

Changes to Criminal Provisions in The Field of Employment and Its Implications for Worker/Labor Protection Post the Entrance of The Job Copyright Law In 2023



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Submitted: December 10, 2022 | Revised: April 09, 2023 | Accepted: May 22, 2023

ABSTRACT

Labor law regulates the relationship between labor and employers that occurs because of an employment agreement between the two. In running their business, entrepreneurs must understand that there are limitations regulated by law. The limitations referred to are legal protection efforts both for employers and for workers / laborers. The rules regarding employment are regulated through Law No. 13 of 2003 concerning employment (employment law) and then changes have been made through Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law No. 2 of 2022 concerning Job Creation into Law (UU Cipta kerja). One of the changes in the employment law is regarding criminal provisions in Article 185, Article 186, Article 187 and Article 188. This study aims to analyze how the effect of changes in criminal provisions in the field of labor on the protection of employers / workers after changes in law Number 13 of 2003 concerning employment. The method used in this study is normative juridical. The approach taken in research is to examine the main legal material by examining theories, concepts, legal principles and laws and regulations related to research. The existence of regulations on rights and obligations arising from work agreements between employers and workers makes the legal relationship between the two not only private but also public. The boundaries between the two have been regulated in the employment Law, namely on criminal provisions that can be imposed in the event of disobedience of employers to rights and obligations under the law but then with the passing of UU Cipta Kerja.

Keywords: Manpower, criminal, legal protection

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INTRODUCTION

The rule of law (*rechtstaat*) and the protection of human rights are two concepts that are closely related and support each other in the formation of a fair and just legal system. In a rule of law, the law must be clear, transparent, and accessible to all citizens. It creates the legal framework necessary to protect human rights. The principle of the rule of law demands that the law must be applied without discrimination. This means that human rights must be respected for all individuals, regardless of race, religion, gender, or other background.

One of the main principles of the rule of law is protection against abuse of power by the government or other entities. This is very important to prevent human rights violations by the government or other institutions with authority. The rule of law and the protection of human rights complement and support each other to create a legal system that is fair, equal and respects human dignity. Countries that adhere to these principles tend to have more stable and reliable legal systems, which in turn promotes better protection of the human rights of all their citizens.

Indonesia is one of the countries that adopts the principle of the rule of law in its legal system. The principle of the rule of law in the Indonesian context is reflected in the constitution and statutory regulations. Article 1 Paragraph 3 in the 1945 Constitution of the Republic of Indonesia (UUD 1945) states "The Unitary State of the Republic of Indonesia is a state of law". This provision confirms that Indonesia is a country of law, which means that law is the foundation and norms underlying state actions. The principle of the rule of law requires that the government and all public institutions must act in accordance with the law, and the law must provide a basis for the protection of human rights, justice, security and public welfare.

One of the human rights protections in the 1945 Constitution is related to the protection of workers/laborers. Guided by Article 28D paragraph (2) of the 1945 Constitution and Article 28E paragraph (1) of the 1945 Constitution, it regulates that every person has the right to choose a job and work and receive fair and appropriate rewards and treatment in work relationships. Minimum Wage Policy has become an important issue in employment issues in several developed and developing countries. The target of this minimum wage policy is to meet the minimum living needs of workers and their families. In reality, there are still many workers who earn wages below the regional minimum wage provisions, where this phenomenon is often found in the regions.

The above is proven by several court decisions that examined and decided several criminal cases in the field of employment, especially those related to wage protection, including the Central Jakarta District Court Decision Number 1739/Pid.Sus/2013/PN.Jkt.Pst, Surabaya District Court Decision Number 714/Pid.Sus/2022/PN Sby, Lubuk Pakam District Court Decision Number 1661/Pid.B/2015/PN Lbp. Bangil District Court Decision Number 311/Pid.Sus/2018/PN Bil, and North Jakarta District Court Decision Number 1300 / Pid.Sus / 2011 / PN.Jkt.Ut. The decision mentioned above is a decision regarding cases of giving wages that are not in accordance with the UMR or wages that are made under the provisions of the UMR.

The laws and regulations governing wages provide preventive legal protection for workers in Indonesia, this is in line with preventive legal protection according to Philipus, who stated that this legal protection has its own provisions and characteristics in its application. In this preventive legal protection, legal subjects have the opportunity to submit objections and opinions before the government/third party provides a final decision. This legal protection is contained in statutory regulations which contain signs and restrictions on doing something. This protection is provided by the government to prevent a violation or dispute before it occurs.

Article 1 number 30 of the Manpower Law provides that wages are the rights of workers/laborers which are received and expressed in the form of money as compensation from entrepreneurs or employers to workers/laborers which are determined and paid according to a work agreement, agreement or statutory regulations including allowances for workers/laborers. workers/laborers and their families for work and/or services that have been or will be performed. The definition above provides an explanation that wages are actually paid based on the agreement of the parties, but to ensure that the wages received are not too low, the government participates in setting the lowest wage standards through statutory regulations known as minimum wages.

However, even though it has been regulated in such a way, in reality there are still deviations from the wage regulations. There are still many cases of giving wages below the minimum wage, as in the example of the court decision mentioned previously. Employment law (Employment Law) is established as a legal umbrella for the field of industrial relations and is engineered to maintain order, as well as social control, primarily providing a basis for

rights for production actors (goods and services), apart from being a legal umbrella for employment law projected as a tool in building partnerships.

Employment law has very broad aspects. As public law, labor law regulates the role of the state in providing guaranteed protection to both employers and workers or laborers. On the other hand, employment law also has a private legal aspect, namely that which regulates the relationship between employers and workers or laborers. So, the uniqueness of employment law creates other problems that will arise both from a public and private perspective.

Legal protection related to wage mechanisms is of course regulated in labor law, this is an embodiment of the state guaranteeing the rights of workers or laborers. Interesting to discuss later is the use of criminal law instruments as instruments that force parties to obey and comply with the obligations regulated in the Manpower Law.

Criminal acts can occur in the field of employment. Entrepreneurs often violate labor laws and regulations or work agreements that have been established. Likewise with workers or laborers. An employment agreement is very important in an employment relationship between a company and workers or laborers because it contains all the consequences that are the rights and obligations of both parties.

The use of criminal law instruments in labor law is an attempt by the government to force parties to behave in accordance with the orders and prohibitions regulated in labor law. The use of criminal law instruments is also interpreted as an effort to protect the law, both preventive and repressive. Therefore, it is important to use criminal law as a coercive instrument in employment law.

Labor law in Indonesia has experienced regulatory changes in recent years. The law that regulates employment in Indonesia is Law number 13 of 2003 concerning Employment (Employment Law). In 2020 there were changes to provisions in the Employment Law, namely by amending several provisions in Law Number 11 of 2020 concerning Job Creation, better known as the Omnibuslaw Law, then the 2020 Job Creation Law was revoked and the government issued a Government Regulation in Lieu of Law Number 2 2022 concerning Job Creation. Based on Law no. 6 of 2023, the government stipulates Perpu 2 of 2022 to become law.

With the changes in labor law provisions as explained previously, the author is interested in researching the differences in criminal regulations regulated in the Manpower Law and the Job Creation Law. This research aims to determine the differences in criminal regulations and whether criminal law instruments are still used as coercive instruments so that parties in the employment sector submit and comply with the obligations and prohibitions regulated in law.

RESULTS AND DISCUSSION

The birth of the Employment Law (UU Ketenagakerjaan) in Indonesia is a response to various social, economic and employment problems that are developing in that country. The following is the urgency of establishing the Employment Law. First, Protection of Workers' Rights and Welfare. One of the main backgrounds of the Employment Law is the protection of workers' rights. Indonesia is a country with a large number of workers, and this law aims to provide better protection to workers in terms of wages, working hours, leave, syndical rights and decent working conditions. Second, Addressing Inequality in Employment: Before the adoption of the Employment Law, inequality in employment, such as low wages and poor working conditions, was a serious problem. This law is intended to reduce this inequality and improve worker welfare. Third, Investment and Economic Growth: The Indonesian government also sees the need to create a conducive business environment to attract investment and encourage economic growth. A good regulation in the Employment

Law can help create stability and certainty for entrepreneurs, which is expected to have a positive impact on the economy.

Social and Economic Changes: Changes in the economic structure and social development in Indonesia, including urbanization and the growth of the informal sector, also influence the background of the Employment Law. This law must reflect changing social and economic realities. Efforts to Increase Sustainability, the Labor Law also reflects Indonesia's commitment to taking steps to improve economic and environmental sustainability. This includes regulations regarding the protection of the work environment and worker welfare. Internationalization, adoption of the Employment Law is also related to Indonesia's commitment to international norms in employment. Indonesia is a member of the International Labor Organization (ILO) and has attempted to comply with international standards in matters of employment. The Employment Law, therefore, is the product of various considerations and challenges faced by Indonesia in the employment realm. This aims to create a balance between protecting workers' rights and employers' interests and promoting sustainable economic growth.

This section is the most important section of your article. The analysis or results of the research should be clear and concise. The results should summarize (scientific) findings rather than provide data in great detail. Please highlight differences between your results or findings and the previous publications by other researchers. For tables and Figures, you need to sound the table and figure.

The law contains norms that govern, authorize, permit and derogate. (Kelsen, 1973: 216) Norms are guidelines for social behavior. (Chinhengo, 2000: 8) Laws containing norms are intended to guide and regulate the behavior and affairs of the people to whom the law applies. (Crabbe, 1994:4) The legislator expresses his will in the law using language. Language is the only tool for legislators to formulate their wishes, and without language it will never be possible to implement laws. (Bruggink, 2011:4)

The formation of legislative regulations cannot be separated from the importance of clarifying the meaning and purpose of regulating something. Clarity of meaning and purpose can be achieved if the legislator is careful in using the words chosen as a complete and clear formulation/formulation of the article. The problem is that there are often weaknesses in the formulation of articles where there are weaknesses in the form of using words correctly without creating unclear meanings or more than one meaning. According to Solan, most disputes about the meaning in laws are about the correspondence between events in the real world and the words in the law. (Solan. 2010:51) Laws in the law cause legal practitioners to be faced with the problem of determining the exact meaning of the enactment of the law when trying to apply it to the factual situation that he has to advise. (Johnstone, 1994:1) This is natural because as Brett said that words are not bright and unchanging crystals, but the shell of thoughts that alive and can vary greatly in color and content according to the conditions and time in which the word is used, words have the nature of being difficult to understand. (Brett, 1953:99) Language (words) have been the source of many misunderstandings.

Words that often cause problems when used in law are and, or, and/or, besides, and except. The use of the terms or or words and has raised many difficult problems. The use of one of these words requires a high level of precision. (Crabbe, 1993:34) According to Doonan and Foster, the use of the term and in legal documents has the following meaning and function:

1) And as a conjunction. And here to unite the words or sentences that precede and follow it. For example, the disposition in the will states: "All my sons and daughters share equally," and here the meaning includes everyone who is the son or daughter of the testator. Another

example, for example: "The investigator and the suspect's legal advisor sign the investigation report", this means that both (investigator and legal advisor) must sign the investigation report, not just one of them.

2) And is inclusive. For example, in the contract there is the sentence "...the buyer can cancel and claim compensation,", the effect of which is to give the buyer the option to (1) cancel; or (2) claim compensation; or (3) cancel and claim compensation. For example, the statement "Authorized officials can cancel permits and impose administrative fines", this means that authorized officials can choose to (1) cancel permits; or (2) impose administrative fines; or (3) cancel the permit and impose an administrative fine.

3) And as or, namely and is used between the last two adjectives or nouns in a series of adjectives or nouns in a sentence, its function is to complete a list. For example, "doctors, dentists, lawyers, accountants, and actuaries." If and is used for this purpose, each adjective or noun in a series of adjectives or nouns will be interpreted as independent or separate so that there is a choice between the adjectives or nouns in the list. Another example, in the statement "Investigators of environmental crimes are POLRI investigators, PPNS investigators of the Ministry of Environment and Forestry, investigators of the Provincial Environmental Service, and investigators of Regency/City Environmental Services", then this means that those who can be investigators in environmental crime cases Life is one of the investigators on the list.

4) And means combination or several. And it can mean a combination or several effects depending on the context of use, for example "...the remainder of my land for my nephew and niece". The use of and here is to connect several 'nephews' and 'nieces', that is, everyone who is the nephew and niece of the testator is entitled to receive benefits from the testator. Another example, in the statement "...the obligation to attend meetings for lecturers at the Department of Constitutional Law and lecturers at the Department of Administrative Law", this means that all people who are lecturers at the Department of Constitutional Law and Administrative Law must attend meetings.

The word or is a conjunction or relates to alternatives or choices. (Peters, 2004:397) The term or indicates that members of the set are considered as alternatives or choices. (Adams, 2013:502) The term or means telling you to choose. (Dickerson, 1960:310) Doonan and Foster state that the term or has two meanings. 46 First, or is usually exclusive but may be inclusive. Or it means exclusive so it requires a choice between linked items, for example "black coffee or white coffee". In some circumstances it can be interpreted as inclusive, where two linked items can be taken simultaneously, for example choosing black coffee as well as white coffee. However, the term or tends to be treated as inclusive unless the concepts to which it links are mutually exclusive. The following is a comparison of criminal provisions in Employment Law 13 of 2003 and Perpu No. 2 of 2022:

Table 1. Comparison of Criminal Provisions

No	Chapter	UU 13 Of 2003	Chapter	PERPU NO 2 Of 2022
1	183	<p>Any person who violates the provisions as intended in Article 74, will be subject to imprisonment for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah)</p> <p>Article 74 (1) Anyone is prohibited from employing and involving children in the worst jobs. (2) The worst jobs referred to in paragraph (1) include: a. any work in the form of slavery or similar; b. any work that utilizes, provides, or offers children for prostitution, pornographic production, pornographic performances, or gambling; c. any work that utilizes, provides, or involves children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and/or d. all work that endangers the health, safety or morals of children. (3) Types of work that endanger the health, safety or morals of children as intended in paragraph (2) letter d are determined by Ministerial Decree</p>	185	Not changed
2	184	<p>(1) Any person who violates the provisions as intended in Article 167 paragraph (5), shall be subject to imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or a fine of at least Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah).</p> <p>Article 167 paragraph (5) (5) In the event that the entrepreneur does not include workers/laborers who experience termination of employment due to retirement age in the pension program, the entrepreneur is obliged to provide the workers/laborers with severance pay equal to 2 (two) times the provisions of Article 156 paragraph (2), gratuity pay for long service 1 (one) time the provisions of Article 156 paragraph (3) and compensation money in accordance with the provisions of Article 156 paragraph (4).</p>	184	Deleted
3	185	<p>(1) Any person who violates the provisions as intended in Article 42 paragraph (1) and paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 90 paragraph (1), Article 143, and Article 160 paragraph (4) and paragraph (7), subject to imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least IDR 100,000,000.00 (one hundred million rupiah) and a maximum IDR 400,000,000.00 (four hundred million rupiah).</p>	185	<p>(1) Any person who violates the provisions as intended in Article 42 paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 88A paragraph (3), Article 88E paragraph (2), Article 143, Article 156 paragraph (1), or Article 160 paragraph (4) is subject to imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least IDR 100,000,000.00 (one hundred million rupiah) and a maximum of IDR</p>

No	Chapter	UU 13 Of 2003	Chapter	PERPU NO 2 Of 2022
1	183	<p>Any person who violates the provisions as intended in Article 74, will be subject to imprisonment for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah)</p> <p>Article 74 (1) Anyone is prohibited from employing and involving children in the worst jobs. (2) The worst jobs referred to in paragraph (1) include: a. any work in the form of slavery or similar; b. any work that utilizes, provides, or offers children for prostitution, pornographic production, pornographic performances, or gambling; c. any work that utilizes, provides, or involves children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and/or d. all work that endangers the health, safety or morals of children. (3) Types of work that endanger the health, safety or morals of children as intended in paragraph (2) letter d are determined by Ministerial Decree</p>	185	Not changed
		<p>Article 42 (1) and (2) (1) Every employer who employs foreign workers is required to have written permission from the Minister or appointed official. (2) Individual employers are prohibited from employing foreign workers.</p> <p>Article 68 Entrepreneurs are prohibited from employing children</p> <p>Article 69 (2) (2) Entrepreneurs who employ children in light work as intended in paragraph (1) must fulfill the following requirements: a. written permission from parents or guardians; b. work agreement between the entrepreneur and parents or guardians; c. maximum working time 3 (three) hours; d. carried out during the day and does not interfere with school time; e. occupational Health and Safety; f. the existence of a clear working relationship; and g. receive wages in accordance with applicable regulations.</p> <p>Article 80 Employers are obliged to provide adequate opportunities for workers/labourers to carry out the worship required by their religion.</p> <p>Article 82 (1) Female workers/laborers have the right to rest for 1.5 (one and a half) months</p>		<p>400,000,000.00 (four hundred million rupiah).</p> <p>Article 42 (2) (The criminal provisions for article 42 paragraph 1 are abolished and the provisions of paragraph 1 in the Perpu are changed) (2) Individual employers are prohibited from employing foreign workers.</p> <p>Article 68 Same as Law 13/2003</p> <p>Article 68 (2) Same as Law 13/2003</p> <p>Article 80 Same as Law 13/2003</p> <p>Article 82 Same as Law 13/2003</p> <p>Article 90 Abolished (vide Article 88E paragraph 2)</p> <p>Article 88A (3) (3) Employers are obliged to pay wages to workers/labourers in accordance with the agreement.</p> <p>Article 88E (2)</p>

No	Chapter	UU 13 Of 2003	Chapter	PERPU NO 2 Of 2022
1	183	<p>Any person who violates the provisions as intended in Article 74, will be subject to imprisonment for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah)</p> <p>Article 74 (1) Anyone is prohibited from employing and involving children in the worst jobs. (2) The worst jobs referred to in paragraph (1) include: a. any work in the form of slavery or similar; b. any work that utilizes, provides, or offers children for prostitution, pornographic production, pornographic performances, or gambling; c. any work that utilizes, provides, or involves children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and/or d. all work that endangers the health, safety or morals of children. (3) Types of work that endanger the health, safety or morals of children as intended in paragraph (2) letter d are determined by Ministerial Decree</p>	185	Not changed
		<p>before giving birth and 1.5 (one and a half) months after giving birth according to the obstetrician or midwife's calculations. (2) Female workers/laborers who experience a miscarriage are entitled to rest for 1.5 (one and a half) months or in accordance with a certificate from an obstetrician or midwife.</p> <p>Article 90 (1) (1) Entrepreneurs are prohibited from paying wages lower than the minimum wage as intended in Article 89.</p> <p>Article 143 (1) No one can obstruct workers/laborers and trade/labor unions from exercising their right to strike legally, orderly and peacefully. (2) Anyone is prohibited from arresting and/or detaining workers/laborers and trade/labor union officials who are carrying out legal, orderly and peaceful strikes in accordance with applicable laws and regulations.</p> <p>Article 160 (4) and (7) (4) In the event that the court decides on a criminal case before the 6 (six) month period as intended in paragraph (3) ends and the worker/laborer is declared innocent, the entrepreneur is obliged to re-employ the worker/laborer. (7) Employers are obliged to pay workers/laborers who experience termination of employment as referred to</p>		<p>(2) Entrepreneurs are prohibited from paying wages lower than the minimum wage.</p> <p>Article 143 Same as Law 13/2003</p> <p>Article 156 (1) (1) In the event of Termination of Employment, the Employer is obliged to pay severance pay and/or gratuity money and compensation money that should have been received.</p> <p>Article 160 (4) (4) In the event that the court decides on a criminal case before the 6 (six) month period as intended in paragraph (3) ends and the Worker/Labourer is declared innocent, the Employer is obliged to re-employ the Worker/Labourer.</p>

No	Chapter	UU 13 Of 2003	Chapter	PERPU NO 2 Of 2022
1	183	<p>Any person who violates the provisions as intended in Article 74, will be subject to imprisonment for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah)</p> <p>Article 74 (1) Anyone is prohibited from employing and involving children in the worst jobs. (2) The worst jobs referred to in paragraph (1) include: a. any work in the form of slavery or similar; b. any work that utilizes, provides, or offers children for prostitution, pornographic production, pornographic performances, or gambling; c. any work that utilizes, provides, or involves children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and/or d. all work that endangers the health, safety or morals of children. (3) Types of work that endanger the health, safety or morals of children as intended in paragraph (2) letter d are determined by Ministerial Decree</p>	185	Not changed
		<p>in paragraph (3) and paragraph (5), 1 (one) period of work award money as stipulated in Article 156 paragraph (3) and compensation money. in accordance with the provisions in Article 156 paragraph (4).</p>		
4	186	<p>(1) Any person who violates the provisions as intended in Article 35 paragraph (2) and paragraph (3), Article 93 paragraph (2), Article 137 and Article 138 paragraph (1), shall be subject to a minimum prison sentence of 1 (one) months and a maximum of 4 (four) years and/or a fine of at least IDR 10,000,000.00 (ten million rupiah) and a maximum of IDR 400,000,000.00 (four hundred million rupiah).</p> <p>Article 35 (2) and (3) (2) The worker placement operator as intended in paragraph (1) is obliged to provide protection from recruitment to worker placement. (3) Employers as intended in paragraph (1) in employing workers are obliged to provide protection that includes the welfare, safety and health, both mental and physical, of the workers.</p> <p>Article 93 (2) (2) The provisions as intended in paragraph (1) do not apply, and entrepreneurs are obliged to pay wages if: a. workers/laborers are sick so they cannot do their work; b. female workers/laborers who are sick on the first and second day of their menstrual period so they are unable to do work; c. the</p>	186	<p>(1) Any person who violates the provisions as intended in Article 35 paragraph (2) or paragraph (3), or Article 93 paragraph (2), is subject to imprisonment for a minimum of 1 (one) month and a maximum of 4 (four) years and / or a fine of at least IDR 10,000,000.00 (ten million rupiah) and a maximum of IDR 400,000,000.00 (four hundred million rupiah).</p> <p>Article 35 (2) and (3) Same as Law 13/2003</p> <p>Article 93 (2) Same as Law 13/2003</p> <p>not including articles 137 and 138 in these criminal provisions.</p>

No	Chapter	UU 13 Of 2003	Chapter	PERPU NO 2 Of 2022
1	183	<p>Any person who violates the provisions as intended in Article 74, will be subject to imprisonment for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah)</p> <p>Article 74 (1) Anyone is prohibited from employing and involving children in the worst jobs. (2) The worst jobs referred to in paragraph (1) include: a. any work in the form of slavery or similar; b. any work that utilizes, provides, or offers children for prostitution, pornographic production, pornographic performances, or gambling; c. any work that utilizes, provides, or involves children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and/or d. all work that endangers the health, safety or morals of children. (3) Types of work that endanger the health, safety or morals of children as intended in paragraph (2) letter d are determined by Ministerial Decree</p>	185	Not changed
		<p>worker/laborer does not go to work because the worker/laborer gets married, marries, circumcises, baptizes their child, the wife gives birth or has a miscarriage, the husband or wife or child or daughter-in-law or parent or in-laws or family member in the same household dies; d. workers/laborers cannot carry out their work because they are carrying out obligations to the state; e. workers/laborers are unable to do their work because they are carrying out religious duties ordered by their religion; f. the worker/laborer is willing to do the work that has been promised but the entrepreneur does not employ him, either due to his own fault or obstacles that the entrepreneur should have avoided; g. workers/laborers exercise their right to rest; h. workers/laborers carry out trade/labor union duties with the approval of the employer; and i. workers/laborers carry out educational duties from the company.</p> <p>Article 137 A work strike as a basic right of workers/laborers and workers/labor unions is carried out legally, orderly and peacefully as a result of failed negotiations.</p> <p>Article 138 (1) (1) Workers/laborers and/or workers/labor unions who intend to invite other workers/laborers to go on strike while the work strike is taking place are carried out without violating the law.</p>		

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1	183	<p>Any person who violates the provisions as intended in Article 74, will be subject to imprisonment for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah)</p> <p>Article 74 (1) Anyone is prohibited from employing and involving children in the worst jobs. (2) The worst jobs referred to in paragraph (1) include: a. any work in the form of slavery or similar; b. any work that utilizes, provides, or offers children for prostitution, pornographic production, pornographic performances, or gambling; c. any work that utilizes, provides, or involves children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and/or d. all work that endangers the health, safety or morals of children. (3) Types of work that endanger the health, safety or morals of children as intended in paragraph (2) letter d are determined by Ministerial Decree</p>	185	Not changed
5	187	<p>(1) Any person who violates the provisions as intended in Article 37 paragraph (2), Article 44 paragraph (1), Article 45 paragraph (1), Article 67 paragraph (1), Article 71 paragraph (2), Article 76, Article 78 paragraph (2), Article 79 paragraph (1), and paragraph (2), Article 85 paragraph (3), and Article 144, shall be subject to imprisonment for a minimum of 1 (one) month and a maximum of 12 (twelve) months and /or a fine of at least IDR 10,000,000.00 (ten million rupiah) and a maximum of IDR 100,000,000.00 (one hundred million rupiah).</p> <p>Article 37 (2) (2) Private labor placement institutions as intended in paragraph (1) letter b, in carrying out labor placement services, are required to have written permission from the Minister or appointed official.</p> <p>Article 44 (1) (1) Employers of foreign workers are obliged to comply with the provisions regarding applicable positions and competency standards.</p> <p>Article 45 (1) (1) Employers of foreign workers are obliged to: a. appoint Indonesian citizen workers as accompanying foreign workers employed to transfer technology and transfer skills from foreign workers; and b. carry out education and job training for Indonesian workers as intended in letter a</p>	187	<p>(1) Any person who violates the provisions as intended in Article 45 paragraph (1), Article 67 paragraph (1), Article 71 paragraph (2), Article 76, Article 78 paragraph (2), Article 79 paragraph (1), paragraph (2), or paragraph (3), Article 85 paragraph (3), or Article 144 shall be subject to imprisonment for a minimum of 1 (one) month and a maximum of 12 (twelve) months and/or a fine of at least IDR 10,000,000, 00 (ten million rupiah) and a maximum of IDR 100,000,000.00 (one hundred million rupiah).</p> <p>Article 45 (1) (1) Employers of Foreign Workers are obliged to: appoint Indonesian Citizen Workers as accompanying workers for Foreign Workers who are employed to transfer technology and transfer skills from Foreign Workers; b. carry out education and job training for Indonesian citizen workers as intended in letter a in accordance with the qualifications of the positions occupied by foreign workers; and c. returning foreign workers to their home country after their employment relationship ends.</p> <p>Article 67 (1) (1) Employers who employ workers with disabilities are obliged to provide</p>

No	Chapter	UU 13 Of 2003	Chapter	PERPU NO 2 Of 2022
1	183	<p>Any person who violates the provisions as intended in Article 74, will be subject to imprisonment for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah)</p> <p>Article 74 (1) Anyone is prohibited from employing and involving children in the worst jobs. (2) The worst jobs referred to in paragraph (1) include: a. any work in the form of slavery or similar; b. any work that utilizes, provides, or offers children for prostitution, pornographic production, pornographic performances, or gambling; c. any work that utilizes, provides, or involves children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and/or d. all work that endangers the health, safety or morals of children. (3) Types of work that endanger the health, safety or morals of children as intended in paragraph (2) letter d are determined by Ministerial Decree</p>	185	Not changed
		<p>in accordance with the qualifications of the positions occupied by foreign workers.</p> <p>Article 67 (1) (1) Employers who employ workers with disabilities are obliged to provide protection according to the type and degree of disability</p> <p>Article 71 (2) (2) Entrepreneurs who employ children as intended in paragraph (1) are required to fulfill the following requirements: a. under the direct supervision of a parent or guardian; b. maximum working time of 3 (three) hours a day; and c. working conditions and environment do not interfere with physical, mental, social development and school time.</p> <p>Article 76 (1) Female workers/laborers aged less than 18 (eighteen) years are prohibited from being employed between 23.00 and 07.00. (2) Employers are prohibited from employing pregnant women workers/laborers who, according to a doctor's statement, are dangerous to the health and safety of their womb or themselves if they work between 23.00 and 07.00. (3) Entrepreneurs who employ female workers/laborers between 23.00 and 07.00 are required to: a. provide nutritious food and drinks; and b. maintain decency and safety while at work.</p>		<p>protection according to the type and degree of disability.</p> <p>Article 71 (2) Same as Law 13/2003</p> <p>Article 76 Same as Law 13/2003</p> <p>Article 78 (2) (2) Entrepreneurs who employ workers/laborers over working hours as intended in paragraph (1) are obliged to pay overtime wages. (Article 78 (1) reads: (1) Entrepreneurs who employ workers/laborers beyond the working hours as intended in Article 77 paragraph (2) must fulfill the requirements: a- there is approval of the worker/laborer concerned; and b. working time overtime can only be done for a maximum of 4 (four) hours in 1 (one) day and 18 (eighteen) hours in 1 (one) week.)</p> <p>Article 79 (1) (2), and (3) (1) Employers are obliged to provide: a- rest time; and b. paid leave. (2) The rest time as intended in paragraph (1) letter a must be given to Workers/Labourers at least including: a- rest between working hours, at least half an hour after working for 4 (four) hours continuously, and rest time This does not include working</p>

No	Chapter	UU 13 Of 2003	Chapter	PERPU NO 2 Of 2022
1	183	<p>Any person who violates the provisions as intended in Article 74, will be subject to imprisonment for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah)</p> <p>Article 74 (1) Anyone is prohibited from employing and involving children in the worst jobs. (2) The worst jobs referred to in paragraph (1) include: a. any work in the form of slavery or similar; b. any work that utilizes, provides, or offers children for prostitution, pornographic production, pornographic performances, or gambling; c. any work that utilizes, provides, or involves children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and/or d. all work that endangers the health, safety or morals of children. (3) Types of work that endanger the health, safety or morals of children as intended in paragraph (2) letter d are determined by Ministerial Decree</p>	185	Not changed
		<p>(4) Employers are obliged to provide pick-up and drop-off transportation for female workers/laborers who go to and from work between 23.00 and 05.00. (5) The provisions as intended in paragraph (3) and paragraph (4) are regulated by Ministerial Decree.</p> <p>(1) Any person who violates the provisions as intended in Article 37 paragraph (2), Article 44 paragraph (1), Article 45 paragraph (1), Article 67 paragraph (1), Article 71 paragraph (2), Article 76, Article 78 paragraph (2), Article 79 paragraph (1), and paragraph (2), Article 85 paragraph (3), and Article 144, shall be subject to imprisonment for a minimum of 1 (one) month and a maximum of 12 (twelve) months and /or a fine of at least IDR 10,000,000.00 (ten million rupiah) and a maximum of IDR 100,000,000.00 (one hundred million rupiah).</p> <p>Article 37 (2) (2) Private labor placement institutions as intended in paragraph (1) letter b, in carrying out labor placement services, are required to have written permission from the Minister or appointed official.</p> <p>Article 44 (1) (1) Employers of foreign workers are obliged to comply with the provisions regarding applicable positions and competency standards.</p> <p>Article 45 (1)</p>		<p>hours; and b. weekly rest I (one) day for 6 (six) working days in 1 (one) week. (3) The leave as referred to in paragraph (1) letter b which must be given to Workers/Labourers, namely annual leave, is at least 12 (twelve) working days after the Worker/Labourer concerned has worked for 12 (twelve) months continuously. continuously.</p> <p>Article 85 (3) Same as Law 13/2003</p> <p>Article 144 Same as Law 13/2003</p>

No	Chapter	UU 13 Of 2003	Chapter	PERPU NO 2 Of 2022
1	183	<p>Any person who violates the provisions as intended in Article 74, will be subject to imprisonment for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah)</p> <p>Article 74 (1) Anyone is prohibited from employing and involving children in the worst jobs. (2) The worst jobs referred to in paragraph (1) include: a. any work in the form of slavery or similar; b. any work that utilizes, provides, or offers children for prostitution, pornographic production, pornographic performances, or gambling; c. any work that utilizes, provides, or involves children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and/or d. all work that endangers the health, safety or morals of children. (3) Types of work that endanger the health, safety or morals of children as intended in paragraph (2) letter d are determined by Ministerial Decree</p>	185	Not changed
		<p>(1) Employers of foreign workers are obliged to: a. appoint Indonesian citizen workers as accompanying foreign workers employed to transfer technology and transfer skills from foreign workers; and b. carry out education and job training for Indonesian workers as intended in letter a in accordance with the qualifications of the positions occupied by foreign workers.</p> <p>Article 67 (1) (1) Employers who employ workers with disabilities are obliged to provide protection according to the type and degree of disability</p> <p>Article 71 (2) (2) Entrepreneurs who employ children as intended in paragraph (1) are required to fulfill the following requirements: a. under the direct supervision of a parent or guardian; b. maximum working time of 3 (three) hours a day; and c. working conditions and environment do not interfere with physical, mental, social development and school time.</p> <p>Article 76 (1) Female workers/laborers aged less than 18 (eighteen) years are prohibited from being employed between 23.00 and 07.00. (2) Employers are prohibited from employing pregnant women workers/laborers who, according to a doctor's statement, are dangerous to the health and safety of their women or</p>		

No	Chapter	UU 13 Of 2003	Chapter	PERPU NO 2 Of 2022
1	183	<p>Any person who violates the provisions as intended in Article 74, will be subject to imprisonment for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah)</p> <p>Article 74 (1) Anyone is prohibited from employing and involving children in the worst jobs. (2) The worst jobs referred to in paragraph (1) include: a. any work in the form of slavery or similar; b. any work that utilizes, provides, or offers children for prostitution, pornographic production, pornographic performances, or gambling; c. any work that utilizes, provides, or involves children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and/or d. all work that endangers the health, safety or morals of children. (3) Types of work that endanger the health, safety or morals of children as intended in paragraph (2) letter d are determined by Ministerial Decree</p>	185	Not changed
		<p>themselves if they work between 23.00 and 07.00. (3) Entrepreneurs who employ female workers/laborers between 23.00 and 07.00 are required to: a. provide nutritious food and drinks; and b. maintain decency and safety while at work. (4) Employers are obliged to provide pick-up and drop-off transportation for female workers/laborers who go to and from work between 23.00 and 05.00. (5) The provisions as intended in paragraph (3) and paragraph (4) are regulated by Ministerial Decree. Article 85 (3) (3) Entrepreneurs who employ workers/laborers who carry out work on official holidays as intended in paragraph (2) are obliged to pay overtime wages.</p> <p>Article 144 Regarding work strikes carried out in accordance with the provisions as intended in Article 140, entrepreneurs are prohibited from: a. replace striking workers/laborers with other workers/laborers from outside the company; or b. provide sanctions or retaliatory measures in any form to workers/laborers and trade/labor union officials during and after carrying out a work strike</p>		
6	188	(1) Any person who violates the provisions as intended in Article 14 paragraph (2), Article 38 paragraph (2), Article 63 paragraph (1), Article 78 paragraph (1), Article 108 paragraph (1), Article 111	188	(1) Any person who violates the provisions as intended in Article 38 paragraph (2), Article 63 paragraph (1), Article 78 paragraph (1), Article 108 paragraph (1), Article 111

No	Chapter	UU 13 Of 2003	Chapter	PERPU NO 2 Of 2022
1	183	<p>Any person who violates the provisions as intended in Article 74, will be subject to imprisonment for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah)</p> <p>Article 74 (1) Anyone is prohibited from employing and involving children in the worst jobs. (2) The worst jobs referred to in paragraph (1) include: a. any work in the form of slavery or similar; b. any work that utilizes, provides, or offers children for prostitution, pornographic production, pornographic performances, or gambling; c. any work that utilizes, provides, or involves children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and/or d. all work that endangers the health, safety or morals of children. (3) Types of work that endanger the health, safety or morals of children as intended in paragraph (2) letter d are determined by Ministerial Decree</p>	185	Not changed
		<p>paragraph (3), Article 114 and Article 148, subject to criminal sanctions of a fine of at least IDR 5,000,000.00 (five million rupiah) and a maximum of IDR 50,000,000.00 (fifty million rupiah).</p> <p>Article 14 (2) (2) Private job training institutions as intended in paragraph (1) are required to obtain a permit or register with the agency responsible for employment in the district/city.</p> <p>Article 38 (2) (2) Private labor placement institutions as referred to in Article 37 paragraph (1) letter b, can only collect labor placement fees from labor users and from workers of certain groups and positions.</p> <p>Article 63 (1) (1) If a work agreement for an indefinite period of time is made verbally, the entrepreneur is obliged to make a letter of appointment for the worker/laborer concerned.</p> <p>Article 78 (1) (1) Entrepreneurs who employ workers/laborers over working hours as intended in Article 77 paragraph (2) must fulfill the following requirements: a. there is the consent of the worker/laborer concerned; and b. Overtime work can only be done for a maximum of 3 (three) hours</p>		<p>paragraph (3), Article 114, or Article 148 are subject to a criminal sanction of a fine of at least IDR 5,000,000.00 (five million rupiah) and a maximum of IDR 50,000,000.00 (fifty million rupiah).</p> <p>Article 38 (2) Same as Law 13/2003</p> <p>Article 63 (1) Same as Law 13/2003</p> <p>Article 78 (1) (1) Entrepreneurs who employ workers/laborers beyond the working hours as intended in Article 77 paragraph (2) must fulfill the following requirements: a- have the consent of the worker/laborer concerned; and b. Overtime work can only be done for a maximum of 4 (four) hours in 1 (one) day and 18 (eighteen) hours in 1 (one) week.</p> <p>Article 108 (1) Same as Law 13/2003</p> <p>Article 111 (3) Same as Law 13/2003</p> <p>Article 114 Same as Law 13/2003</p> <p>Article 148 Same as Law 13/2003</p>

No	Chapter	UU 13 Of 2003	Chapter	PERPU NO 2 Of 2022
1	183	<p>Any person who violates the provisions as intended in Article 74, will be subject to imprisonment for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah)</p> <p>Article 74 (1) Anyone is prohibited from employing and involving children in the worst jobs. (2) The worst jobs referred to in paragraph (1) include: a. any work in the form of slavery or similar; b. any work that utilizes, provides, or offers children for prostitution, pornographic production, pornographic performances, or gambling; c. any work that utilizes, provides, or involves children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and/or d. all work that endangers the health, safety or morals of children. (3) Types of work that endanger the health, safety or morals of children as intended in paragraph (2) letter d are determined by Ministerial Decree</p>	185	Not changed
		<p>in 1 (one) day and 14 (fourteen) hours in 1 (one) week.</p> <p>Article 108 (1) (1) Entrepreneurs who employ at least 10 (ten) workers/laborers are obliged to make company regulations which come into force after being ratified by the Minister or appointed official.</p> <p>Article 111 (3) (3) The validity period of company regulations is a maximum of 2 (two) years and must be renewed after the validity period expires.</p> <p>Article 114 Employers are obliged to notify and explain the contents and provide a text of company regulations or amendments to workers/laborers.</p> <p>Article 148 (1) Employers are obliged to notify workers/laborers and/or workers/labor unions, as well as agencies responsible for local employment at least 7 (seven) working days before the company closure (lock out) is implemented. (2) The notification as intended in paragraph (1) must at least contain: a. time (day, date and hour) starting and ending company closure (lock out); and b. reasons and reasons for closing the company (lock out).</p>		

No	Chapter	UU 13 Of 2003	Chapter	PERPU NO 2 Of 2022
1	183	<p>Any person who violates the provisions as intended in Article 74, will be subject to imprisonment for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah)</p> <p>Article 74 (1) Anyone is prohibited from employing and involving children in the worst jobs. (2) The worst jobs referred to in paragraph (1) include: a. any work in the form of slavery or similar; b. any work that utilizes, provides, or offers children for prostitution, pornographic production, pornographic performances, or gambling; c. any work that utilizes, provides, or involves children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and/or d. all work that endangers the health, safety or morals of children. (3) Types of work that endanger the health, safety or morals of children as intended in paragraph (2) letter d are determined by Ministerial Decree</p>	185	Not changed
		(3) The notification as intended in paragraph (1) is signed by the entrepreneur and/or head of the company concerned.		

The important thing in the criminal provisions in Law 13/2003 with Perpu 2/2022 is the use of the words "and" and "or". This will have serious implications for whether a person can be convicted. For example, in article 185 of Law 13/2003 the word "and" will have the implication that each person will only be subject to criminal sanctions if they have violated all the provisions required by the legislators, or in other words, if even one article is violated then the perpetrator has not fulfilled the elements of the offense and cannot be subject to criminal sanctions. Likewise, other articles make criminal provisions. So, based on the author's analysis, the changes made through PERPU 2 of 2022 are correct and provide clarity and do not give rise to multiple interpretations. So, if someone has violated one of the required articles, the person concerned can be subject to criminal sanctions in accordance with the criminal provisions regulated.

CONCLUSION

Based on the results of the discussion above, the author concludes that there have been fundamental changes after comparing the two provisions above, namely Law Number 13 of 2003 concerning Employment with PERPU Number 2 of 2022 concerning Job Creation. In the Manpower Law, the criminal provisions are subject to multiple interpretations because they require the fulfillment of all the elements of the offense listed in the criminal provisions. In contrast to the regulations in the Job Creation PERPU, the criminal regulations are very clear and do not give rise to multiple interpretations, so that the Criminal Provisions in PERPU Number 2 of 2022 have legal certainty.

AUTHORS' DECLARATION

- Author contribution** : The authors made substantial contributions to the conception and design of the study. The authors took responsibility for data analysis, interpretation, and discussion of results. The authors read and approved the final manuscript.
- Funding statement** : None of the authors have received any funding or grants from any institution or funding body for the research.
- Availability of data and materials** : All data are available from the authors.
- Conflict of interest** : The authors declare no conflict of interest.
- Additional information** : No additional information is available for this paper

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