

# The Position Of Unions In The Perception Framework Of The Design Of Copyright Law

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# The Position Of Unions In The Perception Framework Of The Design Of Copyright Law

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## Abstract

In Early 2020 The Government Is Preparing A Work Creation Bill (Hereinafter Abbreviated As The Draft Bill) Using The Concept Of The Omnibus Law. This Bill Is Being Prepared By The Government To Serve As A Scheme To Build The Indonesian Economy So That It Can Attract Investors To Invest In Indonesia. Following Article 102 Of The 2003 Manpower Act, In Carrying Out Industrial Relations, Workers And Trade Unions Have The Function Of Carrying Out Work Following Their Obligations Maintaining Order For The Continuity Of Production, Democratically Channeling Aspirations, Developing Skills And Expertise As Well As Participating In Advancing Companies And Fighting For Welfare. Members And Their Families. Likewise With The Position Of The Labor Union In The Job Creation Bill, Which In Essence The Roles And Functions And Position Of The Workers' Union In The Job Creation Bill Are Not Much Different From The Roles And Functions Of Trade Unions In The Manpower Law.

**Keywords:** Workers Union, Job Creation Bill, Law Number 13 Of 2003 Concerning Manpower.

## Introduction

Design Patent Laws And Copyright Laws Are Different Objects Of Protection (Pogue, 1953). The Republic Of Indonesia Is A Legal State Based On Pancasila And The 1945 Constitution, Which Has The Aim Of Realizing A Just And Prosperous, Safe, Peaceful, And Orderly Life Of The State And Nation, As Well As Guaranteeing Equal Legal Standing For Citizens. The Legal State Adopted In Indonesia Is A Democratic Legal State Which Is Reflected In The 1945 Constitution Article 1 Paragraph (1) Which States That "The State Of Indonesia Is A Unitary State In The Form Of A Republic", Paragraph (2) States: "Sovereignty Is In The Hands Of The Republic Of Indonesia. The People And Implemented According To The Constitution And Its Paragraph (3) States That: "The State Of Indonesia Is A State Of Law".

Employment Development Has Many Dimensions And Interrelationships. This Relationship Is Not Only Related To The Interests Of The Workforce During, Before, And After The Work Period, But Also To The Interests Of Employers, The Government, And The Community. For This Reason, A Comprehensive And Comprehensive Arrangement Is Needed, Including The Development Of Human Resources, Increasing The Productivity And Competitiveness Of Indonesian Workers, Efforts To Expand Job Opportunities, Manpower Placement Services, And Fostering Industrial Relations. Therefore, In Its Development, The Rule Of Labor Law Has Shifted From The Rule Of Private Law To The Rule Of Public Law, Because The State Actively Regulates The Social Life Of The Community, Including In The Field Of Employment. One Of The Manifestations Of Labor Development Is The Establishment Of The Manpower Law (Utami, 2013).

Workers/Labor As Citizens Have Equal Status Under The Law, The Right To Get A Job And A Decent Living, To Express Opinions, To Gather In One Organization, And To Establish And Become Members Of A Trade Union. The Right To Become A Member Of A Trade Union/Labor Union Is A Basic Right Of Workers/Laborers Which Have Been Guaranteed In Article 28 Of The 1945 Constitution, And As Members Of The National Community, Labor Society, Trade Unions, Labor Unions, And Entrepreneurs In Indonesia Are Part Of From The World Community Which Is Heading Towards The Free Market Era (Utami, 2013).

A Trade Union Is An Organization Of Workers Who Join Together To Achieve Common Goals Such As Wages, Hours, And Working Conditions. The Organization May Consist Of Individual Workers, Professionals, Ex-Needs, Or Unemployed. Over The Last 300 Years, Many Trade Unions Or Workers Have Developed Into Several Forms And Are Influenced By Economic And Political Developments. The Goals And Activities Of The Trade Unions Are Diverse, As A Forum For The Struggle Of The Company's Employees. For Trade Unions, The Vision And Mission Are Clearly Stated In Law No. 13 Of 2003 Which Is Outlined In The Following Meaning: A Trade Union Is An Organization Formed From Workers Both Inside And Outside The Company That Is Free, Open, Independent, Democratic, And Responsible. To Fight For, Defend, And Protect The Rights And Interests Of Workers And Improve The Welfare Of Workers And Their Families. The Labor Union Movement Can Encourage Productivity And Improve The Welfare Of Workers And Their Entire Families (Arthawati, 2018).

At The Beginning Of Its Existence, The Activities Of Trade Unions Were Still Limited To Social And Sports Activities. There Are Times When They Interfere In Politics As An Effort By Politicians To Strengthen The Movement To Fight For Independence And Freedom From The Invaders. With Time, These Demands Grew For The Improvement Of The Fate Of Workers By Increasing Wages, Demands For Social Security, Health, Work Accidents, Old Age, Death, And Pensions For Workers And Other Normative Rights. Existing Research Identifies Several Roles Of Trade Unions In Encouraging Productivity And Improving The Welfare Of Workers, Especially In The Field Of Basic Welfare, Namely: Wages Or Salaries, Facilities, Social Security, Skills Improvement Training, Spiritual Guidance, Recreation, And Workday Benefits (Arthawati 2018).

In Early 2020, The Government Was Preparing A Draft Law (Hereinafter Abbreviated As Ruu) On Job Creation Using The Omnibus Law Concept. This Bill Is Being Prepared By The Government To Be Used As A Scheme To Build The Indonesian Economy So That It Can Attract Investors To Invest In Indonesia. The Government Sees The Need For This Job Creation Bill Because Of The High Unemployment Rate In Indonesia, Which Reaches 7 Million People, So It Is Hoped That This Bill Will Be Able To Open Up New Job Opportunities. The Concept Of Omnibus Law Is A Concept That Has Just Been Used In The Indonesian Legal System. This System Is Usually Referred To As The Universal Sweep Law Because It Can Replace Several Legal Norms In One Regulation. In Addition, This Concept Is Also Used As A Mission To Cut Some Norms That Are Considered Not Following The Times And Are Detrimental To The Interests Of The State. The Job Creation Bill Has 11 Clusters, One Of Which Regulates Employment. This Cluster Includes 3 Laws That Have Been Merged Into One, Namely Law Number 13 Of 2003 Concerning Employment, Law Number 40 Of 2004 Concerning The Social Security System, And Law Number 24 Of 2011 Concerning Social Security Administering Bodies (Kurniawan, 2011). 2020). In The Process Of Drafting This Law, There Were Many Bad Opinions From The Public Who Considered That This Bill Would Be Detrimental To Workers/Laborers. In This Study, We Will Discuss The Position Of Trade Unions In The Job Creation Bill. Therefore, The Government Needs To Provide Support In The Form Of Liberal Property Rights Over Economic Resources And Support Through Related Institutions (Commons, 1924).

#### **Research Methods**

The Type Of Research Used In This Writing Is Library Research. Library Research Means Research That Uses Written Documents As Data, And The Data

Sources Used In This Research Include Primary Legal Materials, Secondary Legal Materials, And Tertiary Materials. Primary Legal Materials Are Legal Materials That Bind Or Make People Obey The Law, Including Legal Products That Are The Subject Of Study And Legal Products As A Means Of Criticism. Secondary Legal Materials Include Explanations Of Primary Legal Materials In The Form Of Expert Doctrines Found In Books, Journals, And Websites (Hanifah, 2020).

The Procedure Used To Collect Data In This Research Is In The Form Of Documentation In The Form Of Notes Or Quotations, Searches Of Legal Literature, Books, And Others Related To The Identification Of Problems In The Research In Question Both Offline And Online. The Approach Used In This Research Is To Use A Statutory Approach. So The Analysis Of Legal Materials Is Carried Out Using The Content Analysis Method (Content Analysis Method) Which Is Carried Out By Describing The Material Of Legal Events Or Legal Products In Detail To Facilitate Interpretation In The Discussion (Hanifah, 2020).

#### **Result And Discussion**

#### **The Role And Functions Of Trade Unions Based On Law Number 13 Of 2003 Concerning Manpower**

A Trade Union Is An Organization Of Workers Who Join Together To Achieve Common Goals Such As Wages, Hours, And Working Conditions. The Organization May Consist Of Individual Workers, Professionals, Ex-Needs, Or Unemployed. Over The Last 300 Years, Many Trade Unions Or Workers Have Developed Into Some Forms And Are Influenced By Economic And Political Developments. The Goals And Activities Of Trade Unions Are Diverse, As A Forum For The Struggle Of Company Employees (Arthawati, 2018).

Based On Article 1 Of Law Number 13 Of 2003 Concerning Manpower, It Is Explained That A Trade Union/Labor Union Is An Organization Formed From, By, And For Workers/Laborers Both Inside And Outside The Company, Which Is Free, Open, Independent, Democratic, And Is Responsible For Fighting For, Defending And Protecting The Rights And Interests Of Workers/ Laborers As Well As Improving The Welfare Of Workers/ Laborers And Their Families. Following Article 102 Of The 2003 Manpower Law, In Carrying Out Industrial Relations, Workers And Trade Unions Have The Function Of Carrying Out Work Following Their Obligations, Maintaining Order For The Sake Of Production Continuity, Channeling Aspirations Democratically, Developing Skills And Expertise As Well As Participating In Advancing The Company And Fighting For Welfare. Members And Their Families.

Trade Unions Must Side With Workers, Not Employers, But Their Alignments Are Objective, Open, And Responsible. This Is Following The Mandate Of Law No. 21 Of 2000, Jo. Article 28d (Paragraph 1), Such As Guarantees Of Protection, Legal Certainty, Fair And Equal Treatment Before The Law, Jo. Article 28d (Paragraph 2), Such As Being Entitled To A Fair And Proper Remuneration In An Employment Relationship, All Of Which Are Stated In The Constitution. 1945. The Role Of Trade Unions, In Addition To Building Industrial Relations, Has A Function As A Party In Making Collective Labor Agreements And Resolving Industrial Relations Disputes, As Representatives Of Workers In Bipartite Cooperation Institutions, As Planners, Implementers, And In Charge Of Workers' Strikes And Workers' Representatives In Fighting For Share Ownership. At The Company.

Based On Article 43, In Conjunction With Article 28 Of Law Number 21 Of 2000 Concerning Trade Unions, It Is Explained That A Trade Union Can Be Formed By At Least 10 Workers, And A Trade Union That Has Been Formed Has The Right To Form And Carry An Umbrella As A Member Of A Trade Union Federation/Confederation. The Existence Of Workers Who Form Trade Unions Cannot Be Prevented By Employers, The Government, Or Any Other Party Who Will Force And Pressure Workers Not To Form Trade Unions, Is Threatened With Imprisonment For A Minimum Of 1 (One) Year And A Maximum Of 5 (Five) Years. And/Or A Fine Of At Least Rp. 100,000,000, - (One Hundred Million Rupiah) And A Maximum Of Rp. 500,000,000, - (Five Hundred Million Rupiah). Likewise, If Workers When Carrying Out Organizational Activities Receive Treatment That Is

Not Following Legal Provisions, Such As Termination Of Employment, Temporary Dismissal, Demotions, Or Transfers, Not Paying Wages Or Reducing Workers' Wages, Intimidation, And Conducting Anti-Union Campaigns. , Then For Those Who Hinder The Activities Of The Trade Union, Are Threatened With This Provision.

The Employment Agreement Is The Basis For The Formation Of An Employment Relationship. In Article 1 Number 21 Of Law Number 13 Of 2003 Concerning Manpower, It Is Stated That A Collective Labor Agreement (Pkb) Is An Agreement That Is The Result Of Negotiations Between A Trade/Labor Union Or Several Trade/Labor Unions Registered At The Agency Responsible For Manpower Affairs With The Entrepreneur Or Several Entrepreneurs Or Associations Of Entrepreneurs That Contain Working Conditions, Rights, And Obligations Of Both Parties. Pkb Is Drawn Up By Registered Employers And Trade Unions And Is Carried Out In Deliberation To Reach A Consensus. Thus, The Parties Or Subjects Who Make The Cla Are The Workers/Workers Represented By The Trade/Labor Union In The Company And The Entrepreneur. The Right Of Workers To Form Trade Unions Is Also Strengthened In Law Number 21 Of 2000 Concerning Trade Unions. Article 5 Paragraph (1) Of Law Number 21 Of 2000 Concerning Trade Unions States That Every Worker/ Laborer Has The Right To Form And Become A Member Of A Trade Union/ Labor Union Following The Agreement Of Both Parties And/Or According To The Rules In The Collective Labor Agreement. The Function Of A Trade/Labor Union Can Thus Be Interpreted As The Position, Function, And Position Of The Trade Union/Labor Union. Based On Article 4 Paragraph (2) Letter An Of The Trade Union/Labour Union Law, Workers Are Represented In The Trade/Labour Union As A Party In Making Collective Labor Agreements And Settling Industrial Disputes (Agung And Wairocana, 2016).

Workers Represented By Trade Unions Are Intended So That Workers Have A Stronger Position In Negotiating With Employers Because Trade Union Officials Will Generally Be Chosen From People Who Can Fight For The Rights And Interests Of Their Members. Law Number 13 Of 2003 States That If In One Company There Are More Than 1 (One) Trade/Labor Union, Those Who Are Entitled To Represent Workers/Laborers To Negotiate With Employers Whose Membership Is More Than 50% (Fifty Percent) Of The Total Workers/Laborers In The Company (Article 120 Paragraph 1). If These Provisions Are Not Met, Then The Trade/Labor Union Can Form A Coalition So That More Than 50% (Fifty Percent) Of The Total Number Of Workers/Laborers In The Company Can Represent Them In Negotiations With Employers (Article 120 Paragraph 2) Agung And Wairocana, 2016).

The Position Of Trade/Labor Unions In Representing Workers To Conduct Negotiations Appears To Be Hampered By The Provisions Of Article 120 Paragraph (1) And Paragraph (2) Of The Manpower Law. The Amount Specified In The Article Has An Impact On The Formation Of A Collective Labor Agreement. In Other Words, The Aspirations Of Its Members Cannot Be Conveyed Properly And Trade Unions Cannot Fight For Their Rights And Interests As They Should (Agung And Wairocana, 2016). Another Function Of The Trade/Labor Union Is As A Party To The Settlement Of Industrial Disputes. Industrial Relations Disputes Based On The Provisions Of Article 1 Number 22 Of Law No. 13 Of 2003 Concerning Manpower, Namely Differences Of Opinion Which Result In Conflict Between Entrepreneurs Or A Combination Of Employers And Workers/Laborers Or Trade Unions/Labor Unions Due To Disputes Regarding Rights, Conflicts Of Interest, And Disputes Over The Termination Of Employment As Well As Disputes Between Trade Unions/Labor Unions. In One Company (Sonhaji, 2019).

The Most Important Legal Subjects In Industrial Relations Are Workers/Laborers And Entrepreneurs. In Addition, Considering That Industrial Relations Occur Within The Community, The Legal Subjects Of Industrial Relations Have Been Expanded To Include The Community And The Government. The Trade/Labor Union Is The Representative Of The Workers In The Company. As A Legitimate Labor Representative, He/She Has A Position As A Legal Subject In Independent Industrial Relations. The Government Also Has A Share As A Legal Subject In Industrial Relations In The Sense Of Its Realization In The Three Main

Functions Of Government, Namely Regulating, Fostering, And Supervising. Society Becomes The Subject Of Industrial Relations Law Because After All Industrial Relations Take Place Or Society In The Sense Of A National Scale. The Impact Is Positive Or Negative. It Will Have A Positive Impact If The Industrial Relations Run Well And The Objectives Are Achieved. On The Other Hand, It Will Have A Negative Impact If Industrial Relations Fail To Achieve Their Goals (Sonhaji, 2019).

#### **The Position Of Trade Unions According To The Job Creation Bill**

The Debate About Omnibus Law As The Main Means For Structuring Regulations, Enlivened The People In Indonesia, When The Omnibus Law Method, Which Was Previously Not Widely Known In Indonesia – Countries With A Continental European Legal System, Became Used In The Preparation Of The Draft Law (Ruu) Which Became The Legislation Program. National Priority For 2020. Regulatory Reform Policies Through The Implementation Of The Omnibus Law In Indonesia, Of Course, Are Not Something The Government Does Rashly. Many Considerations Were Made By The Government Why It Chose The Omnibus Law Method In Carrying Out Urgent Regulatory Reforms. The House Of Representatives At The 8th Plenary Session Of The Second Session Of The 2019-2020 Session Year Established The National Legislation Program For The 2020 Priority Draft Law (Prolegnas Of The 2020 Priority Bill), One Of Which Was The Job Creation Bill (Ruu Job Creation) Which Is Omnibus Law. The Plan To Issue The Job Creation Bill As A Legal Policy Is Of Public Concern Because The Omnibus Law Is Not Yet Known In The Indonesian Legal System, There Is A Decentralization Of Authority In The Central Government, It Affects Labor Rights, And Takes Sides With Investors (Osgar Sahim, 2020)

The Omnibus Law Concept Is A New Concept Used In The Indonesian Legal System. This System Is Usually Referred To As The Universal Sweep Law Because It Can Replace Several Legal Norms In One Regulation. In Addition, This Concept Is Also Used As A Mission To Cut Down Some Norms That Are Considered Incompatible With The Times And Are Detrimental To The Interests Of The State. Indonesia Is Indeed A Country That Has Many Regulations. Even The Figure In 2017 Has Reached 42,000 (Forty-Two Thousand) Regulations. In Terms Of Economy And Investment, The Government Has Mapped Out 74 (Seventy-Four) Laws That Have The Potential To Hinder The Economy And Investment. Of The 74 (Seventy-Four) Laws, The Government Will Draft 2 (Two) Major Laws, Namely The Bill On Job Creation And Empowerment Of Micro, Small And Medium Enterprises (Msmes) To Increase Competitiveness And Encourage Investment In Indonesia. In The Practice Of Economic Policy, A More Intensive And Special Legal Approach Can Be Used Through A Legal-Bureaucratic Approach (Prosser Et Al., 1997). The Problem Is Whether The Number Of Regulations Is The Problem Or There Are Other Things, Such As Disharmony Regulations That Are The Problem. If Many Regulations Are A Problem, Then Simplifying Regulations Through The Omnibus Law Concept Is Certainly The Right Step. This Is Because The Omnibus Law Is A Law That Focuses On Simplifying The Number Of Regulations. After All, It Revises And Revokes Many Laws At Once. Omnibus Law Is Indeed Good For Overcoming The Problem Of Too Many Regulations. However, Without Other Efforts, Issues Of Disharmony, Sectoral Ego To Non-Participatory Regulatory Issues, Of Course, The Application Of Omnibus Law Will Not Be Effective In Overcoming Regulatory Problems, It Is Not Enough Only To Omnibus Law (Matompo, 2020).

Changes In Labor Regulations Should Be Harmonized With The Objective Of Labor Law, Namely Creating Social Justice For The Lives Of Workers/Laborers Together With Their Families. Changes In Labor Regulations By The Indonesian Government Are Currently Called "Omnibus Law" There Is A Heaven Wind To Protect The Welfare Of Workers' Lives Or Hell Is Suffering For Workers' Lives. As A Bipartite Legal Norm Between Companies And Workers Or Trade Unions, The Omnibus Law Will Create Conflict Between The Unions. Trade Unions In This Case Follow The Demands Of Their Members To The Government And Companies Because The Omnibus Law Creates Labor Problems In Disputes Or Industrial Relations Disputes (Yusuf, 2020).

The Government Should Cancel The Planned Amendment To Law Number 13 Of 2003 Concerning Manpower Because It Causes Industrial Relations Disputes And Adds To The Misery Of Workers' Lives In Achieving Social Justice. The Main Things That Arise In Industrial Relations Disputes In Labor Issues Currently Include: (Yusuf, 2020)

1. Regional Minimum Wage  
Wages Are The Rights Of Workers/Laborers That Are Received And Expressed In The Form Of Money Or Other Forms As A Reward From The Entrepreneur Or Employer To Workers/Laborers Who Are Determined And Paid According To Work Agreements, Agreements, Or Statutory Regulations, Including Allowances For Workers/Labor And Their Family For A Job Or Service That Has Been Or Will Be Performed. In A Working Relationship, The Basis For Which Workers Bind Themselves In Carrying Out Work Agreements Is To Get Wages. A Wage That Can Prosper The Working Life Is Based On The Minimum Living Needs (Khm), Where Until Now The Wage Standard Is Still At The Minimum Physical Needs (Kfm). For Workers, The Current Regional Minimum Wage Has Not Been Able To Improve The Lives Of Workers In Working Relationships. According To Abdul Khakim, The Purpose Of Wages Is Social Justice That Can Create Welfare For Workers And Their Families.
2. Work System In A Certain Time Employment Agreement  
Certain Time Work Perjanjian (Pkwt) Or Outsourcing For Workers Or Laborers Is A Support For The Momentum Of National Economic Growth. Pkwt Or Outsourcing In Industrial Relations Causes Many Disputes When Employers Terminate Their Employment (Phk). In The Pkwt, A Harmonious Relationship Between Workers And Employers Has Never Created An Aspect Of Justice In The Law Because They Have Never Been Made Permanent Workers After Passing A Working Period Of 3 (Three) Years Or The Maximum Limit For Carrying Out A Work Contract. It Is Not Clear When Legal Protection For Workers Will Make The Workforce Work In Industry, Harmonious Industrial Relations, Create The Welfare Of Workers And Their Families, And Just And Prosperous Society As One Of The Goals Of The Indonesian Nation.
3. Work Termination  
Termination Of Employment By The Company Is Carried Out In A Non-Normative Way By Laying Off Workers And Laying Off Workers Without Severance Pay. For Companies That Engineer Layoffs At The Discretion Of The Workers Themselves, The Government Does Not Know That The Companies Have Laid Off Permanent Workers And Replaced Them With Contract Workers (Outsourcing).  
In Industrial Relations Disputes, The Actions Of Workers/Laborers Against The Government In Discussing The Draft Law On Job Creation Provide An Integrated Basis For The Provisions Of The Law As The Legal Umbrella. Bipartite Settlement Is A Settlement Within The Company As An Effort To Resolve Disputes Over Rights In An Employment Relationship. The Negotiations Are Agreed In Writing By The Parties Using The Regulations In The Work Agreement, Collective Labor Agreement Between The Entrepreneur And The Worker/Labor Union Registered Through The Manpower Office. The Results Of The Agreement Of The Parties As A Result Of Negotiations To Obtain A Decision By Deliberation And Consensus. Settlement Of Mediation Is The Settlement Of Rights Or Disputes Between Trade Unions In Only One Company, Through Deliberation Mediated By One Or More Mediators From The Department Of Manpower. The Mediator Mediates Rights Disputes By Providing Advice To The Disputing Parties. If There Is An Agreement To Make Peace With The Workforce, A Collective Agreement Is Made Which Is Then Submitted To Be Accepted Or Rejected By The Parties. If Accepted, The Mediator Makes A Collective Agreement To Be Registered With The Industrial Relations Court As A Binding Decision. In The Event That The Recommended Decision Is Rejected By The Parties, The Dispute Is Continued To The Industrial Relations Court In The Case Of The Industrial Relations Court Through A Lawsuit Process To Request A Judge's Decision On The Subject Matter Of The Dispute. However, In Practice, Workers And

Trade Unions Prefer Demonstrations Or Strikes Rather Than Resolving Industrial Relations Disputes. As Stated In Law Number 13 Of 2003 (Yusuf, 2020).

Quoted From Beritasatu.Com, Minister Of Manpower Ida Fauziyah Said That The Job Creation Act Provides Space For Trade Unions Or Labor Unions To Fight For The Interests Of Their Members Who Are Undergoing The Process Of Termination Of Employment (Phk) (Beritasatu.Com). In Essence, The Roles And Functions As Well As The Position Of Trade Unions In The Job Creation Bill Are Not Much Different From The Roles And Functions Of Trade Unions In The Manpower Act..

### Conclusion

Following Article 102 Of The 2003 Manpower Law, In Carrying Out Industrial Relations, Workers And Trade Unions Have The Function Of Carrying Out Work Following Their Obligations, Maintaining Order For The Sake Of Production Continuity, Channeling Aspirations Democratically, Developing Skills And Expertise As Well As Participating In Advancing The Company And Fighting For Welfare. Members And Their Families. Likewise With The Position Of Trade Unions In The Job Creation Bill Which In Essence The Roles And Functions And Positions Of Trade Unions In The Job Creation Bill Are Not Much Different From The Roles And Functions Of Trade Unions In The Manpower Act.

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