

**LOCAL CHAPTER**

# LEGAL WRITINGS



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**UU Cipta Kerja: Different Perspectives on Laborer**

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**I. Facts and Analysis****Preface**

Three years ago, in 2020, Indonesia invented a new form of regulation with an omnibus law system, i.e., Law Number 11 of 2020 regarding Cipta Kerja. However, the policy didn't get good responses within this country. The issue was that many of the law's provisions were inconsistent with our constitution. This regulation was declared conditionally unconstitutional after being submitted to the Constitutional Court (Mahkamah Konstitusi) for a formal test.<sup>1</sup> In response to that decision, at the end of 2022, the government published Government Regulation in lieu of Law Number 2 of 2022 regarding Cipta Kerja ("**Perppu Cipta Kerja**") to push the approval for this regulation.<sup>2</sup>

In 2023, Indonesia's legislature provided a fresh year's gift in the form of Law Number 6 of 2023 regarding The Determination of Government Regulation in lieu of Law Number 2 of 2022 regarding Cipta Kerja as Law ("**UU Cipta Kerja**"). The government was actively pushing this regulation to be implemented to increase the number of investors in Indonesia when the global economy was in horrible condition. In this case, the government believed that the **UU Cipta Kerja** was issued in response to a critical situation in the global economy, which was allegedly capable of resulting in domestic stagflation.<sup>3</sup> In contrast to the government, the citizens, particularly workers, believe **UU Cipta Kerja** undermines workers' rights and tends only to

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<sup>1</sup>Nano Tresna A. and Lulu A., "MK: Inkonstitusional Bersyarat, UU Cipta Kerja Harus Diperbaiki Dalam Jangka Waktu Dua Tahun," [mkri.id](https://www.mkri.id/), available at <https://www.mkri.id/index.php?page=web.Berita&id=17816>, accessed on April 29, 2023.

<sup>2</sup>Mahkamah Konstitusi, Putusan No.91/PUU-XVIII/2020, *Hakiimi Irawan Bangkid Pamungkas (Pemohon)* (2021).

<sup>3</sup>CNN Indonesia Team, "Jokowi Rilis Perppu Ciptaker: Ancaman Resesi hingga Stagflasi," CNN Indonesia, available at <https://www.cnnindonesia.com/ekonomi/20221230132522-92-894102/alasan-jokowi-rilis-perppu-ciptaker-ancam-resesi-hingga-stagflasi>, accessed on March 23, 2023.

support investors. This statement is in line with what was stated by Said, the President of the Labor Party, **UU Cipta Kerja** is too focused on investors' interest by ignoring the rights and welfare of laborers in Indonesia.<sup>4</sup> The justification for the emergency is also a starting point of consternation among people.<sup>5</sup>

The essence of **UU Cipta Kerja** is that it's expected to increase the chance for the Indonesian workforce (*Angkatan Kerja Indonesia*) to be workers. If we look forward to the middle of the 21st century, 2035 to be precise, Indonesia shall obtain a demographic bonus.<sup>6</sup> 10 years after 2035, this country will be 100 years old in 2045. That year is predicted by experts as the generation of Indonesia Gold.<sup>7</sup> Moreover, the number of productive age figures will reach 207.99 million people, while the population of non-productive age is estimated at 110.97 million people.<sup>8</sup> In addition, there will be very few new jobs, judging by the few positions in the company that will still be vacant. As a result, everyone will be rushing to apply for jobs in the remaining places. Moreover, the **UU Cipta Kerja** is expected to be able to provide protection and welfare for workers due to the bonus demographic. Surprisingly, it is also the aftermath of the global economic threat from the recovery phase.

**UU Cipta Kerja** regulates issues such as determining the minimum wage, controlling outsourced workers or outsourcing workers' absences, terminating employment, as well as providing business convenience and protection, enhancing the investment ecosystem, empowering cooperatives and Ministry of Micro, Small, and Medium Enterprises ("MSME") actors, and encouraging the acceleration of national strategic projects to increase national economic growth.<sup>9</sup> Given that there was previously a legal vacuum, the target for capital that Indonesia can receive is expected to grow due to legal certainty for investors.

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<sup>4</sup>Editorial Team, "The Job Creation Law That Actually Makes Workers Reluctant To Work," *voi.id*, available at <https://voi.id/en/bernas/266012>, accessed on June 14, 2023.

<sup>5</sup>*Ibid.*

<sup>6</sup>Ani Nuryani, Aan Julia, and Yuhka Sunda, "Proyeksi Pencapaian Bonus Demografi di Indonesia Tahun 2035," *Bandung Conference Series: Economics Studies* Vol. 2 No. 2 (2022), page 265.

<sup>7</sup>Hasdiana Saleh, et al, "Mempersiapkan Generasi Emas Indonesia 2045 Menghadapi Bonus Demografi Melalui Pembelajaran Berbasis Kreatifitas," *Aksara: Jurnal Ilmu Pendidikan Nonformal* Vol. 9. No. 2 (2023), page 953.

<sup>8</sup>*Ibid.*, page 950.

<sup>9</sup>*Peraturan Pemerintah Pengganti Undang-Undang (Perppu) tentang Cipta Kerja*, Perppu Nomor 2 Tahun 2022.

One of the important sectors affected by **UU Cipta Kerja** is employment. The president claimed that one of the major effects of **UU Cipta Kerja** is that it protects and strengthens the role of workers in enhancing investment in Indonesia, including establishing legal certainty about minimum wages and severance pay.<sup>10</sup> The claim goes against the Labor Party's position. On April 11, 2023, the Labor Party said that they would immediately submit a judicial review to the Constitutional Court of the **UU Cipta Kerja**. The president of the Labor Party, Iqbal, highlighted that this judicial review was undertaken because this regulation had negative impacts on workers or laborers. He implied that the **UU Cipta Kerja** was detrimental to young job seekers, farmers, fishermen, domestic workers, manufacturing workers, and the impoverished. Furthermore, **UU Cipta Kerja** raises nine issues, including the prospect of lifelong outsourcing, which is viewed as a type of modern slavery, low salaries and minimum wages that are not negotiated with labor unions, and the possibility for workers to be subjected to these conditions.<sup>11</sup>

Along with the claim made by the Labor Party, thousands of workers participated in a labor demonstration on May 1, 2023, calling on the government to repeal the **UU Cipta Kerja**. According to Lukman Hakim, one of the general chairs of the Indonesian Workers' Struggle National Front (FNPBI), workers do not oppose the **UU Cipta Kerja** in its entirety. There are a few things to consider, including labor wages, working conditions, and employment arrangements including contract work and outsourcing. He said that there are no regulations that satisfy all parties. However, it would be preferable if the government held a discussion forum where all parties could participate and contribute new ideas for enhancing or interpreting the **UU Cipta Kerja**.<sup>12</sup>

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<sup>10</sup>Andrean W. Finaka, "UU Cipta Kerja Beri Dampak Signifikan Bagi Usaha dan Investasi," *Indonesiabaik.id*, available at <https://indonesiabaik.id/infografis/uu-cipta-kerja-beri-dampak-signifikan-bagi-usaha-dan-investasi>, accessed on April 19, 2023.

<sup>11</sup>Kompas, "Partai Buruh Segera Ajukan Uji Formil dan Materiil UU Cipta Kerja ke MK," *Kompas.com*, available at <https://nasional.kompas.com/read/2023/04/11/13523561/partai-buruh-segera-ajukan-uji-formil-dan-materiil-uu-cipta-kerja-ke-mk>, accessed on April 19, 2023.

<sup>12</sup>Martiyasari Rizky, "Ternyata, Ini Sebab Buruh Gerah & Tuntut Cabut UU Cipta Kerja," *cnbcindonesia.com*, available at <https://www.cnbcindonesia.com/news/20230502180828-4-433837/ternyata-ini-sebab-buruh-gerah-tuntut-cabut-uu-cipta-kerja>, accessed on June 24, 2023.

## UU Cipta Kerja: Government's Vision and Goals

For the past few years, our world has been shocked by several crises. Mainly, the outbreak of the COVID-19 pandemic has infected over 750 million cases and resulted in nearly 7 million deaths all around the globe.<sup>13</sup> Moreover, the pandemic forced billions of people to endure grueling periods of lockdown. Consequently, nations' economic growth plummeted to levels unseen since the global financial crisis of 2008. Indonesia's economy has not been an exception as the nation took a major hit from the aforementioned worldwide health and economic troubles. The country has fallen into recession again for the first time since 1998. South East Asia's biggest economy saw growth fall by 3.49% in the third quarter of the year, compared to the same period in 2019. Then, a decline of 5.32% in the second quarter of 2020 pushed Indonesia into a recession.<sup>14</sup>

The drafting of **UU Cipta Kerja**, entitled Omnibus Law is legislation designed by Jokowi's Administration in light of current and future economical obstacles. This particular law gained momentum and legitimacy through turbulence during the year 2020. Indonesian President, Joko Widodo has long proposed the notion of the omnibus bill most notably in his first speech since being sworn into his second period. He was extremely clear in stating that **UU Cipta Kerja** and economic growth in Indonesia are his top priorities for his second period in office. According to the President, he is dedicated to "simplifying all forms of regulation" that impede investment.<sup>15</sup>

Along its drafting process, **UU Cipta Kerja** made major changes in many workforce regulation areas attracting many criticism from legal activists.<sup>16</sup> One of the main grounds to its rejection is the new introduction of Foreign Workforce ("TKA") regulations. Several of the changes made from the previous Law Number 13 of 2003 regarding Employment ("**UU Ketenagakerjaan**") pertaining to Article 42 about

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<sup>13</sup>WHO, "WHO Coronavirus (COVID-19) Dashboard," World Health Organization, available at <https://covid19.who.int/>, accessed on April 29, 2023.

<sup>14</sup>BBC News, "Indonesia in Recession For The First Time in 22 Years," BBC.com, available at <https://www.bbc.com/news/business-54819898>, accessed on April 30, 2023.

<sup>15</sup>Kartika Manurung and Christine Holike, "The Omnibus Law on Job Creation: Economic Growth First! – People, Environment and Democracy Later?" Watch Indonesia!, available at <https://www.watchindonesia.de/20902/omnibus-law-on-job-creation-economic-growth-first-people-environment-and-democracy-later?lang=de>, accessed on April 29, 2023.

<sup>16</sup> <https://www.jawapos.com/nasional/01361352/uu-cipta-kerja-tuai-kritik-hingga-dicap-inkonstitusi>

foreign workforce permit that had been meticulously arranged in Presidential Regulation Number 20 of 2018 regarding Utilization of Foreign Workers (PERPRES Nomor 20 Tahun 2018 tentang Penggunaan Tenaga Kerja Asing). Formerly foreign employees were required to get Residence Visa, Rencana Penggunaan TKA (“RPTKA”) and TKA Utilization Permit, but after the changes inside **UU Cipta Kerja** now foreign workers are only obligated to enclose **RPTKA**. Some Articles in **UU Ketenagakerjaan** are also expanded in scope for example Article 42 section (3) that several positions such as directors and commissioner overtaken by foreign workforce does not require a written permit. Other prerequisites in **UU Ketenagakerjaan** are also erased in **UU Cipta Kerja** such as the abandonment of Article 48 that completely lifted the obligation for employer to send back foreign workforce after a disclosed amount of time.

Fast forward to 2020, Jokowi’s administration has completed the legislative proceedings of the Omnibus Law. The subsequent mass rejection led to a judicial review on the Constitutional Court. Court Decision Number 91/PUU-XVIII/2020 The Constitutional Court (Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020) granted a part of the legal review for the first time since its inception. The Constitutional Judge Panel reiterated that Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja was formally defective and conditionally unconstitutional (*inkonstitusional bersyarat*).<sup>17</sup> In its ruling the Constitutional Court deemed **UU Cipta Kerja** lacked several standardized method in its formation. The Court then emphasize the crucial part of “meaningful participation” in **UU Cipta Kerja**’s implementation.<sup>18</sup>

Meaningful participation is an integral procedural step in any laws passage to ensure its formal and material wholeness. More importantly a law that incorporates meaningful participation would greatly foster the sense of justice in the public eye. Previously this legal concept is embedded in Article 96 of Law Number 12 of 2011 regarding Formation of Legislation (“**UU PP**”) before being accommodated to the newer Law Number 13 of 2022 in response to the landmark decision issued by the

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<sup>17</sup>Nano Tresna A. and Lulu A., “MK: Inkonstitusional Bersyarat, UU Cipta Kerja Harus Diperbaiki Dalam Jangka Waktu Dua Tahun,” [mkri.id](https://www.mkri.id/), available at <https://www.mkri.id/index.php?page=web.Berita&id=17816>, accessed on April 29, 2023.

<sup>18</sup> Lebda Apsari Putri Yuan and Gayatri Diah Suprobowati, “Analisis Penyusunan UU Cipta Kerja Dalam Kaitannya Dengan UU No. 12 Tahun 2011 dan Putusan MK Nomor 91/PUU-XVIII/2020,” *Sovereignty: Jurnal Demokrasi dan Ketahanan Nasional*, Volume 1, Nomor 3, Year 2022

Constitutional Court in regards to **UU Cipta Kerja**.<sup>19</sup> The Court specifically considered in its decision that public participation is a necessary step in any regulation and to reach those standards there are several key preconditions to be met. First is the right to be heard, right to be considered and right to be explained. This specific elaboration differs from the previous **UU PP** and consequently expands the meaning of participation as a whole.

To respond to the Court's Decision, the Indonesian government decided to entirely abandon the already passed Omnibus Law and instead introduce a completely new form of law product, which is **Perppu Cipta Kerja**. According to Viktor Santoso Tandiasa, a former legal representative for the plaintiff in the Omnibus Law judicial review, **Perppu Cipta Kerja** has only minuscule differences compared to its predecessor. Viktor pointed out that the new law only corrected a few reference errors and several misspellings.<sup>20</sup> Those reference errors can affect the substance of the article. On page 6, for example, the formulation of Article 6 of **Perppu Cipta Kerja** includes a reference to Article 5 section (1) letter (a). Even though Article 5 of the **Perppu Cipta Kerja** does not have a section. In addition, Article 175 section (5) is written referring to section (3). Even though it should refer to section (4). Although it's materially identical to Omnibus Law, **Perppu Cipta Kerja** was formally passed as law in the parliament (DPR) in the 19th Plenary Meeting, period IV of the parliamentary session, the year 2022-2023.<sup>21</sup>

The government continued to argue that the current format was a step to mitigate the impact of global uncertainty since it promotes household consumption, the creation of employment opportunities, the reinforcement of the financial sector, and the improvement of financial authority.<sup>22</sup> **Perppu Cipta Kerja** was a measure to

<sup>19</sup> Fitriani Ahlan Sjarif, "Arti *Meaningful Participation* dalam Penyusunan Peraturan," Hukum Online, available at <https://www.hukumonline.com/klinik/a/arti-imeaningful-participation-i-dalam-penyusunan-peraturan-lt62ceb46fa62c0/>, accessed on June 23, 2023

<sup>20</sup> Andi Saputra, "Pengacara Penggugat: Isi Perppu Sama dengan UU Ciptaker," detiknews, available at <https://news.detik.com/berita/d-6492588/pengacara-penggugat-isi-perppu-sama-dengan-uu-ciptaker>, accessed on April 29, 2023.

<sup>21</sup> CNN Indonesia, "Perppu Cipta Kerja Resmi Disahkan Jadi Undang-Undang," [cnnindonesia.com](https://www.cnnindonesia.com/nasional/20230321104533-32-927642/perppu-cipta-kerja-resmi-disahkan-jadi-undang-undang#:~:text=DPR%20secara%20resmi%20menyetujui%20Peraturan,Selasa%20(21%2F3)), available at [https://www.cnnindonesia.com/nasional/20230321104533-32-927642/perppu-cipta-kerja-resmi-disahkan-jadi-undang-undang#:~:text=DPR%20secara%20resmi%20menyetujui%20Peraturan,Selasa%20\(21%2F3\)](https://www.cnnindonesia.com/nasional/20230321104533-32-927642/perppu-cipta-kerja-resmi-disahkan-jadi-undang-undang#:~:text=DPR%20secara%20resmi%20menyetujui%20Peraturan,Selasa%20(21%2F3)), accessed on April 29, 2023.

<sup>22</sup> Sri Pujianti, "Govt: Job Creation Perppu Mitigating Global Economic Impact," [en.mkri.id](https://en.mkri.id), available at

lessen the effects of the global economy because investment and consumption were correlated. An increase in investment would encourage greater employment opportunities and increase income. This increase in income would then gradually encourage increased consumption, escalate the demand for products and services, and also further encourage investment.

Moreover, the Government of Indonesia, under the leadership of President–Vice President, Joko Widodo–Ma'ruf Amin, envisions Indonesia as a developed country by 2045. They identify education and human resource development as essential components to achieving optimal levels of economic growth and increasing the country's competitiveness to benefit its entire population. The development of quality infrastructure and human resources constitutes the first two stages in the process of attaining developed status. As stated by the President, infrastructure development represents a foundational requirement, followed by the development of human resources. However, The Minister of Finance, Sri Mulyani, has identified five requirements for achieving Indonesia Gold (Indonesia Emas) in 2045, namely: infrastructure development, quality human resources, technological readiness, comprehensive regional planning, and a sustainable, credible, advanced, and healthy economy and financial sector.

One of the big complications in the country's investment environment is excessive regulation, not only at the central government level but also at the regional level. In terms of investment, the ease of doing business must be changed. According to the latest World Bank ranking, Indonesia's level of ease of doing business is ranked at number 73 of more than 180 countries.<sup>23</sup> At the current state of overlapping regulation, Indonesia is set to continue losing potential investment. BKPM calculated that over the past several years Indonesia has lost over USD\$ 120 billion in capital investment due to excessive regulations.

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[https://en.mkri.id/news/details/2023-03-09/Govt:\\_Job\\_Creation\\_Perppu\\_Mitigating\\_Global\\_Economic\\_Impact](https://en.mkri.id/news/details/2023-03-09/Govt:_Job_Creation_Perppu_Mitigating_Global_Economic_Impact), accessed on April 29, 2023.

<sup>23</sup>Omnibus Flash, "News Job Creation Omnibus Law Signed," pwc.com, available at <https://www.pwc.com/id/en/publications/omnibus/omnibus-flash-2020-01.pdf>, accessed on April 29, 2023.



## UU Cipta Kerja's Position Compared to Laborer's Perspective

In the epoch of capitalism, laborers are the backbone of the industry.<sup>24</sup> Without them, production would not exist. Workers refer to someone who works and is compensated for their efforts. A worker is defined in our country as someone who works as a permanent employee and earns a salary in the form of money or commodities.<sup>25</sup> There are two types of workers based on their work commitment, that is freelance workers and regular workers. Freelance workers refer to self-employed individuals. Rather than being employed by a company, freelance workers generally work as individuals who offer services in the form of contracts or projects.<sup>26</sup> In contrast with freelance workers, regular workers are usually associated with long-term or permanent job contracts and have longer periods. The distinction between workers and freelance workers is based on the employer's decision to hire. Freelance workers do not have a regular supervisor who expects them to constantly obey the commands of the business. This is different from workers who do work based on a system that has been determined by the employer.

However, based on Article 1 section (3) of the **UU Ketenagakerjaan**, workers have a broader definition, namely someone who receives wages through various forms for the hard work that they've done.<sup>27</sup> Based on the explanation from this law, laborers are classified into two categories, white-collar workers and blue-collar workers. Just like its name, white-collar workers are individuals who carry out supporting functions such as work preparation, control, or decision-making.<sup>28</sup> While blue-collar workers concentrate on the potential enhancement of the job of humans performing manual tasks on the shop floor.<sup>29</sup> Hence, jobs such as farmers, fishermen,

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<sup>24</sup>Dodi Faedlulloh, "Kegagalan Gerakan Buruh dan Partai Buruh Pada Pemilu Era Reformasi [The Failure of the Labor Movement And Labor Party in the Reform Era General Election]," *Jurnal Politika Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional* No. 10.2 (2019), page 171.

<sup>25</sup>M. Rahmat Budi Nuryanto, "Studi tentang solidaritas sosial di desa Modang kecamatan Kuaro kabupaten Paser (kasus kelompok buruh bongkar muatan)," *Conaplin Journal: E Journal Konsentrasi Sosiologi* Vol. 2, No. 3 (2014), page 53.

<sup>26</sup>Editorial Team, "What Is Freelancing and How Does It Work?" N26, available at <https://voi.id/en/bernas/266012>, accessed on June 14, 2023.

<sup>27</sup>*Undang-Undang (UU) Tentang Ketenagakerjaan*, UU Nomor 13 Tahun 2003, LN Nomor 39 tahun 2003, TLN No. 4279, Pasal 1 ayat (3).

<sup>28</sup>S. Waschull, J. A. C. Bokhorst, J.C. Wortmann, E. Molleman, "The redesign of blue-and white-collar work triggered by digitalization: collar matters," *Computers & Industrial Engineering* Vol. 165, No. 107910 (2022), page 1.

<sup>29</sup>*Ibid.*

domestic workers, manufacturing workers, and the impoverished as laborers. In 1999, during the first general election at the time of reformation, this community group joined a workers' union calling itself the Labor Party (*Partai Buruh*).<sup>30</sup> This party was formed as a forum for aspirations and a tool for workers to fight for their rights as citizens.

During the democratic era, the Labor Party led the labor movement in voicing their concerns about the government system and that the impact of **UU Cipta Kerja** is not in line with their expectations. Laborers evaluate that this new regulation has more negative consequences than beneficial consequences.<sup>31</sup> This makes achieving the desired balance more challenging. The Labor Party is not favorable to the **UU Cipta Kerja** because some articles in this regulation have caused more harm than benefit for laborers, such as: (1) simplified the requirements for foreign workers; (2) extended the period for *Perjanjian Kerja Waktu Tertentu* (“**PKWT**”); (3) make it easier to determine layoffs (*Pemutusan Hubungan Kerja*), since nowadays there is no need for a stipulation from an industrial hub dispute settlement agency; (4) extended overtime working hours; (5) abolished sectoral minimum wage (UMS); and (6) there's no restriction for types of work that can be outsourced. Those lists indicate that **UU Cipta Kerja** is stigmatized by the public as a regulation that's pro-foreign investors.

The primary grounds of protest included concerns such as the minimum wage and the opening of investment to international investors. This is what prompted them to file a judicial review request to the Constitutional Court. Although the Labor Party has made a significant contribution to the votes of workers in Indonesia, the influence of individual workers also cannot be underestimated. The increase in unemployment in Indonesia due to the pandemic shows how much the government needs to pay attention to its citizens.<sup>32</sup> Several companies closed their business or went bankrupt during the pandemic, which led to a notable drop in employment and layoffs.

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<sup>30</sup>Endra Wijaya, “Pendekatan Historis dan Politik Hukum terhadap Keberadaan Partai Kaum Buruh di Indonesia (Historical and Legal Policy Approaches to The Existence of Labour Party in Indonesia),” Dari Redaksi Vol. 13.0 (2016), page 317.

<sup>31</sup>Almadinah Putri Brilian, “Ancam Mogok Nasional, Ini 4 Alasan Buruh Tuntut UU Cipta Kerja Dihapus,” Detik.com, 1 Mei 2023, available at <https://finance.detik.com/berita-ekonomi-bisnis/d-6698826/ancam-mogok-nasional-ini-4-alasan-buruh-tuntut-uu-cipta-kerja-dihapus>, accessed on 14 Juni 2023.

<sup>32</sup>Ilham Robbi, “Peluang Serapan Tenaga Kerja di Jawa Timur Setelah Pandemi Covid-19,” *Jurnal Ketenagakerjaan* Vol. 17, No. 1 (2022), page 55.

In Southeast Asia, the informal laborers' group is made up of millions of low-skilled employees with poor earnings caused by the discrepancy between jobs and skills. In the age of global modernization, the mass digitalization of many working sectors are the primary cause of the growth in unemployment. Throughout 2020, the unemployment rate in the Asia-Pacific region increased to 5.2%, which shows an increase of 18% compared to 2019 with the number of unemployed reaching 101.1 million people.<sup>33</sup> Based on the projections of the International Monetary Fund (“IMF”), Indonesia is in second place as the country with the highest unemployment rate, which is 5.3%.<sup>34</sup> Meanwhile, the Central Agency on Statistics; Statistics Indonesia (“BPS”) has recorded that the unemployment rate in Indonesia has increased from last February, 8.40 million people to 8.42 million in August 2022.<sup>35</sup> This figure is quite large when compared to the total workforce of 143.72 million people, the open unemployment rate (*pengangguran terbuka*) in Indonesia was monitored at 5.86% in August 2022.

**UU Cipta Kerja** has become a political matter that has drawn interest from several spheres of society due to the differences between its advantages and disadvantages. In actuality, this law has not had a successful track record since 2020, which might be offered as a significant basis for its implementation.<sup>36</sup> **UU Cipta Kerja** has drawn a lot of criticism because its creation lacks public participation. This also raises questions of relevance in voicing aspirations that constantly echo in Indonesian political life.

The era of democracy, which should allow citizens to express themselves freely, is constantly fraught with problems about how criticism should be delivered, where the line should be drawn between hate speech and criticism, how media should

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<sup>33</sup>Badan Kebijakan Fiskal, “Kajian Dampak COVID-19 Terhadap Pasar Tenaga Kerja dan Respons Kebijakan di Kawasan Asia dan Pasifik,” Kementerian Keuangan Republik Indonesia, available at <https://fiskal.kemenkeu.go.id/kajian/2021/08/18/2433-kajian-dampak-covid-19-terhadap-pasar-tenaga-kerja-dan-respons-kebijakan-di-kawasan-asia-dan-pasifik#:~:text=Pandemi%20COVID%2D19%20juga%20memberikan,berketerampilan%20rendah%20dengan%20upah%20rendah>, accessed on May 15, 2023.

<sup>34</sup>Khadijah Shahnaz Fitra, “Pengangguran di Asia Tenggara, Indonesia Diprediksi Nomor 2,” *Bisnis.com*, available at <https://ekonomi.bisnis.com/read/20230225/12/1631675/pengangguran-di-asia-tenggara-indonesia-diprediksi-no-mor-2>, accessed on May 15, 2023.

<sup>35</sup>*Ibid.*

<sup>36</sup>Hesty Kartikasari and Agus Machfud Fauzi, “Penolakan Masyarakat Terhadap Pengesahan Omnibus Law Cipta Kerja dalam Perspektif Sosiologi Hukum,” *Doktrina: Journal of Law* Vol. 4, No. 1 (2021), page 39.

portray news, and so on. This question's answer should no longer be debated because Indonesia is a plural country. Differences of opinion should not be an impediment to living life. As a result, laborers, as a group, who are at a disadvantage when compared to employers and the government, require a larger media presence to defend their rights. This is demonstrated by popular social media platforms such as Instagram, Twitter, and Tiktok, where information can be disseminated swiftly. Within the Indonesian government, this facility is thought to be capable of disseminating and dismantling closed cases. As a result, the usage of propaganda reels on Instagram and Tiktok videos, as well as rising hashtags on Twitter, heralds a new era in Indonesia's digital revolution. Workers from all around Indonesia can use these resources to speak up for their rights.

## **The Government and Employers' Responsibilities in Ensuring Workers' Rights**

Laborers and employers both have different roles and authorities in the industrial system. Laborers are cogs created by employers. The existence of both is important in ensuring the harmony of the country's economy. This is reflected in the relationship between rights and obligations between employers and workers, in which the employer's obligation is to fulfill laborers' rights. According to Article 71, Law Number 39 of 1999 regarding Human Rights (Undang-Undang No. 39 Tahun 1999 tentang Hak Asasi Manusia), the government's role as the state's executor requires it to respect, protect, uphold, and promote workers' rights in a proportionate and fair approach.<sup>37</sup> Protecting workers' rights can be designed by enforcing the law and maintaining morally righteous, honest, and equitable workplaces. As a result, it can ensure effectiveness in terms of relevant legal agreements, the skill of law enforcement officers, the accessibility of necessary facilities and infrastructure, and the understanding of laborers, employers, or the general public.<sup>38</sup>

In **UU Cipta Kerja**, Laborers are allowed to form unions with **Labor Unions Law** (Undang-Undang No. 21 Tahun 2000 tentang Serikat Pekerja/Serikat Buruh) as the legal basis. Membership in labor unions (*Serikat Buruh*) is classified as basic

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<sup>37</sup>Undang-Undang (UU) *Tentang Hak Asasi Manusia*, UU Nomor 39 Tahun 1999, LN Nomor 165 tahun 1999, TLN No. 3886, Pasal 71.

<sup>38</sup>Rustamunadi R, "Kebijakan Pemerintah dalam Pemenuhan Hak Buruh," *Al Ahkam* Vol. 11, No. 2 (2015), page 65.

rights of laborers which is guaranteed on Article 5 section (1) of **Labor Unions Law**, every laborer has the right to form an association whose members consist of laborers. The union also opens the opportunity for every laborer to join as a member.<sup>39</sup> Article 25 section (1) further discusses the rights and obligations of laborers, in which laborers are allowed to form institutions or carry out activities related to efforts to improve the welfare of laborers.<sup>40</sup> With the existence of labor unions, laborers can claim their rights collectively.

Laborers have the right to receive compensation or a decent wage for what they have done. However, there are still employers who are still reluctant to comply with applicable regulations. One of the examples is the case between Surip (an employee) and the management of CV Maju Jaya. Surip has been a laborer who has worked in the crane motor sector since 1986.<sup>41</sup> During his work, he always received wages below the Minimum Wage that is regulated in Medan.<sup>42</sup> In his lawsuit, the regulations that he used against CV Maju Jaya emphasized in Article 90 section (1) and Article 91 of **UU Ketenagakerjaan** that wages/salaries that are in accordance with a decent living for humans are at least equal to the Minimum Wage of the city where the plaintiff works.<sup>43</sup>

Through the Medan District Court Decision Number 45/G/2013/PHI.MDN (Putusan Pengadilan Negeri Medan Nomor 45/G/2013/PHI.MDN), the judge decided that the management of CV Maju Jaya was found guilty because its actions were considered careless with the welfare of the workers.<sup>44</sup> Likewise several articles contained in the **UU Cipta Kerja** regarding minimum labor wages. Numerous laborers did not agree with this so various actions of resistance arose. Article 25 section (1), Article 90 section (1), and Article 91 from **UU Ketenagakerjaan** validate the rejection activities currently carried out by workers.

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<sup>39</sup>*Undang-Undang (UU) Tentang Serikat Pekerja/Serikat Buruh*, UU Nomor 21 Tahun 2000, LN Nomor 131 tahun 2001, TLN No. 3989, Pasal 5 ayat (1).

<sup>40</sup>*Undang-Undang (UU) Tentang Serikat Pekerja/Serikat Buruh*, UU Nomor 21 Tahun 2000, LN Nomor 131 tahun 2001, TLN No. 3989, Pasal 25 ayat (1).

<sup>41</sup>Pengadilan Negeri Medan, Putusan Nomor 45/G/2013/PHI.MDN., *Surip melawan Pimpinan CV Maju Jaya* (2013), hlm. 2.

<sup>42</sup>*Ibid.*

<sup>43</sup>*Undang-Undang (UU) Tentang Ketenagakerjaan*, UU Nomor 13 Tahun 2003, LN Nomor 39 tahun 2003, TLN No. 4279, Pasal 91.

<sup>44</sup>Pengadilan Negeri Medan, Putusan Nomor 45/G/2013/PHI.MDN., *Surip melawan Pimpinan CV Maju Jaya* (2013), hlm. 35.

Employers play a crucial part in ensuring the welfare of their workers. Referring to **UU Cipta Kerja** and **UU Ketenagakerjaan**, there are six obligations that every employer must pay attention to in order to guarantee their workers' lives.

1. An employer has to provide job training to improve workers' competence and morale. In addition to helping the workers themselves, this will directly improve the productivity and efficiency of the business where they are working.<sup>45</sup>
2. An employer should offer equal opportunity and treatment to their workers. Workers deserve fair treatment without discrimination as they are human beings. Also, each worker does have the option of choosing which position to apply for or requesting a job transfer if they are not comfortable.<sup>46</sup>
3. An employer must decide on a reasonable working schedule. It is unethical if the employer sets excessive working hours that lead the workers to physical and mental illnesses, this might affect workers' productivity.<sup>47</sup>
4. An employer has a responsibility to maintain their workers' health and safety while they are at work.<sup>48</sup>
5. An employer is responsible for paying workers on time so that they feel taken care of. The government can impose penalties and revoke a business owner's license if they violate their obligation to pay their workers' wages.<sup>49</sup>
6. An employer has the responsibility to accept aspirations. Employers are obligated to allow their workers to establish a union to defend their rights.<sup>50</sup>

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<sup>45</sup>*Undang-Undang (UU) Tentang Ketenagakerjaan*, UU Nomor 13 Tahun 2003, LN Nomor 39 tahun 2003, TLN No. 4279, Pasal 11.

<sup>46</sup> *Undang-Undang (UU) Tentang Ketenagakerjaan*, UU Nomor 13 Tahun 2003, LN Nomor 39 tahun 2003, TLN No. 4279, Pasal 31.

<sup>47</sup> *Undang-Undang (UU) Tentang Ketenagakerjaan*, UU Nomor 13 Tahun 2003, LN Nomor 39 tahun 2003, TLN No. 4279, as amended by UU Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja menjadi Undang-Undang, LN No. 41 Tahun 2023, TLN No. 6856, Pasal 77.

<sup>48</sup> *Undang-Undang (UU) Tentang Ketenagakerjaan*, UU Nomor 13 Tahun 2003, LN Nomor 39 tahun 2003, TLN No. 4279, Pasal 86.

<sup>49</sup>*Undang-Undang (UU) Tentang Ketenagakerjaan*, UU Nomor 13 Tahun 2003, LN Nomor 39 tahun 2003, TLN No. 4279, as amended by UU Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja menjadi Undang-Undang, LN No. 41 Tahun 2023, TLN No. 6856, Pasal 88.

<sup>50</sup>*Undang-Undang (UU) Tentang Ketenagakerjaan*, UU Nomor 13 Tahun 2003, LN Nomor 39 tahun 2003, TLN No. 4279, Pasal 104.

## Minimum Wages Benchmark to Meet the Decent Standard of Living

A decent standard of living is part of economic, social, and cultural rights that are acknowledged in many civilizations, including Indonesia. According to Article 27 Section (2) of the **UUD 1945**, every country has the right to obtain a job and earn a decent living for humanity.<sup>51</sup> For instance, the fifth principle of Pancasila, "Social Justice for All Indonesian People," acknowledges the protection of economic, social, and cultural rights. In line with this concept, welfare is necessary for the realization of these rights.<sup>52</sup> Human rights have also been acknowledged since 1919 by the International Labor Organization ("**ILO**"). According to the **ILO** Constitution, social fairness must be the foundation of any sustainable, worldwide peace. Because Indonesia has been a part of **ILO** since 1950, it could be held accountable for any wrongdoings against laborers.

To achieve welfare, they should set a decent standard of living by fulfilling their daily needs. The minimum requirements for laborers to be able to live a decent life physically within a month are known as *kebutuhan hidup layak*/decent living needs ("**KHL**"). **KHL** is an essential guide when determining the minimum wage.<sup>53</sup> The term **KHL** appeared in Article 89 section (4) **UU Ketenagakerjaan**. That article, which formed the basis for **KHL** and Ministerial Regulation Number 13 of 2012, governs its components and implementation to achieve decent living needs. This regulation was made by the Ministry of Manpower and Transmigration in 2012. **KHL** was formerly used as the legal basis for the minimum wage in Article 43 of Government Regulation Number 78 of 2015 regarding Wages but it was removed in Government Regulation Number 36 of 2021 regarding Wages. So, the term **KHL**

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<sup>51</sup>Henny Purwanti, "Keseimbangan Antara Hak dan Kewajiban," Kementerian Keuangan Republik Indonesia, available at, <https://www.djkn.kemenkeu.go.id/artikel/baca/15809/Keseimbangan-Antara-Hak-dan-Kewajiban.html#:~:text=Pasal%2027%20ayat%201%20%3A%20%22Segala,itu%20dengan%20tidak%20ada%20kecualinya.%22&text=Pasal%2027%20ayat%202%20%3A%20%22Tiap.penghidupan%20yang%20layak%20bagi%20kemanusiaan.%22>, accessed on May 16, 2023.

<sup>52</sup>Amnesty International, "Standar Hidup Layak," amnesty.id, available at <https://www.amnesty.id/standar-hidup-layak/#:~:text=Standar%20hidup%20layak%20adalah%20bagian,diakui%20sejak%20ratusan%20tahun%20lalu>, accessed on April 19, 2023.

<sup>53</sup>Desy Yuliasuti, "Apa Itu Standar Kebutuhan Hidup Layak dalam Undang-Undang?" fortuneidn.com, available at <https://www.fortuneidn.com/finance/desy/apa-itu-standar-kebutuhan-hidup-layak-dalam-aturan-undang-undang?page=all>, accessed on April 19, 2023.

along with the Government Regulation Number 78 of 2015 regarding Wages has been repealed and declared ineffective as a result of the promulgation of **UU Cipta Kerja**.

According to Ida Fauziyah, Minister of Manpower, the formula outlined in the **UU Cipta Kerja** derivative regulations will still be used to determine the minimum wage for 2023.<sup>54</sup> After the Constitutional Court declared that **UU Cipta Kerja** and its derivative regulation were legally “defective,” there are many polemics on which amount is appropriate to use to set a minimum wage, which no longer uses **KHL** as references. The main goal of wages is to establish a fair pay system that will improve the welfare of workers, while still paying attention to business productivity and the state of the economy.<sup>55</sup>

One criticism of this regulation is that it does not take into account **KHL** when setting the minimum wage. The rise in workers' living costs is frequently not directly correlated with the state of the economy and the labor market.<sup>56</sup> As of now, the indicators used by **UU Cipta Kerja** to determine the minimum wage are based on: 1) Economic growth; 2) Inflation; and 3) A particular index that is linked to the rate of increase in minimum wage in accordance with its function as social safety net.<sup>57</sup> The application of minimum wages is not regulated by government regulation. Therefore, the detailed explanation of wage indicators are referring to Article 25 Government Regulation Number 36 of 2021 regarding Wages. The method for calculating the minimum wages, which considers employment and economic situations, is detailed in Sections (2), (4), (5). It is stated that economic and employment factors, such as buying power parity, labor absorption rate, and median pay is to ensure the accuracy

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<sup>54</sup>Agnes Theodora, “Formula Upah Minimum Tetap Sama Survei KHL Kembali di Dorong,” Kompas.id, available at <https://www.kompas.id/baca/ekonomi/2022/08/23/formula-upah-minimum-tetap-sama-survei-khl-kembali-didorong>, accessed on April 20, 2023.

<sup>55</sup>Adhy Thea DA, “Alasan KSPI Tolak Aturan Penetapan Upah Minimum,” hukumonline.com, available at <https://www.hukumonline.com/berita/a/alasan-kspi-tolak-aturan-penetapan-upah-minimum-2022-lt61556a4736ac9?page=2>, accessed on April 23, 2023.

<sup>56</sup>Nabiyla Risfa Izzati, “Betapa Peliknya Penetapan Upah Minimum Pada Era UU Cipta Kerja,” The Conversation, available at <https://theconversation.com/betapa-peliknya-penetapan-upah-minimum-pada-era-uu-cipta-kerja-174470>, accessed on April 21, 2023.

<sup>57</sup>Annasa Rizki Kamalina, “Formulasi Upah Minimum Gunakan Indeks Tertentu, Ini Penjelasan Kemenaker,” Ekonomi & Bisnis, available at <https://ekonomi.bisnis.com/read/20230106/12/1615662/formulasi-upah-minimum-gunakan-indeks-tertentu-ini-penjelasan-kemenaker>, accessed on June 23, 2023.



of this variable. It is mandated that the data be obtained from a reputable source in the field of statistics. So, the future indicators would be based on a field of statistical data.<sup>58</sup>

Meanwhile, Government Regulation Number 78 of 2015 regarding Wages does not contain specific requirements to be paid more. This regulation set the minimum wages based on **KHL**, additionally paying attention to economic growth and productivity. This transformation caused controversy among the workers because it was viewed as unfair and was not mutually agreed upon with the workers. In comparison to setting minimum wages based on occupational requirements, **KHL** is thought to be more humane because it takes into consideration the actual cost of living.

## II. Conclusion

**UU Cipta Kerja** is a new Omnibus Law issued in response to a critical situation in the global economy, which was allegedly capable of resulting in domestic stagflation. The enactment of the **UU Cipta Kerja** has caused controversy and protests, primarily amongst the most affected, laborers in Indonesia. The question of relevance in voicing aspirations is an ongoing issue in Indonesian political life, and the 5.0 industrial revolution provides an alternate option for workers to speak up for their rights using social media platforms.

Laborers play a vital role in the capitalist economy, and the Indonesian government must prioritize their welfare. Article 27 section (1) of **UUD 1945** stated that “Every citizen has the right to work and a life worthy of humanity.” Safeguarding workers’ interests is a crucial task for the government because workers are the most important part of the production process, which in turn is the backbone of any modern industrial economy. A discontent labor workforce might endanger the entire economic stability of a nation. The **UU Cipta Kerja** has significant implications for workers, but it has been met with opposition. Achieving a balance between the interests of workers and employers is a challenge, but it is crucial to ensuring a harmonious economy.

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<sup>58</sup>David Kurniawan, “Tak Jadi Komponen Penentu Upah, Survei KHL Dihapuskan,” *Harian Jogja*, available at <https://jogjapolitan.harianjogja.com/read/2021/09/02/513/1081747/tak-jadi-komponen-penentu-upah-survei-khl-dihapuskan>, accessed on April 23, 2023.

Employers have a responsibility to fulfill labor rights, and the government must enforce these obligations to protect workers.

The introduction of a new Government Regulation Number 36 of 2021 regarding Wages does not take **KHL** into account when setting the minimum wage. Instead, the regulation considers economic and employment factors such as buying power parity, labor absorption rate, and median pay. Moreover, the newest regulation, Regulation of the Minister of Manpower Number 18 of 2022 About Minimum Wage Determination for 2023, allows workers and laborers with less than one working year to be paid more than the minimum wage if they meet specific requirements caused controversy among workers who view **KHL** as more humane and fair since it takes into consideration the actual cost of living. Overall, determining the minimum wage in Indonesia is a complex issue that requires balancing the welfare of workers, business productivity, and economic growth.

In essence, the newly passed **UU Cipta Kerja** is only a new form of an old law, drafted to serve the purpose of Indonesia's elite. Whilst potentially beneficial in the short-term, **UU Cipta Kerja** is ultimately only a temporary solution to far more foundational problems because it does not have an answer to the most damaging aspect of Indonesia's economy, systemic corruption.

### III. Suggestions

**UU Cipta Kerja** is riddled with contradictions from many groups, with various articles causing negative impacts on workers despite being more advantageous for businesspeople and foreign investors in its actualization. Workers are part of the marginalized, and the only option for them to preserve their rights is to unify their voices with all the pressure from the authorities in fulfilling their basic needs. Workers, like all humans, require fundamental requirements such as food, clothing, and shelter, which can be provided through fair work. In fact, the **UU Cipta Kerja** regulations contradict this. The reality of Indonesia's minimum wage and investment environment dashes many workers. Ironically, workers tend to work just to survive. This new regulation potentially makes those who depend their life on this field suffer more than they could imagine.

Therefore, in order to create regulation that truly provides necessities of living, more involvement from all levels of society is required, starting with the affected people, specifically laborers, up to a child who doesn't even have any obligations. Openness and transparency in revising **UU Cipta Kerja** can calm ongoing political and economic unrest in Indonesia. According to the Labor Party and Confederation of Indonesian Trade Unions ("**KSPI**") President, The May Day of 2023 demonstration would culminate in seven demands. **UU Cipta Kerja's** revocation is the primary demand for this action.<sup>59</sup> If the voice of workers is heard and **UU Cipta Kerja** is repealed or changed, it is expected that the government would cooperate with the public in taking into consideration the substance of these articles in order to create rules that can benefit workers, employers, and the government.

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<sup>59</sup>CNN Indonesia, "7 Tuntutan Demo May Day 2023, Cabut UU Cipta Kerja-Tolak Upah Murah," [cnnindonesia.com](https://www.cnnindonesia.com/nasional/20230429161745-20-943461/7-tuntutan-demo-may-day-2023-cabut-uu-cipta-kerja-tolak-upah-murah), available at <https://www.cnnindonesia.com/nasional/20230429161745-20-943461/7-tuntutan-demo-may-day-2023-cabut-uu-cipta-kerja-tolak-upah-murah>, accessed on April 30, 2023.

## BIBLIOGRAPHY

### I. Journals

- Apriliyanti, Merlin. "Challenges of The Industrial Revolution Era 1.0 to 5.0: University Digital Library In Indonesia." *Library Philosophy and Practice* (2022). Page 1.
- Faedlulloh, Dodi. "Kegagalan Gerakan Buruh dan Partai Buruh Pada Pemilu Era Reformasi [The Failure of the Labor Movement And Labor Party in the Reform Era General Election]." *Jurnal Politica Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional* No. 10.2 (2019). Page 168.
- Fauzi, Agus Machfud and Hesty Kartikasari. "Penolakan Masyarakat Terhadap Pengesahan Omnibus Law Cipta Kerja dalam Perspektif Sosiologi Hukum." *Doktrina: Journal of Law* Vol. 4, No. 1 (2021). Page 39.
- Nuryanto, M. Rahmat Budi. "Studi tentang solidaritas sosial di desa Modang kecamatan Kuaro kabupaten Paser (kasus kelompok buruh bongkar muatan)." *Conaplin Journal: E Journal Konsentrasi Sosiologi* Vol. 2, No. 3 (2014). Page 53.
- R. Rustamunadi. "Kebijakan Pemerintah dalam Pemenuhan Hak Buruh." *Al Ahkam* Vol. 11, No. 2 (2015). Page 65.
- Robbi, Ilham. "Peluang Serapan Tenaga Kerja di Jawa Timur Setelah Pandemi Covid-19." *Jurnal Ketenagakerjaan* Vol 17, No. 1 (2022). Page 55.
- Nuryani, Ani, Aan Julia, and Yuhka Sunda. "Proyeksi Pencapaian Bonus Demografi di Indonesia Tahun 2035." *Bandung Conference Series: Economics Studies* Vol. 2 No. 2 (2022). Page 265.
- Saleh, Hasdiana et al. "Mempersiapkan Generasi Emas Indonesia 2045 Menghadapi Bonus Demografi Melalui Pembelajaran Berbasis Kreatifitas." *Aksara: Jurnal Ilmu Pendidikan Nonformal* Vol. 9. No. 2 (2023). Page 953.
- Waschull, S. J. A. C. Bokhorst, J.C. Wortmann, E. Molleman. "The redesign of blue-and white-collar work triggered by digitalization: collar matters," *Computers & Industrial Engineering* Vol. 165, No. 107910 (2022). Page 1.

## II. Court Decision

Pengadilan Negeri Medan. Putusan Nomor 45/G/2013/PHI.MDN. *Surip melawan Pimpinan CV Maju Jaya* (2013).

## III. Regulations

Peraturan Pemerintah Pengganti Undang-Undang (Perppu) tentang Cipta Kerja. Perppu Nomor 2 Tahun 2022.

Undang-Undang (UU) Tentang Hak Asasi Manusia, UU Nomor 39 Tahun 1999, LN Nomor 165 tahun 1999, TLN No. 3886, Pasal 71.

Undang-Undang (UU) Tentang Ketenagakerjaan. UU Nomor 13 Tahun 2003. LN Nomor 39 tahun 2003. TLN No. 4279.

Undang-Undang (UU) Tentang Ketenagakerjaan. UU Nomor 13 Tahun 2003, LN Nomor 39 tahun 2003. TLN No. 4279, as amended by UU Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja menjadi Undang-Undang, LN No. 41 Tahun 2023. TLN No. 6856.

Undang-Undang (UU) Tentang Serikat Pekerja/Serikat Buruh, UU Nomor 21 Tahun 2000, LN Nomor 131 tahun 2001, TLN No. 3989.

Undang-Undang Dasar (UUD). UUD Tahun 1945.

## IV. Internet Sources

Amnesty International. "Standar Hidup Layak." amnesty.id. Available at <https://www.amnesty.id/standar-hidup-layak/#:~:text=Standar%20hidup%20layak%20adalah%20bagian,diakui%20sejak%20ratusan%20tahun%20lalu>.

Accessed on April 19, 2023.

Badan Kebijakan Fiskal. "Kajian Dampak COVID-19 Terhadap Pasar Tenaga Kerja dan Respons Kebijakan di Kawasan Asia dan Pasifik." Kementerian Keuangan Republik Indonesia. Available at <https://fiskal.kemenkeu.go.id/kajian/2021/08/18/2433-kajian-dampak-covid-19-terhadap-pasar-tenaga-kerja-dan-respons-kebijakan-di-kawasan-asia-dan-pasifik#:~:text=Pandemi%20COVID%2D19%20juga%20memberikan,berketera>

[mpilan%20rendah%20dengan%20upah%20rendah](#). Accessed on May 15, 2023.

BBC News. "Indonesia in Recession For The First Time in 22 Years." BBC.com. Available at <https://www.bbc.com/news/business-54819898>. Accessed on April 30, 2023.

Brilian, Almadinah Putri. "Ancam Mogok Nasional, Ini 4 Alasan Buruh Tuntut UU Cipta Kerja Dihapus." Detik.com. 1 Mei 2023. Available at <https://finance.detik.com/berita-ekonomi-bisnis/d-6698826/ancam-mogok-nasional-ini-4-alasan-buruh-tuntut-uu-cipta-kerja-dihapus>. Accessed on 14 Juni 2023.

CNN Indonesia Team. "Jokowi Rilis Perppu Ciptaker: Ancaman Resesi hingga Stagflasi." CNN Indonesia. Available at <https://www.cnnindonesia.com/ekonomi/20221230132522-92-894102/alasan-jokowi-rilis-perppu-ciptaker-ancaman-resesi-hingga-stagflasi>. Accessed on March 23, 2023.

CNN Indonesia Team. "Perppu Cipta Kerja Resmi Disahkan Jadi Undang-Undang." [cnnindonesia.com](https://www.cnnindonesia.com). Available at [https://www.cnnindonesia.com/nasional/20230321104533-32-927642/perppu-cipta-kerja-resmi-disahkan-jadi-undang-undang#:~:text=DPR%20secara%20resmi%20menyetujui%20Peraturan,Selasa%20\(21%2F3\)](https://www.cnnindonesia.com/nasional/20230321104533-32-927642/perppu-cipta-kerja-resmi-disahkan-jadi-undang-undang#:~:text=DPR%20secara%20resmi%20menyetujui%20Peraturan,Selasa%20(21%2F3)). Accessed on April 29, 2023.

Finaka, Andrian W. "UU Cipta Kerja Beri Dampak Signifikan Bagi Usaha dan Investasi." [Indonesiabaik.id](https://indonesiabaik.id). Available at <https://indonesiabaik.id/infografis/uu-cipta-kerja-beri-dampak-signifikan-bagi-usaha-dan-investasi>. Accessed on April 19, 2023.

Fitra, Khadijah Shahnaz. "Pengangguran di Asia Tenggara, Indonesia Diprediksi Nomor 2," *Bisnis.com*. Available at <https://ekonomi.bisnis.com/read/20230225/12/1631675/pengangguran-di-asia-tenggara-indonesia-diprediksi-nomor-2>. Accessed on May 15, 2023.

Izzati, Nabiyla Risfa. "Betapa Peliknya Penetapan Upah Minimum Pada Era UU Cipta Kerja." *The Conversation*. Available at

<https://theconversation.com/betapa-peliknya-penetapan-upah-minimum-pada-era-uu-cipta-kerja-174470>. Accessed on April 21, 2023.

Kamalina, Annasa Rizki. "Formulasi Upah Minimum Gunakan Indeks Tertentu, Ini Penjelasan Kemenaker." *Ekonomi & Bisnis*. Available at <https://ekonomi.bisnis.com/read/20230106/12/1615662/formulasi-upah-minimum-gunakan-indeks-tertentu-ini-penjelasan-kemenaker>. Accessed on June 23, 2023.

Kompas. "Partai Buruh Segera Ajukan Uji Formil dan Materiil UU Cipta Kerja ke MK," *Kompas.com*. Available at <https://nasional.kompas.com/read/2023/04/11/13523561/partai-buruh-segera-ajukan-uji-formil-dan-materiil-uu-cipta-kerja-ke-mk>. Accessed on April 19, 2023.

Kurniawan, David. "Tak Jadi Komponen Penentu Upah, Survei KHL Dihapuskan." *Harian Jogja*. Available at <https://jogjapolitan.harianjogja.com/read/2021/09/02/513/1081747/tak-jadi-komponen-penentu-upah-survei-khl-dihapuskan>. Accessed on April 23, 2023.

Manurung, Kartika and Christine Holike. "The Omnibus Law on Job Creation: Economic Growth First! – People, Environment and Democracy Later?" *Watch Indonesia!* Available at <https://www.watchindonesia.de/20902/omnibus-law-on-job-creation-economic-growth-first-people-environment-and-democracy-later?lang=de>. Accessed on April 29, 2023.

Omnibus Flash. "News Job Creation Omnibus Law Signed." *pwc.com*, available at <https://www.pwc.com/id/en/publications/omnibus/omnibus-flash-2020-01.pdf>. Accessed on April 29, 2023.

Pujianti, Sri. "Govt: Job Creation Perppu Mitigating Global Economic Impact." *en.mkri.id*. Available at [https://en.mkri.id/news/details/2023-03-09/Govt:\\_Job\\_Creation\\_Perppu\\_Mitigating\\_Global\\_Economic\\_Impact](https://en.mkri.id/news/details/2023-03-09/Govt:_Job_Creation_Perppu_Mitigating_Global_Economic_Impact). Accessed on April 29, 2023.

Purwanti, Henny. "Keseimbangan Antara Hak dan Kewajiban," *Kementerian Keuangan Republik Indonesia*. Available at, <https://www.djkn.kemenkeu.go.id/artikel/baca/15809/Keseimbangan-Antara-H>

[ak-dan-Kewajiban.html#:~:text=Pasal%2027%20ayat%201%20%3A%20%22Segala,itu%20dengan%20tidak%20ada%20kecualinya.%22&text=Pasal%2027%20ayat%202%20%3A%20%22Tiap.penghidupan%20yang%20layak%20bagi%20kemanusiaan.%22](#). Accessed on May 16, 2023.

Rizky, Martyasari. “Ternyata, Ini Sebab Buruh Gerah & Tuntut Cabut UU Cipta Kerja.” [cnbcindonesia.com](#). Available at <https://www.cnbcindonesia.com/news/20230502180828-4-433837/ternyata-ini-sebab-buruh-gerah-tuntut-cabut-uu-cipta-kerja>. Accessed on June 24, 2023.

Saputra, Andi. “Pengacara Penggugat: Isi Perppu Sama dengan UU Ciptaker.” [detiknews](#). Available at <https://news.detik.com/berita/d-6492588/pengacara-penggugat-isi-perppu-sama-dengan-uu-ciptaker>. Accessed on April 29, 2023.

Thea DA, Adhy. “Alasan KSPI Tolak Aturan Penetapan Upah Minimum.” [hukumonline.com](#). Available at <https://www.hukumonline.com/berita/a/alasan-kspi-tolak-aturan-penetapan-upah-minimum-2022-lt61556a4736ac9?page=2>. Accessed on April 23, 2023.

Theodora, Agnes. “Formula Upah Minimum Tetap Sama Surve KHL Kembali di Dorong.” [Kompas.id](#). Available at <https://www.kompas.id/baca/ekonomi/2022/08/23/formula-upah-minimum-tetap-sama-survei-khl-kembali-didorong>. Accessed on April 20, 2023.

Tresna A., Nano and Lulu A. “MK: Inkonstitusional Bersyarat, UU Cipta Kerja Harus Diperbaiki Dalam Jangka Waktu Dua Tahun.” [mkri.id](#). Available at <https://www.mkri.id/index.php?page=web.Berita&id=17816>. Accessed on April 29, 2023.

WHO. “WHO Coronavirus (COVID-19) Dashboard.” World Health Organization, available at <https://covid19.who.int/>. Accessed on April 29, 2023.

Yuliasuti, Desy. “Apa Itu Standar Kebutuhan Hidup Layak dalam Undang-Undang?” [fortuneidn.com](#). Available at <https://www.fortuneidn.com/finance/desy/apa-itu-standar-kebutuhan-hidup-layak-dalam-aturan-undang-undang?page=all>. Accessed on April 19, 2023.



## Perspektif Hukum Pidana terhadap Kejahatan Anak di Bawah Umur

Oleh: Dasya Putrinda Haris dan Fathia Idelia Yunanto

Staf *External Public Relations* ALSA LC UI Board of 2023

### I. Tren Tindak Pidana oleh Anak di Bawah Umur

Terhitung sejak tahun 2016 sampai 2020, Komisi Perlindungan Anak Indonesia (“KPAI”) mencatat sebanyak 655 anak telah menjadi pelaku kekerasan fisik dan psikis.<sup>1</sup> Di setiap tahunnya, data tersebut konsisten dengan jumlah angka di atas 100 (seratus) kasus.<sup>2</sup> Fenomena ini cukup mengkhawatirkan karena anak memiliki peran yang penting dalam meneruskan perjuangan bangsa dan pembangunan nasional demi tercapainya masyarakat yang makmur. Mengingat pentingnya peran tersebut, anak memerlukan pembinaan dan bimbingan khusus agar dapat berkembang secara maksimal.<sup>3</sup>

Belakangan ini, terdapat kasus yang cukup menyita perhatian publik terkait anak di bawah umur yang melakukan tindak pidana, yaitu kasus anak yang berinisial (“AG”) bersama Mario Dandy dan Shane Lucas yang melakukan tindakan penganiayaan berat terhadap David Ozora.<sup>4</sup> Dalam kasus tersebut, AG merupakan pelaku tindak pidana yang masih di bawah umur, yaitu berusia 15 tahun.<sup>5</sup> AG dijerat dengan Pasal 355 ayat (1) Kitab Undang-Undang Hukum Pidana (“KUHP”) *jo.* Pasal 55 ayat (1) KUHP<sup>6</sup> dengan ancaman pidana penjara paling lama 12 tahun.<sup>7</sup> Namun,

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<sup>1</sup> Reza Pahlevi, “Inilah Jumlah Anak-Anak yang Jadi Pelaku Kekerasan di Indonesia,” <https://databoks.katadata.co.id/datapublish/2022/07/29/ini-jumlah-anak-anak-yang-jadi-pelaku-kekerasan-di-indonesia>, diakses 3 Mei 2023.

<sup>2</sup> *Ibid.*

<sup>3</sup> Guntarto Widodo, “Sistem Pemidanaan Anak sebagai Pelaku Tindak Pidana Perspektif Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak,” *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan* Vol. 6, No. 1 (Mar 2016), hlm. 58.

<sup>4</sup> CNN Indonesia, “AG Divonis 3,5 Tahun dalam Kasus Penganiayaan David Ozora,” <https://www.cnnindonesia.com/nasional/20230410064722-12-935482/ag-divonis-35-tahun-dalam-kasus-penganiayaan-david-ozora>, diakses 24 April 2023.

<sup>5</sup> *Ibid.*

<sup>6</sup> Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, “KemenPPPA Apresiasi Proses Hukum Sesuai SPPA Terhadap Anak Berkonflik Hukum Dengan AG,” [https://www.kemenpppa.go.id/index.php/page/read/29/4487/kemenpppa-apresiasi-proses-hukum-sesuai-sppa-terhadap-anak-berkonflik-dengan-hukum-ag#:~:text=AG%20dijerat%20dengan%20Pasal%20355,55%20Ayat%20\(1\)%20KUHP](https://www.kemenpppa.go.id/index.php/page/read/29/4487/kemenpppa-apresiasi-proses-hukum-sesuai-sppa-terhadap-anak-berkonflik-dengan-hukum-ag#:~:text=AG%20dijerat%20dengan%20Pasal%20355,55%20Ayat%20(1)%20KUHP), diakses 3 Mei 2023.

<sup>7</sup> *Kitab Undang-Undang Hukum Pidana [Wetboek van Strafrecht]*, diterjemahkan oleh Moeljatno, (Jakarta: Pradnya Paramita, 1976), Ps. 355 ayat (1).

Pasal 81 ayat (2) Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak (“UU SPPA”) menjelaskan bahwa anak hanya dapat dikenakan pidana penjara paling lama setengah dari ancaman pidana penjara untuk orang dewasa, yaitu dalam konteks kasus tersebut adalah 6,5 tahun.<sup>8</sup> Maka, Jaksa Penuntut Umum (“JPU”) memberikan tuntutan pidana penjara selama 4 tahun dan Pengadilan Negeri Jakarta Selatan hanya melayangkan vonis 3 tahun dan 6 bulan penjara.<sup>9</sup>

Selain kasus tersebut, belakangan ini juga terdapat kasus penyalahgunaan narkoba yang dilakukan anak di bawah umur yang merupakan anak dari salah satu penyanyi dangdut yang terkenal.<sup>10</sup> Oleh karena pelaku yang terlibat masih di bawah umur, maka sistem peradilan yang digunakan berbeda dengan umumnya, yaitu sistem peradilan pidana anak sebagaimana diatur dalam UU SPPA.<sup>11</sup> Anak tersebut juga mendapatkan perlindungan yang khusus sebagai pelaku tindak pidana, yaitu dilindungi secara khusus melalui upaya pengawasan, pencegahan, dan rehabilitasi sebagaimana diatur dengan Pasal 67 Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak (“UU Perlindungan Anak”).<sup>12</sup>

## II. Faktor-Faktor Maraknya *Juvenile Delinquency*

Banyaknya anak yang menjadi pelaku tindak pidana dipengaruhi oleh berbagai faktor, yaitu faktor eksternal dan faktor internal. Faktor internal yang mempengaruhi seorang anak di bawah umur untuk melakukan tindak pidana jika ditinjau dari aspek kepribadian adalah memiliki konsep diri yang rendah, memiliki kemampuan penyelesaian masalah sosial yang rendah, serta kemampuan mengontrol diri yang rendah.<sup>13</sup> Sedangkan, menurut Tannebaum, faktor eksternal terjadinya *juvenile delinquency* sama seperti kejahatan pada umumnya, yaitu faktor sosial, terutama

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<sup>8</sup> Indonesia, *Undang-Undang Sistem Peradilan Pidana Anak*, UU No. 11 Tahun 2012, LN No. 153 Tahun 2012, TLN No. 5332, Ps. 81 ayat (2).

<sup>9</sup> CNN Indonesia, “AG Divonis,” <https://www.cnnindonesia.com/nasional/20230410064722-12-935482/ag-divonis-35-tahun-dalam-kasus-penganiayaan-david-ozora>, diakses 24 April 2023.

<sup>10</sup> Umi Nur Fadhillah dan Reiny Dwinanda, “Terlibat Kasus Narkoba, Anak Pedangdut Kondang Bisa Diproses Hukum,” <https://ameera.republika.co.id/berita/rrijs414/terlibat-kasus-narkoba-anak-pedangdut-kondang-bisa-diproses-hukum-part1>, diakses 24 April 2023.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> Kiki Widya Sari dan Erwin Syahrudin, “Kriminologi tentang Kejahatan Begal yang Dilakukan oleh Anak di bawah Umur,” *Jurnal Ilmiah Publika*, Vol. 10 No. 1 (Januari-Juni 2022), hlm. 9–10.

lingkungan pergaulannya (*peers group*).<sup>14</sup> Tannebaum mengemukakan bahwa “*most delinquencies are committed in groups; most criminals live in, operate with, and are supported by groups.*”<sup>15</sup> Maka, kelompok di mana seseorang hidup dan melaksanakan kegiatannya berdampak terhadap tingkah laku anak yang hidup di dalam lingkungan tersebut. Ditambah lagi apabila seorang anak yang termasuk ke dalam lingkungan itu masih dalam proses pencarian jati diri. Anak-anak yang dalam masa pertumbuhannya hidup di dalam lingkungan yang tidak mendukung perkembangan jati dirinya atau cenderung lingkungan yang negatif, maka mereka akan mudah diprovokasi. Hal ini berujung pada sikap seorang anak yang menjurus pada pelanggaran norma dan pelanggaran lain.<sup>16</sup>

### III. Konsep *Juvenile Delinquency*

Secara teoritis, penyimpangan perilaku atau tindak pidana yang dilakukan oleh anak di bawah umur sebagaimana dijelaskan sebelumnya dikenal dengan *Juvenile Delinquency*, yaitu perbuatan yang dilakukan oleh seseorang yang belum dewasa dengan melanggar hukum dan perbuatan tersebut dilandaskan atas kesadaran oleh anak itu sendiri bahwa perbuatannya dapat dikenai sanksi atau hukuman.<sup>17</sup> *Juvenile Delinquency* merupakan perilaku kejahatan anak yang di bawah umur yang diakibatkan suatu bentuk pengabaian sosial sehingga mereka dapat melakukan suatu hal yang menyimpang.<sup>18</sup> Dalam hukum positif di Indonesia, *Juvenile Delinquency* diatur dalam Pasal 1 angka 3 UU SPPA mengenai anak yang berkonflik dengan hukum, yaitu anak yang telah mencapai umur 12 tahun, tetapi belum mencapai umur 18 tahun yang diduga melakukan tindak pidana.<sup>19</sup>

Tentunya, anak yang berkonflik hukum ini memiliki ancaman sanksi pidana yang berbeda dengan orang dewasa pada umumnya. Hal tersebut dapat dilihat pada contoh kasus di atas, yaitu AG dan anak pedangdut yang terjerat narkoba. Ancaman

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<sup>14</sup> Sarwirini, “Kenakalan Anak (*Juvenile Delinquency*): Kausalitas dan Upaya Penanggulangannya,” *Jurnal Perspektif* Vol. XVI No. 4 (2011), hlm. 245.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> Widodo, “Sistem Pidanaan,” hlm. 59.

<sup>18</sup> Raihana, “Kenakalan Anak (*Juvenile Delinquency*) dan Upaya Penanggulangannya,” *Jurnal Kriminologi: Sisi Lain Realita* Vol. 1 No. 1 (2016), hlm. 74.

<sup>19</sup> Widodo, “Sistem Pidanaan,” hlm. 60.

sanksi pidana yang dapat dijatuhkan pada anak yang berkonflik hukum telah dijelaskan dalam Pasal 71 UU SPPA, yaitu pidana anak terdiri dari pidana pokok dan pidana tambahan. Adapun yang dimaksud dengan pidana pokok adalah pidana yang dijatuhkan tersendiri oleh hakim dan bersifat imperatif.<sup>20</sup> Pidana pokok tersebut terdiri atas:<sup>21</sup>

1. Pidana peringatan;
2. Pidana dengan syarat;
  - a. Pembinaan di luar lembaga;
  - b. Pelayanan masyarakat; atau
  - c. Pengawasan.
3. Pelatihan kerja;
4. Pembinaan dalam lembaga; dan
5. Penjara.

Sementara itu, pidana tambahan merupakan pidana yang dapat dijatuhkan di samping pidana pokok sehingga jenis pidana ini bersifat fakultatif dan tidak boleh dijatuhkan tanpa adanya pidana pokok yang dijatuhkan terlebih dahulu.<sup>22</sup> Pidana tambahan bagi anak terdiri atas perampasan keuntungan yang diperoleh dari tindak pidana atau pemenuhan kewajiban adat berupa denda yang harus dibayar atau tindakan yang harus dipenuhi berdasarkan norma adat setempat, tetapi tetap memperhatikan harkat dan martabat anak serta tidak membahayakan kondisi fisik dan mental sang anak.<sup>23</sup> Lalu, ayat selanjutnya, yaitu ayat 3, menambahkan bahwa apabila dalam hukum materiil diancam pidana kumulatif berupa penjara dan denda, pidana denda tersebut diganti dengan pelatihan kerja.<sup>24</sup>

Namun, perlu diketahui juga bahwa dalam menjatuhkan pidana bagi anak tetap harus memperhatikan harkat dan martabat anak dengan memberikan perlindungan khusus, seperti mendapatkan hak perlindungan diri dari diskriminasi sebagaimana yang

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<sup>20</sup> Alvy Rawis, "Sanksi Pidana Pokok Bagi Anak Menurut Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak," *Lex Et Societatis* Vol. VII, No. 4 (2019), hlm. 81.

<sup>21</sup> Indonesia, *Undang-Undang Sistem Peradilan Pidana Anak*, Ps. 71 ayat (1).

<sup>22</sup> Adami Chazawi, *Stelsel Pidana, Tindak Pidana Teori-Teori Pidana dan Batas Berlakunya*, Pelajaran Hukum Pidana Bagian 1 (Jakarta: PT Raja Grafindo Persada, 2002), hlm. 26 – 27.

<sup>23</sup> Indonesia, *Undang-Undang Sistem Peradilan Pidana Anak*, Ps. 71 ayat (2).

<sup>24</sup> *Ibid*, Ps. 71 ayat (3).

disebutkan oleh Konvensi Hak-Hak Anak.<sup>25</sup> Hal ini selaras dengan yang telah dijelaskan dalam Pasal 1 ayat (2) UU Perlindungan Anak menyatakan bahwa:<sup>26</sup>

*“Perlindungan anak adalah segala kegiatan untuk menjamin dan melindungi anak dan hak-haknya agar dapat hidup, tumbuh berkembang dan berpartisipasi secara optimal sesuai dengan harkat dan martabat kemanusiaan, serta mendapat perlindungan dari kekerasan dan diskriminasi.”*

Pada hakikatnya, setiap anak berhak mendapatkan perlindungan sesuai dengan hukum. UU SPPA sendiri telah memberikan beberapa perlindungan terhadap anak yang berhadapan dengan hukum, seperti pemberian hak-hak khusus yang dimiliki setiap anak dalam proses peradilan pidana anak. Sebagaimana tertera pada Pasal 3 UU SPPA, contoh dari beberapa hak-hak tersebut adalah melakukan kegiatan rekreasional, tidak dipublikasikan identitasnya, sidang yang tertutup untuk umum, dan lainnya.<sup>27</sup> Selain itu, bentuk perlindungan yang lainnya adalah bahwa penangkapan, penahanan, atau sanksi pidana penjara anak hanya dilakukan apabila sesuai dengan hukum yang berlaku dan hanya dapat dilakukan sebagai jalan terakhir.<sup>28</sup> Kemudian, perlindungan khusus yang dapat dikatakan cukup esensial pada sistem peradilan pidana anak adalah adanya kewajiban untuk mengupayakan pendekatan keadilan restoratif (*restorative justice*) dan proses diversifikasi.<sup>29</sup>

Berdasarkan Pasal 1 angka 6 UU SPPA, keadilan restoratif merupakan penyelesaian perkara melalui partisipasi pelaku, korban, keluarga pelaku dan keluarga korban, serta pihak lain.<sup>30</sup> Lebih lanjut, Pasal 5 ayat (2) UU SPPA menjelaskan bahwa keadilan restoratif yang dimaksud meliputi:<sup>31</sup>

1. Penyidikan dan penuntutan pidana anak sesuai ketentuan peraturan perundang-undangan, kecuali ditentukan lain dalam UU SPPA;

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<sup>25</sup> Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, *Profil Anak Indonesia 2020* (Jakarta: Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, 2020), hlm. 211.

<sup>26</sup> Indonesia, *Undang-Undang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak*, UU No. 35 Tahun 2014, LN No. 297 Tahun 2014, TLN No. 5606, Ps. 1 ayat (2).

<sup>27</sup> *Ibid*, Ps. 3.

<sup>28</sup> Bilher Hutahaean, “Penerapan Sanksi Pidana bagi Pelaku Tindak Pidana Anak,” *Jurnal Yudisial* Vol. 6 No. 1 (April 2013), hlm. 74.

<sup>29</sup> Indonesia, *Undang-Undang Sistem Peradilan Pidana Anak*, Ps. 5 ayat (1) dan (3).

<sup>30</sup> *Ibid*, Ps. 1 ayat (6).

<sup>31</sup> *Ibid*, Ps. 5 ayat (2).

2. Persidangan anak oleh pengadilan di lingkungan peradilan umum; dan
3. Pembinaan, pembimbingan, pengawasan, dan/atau pendampingan selama proses pelaksanaan pidana atau tindakan dan setelah menjalani pidana atau tindakan.

Tujuannya adalah untuk menyelesaikan suatu perkara dengan adil dan menekankan pemulihan kembali pada keadaan semula sehingga menghindari pembalasan.<sup>32</sup> Dengan demikian, keadilan restoratif ini merupakan pendekatan yang berpedoman pada pembelajaran moral, penyembuhan, dan rasa memaafkan.<sup>33</sup> Keadilan restoratif ini juga dijelaskan dalam Penjelasan Umum SPPA, yaitu bagian dari proses diversifikasi yang setiap pihak, dengan rasa hati yang tenang dan tidak berdasarkan pembalasan, menyelesaikan masalah secara bersama-sama dan menciptakan kewajiban dalam membuat segala halnya menjadi lebih baik.

Sementara itu, yang dimaksud dengan diversifikasi adalah pengalihan penyelesaian perkara anak ke proses di luar peradilan pidana. Tujuan adanya proses diversifikasi ini antara lain untuk mencapai perdamaian antara korban dan anak, menyelesaikan perkara di luar proses peradilan, dan menghindarkan anak dari pidana penjara.<sup>34</sup> Berdasarkan Pasal 7 ayat (1) UU SPPA, diversifikasi bersifat wajib pada tingkat penyidikan, penuntutan, dan pemeriksaan perkara anak di pengadilan negeri.<sup>35</sup> Namun, diversifikasi ini hanya berlaku terhadap tindak pidana yang ancaman pidana penjaranya di bawah 7 (tujuh) tahun dan bukan merupakan pengulangan tindak pidana.<sup>36</sup>

Selanjutnya, target dari proses diversifikasi ini adalah hasil kesepakatan diversifikasi, yaitu dapat berupa perdamaian dengan atau tanpa ganti kerugian, penyerahan kembali kepada orang tua/wali, keikutsertaan dalam pendidikan dan pelatihan di lembaga pendidikan atau Lembaga Penyelenggaraan Kesejahteraan Sosial (“LPKS”) paling lama 3 (tiga) bulan) atau pelayanan masyarakat.<sup>37</sup> Nantinya, hasil kesepakatan tersebut akan disampaikan oleh atasan pejabat yang bertanggung jawab di setiap tingkat pemeriksaan

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<sup>32</sup> Randy Pradityo, “Restorative Justice dalam Sistem Peradilan Pidana Anak,” *Jurnal Hukum Peradilan* Vol. 5, No. 3 (Nov 2016), hlm. 325.

<sup>33</sup> Ridwan Mansyur, “Keadilan Restoratif sebagai Tujuan Pelaksanaan Diversifikasi pada Sistem Peradilan Pidana Anak,” <https://www.mahkamahagung.go.id/id/artikel/2613/keadilan-restoratif-sebagai-tujuan-pelaksanaan-diversifikasi-pada-sistem-peradilan-pidana-anak>. Diakses

<sup>34</sup> *Ibid.*

<sup>35</sup> Indonesia, *Undang-Undang Sistem Peradilan Pidana Anak*, Ps. 7 ayat (1).

<sup>36</sup> *Ibid.*, Ps. 7 ayat (2).

<sup>37</sup> *Ibid.*, Ps. 11.

ke pengadilan negeri untuk diperoleh penetapan pengadilan.<sup>38</sup> Namun, perlu diketahui jika tidak ada kesepakatan yang dihasilkan dari proses diversifikasi adalah proses peradilan anak perlu dilanjutkan.<sup>39</sup>

#### IV. Kesimpulan

Tren tindak pidana yang dilakukan oleh anak di bawah umur kini cukup marak di Indonesia, seperti kasus AG dan kasus penggunaan obat terlarang oleh anak seorang penyanyi dangdut. Maraknya tindak pidana yang dilakukan oleh anak di bawah umur tersebut tidak luput dengan adanya faktor internal dan faktor eksternal. Faktor internal disebabkan oleh kepribadian anak itu sendiri dan faktor eksternal disebabkan oleh faktor sosial, terutama lingkungan pergaulannya.

Dalam menangani permasalahan tersebut, Indonesia memiliki UU SPPA yang merupakan pedoman dasar dalam peradilan pidana anak. Indonesia melalui UU SPPA memberikan pengaturan yang berbeda terkait peradilan pidana anak dengan peradilan pidana umumnya, seperti perbedaan pidana pokok dan pidana tambahan dan hak-hak anak yang dapat dibilang khusus. Namun, di sisi lain, pidana penjara bagi anak merupakan langkah terakhir dalam menyelesaikan suatu perkara. Oleh karena itu, UU SPPA juga mengatur terkait pendekatan keadilan restoratif, yaitu penyelesaian perkara melalui partisipasi pelaku, korban, keluarga pelaku dan keluarga korban, serta pihak lain, dan diversifikasi, yaitu pengalihan penyelesaian perkara anak ke proses di luar peradilan pidana. Tujuannya untuk menjaga harkat dan martabat anak serta memberikan pembelajaran moral atau penyembuhan, bukan pembalasan.

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<sup>38</sup> Ibid, Ps. 12 ayat (2).

<sup>39</sup> Ibid, Ps. 13.

**DAFTAR PUSTAKA****PERATURAN PERUNDANG-UNDANGAN**

Indonesia. *Undang-Undang Sistem Peradilan Pidana Anak*, UU No. 11 Tahun 2012, LN No. 153 Tahun 2012, TLN No. 5332.

Indonesia. *Undang-Undang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak*, UU No. 35 Tahun 2014, LN No. 297, TLN No. 5606.

*Kitab Undang-Undang Hukum Pidana [Wetboek van Strafrecht]*. Diterjemahkan oleh Moeljatno. Jakarta: Pradnya Paramita, 1976.

**BUKU**

Chazawi, Adami. *Stelsel Pidana, Tindak Pidana Teori-Teori Pemidanaan dan Batas Berlakunya*. Pelajaran Hukum Pidana Bagian 1. Jakarta: PT Raja Grafindo Persada, 2002.

Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia. *Profil Anak Indonesia 2020*. Jakarta: Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, 2020.

**JURNAL**

Hutahaean, Bilher. "Penerapan Sanksi Pidana Bagi Pelaku Tindak Pidana Anak." *Jurnal Yudisial* Vol. 6 No. 1 (April 2013). Hlm. 64 – 79.

Pradityo, Randy. "Restorative Justice dalam Sistem Peradilan Pidana Anak." *Jurnal Hukum Peradilan* Vol. 5. No. 3 (Nov 2016). Hlm. 319 – 330.

Raihana. "Kenakalan Anak (Juvenile Delinquency) dan Upaya Penanggulangannya." *Jurnal Kriminologi: Sisi Lain Realita* Vol. 1 No. 1 (2016). Hlm. 72 – 83.

Rawis, Alvy. "Sanksi Pidana Pokok bagi Anak Menurut Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak." *Lex Et Societatis* Vol. VII. No. 4 (2019). Hlm. 79 – 86

Sari, Widya Kiki dan Erwin Syahrudin. "Kriminologi tentang Kejahatan Begal yang Dilakukan oleh Anak di bawah Umur." *Jurnal Ilmiah Publik* Vol. 10 No. 1 (Januari-Juni 2022). Hlm. 6 – 17.



Sarwirini. “Kenakalan Anak (Juvenile Delinquency): Kausalitas dan Upaya Penanggulangannya.” *Jurnal Perspektif* Vol. XVI No. 4 (2011). Hlm. 244 – 251.

Widodo, Guntarto. “Sistem Pemidanaan Anak Sebagai Pelaku Tindak Pidana Perspektif Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak.” *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan* Vol. 6 No.1 (Maret, 2016). Hlm. 58 – 82.

## INTERNET

CNN Indonesia. “AG Divonis 3,5 Tahun dalam Kasus Penganiayaan David Ozora.” <https://www.cnnindonesia.com/nasional/20230410064722-12-935482/ag-divonis-35-tahun-dalam-kasus-penganiayaan-david-ozora>. Diakses 24 April 2023.

Fadhilah, Umi Nur dan Reiny Dwinanda. “Terlibat Kasus Narkoba, Anak Pedangdut Kondang Bisa Diproses Hukum.” <https://ameera.republika.co.id/berita/rrijs414/terlibat-kasus-narkoba-anak-pedangdut-kondang-bisa-diproses-hukum-part1>. Diakses 24 April 2023.

Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia. “KemenPPPA Apresiasi Proses Hukum Sesuai SPPA Terhadap Anak Berkonflik Hukum Dengan AG.” [Mansyur, Ridwan. “Keadilan Restoratif sebagai Tujuan Pelaksanaan Diversi pada Sistem Peradilan Pidana Anak.” <https://www.mahkamahagung.go.id/id/artikel/2613/keadilan-restoratif-sebagai-tujuan-pelaksanaan-diversi-pada-sistem-peradilan-pidana-anak>. Diakses 9 Mei 2023.](https://www.kemenpppa.go.id/index.php/page/read/29/4487/kemenpppa-apresiasi-proses-hukum-sesuai-sppa-terhadap-anak-berkonflik-dengan-hukum-ag#:~:text=AG%20dijerat%20dengan%20Pasal%20355,55%20Ayat%20(1)%20KUH P. Diakses 3 Mei 2023.</a></p></div><div data-bbox=)

Pahlevi, Reza. “Inilah Jumlah Anak-Anak yang Jadi Pelaku Kekerasan di Indonesia.” <https://databoks.katadata.co.id/datapublish/2022/07/29/ini-jumlah-anak-anak-yang-jadi-pelaku-kekerasan-di-indonesia>. Diakses 3 Mei 2023.