



Regulations on the Job Creation Law regarding Job Loss Guarantees in the Context of Legal Protection for Workers

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ARTICLE INFO	ABSTRACT
<p>Keywords : Job Loss Guarantee; Legal Protection; Workers.</p> <p>Submitted: 2023-04-17</p> <p>Last revised: 2023-06-18</p> <p>Accepted: 2023-07-20</p> <p>DOI : 10.25077/alj.v8i1.42</p>	<p>Job Loss Guarantee (JKP) is a program created by the government for workers who experienced termination of employment (PHK) with benefits in cash, job market information, and job training. Workers are still overshadowed by the uncertainty of legal protection, including JKP. JKP has been guaranteed by the Job Creation Law Act No. 11 of 2020 and then published government regulation (PP) number 37 of 2021 concerning implementing the Job Loss Guarantee program. However, the regulation of Article 20 PP No. 37 of 2021 concerning JKP explains the benefits of JKP for participants who experience layoffs are excluded from dismissals due to resignation, total permanent disability, retirement or death. This study outlines two problems: how to follow up the Job Creation Law to protect workers? and the rights of workers if they experience job loss through termination of employment?. The research method used is juridical normative. Implementing the Job Creation Law made by the government to bring a change to the JKP system is expected to be carried out in the interests of workers. Then, the government, as the controller, constantly supervises the implementation of the Job Creation Law and the National Social Security System in the field so that workers will get legal certainty.</p>

1. Introduction

The state guarantees every citizen the right to work and a decent living. This is stated in the 1945 Constitution of the Republic of Indonesia Article 27, paragraph 2: "Every citizen has the right to work and a decent living for humanity". Therefore, any policies made by the government related to the work and economy of the Indonesian people should realize the feasibility of living and improve the people's economy. The Indonesian government has enacted Law Number 11 of 2020, concerning Job Creation, whose main objective is to create the broadest possible employment opportunities for the Indonesian people, increase the protection and welfare of workers, encourage government investment, accelerate economic transformation, and address overlapping regulatory issues.

Law Number 11 of 2020, concerning Job Creation, is a regulation that combines several principles with different regulatory substances but regulates adjacent fields under one legal umbrella. There are ten scopes held in this law, namely¹:

- 1) enhancing the investment ecosystem and business activities;
- 2) employment;
- 3) facilitation, protection, and empowerment of Cooperatives and MSMEs;
- 4) ease of doing business;
- 5) research and innovation support;
- 6) land acquisition;
- 7) economic area;
- 8) Central Government investment and acceleration of national strategic projects;
- 9) implementation of government administration; And
- 10) imposition of sanctions.

The law also regulates Job Loss Guarantee (JKP), intended for workers who lose their jobs. JKP is a guarantee given to workers who have experienced termination of employment (PHK) in the form of cash benefits, access to job market information, and job training. PHK is the termination of an employment relationship due to a particular matter with the condition that the employee is dismissed or no longer working from an agency or company because the employment relationship between the employer and the employee is terminated or the contract period is not renewed.

According to Zainal Asikin, the employment relationship is between the worker and the employer after a work agreement, in which the first party, the worker, binds

¹ 'Mengenal Omnibus Law – Latar Belakang Dan Tujuan', *Gajimu.Com*, 2023 <<https://gajimu.com/pekerjaan-yanglayak/omnibus-law-uu-ciata-kerja/omnibus-law-uu-ciata-kerja#2--apa--saja-regulasi-undang-undang-yang-akan-disusun-dengan-metode-omnibus-law->> [accessed 19 March 2023].

himself to the other party, the employer, to work for a wage. The employer declares his willingness to employ the worker by paying wages². JKP policy, as one of the new policies that aim to accommodate the high flexibility of the labor market, allows workers to enter and leave the labor market. JKP benefits can be disbursed with specific terms and conditions.

Quoted from the Indonesiabaik.id page, the following are the JKP disbursement requirements or JKP BPJS Employment claim requirements³:

- 1) Participants who have experienced termination of employment (PHK)
- 2) Participants have a contribution period of at least 12 months and have paid contributions for at least 6 consecutive months
- 3) Participants wish to work again
- 4) Registered in the Employment BPJS program

It should also be noted that claims for JKP BPJS Ketenagakerjaan applications are made immediately after layoffs for up to 3 months. If the 3-month period has passed, the JKP benefits are forfeited. Workers who resign, have a total permanent disability, retire, pass away, and PKWT whose working period has expired according to the contract period does not meet the criteria for JKP beneficiaries⁴. Cash benefits from JKP are provided for 6 months after workers affected by layoffs are verified by BPJS Ketenagakerjaan and fulfill the requirements as beneficiaries. So, workers who have experienced layoffs can meet their necessities of life adequately while trying to get a job back. According to statutory provisions, the JKP program does not replace the employer's obligation to pay severance pay. Further rules regarding JKP are regulated in PP Number 37 of 2021 concerning Job Loss Guarantee Organizers.

As the "youngest child" in implementing the social security program for workers in Indonesia, the JKP program bears a heavy burden because its presence is not enthusiastically responded to by the workers who are its legal subjects. For workers, the JKP program is seen as nothing more than consolation to cure the disappointment of workers and workers' organizations who lost in discussions on the Job Creation Law and will only help little workers who have been laid off due to the limited benefits provided⁵.

The existence of the JKP program also brings a glimmer of hope for improvement in the implementation of the social security program for workers or laborers because

² Zainal Asikin, *Dasar-Dasar Hukum Perburuhan* (Jakarta: PT. Grafindo Persada, 1993).

³ Andrian W. Finaka, 'Cara Daftar Program Jaminan Kehilangan Pekerjaan', *Indonesiabaik.Id*, 2022 <<https://indonesiabaik.id/infografis/cara-daftar-program-jaminan-kehilangan-pekerjaan>> [accessed 19 March 2023].

⁴ Nur Jamal Shaid, 'Simak Syarat Dan Cara Mencairkan JKP BPJS Ketenagakerjaan', *Kompas.Com*, 2022 <<https://money.kompas.com/read/2022/03/12/095000826/simak-syarat-dan-cara-mencairkan-jkp-bpjs-ketenagakerjaan?page=all>> [accessed 19 March 2023].

⁵ Fernandi Mahendrasusila, 'Dampak Penyelenggaraan Program Jaminan Kehilangan Pekerjaan Terhadap Sistem Jaminan Sosial Nasional Di Indonesia', *Jurnal Hukum Visio Justisia*, 1.1 (2021), 1–23.

they should be increasingly aware of the importance of their normative rights over participation in the social security program which is a requirement for obtaining JKP benefits. In addition, the oversight role of the competent agency will also be vital to preventing termination of employment so that the utilization of the program's operational budget or funds becomes more optimal and efficient⁶.

Based on the problems above, the writer can raise an issue to find a legal solution at this writing;

- 1) What is the follow-up of the Job Creation Law regarding Job Loss Guarantees to protect workers?
- 2) What are workers' rights if they experience job loss through termination of employment?

2. Method

This study uses a normative juridical research method with an assessment based on written regulations and other library materials⁷. The approach is to study the laws and regulations related to this research. Primary legal materials include the Job Creation Law, the National Social Security System Law, and Government Regulations. Meanwhile, secondary legal materials were obtained from books, articles and journals.

3. Follow-up of the Job Creation Law regarding Job Loss Guarantees to Protect workers

The Job Creation Law brought a change to the Job Loss Guarantee system. The Job Loss Guarantee Program (JKP) is social security created and added to the Previous National Social Security system (SJSN). SJSN is regulated in Law Number 40 of 2004 concerning the National Social Security System and Law Number 24 of 2011 concerning Social Security Administering Bodies⁸.

The social security program at the time the SJSN was formed consisted of only 5 programs: health, death, work accident, pension and old age insurance. The government is trying to expand efforts to protect workers by creating 1 social security program, JKP. The government created the JKP program to protect workers if later workers experience layoffs. To guarantee information or access related to employment to get a job back after being laid off and to get the opportunity to take part in job training.

⁶ Ibid.

⁷ Sri Mahmuji Soerjono Soekanto, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Depok: Raja Grafindo Persada, 2021).

⁸ Khairani, *Pengantar Hukum Perburuhan Dan Ketenagakerjaan* (Depok: Raja Grafindo Persada, 2021).

The presence of a job loss guarantee program is expected to be one of the Government's efforts to ensure the creation of legal certainty and worker welfare. Arrangements for adding job loss guarantee to the National Social Security System (SJSN) Law are contained in article 82 of Law Number 11 of 2020 concerning Job Creation which changes the articles in the Social Security Administering Body Law (BPJS) such as Article 6, Article 9, and Article 42 paragraph (2). Following up on Article 82 of the Job Creation Law, the Government issued Government Regulation (PP) Number 37 of 2021 concerning implementing a Job Loss Guarantee Program. With the issuance of a Government Regulation, Article 82 can be followed up so that the implementation goes well.

In Government Regulation (PP) Number 37 of 2021 Article 18, there are three benefits of the Job Loss Guarantee Program, namely:

1. Cash Benefits, organized by BPJS Employment, in which participants who have paid contributions are entitled to cash benefits every month for a maximum of 6 (six) times with the provision that the amount is 45% of wages for the first 3 (three) months and 3 (three) the following month of 25% of wages. Wages here are wages recorded or registered last at BPJS Ketenagakerjaan and do not exceed the upper limit of wages.
2. Benefits of Access to Labor Market Information, Organized by the Ministry of Manpower assisted by BPJS Ketenagakerjaan, which includes several services, namely labor market information services in the form of providing job vacancy data; and job guidance services in the form of self-assessment or self-assessment and career counseling.
3. Benefits of Job Training, benefits of job training are given to workers/laborers who still need to get a job and have received information or recommendations from a career counselor. Reporting from the government's official Job Loss Guarantee (JKP) website, there are several provisions for a job loss that cannot be used as a cause, namely:
 - a) Resigned
 - b) Retired
 - c) Permanent total disability
 - d) Died

PKWT workers whose working period ends according to the contract period⁹. According to the explanation that has been presented, it is clear that not all job losses will receive a Job Loss Guarantee. However, regarding pensions, there is a Pension Guarantee that the government has provided. According to Article 39, paragraph (1), pension guarantees are organized nationally based on the principle of social insurance or compulsory savings, which are held to maintain a decent standard of living when

⁹ 'Tentang JKP | Jaminan Kehilangan Pekerjaan', p. Jkp.go.id <<https://jkg.go.id/tentang>> [accessed 29 March 2023].

participants lose or reduce their income due to entering age or experiencing permanent total disability.

JKP participants are workers with a working relationship with the employer and have registered and paid contributions. To become JKP participants, workers must have a working relationship with the employer or entrepreneur and then be reported by the employer. JKP participation depends on conditions within the company because the requirements to become a JKP participant are to have or be registered as a participant in another social security program, namely:

- a) Work Accident Insurance;
- b) Death Guarantee;
- c) Old Age Guarantee; And
- d) Health Insurance

In addition, participants are not over 54 at the time of enrollment in the Job Loss Guarantee Program.

Workers are always overshadowed by the loss of a job. The Job Creation Law is here to provide Job Loss Guarantee. The government is trying to accommodate input and give a sense of security about legal certainty related job loss. However, it is good that the implementation of the Job Creation Law regarding to Job Loss Guarantee is going well in terms of regulation, facts on the ground, and the execution of the Job Loss Guarantee, and it is hoped that the follow-up of the Job Creation Law regarding to Job Loss Guarantee can become an umbrella for workers to protect them from the effects of job loss.

4. Workers' Rights When Experiencing Termination of Employment

Workers always overshadowed by layoffs continue to seek solutions and rights from workers if their contract period is not extended later. Entrepreneurs or companies may not unilaterally terminate the employment relationship. Termination of employment can only be carried out if the company has notified the worker in advance and the employee has given their approval for that. The government is trying to make regulations related to layoffs in Law Number 11 of 2020 concerning Job Creation which has amended several provisions stipulated in Law Number 13 of 2003 concerning employment to make it easier to do business and attract investment for investors.

According to PP 35 of 2021 in Chapter V, Article 38 regulates the mechanism for layoffs, workers who receive notification letters related to releases and do not refuse layoffs, the employer must notify the Manpower Office. Agreements related to layoffs are then poured into a collective agreement which will later be helpful for workers to benefit from the JKP program because this is one of the conditions for getting JKP.

PP 35 of 2021 in Chapter V Article 39 also regulates the layoff mechanism for workers who refuse layoffs. They must make a rejection letter within 7 working days of receiving the notification letter. Settlement of releases is first carried out by negotiation between employers and workers and/or trade unions. If the negotiations fail or do not reach a common wish, the settlement can be pursued through the industrial relations dispute resolution mechanism.

According to Article 40 paragraph (1) of Government Regulation Number 35 of 2021, it is stated that in the event of a layoff, the employer is obliged to pay severance pay and/or term award money. Work, compensation for rights that should be received¹⁰. The amount of severance pay is as follows¹¹:

- a. working period less than 1 year, 1 month wages;
- b. working period of 1 year or more but less than 2 years, 2 months wages;
- c. working period of 2 years or more but less than 3 years, 3 months wages;
- d. working period of 3 years or more but less than 4 years, 4 months wages;
- e. working period of 4 years or more but less than 5 years, 5 months wages;
- f. working period of 5 years or more but less than 6 years, 6 months wages;
- g. working period of 6 years or more but less than 7 years, 7 months wages;
- h. working period of 7 years or more but less than 8 years, 8 months wages;
- i. 8 years of service or more, 9 months wages.

Then, regarding the amount of Service Period Award Money (UPMK) as follows;

- a. working period of 3 years or more but less than 6 years, 2 months wages;
- b. working period of 6 years or more but less than 9 years, 3 months wages;
- c. working period of 9 years or more but less than 12 years, 4 months wages;
- d. working period of 12 years or more but less than 15 years, 5 months wages;
- e. working period of 15 years or more but less than 18 years, 6 months wages;
- f. working period of 18 years or more but less than 21 years, 7 months wages;
- g. working period of 21 years or more but less than 24 years, 8 months wages;
- h. 24 years of service or more, 10 months wages.

The provisions for Compensation of Rights (UPH) that should be received are as follows:

- a. annual leave that has not been taken and has not fallen;
- b. costs or fees for returning workers and their families to the place where workers are accepted to work;

¹⁰ Pasal 40 ayat (1) Peraturan Pemerintah (PP) Nomor 35 tahun 2021

¹¹ Pasal 81 angka 44 UU Cipta kerja yang mengubah Pasal 156 UU Ketenagakerjaan

c. other matters stipulated in the employment agreement, company regulations or collective bargaining agreement.

With the regulations made by the government, it is hoped that each agency and employer will implement them so that in the future, they are not arbitrary in terminating their employment relationship with workers. The government hopes that the Job Creation Law will facilitate and guarantee the continuation of workers rights if they are later laid off.

5. Conclusion

The government has enacted the Job Creation Law intending to create the most comprehensive and most equitable employment opportunities in all regions of Indonesia to fulfill the right to a decent living through the facilitation and protection of MSMEs, increasing the safety of workers welfare and accelerating national strategic projects. This Job Creation Law has accommodated several laws into one unit. Ease of investment for building the economy is indeed essential. However, legal certainty for workers is something that must be addressed.

The government's support for workers is needed in regulating this regulation, following the 1945 Constitution of the Republic of Indonesia Article 27 paragraph (2) that "Every citizen has the right to work and a living that is worthy of humanity". Therefore, any policies made by the government regarding workers and the Indonesian people's economy should include essential points to realize the ideals and fundamental objectives of the law, in this case, the feasibility of living and improving the people's economy. Laborers and workers are still overshadowed by the uncertainty of legal protection, including job loss guarantees.

In Government Regulation Number 37 of 2021 concerning the Implementation of the JKP Program, there are 3 benefits from JKP, namely:

1. Cash benefits
2. Benefits of access to labor market information
3. Benefits of job training

There are several provisions for a job loss that cannot be used as a cause, namely:

1. Resigned
2. Fixed total pension
3. Died
4. PKWT workers whose working period ends according to the contract period.

Implementation of the Job Creation Law made by the government to change the Job Loss Guarantee system is expected to be executed, and the facts on the ground can work in the interests of the workers. The government is present in providing a Job Loss Guarantee Program by offering benefits in the form of cash, job market information, and job training.

Expanding the National Social Security System, which adds Job Loss Guarantee to Social Security, is a good move. However, from an implementation perspective, many workers still feel the implementation of the Job Creation Law still needs to protect them. As the controller, it is best if the government constantly supervises the performance of the Job Creation Law and the National Social Security System in the field.

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