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**LEGAL PROTECTION OF LONG LEAVE FOR WORKERS/LABORERS
BASED ON LAW NO. 6 OF 2023 AND CONSTITUTIONAL COURT DECISION
NO. 168/PUU-XXI/2023**

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ABSTRACT

This study aims to analyze how the Legal Protection of the Right to Long Leave for workers according to Law Number 6 of 2023 and Constitutional Court Decision Number 168 / PUU- XXI / 2023 and to analyze Legal Considerations in Constitutional Court Decision Number 168 / PUU- XXI / 2023 have provided Legal Certainty and Justice for the Right to Long Leave for Labor / Workers. This type of research is normative legal research, normative legal research is also called doctrinal legal research and uses the Legislation approach, conceptual approach. Legal protection of long leave rights for certain time workers is regulated in Law Number 13 of 2003 concerning manpower and replaced by Law Number 6 of 2023 concerning Job Creation stating that long leave is entitled to be given to workers who have worked for 12 consecutive months or 1 consecutive year and at least 12 working days are given. The rules regarding long leave are further regulated in work agreements, company regulations or collective labor agreements. The legal protection of long leave for workers/laborers based on Law No. 6 of 2023 and Constitutional Court Decision No. 168/PUU-XXI/2023 in principle still refers to Article 79 paragraph (2) letter c of the Manpower Law, which states that leave arises after 12 months of continuous work. The Constitutional Court's decision does not change this provision, but focuses more on changes in the regulation of the term of the Fixed-Term Employment Agreement (PKWT) and the company's obligations regarding long breaks.

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LEX JOURNAL: KAJIAN HUKUM & KEADILAN

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1. INTRODUCTION

In the preamble of the 1945 Constitution, the 4th paragraph states the legal ideals of the 1945 Constitution, which are sourced and imbued with the philosophy of Pancasila. The 4th paragraph mentions the legal ideals which are then translated in the body. Regarding the contents of the provisions in the body that have relevance to labor issues, namely Article 27 paragraph 2 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) states that "Every Indonesian citizen has the right to work and a decent livelihood" (Sumertajaya, 2024).

Since the enactment of Law No. 13 Year 2003 on Manpower, Indonesia has entered a new era in the regulation of employment relations. This law is designed to protect workers' rights and create a balance between the interests of workers and employers. Some important aspects regulated in this law include minimum wage, working hours, leave, and protection against termination of employment (HAK CUTI PANONG) (Wibowo, Hadi, & Gunadi, n.d).

However, the implementation of Law No. 13/2003 has not been smooth. Various challenges have arisen, especially in terms of law enforcement and awareness of workers' rights (Sholihah, 2024). Many workers, especially in the informal sector, still do not have access to the protection they should receive. In addition, employers often face difficulties in complying with the stipulated provisions, which can result in conflicts between workers and management.

In 2020, efforts to reform labor law were again made through the passage of the Job Creation Law. This law aims to create a better investment climate by simplifying various regulations, including related to labor. Although it is expected to increase employment, this law has drawn controversy and rejection from various circles, especially related to the protection of workers' rights. This process shows the complex

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E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

dynamics of labor regulation in Indonesia, where worker protection and economic growth must be balanced (Iswaningsih, 2021).

The emergence of Law Number 6 of 2023 on the stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation. Since the global economic crisis and the impact of the COVID-19 pandemic, many sectors have experienced a significant decline, leading to high unemployment (Yitawati, 2024). The government realizes the importance of structural reforms to ease investment and accelerate economic recovery, hence the initiative to draft a law that is more comprehensive and responsive to market needs.

The Job Creation Law aims to simplify regulations that are considered complicated and complicate the business licensing process. By integrating various regulations into one law, it is expected that there will be ease for entrepreneurs, both local and foreign, to invest in Indonesia. In addition, the law also regulates various aspects of labor, including flexibility in employment relationships and protection for workers, although there are concerns regarding the reduction of workers' rights in some sectors (Yusika, 2021).

However, the passing of Law No. 6 of 2023 was not free from controversy and rejection from various elements of society, including trade unions and non-governmental organizations (Aresta, Yuni, & Migrant, 2023). They are concerned that this law prioritizes the interests of investors over the protection of workers' rights. Massive protests occurred in various regions, reflecting dissatisfaction with the potential negative impacts of this policy. These dynamics demonstrate the challenges of achieving a balance between economic growth and social protection in Indonesia.

The Constitutional Court (MK) Decision No. 168/PUU-XXI/2023 stems from a challenge to the existence of the Job Creation Law, which is considered by some to not fulfill the principles of democracy and public participation. The plaintiffs in this case claim that the process of passing the Job Creation Law did not involve adequate public

Tersedia di online: <http://ejournal.unitomo.ac.id/index.php/hukum>

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P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & Keadilan

participation, thus violating the constitutional right to contribute to policy-making. Many elements of society disagree with the enactment of the Job Creation Law. The Job Creation Law is considered not in favor of the community, especially workers. Several articles in the Job Creation Law are considered detrimental to workers. One of them is about severance pay and the lowered value of compensation (Sukma, *et.al.*, 2025).

The Constitutional Court's decision is of public interest as it concerns the legal legitimacy of the Job Creation Law that has had a profound effect on various sectors, including employment and investment. In its ruling, the Court stated that there were procedural flaws in the passage of the law, providing room for criticism of legislative practices that were deemed rushed and non-transparent. In addition, the decision opened the door for revision or annulment of several provisions deemed detrimental to society, sparking a wider debate on the direction of economic and social policy in Indonesia (Pratama, Lazuardi, & Uwiyono, 2022).

Following the ruling, polemics intensified among the public, politicians, and businessmen. While some welcomed the Court's decision as a positive step towards increasing public participation in lawmaking, others were concerned that the legal uncertainty could affect the investment climate and economic growth. These dynamics reflect the complexity of the relationship between law, economics and human rights in Indonesia, as well as the challenges of creating balanced and inclusive policies.

The right to sabbatical leave for workers in Law No. 6/2003 on Job Creation and Constitutional Court Decision No. 168/PUU-XXI/2023 relate to significant changes in labor regulations that have the potential to affect workers' welfare. This law regulates various aspects of labor, including provisions on leave, which are considered more flexible but also raise concerns regarding the protection of workers' rights. Many workers and labor unions feel that the more lenient arrangements regarding sabbatical leave could reduce their right to adequate rest periods, which are important for mental and physical health (Ardelia, 2024).

Tersedia di online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

The right to Long Leave is one of the rights of workers who have worked for a certain period of time and have a significant contribution in creating a balance between work and personal life. Based on Article 79 paragraph (2) of Law Number 13 of 2003 concerning Manpower regulates employee's long leave rights, workers who have worked for 6 (six) consecutive years are entitled to a long leave of 2 (two) months. However, with the existence of the Job Creation Law, the regulation regarding this long leave has undergone several changes which provide more flexibility to employers and workers in regulating this right through work agreements, company regulations, or collective labor agreements (PKB) (Khair, 2021). The protection of the right to long leave is also closely related to the principle of *decent work* launched by the *International Labor Organization (ILO)*. This principle emphasizes the importance of the balance between work productivity and workers' welfare. In the Indonesian context, the protection of the right to long leave symbolizes the state's commitment to respecting workers' rights, as well as creating conducive and sustainable working relationships (Hardiwinoto, *et.al.*, 2017).

However, the problem is the paradox in the Constitutional Court Decision No. 168/PUU-XXI/2023 which only exacerbates this polemic, as it recognizes the procedural flaws in the enactment of the Job Creation Law. In the ruling, the Court emphasized the importance of public participation in the legislative process, meaning that aspects relating to workers' rights, including long leave, should be re-evaluated. This decision gives hope to groups fighting for better protection for workers, but also creates legal uncertainty that could affect the implementation of the law (Raphael, 2024).

The public and various stakeholders are now engaged in a discussion on the need to revise or adjust the long leave provisions in the Job Creation Law. On the one hand, there is a push to ensure that workers get appropriate leave entitlements in order to maintain work-life balance. On the other hand, employers are concerned about the impact of such changes on productivity and operational costs. This dynamic reflects the

Tersedia di online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

challenge of creating regulations that not only support economic growth, but also guarantee workers' rights fairly (Komnas HAM, 2021).

Thus, this background serves as a basis for understanding the importance of protecting the right to sabbatical leave for workers as part of efforts to realize justice in industrial relations in Indonesia. Policy adjustments made through the Job Creation Law and strengthened by the Constitutional Court Decision Number 168/PUU-XXI/2023 need to be continuously monitored and evaluated so that they remain in line with the principles of protecting workers' rights and sustainable economic development.

2. RESEARCH METHODS

This type of research is normative legal research, normative legal research is also called doctrinal legal research. In this type of legal research, often the *law* is conceptualized as what is written in the *laws* and regulations (*law in books*) or the law is conceptualized as rules or norms that are patacons of human behavior that are considered appropriate (Amiruddin & Asikin, 2014). This type of normative legal research is research that is focused on examining the rules or norms in positive law. Using legal materials in the form of laws and regulations, legal theories and opinions of scholars (Marzuki, n.d).

3. DISCUSSION

Asset Forfeiture Mechanism in Returning State Losses Due to Corruption Crime

The Constitutional Court (MK) Decision Number 168/PUU-XXI/2023 is a response to constitutional objections from labor unions and the Labor Party against a number of provisions in the Job Creation Law that are considered to neglect protection and justice for workers. The petition highlights fundamental aspects of labor relations in Indonesia, such as contract work periods (PKWT), protection against layoffs, foreign labor arrangements, wage systems, and outsourcing mechanisms.

Tersedia di online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

This decision emphasizes the role of the Constitutional Court as the guardian of the constitution and protector of the constitutional rights of citizens, especially workers, in the face of legislative trends that tend to be pro-investment but neglect the socio-economic rights of the people. The constitutional articles used as the main reference in the Constitutional Court's analysis include:

- a. Article 27 paragraph (2) of the 1945 Constitution: "Every citizen has the right to work and a livelihood worthy of humanity."
- b. Article 28D paragraph (1): "Everyone has the right to recognition, guarantees, protection and certainty of a just law and equal treatment before the law."
- c. Article 28H paragraph (2): The right to obtain facilities and special treatment to obtain employment and a decent livelihood.
- d. Article 28I paragraph (4): Protection, promotion, and fulfillment of human rights are the responsibility of the state.

On that basis, the Court considers that policies governing employment relations must be oriented towards the protection of workers as parties who are economically and structurally weaker than employers.

- a. Fixed-term Employment Agreement (PKWT)

The Constitutional Court considered that PKWT arrangements that allow workers to be contracted indefinitely or through repeated extensions create job uncertainty. This is contrary to the principles of protection and legal certainty guaranteed in Article 28D paragraph (1) of the 1945 Constitution. By limiting PKWT to a maximum of five years (including extensions), the Constitutional Court indirectly encourages employers to transfer the status of contract workers to permanent workers if the work is continuous. This is a form of affirmation of the principle of security of tenure or job security as a form of decent livelihood.

b. Use of Foreign Workers (TKA)

The Court affirmed that the use of foreign workers must not override the obligation to prioritize domestic workers, as the principle of local labor sovereignty. This is an affirmation of the principle of economic nationalism in labor. The Constitutional Court strengthens the role of the state in maintaining a balance between openness to investment and protection of jobs for the Indonesian people. The use of foreign workers can only be justified if there is absolutely no local labor available for certain positions, and must be based on the objective needs of the labor market.

c. Minimum Wage and Wage Scale Structure

The Court highlighted the absence of explicit Decent Living Needs (KHL) indicators in the determination of minimum wages, as well as the vagueness of provisions regarding the structure and scale of wages. The right to a decent livelihood is closely related to the value of wages received by workers. Minimum wages that are not based on the KHL risk overriding the basic needs of workers and families. The Constitutional Court expanded the responsibility of the government and employers to use objective data in wage setting, including sectoral variables, inflation, and economic growth.

d. Termination of Employment (PHK)

The regulation of layoffs that are too easily carried out without a strong bipartite agreement or negotiation process, according to the Constitutional Court, is contrary to the principle of procedural justice (due process of law). This decision reaffirms the position of workers as structurally weak and in need of strong legal protection. Layoffs are not just an administrative matter, but concern the right to life and the future of workers. The Constitutional Court signaled that every layoff must still go through fair, transparent, and accountable procedures.

Tersedia di online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

e. Outsourcing and Workforce Flexibility

The outsourcing regulation in the Job Creation Law is considered by the Constitutional Court to be too loose because it opens outsourcing to all types of work. The Court is of the view that not all types of work can be outsourced, especially those that are permanent and sustainable. Unrestricted outsourcing can be a way for employers to avoid responsibility for workers' normative rights. This decision puts the legal protection of outsourced workers back within the framework of state responsibility.

So in this case, the Constitutional Court's decision is substantive:

- a. Provide a constitutional interpretation of the Job Creation Law so that it does not deviate from the principles of social justice and protection of human rights.
- b. Restore the state's function as a protector of workers, not just a facilitator of the free labor market.
- c. Order the legislator to draft a separate and comprehensive labor law.
- d. Bind all stakeholders, including the executive, legislature, and businesses, to align labor policies with constitutional principles.

Constitutional Court Decision No. 168/PUU-XXI/2023 is an important victory for the labor movement and civil society fighting for a fair and humane labor system. In the context of constitutional law, this decision confirms that the Constitution's alignment is not neutral towards the market, but in favor of protecting the most vulnerable citizens: in this case, workers. Thus, the Constitutional Court does not only carry out judicial functions, but also plays an important role in social correction and the establishment of a just rule of law.

Article 81 number 25 of Law 6/2023 which amends the provisions of Article 79 of Law 13/2003 reads:

- (1) Employers are obliged to give:
 - a. rest time; and
 - b. Leave.

Tersedia di online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

- (2) Rest time as referred to in paragraph (1) letter a must be given to Workers / Laborers at least including:
 - a. rest between working hours, at least half an hour after working for 4 (four) hours continuously, and the rest time does not include working hours; and
 - b. 1 (one) day weekly rest for 6 (six) working days in 1 (one) week.
- (3) Leave as referred to in paragraph (1) letter b which must be given to workers/laborers, namely long leave, at least 12 (twelve) working days after the worker/laborer concerned has worked for 12 (twelve) months continuously.
- (4) The implementation of long leave as referred to in paragraph (3) shall be regulated in the employment agreement, company regulation, or collective labor agreement.
- (5) In addition to the rest and leave periods as referred to in paragraph (1), paragraph (2), and paragraph (3), certain companies may provide long breaks as stipulated in Work Agreements, Company Regulations, or Collective Labor Agreements.
- (6) Further provisions regarding certain companies as referred to in paragraph (5) shall be regulated by Government Regulation."

The regulation in the Article a quo amends the provisions of Article 79 paragraph (2) of Law 13/2003 so that it no longer includes Article 79 paragraph (2) letters c and d, while the provisions of Article 84 of Law 13/2003 still regulate the validity of Article 79 paragraph (2) letters c and d. This creates legal uncertainty because the non-regulation of Article 79 paragraph (2) letter c and letter d of Law 13/2003 in 79 of Law 6/2003 which amends the provisions of Article 79 paragraph (2) of Law 13/2003, creates legal uncertainty for workers/laborers to obtain the right to full wages while undergoing annual rest and/or long rest rights, because on the one hand, workers/laborers are entitled to full wages during their annual rest and/or long rest rights as stipulated in Article 84 of Law 13/2003, but on the other hand, Article 79 paragraph (2) no longer regulates letters c and d as mentioned in Article 84 of Law 13/2003.

Because the regulation of the Article a quo has the potential to make workers/laborers unable to obtain the right to recognition, guarantees, protection, and

Tersedia di online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

fair legal certainty as guaranteed in Article 2D paragraph (1) of the 1945 Constitution and potentially unable to receive fair and appropriate compensation and treatment in employment relations relating to the right to rest/leave and the right to rest/leave wages by workers as these rights should be fulfilled according to Article 28D paragraph (2) of the 1945 Constitution; which in turn workers/laborers also have the potential to not get the right to work and livelihood worthy of humanity as guaranteed in Article 27 paragraph (2) of 1945. In relation to other constitutional rights as referred to in Article 28I paragraph (4) of 1945, the lack of role of the State in the regulation of leave indicates the absence of protection, promotion, enforcement, and fulfillment of human rights which are the responsibility of the state, especially the government.

That based on the above description, it is clear and evident that the provisions of the Article petitioned for judicial review have the potential to harm the constitutional rights of the Plaintiffs, as set out in Article 27(2), Article 28D(1) and Article 28D(2) of the 1945 Constitution. So that there is clearly a causal relationship (causal verband) between the petitioned article and the potential constitutional loss of the Plaintiffs. If the Court grants the petition, the potential loss will certainly not occur.

However, the provisions regarding long breaks in the Job Creation Law have been subject to judicial review to the Constitutional Court ("MK"). The Constitutional 1945 Constitution Court Decision No. 168/PUU-XXI/2023 states that the word "may" in Article 79 paragraph (5) in Article 81 number 25 of the Job Creation Law is contrary to the and has no binding legal force (p. 681). The Constitutional Court argues that the provisions in the Job Creation Law cause long breaks to not be mandatory for workers/laborers. This is because the word "may" is to express the discretionary or optional nature of an authority given to a person or institution (p. 592). By regulating the right to long rest in the Job Creation Law to be an option or not an obligation, workers/laborers face uncertainty over the right to long rest because the provisions are optional or depend on Company policy.

Tersedia di online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

The Constitutional Court considers that long leave or long rest is part of a predetermined rest period as a constitutional right that must be provided by employers for certain companies. The Constitutional Court is also of the opinion that workers/laborers who work in certain companies must be given long breaks, so the word "may" in the article must be declared unconstitutional in order to provide legal certainty.

Thus, the big leave regulation in Article 81 number 25 of the Appendix to the Job Creation Law which amends Article 79 paragraph (5) of the Manpower Law after the Constitutional Court's decision becomes:

"In addition to the rest and leave periods as referred to in paragraph (1), paragraph (2), and paragraph (3), certain companies provide long breaks as stipulated in Work Agreements, Company Regulations, or Collective Labor Agreements."

As such, sabbatical leave is a long break that certain companies are obliged to provide to their employees, the implementation of which is further regulated in work agreements, company regulations, or collective labor agreements. Likewise, the conditions of great leave and the length of great leave are the authority of the company to regulate further. Unfortunately, both in Law No. 6 of 2023, the Manpower Law, and Government Regulation No. 35 of 2021, it is not further regulated what the criteria are for certain companies that are obliged to provide great leave. In addition, until now there have been no implementing regulations such as ministerial regulations governing what certain companies are and the rules regarding long breaks (great leave).

The Constitutional Court asked the legislators, namely the House of Representatives and the Government, to immediately form a new Labor Law and separate it from that regulated in the Job Creation Law. The Constitutional Court gave a maximum of 2 (two) years to the legislators to immediately complete the new Labor Law. The reform of the formation of the new Labor Law is encouraged for several main reasons. First, the substance of the Manpower Law has gone through the results of 37 cases that have previously been requested to be tested by the Constitutional Court. With

Tersedia di online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

so many materials declared unconstitutional, the Law is no longer intact. Second, although the Manpower Law has been amended through the Job Creation Law, not all materials from the old Manpower Law are accommodated in the Job Creation Law, creating an overlap between the two laws. Third, the Court considers that disharmony and unsynchronization between the norms in the two laws could threaten the protection of workers' rights and legal certainty for employers.

Therefore, the Constitutional Court encourages that the formation of the new law is also carried out by involving active participation from labor unions to ensure a clearer and separate substance from the Job Creation Law. In relation to the Constitutional Court Decision No. 168/PUU-XXI/2023, several implementing regulations of the Manpower Law need to be adjusted to accommodate this Constitutional Court Decision. Regulations that may be directly affected include Government Regulation Number 36 of 2021 on Wages, Government Regulation Number 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Working Time, Rest Time, and Termination of Employment, as well as Government Regulation Number 34 of 2021 on the Use of Foreign Workers. In addition, the provisions affected by the Constitutional Court Decision No. 168/PUU-XXI/2023 have now come into force and must be implemented immediately, so compliance with the relevant aspects of the Labor Law affected by the Constitutional Court Decision No. 168/PUU-XXI/2023 is required.

4. CLOSING

The Constitutional Court Decision Number 168/PUU-XXI/2023 explicitly emphasizes the importance of protecting workers' normative rights, including the right to long leave, as an integral part of a decent livelihood and fair treatment in the workplace. In its legal considerations, the Court considers that the elimination or neglect of the right to long leave previously regulated in Law Number 13 of 2003 concerning Manpower has the potential to violate the principles of social justice, legal certainty,

Tersedia di online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & Keadilan

and recognition of the dignity of workers, through this decision the Court has provided legal certainty that the right to long leave cannot be eliminated unilaterally by the legislator. On the other hand, the Court also strengthens the principle of justice by providing legal protection to workers from deregulatory tendencies that sacrifice their welfare rights.

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Tersedia di online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

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LEX JOURNAL: KAJIAN HUKUM & KEADILAN

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