



# The Philosophy of Social Injustice for All Indonesian Laborers Set Forth in Job Creation Law

Sidik Sunaryo<sup>1\*</sup>

<sup>1</sup> Faculty of Law, University of Muhammadiyah Malang, Malang, East Java, 65141, Indonesia

\* Corresponding author: [sidik\\_sunaryo@yahoo.co.id](mailto:sidik_sunaryo@yahoo.co.id)

| Article   | Abstract  |
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| <p><b>Keywords:</b><br/>Philosophy; Work; Labor; Spirit; Justice.</p> <p><b>Article History</b><br/>Received: Jan 7, 2023;<br/>Reviewed: Jan 10, 2023;<br/>Accepted: May 2, 2023;<br/>Published: May 5, 2023.</p> | <p><i>Working is not only for the sake of earning money, nor is it for the sake of fitting professional rationality. It goes beyond what it appears to be; it represents observances of God. That is, occupations should be seen from a wider perspective implying that it also considers spiritual, immaterial, and material dimensions. The spiritual scope represents the responsibility of humans to their God; the material scope is understood as working for a family, society, the state, and the nation. An occupation carries the spiritual value that represents the social behavior of bearing the responsibility for a job. Mental and social aspects in an occupation carry another meaning of social justice for all Indonesian laborers. Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, apart from pushing and urging attitude calling for its formulation and pragmatic needs that remain problematic in the eye of society in general, needs testing and reviewing fundamentally from the perspective of social justice principle for all Indonesian laborers. This study is focused on the analysis of the substance of Government Regulation in Lieu of law concerning Job Creation seen from the perspective of social justice for all the workers concerned. This study employs philosophical, conceptual, and statutory approaches to delve into the typical principle of justice in Government Regulation in Lieu of Law concerning Job Creation.</i></p> |



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## INTRODUCTION

Government Regulation in Lieu of Law concerning Job Creation represents the response of the government to the conditional unconstitutional decision of the Constitutional Court (and soon be a Law according to DPR decision on 21 March 2023). However, this regulation has sparked pros and cons. This regulation was passed by the government in late 2022 (as a deadline for responding to the mandate of the

Constitutional Court Decision) aiming to expedite the national economic recovery and improve the competitiveness of Indonesia in the global world (Khair et al., 2022; Priskila Ginting, 2021). Government Regulation in Lieu of Law set several amendments for varied sectors, including the amendments to the regulation concerning laborers, investment, and other economic regulations. This measure is intended to set a new climate of investment that is more attractive to both foreign and local investors, accelerate economic growth, and create new job opportunities. The Indonesian government expects that this measure will allow those to invest and run their businesses seamlessly and reinforce the legal protection of laborers. This regulation is also expected to contribute positive values to the economy of Indonesia (Husnulwati & Yanuarsa, 2021) and the welfare for all (Darmawan, 2020; N. H. Fithri, 2022). Considering all these urging tendencies, the government insisted on amending this regulation to the Job Creation Law. The intention to amend this regulation, however, was opposed by PKS and Demokrat factions.

The intention to amend this regulation has been opposed by Indonesian labor unions because they argue that it would impact labor rights (Al-Fatih et al., 2020). The following are several reasons why laborers stand against the formulation of Job Creation Law:

1. Soaring layoffs; Job Creation Law allows companies to dismiss employees, and it is less costly for companies. This likelihood becomes a concern among workers and finding another job will not be easy under this new policy.
2. Wages and protection of laborers: There is concern that Job Creation Law cuts the rights and wages received by employees. This amendment also means longer working hours without any additional wages or proportional leave-taking.
3. The reduced role of labor unions: Job Creation Law, as they are worried about, could also reduce the role of labor unions in protecting the rights of employees and negotiating wages and allowances.
4. Likelihood of employee exploitation: some provisions set forth in the Job Creation Law concerning more flexible working hours will lead to unfair treatment and exploitation by employers against employees.

Departing from the aforementioned grounds, labor unions oppose Job Creation Law and once staged protests against the amendments, calling for the cancellation of Job Creation Law. They argued that Job Creation Law was not pro-employees considering that it does not reinforce the protection of employees and their rights, tending to harm their rights. This study aims to discuss the issue from a philosophical perspective to delve into the polemic of Job Creation Law/Government Regulation in Lieu of Law concerning Job Creation, especially viewed from social justice as mandated by Pancasila. Laborers as the primary entity in Job Creation Regulation will be further discussed in this study, aiming to find the meaning of social justice for all the workers in Indonesia to allow for an easier understanding of this issue. This study

is expected to contribute benefit not only to academicians (especially within the purview of job creation law and legal philosophy) but also to practitioners. This study also carries its novelty expected to give a significant contribution to science and employment-related practices.

## **METHOD**

Legal research methods are used during this research process (Irwansyah, 2020). The language of the study is Indonesian law, and written laws are examined from various perspectives, including theory, philosophy, and law comparison. The legal research's objective was to confirm the existence (Al-Fatih & Siboy, 2021) of justice for all laborers in Indonesia due to Job Creation Law cases or vice versa.

## **DISCUSSION**

### **The right to get Decent Occupation for Humanity from the Perspective of Government Regulation in Lieu of Law concerning Job Creation**

- a. Constitutional Justification regarding Decent Occupation for Humanity in Government Regulation in Lieu of Law concerning Job Creation.

The right to get a proper job for the sake of humanity is set forth in the 1945 Constitution of the Republic of Indonesia Article 27 (2) "Each citizen shall be entitled to an occupation and an existence proper for a human being (the 3rd amendment of Indonesian Constitution) "an occupation and an existence proper for a human being" serves as the key phrase of the constitutional right of every employee since this term carries spiritual and material aspects.

According to Irianto (Irianto, 2009), the spiritual dimension of this term holds that an occupation is considered another form of worship to God, a manifestation of faith of an employee as the creation of God. The material dimension for humanity refers to divine responsibility carried by an employee as in the term "scattered all over the earth" for the continuous existence of human beings. As the responsibility that an employee holds to God, being entitled to a job relevant to his/her preference is not subordinate-to-boss responsibility. The substance of Government Regulation in Lieu of Law is far from the intended constitutional spirit, but it rather consists of a series of texts (Rahardjo, 2010) resulting from a partial compilation (Rahardjo & Hukum, 2010) of earlier varied norms.

- b. Justification of Legal Morality of Decent Occupation for Humanity in Government Regulation in Lieu of Law.

The right to get a decent job on the grounds of humanity should be seen from the moral perspective of law (Hart, 2009). The law governing employment must always be attached to the moral source of the law. In terms of the right to a decent occupation for humanity, the morality of the regulation regulating occupation must take into account the meaning that defines a job as an instruction from God.

Occupation is intended to humanize humans with their dignity (Drolet, 2013). An occupation serves as a medium and facility to allow people to respect others and understand objectives set between employers and employees to bring about welfare for workers, people, state, and nation. All the disputes taking place in a labor scope must be settled in deliberation by upholding the principle of *hikmah* (Tanya et al., 2010) and wisdom. Harmony and rewards of rights (John Rawl, 1995) and obligations between employees and employers represent the morality of regulation regarding decent occupations for humanity to bring about social justice (Lebacqz, 1986) for all employees and employers.

c. Justification of Decent Occupation in Government Regulation in Lieu of Law.

The analysis of the right to get a decent job for humanity seen from the perspective of the Government Regulation concerned can depart from the philosophical fundament (Surbakti, 2010) of the word “*Menimbang*” (considering) point a to point i. The justification of the right to a decent job for humanity as in the word “*menimbang*” is obvious in the keyword *kepentingan memaksa* (binding interest) in the following: “*The prosperous, just, and welfare citizens of Indonesia pursuant to Pancasila and the 1945 Constitution of the Republic of Indonesia; global crises and national economic upheavals; adjustment to several regulatory aspects, investment ecosystems, and acceleration of national strategic projects; the law concerning the current sectors has not managed to meet the legal needs to support the acceleration of job creation; breakthrough and legal certainty of omnibus methods; blended standards of policies to increase competitiveness and attract more investors at a national level by performing economic transformation; the strong legal basis for both the government and relevant institutions to make policies and take measures immediately*”.

Regarding the scope of “binding interest” implied in the phrase: “prosperous and just citizens, economic crises, investment, national projects, competitiveness, economic transformation”, the right to get a decent job for humanity is reduced (Caney, 1995) within the context of abstract economic interest that forces Government Regulation to negate (P. Murphy, 1991) the constitutional right of all Indonesian citizens to get decent jobs for humanity. The humanity principle in terms of decent occupation for all does not carry the philosophical spirit of Government Regulation in Lieu of Law. The economic principle turns to the spirit of the Government Regulation concerned, where the meaning of abstract economic interest that coerces all Indonesian workers is exaggerated to let go of their constitutional rights (Zubaidi et al., 2020).

This binding interest serves as the philosophical fundament of Government Regulation in Lieu of Law, carrying the meaning of unconditional unconstitutional. In other words, this Government Regulation contravenes the constitutional right to get a decent job for humanity. The principle of this Government Regulation is intended to legitimate the economic interest of employers by forcibly negating or ruling out the interests of workers in Indonesia constitutionally. Government Regulation in Lieu of Law serves as a method to legitimate rationality of this messy principle of the efficiency of employers to rule out the regulation incongruous with economic interest. Government Regulation

in Lieu of Law expedites recruitment and maximizes the benefits for employers/businesses over the economic interest of the state.

Article 2 of Government Regulation in Lieu of Law governs underlying principles: “equal rights; b. legal certainty; c. wider access to business opportunities; d. togetherness; and e. independence”.

The concept of the principles as in Article 2 serves as the spirit that gives soul to the whole regulatory provisions of Government Regulation in Lieu of Law concerning Job Creation. However, almost all the provisions therein carry this vigor although it seems to be only for the sake of textual formality (Sen, 2009).

The principle of equal rights implies that all citizens especially employees do not have equal rights to decent occupations for humanity (Copleston, 1944). The definition of legal certainty is only intended for economic actors and businesses in terms of easier access to the bureaucracy of government services regarding corporate document processing and access to capital from either banks or communities. The principle of easier access to business opportunities surely radiates vigor amidst other spirits that have been overlooked (Barry, 1989). Togetherness legitimates the working class and corporates since the objectives of workers are incomparable to those of employers in terms of running businesses. On one hand, employees work to reach prosperity and meet their basic needs. On the other hand, businesses are more profit-oriented, always ensuring that they can cover taxes/levies charged by the state or other informal levies. Independence, moreover, is related to the skill and capacity of human beings as underlying qualifications for companies to hire them as employees. Simultaneously, companies are seen as independent and private entities and they, thus, must be guaranteed under Government Regulation in Lieu of Law concerning Job Creation.

The meaning of principles outlined in Article 2 reduces the meaning of the constitutional right of workers to get decent occupations for humanity. The state never gets involved in encouraging companies to make their employees entitled to all their rights. These principles seem to justify that the economic interest of companies is paramount over the interest of workers and the state. State interest cannot be seen only from the perspective of state revenue from taxes and legal levies collected from businesses, but it should take into account the aspects of protection and guarantee (Edwards, 1967) to ensure that all the citizens have easier access to decent occupations for humanity and the rights of permanent employees are guaranteed.

The meaning of the principles in Article 2 indicates that all employers are guaranteed to be entitled to their rights and legal certainty equally to give access to businesses, togetherness, and independence in selecting businesses to run, and manage businesses, and the freedom to arrange and formulate autonomy regulations governing the businesses. Autonomy regulations can regulate whatever is needed in companies by employers, and such regulations should be jointly made by employees, or a labor union or labor unions and employers combined, or an employer's association or employer's associations combined.

This scheme will allow companies to gain full authority to rule out normative rights of employees to jointly make regulations.

The existence of Government Regulation in Lieu of Law concerning Job Creation as heteronomous law that should carry the power to coerce seems to let go of its imperative power to the right and authority of employers. Employers can, therefore, arbitrarily coerce workers to comply with the autonomy made. The regimes of labor law previously giving normative rights to workers or laborers to formulate and make autonomy regulations of companies are narrowed down in terms of their rules in Government Regulation in Lieu of Law concerning Job Creation.

### **The Rights of All Indonesian Employees to Get Decent Occupations for Humanity from the Perspective of Government Regulation in Lieu of Law concerning Job Creation**

- a. Constitutional Justification of a decent livelihood for humanity in Government Regulation in Lieu of Law.

The 1945 Constitution of the Republic of Indonesia Article 27 (2) states “Each citizen shall be entitled to an occupation and an existence proper for a human being”).

The fundamental meaning of this constitution cannot be freely interpreted, and neither organic law nor successor law can deviate from this meaning. Government Regulation in Lieu of Law is categorized as an organic law since it directly takes instructions from Article 27 of the 1945 Constitution (Satjipto, 2006). That is, it cannot contravene the philosophy (Unger, 1999) and other provisions. All the provisions set forth in Government Regulation in Lieu of Law concerning Job Creation should place Article 27 of the 1945 Constitution as the highest source of law and the entire values of Pancasila as the highest source of morality.

The meaning of proper livelihoods for all workers in Indonesia should be taken as a manifestation of reflection (Tamanaha, 2001) of prosperous livelihood as seen from the perspectives of theology, humanism, unity, and inner wisdom to consider workers and communal values in communities. Workers work to fulfill not only their basic needs including food, clothes, and housing but also higher needs for education, health, and recreation in an integral form (Mursidah et al., 2022). Proper livelihood for all workers across Indonesia must be seen from the perspective of basic needs and higher needs entirely. The presence of Government Regulation in Lieu of Law concerning Job Creation negates or rules out the definition of proper livelihood for humanity for all workers across Indonesia constitutionally (Fadjar, 2013).

- b. Justification of Morality of Law of Proper Livelihoods for Humanity in Government Regulation in Lieu of Law concerning Job Creation.

The right of workers across Indonesia to get a proper livelihood for humanity as outlined in Government Regulation in Lieu of Law concerning Job Creation is

not guaranteed. The morality of law outlined in the Government Regulation in Lieu of Law concerned carries both rational and transactional meanings. The morality of rational law implies that companies or business owners have the full right to regulate and manage businesses. Those working in a company must obey the business owner. Being right or wrong is within the prerogative of business owners in managing businesses. The morality of transaction law implies that the law of autonomy and heteronomy made to guarantee certainty should refer to business transactions or business as usual. No-work-no-pay principle becomes the highest source of morality of law governing the relationships between employees and employers. Employees or workers as human beings are placed at the production line and they are demanded to meet the target of the production of goods and services.

Employees in Indonesia as human beings with their right to proper livelihoods for humanity are placed as dependent factors in a series of production processes. The role and position of the workforce in Indonesia are very important in achieving the goal of even national development (F. S. Fithri, 2021).

All the employees across Indonesia should have the right to proper livelihoods for the sake of humanity and they should be placed as human capital adhering to all their rights and dignity. Workers are the primary factors having the position that can degenerate the continuity of businesses according to the principle and the vigor of the constitution to bring about welfare for all. This is the absolute definition of proper livelihoods for the sake of humanity to work and as the implementation of the principle of social justice to mainly bring about welfare for all.

### **Social Justice for All Workers in Indonesia seen from the Perspective of Government Regulation in Lieu of Law concerning Job Creation**

- a. Constitutional Justification of the Definition of Social Justice according to Government Regulation in Lieu of Law concerning Job Creation.

Social justice (Alexander & Sherwin, 2001) within the scope of the philosophy of occupations implies that working is one of the keys to living a healthy life both in the world and hereafter. Working is an obligation of a human being to meet all the needs and to survive as long as he/she lives in this world. Moreover, working is also intended to help the family and descendants grow both physically and mentally. This overall growth can be encouraged by receiving wages from the obligations performed. The term wage here refers to the payment received by workers, which is expressed in the form of money as compensation from the employer to the worker in accordance with the employment agreement (Aksin, 2018; Amelia et al., 2023). Wages or salaries can also be interpreted as result from the logical and rational consequences that are justified (Tamanaha, 2009) by the communal values of a community where workers reside to perform their rights and obligations.

The philosophy of wages for workers allows for the management of sustainability for workers and it is more than just an individual task. It goes beyond this task where working is also intended to keep and continue the generation.

The principle of social justice within the philosophical scope of working for workers, therefore, should be seen as a measure to maintain the sustainability of generations in the time to come. Thus, all the rights and obligations as prerequisites to establishing professional relationships should also be seen from a generative perspective.

There are generations behind those who work that need to be prepared and their rights and development should also be guaranteed. The obligations of workers cannot be seen in a way that they turn to the individual rights and obligations of the workers, but they should rather be seen as the communal rights and obligations of generations integrally.

b. Justification of Legal Morality of the meaning of social justice in Government Regulation in Lieu of Law concerning Job Creation.

The philosophy of working for workers goes beyond the survival of generations. It is for the sake of the life in the hereafter (Peschke, 1985) following the end of worldly life. The wages received after performing works in the world are comparable to what God has promised to His human beings later after their worldly life ends (Lloyd, 1964).

To assure a happy life, employees need a fortune with which they will help others living an unfortunate life. The wages received should cover life in the world and in the hereafter (Waliam, 2018). Sharing with others should be encouraged to allow for a happy life both in the world and in the hereafter. The concept of wages understood more as sharing holds an irrational dimension (Hardiman, 2003). Such a meaning of wages should be part of the regulation of rights and obligations in establishing work relationships between employers and employees. The employment relationship is certainly established through a previously agreed upon employment agreement (Putra et al., 2023).

The morality of law of the definition of social justice regarding working has dimensions of rationality (Gurvitch, 1959), and religious communality, where the former implies that physical welfare should take into account the fulfillment of basic needs and higher needs of the rights and obligations at work. The religious dimension of the meaning of social justice carries the meaning implying that spiritual/inner welfare should be fulfilled from the rights and obligations arising from working. Thus, the morality (Fuller, 1964) of the law of the definition of social justice in Government Regulation in Lieu of Law concerning Job Creation should carry the dimension of both rationality and religiosity.

The presence of Government Regulation in Lieu of Law concerning Job Creation bears the dimension of social justice of working within the perspective of communal rationality and communal religiosity. The working philosophy in Government Regulation in Lieu of Law only carries individual and rational meaning transactionally. The interest of private businesses (entrepreneurs) and the interest of state revenue (reduced for the sake of those with power) gained from



taxes collected from businesses/economic activities seem to be the only primary objectives (Dyde, 2001).

The principle of individual and rational justice in a transactional scope in Government Regulation in Lieu of Law concerning Job Creation contravenes the principle of social justice (Dahrendorf, 1986) in the state constitution and ideology. Government Regulation in Lieu of Law concerning Job Creation philosophically does not hold any power of enforcement since it lacks the spirit of the morality of law (Williamson, 2022). This regulation is more like fleshless bones seen from the perspective of social justice for all workers in Indonesia. This regulation is also seen more like a delicate roof hanging loosely without pillars and foundations. Conversely, it can also be seen as a kite, flying high following where the wind goes the wind represents the power of authorities and business people. The kite is easily tugged as one wishes following the interest of authorities and business people.

Government Regulation in Lieu of Law concerning Job Creation represents despotic, repressive, and capitalistic tendencies (Zhang Zhiming of Philippe Nonet and Philip Selznick, 1978). Despotic justice shows the unilateral interest of the state to collect taxes and other official levies from businesses to help meet the target of revenue outlined in the state budget. Moreover, repressive justice restricts and overlooks the normative rights of workers because they have weak bargaining position not protected by the state as its constitutional responsibility. Liberal justice indicates that the meaning and perspective of harmony between rights and obligations between employers and employees should become the prerogative of companies.

The characteristics of social justice for all workers in Indonesia guaranteed by the constitution and the morality of the highest law are marked by religious, humanistic, and communal aspects (Cotterrell, 2017). According to Murphy (J. B. Murphy, 2017), Religious justice positions the value of observances and worship of God above all among workers. Humanistic justice upholds the value of respecting human dignity and worth by valuing equality of rights and status regardless of race, ethnicity, ancestry, social status, or religion (Kristiyanti, 2018). This means that workers, as human beings, have the right to decent employment and livelihood for the sake of humanity. Communal justice indicates that working is a communal responsibility for an individual, his family, community, state, and nation. Welfare is seen from the philosophical perspective as the whole morality of the highest and constitutional law.

## CONCLUSION

Government Regulation in Lieu of Law does not guarantee the right to get a decent occupation and proper livelihood for the sake of humanity for all workers in Indonesia. Therefore, it is made to only legitimate the liberalism of interest of businesses within the system of capital economy of the free market. Government Regulation in Lieu of Law concerning Job Creation justifies the coercion of all workers in Indonesia to get involved in the capitalism of the free job market, reducing and eliminating the rights of all workers in Indonesia constitutionally to provide decent jobs and proper livelihoods for the sake of humanity. Government Regulation in Lieu of Law

concerning Job Creation adheres to the principle of individual justice that contravenes the principle of social justice for all workers in Indonesia. Government Regulation in Lieu of Law concerning Job Creation steps out of the constitutional objectives of bringing about welfare for all workers in Indonesia, contravening Pancasila as the highest source of legal morality.

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