

# THEORY AND PRACTICE

Law  
Towards Era 5.0

Sebagai negara hukum, prinsip hukum dan asas yang dianut adalah bahwa setiap orang dianggap mengetahui hukum dan peraturan pada saat diundangkan; ketidaktahuan akan hukum tidak dapat dimaafkan. Ketidaktahuan akan hukum umumnya dialami oleh kelompok masyarakat yang tidak mengenyam pendidikan tinggi atau mereka yang berada dalam kategori ekonomi rendah. Mereka memerlukan keadilan.

Tujuan dari keadilan adalah untuk memastikan bahwa hukum tidak hanya terbatas pada kelompok tertentu, karena menempuh jalur hukum, atau mencari keadilan melalui jalur hukum dapat memakan biaya yang mahal. Oleh karena itu, pemberian bantuan hukum secara cuma-cuma kepada masyarakat miskin merupakan salah satu bentuk pemerataan keadilan. Namun, dalam implementasinya, pemberian bantuan hukum untuk mencapai keadilan masih rendah.

Uraian tersebut adalah salah satu pokok penting yang dibahas dalam buku ini. Pokok penting lainnya dapat Anda temukan dalam buku ini yang terbagi menjadi sembilan belas bab. Buku ini diterbitkan sebagai bacaan positif mengenai penerapan hukum di Indonesia. Selamat membaca!

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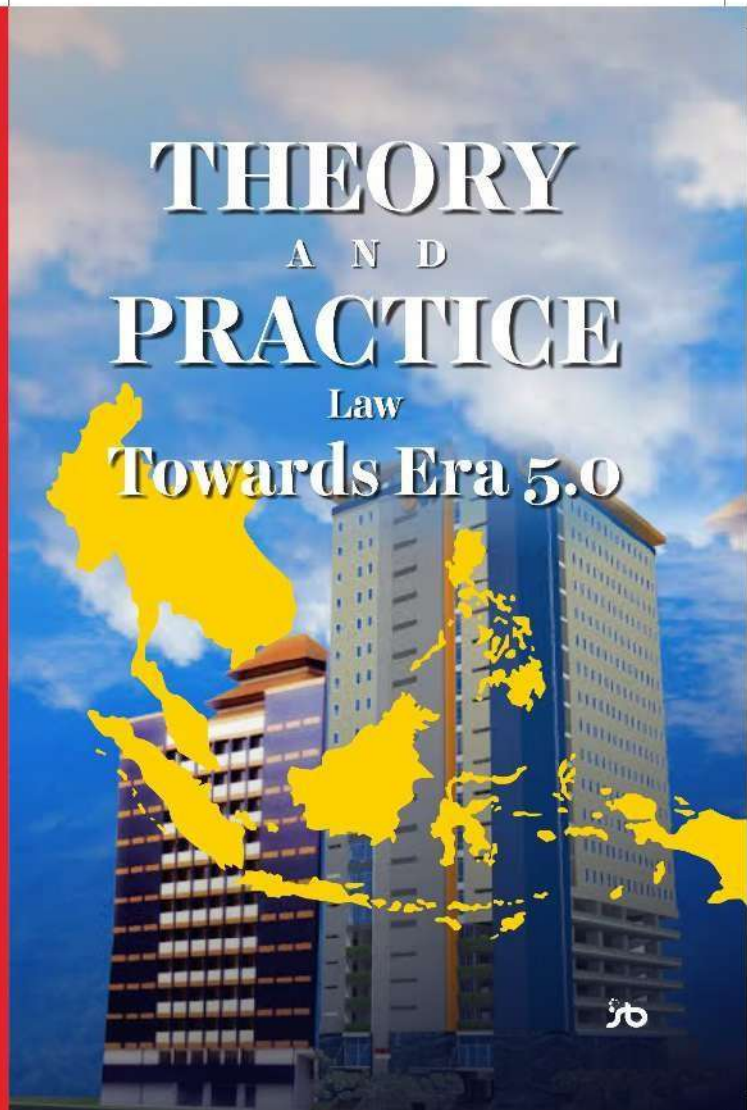
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Pustaka, Ilmu, Teknologi, dan Inovasi



# THEORY AND PRACTICE

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# **KATA PENGANTAR**

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Indonesia, sebagaimana dinyatakan dalam Pasal 1 Ayat 3 Undang-Undang Dasar 19fi5, menjelaskan posisinya sebagai negara hukum. Dalam sebuah negara hukum, prinsip hukum, asas yang dianut adalah bahwa setiap orang dianggap mengetahui hukum dan peraturan pada saat diundangkan; ketidaktahuan akan hukum tidak dapat dimaafkan. Ketidaktahuan akan hukum umumnya dialami oleh kelompok masyarakat yang tidak mengenyam pendidikan tinggi atau mereka yang berada dalam kategori ekonomi rendah.

Mereka memerlukan keadilan. Lujuan dari keadilan adalah untuk memastikan bahwa hukum tidak hanya terbatas pada kelompok tertentu, karena menempuh jalur hukum, atau mencari mencari keadilan melalui jalur hukum dapat memakan biaya yang mahal. Oleh karena itu pemberian bantuan hukum secara cuma-cuma kepada masyarakat miskin merupakan salah satu bentuk pemerataan keadilan.

Pasal 3fi Ayat 1 Undang-Undang Dasar 19fi5 menekankan kewajiban negara untuk hadir dalam kehidupan masyarakat.

Kehadiran ini menegaskan bahwa negara harus memastikan bahwa setiap warga negara atau anggota masyarakat mendapatkan hak-haknya yang tanpa diskriminasi. Proses bantuan hukum dapat diakses secara langsung oleh masyarakat melalui interaksi dengan para bantuan hukum. Menurut Pasal 22 Ayat 1 Undang-Undang Nomor 18 Tahun 2003, advokat wajib memberikan bantuan hukum secara cuma-cuma kepada pencari keadilan yang tidak mampu. Hal ini mendorong lahirnya Peraturan Pemerintah Nomor 83 Tahun 2008 tentang Persyaratan dan Tata Cara Pemberian Bantuan Hukum Secara Cuma-Cuma.

Berkaitan dengan hal tersebut, buku berjudul *Theory And Practice: Law Towards Era 5.0* ini hadir sebagai bacaan positif mengenai penerapan hukum di Indonesia. Pembahasan buku ini terbagi ke dalam 19 bab. Adapun bab pertama membahas tentang "Obstacles In Implementing Passport Issuance Services In The State Of The Covid-19 Pandemic And Its Solutions (Case Study In Class 1 Immigration Office Non-Lpi Langerang)" ditulis oleh Novita Romauli Batubara, Iri Cahya Indra Permana, Gamal Abdur Nasir.

Bab kedua berjudul "Keabsahan Dokumen Elektronik Sebagai Alat Bukti Yang Sah Ditinjau Dalam Hukum Acara Perdata" yang ditulis oleh Perdi Kustiana, Syafrizal, Agus Darmawan. Bab ketiga "The Role Of The Langerang District Government In Implementing A Social Protection Program For Vulnerable Workers Based On Law Number 2fi Of 2011 Concerning Social Security Implementing Agency" ditulis oleh Raddani, Ahmad, dan Upik Mutiara. Masih ada enam belas bab lainnya yang perlu Anda baca mengenai penerapan hukum di Indonesia. Selamat membaca!

Langerang, November 2023

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# **POLICY REGULATION OF CRIMINAL ACTIONS IN THE EMPLOYMENT FIELD IN LAW NO. 6 OF 2023 CONCERNING ESTABLISHMENT OF PERPPU NO. 2 OF 2022 CONCERNING JOB CREATION INTO AN LAW**

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## **Introduction**

Labor crimes are unlawful acts that can be committed by workers/laborers as well as employers or other parties outside the company that violate laws, Collective Labor Agreements, Company Regulations, Work Agreements that can be subject to criminal sanctions contained in Labor laws and regulations as well as those that have been regulated based on the Criminal Code (KUHP) either carried out individually or jointly.

On October 20, 2019 during the inauguration of the President of Indonesia for the 2019 – 2024 period in his speech,

Joko Widodo as President-elect submitted a proposal for the Formation of the Omnibus Law, according to the President, the messy bureaucracy in Indonesia was getting worse, so there was a need for simplification of regulations in a method, namely the Omnibus law which would change several laws through a new law. When the proposal was included in the government's priority agenda.

There was a rejection of the Omnibus Law, several institutions and trade unions/labor unions attempted a Judicial Review (JR) lawsuit against the Constitutional Court, during the long course of the Judicial Review (JR) session until November 25 2021 the Constitutional Court decided through Decision No. 91/PUU-XVIII/2021 if Law No. 11 of 2020 Concerning Job Creation is "Conditionally unconstitutional", and the government and the DPR were given 2 (two) years to make efforts improvement to the form.

However, the time given by the Constitutional Court was not used properly by the Government and the DPR in carrying out formal improvements to Law No. 11 of 2020 concerning Job Creation, the DPR only made amendments to Law No. 12 of 2011 concerning the Formation of Legislation by including several terms regarding the Omnibus Law, the procedure for its formation, while "Conditionally Unconstitutional" does not revise and change the provisions contained in the Law on Formation of Legislation but also how the Government should involve many the general public to hear their opinion. In fact, the President of the Republic of Indonesia, Joko Widodo, even issued Regulation in lieu of Law (Perpu) No. 2 of 2022 concerning Job Creation, which has the exact same substance as the contents of Law No. 11 of 2020 concerning Job Creation. This has increasingly caused a polemic in the community if the Government is increasingly

losing its mind just to force the Job Creation Law to be legal and effective immediately. This is also a form of “recklessness” by the Government which does not want to listen to input and opinions from the public in forming a rule/law. This is also a form of “recklessness” by the Government which does not want to listen to input and opinions from the public in forming a rule/law.

The issuance of Law No. 6 of 2023 concerning the Stipulation of Perpu No. 2 of 2022 concerning Creation of Work Becomes a Law concerning. This Perpu is an important legal basis in efforts to develop the employment sector in Indonesia. However, as with changes to other legal regulations, Law No. 6 of 2023 concerning the Stipulation of Perpu No. 2 of 2022 concerning Job Creation Becomes a Law also has significant implications for labor crimes.

The legal implications of Law No. 6 of 2023 concerning the Stipulation of Perpu No. 2 of 2022 concerning Job Creation to Become a Law against labor crimes cover various aspects that need careful attention. First of all, this Perpu introduces changes in the labor regulation procedure. Several existing provisions have been amended, including regarding business licenses, minimum wages, work agreements, and settlement of labor disputes. In the context of labor crimes, these changes can have an impact on law enforcement and penalties imposed for labor violations.

Apart from that, Law No. 6 of 2023 concerning the Stipulation of Perpu No. 2 of 2022 concerning Job Creation becomes law also introduces facilities for foreign investment in the employment sector. This has the potential to have an impact on the protection of labor rights, especially in terms of occupational security and safety. This implication can also affect labor crimes, because labor abuse or violations of work safety standards can occur more easily in situations where strict labor regulations are not applied effectively.

Furthermore, changes in Law No. 6 of 2023 concerning the Stipulation of Perpu No. 2 of 2022 concerning Job Creation to become law can also affect the relationship between workers and employers. For example, policies that allow the use of casual or outsourced workers can lead to job insecurity and make it difficult to identify labor criminal liability. Law enforcement in cases such as labor rights violations or discrimination could be made more complicated by this change.

In the context of the legal implications of Law No. 6 of 2023 concerning the Stipulation of Perpu No. 2 of 2022 concerning Job Creation to become a law against labor crimes, it is important for the government, law enforcement, and society as a whole to understand the consequences of this change. Careful monitoring of the implementation and implementation of this Perpu is necessary to ensure that workers' rights are protected and effective law enforcement against labor violations is carried out.

## **Discussion**

On March 31, 2022, the Government of Indonesia issued Government Regulation in Lieu of Law (Perpu) Number 2 of 2022 concerning Job Creation. This Perpu aims to increase investment and create jobs by reforming regulations in the labor sector. However, the ratification of this Perpu reaped pros and cons from various parties, especially from the workers. In Law No. 6 of 2023 concerning the Stipulation of Perpu No. 2 of 2022 concerning the creation of work to become this law, there is Chapter IV which discusses the employment cluster which contains several provisions regarding criminal sanctions for employment.

In Chapter IV Clusters per Article 77 to Article 83. These articles have significant legal implications for labor criminal sanctions in Indonesia. With regard to the criminal justice system

in Indonesia, M. Yahya Harahap stated that the criminal justice system outlined in the Criminal Procedure Code (KUHAP) is an integrated criminal justice system that is based on the principle of “functional differentiation” among law enforcement officials in accordance with the “stages of the process of authority” granted by law to each. (M. Yahya Harahap, 2020).

This criminal justice system was formed as a system that has the goal of controlling crime in society. As it is known that the problem of crime, according to Benedict S. Alper, is the oldest social problem and in connection with the problem of crime, more than 80 (eighty) International Conferences have been recorded, which began in 1825 to 1970 which discussed efforts to tackle crime. (Amrullah, Arief, 2006, p. fi).

Crime or criminal acts are a form of “deviant behavior” that always exists and is inherent in every form of society; no society is free from crime. According to Saparinah Sadli, deviant behavior is a real threat or a threat to social norms that underlie life or social order; can lead to individual tensions as well as social tensions, and constitute a real or potential threat to the continuation of social order.

Against this oldest humanitarian and social problem, many efforts have been made to overcome it in various ways. One of the efforts to prevent and control crime is to use criminal law with sanctions in the form of punishment. (Muladi, Barda Nawawi Arief, 2005, p. 1fi8)

Marc Ancel once said that “modern criminal science” consists of three components “Criminology”, “Criminal Law” and “Penal Policy”. He stated that “Penal Policy”. is a science as well as an art which ultimately has a practical objective to enable positive legal regulations to be better formulated and to provide guidance not



only to legislators, but also to courts that apply laws and also to administrators or executors of court decisions. (Barda, Nawawi Arief, 2020, p. 19).

According to Soerjono Soekanto, criminalization is an act or determination of the authorities regarding certain actions which are considered by the community or groups of people to be acts that can be sentenced to become criminal acts or to make an act into a criminal act and therefore can be punished by the government by working on his behalf. (Soejono Soekanto, 1981, p. 62)

Related to the explanation regarding the criminalization, it can be concluded that any actions by employers towards workers/laborers that cause harm both materially and spiritually, actions that are not wanted by society (in this case especially workers/laborers), can be criminalized into a crime. Related to the process of criminalizing the actions of employers that cause losses, in order to uphold justice and welfare of workers/laborers, protect the rights and obligations of workers/laborers from the arbitrariness of employers, as well as to create a deterrent effect on employers, laws have been formulated that specifically regulate actions that are considered detrimental to workers/laborers as a crime which is punishable by a sanction in the form of a criminal sentence.

An employment crime is a violation of applicable labor law rules and needs to be subject to criminal penalties. As regulated in Law no. 13 of 2003 concerning Manpower, violations of labor rights are divided into 2 (two) categories of criminal acts, namely: criminal acts and violations.

The criminal sanctions regulated in Law No. 6 of 2023 concerning the Stipulation of Per pu No. 2 of 2022 concerning the Creation of Work Into the Law on Job Creation have undergone many changes, there are several things that are still

being maintained, some that have changed, and some that have been deleted. Some of the criminal sanctions regulated in Law No. 6 of 2023 concerning the Stipulation of Perpu No. 2 of 2022 concerning Work Creation Becomes a Law concerning work copyright include:

1. Criminal sanctions for employers who terminate employment (PHK) unilaterally. This article states that employers who unilaterally terminate a job can be subject to a criminal sanction of imprisonment for a maximum of fi (four) years and/or a fine of up to Rp. fi00 million. In addition, employers who unilaterally lay off can also be subject to administrative sanctions
2. Criminal sanctions for entrepreneurs who do not fulfill the obligation to pay wages in accordance with applicable regulations. This article states that entrepreneurs who do not fulfill these obligations may be subject to criminal sanctions with imprisonment for a maximum of 2 (two) years and/or a fine of up to Rp. 200 million.
3. Criminal sanctions for employers who do not provide occupational health and safety protection for their workers. This article states that employers who do not provide occupational health and safety protection for their workers may be subject to a criminal sanction of imprisonment for a maximum of 2 (two) years and/or a fine of up to Rp. 200 million.
- fi. Criminal sanctions for employers who discriminate against workers. This article states that employers who discriminate against workers may be subject to a criminal sanction of imprisonment for a maximum of 2 (two) years and/or a fine of up to Rp. 200 million.

5. Criminal sanctions for employers who employ minors. This article states that employers who employ minors can be subject to a criminal sanction of imprisonment for a maximum of 5 (five) years and/or a fine of up to Rp. 500 million.

Changes Related to Employment Criminal Sanctions in Law No. 6 of 2023 concerning the Stipulation of Perpu No. 2 of 2022 concerning Creating Work Becomes Law brings a number of changes related to labor criminal sanctions. Some important implications that need to be considered include:

1. Increasing Criminal Sanctions  
Law No. 6 of 2023 concerning the Stipulation of Perpu No. 2 of 2022 concerning Creation of Work Becomes a Law tightening criminal sanctions for labor violations. This is intended to encourage company compliance with labor regulations and protect workers' rights. This increase in criminal sanctions can be in the form of higher fines or prison sentences for violators.
2. Expansion of Types of Violations  
This Perpu also regulates the expansion of the types of labor violations that can be subject to criminal sanctions. Violations such as abuse, discrimination, or violations of workers' rights can be grounds for filing criminal charges against the parties involved.

### *Impact and Implications*

The implications of this change in labor criminal sanctions are as follows:

1. Increasing Company Awareness and Compliance  
Increasing criminal sanctions can provide strong incentives for companies to comply with labor

regulations. In order to avoid the risk of more severe penalties, companies are expected to be more careful and comply with applicable labor standards.

2. Protection of Workers' Rights

This change is expected to increase the protection of workers' rights. With stricter criminal sanctions, perpetrators of violations will think twice before taking actions that harm workers. This provides a sense of fairness for workers and promotes a safer and fairer work environment.

3. Increasing the Effectiveness of Law Enforcement

With the expansion of the types of violations and corporate criminal responsibility, law enforcement against labor violations is expected to be more effective. This implication is expected to prevent violations involving individuals and companies by threatening them with serious legal consequences.

## Conclusion

Law No. 6 of 2023 concerning the Stipulation of Perpu No. 2 of 2022 concerning Creation of Work Becomes a Law, specifically Chapter IV of the Labor Cluster, bringing about significant changes related to criminal sanctions for employment. Increasing sanctions, expanding the types of violations, and corporate criminal responsibility are some of the important implications that need attention. It is hoped that this will encourage company compliance with labor regulations, protect workers' rights, and increase the effectiveness of law enforcement in the field of employment.

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