019, page. 328.

<sup>3</sup> Law Number 13 of 2003 concerning Employment, Article 1 paragraph 16

<sup>4</sup> Imam Soepomo, *Pengantar Hukum Perburuhan* Jakarta: Djambatan, 1983, page. 24.

policy breakthrough through the Omnibus Law on Job Creation in 2020.<sup>5</sup> One of the main clusters in the Job Creation Law is the Employment cluster, which fundamentally changes and refines several provisions in the labor law. The Government stated that the main goals of this change are to simplify regulations, cut bureaucracy, and improve the ease of doing business, with the hope of creating broader employment opportunities and encouraging sustainable economic growth.<sup>6</sup>

The legal politics for establishing the renewal of labor regulations began with the enactment of Law Number 11 of 2020 concerning Job Creation, which was later declared conditionally unconstitutional in November 2021 through Constitutional Court Decision Number 91/PUU-XVIII/2020. The Constitutional Court granted the Government of Indonesia and the House of Representatives of the Republic of Indonesia (DPR RI) two years to comply with the said Constitutional Court Decision. The enactment of Law Number 11 of 2020 concerning Job Creation was also accompanied by public rejection through demonstrations across Indonesia.<sup>7</sup>

The enactment of Law Number 11 of 2020 concerning Job Creation was intended to reform bureaucracy and regulations in order to improve the ease of doing business, attract investment, and ultimately create broader employment opportunities. However, behind these objectives, the Employment cluster in this law was considered controversial and met with strong rejection, particularly from labor unions and worker activists. The main reason behind this rejection is the strong perception that the Job Creation Law is far from the ideal balance and actually tends to favor the interests of employers while significantly weakening the bargaining position of workers.<sup>8</sup>

The Government issued Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 to address the Constitutional Court (MK) Decision Number 91/PUU-XVIII/2020, and it was finally enacted as Law Number 6 of 2023 concerning the Stipulation of Government

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<sup>5</sup> Lihat <https://setkab.go.id/presiden-uu-cipta-kerja-beri-dampak-signifikan-bagi-iklim-investasi/> accessed September 2, 2025, at 15.40 WIB

<sup>6</sup> Lihat <https://ekon.go.id/publikasi/detail/553/uu-cipta-kerja-prioritaskan-penciptaan-lapangan-kerja-baru> accessed September 2, 2025, at 15.40 WIB

<sup>7</sup> Lihat <https://nasional.kompas.com/read/2021/05/01/11505841/5-poin-uu-cipta-kerja-yang-dinilai-rugikan-buruh?page=all> accessed September 1, 2025, at 16.40 WIB

<sup>8</sup> Lihat <https://www.hukumonline.com/berita/a/sejumlah-substansi-uu-cipta-kerja-yang-dinilai-rugikan-buruh-1t5fa28130dfb31/> accessed September 2, 2025, at 17.40 WIB

Regulation in Lieu of Law (Perppu) Number 2 of 2022 Regarding Job Creation into Law (hereinafter referred to as the Job Creation Law).<sup>9</sup>

Before the significant changes in the labor law landscape, the labor law had long been the main pillar regulating the interaction between workers and employers in Indonesia. Philosophically, this law sought to create comprehensive protection for workers, covering the right to a decent wage, social security, safe and healthy working conditions, as well as protecting workers from termination of employment (PHK). This spirit of protection was very strong, given the position of workers who are often viewed as weaker in the employment relationship.

Throughout nearly two decades of its implementation, the labor law continually faced issues and criticism from both employers and workers.<sup>10</sup> The core of this law is its emphasis on the Legal Protection Paradigm, which is fundamentally realized through three main provisions:<sup>11</sup>

1. Graduated Termination of Employment (PHK) Procedures To prevent unilateral and arbitrary Termination of Employment (PHK), the law mandates a complex and multi-layered process, starting from bipartite negotiations, mediation/conciliation, up to final resolution through litigation at the Industrial Relations Court (PHI).
2. Mandatory High Severance Pay This regulation stipulates a relatively high severance pay formula, especially for long-tenured employees. This provision aims to provide compensation for job loss and ensure workers have a financial guarantee for their livelihood.
3. Restriction on Fixed-Term Employment Agreements (PKWT) The law strictly limits the use and duration of PKWT (Fixed-Term Employment Agreements) for certain types of work. The objective is to make PKWTT (Permanent/Indefinite-Term Employment Agreement) the primary standard, thereby providing job security and preventing the use of recurring contracts that are detrimental to workers.

One of the criticisms from Employers is the notion that the labor law regulations are overly biased toward workers, thereby creating a significant burden for employers. One point

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<sup>9</sup> <https://setkab.go.id/pemerintah-terbitkan-perppu-cipta-kerja/> accessed September 4, 2025, at 17.40 WIB.

<sup>10</sup> Otti Ilham K, Analisis Undang-Undang Cipta Kerja Terhadap Perlindungan Tenaga Kerja di Indonesia. Widya Pranata Hukum, 2021, page. 59-60

<sup>11</sup> Law Number 13 of 2003 concerning Employment.

often highlighted is the provision regarding severance pay and long-service appreciation money (UPMK) regulated in Article 156 of the Labor Law. The amount of severance pay, calculated based on tenure and the last wage, is considered too high, especially for companies facing economic pressure or market fluctuations.<sup>12</sup>

Furthermore, the Termination of Employment (PHK) procedure regulated in the labor law is also a focus of attention. Although intended to prevent unilateral PHK, the process—which requires bipartite negotiations, mediation, conciliation, up to resolution at the Industrial Relations Court (PHI)<sup>13</sup> is time-consuming, convoluted, and incurs substantial costs.

The Government's efforts to restore Justice for Employers and Workers through the Job Creation Law came as a response to criticisms from both Employers and Workers, and certainly with the explicit goal of simplifying regulations and increasing the ease of doing business in Indonesia. From the employer's perspective, the Job Creation Law attempts to reposition the principle of balance by granting greater flexibility and reducing labor cost burdens, which were previously considered too onerous, such as the Simplification of PHK Procedures and Severance Pay Adjustment, which altered the severance pay provisions, generally lowering the value of compensation paid directly by the company.<sup>14</sup> In exchange, the Job Loss Guarantee (JKP) scheme was introduced, which is mutually borne by the government, employers, and workers.<sup>15</sup>

For employers, this is a tangible effort to alleviate the financial burden of PHK, making restructuring or business adjustment decisions easier to implement, and enabling companies to better survive crises. These changes directly provide fairer legal protection by reducing financial risks due to more proportional severance pay burdens, and the JKP scheme minimizes the risk of bankruptcy caused by excessive PHK obligations.<sup>16</sup> Furthermore, it enhances operational flexibility by making it easier to adjust the number and type of employees, allowing employers to respond to market dynamics quickly and efficiently, as

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<sup>12</sup> Lihat <https://www.hukumonline.com/berita/a/pesangon-dalam-uu-ketenagakerjaan-hol7515/> accessed September 6, 2025, at 10.08 WIB

<sup>13</sup> Law Number 13 of 2003 concerning Employment.

<sup>14</sup> Akhmad Maimun, Natasia Maharani Kasih, Analisis Yuridis Hak Pesangon Pemutusan Hubungan Kerja PascaBerlakunya Undang-Undang Cipta Kerja, Jurnal Pubmedia : Social Sciences and Humanities Volume 1, Number 1, 2023, page. 8

<sup>15</sup> Article 2 of Government Regulation Number 37 of 2021 concerning the Implementation of the Job Loss Guarantee Program

<sup>16</sup> Fajar B Hirawan, Adinova Fauri, Henrico Tobing, Muhyiddin, Kajian UU 11/2020 tentang Cipta Kerja Klaster Ketenagakerjaan: Studi pada Regulasi Pengupahan, PHK, dan Pesangon, Jurnal Ketenagakerjaan Volume 18 No. 1, 2023, page. 9

well as creating legal certainty and ease of doing business, with the Simplification of regulations and licensing reducing transaction costs and time, thus improving the investment climate.<sup>17</sup>

From the worker's perspective, the provisions in the Job Creation Law are actually considered to weaken their protection and shift the balance excessively towards employers. The reduction in severance pay, the expansion of PKWT (Fixed-Term Employment Agreements) which means a loss of job certainty, and the potential ease of PHK (Termination of Employment) are feared to create a cheap labor market and worker vulnerability.<sup>18</sup> The existence of the Job Creation Law explicitly only attempts to address employers' complaints about regulatory rigidities in the labor law and give them greater maneuverability for business. However, this justice is often viewed as coming at the expense of several aspects of worker protection previously guaranteed by the labor law.<sup>19</sup>

Article 2 of Law No. 12 of 2011 concerning the Formation of Legislative Regulations explains that Pancasila is the source of all sources of state law. This is in line with the Article-by-Article Elucidation of Article 2 of Law No. 12 of 2011 concerning the Formation of Legislative Regulations, which states that the placement of Pancasila as the source of all sources of state law is in accordance with the Preamble to the 1945 Constitution of the Republic of Indonesia, fourth paragraph, namely Belief in the One and Only God, Just and Civilized Humanity, The Unity of Indonesia, Democracy Led by the Wisdom of Deliberation among Representatives, and Social Justice for all the People of Indonesia.<sup>20</sup>

Furthermore, Article 6 paragraph (1) of Law No. 12 of 2011 concerning the Formation of Legislative Regulations explains that the content of Legislative Regulations must reflect the principles of protection (pengayoman); humanity; nationalism; kinship; archipelagic identity (kenusantaraan); unity in diversity (bhinneka tunggal ika); justice; equality before the law and government; order and legal certainty; and/or balance, harmony, and congruence.<sup>21</sup> This provision is in line with the stipulation in Article 2 of the Labor Law,

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<sup>17</sup> [https://www.setneg.go.id/baca/index/pemerintah\\_dan\\_ahli\\_sebut\\_uu\\_cipta\\_kerja\\_memiliki\\_manfaat\\_besar](https://www.setneg.go.id/baca/index/pemerintah_dan_ahli_sebut_uu_cipta_kerja_memiliki_manfaat_besar) accessed September 5, 2025, at 19.30 WIB

<sup>18</sup> Siti Rahayu Fatimah, Analisis Yuridis Implikasi UU Cipta Kerja terhadap Pemutusan Hubungan Kerja, Jurnal Hukum dan Pembangunan, Vol. 54, No.2, 2024

<sup>19</sup> Lihat <https://www.cnnindonesia.com/nasional/20201007142847-20-555477/catatan-serikat-buruh-soal-omnibus-law-ciptaker> accessed September 5, 2025, at 19.30 WIB

<sup>20</sup> Article-by-Article Elucidation of Article 2 of Law No. 12 of 2011 concerning the Formation of Legislative Regulations.

<sup>21</sup> Article 6 paragraph (1) of Law No. 12 of 2011 concerning the Formation of Legislative Regulations.

which states that Employment development is based on Pancasila and the 1945 Constitution of the Republic of Indonesia.<sup>22</sup>

The legal relationship between the Employer as the party giving work and the Worker is established through an employment agreement. The principle of balance (or equity) is a principle that requires equality and justice in the relationship between the parties. This principle ensures that the rights and obligations of the parties are balanced and that no one is unfairly disadvantaged. In psychological theory, J.S. Adams' Equity Theory states that individuals will be motivated if they feel that the treatment received (output) is commensurate with the effort expended (input).

Balance as a fundamental basis in contract law arises because agreements often reflect an imbalance between the two parties, both in their respective positions and in their bargaining power. This leads to the formation of agreements that are unbalanced or tend to favor one party. Consequently, injustice arises for the party whose position is weaker, and typically the weaker party is the worker.

The understanding of balance-*evenwicht-evenwichtig* (Dutch) or *equality-equal equilibrium* (English)-literally means the same, proportional, pointing to a state, position, degree, weight, and so on.<sup>23</sup> The principle of balance is the implementation of the principle of good faith, the principle of honest transaction, and the principle of justice. Balance in law is based on the reality of significant disparity within society; therefore, a regulatory system is needed that can protect parties who hold a disadvantageous position.<sup>24</sup>

The balance between the interests of employers and workers is a crucial issue. This balance is important to ensure that both employers and workers can play an optimal role in creating high productivity. However, the implementation of this Law has shown significant signs of problems, where many workers feel their rights are threatened, especially concerning wages and job protection, leading to dissatisfaction and protests among workers and labor unions.

From a theoretical perspective, it is important to analyze the Job Creation Law through the lens of the principle of Balance in Industrial Relations, which emphasizes the importance of fair interaction between employers and workers. Social justice is also a main focus, where

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<sup>22</sup> Article 2 of Law Number 13 of 2003 concerning Employment.

<sup>23</sup> Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsional dalam Kontrak Komersial*, Jakarta: Kencana, 2010, page. 26

<sup>24</sup> Budi Winarno, *Kebijakan Publik Teori dan Proses*, Jakarta: Bukukita, 2008, page. 76

equitable treatment must be given to all parties in the employment relationship. Therefore, this journal discusses the legal reforms in Employment within the Job Creation Law, and how the Principle of Balance is reflected in the renewed regulations for the Protection of Workers and Employers based on the Job Creation Law.

After outlining the background of this research and formulating the main focus of the problem, the author then positions this research within the existing scientific landscape. This section serves as a bridge between the problem identification and the original analysis that will be presented in the Discussion Chapter. The author places this research within an academic context, identifying previous studies with a similar focus, including:

1. Anindia Wulandari, Putri Rimadani,<sup>25</sup> Pamulang University, entitled "Analysis of Changes to the Labor Law Regarding the Job Creation Law in the Fixed-Term Employment Agreement Cluster." The researchers in this paper evaluate the impact of the Job Creation Law on Fixed-Term Employment Contracts by analyzing changes in legal provisions that affect the characteristics, rights, and protection of workers.
2. Arief Dermawan Singh, Zahra Alsabilah Rasji,<sup>26</sup> with the title Analysis of the Impact of the Job Creation Law on Workers' Rights, in this journal the researcher explains that this Job Creation Law has a detrimental impact on workers' rights, namely layoffs, wages, salaries, outsourcing, and severance pay, thus causing problems in society. In this case, the researcher examines the impact of the regulations in the Job Creation Law on workers' rights.

Based on the two articles above, the author attempts normative research from different perspectives, where the author will examine the balance in the Job Creation Law, which not only considers the workers' perspective but also the employers' perspective.

This research uses a normative juridical approach, a type of research that focuses on a literature review. This approach aims to analyze various legal regulations, legal principles, concepts, and theories related to the legal field. According to Soerjono, the scope of the normative juridical approach includes history, comparison, systematics, and legal principles. In collecting data, the researcher used a literature review and supporting documents such as

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<sup>25</sup> Anindia Wulandari, Putri Rimadani, Universitas Pamulang, dengan Judul Analisis Perubahan Undang-Undang Ketenagakerjaan Terhadap Undang Undang Cipta Kerja Klaster Perjanjian Kerja Waktu Tertentu, Jurnal Publikasi Ilmu Hukum Vol. 2, No. 1 Maret 2024, page. 77-85

<sup>26</sup> Arief Dermawan Singh, Zahra Alsabilah Rasji, dengan judul Analisis Dampak Undang Undang Cipta Kerja Terhadap Hak Pekerja Journal of Education Religion Humanities and Multidisciplinary, Vol. 1 No. 2 Desember 2023, page, 142-149

laws and regulations, research results, legal journals, and several books. In this study, the primary focus of data collection was Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation as Law, as well as Law Number 13 of 2003 concerning Manpower.

## **DISCUSSION**

### **Legal Reforms In Employment Within The Job Creation Law**

Labor law and the job creation law have attempted to implement the principle of balance, but with different focuses and priorities, which gives rise to debate over where the true point of justice lies. Law No. 13 of 2003 viewed balance through the lens of strong protection for workers. With high severance pay provisions, restrictions on Fixed-Term Employment Agreements (PKWT), and rigid Termination of Employment (PHK) procedures, this Law aimed to limit the power of employers. From a justice perspective, this was an effort to prevent structural injustice against workers. However, for employers, this was often felt as an imbalance that burdened operational costs and reduced flexibility, which was ultimately claimed to hinder growth and job creation.

The Job Creation Law attempts to create balance by giving more flexibility to employers and reducing labor cost burdens, for example through severance pay adjustments and the expansion of Fixed-Term Employment Agreements (PKWT). From the perspective of justice for employers, this is an effort to create a more attractive investment climate, which is expected to lead to economic growth and greater job creation.<sup>27</sup> However, from the workers' side, this is often perceived as a reduction in protection and increased vulnerability, thus raising questions about justice for them. Here are some changes in the Job Creation Law:

a. Renewal of Regulations related to Fixed-Term Employment Agreements (PKWT)

As a form of work flexibility for competitiveness, the articles in the Job Creation Law concerning Fixed-Term Employment Agreements (PKWT) have undergone changes and renewal. Article 59 of the original Labor Law regulated and limited the PKWT duration to a maximum of 2 years and a maximum extension of 1 year (a total of 3 years), and also limited the types of jobs that could be contracted as PKWT. In contrast, Article 59 as regulated in the Job Creation Law specifically removes the limitations on the duration of PKWT extension and renewal. Further provisions were

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<sup>27</sup> Anindia Wulandari, Putri Rimadani, *Op.cit*, page. 80.

delegated to a Government Regulation (PP). Subsequently, the intended Government Regulation, namely Government Regulation Number 35 of 2021, Article 8 regulates that PKWT based on duration can be made for a maximum of 5 (five) years, and can be extended for a period according to the agreement between the employer and the worker/laborer, provided that the overall duration of the PKWT, including its extensions, does not exceed 5 (five) years. This is considered detrimental to Workers because the duration of the PKWT becomes longer.

b. Renewal of Article 88 paragraph

The fundamental difference in the regulation of Article 88 paragraph (2) between the Labor Law and the Job Creation Law lies in the regulated material and the focus of protection for workers/laborers. In the context of the labor law, Article 88 paragraph (2) relates to the continuation of the protection regulated in paragraph (1), but the focus of its regulation changes following the amendment through the Job Creation Law.

Article 88 paragraph (1) of the Labor Law reads: 'Every worker/laborer has the right to a decent living for humanity. Meanwhile, Article 88 paragraph (2) of the Job Creation Law reads: 'The Central Government establishes a wage policy as one effort to realize the right of workers/laborers to a decent living for humanity.

Therefore, the change in the core material of Article 88 paragraph (2) is considered a firm attempt to provide protection to laborers. Because what was originally regulated as a continuation of the general Worker/Laborer Protection regulation has been changed to a Wage Policy. This change focuses on the role of the Central Government in establishing wage policies to realize a decent living for workers/laborers.

c. Deletion of Article 156 paragraph (4) letter c

The main difference in the regulation of Article 156 between the Labor Law and the Job Creation Law lies in the change of substance regarding the rights of workers/laborers who are terminated (PHK), especially related to the Compensation for Rights (Uang Penggantian Hak/UPH) regulated in Article 156 paragraph (4) letter c of the Labor Law. The Job Creation Law removes the component of Article 156 paragraph (4) letter c, which reads: 'compensation for housing as well as medical treatment and care is set at 15% (fifteen percent) of the severance pay and/or long-service appreciation money for those who qualify.'"

#### d. Addition of Article 157A

The addition of Article 157A to the Job Creation Law aims to provide legal certainty and operational solutions for employers and workers/laborers during the ongoing Termination of Employment (PHK) dispute process at the Industrial Relations Court (PHI). Before this article, there was often a void and lack of clarity regarding the status and obligations of both parties when a PHK was litigated.

This Article ensures that the employment relationship remains valid and confirms that the employment relationship is not legally severed until a decision has permanent legal force (*inkracht*), meaning the working rights and obligations remain attached (the principle of worker protection).

It provides Company Operational Certainty by giving employers a legal tool to secure assets, company secrets, and maintain the work environment if the worker whose PHK is being disputed commits serious violations or their working situation disrupts operations. Furthermore, it offers Protection Balance, because even though the worker does not attend work due to suspension, their basic rights (wages) must still be fulfilled. This prevents the worker and their family from losing their livelihood while their rights are being fought for in court.

Finally, it provides duration certainty by setting a clear time limit, which is until the court decision has permanent legal force (*inkracht*), ending the status uncertainty of both parties.

The addition of Article 157A<sup>28</sup> is expected to Address the Legal Void Regarding Worker Status, because prior to this article, when an employer filed a PHK application with the Industrial Relations Court (PHI) and the worker refused, the worker's status became ambiguous. Furthermore, Article 157A provides a legal basis for employers to suspend workers from their duties without violating their right to wages.

The addition of Article 157A is expected to maintain a balance of interests by achieving equilibrium between two conflicting interests: the employer's interest, which requires protection against potential operational losses, asset security, and company secrets from workers who may have committed serious violations or who are involved in an intense dispute; and the worker's interest, which requires protection of their right

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<sup>28</sup> Article 157A of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 Regarding Job Creation into Law.

to wages as a source of livelihood, considering that the dispute resolution process at the PHI can be lengthy.

## **The Principle Of Balance In The Protection Of Workers And Employers Based On The Job Creation Law**

The application of the principle of balance in labor law is an effort to create a harmonious, productive, and sustainable industrial relationship. This principle demands proportionality and alignment between the rights and obligations of the parties, so that no one feels excessively disadvantaged or placed in a vastly superior position without commensurate responsibility. Regarding balanced justice for employers and workers, we must transcend partial interests and look at the bigger picture of economic and social dynamics. Given the existence of significant social disparity, the key role of balance within the legal framework is to build a regulatory system capable of providing protection to parties who are in a disadvantaged position.<sup>29</sup>

Constitutional Court (MK) Decisions, such as Decision No. 37/PUU-IX/2011 regarding process wages and decisions testing the Job Creation Law (such as MK Decision No. 168/PUU-XXI/2023), contain legal considerations that strive to find common ground or balance between the employer's interest in business continuity and the workers' interest in basic rights and welfare.

There is an imbalance of bargaining power between employers and workers. Employers, with capital and control over production, are generally viewed as being in a stronger position compared to workers who individually depend on wages to meet their living needs. Therefore, the role of the state through legal regulation becomes crucial to intervene and ensure a point of balance that does not exclusively benefit one party.<sup>30</sup>

From the perspective of the workforce, workers require guarantees against exploitation, fair wages, a work environment that ensures safety, and economic certainty after Termination of Employment (PHK). If not supported by firm regulations, workers can easily become victims of arbitrary dismissal, minimal income, and a work environment detrimental to human

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<sup>29</sup> Budi Winarno, *Op. Cit*

<sup>30</sup> Elza Aulia, Tinjauan Pemutusan Hubungan Kerja Pasca dihapusnya Pasal 152 Undang-Undang Ketenagakerjaan Dalam Perspektif Hukum Dan Hak Asasi Manusia, Jurnal Malahayati. JHM Vol. 5 No. 2 November 2024, page. 2.

dignity. Thus, justice for workers must include the existence of an adequate social safety net and full recognition of their fundamental rights as individuals and citizens."

From the Employer's Perspective, Employers require legal certainty, flexibility in managing operations (including human resources), cost efficiency to compete, and a conducive business climate for investment and growth. Without these aspects, employers find it difficult to generate profit, innovate, and ultimately, create or maintain jobs. Justice for employers means having an environment that allows them to conduct business soundly without being burdened by overly rigid regulations or disproportionate costs.

For example, by loosening the rules on Fixed-Term Employment Agreements (PKWT) and outsourcing, the Job Creation Law grants greater flexibility to employers in managing human resources. Normative justice here shifts to the employer's ability to adapt quickly to market dynamics, optimize costs, and remain competitive. The argument is that if companies can survive and grow, then job opportunities will also remain available.

The principle of equitable balance for employers and workers must focus on the long-term interests of both parties and overall socio-economic stability. This demands the Protection of Non-Derogable Fundamental Rights. Workers must retain the right to decent wages, safe and healthy working conditions, freedom of association, and protection from discrimination. This is the foundation of substantive justice that must not be sacrificed for the sake of economic flexibility.<sup>31</sup> Justice here means that employers are not entangled in rigid regulations that hinder growth, but this flexibility must be accompanied by social responsibility and must not lead to exploitation. For instance, PKWT flexibility must still have reasonable limits to prevent workers from being perpetually in an uncertain status.

Regarding Termination of Employment (PHK) due to economic reasons, there must be an effective safety net mechanism, such as a strong Job Loss Guarantee (JKP) for workers. This is a form of distributive justice, where economic risk is not entirely borne by the individual worker but is shared proportionally. For employers, this means that reducing the severance pay burden does not mean eliminating social responsibility entirely, but rather changing the form of that responsibility.

**Efficient and Fair Dispute Resolution:** Both employers and workers need a dispute resolution mechanism that is fast, transparent, and low-cost. Justice here is equal access to procedural justice, ensuring that every dispute can be resolved fairly without excessive time

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<sup>31</sup> Noviana, Eva, Toto Tohir Suriaatmadja, *Op.Cit*, page. 89.

and cost for either party. Inclusive Agreement: Equitable balance cannot be achieved only through top-down regulation but must involve constructive social dialogue among the government, employers, and workers (labor unions). Justice here means recognizing the voices and interests of all parties in formulating labor policy.

The comparison between the labor law and the Job Creation Law shows a shift in the value of normative justice balance towards employers. While the labor law tended to prioritize worker protection as a manifestation of justice, the Job Creation Law repositions the concept of justice for employers by emphasizing legal certainty, operational efficiency, and economic competitiveness, without eliminating the manifestation of justice for workers.

Implementation of the Principle of Balance related to Protection and Business Sustainability: Business Sustainability (Investment) requires employers to have a peaceful business environment, free from threats or destructive strike actions, to invest, innovate, and maintain corporate competitiveness, the goal of which is Increased Production and Productivity. Furthermore, welfare and rights protection require workers to have job security in the form of guaranteed rights, decent wages, and safe working conditions so that their human dignity is respected and their welfare increases, with the goal of increasing welfare and human dignity.

The Job Creation Law provides fairer legal protection for employers when viewed through the lens of the principle of balance oriented towards economic efficiency, business certainty, and reduced operational costs. This is the government's answer to the demand for creating a more competitive investment climate. However, the application of this principle of balance does not come without consequences

## **CONCLUSION**

The labor law represented justice that provided protection to workers, but conversely, it became a burden for employers. The enactment of the Job Creation Law shifts this toward a more flexible form of justice, where efficiency and ease of doing business are considered prerequisites for economic justice and job creation. The high-risk burden of PHK (Termination of Employment) and high labor costs regulated in the labor law have shifted toward a risk-sharing effort through schemes like the Job Loss Guarantee (JKP) in the Job Creation Law.

The principle of balance for employers and workers based on the Job Creation Law is realized through the adjustment and strengthening of existing labor regulations, although it does not explicitly change the fundamental concept of balance sought by the labor law. Some relevant aspects include Balance related to Welfare in rules on minimum wages, as an effort to realize the worker's right to a decent living, and adjustments to employment agreement rules, while maintaining protection of worker rights, such as the right to compensation if a Fixed-Term Employment Agreement (PKWT) is terminated prematurely.

Equitable balance for employers and workers does not mean equal division, but rather recognizing the strengths and vulnerabilities of each party, and formulating regulations that enable inclusive economic growth and adequate social protection. Both the labor law and the Job Creation Law attempt to achieve this balance, but with different approaches. Balanced justice is achieved when employers can grow and create jobs, and at the same time, workers enjoy their fundamental rights, a strong social safety net, and decent working conditions. Reaching this point requires continuous regulatory adaptation and the commitment of all parties to build industrial relations based on mutual trust and responsibility.

Despite the challenges, the Job Creation Law attempts to realize balance by providing a more comprehensive legal framework, both through adjustments in wage policy and the protection of workers' rights in employment agreements. However, the crucial question that remains a subject of discussion is whether the shift in values regulated in the Job Creation Law has reached an optimal point of balance, or if it has instead created a new imbalance, where justice for employers is achieved at the expense of some essential rights and protections for workers, or where justice and protection for workers sacrifice justice for employers.

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