

Women Workers' Protection in the Job Creation Law Feminist Legal Theory Perspective

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How to cite Indra Firmansyah, et.all "Women Workers Protection in the Job Creation Law Feminist Legal Theory Perspective" *Unifikasi: Jurnal Ilmu Hukum*. 8(2). 2021.272-280. DOI <https://doi.org/10.25134/unifikasi.v8i2.5166>
Submitted : 22-08-2021 Revised : 08-10-2021 Accepted : 09-11-2021

Abstract : This study aims to find how women workers' protection is linked to a feminist legal approach, referring to the job creation law. The study revealed there was no improvement in the law. It tended to be detrimental, especially the discussion of three articles: 59, 79, and 81. Feminist Legal Theory sees the need for a breakthrough, the making and enacting laws against women. This is to eliminate discrimination, marginalization, and subordination by law against women. The study employed normative juridical research, involving the statute and conceptual approaches. The data were collected by a literature study involving descriptive data analysis techniques. The study showed women workers' protection, the Job Creation Law has not improved. It is even more destructive, especially the regulation of limitation periods in employment contracts, weekly rest, and contract labour abolition.

Keywords: Feminist Legal Theory, The Job Creation Law, Women Workers' Protection

Perlindungan Pekerja Perempuan pada Undang-Undang Cipta Kerja Perspektif Feminist Legal Theory

Abstrak : Penelitian ini bertujuan untuk mengetahui bagaimana perlindungan terhadap pekerja perempuan pada UU Cipta Kerja kemudian dihubungkan dengan pendekatan hukum feminis. Hasil penelitian menunjukkan bahwa perlindungan pekerja perempuan pada UU Cipta Kerja belum juga membaik, bahkan semakin merugikan paling tidak dalam pembahasan 3 (tiga) pasal dalam UU Cipta Kerja, yakni Pasal 59, 79, dan Pasal 81. *Feminist Legal Theory* memandang perlunya melakukan terobosan dalam pembuatan dan berlakunya hukum terhadap perempuan untuk menghilangkan diskriminasi, marginalisasi dan subordinasi yang dilakukan oleh hukum terhadap perempuan. Metode penelitian dalam penelitian ini adalah penelitian yuridis normatif dengan pendekatan perundang-undangan (statute approach) dan pendekatan konseptual (conceptual approach). Adapun teknik pengumpulan datanya dilakukan melalui studi kepustakaan dengan menggunakan teknik analisis data deskriptif. Hasil penelitian adalah bahwa perlindungan pekerja perempuan pada UU Cipta Kerja belum juga membaik, bahkan semakin merugikan paling tidak dalam pembahasan yang mengatur tentang batasan masa kontrak kerja, istirahat mingguan, dan peniadaan masa kerja kontrak.

Kata Kunci : Feminist Legal Theory, Perlindungan Pekerja Perempuan, UU Cipta Kerja

INTRODUCTION

Even though, the Constitutional Court has declared the Job Creation Law as conditionally unconstitutional. Such a law still becomes the topic of discussion and research object. The law is considered as one of the law-making savings methods. This is because it collects many laws and regulations in one law. On the other hand, the omnibus law is also considered a mistake. It contains laws that contradict each other. Omnibus law, which comes from the word *omnis*, means for all, is intended for all people. The so-called omnibus law is named *UU sapu jagat* by the media in Indonesia. In Indonesia, omnibus law is expected to offer a solution to simplify numerous regulations. According to Bappenas, in the year 2000-2015, the central government has issued 12,471 regulations. In this case, the ministries are the largest producers with 8,311 regulations. Meanwhile, according to the Indonesian Center for Law and Policy Studies 2014-2018, the government has issued 7621 Ministerial Regulations, 765 Presidential Regulations, 452 Government Regulations, and

107 Laws.¹ Accordingly, it is not surprising that the expectation of omnibus law is to simplify plentiful regulations. This is because it revises and revokes many laws at once.

Even though the so-called law has been ratified, it continues to reap the pros and cons. At that time, seven factions supported the government's move to ratify the law. The PDIP, Golkar, Gerindra, Nasdem, PKB, PAN, and PPP factions agreed to finalize the bill into law. Meanwhile, PKS and Democrats are still against it. The government firmly believes the law brings countless benefits to the people. For instance, job loss guarantees, support for MSME actors, maternity leave and menstrual leave for female workers, the land bank providing cheap or even free of charge land for people's houses, Indonesia will be flooded with investment and employment opportunities, and housing for low-income people.² According to considerations, the basis for the justification of the Job Creation law, the state needs to make various efforts. This includes fulfilling the citizens' right to work and get a decent life. This is to create a prosperous, fair, and affluent society. In addition, the absorption of Indonesian workers through job creation law is needed, especially, in the midst of an increasingly competitive era and the demands of economic globalization.³ On the other hand, some academics and labor organizations continue to be against it. They think the law has the potential to harm workers. Andriko Otang, Director of the Trade Union Right Center, highlighted Article 81 number 15 of the Job Creation Law. It removes the limitation of two years periods in an employment contract with a maximum extension of one year. In addition, the provisions for the contract extension will be regulated in the PP. According to him, this change creates job uncertainty for workers. Workers can forever be contract workers and will never enjoy compensation, the severance pay like permanent workers if layoffs occur.⁴

Furthermore, the female workers also reject the law. They consider it to be women-unfriendly and perpetuates poverty. Dian Septi, Chair of the Council of the Women's Labor Department, the Confederation of Indonesian Workers' Union (KPBI), states that the Job Creation Law is considered to be very oppressive and detrimental to female workers. In Article 59 of the Job Creation Law, the 3-year work contract is removed. According to her, this could potentially create a life-long contract for workers. This definitely ignores the workers bargaining power, female workers especially⁵, Female workers dominate almost 80% of the workforce in labor-intensive sectors, the factories. This is in contrast to capital-intensive sectors, the offices where workers are dominated by men.⁶ In previous related studies, it was only limited to investigating another perspective or comparing the Job Creation Law and the Manpower Law. Accordingly, this study examines women workers' protection (the job creation law), compares the job creation law and the manpower law, and analyses it from the perspective of Feminist Legal Theory.

RESEARCH METHODS

The study employed normative juridical research involving statute and conceptual approaches. The statute approach was to analyze and review the laws and regulations under the study. In addition, it was also limited to articles on women workers' protection and detrimental

¹ <https://www.merdeka.com/jatim/mengenal-apa-itu-omnibus-law-beserta-konsep-dan-sejarah-perkembangannya-klm.html?page=all>. (June 24, 2021).

² <https://ekonomi.bisnis.com/read/20201008/9/1302431/ini-7-manfaat-uu-cipta-kerja-untuk-rakyat-indonesia-versi-pemerintah>, (June 24, 2021).

³ Osgar Sahim Matompo dan Wafda Vivid Izziyana. *Konsep Omnibus Law dan Permasalahan RUU Cipta Kerja*. Jurnal Rechstaat Nieuw Vol. 5 No. 1, October 2020, p. 28.

⁴ <https://nasional.kompas.com/read/2020/10/22/08580691/benarkah-uu-cipta-kerja-berikan-keuntungan-bagi-pekerja-kontrak?page=all>, (June 24, 2021).

⁵ <https://www.merdeka.com/uang/kpbi-uu-cipta-kerja-tidak-ramah-perempuan-dan-melanggalkan-kemiskinan.html>, (June 24, 2021).

⁶ <https://www.voaindonesia.com/a/buruh-perempuan-sepakat-menolak-uu-cipta-kerja-/5626818.html>, (June, 24 2021).

articles to workers, especially women workers. This was done by comparing the Manpower Law with the Job Creation Law. Meanwhile, the conceptual approach was based on views or doctrines developed in the science of law. In this study, the descriptive analysis aimed to provide a complete and comprehensive picture of women workers' protection, referring to the Manpower Law and the Job Creation law, and analyzed it according to Feminist Legal Theory.

RESULTS AND DISCUSSION

1. Women Workers' Protection the Manpower Law and the Job Creation Law

To date, in Indonesia, women workers' condition is considered terrible even with the existing regulations. In general, companies are still superior and workers are inferior. This is because if the workers demand justice, layoffs await them. In the current situation, the pandemic of Covid-19 pandemic particularly, many companies have gone bankrupt. Thus, they must do a layoff due to a decrease in company income.⁷ Particularly, the most severe impact is suffered by female workers. They lost their jobs due to the pandemic or the working system regulated by the Job Creation Law. In addition, reproductive health matter is often violated by the company. For instance, menstrual leave can be exchanged for money, pregnant women are required to work overtime, and the distinction between maternity leave and miscarriage leave. Furthermore, female workers still experience sexual harassment.⁸

According to Soepomo (1976) quoted by Susiana (2017), labor protection is divided into three types, as follows:

- a. Economic protection, workers' protection such as sufficient income, covering the workers who are unable to work against their will. Economic protection or social security is labor protection in the form of compensation. It is in lieu of some lost or reduced income and services due to some cases such as work accidents, illness, pregnancy, maternity, old age and death. The social protection includes:
 1. Employment injury insurance. This is to cover some or all loss income due to death or work accident disability, the physical and mental.
 2. Life insurance. This is needed to ease the burden on the family such as funeral costs and compensation money for workers who die outside work accidents resulting in income losses and the economy of the families left behind.
 3. Pension plan. It provides receipts certainty that is paid at once and/or periodically when the worker is 55 years old or fulfills these requirements. This guarantee is expected to be a cure for labor concerns, the low incomes workers.
 4. Health care insurance. This is to increase the workers' productivity. Thus, they can carry out their duties very well. This guarantee is the entrepreneur's responsibility and obligation in maintaining the workforce.
- b. Social protection, the worker's protection: the occupational health insurance, freedom of association, and right protection to organize. This is to protect or safeguard the workforce from certain conditions or work relations that are detrimental to the workers' health and morals, particularly when carrying out their duties.
- c. Technical protection, working security and safety protection. Work safety is part of technical protection. It covers protecting the workers from danger caused by work tools or materials under progress. As workers, female workers have the same rights as male workers. they get three types of protection, economic, social, and technical protection.

⁷ Aris Prio Agus Santoso, Erna Chotidjah Suhatmi, *Pemutusan Hubungan Kerja saat Pandemi Covid-19 Ditinjau dari Sudut Pandang Hukum Ketenagakerjaan*, Jurnal Unifikasi : Jurnal Ilmu Hukum Volume 08.01.2021, p. 88

⁸ Margaret Aliyatul Maimunah dalam *Bertahan Hidup di Desa atau Tahan Hidup di Kota: Balada Buruh Perempuan*, Women Research Institute, Jakarta 2008, p. 67.

Female workers' protection is regulated in Article 28 D paragraph (2) of the 1945 Constitution. It states everyone has the right to work and to receive fair and proper remuneration and treatment in an employment relationship. This means female workers get the same right as men. This includes proper treatment. This is regulated in Article 27 and Article 33 of the 1945 Constitution. In addition, Government Regulation No. 8 of 1981 concerning Wage Protection, stated in Article 3 emphasizes in setting wages, the business actors can not discriminate against male and female workers, particularly the equal value work matters. The article also mentions non-discrimination refers to the wages and other benefits received by male workers are equal to what received by female workers, particularly on equal value work matters. The enactment of Law Number 13 of 2003, the Manpower, made numerous companies apply an outsourced work system. The law seems to put the company in a safe position. This is because the workers employed come from workers' services agencies. Therefore, all the risks are no longer the responsibility of the company where you work, but the workers' services agencies.⁹ In Indonesia, employment policies are regulated in Law No. 13 of 2003, the employment. In the law, the articles regulating female workers are as follows¹⁰:

Law No. 13 of 2003, the Manpower, Article 76 paragraph (1): "Female workers who are less than eighteen years are prohibited from being employed from 23.00 to 07.00." Paragraph (2): "Female workers have the right not to work if they are pregnant which according to a doctor's statement is dangerous for the womb and for themselves if they work from 23.00-07.00." Paragraph (3): a. : "Getting nutritious food and drink." b. "The employer maintains decency and security while at work." Paragraph (4): "Provide transportation and pick-up for female workers who go to and return to work between 23.00-07.00 hours." Law No. 13 of 2003, the Manpower, Article 81 paragraph (1): "Women workers who hurt during the periods and notify employers are not obliged to work on the first and second days of menstruation." Law No. 13 of 2003, the Manpower, Article 82 paragraph (1): "Women workers are entitled to a break for 1.5 (one and a half) months before giving birth and 1.5 (one and a half) months after giving birth according to the obstetrician or a midwife calculation." Law No. 13 of 2003 concerning employment, Article paragraph (2): "Female workers have the right to get a break for 1.5 (one and a half) months or according to a letter of statement from a gynecologist or midwife."

Law No. 13 of 2003 on employment, Article 83: "Female workers have the right to receive appropriate opportunities during working hours, particularly the woman who still breastfeeding their children." Law No. 13 of 2003, the Manpower, Article 93 paragraph (2) letter b: "Female workers have the right to be fully paid even though they do not come to work due to first and second days of periods." Law No. 13 of 2003, employment, Article 153 paragraph (1) letter e: "Female workers shall not be subject to employment termination due to pregnancy, childbirth, miscarriage, or breastfeeding." Law No. 13 of 2003, Manpower, Article 185: "Punishing a violation of Article 82, a criminal offense punishable by imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least IDR of 100,000,000 (one hundred million rupiahs) and a maximum IDR of 400,000,000 (four hundred million rupiahs)." Law No. 13 of 2003, Manpower, Article 187: "Punishing a violation of Article 76, a criminal offense punishable by imprisonment for a minimum of 1 (one) month and a maximum of 12 (twelve) months and/or a fine of at least IDR of 10,000,000 (ten million rupiahs) and a maximum IDR of 100,000,000 (one hundred million rupiahs)."

⁹ Agustina Balik, Novyta Uktolseja. *Aspek Keadilan dalam Perjanjian Kerja Outsourcing di Tengah Pandemi Covid-19*, *SASI*, Vol. 27 No. 2 year 2021.

¹⁰ Febri Jaya, *Perlindungan Hak-Hak Pekerja Perempuan Pasca Revisi UU Ketenagakerjaan dalam Omnibus Law*, *Jurnal Kerta Semaya Universitas Internasional Batam*, Vol. 8 No.12 year 2020.

Referring to the Job Creation Law, the above-mentioned articles do not have significant changes. Article 76-93 paragraph (2) letter b does not change at all. Meanwhile, Article 153-187, the amendments were discussed in Law Number 11 of 2020 concerning Job Creation. However, there is no change in the protection substance of women workers' rights in the previous Manpower law. Therefore, legally, the Job Creation Law does not have a positive impact in protecting women workers' rights. However, if you refer to other articles, the Job Creation Law has harmed workers, especially female workers. For example, in Article 59, the limit of the 3-year work contract is removed. This definitely creates a life-long contract system and ignores female workers' bargaining powers. This occurs due to 80% of factory workers are female workers. In addition, Article 79 of the Manpower Law, a weekly break of one day for six working days (in one week) or two days for five working days (in one week), was revised by the Job Creation Law. It changed to a weekly rest of one day for six working days (in one week). This change is certainly destructive for female workers. This is because, in addition to work, female workers have responsibilities as housewives. Another article, Article 81 point 15 of the Job Creation Law, removes the limitation of a 2-years working contract with a maximum extension of one year. The provisions for the contract extension will be regulated in the PP. This change creates job uncertainty for workers. Workers can forever be contract workers and will never enjoy compensation, the severance pay like permanent workers when layoffs occur. The three amendments to the article at least show that the Job Creation Law actually harms workers, the female workers.

2. Feminist Legal Theory and Defense Against Female Workers

As a philosophy and a movement, feminism was born in the 18th-century enlightenment era in Europe. It was pioneered by Lady Mary Wortley Montagu and the Marquis de Condorcet. During this period, two major revolutions took place, the American Revolution in 1776 and the French Revolution in 1789. "The American Bill of Rights" gave rights to individuals side by side with the French call for the slogans *Liberte, Egalite, and Fraternite* (independence, equality, and brotherhood). They have a strong influence on each individual. Post Declaration of Human Rights in France, Olympe de Gouge published the "Declaration of the Right of Woman" in 1789. Even though it was motivated by political and economic conflicts, the French revolution had brought the winds of freedom, not only in the political and economic fields but also in social, legal, and even gender. This revolution is a desperate thirst for the claimant of freedom.

Feminist theory is a broad system of general ideas about social life and human experience. It develops from a developing perspective on women. This theory centers on women in three ways. First, the main research "object", the starting point of all his research, is the situation (or situations) and women experiences in society. Second, this theory treats women as the central "subject" in the research process; So, she tries to see the world from typical of women in the social world. Third, feminist theory is critical and active towards women. It tries to build a better world for women – and so for humanity.¹¹

Feminists see male theorists underestimated the oppression suffered by women in the household, labor market, politics, and culture. This is because they see women as essential matters, not as citizens.¹² Normally, Men are presented as dominant, active, aggressive, and authoritative, performing important and diverse roles that often require professionalism, efficiency, rationality, and power to be executed successfully. On the other hand, women are portrayed to be subordinate,

¹¹ George Ritzer dan Douglas J. Goodman, *Teori Sosiologi: Dari Teori Sosiologi Klasik Sampai Perkembangan Mutakhir Teori Sosial Postmodern*, Kreasi Wacana, Bantul 2011, p. 487-488.

¹² Ben Agger, *Teori Sosial Kritis: Kritik, Penerapan dan Implikasinya*, Kreasi Wacana, Yogyakarta 2005, hlm. 201.

passive, submissive, and marginal, carrying out a number of secondary and unattractive jobs that are limited to their gender, emotions, and domestication..¹³

Simone de Beauvoir, a French philosopher, wrote *The Second Sex* containing the design of feminist theory. From this book, the Western women's movement (Second Wave Feminism) emerged. It challenged injustice issues such as unfair wages, menstrual leave, and abortion. Furthermore, the violence began to be discussed openly.¹⁴ Simone de Beauvoir emphasizes two things: First, there is a difference between sex and gender; Second, subordination between women is not justified biologically, humans are the same as men, and must have equal status in all aspects of public life. Beauvoir distinguishes between "female" (based on biological categories) and "women" (based on existential categories). For many feminists, this is mapped into the distinction they use between sex and gender. Sex is a biological category while gender is a social category. By stating this distinction, feminists are able to argue there is no necessary connection between biological sex differences and socio-cultural gender norms. It is also to campaign for equality between men and women in social life.¹⁵ Women's equality is absent in domestic life. Women get a dilemma, working to earn a living for their families, while at the same time they also have an obligation to take care of children and the household. This does not exist in men who seem to only have an obligation to work.¹⁶

Referring to this philosophy and the feminist movement, a legal thought was born to make a breakthrough against the enactment of the law against women and the discrimination that women get from the law¹⁷. The Feminist Legal Theory (FLT) tries to break down legal inequality that is not objective in viewing men and women. Male domination of the law makes women discriminated against and marginalized in law. FLT seeks to dismantle male-dominated laws and their gender tendencies. FLT sees the need to make a breakthrough, particularly in making and enacting laws against women. This is to eliminate discrimination by law against women. FLT is not indivisible from the various schools of feminism such as Liberal Feminism, Marxist Feminism, Marxist Feminism, Gender Psycho-analytic Feminism, Existentialist Feminism, and Ecofeminism. At the end of the 20th century, the feminist movement is widely seen as a splinter from the Critical Legal Studies movement. It provides a lot of criticism of the existing legal logic, the manipulative nature and dependence of law on politics, economics, the role of law in shaping patterns of social relations, and the hierarchy formation by unsubstantially legal provisions.¹⁸ The feminist legal theory rejects legal positivism perspectives which cleanse non-legal elements such as sociological, political, historical, and moral. The people are John Austin and Hans Kelsen. Although they agree that law must be separated from non-judicial elements, they differ on a philosophical basis. Austin's opinion refer to Utilitarianism while Kelsen refers to Neokantianism.¹⁹

FLT's defense of women stems from "women's experiences". In other words, the FLT positioned itself "in favor" of women. this is to break the so-called objective legal establishment. In

¹³ Dominic Strinati, *Popular Culture: Pengantar Menuju Tori Budaya Populer*, Bentang, Yogyakarta 2003, hlm. 211.

¹⁴ Farida Nurun Nazah, *Posisi Perempuan Menurut Perspektif Kompilasi Hukum Islam di Indonesia (Kajian Gender dan Feminisme)*, Jurnal Hukum dan Keadilan Volume 7 No 2, September 2020, p. 281-282.

¹⁵ Kimberly Hutching, *Simone de Beauvoir dalam Teori-Teori Kritis: Menantang Pandangan Utama Studi Politik Internasional*, Editor Jenny Edkins dan Nick Vaughan Williams, Pustaka Pelajar, Yogyakarta 2013, p. 95.

¹⁶ Angga Unita Kiranantika, *Dualisme Peran Gender dalam Keluarga Buruh Migran Indonesia*, dalam *Konferensi Internasional Feminisme: Persilangan Identitas Agensi dan Politik (20 Tahun Jurnal Perempuan)*, Jurnal Perempuan 2016, p. 231.

¹⁷ Aditya Yuli Sulistyawan, *Feminist Legal Theory dalam Telaah Paradigma: Suatu Pemetaan Filsafat Hukum*. Jurnal Masalah-masalah Hukum Undip, Jilid 47 No. 1, Januari 2018, p. 56.

¹⁸ Wirasandi, *Wanita dalam Pendekatan Feminisme*, Jurnal Ilmiah Rinjani Universitas Gunung Rinjani Vol. 7 No. 2 Tahun 2019, p. 48.

¹⁹ Serlika Aprita dan Rio Adhitya, *Filsafat Hukum*, PT Raja Grafindo Persada, Depok 2020, p. 103.

fact, it presents discrimination and injustice for women. In general, feminist legal thinkers tend to assume that women's identity is homogeneous. Thus, they viewed feminist legal theory as an alternative to patriarchal legal theory.²⁰

Thus, it is not enough to criticize the neutrality or objectivity of patriarchal law from the perspective of gender. We need to also see it from race, religion, age, sexual orientation, class, social status, and so on. This kind of criticism makes the plural identity of women and other individuals can be assumed. Therefore, the main problem for legal theory, a feminist perspective, is making laws that can recognize the plurality of women and society.²¹ The characteristics of the feminist legal methodology by Sadli and Porter is partiality to women and gender as a "tool of analysis". This is at least making the feminist law responds to various legal discriminations. For instance, the struggle for rights that are different from men's rights due to biological and physiological differences. Giving different rights—equal treatment or special treatment is known later as affirmative action.²²

FLT views women workers' protection in Indonesia is still far from ideal. This can be seen from the previous discussion. At least three articles are destructive to female workers, especially. If it is drawn more broadly, various problems in women, such as the economy, low levels of education, domestic violence, and divorce have forced them to enter the snare of industrialization. They are forced to fulfill their self-responsibilities and family needs. At the same time, they must be present in the family. In all fields, the idealism demands for the role of women, especially in the professional world, often make women become victims of marginalization. In many cases, men are still considered the "perpetrators". That is not completely wrong. However, if we look more closely, the state with its legal and political policies is most dominantly subordinating women. Even so, feminist jurists still believe that law has institutional and normative dimensions. The law remains important in shaping the perspective of society.²³

CONCLUSION

Referring to the aforementioned discussion, Women workers' protection (the Job Creation Law) has not improved. It is even more destructive, particularly the discussion of the 3 (three) articles: Articles 59, 79, and 81. They regulate work contract limitation, weekly rest, and work contract abolition. From the Feminist Legal Theory perspective, this theory has offers the idea that the law must also be based on gender equality and justice. It not only produces certainty, but also justice and welfare. Therefore, in the discussion related to the Job Creation Law, Feminist Legal Theory sees the need for a breakthrough in making and enacting laws against women. This is to eliminate discrimination, marginalization, and subordination by law against women. Researchers suggest Articles 59, 79, and 81 of the Job Creation Law be deleted or revised.

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²¹ Donny Danardono, *Op.Cit.*, p. 11-12.

²² Sini Dana Panti Retnani, *Feminisme dalam Perkembangan Aliran Pemikiran dan Hukum di Indonesia*, Jurnal Ilmu Hukum Prinsipium UKSW, Vol. 1 No. 1 2017, p. 105.

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