

## CHAPTER I

### INTRODUCTION

#### 1.1 BACKGROUND

The rapid development of the world economy, the flow of globalization and free trade as well as advances in technology, globalization and information have expanded the transaction space for goods and services offered to become more varied, both domestically produced goods and services and production. Business owners/undertakings in responding to this, they do several things that can support in producing better and quality production goods, so that the company's goals are achieved. One of the things that are applied to achieve this goal, employers are more optimizing their workers / laborers in increasing work productivity.<sup>1</sup>

If we look at the total number of Indonesian workers aged 15 years and over as of August 2019, the Central Statistics Agency recorded a total of 126.51 million people, the largest distribution is in informal workers, reaching 70.49 million people. This figure is higher than formal workers who are only 56.02 million.<sup>2</sup>

<sup>1</sup> Suhartoyo, *Perlindungan Hukum Bagi Buruh Dalam Sistem Hukum Ketenagakerjaan Nasional*, (Administrative Law & Governance Journal. Volume 2 Issue 2, 2019), Page.2.

<sup>2</sup> <https://databoks.katadata.co.id/datapublish/2020/04/08/jumlah-pekerja-informal-lebih-banyak-dari-pekerja-formal> (accessed on 14 september 2021)

Some of these workers are young people where it is recorded that the number of children aged 10-17 years who work or can be considered as workers/laborers in Indonesia is 3.25% of the total. From this description, we can understand that behind the figures from the data, there are many young people who have either been classified as the labor force or not, who work in many sectors and need special attention.<sup>3</sup>

Everyone has the right to work and receive compensation as well as fair and proper treatment in an employment relationship as regulated in Article 28D of the Constitution of the Republic of Indonesia. Based on Article 3 of Law No. 13 of 2003, a worker/labourer is anyone who works with receive wages or other forms of remuneration, based on these provisions, the workforce is any person who is able to do work to produce goods and/or services, both to meet their own needs and for the community.

The purpose of the establishment of labor law is to:

1. Empowerment and utilization of the workforce is an integrated activity to be able to provide the widest possible job opportunities for Indonesian workers. Through this empowerment and utilization,

<sup>3</sup> <https://www.bps.go.id/indicator/6/2009/1/persentase-dan-jumlah-anak-usia-10-17-tahun-yang-bekerja-menurut-jenis-kelamin.html> ( accessed on 10 september 2021)

it is hoped that Indonesian workers can participate optimally in National Development, while still upholding their human values.

2. Equal distribution of job opportunities must be pursued throughout the territory of the Unitary State of the Republic of Indonesia as a single labor market by providing equal opportunities to obtain employment for all Indonesian workers according to their talents, interests and abilities. Likewise, it is necessary to strive for equal distribution of workforce placement in order to fulfill the needs of all sectors and regions.
3. provide protection to workers in realizing welfare; and
4. improve the welfare of workers and their families. <sup>4</sup>

Referring to the purpose of the establishment of the labor law, it can be seen that the protection of workers is a very essential point to realize the welfare of workers. In realizing the goal of establishing the labor law, one of the important things is regarding wages for workers as a reward for the work that has been produced.

The basis of the payment of wages arises as a result of the existence of employment relationship, in an employment relationship is required to meet the elements that have been regulated, these elements are:

- profession

<sup>4</sup> Article 4 Law Number 11 of 2020 on Job Creation

- wages
- order

if these elements fail to be met then the money received by the workers cannot be considered as wages. Returning to the element related to the theme of this writing, namely the element of wages, this element can be understood as a reward for services or labor that has been provided by workers to employers..<sup>5</sup>

After the enactment of the Job Creation Law, there are several provisions regarding wages contained in the manpower chapter which have changed from the previous Law. Article 81 point 24 which is a change from Article 88 of Law No. 13 on manpower, a significant change is the number of policies that previously had 11 (eleven) policies to only 7 (seven), one of the policy points that was removed was the policy on wages for severance payment. The provisions regarding severance pay have been regulated in Article 150 of the Job Creation Law.

With the abolition of article 88, one of the most essential things, namely legal certainty regarding the rights of workers, will become a problem, previously it has also been mentioned that the employment law has the

<sup>5</sup> Lanny Ramli, *Hukum Ketenagakerjaan*, (Airlangga University Press; Surabaya, 2008), Page.8.

aim of realizing welfare for workers, but with the emergence of problems regarding the abolition of the severance pay policy, the goal of the Act will not materialize.

Moreover, regarding legal certainty, it has also become an obligation for employers since it has been stated in Article 2 of Law Number 11 of 2020 on Job Creation, which states that the Act is implemented based on several principles, one of which is the principle of legal certainty. Based on the background that has been described previously, the author chooses the title

## **1.2. Legal issue**

- What rights are received by workers who have been laid off according to the provisions of the job creation law ?
- Legal remedies that can be taken by workers for the rights that should be received when Termination of employment occur ?

## **1.3 Research Purpose**

1. To provide an explanation and knowledge toward The role of government protection toward workers rights on severance pay based on Law Number 11 OF 2020 on Job Creation.
2. To provide an explanation on Legal protection toward workers rights on severance pay based on Law Number 11 OF 2020 on Job Creation.

## **1.4 Contribution of the Research**

This research was conducted with the hope of providing benefits from several aspects, namely:

1. Theoretical aspect

From a theoretical standpoint, the benefits include providing explanations and insights into the legal issues under consideration, as well as contributing to the development of law in Indonesia, particularly in the area of manpower law.

2. Practical aspect

This research also aims to provide practical benefits. Some practical benefits that can be obtained from the research to be studied include providing benefits and input in the form of knowledge to parties related to this research and especially to the whole community in general.

## **1.5 Research Method**

### **1.5.1 Research type**

The research made here is a type of legal research using normative research methods which aims to find the truth of coherence by analyzing the existence of a legal rule that is in accordance with the legal norms contained in the applicable laws and regulations as well as from legal principles and legal doctrine.<sup>6</sup> This writing

<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum, Edisi Revisi*, Prenadamedia Group, Jakarta, 2017. Page. 46.

aims to find a systematic explanation of the legal protection of workers' rights to severance pay based Law Number 11 of 2020 on Job Creation Act.

### **1.5.2 Legal Approach**

The approach that will be used in this research is the statute approach, as well as the conceptual approach. The statute approach is an approach that examines the laws and regulations relating to legal matters and issues being studied. In conducting research through the statute Approach, the researcher aims to study and see the existence of conformity and consistency between one statutory regulation and another.

1. Statute approach is an approach that conducts review and research on laws and regulations related to the legal issue being researched. By doing a statute approach, researchers study whether there is consistency and conformity between laws and regulations with one another.<sup>7</sup>
2. Conceptual approach is an approach that provides information/explanation from several views and several doctrines that develop in legal science, so that it can provide writers with ideas that give birth to several legal understandings, legal concepts and relevant legal principles that can create legal arguments that can find the formulation of problems and legal issues that already exist.<sup>8</sup>

<sup>7</sup> Ibid, Page.136.

<sup>8</sup> Ibid, Page.136.

### 1.5.3 Legal Materials

The legal materials used in this research are primary legal materials and secondary legal materials :

- a. Primary legal material is legal material that has an authoritative nature, which means it has authority. Examples of primary legal materials are legislation and jurisprudence. The legal materials in this study were obtained from the norms contained in the laws and regulations relating to the protection towards worker wage.<sup>9</sup>

- b. Secondary legal materials

Secondary legal material is legal material that can be found in theses, legal dissertations, legal books and can also be found in legal journals, besides that, secondary legal materials can also be found from legal texts relating to the protection of worker's severance pay right .<sup>10</sup>

### 1.5.4 Legal Material Collecting Procedure

The procedure for collecting legal materials in this thesis is carried out by library research, literature studies are carried out by collecting legal materials, both secondary and primary.

### 1.5.5 Legal Material analysis

<sup>9</sup> Ibid, Page.181

<sup>10</sup> Ibid, Page 195

The descriptive approach used in this thesis is used to analyze legal materials. Descriptive analysis is a kind of analysis that involves comparing the statement of the problem to the legal materials gathered.

## **1.6 Systematic Research**

This outline will be explained completely and will be explained into four chapters, which consist of :

Chapter 1 consisted of the Background, Legal Issue, Research Issue, Contribution of the Research, Research Method and Writing system.

Chapter 2 consisted of theories, conditions, principles, definitions and types of government roles in protecting workers' rights to severance pay as regulated by law.

Chapter 3 consists of discussion on the second legal issue, the issue discussed in the second legal issue is the Legal Protection of workers' rights to severance pay as regulated by Law Number 11 of 2020 on Job Creation.

Chapter 4 is the final chapter of the research which its output is a conclusion of the research and will provide recommendation regarding the issue that have been discussed.