



THE IMPACT OF THE JOB CREATION LAW ON WORKER'S RIGHTS IN INDONESIA

COLOPHON

Copyright ©2023 CNV Internationaal and Mondiaal FNV

Researcher/Author: Giri Ahmad Taufik

Co Authors: Samuel Gultom, Tia Mboeik, Astri Suryandari and Ben Vanpeperstraete

Data collection: For the data gathering, this report could benefit from the involvement of the 3 Federations (FSPM Sinarmas, FSP BUN EHP and FSP Minamas) within the South Borneo Palm Oil Plantation Union (Serikat Buruh Sawit Kalimantan Selatan, Serbusaka) and the union Indonesia Plantation Worker Union (Serikat Buruh Perkebunan Indonesia, F-SERBUNDO) for the plantation sector, and the Federations of Garment and Textile (Garteks) for the garment sector. Period of Interviews March-August 2022.

Date: February 2023

Design: DTP-Studio-Aelberts

TABLE OF CONTENTS

I. INTRODUCTION	3
II. THE JOB CREATION LAW AND THE DETERIORATION OF WORKER RIGHTS	5
A. Inadequate Minimum Wage Growth	5
B. Increased vulnerability for piece-rate workers	6
C. Increased the risk of excessive overtime	6
D. Increased contract flexibility	7
E. Increased and prolonged use of short-term contracts	8
F. Lower severance payments	9
G. Undermining of Freedom of Association and Collective Bargaining	10
H. Minimum/Inadequate Social Security Protection	11
IV. CONCLUSIONS	12
IV. RECOMMENDATION	13
ANNEX 1: OVERVIEW OF RELEVANT REGULATIONS	14



I. INTRODUCTION

In 2020, the Indonesian government passed the controversial Job Creation law (Law nr. 11/2020). The law is based on the premise of generating economic growth by creating a more investment-friendly climate.¹ To foster a conducive business environment, sweeping administrative reforms were carried out by passing the 905 pages bill, containing 185 separate articles which would revise 76 existing laws. In the world of work, and workers' rights, the new law significantly decreased existing labour rights protection and undermined working conditions, making the reform highly controversial. Despite the claim that the new law will create more job opportunities, the bill was first and foremost met with wide opposition by the public and various groups, including more than 40 civil society organisations and 32 labour unions,² all claiming that the government designed the Job Creation law to attract more investors at the expense of worker rights.

In November 2021, the Indonesian Constitutional Court (MK) declared the Job Creation Law unconstitutional, however, only on procedural grounds.³ The government was given a two-year deadline to revise the Job Creation Law. In case no improvements are made, the previous Manpower Law will again apply. In response to the criticism of the lack of public consultation and transparency, the Constitutional Court equally encouraged the government to ensure better public participation in any new law.

Despite the conditions outlined by the court, the government went ahead and implemented the new calculation method derived from the Job Creation Law to set the minimum wage for 2022. Unsurprisingly, given the weakened wage increase, the Indonesia Employers Association of Entrepreneurs (*Asosiasi Pengusaha Indonesia*, APINDO) has backed the government's reasoning, claiming the Constitutional Court decision does not nullify the substance of the Job Creation Law and thus, can still be applied.⁴ Meanwhile, in May 2022, in an attempt to address the concerns of the Constitutional Court, the ruling coalition amended the procedural rules with the passage of bills with a clear objective to re-introduce the Job Creation Law rather than amending the law or improving the process.⁵

This report analyses the impact on workers' lives following the Job Creation Law by comparing it to its predecessor, the 2003 Manpower Law⁶. Furthermore, this report aims to make the negative impacts of these regulatory changes on the daily livelihood of workers tangible. To do so, this report is grounded in interviews with 6 trade union federations (5 in the palm oil sector and 1 in the garment sector) and their members in two heavily impacted sectors, namely the plantation and the garment-textile sector:⁷ Three trade union federations in South Kalimantan (FSPM Sinarmas, FSP BUN EHP and FSP Minamas) that are part of the South Borneo Palm Oil Plantation Union (Serikat Buruh Sawit Kalimantan Selatan, SERBUSAKA), the Federation of Indonesia Plantation Workers Union (F-SERBUNDO) in Sumatra and GARTEKS (Garment and Textile Trade Union Federation), associated with the Confederation of All Indonesian Trade Union (KSBSI). However, it is reasonable to assume that similar dynamics are also visible in other sectors in Indonesia.

These case studies identify several possible violations of international labour standards. These include dismantling the role of collective bargaining, excessive working hours, non-payment of minimum wage, aggravation of working conditions, and deterioration of workers' well-being and occupational health and safety. These impacts on the life of workers should be sufficient concern for the Indonesian Government to take concrete actions. Also, the EU, who has updated its trade policy with a stronger focus on implementation of labour rights and who is currently in negotiation with Indonesia, should make the respect and protection of workers' rights a key concern in the negotiations.

¹ China Ghaliya, Omnibus bill on job creation passed into law despite opposition, *Jakartapost.com* <<https://www.thejakartapost.com/news/2020/10/05/omnibus-bill-on-job-creation-passed-into-law-despite-opposition.html>> retrieved at 5 October 2020.

² Kharishar Kahfi, 12 Reasons Why : Activists Enumerate Reasons to Reject 'Colonial Spirited' Omnibus Bill, *TheJakartaPost*, <<https://www.thejakartapost.com/news/2020/01/30/12-reasons-why-activists-enumerate-reasons-to-reject-colonial-spirited-omnibus-bill.html>>, retrieved at 3 July 2022, and News Desk, Workers return to street to protest against jobs law, demand wage hike, *The Jakarta Post*, <https://www.thejakartapost.com/news/2020/11/02/workers-return-to-street-to-protest-against-jobs-law-demand-wage-hike.html>, retrieved 3 July 2022.

³ The formation of Job Creation Law is not in accordance with the mandatory procedures stipulated in 1945 Constitution Law and Law 12/2011.

⁴ Ade Irma Junida, APINDO Sebut Putusan MK Soal UU Cipta Kerja Tak Berdampak Serius (Apindo states, Constitutional Court Decision on the Job Creation Law does not have serious Impact), *Antara* <<https://www.antaranews.com/berita/2547045/apindo-sebut-putusan-mk-soal-uu-cipta-kerja-tak-berdampak-serius>> retrieved at 29 July 2022.

⁵ Ardito Ramadhan, DPR Sahkan Revisi UU PPP, Atur Metode "Omnibus Law" (The House of Parliament Passed Law-Making Law, that Governs Omnibus Method), < Government Regulation Number 37 Year 2021 on Unemployment Benefit Program> retrieved at 23 July 2022.

⁶ Law Number 13 Year 2003 on Manpower.

⁷ For the data gathering, this report could benefit from the involvement of the 3 Federations (FSPM Sinarmas, FSP BUN EHP and FSP Minamas) within the South Borneo Palm Oil Plantation Union (Serikat Buruh Sawit Kalimantan Selatan, Serbusaka) and the union Indonesia Plantation Worker Union (Serikat Buruh Perkebunan Indonesia, Serbundo) for the plantation sector, and the Federations of Garment and Textile (Garteks) for the garment sector. Period of Interview March -August 2022.



II. THE JOB CREATION LAW AND THE DETERIORATION OF WORKER RIGHTS

The report identifies and highlights several areas where the Job Creation Law negatively impacts the lives of workers, namely inadequate minimum wages and longer working hours; limitless flexibility; a reduction of freedom of association and social dialogue; and reduced social security protection and coverage. It first discusses the changes in the legislative framework and complements these with the outcome of field research with the trade unions in both sectors.

A. INADEQUATE MINIMUM WAGE GROWTH

The Job Creation Law has made substantial changes regarding the calculation of the minimum wage. The new regime shifts from a decent wage calculation based on purchasing power to a safety net calculation. Under the 2003 Manpower Law,⁸ the minimum wage was based on three components namely the tripartite negotiated wage basket (*Komponen Hidup Layak*),⁹ productivity, and economic growth. The Job Creation Law introduced a new formula in which there is only reference to data provided by the National Agency of Statistics including purchasing power parity, economic growth, and median wages.¹⁰

In consequence, the connection between the statutory minimum wage and the cost of living is weakened and thus no longer adequately counterbalances rising inflation for minimum wage earners. This in turn reduces the capacity of wage earners to maintain or raise their standard of living and those of their families. More concretely, in 2022 the government decided on an average minimum wage rise of only 1,09%,¹¹ which trails far below previous increases. In 2021, the minimum wage saw an 8,5% increase, and in the 8 years before the Job Creation Law, there was an average nominal increase of the minimum wage of 10,08%.¹¹ Considering inflation, this still meant an average increase of minimum wages of 3,46% in real terms.¹³ However, the 2022 inflation is expected to amount up to 4,2%,¹⁴ which means that the nominal wage increases of 1,09% results in a decrease in real terms. This means that the purchasing power of workers and their families decreases. As a result, it becomes more difficult for workers and their families to meet their basic needs and increasingly puts families in a precarious position.

In the garment and textile sector, trade union federation Garteks has documented a significant increase of members who are compelled to take a second job for additional income, either as street vendors during the weekend or as after-hours motorcycle ride-sharing workers, leaving little time for family and other social activities.¹⁵ In the plantation sector, the situation is even worse since many workers live in secluded and remote areas, with limited availability of opportunities for an auxiliary income. Some workers do perform additional work on individual-owned plantations during their after-work/holiday time. However, this opportunity is only available for harvesters or planters, and other workers have no or limited opportunity to look for additional income. In many cases, the workers are forced to borrow money to cover the cost of living, making workers vulnerable to debt bondage.¹⁶

⁸Article 43 Government Regulation Number 78 Year 2015 on Wages.

⁹The latest KHL Component (basket of goods) consists of 60 commodity prices: food, clothes, entertainment, and saving. The commodity components were evaluated every five years by the tripartite wage council. See Ministry of Manpower Regulation Number 21 Year 2016 on Decent Living Component with its subsequent amendment.

¹⁰The decent wage components have been replaced by average household consumption. Article 26 par (6) Government Regulation Number 36 Year 2021 on Wages.

¹¹Adi Wikanto, UMP 2022 siap berlaku di 34 provinsi, ini perbandingan dengan tahun 2021 (The 2022 province wage in 34 Provinces, this is the comparison with 2021) 03 December 2022, < <https://nasional.kontan.co.id/news/ump-2022-siap-berlaku-di-34-provinsi-ini-perbandingan-dengan-tahun-2021>> retrieved at 24 July 2022.

¹²The calculation is based on national average minimum wage data provided by National Statistical Agency.

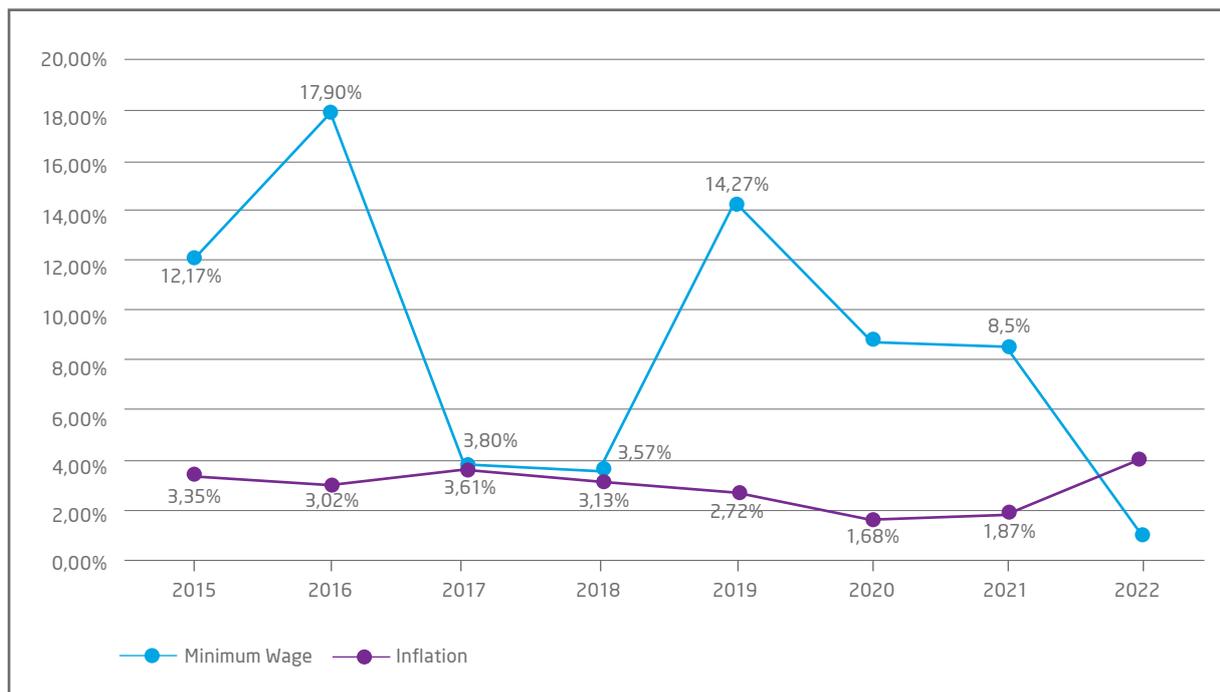
¹³Calculation based on data by Indonesia Central Bank Statistic Inflation Statistic, <https://www.bi.go.id/id/statistik/indikator/target-inflasi.aspx> and <https://www.bps.go.id/indikator/19/220/1/upah-minimum-regional-propinsi.html>.

¹⁴Maikel Jefriando, BI Ramal inflasi Indonesia tembus 4,2 % pada 2022 (Indonesia Central Bank projected 2022 inflation reached 4,2 %), 15 June 2022 < <https://www.cnbcindonesia.com/news/20220615112039-4-347213/bi-ramal-inflasi-indonesia-tembus-42-pada-2022>> retrieved at 24 July 2022.

¹⁵Interview with Garteks representative, 1 August 2022.

¹⁶Interview with Serbundo representative, 3 August 2022 and its sufficient to mention only Serbusaka representatives, 28 May 2022.

MINIMUM WAGE GROWTH COMPARED TO INFLATION RATE



B. INCREASED VULNERABILITY FOR PIECE-RATE WORKERS

The new situation is even worse for workers under a piece-rate system of wages. Previously, the Manpower Law 2003 provided two protection mechanisms. Firstly, the resulting daily wage of the rate per piece could not be lower than the daily minimum wage for the last twelve months. Secondly, for work where the product yield is dependent on the weather (such as work in the field), the wage should be calculated based on the monthly rate for the last twelve months.¹⁷ These two provisions provided certain protection for the workers and provided a minimum floor during negotiations on their wages. However, the Job Creation Law has eliminated these minimum protections and stipulates that the piece-rate wages are solely based on negotiations between workers and employers.¹⁸

This research has documented the situation of harvesters on a plantation* in South Kalimantan currently receiving a daily fee of only IDR 98.000 (EUR 6.5). Under the Manpower Law 2003, such a daily wage would have been illegal since the daily fee is below the daily minimum wage of South Kalimantan which is Rp.145.323 (EUR 9.6).¹⁹ The Job Creation Law has legalized that individual worker management negotiations would result in such a daily wage and the corresponding de facto working hours. Furthermore, during the low season, this wage is even further eroded as workers are required to harvest 1.2 tonnages of fruits, a target that cannot realistically be achieved in a day. Hence, the workers need to compensate the target the next day, creating longer working hours and de facto further eroding the wage structure.²⁰

C. INCREASED RISK OF EXCESSIVE OVERTIME

The Job Creation Law is also more lenient in terms of overtime compared to the previous legal regime. The Law sets the new standards to a maximum of 4 hours in a day and 18 hours in a week, compared to 3 and 14 hours previously.²¹

¹⁷Article 157 par. (3) and (4) Manpower Law 2003.

¹⁸Article 18 par (1) and (2) GR 36/2021.

¹⁹Akhdi Martin Pratama, Deretan UMP 2022 di Pulau Kalimantan, Mana Paling Besar? (List of Minimum Wages Provinces in Borneo, which is the biggest ?), 26 November 2011 < <https://money.kompas.com/read/2021/11/26/130000426/deretan-ump-2022-di-pulau-kalimantan-mana-paling-besar-?page=all> > retrieved at 20 August 2022.

²⁰Interview with SERBUSAKA representative Serbusaka representative, 28 May 2022.

²¹Article 81 Number 22 The Job Creation Law.

*The names of plantations, factories and workers are anonymized in this report. All the names are known to the authors of this publication.

Research by Garteks highlights that increased overtime does not lead to more income. Interviews reveal that overtime in the garment sector is more a matter of company policy, with the company deciding unilaterally about overtime, than an occasional mutually agreed decision. Concretely, most overtime work is de facto used as a penalty (skor jam). This penalty applies to workers who missed a production target during working hours, or when the product has been rejected. The performed overtime does not result in extra remuneration.²²

D. DECREASED JUDICIAL OVERSIGHT OVER TERMINATIONS

The Job Creation Law dismantles a crucial safeguard on the termination and short-term contracts compared to the 2003 Manpower Law 2003. It became easier to unilaterally terminate the employment relationship by removing the mandatory judicial scrutiny. Previously, the dismissal process required the approval of the labour court, which evaluated the concrete case and guarded the implementation of the rights of the workers. Both the worker and the employer had to bear the court costs. Under the Job Creation Law, this option is only available upon request of the worker, who must bear the associated costs.

Given the costs of accessing judicial oversight and the uncertain remedy, workers are less inclined to enforce statutory protections in the case of termination. As a result, employers have increasingly started to pay sub-legal severance payment amounts. For example, Garteks has reported over 11.830 instances of terminations where workers have not received full severance payments in the garment sector alone.

Similar dynamics are at play in the palm oil sector. For example, the union Serbusaka has documented the mass termination in a plantation. The dismissal disregarded several workers who would have already been entitled to permanent status under the Manpower Law 2003. Additionally, several procedural violations were found, such as notice being communicated less than 14 days before the dismissal, as well as verbally instead of in writing as required by the law. Additionally, the amount of compensation fell short of the legal requirements.²³ Under the Manpower Law 2003, the court would review all the substantive and procedural requirements for dismissal before the companies could terminate employment which guaranteed worker rights and would have minimized potential violations regarding employment termination.

Dewi is 31 and is a mother of 2 children aged 13 and 4 years.

She was one of 23 workers at a palm oil plantation in South Kalimantan who were unilaterally laid off in June 2022. She received verbal notice despite signing an extension of her contract for another year earlier in the month. This was the 7th 1-year employment contract she has signed. Under the Manpower Law 2003 Dewi should have been converted to a permanent position, and such a unilateral verbal dismissal would have been illegal and uncovered under standard judicial scrutiny.

Her monthly salary was around the provincial minimum wage of IDR 2,9 million (EUR 190), but her take-home pay was only IDR 2.5 million (EUR 163) because of an IDR 500,000 (EUR 33) social security contribution and rice allowances. However, these deductions were not reflected in her pay slip and she never received a copy of any signed work contract.

Dewi: "I do not understand why the layoffs were carried out, did I do something wrong? Even though I had just signed a contract as sprayer a month before. "Now I don't know where to look for a job, I solely have to depend on my husband".²⁴

Dewi's husband still works in the same company, as a security guard. He is equally on a short-term contract, even though he started working before 2006 and earned a salary of IDR 2.4 million for 21 working days.

²²Garteks representative interview. 1 August 2022.

²³Interview representative Serbusaka, 21 July 2022.

²⁴Interview with Dewi, 22 August 2022.

Dewi: “In the past, we had 3-4 kinds of food on the table; chicken, vegetables and pumpkin. I was able to buy 1 rack of eggs (30 eggs) and longan or apples. Now we have only one kind of food for our meals. I cannot buy fruits anymore because it is too expensive, and no fruit trees can grow here”, explained Dewi. What about the children, do they feel the difference too? “Yes, of course, I cannot buy snacks anymore for the children. Now I have to buy school clothes in instalments at the cooperative, not to mention the monthly tuition fee. Previously, when I worked, I could immediately pay (in full)”, she replied. Even though Dewi’s child attends a public school, every year the parents must set aside costs for uniforms and books, as well as for monthly tuition fees. For her child who enters middle school Dewi must set aside 566,000 rupiah and 80 thousand rupiah for monthly tuition fees.

E. INCREASED AND PROLONGED USE OF SHORT-TERM CONTRACTS

The Job Creation Law has equally changed the allowed limit from temporary contracts from 3 years previously up to 10 years. It further removed the automatic conversion from a temporary to a permanent worker in case the company extended the temporary working contract more than two times. Furthermore, it has also removed restrictions on outsourcing based on the type of work. Previously, under the Manpower Law 2003, outsourcing was only justified if it was unrelated to its main production/business, such as cleaning services, security, or other supporting roles in companies.²⁵

Trade union Garteks has identified several companies which have adopted a more flexible recruitment policy under the new legal regime. These companies terminated workers with permanent status, only to be rehired, either as temporary contract workers or outsourced workers.²⁶ Additionally, data by Garteks indicates an increased reluctance of companies to recruit workers under a permanent worker status, and corporate hiring has shifted to prefer to recruit workers under a temporary contract status or outsource hiring. Indeed, before the Job Creation Law, the number of temporary workers was on average around 45%. However, afterwards, this rose to 55 % of the workforce being temporary workers.²⁷

Similarly, in the plantation sector, Serbundo has observed an increased trend of companies unilaterally dismissing workers to move them under more flexible contracts. In the plantation sector the increased time in which short-term contracts can be used, from 3 to 10 years, seems appealing to employers.²⁸

Tono (26) is a garment factory worker in Central Java. He lives together with his wife, Ratna (24), and a three-year-old. Tono started working as a sewing labourer at a garment factory in 2018 and earns a salary of IDR 2.3 million/month (150 EUR). Although his salary matches the Central Java Provincial Minimum Wage, it is insufficient for the needs of the family. Tono’s wife works in another garment company earning IDR 1.9 million/month (124 EUR). But then Tono’s wife was no longer employed at the factory, but laid off due to COVID-19 reasons.

To earn this wage, Tono must work long extra-legal hours. Workers are supposed to go to work every day from 7.30 am to 4.30 pm. Tono performs additional working time of around 2 hours -for which he gets compensated. However, due to the target system, Tono is equally forced to have unpaid overtime of 2 to 2.5 hours per day.

As for the company, they employ around 1300 workers, all of them are contractual. There are no permanent workers, despite some of them having worked there for more than 3 years. Instead, the factory only foresees one-year contracts. Tono’s contract from 2018 - 2019 is 1 year, then his contract was extended in 2019-2020 for one year, and his third contract extension in 2020-2021 was also 1 year. More recently he received his fourth contract extension for 2021-2022, again for 1 year. Under the original Manpower Law No. 13 of 2003, Tono would have become a permanent worker in the third year after entering service.

²⁵Article 65 par (2) Manpower Law 2003.

²⁶Documented by Garteks Federation.

²⁷Interview with Garteks representative, 1 August 2022.

²⁸Serbundo representative interview. 1 August 2022.

In 2021, Tono and the other 400 employees of the factory formed a union. Tono was chosen to be the head of the union and began to critically question the existing working conditions of the factory management, including long working hours and contracts. The union also asked the factory to enter negotiations to conclude a CBA, instead of relying on the existing company regulations for labour rights.

In 2022, after the ratification of the Job Creation Law, the management offered Tono and other union officials a 3-month probation contract, whereas other workers were offered a 1-year contract. Having worked for several years in the company, Tono and his colleagues refused the offer. The union then filed a dispute with the local manpower office, which is currently still pending. In reaction, the management interpreted the refusal to accept the 3-month contract as a termination and thus offered compensation as stipulated in the Job Creation Act. Tono and his colleagues refused to accept this severance package, notably as it would mean agreeing to leave the company, even though the case is still pending at the manpower office.

F. LOWER SEVERANCE PAYMENTS

The Job Creation Law has changed the calculation of severance payment, resulting in a decrease of severance payments of between 13 % to 64 % compared to the 2003 Manpower Law 2003, depending on the applicable scenario. In addition, while the law still foresees the compensation as a pillar of the severance package, it does remove the housing/healthcare provision which is set at 15% of the severance and/or service pay. The following table summarizes the severance gap between the Manpower Law of 2003 and the Job Creation Law under several scenarios. It provides an estimate of the quantifiable difference for a worker with 5-year seniority combining the severance and service pay. Although equally lowered, the compensation is excluded from the calculation as this now only includes unused holidays, the cost to return home, and additional elements per a collective bargaining agreement.

REASON FOR DISMISSAL	SEVERANCE PACKAGE		
	MANPOWER LAW 2003	THE JOB CREATION LAW	GAP BASED ON 5 YEARS OF SENIORITY
Company Closure (financial loss, force majeure and bankruptcy)	1x severance pay, 1x service pay, compensation	0,5 x severance pay, 1x service pay, compensation	37,5%
Merger or Acquisition	1 or 2x severance pay (depending on the employees agreement/disagreement), 1x service pay, compensation	1x severance pay, 1x service pay, compensation	Same or 42,8%
Companies Closed Down Due to Non-Financial Loss, i.e moving abroad, etc	2x severance pay, 1x service pay, compensation	1x severance pay, 1x service pay, compensation	42,8%
Efficiency measures to prevent losses	2x severance pay, 1x service pay, compensation	1x severance pay, 1x service pay, compensation	42,8%
Efficiency measures resulting from financial losses	2x severance pay, 1x service pay, compensation	0,5x severance pay, 1x service pay, compensation	64,2%
Retirement	2x severance pay, 1x service pay, compensation	1,75 x severance pay, 1x service pay, compensation	13 %

Asep Muliana is 31 years old and a factory worker at a garment factory. Asep has worked at this company for 7 years. Over these years, Asep remained a temporary contract worker.

Asep and his colleagues have suffered several labour rights violations over the years, ranging from disrespecting the annual leave, unclear employment relationships, and sub-legal wages. In response, Asep and his colleagues formed a union and affiliated with the Federation of Garteks, and Asep was elected chairman.

After registering the union, the union contacted the company management at the end of 2020. In response, several unionized workers were dismissed due to efficiency reasons. The union has made several attempts to enter bipartite negotiations regarding these unilateral layoffs, but without any response. Instead, the company started an intimidation and anti-union campaign, pressuring employees to resign from the union.

With the breakdown of the negotiations, a strike was held. During the strike, 20 more members of the union were terminated or their contract was not prolonged, again framed as an efficiency measure. After seeking judicial recourse against these terminations, the Industrial Relations Court did maintain the termination, but clarified that the workers should have been considered permanent workers as per the Manpower Law 2003 and thus adjusting positively the severance package. However, upon appeal by the company, the Supreme Court applied the calculation in the Job Creation Act, despite that the facts predate its entry into force. This move drastically reduced the severance payments to land slightly above 50% compared to the previous judgement.

G. UNDERMINING OF FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING.

The Job Creation Law has a substantial detrimental impact on freedom of association and collective bargaining, especially concerning wages. In addition to the abovementioned increase in temporary contract workers and the reduced role of the tri-partite wage council in determining the minimum wage, the law further limits collective bargaining for wages at the company level and removes sectoral wages determined by the head of local government. All these changes affect the capacity of trade unions to effectively negotiate wages, and thus reduce the possibility for trade unions to defend members' interests.

The interviews in both sectors underline the limited effectiveness of bipartite wage negotiations at the company level. Due to the significant power imbalance between the workers and the management, further exacerbated anti-union activities, trade union representatives often developed strategies to improve minimum wages at the city/regional level. These levels provided for a space of strategic cooperation and solidarity among trade unions, thus creating a more effective recourse to increase the minimum wages. A similar option was also available at the sectoral level.

Unfortunately, the Job Creation Law has removed the sectoral wage and curtailed the possibilities for local governments to enact a minimum wage, subjecting them to overview the central government, namely the Minister of Manpower.²⁹

Finally, social dialogue equally took a hit at the national level. As previously mentioned, the Wage Council, a tripartite institution that advises the government in wage policy, saw its role in the setting of the minimum wage severely impaired. Previously, under the 2003 Manpower Law, Wage Council had emerged as a significant place for social dialogue with social partners exerting significant influence on the goods and services that need to be comprised to the basket used to formulate a minimum wage. This approach, namely through deliberation, is effectively replaced by a technocratic approach. Indeed, discussions still occurring in the Wage Council are currently limited to the economic data published by the State Statistical Agency.³⁰

²⁹In the Job Creation Law, the provincial government also have limited roles, in which all minimum wage proclamation needs to be done within parameter that set by the government. This is evident in the case of DKI Jakarta government that defied the central government minimum wage parameter. The decision of DKI Jakarta governor to increase minimum wage outside central government guideline has been nullified by the Court.

³⁰Article 22 par (5) GR 36/2021. See also Interview with Serbundo representatives who sit in Regional Wage Council, 3 August 2022.

Trade unions from the plantation as well as garment sector, emphasize the changes and see a diminished company-level trade union effectiveness in raising minimum wages. This is evident in the 2022 minimum wage decision. The trade unions have failed to put political pressure to advocate proper minimum wage as explained in the previous section.

Interviewed trade unions in both the plantation and garment sectors emphasize the change and witness a significant reduction in trade union effectiveness. No longer being able to bargain on wages at the company level reduces their capacity to service their members. Especially in combination with the increased use of short-term contracts (see above), workers' ability to join or form a union of their own choosing is significantly impaired.

A garment company in Indonesia, STR Ltd illustrates this dynamic. STR Ltd it had a company-level collective bargaining agreement. However, the management increased the number of short-term contracts and aimed to change the collective bargaining agreement to align more with the lower standards contained in the Job Creation Law. The company-level trade union refused the proposals. The company's management retaliated by terminating employment for the temporary workers who are active in the trade union.

H. MINIMUM/INADEQUATE SOCIAL SECURITY PROTECTION.

The Job Creation Law equally intervenes in the world of work at the level of the social protection coverage. It creates a system of unemployment benefits (*Jaminan Kehilangan Pekerjaan*, JKP), which under the previous legal regime was not part of the social security package.³¹ The Job Creation Law expands the social protection coverage for unemployment in three pillars, namely by adopting an unemployment benefits scheme consisting of a cash transfer for 6 months, training; and facilitated access to the labour market.

The law thus introduces an employment benefit for the working population. However, the Indonesian trade unions have identified several main flaws in the system. Namely, workers need to be registered and contributing to the system for a sufficient time, which severely impacts workers who are terminated before the period as well as workers with a short-term contract. Secondly, the amount of the provided cash transfer is significantly below the cost-of-living standards. Instead, the cash payment amount to 45% of the last wages received, and this is during the first three months of unemployment, only to 25% for the remaining three months. In addition, an additional ceiling of IDR 5 million (327 EUR) ensures that a dismissed worker will only receive a maximum of IDR 2,25 million (147 EUR) and IDR 1,250 million (81 EUR) respectively.

Data gathered by Garteks demonstrates that most dismissed workers after the enactment of the Job Creation Law have not been able to access unemployment benefits. The requirement of being at least 6 consecutive months contributory to the social security system³² means that only a small portion of dismissed workers could access unemployment benefits. Concretely, workers with temporary contract status have difficulties meeting this requirement most temporary contract workers are typically only contracted for three to four months. Further fieldwork also reveals that the procedure to obtain unemployment benefits is dissuasively bureaucratic, thus further deterring dismissed workers to claim their unemployment benefits.³⁴

Regarding the amount of the cash transfer, it is insufficient to cover the living cost in many areas of Indonesia's regional cities. According to the last living cost survey (2018) conducted by State Statistical Agency, the average household living cost in Indonesia for the most expensive city (Jakarta City) is IDR 16 million (1.045 EUR), and the lowest household³⁵ living cost (Singaraja City) is IDR 7 million (457 EUR).³⁶ Thus, the cash transfer for the dismissed worker in Jakarta only covers 14% of the household living costs and 32% of the household living costs in Singaraja for maximum unemployment benefit received for the first 3 months. Later the maximum unemployment benefit can only cover respectively 7% and 18% of the household living costs.

³¹Article 18 Law Number 40 Year 2004 on Social Security.

³²Article 18 GR 37/2021.

³³Article 19 Par (3) GR 37/2021.

³⁴Interview with Gartext representative, 1 August 2022.

³⁵The average household consists of 4 people.

³⁶Alif Karmadi, Household Living Cost Survey in Indonesia Cities, <https://dataindonesia.id/ragam/detail/biaya-hidup-di-kotakota-indonesia> retrieved at 26 July 2022.

IV. CONCLUSION

In conclusion, the Job Creation Law impacts the world of work in several areas, ranging from curtailing wage increases to increased labour flexibility, freedom of association, and collective bargaining.

Firstly, the Job Creation Law significantly undermines the growth of the statutory minimum wage. Under the Job Creation Law, the minimum wage is calculated based on the safety net calculation, as opposed to a cost-of-living calculation under the previous regime. This approach places wage growth under inflation, making workers and their families struggle to keep up with the rising prices of basic needs.

Secondly, the Job Creation Law weakens the already fragile job security workers enjoyed. Such changes include the relaxation in the dismissal process, the extension of the permissible limit to hire contract workers and removing outsourcing hiring limitations. This approach already results in an increase in short-term contracts and an increasing number of unfair dismissals due to the relaxation of judicial oversight in the dismissal process. These measures do not only contribute to diminished job security but are de facto also used as a device to weaken or destroy local union structures.

Thirdly, the Job Creation Law also reduces freedom of association and collective bargaining, by marginalizing the role of trade unions' wage setting. The Act limits the role of company-level wage negotiations, eliminates sectoral wages, and diminishes the role of the tri-partite Wage Council. In reducing the role of unions in several wage-setting mechanisms, the law further affects union membership.

Finally, the Job Creation Law provides a minimum yet inadequate social security protection by giving employment benefits. However, coupled with lowered severance and compensation payments in the case of dismissal of workers, it puts workers in a worse situation. The low unemployment benefits are inadequate to help workers meet standard living costs in case of unemployment. Additionally, the required 6 months consecutive contribution to the social security fund has de facto excluded a substantial number of workers, especially temporary contracts, to access the system. This is in addition to irregularities in the procedure and the long waiting times (over 6 months).

In conclusion, the Job Creation Act means a net deterioration of the situation of workers in Indonesia, both in terms of the legal position of a worker, as well as in practice. It is crucial to rethink and improve labour rights protections in Indonesia to be on par or even better as those provided under the previous regime. The Government of Indonesia, as the main duty holder towards its citizens, but also the EU under its revamped Trade Policy should reverse the trend to achieve decent work and increase the standard of living of workers.

IV. RECOMMENDATIONS

TO THE INDONESIAN GOVERNMENT:

- Amend the Job Creation Act to address the identified concerns in terms of wage setting, contract flexibilization, overtime, and reduced severance payments.
- Further strengthen the unemployment benefits to protect the unemployed against poverty.
- Strengthen social dialogue and collective bargaining, both in terms of the process of revamping the Job Creation Act as well as through the institutional set-up of the wage-setting process.

TO THE EU IN THE CEPA NEGOTIATIONS:

- The contents of the CEPA agreement must respect and ensure the implementation of relevant International Human Rights Conventions, including fundamental ILO Conventions. In light of the new EU trade strategy, CEPA negotiations should emphasize reforms to the Job Creation Act prior to the ratification of the agreement.
- The final CEPA agreement should include clear commitments to respect existing international labour norms and strengthen national labour legislation.



ANNEX I:

OVERVIEW OF RELEVANT REGULATIONS

Main regulations	Law Number 13 Year 2003 on Manpower Law (Manpower Law 2003) Law Number 40 Year 2004 on National Social Security (Social Security Protection Law)	Law Number 11 Year 2020 on Job Creation Law (The Job Creation Law 2003)
Implementing	Ministry of Manpower Decree 100/MEN/IV/2004 on Implementation of temporary contract (Ministry Decision 100/2004)	Government Regulation Number 35 Year 2021 on Temporary Hiring, Outsourcing, Working Time and Resting Time, and Termination of Employment
Regulations	Ministry of Manpower Regulation Number 19 Year 2012 on Terms and Condition on Outsourcing Employment (Ministry Regulation 19/2012) Government Regulation Number 78 Year 2015 on Wages (GR 78/2015)	
	Ministry of Manpower Regulation Number 15 Year 2018 on Minimum Wage (Ministry Regulation 15/2018)	Government Regulation Number 36 Year 2021 on Wages (GR 36/2021)
	Ministry of Manpower Number Kep.102/Men/VI/2004 on Overtime Hours and Overtime Payment (Ministry Decision 102/2004)	Government Regulation Number 37 Year 2021 on Unemployment Benefit Program

