

Evaluation of the Implementation and Impact of the Job Creation Law Post—The Constitutional Court Decision 168/PUU-XXI/2023: A Perspective from Entrepreneurs

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How to cite this paper: Hendriadi, M. T., Hamid, A., Iriantoro, A., & Komandoko, K. (2025). Evaluation of the Implementation and Impact of the Job Creation Law Post—The Constitutional Court Decision 168/PUU-XXI/2023: A Perspective from Entrepreneurs. *Beijing Law Review*, 16, 1460-1502. <https://doi.org/10.4236/blr.2025.163074>

Received: June 27, 2025

Accepted: August 5, 2025

Published: August 8, 2025

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Abstract

This study aims to explore the interaction between law and social factors, including from the perspective of entrepreneurs as employers in the form of entrepreneurs' perceptions and responses to the interpretation of a decent life in determining compensation for employment agreements that bind contract employees and workers (PKWT and PKWTT) when the employment relationship ends, a short probationary period, the provision of process wages for employees who are laid off, and provisions regarding minimum wages that do not consider the company's ability regulations stipulated by the Job Creation Law post-the Constitutional Court Decision No. 168/PUU-XXI/2023. *Perjanjian Kerja Waktu Tertentu* (PKWT) is a fixed-term employment agreement that specifies the time between the worker and the employer. At the same time, *Perjanjian Kerja Waktu Tidak Tertentu* (PKWTT) is an Indefinite-Term Employment Agreement, or an employment agreement without a time limit, which is usually called a permanent employee. This research utilizes a normative juridical legal research method, with data analysis performed through qualitative analysis (aligned with qualitative research philosophy) that is descriptive in nature. The legal research method for analyzing secondary data incorporates literature studies that take a socio-legal approach. The results of this study show that we need to assess how the Job Creation Law is being applied and its effects on post-Constitutional Court Decision No. 168/PUU-XXI/2023, using both a positive and ideal legal framework. This aims to realize legal certainty and legal benefits in business in Indonesia from the perspective of entrepreneurs, as

guaranteed in the 1945 Constitution of the Republic of Indonesia. Thus, the results of this study are expected to improve the employment law ecosystem in Indonesia and can also be used by state administrators, academics, and other stakeholders related to the Constitutional Court Decision 168/PUU-XXI/2023, which granted the judicial review of the Job Creation Law and asked the legislators, or *Dewan Perwakilan Rakyat Indonesia* (DPR RI), and the government to immediately create a new employment law and separate it from the Omnibus Law, or Job Creation Law.

Keywords

Entrepreneurs, Job Creation Law, The Constitutional Court Decision No. 168/PUU-XXI/2023, PKWT and PKWTT, Positive and Ideal Legal Framework, The 1945 Constitution of the Republic of Indonesia

1. Introduction

Improving a country's economy is an important agenda that includes investment, innovation, policy, and finance all playing a central role in defining the 21st-century economic growth model (Stern et al., 2022). In this context, a nation's economy is a reflection of the existence of various factors that are interrelated with each other, one of which is the ability of entrepreneurs to run their businesses, which will directly or indirectly have an impact on improving a country's economy. Entrepreneurs create job opportunities and stimulate economic growth, and their contributions have a positive chain effect on overall economic health (Lim, 2023). Entrepreneurs are individuals who capitalize on market opportunities by leveraging technical and organizational innovations while also taking risks (Eroglu & Picak, 2011; Oly Ndubisi & Iftikhar, 2012). Meanwhile, the definition of entrepreneurship is the practice of starting a new organisation or revitalising an established organisation, especially a new business that is generally a response to identified opportunities (Eroglu & Picak, 2011). According to AL-Ajlouni (2023), to achieve economic growth in a country, entrepreneurs contribute to the journey towards balanced economic development through the maximum use of available property, because they can create and extract value, generate innovative transactions and job locations for individuals and ease in cumulative competition. In the era of globalisation, the role of entrepreneurs both at the global and national levels tends to increase to encourage economic growth, create jobs, and also improve welfare in society (Mokoginta et al., 2022). According to Surya et al. (2021), industrialisation and modernisation, followed by a conducive investment flow, are determinants of regional economic growth in Indonesia. Referring to this condition, Davis (2024) states that several regulations or regulations are needed for competitive and civilised businesses to develop. *Wealth & Finance International* (2022) states that employment regulations or regulations are made to facilitate the interpretation of a country's laws. The goal is to make it easier if problems arise

to resolve disputes so that it can create a better society, and support to encourage more entrepreneurs to do business (Wealth & Finance International, 2022). This view can be interpreted that laws or regulations in the form of labour laws should not be left ambiguous (Edelman, 1992), because it will be easier for people or organisations to find loopholes that can harm society with ulterior motives.

Labour law has a broad scope and application, covering all matters related to the workplace (The University of Law, 2025). In this context, policymakers and organisational leaders are encouraged to continue to adapt the legal framework to address emerging challenges, ensure the protection of workers' rights, and encourage an inclusive and dynamic work environment (Fauzi et al., 2024). According to Fauzi et al. (2024), there needs to be a change in labour law regarding organisational practices, employee welfare, and broader economic dynamics. The evolution of labour law underscores the importance of strong legal protection to promote a fair and equal workplace. Nicholaisen (2023) states that overall, government regulation seeks to balance business interests with those of consumers, workers, and society as a whole. While some may argue that excessive regulation stifles innovation and growth, others believe that regulation is necessary to maintain healthy competition and prevent abuse of power by companies (Nicholaisen, 2023).

In Indonesia, the Constitutional Court or *Mahkamah Konstitusi* (MK) has the duty and authority to try at the first and last instance whose decisions are final to: test laws against the 1945 Constitution, decide on disputes over the authority of state institutions whose authority is granted by the 1945 Constitution, decide on the dissolution of political parties, and decide on disputes regarding election results (Law of the Republic of Indonesia Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court or *Undang-Undang Republik Indonesia Nomor 7 Tahun 2020 tentang Perubahan Ketiga atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi*). Then, labour regulations or regulations or labour law in Indonesia have undergone significant transformation since the enactment of Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower (Law 6/2023) or *Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 tentang Ketenagakerjaan* (UUK 13/2003). or Law 6/2023 or UUK 13/2003 is the legal basis that regulates employment relations, protection of workers, and the rights and obligations between employers and employees. However, along with social and economic dynamics, Law 13/2003 has undergone substantial changes through Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation into Law (Job Creation Law or Law 6/2023) or *Undang-Undang Republik Indonesia Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang (Perppu) Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang* (UU Cipta Kerja or UU 6/2023).

With the enactment of the Job Creation Law or Law 6/2023, many provisions

in Law 13/2003 have been changed or removed. There are 9 (nine) changes to Law 13/2003 through the Job Creation Law or Law 6/2023 including job training; placement of workers; use of foreign workers; Specific Time Employment Agreement or *Perjanjian Kerja Waktu Tertentu* (PKWT); outsourcing; working hours, rest periods, and leave; wages; layoffs; criminal and administrative sanctions (Thea DA, 2021). This is a major step to adjust employment regulations in Indonesia to the dynamic development of the world of work and respond to market needs. Then, on March 31, 2023, the Government Regulation, instead of Law Number 2 of 2022 concerning Job Creation or *Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja* (Perppu No 2/2022) was officially enacted as the Job Creation Law or Law 6/2023, so this law effectively applies as a valid and applicable employment law in Indonesia. The Job Creation Law or Law 6/2023 emerged in response to the Decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-XVIII/2020 in the case of Formal Review of Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia or *Putusan Mahkamah Konstitusi Republik Indonesia Nomor 91/PUU-XVIII/2020 dalam perkara Pengujian Formil Undang-Undang Republik Indonesia Nomor 11 Tahun 2020 tentang Cipta Kerja terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. The Decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-XVIII/2020 mandates the revision of Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (Law 11/2020) or *Undang-Undang Republik Indonesia Nomor 11 Tahun 2020 tentang Cipta Kerja* (UU 11/2020). Previously, on November 25, 2021, the Constitutional Court of the Republic of Indonesia decided to support the judicial review of Case Number 91/PUUXVIII/2020, which stated that certain provisions in Law 11/2020 were conditionally contrary to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).

The Decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-XVIII/2020 emphasized that if the government and the People's Representative Council of the Republic of Indonesia (DPR RI) fail to implement the required amendments within two years, the law will be deemed to be permanently contrary to the 1945 Constitution of the Republic of Indonesia or UUD NRI 1945 (Arizona, 2024). Furthermore, the problem of the transformation of employment law in Indonesia, from Law 13/2003 to the Job Creation Law or Law 6/2023 continues, and finally the Decision of the Constitutional Court of the Republic of Indonesia Number 168/PUU-XXI/2023 (Mahkamah Konstitusi Republik Indonesia, 2024a) emerged. However, the Job Creation Law or Law 6/2023, post-the Constitutional Court Decision 168/PUU-XXII/2023 is considered to tend to have complex implications for the world of employment in Indonesia. The Decision of the Constitutional Court Number 168/PUU-XXI/2023 on the Job Creation Law (Law 6/2023) has complex implications for employers in Indonesia for several reasons as follows:

1) Constitutional Court Decision 168/PUU-XXII/2023 requires improvements in the process of forming the Job Creation Law, which was previously considered formally unconstitutional—The Constitutional Court Decision stated that the Job Creation Law was formally flawed because the process of its formation was not by the 1945 Constitution, especially in terms of inadequate public participation. This means that the law is still legally valid, but with the potential to be revoked if it is not corrected within the period given by the Constitutional Court. For employers, this creates a violation of the law because there is the possibility of significant changes to the applicable regulations, especially regarding employment.

2) Constitutional Court Decision Number 168/PUU-XXI/2023 has the potential to change various aspects of employment regulated in the Job Creation Law, such as wages, work, and industrial relations, which can create laws for employers—Several important points in the Job Creation Law that have the potential to be changed include wages, employment agreements that bind contract employees and freelance workers for a fixed term or *perjanjian kerja yang mengikat karyawan tetap yang tidak memiliki masa berlaku* (PKWT), outsourcing workers, leave, and termination of employment or *pemutusan hubungan kerja* (PHK). These changes can have an impact on the company's operational costs, the cessation of workforce management, and the cessation of industrial relations processes. For example, changes to the wage formula previously regulated in PP 36/2021, or a review of the layoff mechanism regulated in PP 35/2021.

3) The Constitutional Court Decision Number 168/PUU-XXI/2023 also encourages the need to align implementing regulations related to employment, which can take significant time and resources for companies.

On the one hand, the government believes that the Job Creation Law will create a more flexible investment climate, attract more investment, create new jobs, and stimulate economic growth. It believes that this law will simplify regulations, simplify business licensing, and reduce bureaucratic barriers, making it more attractive to investors and businesses. On the other hand, entrepreneurs are concerned that these changes will negatively impact them, even though the basis of the Job Creation Law was to increase investment in Indonesia (Junida, 2021). According to Hariyadi Sukamdani, Chairman of the Indonesian Employers' Association (Apindo), in Junida (2021), since the enactment of the Job Creation Law, it has given rise to multiple interpretations that are highly unproductive and could negatively impact the government's consistency in efforts to advance the Indonesian economy. These include the following:

1) These emerging issues are also feared to disrupt the government's efforts to encourage job creation as mandated by the Job Creation Law. One such opinion is that if the Job Creation Law has been ruled formally flawed by the Constitutional Court, how can its content remain flawed? and

2) More concerning is the movement of workers who believe the Job Creation Law must be amended because it is inconsistent with the Constitutional Court (MK) ruling. Therefore, the enactment and implementation of the Job Creation

Law, or Law 6/2023, following Constitutional Court Ruling 168/PUU-XXI/2023, contains several provisions that tend to be detrimental and impact the businesses of entrepreneurs who do not consider the company's capabilities.

Furthermore, the above problems do not only stop at the provisions in the Job Creation Law or Law 6/2023, where on October 31, 2024, the Constitutional Court (MK) has issued the Decision of the Constitutional Court of the Republic of Indonesia Number 168/PUU-XXI/2023 (MK Decision 168/PUU-XXII/2023) in response to the request for material review of the Job Creation Law or Law 6/2023, which was submitted on December 1, 2023. Various provisions regulated in the Job Creation Law, or Law 6/2023, discussed in the MK Decision 168/PUU-XXI/2023, are regarding the interpretation of a decent life in determining the provision of compensation for Fixed-Term Workers (PKWT) employees when the employment relationship ends, a short probationary period, the provision of process wages for laid-off employees, and provisions regarding minimum wages that do not take into account the company's capabilities.

2. Literature Review

Entrepreneur—An entrepreneur is someone who organises, manages, and assumes the risks of a business or company (Merriam-Webster, n.d.). Maritz & Nie-man (2006) state that an entrepreneur is a person who habitually creates and innovates to build something to gain recognised value with existing opportunities. Scarborough & Cornwall (2016); Makhbul & Hasun (2010) state that an entrepreneur or entrepreneur is someone who can take opportunities, take risks, and develop new businesses to make a profit. An entrepreneur is an individual who starts and runs a business and tends to innovate with high growth and high risk, and is seen as a driving force in the modern economy (Seth, 2025). Experts in Prince et al. (2021) define entrepreneurs as entrepreneurs who are related to various things, such as seeking opportunities, creating businesses, facing uncertainty, seeking profits, and so on, which reflect various perspectives that exist in the field of entrepreneurship and outside the field. Meanwhile, entrepreneurship is generally conceptualised as the creation of a new business and bearing the risks associated with that business in exchange for the profits gained from exploiting opportunities in the market, for example, currently unmet consumer demand (Gutterman, 2020), and pursuing opportunities beyond the resources currently controlled (Eisenmann, 2013). According to experts in Schlichte & Junge (2024), entrepreneurship is very important for the economic welfare of developed and developing countries and is seen as a major driver of product and service innovation (and as the reason for the existence of companies that include all new economic activities) and is defined as the act of launching a new business, either by a start-up company, through an existing company, or internal company efforts. Then, entrepreneurial activity ultimately leads to the creation of organisations, creates new jobs, and drives economic growth (Schlichte & Junge, 2024). In the context of entrepreneurs and entrepreneurship, the Indonesian constitution provides a strong legal basis

for the rights of citizens to do business and gives the state an obligation to create a conducive business climate and protect the rights of business actors or entrepreneurs as regulated in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) Article 27 paragraph (2). UUD NRI 1945 Article 27 paragraph (2) UUD 1945 regulates that every citizen has the right to work and a decent living standard. This right is the basis for citizens to try to earn a living and improve their welfare, and guarantee the right to freedom of business and the right not to be discriminated against in business. An entrepreneur is an entrepreneur, an individual who creates a new business, bears most of the risks and enjoys most of the profits. The process of establishing a business is known as entrepreneurship (Hayes, 2024), and entrepreneurship increases economic development (Rusu et al., 2025), and economic sustainability demands continuous innovation and entrepreneurship (AL-Ajlouni, 2023).

Employment law—According to Adams (2024), in general, employment law is defined as the law that regulates the relationship between workers, employers and the government (Basri, 2021). Employment law directs itself to issues that are considered specific and endemic to the relationship, as a result of the unique power dynamics that are an integral part of it (Adams, 2024). According to The Chartered Institute of Personnel and Development (2025), employment law is used to regulate the relationship between employers and employees (Hamid et al., 2022), regulating what employers can expect from employees, what employers can ask of employees, and employee rights in the workplace. In Indonesia, employment law has been formally regulated through various laws, such as Law of the Republic of Indonesia Number 13 of 2003 concerning Employment (UUK 13/2003) and the Job Creation Law, which contain significant changes in employment policy (Khair, 2021). Employment law in Indonesia regulates employment relationships based on elements of work, wages, and orders (Wibowo, 2023). Fauzi et al. (2024) stated that employment law is a multi-faceted field, covering various legal principles, regulations, and laws that govern employment relationships between employers and workers. Employment relationships lie at the intersection of economic organisations and employment law regulations (Countouris, 2019). Then, the dynamic landscape of contemporary employment law regulates the relationship between employers and employees, which summarises aspects of employment rights and responsibilities of the organisation. Then, the dynamic landscape of contemporary employment law regulates the relationship between employers and employees that encapsulates aspects of employment rights and organisational responsibilities that continue to evolve in the current environment (Eneh et al., 2025), where the labour relations model is being modified by the tendency towards flexibility experienced in recent reforms (Perelló Gómez, 2006). Eneh et al. (2025) stated that the paradigm of employment law has changed; recent trends show a higher focus on inclusivity, non-discrimination, and diversity in the workplace. The paradigm of employment law reflects a dynamic evolution driven by various factors, including economic globalisation, technological advances, and changes in

socio-political dynamics (Aggarwal, 2024). The dynamics of the employment law paradigm emerge due to the forms of employment and employment relationships that continue to change and develop (Dundon et al., 2017). In this regard, Dundon et al. (2017) raise important questions that arise not only about what we mean by good quality work but also what dimensions shape the employment and employment relationship and its implementation. According to Aggarwal (2024), careful implementation is needed to ensure that labour law reforms are directed at achieving the right balance between the interests of employers and workers. In addition, monitoring the impact of labour law reforms on the ground is essential to improve compliance and enforcement of labour laws and assess their effectiveness (Syed, 2023).

Positive legal framework—According to Magen (2015), a legal order is a collection of norms, whether nation-state law, supranational entities, or international law consisting of norms that impose duties to perform or refrain from certain actions on individuals or legal entities (primary rules). In most cases, the legal order also consists of explicit meta-norms (Roeben, 2020) regarding the creation, change, adjudication, and enforcement of primary rules, especially norms that determine legal force, procedures, and legal personality (secondary rules), and are hierarchically organised, such as the legal system of a nation-state, which is united by a general constitution as positive law (Magen, 2015). Positive law is also called *ius constitutum*, which means a collection of written legal principles and rules that are currently in force and are generally or specifically binding to be enforced by and/or through the government or courts in the State of Indonesia (Astawa, 2008). Thus, positive legal norms are bound by the actual behaviour of legal officials, which can often be changed intentionally and limited to certain jurisdictions (Moschella & George, 2015). In Indonesia, positive law is a law consisting of a collection of principles and legal rules, which are currently in force (Qothrunnada, 2023). Qothrunnada (2023) states that according to its form, Indonesian positive law consists of written law (Law) and unwritten law (customary law), and the source of positive law is legislation, a written regulation or state decision made by authorised state apparatus (together by the People’s Representative Council and the President) and binding on society (Marpi, 2020). Then, referring to the fact that Indonesia adheres to the concept of *trias politica*, it is a normative principle that states that power should not be handed over to the same person or institution to prevent abuse of power by those in power (Pradijonrika, 2022). According to Pradijonrika (2022), *trias politica* is state power consisting of three types of power, namely: 1) Legislative power, or the power to make laws, which is often referred to as the “rule-making function”; 2) Executive power, or the power to enforce laws, which is often referred to as the “rule application function”; and 3) judicial power, or the power to try violations of laws, which is often referred to as the “rule adjudication function”. These three state institutions will later determine state policies related to legal politics that are adjusted to the power and authority of each state institution (Pradijonrika, 2022). Furthermore, Marpi (2020) stated that

the law consists of considerations containing considerations as to why the law was made, and in general these considerations begin with the words “considering”, “reading”, “remembering”, and also contain dictums or orders. There is another part that is no less important which is generally found in every law, namely transitional provisions whose function is to fill the gap in the law (*rechtsvacuum*) by connecting the past with the present. The transitional provisions usually read, “If there are no provisions, then the old regulations apply (Marpi, 2020).

Ideal legal framework—An ideal legal framework is a well-designed law that should provide rules on how state institutions are structured; the relationship between extractive projects and surrounding communities; the behaviour of public officials active in the sector; the disclosure and accountability of public information; and how the government in a country must comply with, or follow, all the rules in a country’s legal framework [Natural Resource Governance Institute \(NRGI\) Reader \(2015\)](#). According to [Natural Resource Governance Institute \(NRGI\) Reader \(2015\)](#), an ideal legal framework consists of a set of documents that include a constitution, laws, regulations, and contracts. How these documents relate to each other and which has more power than others is often referred to as the legal hierarchy. In this context, [Scott \(2009\)](#) states that labour law is primarily governed by common law and statutory law, particularly related to employment relations and allowing employees or employers to terminate business relationships at will without penalty. In an ideal legal framework, all provisions in the law must have a legal dimension and an economic dimension and must be informed by the social context ([Ansori, 2017](#)). According to [Ansori \(2017\)](#), the implementation of progressive legislation is very important for the successful resolution of the problem, and the proposed progressive legislation will make a valuable contribution to the progress of the law that is currently taking place. The implementation of progressive legislation is very important to achieve broad justice where positive law produces benefits for the wider community, individuals and certain groups ([Rahardjo, 2006c](#)). According to [Rahardjo \(2006c\)](#), the implementation of progressive legislation in Indonesia would be wise to start with the development of a legal state through sociological jurisprudence and not only see law as written rules. This view is in line with the ontology of legal morality within the framework of legal realism, contextualising law as a social institution and an institution of justice ([Silalahi et al., 2025](#)). Therefore, the decision to reform the law can reveal the assumptions that the law produces benefits for the wider community, individuals or certain groups and can move beyond the boundaries of these assumptions into new explorations at very different intersections of legality ([Boulot & Sterlin, 2022](#)). The ideal legal framework in the opening of the 1945 Constitution of the Republic of Indonesia is the basis for the constitution of the Republic of Indonesia. [Asshiddiqie \(2016\)](#) stated that the concept of a welfare state for the Indonesian state is contained in the fourth paragraph of the opening of the 1945 Constitution of the Republic of Indonesia. The fourth paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia outlines the government’s responsibility

to establish a state that safeguards all Indonesian citizens and their cultural heritage, promotes public welfare, and advances national education (Suharto, 2014). Thus, labour law is a law that regulates the employment relationship between employees and employers, whose purpose is to protect the rights and interests of both parties while maintaining a harmonious and fair work environment (Fauzi et al., 2024; Azria, 2021). Therefore, the ideal legal framework for labour law aims to balance the interests of employers and employees while promoting social justice and economic development (Aggarwal, 2024).

3. Methodology

The research methodology used in this study is a juridical-normative approach, an approach that examines or assesses legal issues through the lens of formality or legal norms (Taekema, 2018). According to Taekema (2018), the permissibility of an action is determined by formal legal review, which is carried out by relevant legislation or positive law, and juridical-normative refers to all mandatory doctrines contained in legislation. Furthermore, in this study no interviews, surveys, or case studies were conducted, but the researcher used a qualitative approach, a qualitative research philosophy. According to Moleong (2018), qualitative research is research that aims to understand phenomena regarding participant conditions such as behavior, perceptions, motivations, actions, and others (Abdurrahman, 2009). Meanwhile, formal legal review includes aspects of power and procedures for establishing regulations (Bimasakti et al., 2025). According to Nartin et al. (2024), the philosophy of qualitative research is the conceptual foundation underlying the qualitative approach in the research process, which includes an understanding of the nature of reality, an understanding of how knowledge is constructed, and a view of the role of researchers in uncovering and understanding the phenomena studied through the approaches of social constructivism, interpretivism, phenomenology, and subject involvement, as well as contextuality and complexity in the form of discussion forums. Primary data sources are data obtained directly from the source, either through interviews, observations, or reports in the form of unofficial documents, which are then processed by researchers. While the descriptive qualitative approach is intended to collect information about an existing symptom, namely the state of the symptom according to what it is when the research is conducted (Arikunto, 2002). The data collection technique used in this study will be carried out by collecting primary data (Soekanto, 1986) and collecting secondary data (Syamsudin, 2007) through juridical-normative research and collecting primary data through a socio-legal approach. Meanwhile, data analysis in this study will be conducted qualitatively, using a qualitative research philosophy and following a systematic juridical analysis approach related to juridical-normative research, combined with a juridical-empirical approach to examine primary data related to socio-legal aspects, including the interaction between social responsibility and legal obligations that businesses must integrate into policy (Wisdom Library, 2024). Furthermore, doctrinal analysis alone is con-

sidered sufficient to evaluate the implementation and impact of the Job Creation Law following Constitutional Court Decision 168/PUU-XXI/2023 from the perspective of entrepreneurs. This is because the decision emphasizes the legal framework and its direct implications for business operations, thus requiring an understanding of changes in legislation rather than empirical data regarding economic impacts. The intended doctrinal analysis includes legal concepts and principles of all types—cases, laws, and regulations—defined as a synthesis of various rules, principles, norms, interpretive guidelines, and values that explain, cohere, or justify a section of law as part of a broader legal system (Hutchinson & Duncan, 2012).

Thus, this study will explore the interaction between law and social factors, including from the perspective of employers in the form of employers' perceptions and responses to the interpretation of a decent living in determining compensation for Fixed-Term Workers (PKWT) employees when the employment relationship ends, short probationary periods, the provision of process wages for laid-off employees, and provisions regarding minimum wages that do not consider the company's ability to comply with regulations stipulated by the Job Creation Law. Furthermore, this approach will provide insight into the reality of the implementation of the Job Creation Law in the field, identify gaps between legal theory and practice, and understand the impact of this law on the social and economic conditions of workers and employers (Marzuki, 2014). The combination of this juridical-normative and socio-legal approach will provide a robust framework for analyzing the Job Creation Law, not only from a written legal perspective but also from its influence in the broader social and economic context in Indonesia. This will enable the study to provide appropriate and evidence-based recommendations for the development of more effective and equitable legal policies and practices. Furthermore, this article is entitled "Evaluation of the Implementation and Impact of the Job Creation Law Following Constitutional Court Decision 168/2023: An Employer's Perspective," and the research questions are formulated as follows:

- 1) What is the positive legal framework for employment related to the Job Creation Law post—the Constitutional Court Decision 168/PUU-XXI/2023?
- 2) What is the direct impact of the issuance of Law 13/2003 in conjunction with the Job Creation Law post—Constitutional Court Decision 168/PUU-XXI/2023 on employers?
- 3) What is the implementation of the positive legal framework in the employment sector in the Job Creation Law post—Constitutional Court Decision 168/PUU-XXI/2023?
- 4) What is the ideal legal framework for providing legal certainty and guaranteeing legal benefits for employers in the Job Creation Law post—Constitutional Court Decision 168/PUU-XXI/2023?

Therefore, the systematics of this research are sequentially aligned with the formulation of the research problem which discusses: 1) Positive Legal Framework

with Employment in the Job Creation Law post—the Constitutional Court Decision 168/PUU-XXI/2023; 2) The Direct Impact of the Issuance of Law 13/2003 in conjunction with the Job Creation Law post—the Constitutional Court Decision 168/PUU-XXI/2023 on Entrepreneurs; 3) Implementation of the Positive Legal Framework in the Employment Sector in the Job Creation Law post—the Constitutional Court Decision 168/PUU-XXI/2023; and 4) The Ideal Legal Framework in Providing Legal Certainty and Guaranteeing Legal Benefits for Entrepreneurs in the Job Creation Law post—the Constitutional Court Decision 168/PUU-XXI/2023 and this article ends with conclusions and suggestions described as in **Figure 1** below as follows:

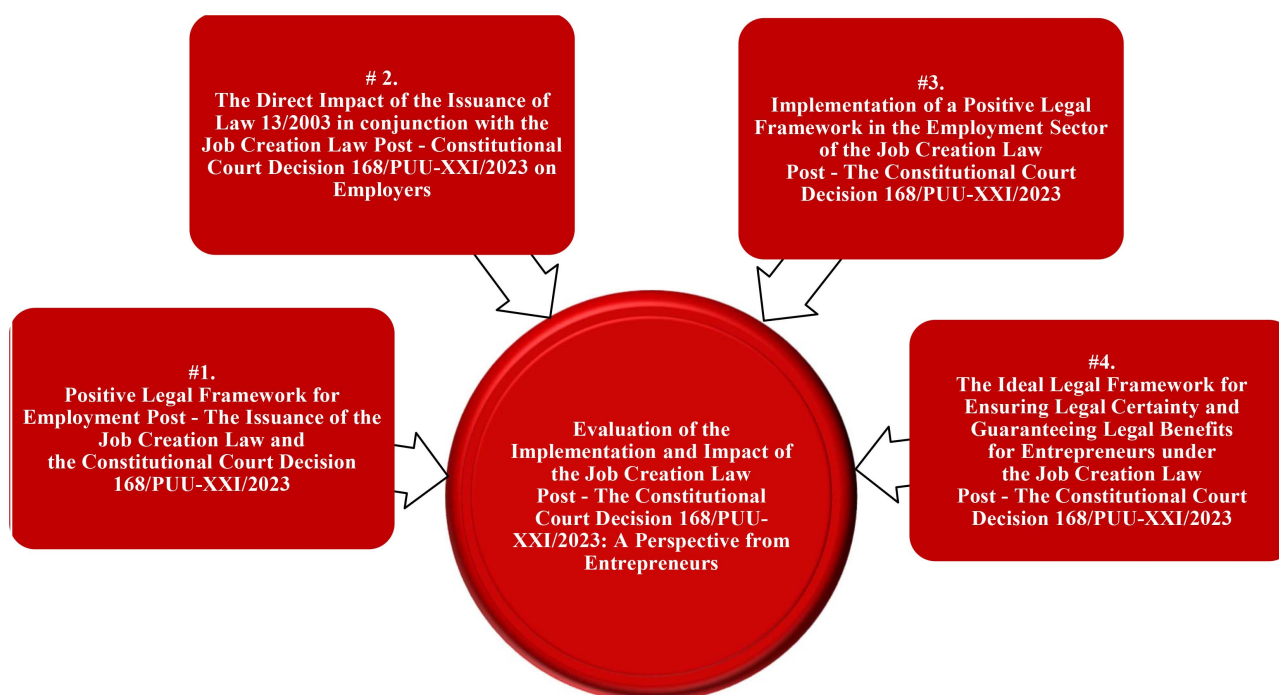


Figure 1. Evaluation of the Implementation and Impact of the Job Creation Law Post—The Constitutional Court Decision 168/PUU-XXI/2023: A Perspective from Entrepreneurs.

3.1. Positive Legal Framework for Employment Post—The Issuance of the Job Creation Law and the Constitutional Court Decision 168/PUU-XXI/2023

All economic sectors in Indonesia have one goal: how to improve the welfare of the Indonesian people, as stated in Article 33 of the 1945 Constitution of the Republic of Indonesia, which was amended in 2002 (Anggusti et al., 2024). According to Anggusti et al. (2024), this provision was introduced in 2002, which marked an important addition to the constitutional framework. According to Davis (2024), several factors can influence how effective a country is in developing its business sector, one of the main factors being government policies, regulations, or employment laws. In this case, many sectors of the business world have long complained and criticised regulations in the field of employment as inhibiting fac-

tors for profits, economic efficiency, and job creation (Davis, 2024; Iswaningsih et al., 2021; Wiryawan, 2016). Entrepreneurship has an impact on economic growth and social and environmental well-being (Neumann, 2021), where entrepreneurs play a vital role in the economy, using the skills and initiative needed to anticipate needs and bring new ideas to market (Hayes, 2024) and can create new jobs (Kritikos, 2024).

According to Jain (2023), the role of entrepreneurship in economic development is very important, and after all, entrepreneurs do not only build businesses and grow their wealth; they also influence the economy by creating new jobs and opportunities, driving innovation, and developing new markets, products, and services. Entrepreneurship is considered essential to a dynamic economy. Entrepreneurs create job opportunities not only for themselves but also for others. Entrepreneurial activities can affect a country's economic performance by bringing new products, methods, and production processes to market and by increasing productivity and competition more broadly (Kritikos, 2024). According to Kritikos (2024), to realise this advantage, it is necessary to have reasonable legal process requirements in the form of legal regulations that contribute to an entrepreneur-friendly environment as follows:

- 1) In particular, it is important to protect intellectual property and other property rights, simplify and enforce commercial laws, improve the business climate, reduce regulatory burdens, and create a culture of second chances for failed entrepreneurs. More specifically, the following policy measures should be considered. Government policies and property rights laws are important in shaping a country's innovation. Protecting material property rights ensures that any wealth creation remains in the hands of entrepreneurs, while protecting intellectual property rights encourages entrepreneurship and innovation. Bureaucratic barriers limit innovation-driven activities in many countries.

- 2) Entrepreneurial opportunities are greater in well-regulated economies with freely operating markets and efficient licensing, as entrepreneurs can operate flexibly and their entrepreneurial activities can respond to changes in the market.

- 3) Important laws and regulations are enforced fairly and equitably. Administrative burdens for start-ups should be low, including the time required to register a business, the number of bureaucratic steps, and the number of regulations, fees, and reporting requirements. As a benchmark, leading business-friendly countries allow companies to register a business in one day, without the need for regular renewals. This can be achieved by setting up sophisticated online electronic administration for all standard businesses and, in general, by developing a better quality public administration. Conflicting legislation creates uncertainty, and uncertainty hinders business activity. Codification means bringing together all amendments to a particular law, adopted at different times, into a single legal code. Rapid and comprehensive codification of laws eliminates contradictions. It should also include the reduction and unification of administrative procedures related to a particular activity.

4) Creating such a culture also reduces the fear of failure, which remains the most important obstacle to entrepreneurship. The negative effects of layoffs in companies that are unable to compete can be reduced by increasing the options for finding new jobs and by supporting vocational training for workers who lose their jobs. Subsidies for initiating a business should be taken into account to foster entrepreneurial activity. This approach has the potential to mitigate the risk of early-stage business failure.

Due process requirements are determined in part by an examination of the customs and procedures of common law and applicable statutory law (*Justia U.S. Law, n.d.*). According to *Justia U.S. Law (n.d.)*, due process requirements, as noted, depend on the nature of the interest at stake, while the form of due process required is determined by the weight of that interest balanced against opposing interests. In Indonesia, the positive legal framework related to employment is Law 13/2003 in conjunction with the Job Creation Law, following Constitutional Court Decision 168/PUU-XXI/2023, where these regulations have a direct impact on employers. The following are the main issues used as propositions and hypotheses for this research, namely, what and how changes are needed to improve the implementation of the Job Creation Law following Constitutional Court Decision 168/PUU-XXI/2023 for employers or employees:

1) Provisions for compensation for Fixed-Term Workers (PKWT)—These provisions govern employers' obligations to provide compensation to contract employees when the PKWT expires, either due to the expiration of the agreement or the completion of a specific job, as stipulated in Article 61A paragraph (1) of the Job Creation Law or Law 6/2023. The probation period in the Job Creation Law, also known as Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Fixed-Term Employment Agreements, Indefinite-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment (PP 35/2021), is a specific period during which a company assesses the performance and suitability of a new employee before being appointed as a permanent employee. This probation period is not mandatory and only applies to Indefinite-Term Employment Agreements (PKWTT) or permanent employees;

2) Probationary Period Provisions for PKWTT Employees—The probationary period is a period during which a company evaluates a new employee's abilities, skills, and suitability to the company culture before deciding to appoint them as permanent employees. The probation period and probation period are regulated in PP 35/2021. The probationary period only applies to employees appointed under PKWTT (Indefinite-Term Employment Agreements) or permanent employees, not contract employees (PKWT). The probationary period typically lasts a maximum of three months but can vary depending on each company's policy. The short probationary period of 3 months impacts the provision of process wages for laid-off PKWTT employees, and the provisions regarding the minimum wage do not take into account the company's capabilities;

3) Provisions for the provision of process wages for laid-off employees—The provisions regarding the provision of process wages for laid-off employees have not undergone significant changes. Process wages, also known as suspension wages, are still regulated in Article 155 paragraph (2) of Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower (UUK 13/2003), which states that as long as the process of resolving industrial relations disputes (including layoffs) is not completed, both employers and employees must continue to fulfill their respective obligations. This means that employers remain obliged to pay workers' wages during the layoff process, by the provisions of Article 155 paragraph (2) of UUK 13/2003 in conjunction with the Job Creation Law (UUK 6/2023), until a final decision is made by the industrial relations dispute resolution body. Referring to the Job Creation Law and Circular Letter of the Supreme Court of the Republic of Indonesia Number 3 of 2015 concerning the Implementation of the Formulation of the Results of the 2015 Plenary Meeting of the Supreme Court Chamber as Guidelines for the Implementation of Duties for the Courts (SEMA 3/2015), it stipulates that process wages in the resolution of industrial relations disputes are awarded for a maximum of six months; and

4) Provisions on the Provincial Minimum Wage (UMP)—Based on Article 1, number 1 of the Regulation of the Minister of Manpower of the Republic of Indonesia Number 16 of 2024 concerning the Determination of the Minimum Wage for 2025 (Permenaker 16/2024). This regulation was issued on December 4, 2024, and came into effect on that date. The main content of Permenaker 16/2024 concerns the determination of the Provincial Minimum Wage (UMP) and Regency/City Minimum Wage (UMK) for 2025, as well as sectoral minimum wages. According to Ministerial Regulation 16/2024, the UMP is defined as the lowest monthly wage in a company, as determined by the governor. Furthermore, Article 81, number 28 of the Job Creation Law, which includes the new Article 88C paragraph (1), emphasizes that the governor is obliged to determine the UMP. PP 51/2023, Article 27, paragraphs (1) and (2), also emphasizes that the governor determines the UMP annually, which is done by adjusting the minimum wage value.

Based on the previous descriptions, the implementation of a positive legal framework for employment in Indonesia, following the issuance of the Job Creation Law (Law No. 6/2023) and Constitutional Court Decision No. 168/PUU-XXI/2023, is expected to make adjustments to Indonesian labor law, both in terms of policies and practices, to align with the established and clarified worker protections, particularly regarding fixed-term employment agreements (PKWT) and rest days, and emphasize the need for new and separate sectoral labor laws to provide greater clarity and protection. In the case of Fixed-Term Employment Agreements (PKWT), employers are required to comply with MK Decision No. 168/2023, which sets a five-year limit for the term of PKWT, including its extension, and adjust company policies and work arrangements accordingly. Existing written PKWTs and company regulations must be amended if their provisions conflict with this new mandate. Regarding rest days, the Constitutional Court's

ruling overturned the Job Creation Law's provision of one rest day per six-day workweek, restoring the previous Manpower Law's provision of two rest days per week for a five-day workweek, thereby improving worker welfare and reducing the potential for exploitation. Furthermore, regarding the use of foreign workers (TKA), the Constitutional Court has clarified that foreign workers can only be employed in Indonesia for specific positions and periods, requiring competency for the role and prioritizing the use of Indonesian workers.

Thus, the need for a new labor law is pressing, with the Constitutional Court urging members of parliament (DPR and the Government) to immediately enact a new, separate sectoral labor law to completely replace or eliminate conflicting provisions in the Job Creation Law. This new law is expected to provide clearer and more comprehensive protection for workers. Furthermore, proactive compliance from employers is required. In this context, employers are advised to take proactive steps to ensure compliance with the updated legal framework by updating internal policies and aligning practices with the new provisions to protect business operations and employee rights. Furthermore, the Constitutional Court has emphasized the importance of active participation of trade unions and workers in the process of drafting new labor laws to ensure fair and balanced outcomes.

3.2. The Direct Impact of the Issuance of Law 13/2003 in Conjunction with the Job Creation Law Post-Constitutional Court Decision 168/PUU-XXI/2023 on Employers

With the enactment of the Job Creation Law, or Law 6/2023, many provisions in Law 13/2003 were amended or removed. There are 9 (nine) amendments to Law 13/2003 through the Job Creation Law, or Law 6/2023, including job training; placement of workers; use of foreign workers; PKWT; outsourcing; working hours, rest periods, and leave; wages; layoffs; and criminal and administrative sanctions (Thea DA, 2021). This is a major step towards adapting employment regulations in Indonesia to the dynamic development of the world of work and responding to market needs. Then, on March 31, 2023, Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (Perppu No. 2/2022) was officially promulgated as the Job Creation Law, or Law 6/2023, making this law effectively valid as a legal and applicable employment law in Indonesia. The Job Creation Law, or Law 6/2023, was enacted in response to the Constitutional Court of the Republic of Indonesia Decision Number 91/PUU-XVIII/2020, in the case of the Formal Review of Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia. The Constitutional Court Decision Number 91/PUU-XVIII/2020 mandated the revision of Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (Law 11/2020). Previously, on November 25, 2021, the Constitutional Court ruled in favor of the judicial review of Case Number 91/PUUXVIII/2020, which conditionally declared certain provisions of Law 11/2020 to be in conflict with the 1945 Constitution of the Republic of Indonesia (UD NRI 1945).

Furthermore, the direct impact on employers following the issuance of Law 13/2003 in conjunction with the Job Creation Law following Constitutional Court Decision 168/PUU-XXI/2023 is as described in **Table 1** below:

Table 1. Description of the provisions and articles of amendments to job creation law or law 6/2023 post—the constitutional court decision 168/PUU-XXI/2023.

Amendment to Law 6/2023 Post—The Constitutional Court Decision 168/PUU-XXI/2023			
Terms and Articles	Job Creation Law or UU 6/2023	The Constitutional Court Decision 168/PUU-XXI/2023	Description
<p>Provisions regarding the provision of compensation for employment agreements that bind contract employees and freelance workers for a fixed term or <i>perjanjian kerja yang mengikat karyawan kontrak dan pekerja lepas pekerja waktu tertentu</i> (PKWT) when the employment relationship ends are regulated in:</p> <ul style="list-style-type: none"> ✓ Article 57 paragraph (1) concerning PKWT ✓ Article 64 paragraph (2) 	<p>A fixed-term employment agreement (PKWT) is made in writing and must use Indonesian and Latin letters.</p> <p>The government determines part of the implementation of the work as referred to in Article 57 paragraph (1)</p>	<p>A work agreement for a fixed period of time must be made in writing using Indonesian and Latin letters.</p> <p>Meaning: The Minister determines part of the implementation of the work as referred to in Article 57 paragraph (1) in accordance with the type and field of outsourcing work agreed in the written outsourcing agreement.</p>	<p>Affirmation that PKWT must be made in writing. The affirmation that the Minister determines the outsourcing restrictions regarding the types and fields of work that can or cannot be outsourced. This regulation can have a positive impact that the implementation of outsourcing is no longer carried out freely without any restrictions on the types and fields of work. However, the wording of the wording “in accordance with the types and fields of outsourcing work agreed in the written outsourcing agreement” is not clear what it means when read. Is this determination based on the written outsourcing agreement? Or vice versa, the written outsourcing agreement is in accordance with the determination? It should be related to this: “The Minister determines part of the implementation of work as referred to in Article 57 paragraph (1) in accordance with the types and fields of outsourcing work”.</p>

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Provisions regarding PKWT in Article 56 paragraphs (1), (2) and (3) of the Job Creation Law	Article 56 paragraph (1) of Law Number 6 of 2023 states that an employment agreement is made for a specific period or for an indefinite period. Article 56 paragraph (2) states that a specific period employment agreement (PKWT) or contract is based on the time period and completion of a specific job. Article 56 paragraph (3) states that the time period or completion of a specific job as referred to in paragraph (2) is determined based on an employment agreement.	The Constitutional Court stated that the norm regarding the PKWT period is an important norm that must be regulated in law, not in derivative regulations or other agreements. Time Limitation: The Constitutional Court then interpreted that PKWT may not be made or extended for more than 5 years. The completion period of a particular job is made no more than 5 (five) years, including if there is an extension.	Previously, in Law 6/2023 and in PP 35/2021, the PKWT model of “completion of a certain job” did not have clear limitations and was only based on an agreement between the parties. In fact, the bargaining position between workers and employers is certainly not balanced in forming the agreement. However, the Constitutional Court Decision 168/PUU-XXI/2023 is considered to have a significant impact on the employment sector. Article 56 of the Job Creation Law regulates PKWT and the use of outsourced workers. This Constitutional Court Decision, especially regarding PKWT, limits the term of PKWT and tightens the requirements for renewing PKWT. This means that employers can no longer easily extend PKWT or use outsourcing for permanent or ongoing work. This change has the potential to benefit workers because it provides more protection and job certainty. However, on the other hand, employers face the challenge of adapting to the new regulations. Increased operational costs and decreased workforce flexibility can be an additional burden for companies, especially for small and medium enterprises (SMEs). In addition, the potential for increased employment disputes is also a serious concern for employers.
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<p>Provisions regarding the provision of process wages for employees who are laid off are regulated in:</p>	<p>In the event that workers/laborers have been notified and refuse termination of employment, the resolution of the termination of employment must be carried out through bipartite negotiations by mutual consensus between the employer and the workers/laborers and/or the workers/labor union. In the event that bipartite negotiations as referred to in paragraph (3) do not reach an agreement, termination of employment will be carried out through the next stage in accordance with the industrial relations dispute resolution mechanism. Severance pay as referred to in paragraph (1) is provided with the following provisions:</p>	<p>In the event that workers/laborers have been notified and refuse termination of employment, the resolution of the termination of employment must be carried out through bipartite negotiations by mutual consensus between the employer and the workers/laborers and/or the workers/labor union. In the event that bipartite negotiations as referred to in paragraph (3) do not reach an agreement, then termination of employment can only be carried out after obtaining a decision from an industrial relations dispute resolution institution whose decision has permanent legal force. Severance pay as referred to in paragraph (1) is given at least:</p>	<p>The affirmation of bipartite negotiations in disputes over layoffs is carried out through deliberation and consensus.. Affirmation that if bipartite negotiations fail, then the new layoffs can only be processed after going through the PPHI process and there is a PPHI decision that has permanent legal force.</p>
<p>Provisions regarding Minimum Wages or <i>Upah Minimum</i> (UM) that do not take into account the company's capabilities are regulated in Article 92 (1) of the Employment Law (as amended by the Job Creation Law)</p>	<p>Article 92 (1) of the Manpower Law or UUK 13/2003 (as amended by the Job Creation Law) mandates that employers develop a wage structure and scale that takes into account the company's capabilities and productivity. While the minimum wage is a standard that employers must meet, especially for new employees, it is important to note that the wage structure and scale for more experienced employees must also take into account the company's financial capacity and productivity. In essence, the minimum wage is a baseline, and companies are</p>	<p>Provisions regarding Minimum Wages that do not take into account company capabilities are regulated in Article 92 (1) of Law 13/2003, which has been amended by the Job Creation Law. This article emphasizes that the governor is obliged to determine the Minimum Wage (UM) every year, and in the determination process, the company's capability factor is not the main consideration.</p>	<p>Note: the emphasis on the phrase "has permanent legal force", means that you have to wait 14 days.</p> <p>Returning to the original phrase of Law 13/2003 that the severance pay formula in the Law is a minimum/least formula (lower limit as a safety net).</p> <p>The provisions regarding minimum wages that do not take into account the company's capabilities are not expressly regulated in one article. However, the concept of minimum wages and its relation to company capabilities are regulated in several articles in various laws and regulations. Among them are Law 13/2003 concerning Manpower, PP 36/2021, and Law Number 11 of 2020 concerning Job Creation (Job Creation Law 11/2020) :). The following is the description: Law 13/2023 Article 88 paragraph (2) states that the government sets the minimum wage based on decent living needs</p>

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expected to develop a fair and sustainable wage system, taking into account employee needs and the company's ability to pay.

by considering productivity and economics. Then, the Job Creation Law 11/2020) this Law 13/2003, including provisions related to wages. Specifically, Article 88E paragraph 2 in conjunction with Government Regulation of the Republic of Indonesia Number 36 of 2021 concerning Wages (PP 36/2021) which has been amended through Government Regulation of the Republic of Indonesia Number 51 of 2023 concerning Amendments to Government Regulation of the Republic of Indonesia Number 36 of 2021 (PP 51/2023). PP 51/2023 includes changes to provisions regarding the minimum wage calculation formula, determination and implementation of the minimum wage, and strengthening the role of regional wage councils. Furthermore, PP 51/2023 prohibits employers from paying wages below the minimum wage as stipulated in PP 36/2021. PP 51/2023 details the implementation of wage policies, including minimum wages, and also stipulates that the minimum wage applies to workers with a work period of less than one year and that wages for micro and small businesses are determined through an agreement between employers and workers.

Source: From various sources (processed).

Referring to **Table 1**, it can be interpreted that the implementation of the Job Creation Law, or Law 6/2023, has a significant impact on employers, including:

1) Provision of compensation for employees with PKWTT—PKWTT do not receive compensation when the employment relationship ends. However, they are entitled to service award money, compensation for rights, and/or separation money, which are regulated in the employment law and its implementing regulations. These rights are regulated in Law Number 13 of 2003 concerning Manpower and its implementing regulations, although there are no specific regulations in PP 51/2023 that regulate PKWTT compensation. PP 51/2023 relates to PKWT. Provision of compensation for PKWTT employees when the employment relationship ends, short probationary periods, provision of process wages for laid-off employees, and provisions regarding minimum wages that do not take into account the company's capabilities. [Iswaningsih et al. \(2021\)](#) stated that one of the important changes regulated in Law 6/2023 is the provision regarding compensation for PKWTT employees when the employment relationship ends, as regulated in the law in the field of employment and its implementing regulations in PP 35/2021. Previously, employers had more flexibility in managing PKWTT employment relationships, including in terms of termination of employment, which had implications for employers as a criminal act ([Delente, 2024](#)). With the obligation to provide compensation, it has an impact on employers so that employers are now faced with additional financial burdens that are not small. This compensation can be a heavy burden, especially for small and medium businesses that often operate with thin profit margins. In situations where businesses have to restructure or face declining demand, this obligation can worsen the company's financial condition. As a result, employers may be more inclined to avoid using PKWT workers, which in turn can reduce flexibility in handling short-term projects.;

2) Provisions on PKWT—Article 56, paragraph (3) of the Job Creation Law states that the term of PKWT is determined based on the work agreement, but in its implementation, there are multiple interpretations regarding the term and its extension. This means that there is no maximum time limit for PKWT, including its extension. This is different from the previous regulation, which limited the term of PKWT and its extension. The Constitutional Court (MK) decision regarding Article 56 paragraphs (1), (2), and (3) of the Job Creation Law, especially regarding Fixed-Term Employment Agreements (PKWT) or outsourcing, hurts employers. This decision has the potential to increase operational costs, complicate workforce flexibility, and increase the risk of employment disputes. Furthermore, the negative impacts of the Job Creation Law MK Decision 168/PUU-XXI/2024 include: 1) Increased Operational Costs—With restrictions on the use of outsourcing and PKWT, employers may need to recruit more permanent employees for work that could previously be outsourced to third parties. This will increase operational costs related to salaries, benefits, and other obligations associated with permanent employees; 2) Reduced Flexibility—Employers will face challenges in adjusting the number of workers to fluctuating business needs. Restrictions on PKWT and outsourcing reduce the company's ability to respond to market changes quickly and efficiently; 3) Increased Risk of Employment Disputes

– With restrictions on PKWT and outsourcing, the potential for disputes between workers and employers regarding employment status, workers’ rights, and termination of employment (PHK) may increase; 4) More Complex Working Conditions – Employers need to adapt to new, possibly more complex rules related to PKWT and outsourcing, including stricter administrative and legal requirements; and 5) Hampered Investment and Business Growth—Some entrepreneurs are likely to delay or reduce their investments due to the emergence of legal uncertainty and increased operational costs. Then, the possibility of business growth will also be hampered, especially related to obstacles in managing the workforce. According to [Iswaningsih et al. \(2021\)](#), many entrepreneurs, especially in sectors that require special skills or more in-depth training. The importance of a trial period in an employment relationship is that it allows employers as employers to find workers who are as competent as possible to carry out the activity, while for workers, workers have the opportunity to know from the beginning of the employment relationship what conditions they must fulfil ([Ştirbu & Stoian, 2025](#)). Therefore, a longer trial period is very necessary to allow companies to assess the employee’s ability and suitability to the company culture before making a permanent decision. For example, in some industries, three months may not be enough to thoroughly evaluate an employee’s performance and potential. This can lead to hasty decisions, where employers may have to decide to hire employees who have not been fully tested. As a result, the company can suffer losses, both in terms of training costs that have been incurred and in terms of productivity that may be affected by the lack of employee skills.

3) Provisions on the provision of process wages for laid-off employees—Provisions regarding the provision of process wages for laid-off employees are also an important concern ([Iswaningsih et al., 2021](#)), and layoffs are one of the most difficult tasks faced by employers as employers ([University of Washington, Seattle, WA, 2025](#)). In Law 6/2023, some provisions require employers to provide wages to employees involved in the termination of the employment process. This aims to protect workers’ rights and provide financial support during the process. This provision adds a significant cost burden in situations where companies have to lay off employees for economic reasons. The obligation to provide process wages can worsen the company’s financial condition. This can create uncertainty for employers, which can ultimately hinder their intentions to expand or make new investments, because they have to consider the potential additional costs associated with layoffs.

4) Minimum Wage Provisions—Provisions regarding minimum wages which, from the past until now, have also caused problems ([Wiryan, 2016](#)). Minimum wages are a significant determining factor so that laws related to minimum wages play a very important role in reducing wage inequality in Indonesia ([Chun & Khor, 2010](#)). In Law 6/2023, although there are regulations regarding minimum wages, many entrepreneurs argue that these provisions do not take into account the company’s capabilities. In some cases, the determination of minimum wages based on

macro indicators such as inflation and economic growth does not consider the specific conditions of the company, especially for small businesses that may not be able to meet these standards. As a result, small entrepreneurs may be forced to reduce their workforce or even close their businesses if they are unable to meet minimum wage obligations. This creates a situation where the intention to protect workers has the potential to result in a reduction in employment.

Based on the previous descriptions, an evaluation of the implementation of the Job Creation Law Post—the Constitutional Court Decision 168/PUU-XXI/2023 is needed, especially regarding the positive legal framework and the positive legal framework to realise legal certainty and legal benefits in business in Indonesia from the perspective of entrepreneurs. Therefore, the Job Creation Law Post—the Constitutional Court Decision 168/PUU-XXI/2023 is expected to have provisions related to the balance between protecting the rights of workers and employers. This is very important to maintain business continuity, so it must be sought so that both parties can benefit from each other.

Thus, the evaluation of the implementation of the Job Creation Law Post—the Constitutional Court Decision 168/PUU-XXI/2023 as a labour law in Indonesia is expected to be effective in achieving the desired goals, identifying challenges and obstacles in its implementation, and recommending improvements. This process usually involves examining the legal framework, overlapping regulations, and actual law enforcement practices. Therefore, the evaluation of the implementation of the Job Creation Law Post—the Constitutional Court Decision 168/PUU-XXII/2024, especially related to the positive legal framework and the ideal legal framework to realise legal certainty and legal benefits in business in Indonesia from the perspective of entrepreneurs.

3.3. Implementation of a Positive Legal Framework in the Employment Sector of the Job Creation Law Post—The Constitutional Court Decision 168/PUU-XXI/2023

In Indonesia, legislation adopts a hierarchical theory initiated by Hans Kelsen (Pasha, 2024) where legislation has a hierarchical level as regulated in Article 7, paragraph (1) of Law No. 12 of 2011 concerning the Formation of Legislation, which was amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislation, which was amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation. Article 7, paragraph (1) of Law No. 12 of 2011 regulates the types and hierarchy of legislation in Indonesia, consisting of:

- 1) The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945)—The 1945 Constitution of the Republic of Indonesia is a written constitution or basic law that is the basis and highest source of law in Indonesia. The 1945 Constitution regulates all aspects of national and state life, including the government system, the rights and obligations of citizens, and state institutions. As the highest consti-

tution, the 1945 Constitution of the Republic of Indonesia is the basic law and source of law that is the main reference in organising the state and compiling the laws and regulations below it. Thus, all laws and regulations in Indonesia must be sourced from the 1945 Constitution and must not conflict with it to regulate national and state life.

2) Decree of the People's Consultative Assembly of the Republic of Indonesia—Decree of the People's Consultative Assembly of the Republic of Indonesia Number III/MPR concerning Sources of Law and Order of Legislation or *Ketetapan Majelis Permusyawaratan Majelis Republik Indonesia Nomor III/MPR tentang Sumber Hukum dan Tata Urutan Peraturan Perundang-undangan* (TAP MPR RI)—TAP MPR RI is a type of decision issued by the People's Consultative Assembly (MPR) of the Republic of Indonesia and has binding legal force, both internally (against the MPR itself) and externally (against state institutions and society). Before the amendment to the 1945 Constitution of the Republic of Indonesia, TAP MPR RI had a high hierarchical position in the legal system. However, after the amendment, the position of the MPR and TAP MPR shifted so that the MPR no longer had the authority to make general regulations (*regeling*) but rather decisions that were administrative or contained administrative determinations (*beschikking*), which are commonly referred to as decisions (Sokonagoro, 2012). With the enactment of Law 12/2011, TAP MPR entered the hierarchy of legal regulations, and its position is below the 1945 Constitution and above laws/government regulations instead of laws. 3. Laws/Government Regulations instead of Laws (or abbreviated Perpu or Perppu)—Perppu is a legislation stipulated by the president in the event of a compelling emergency, which is regulated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

3) Law/Government Regulation in Lieu of Law (or abbreviated as Perpu or Perppu)—Perppu is a Legislation stipulated by the President in cases of urgent necessity, which is regulated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

4) Government Regulation (abbreviated as PP)—PP is a statutory regulation in Indonesia stipulated by the President to implement the law (UU) properly, and the contents of the PP are the materials to implement the UU. In Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislation or *Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan* (UU 12/2011) it is stated that PP as an organic regulation of UU according to its hierarchy may not overlap or contradict.

5) Presidential Regulation or *Peraturan Presiden* (abbreviated as Perpres)—Perpres is a statutory regulation made by the President, and the contents of the Perpres are the materials ordered by UU or the materials to implement Government Regulation (PP). Presidential Regulation is a new type of Legislation in Indonesia, namely since the enactment of Law of the Republic of Indonesia Number 10 of 2004 concerning the Formation of Legislation (Law 10/2004) or *Undang-Undang Republik Indonesia Nomor 10 Tahun 2004 tentang Pembentukan Pera-*

turan Perundang-Undangan (UU 10/2004).

6) Provincial Regulation (abbreviated as Provincial Regulation)—Provincial Regulation is a regulation formed by the Regional People's Representative Council (DPRD) of the Province with the joint approval of the governor. This is regulated in the provisions of Article 14 of Law 12/2011 which explains that the material contained in the Provincial Regulation contains matters related to the implementation of regional autonomy and assistance tasks and accommodates special regional conditions or can also be in the form of an elaboration of higher laws.

7) Regency/City Regulation (abbreviated as Regency/City Regulation)—Regency/City Regulation is a regulation formed by the Regency/City Regional People's Representative Council or *Dewan Perwakilan Daerah* (DPRD) with the joint approval of the Regent/Mayor.

According to Pasha (2024), there are four principles in the hierarchy of laws and regulations, namely: 1) *Lex superiori derogat legi inferiori*—Lower regulations must not conflict with higher regulations. This principle applies to two regulations whose hierarchies are not equal and contradict each other; 2) *Lex specialis derogat legi generali*—More specific regulations override more general regulations. This principle applies to two regulations whose hierarchies are equal with the same material; 3) *Lex posteriori derogat legi priori*—New regulations override old regulations; and 4) This principle applies when there are two regulations whose hierarchies are equal to prevent legal uncertainty. Regulations can only be abolished by regulations that are of equal or higher standing.

In the positive legal framework of Indonesian law, State Administrative Decision or *Keputusan Tata Usaha Negara* (KTUN) is a written decision issued by a state administrative body or official, which is concrete, individual, and final, and has legal consequences for the parties concerned. So, *beschikking* is one form of KTUN. According to Al-Fatih & Muluk (2023), *beschikking*, *regeling*, and *beleidsregel* in the Indonesian legal system are different types of legal instruments, namely:

1) *Beschikking* (Administrative Decision)—*Beschikking* is a concrete and individual legal action carried out by a government agency and is often a decision regarding a particular case or situation. For example, a permit issued by a government agency;

2) *Regeling*—*Regeling* refers to laws and regulations that establish general rules and norms for a broader scope and apply to a wider range of individuals or situations than *Beschikking*. Regulations include laws and regulations, which establish general rules and norms and provide a framework for behaviour and action in a particular area and provide direction for the application of laws and regulations based on the expertise and wisdom of the government in implementing policies. For example, employment law;

3) *Beleidsregel*, or policy regulation—*Beleidsregel* is a guideline issued by the government based on its authority to implement policies. *Beleidsregel* is a policy guideline issued by the government. *Beleidsregels* are not legally binding like laws

or regulations but serve as a guide for government action. For example, circulars from ministries and instructions from government agencies.

The implementation of a positive legal framework in the employment sector in the Job Creation Law post—the Constitutional Court Decision 168/PUU-XXI/2023, when associated with the four principles in the hierarchy of laws and regulations in Indonesia, is *beschikking* and *regelng*. The Constitutional Court Decision Number 168/PUU-XXI/2023 ordered the government and the DPR to improve several aspects of the Job Creation Law, especially regarding employment regulations. In this context, the Job Creation Law post—the Constitutional Court Decision Number 168/PUU-XXI/2023 is to order the government and the DPR RI as legislative institutions to improve several aspects, including provisions regarding the Provision of Compensation for PKWT when the employment relationship ends regulated in Article 57 paragraph (1) concerning PKWT and Article 64 paragraph (2); Provisions regarding PKWT in Article 56 paragraphs (1), (2) and (3) of the Job Creation Law; Provisions regarding the provision of process wages for employees who are laid off are regulated in Article 151 paragraph (3), Article 151 paragraph (4), and Article 156 paragraph (2); and Provisions regarding Minimum Wages or *Upah Minimum* (UM) that do not consider the company's capabilities are regulated in Article 92 (1) of the Manpower Law (as amended by the Job Creation Law).

Based on the various previous descriptions, it can be interpreted that the Job Creation Law after the Constitutional Court Decision 168/PUU-XXI/2023 marks a paradigm shift in employment regulations in Indonesia by emphasizing the importance of protecting workers' rights and justice in industrial relations. Therefore, the revision of the Job Creation Law and the drafting of new laws in Indonesia by the Government and the House of Representatives of the Republic of Indonesia are necessary because the Constitutional Court's decision declared the original law to be formally flawed and conditionally unconstitutional and aims to improve the investment climate, create jobs, and increase worker protection, and the reasons for the revision and new legislation are as follows: 1) The Constitutional Court's decision, the Job Creation Law (Omnibus Law), was declared formally flawed by the Constitutional Court in 2021 because its formation process was not in accordance with the Law on the Formation of Legislation. This mandates a revision within two years, which is currently being carried out by the Government and the House of Representatives through a Perpu (Government Regulation in Lieu of Law) and its derivative laws; 2) Improving the Investment Climate, the Omnibus Law was originally designed to simplify regulations, reduce bureaucracy, and make it easier for investors to do business in Indonesia, thereby attracting foreign investment and driving economic growth. This revision aims to maintain these benefits while addressing its shortcomings 3) Job Creation and Economic Growth: The main objective of the Job Creation Law is to encourage job creation and accelerate national strategic projects, which are crucial for economic

development and improving the standard of living of Indonesian citizens; and 4) Regulatory Harmonization: The Job Creation Law's "omnibus" approach aims to consolidate and harmonize various laws and regulations that hinder investment and economic activity. The ongoing process involves refining these regulations to create a more cohesive and effective legal framework and addressing procedural flaws. The original Job Creation Law faced criticism for procedural flaws, including a lack of stakeholder participation and adequate transparency in its drafting process. Therefore, it is crucial to involve all stakeholders and the public (companies and workers), which is expected to provide a deeper and more comprehensive understanding of the changes to employment regulations. In this case, the improvement or creation of a new employment law is expected to avoid overlapping norms between Law 6/2023 and the existing Law of the Republic of Indonesia Number 13 of 2003 concerning Employment (Law 13/2003).

Thus, Constitutional Court Decision Number 168/PUU-XXI/2023 calls for improvements to regulations related to layoffs, including layoff procedures, the rights of workers affected by layoffs, and mechanisms for resolving layoff disputes. This Constitutional Court decision can be interpreted as momentum to carry out more comprehensive labor law reforms that favor both workers and employers. In this context, the government needs to immediately draft more detailed and comprehensive laws and regulations to implement the Constitutional Court decision and ensure the protection of workers' and employers' rights in order to provide legal certainty, prevent incomplete compliance, address potential injustice, and maintain public confidence in the legal system. This aims to: 1) Legal Certainty and Investor Confidence: investors need stable and predictable policies for both workers and companies, and frequent changes or unclear implementation of court decisions can hinder investment, and comprehensive laws provide this necessary certainty; 2) Balancing Rights and Interests: New regulations that focus on the balance between workers' rights and employers' interests are crucial to avoid situations where one party is disproportionately disadvantaged, as seen in calls for a new employment law that separates it from the Job Creation Law 3) Ensuring Effective Implementation: The Constitutional Court itself has acknowledged that substantial changes can pose interpretative challenges, and clear and detailed laws are needed to guide consistent and effective implementation at all levels of government and the judiciary; and 4) Maintaining Public Trust and the Rule of Law: The absence of clear implementing regulations or the political will to enforce court decisions weakens the rule of law. Swift legislative action to pass comprehensive laws strengthens the binding legal force of Constitutional Court decisions and maintains public trust. Therefore, this effort is very important for the government, together with the House of Representatives of the Republic of Indonesia, to carry out an ideal legal framework in providing legal certainty and guaranteeing legal benefits for employers in the Job Creation Law after Constitutional Court Decision 168/PUU-XXII/2024.

3.4. The Ideal Legal Framework for Ensuring Legal Certainty and Guaranteeing Legal Benefits for Entrepreneurs under the Job Creation Law Post—The Constitutional Court Decision 168/PUU-XXI/2023

Indonesia adopts the concept of a material rule of law, which also includes the principles of a welfare state. This can be seen implicitly in the general explanation of the Constitution of the Republic of Indonesia or *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (UUD NRI 1945), as well as explicitly in several articles in the UUD NRI 1945 related to the state's goal of realising general welfare and social justice for all Indonesian people. Indonesia as a state of law is not only limited to formal aspects (law as written rules) but also pays attention to material aspects (content and purpose of law). This means that the law must aim to realise justice, benefit, and legal certainty for the entire community. In this context, one of the goals of the State of Indonesia, as stated in the fourth paragraph of the Preamble to the UUD NRI 1945, is to emphasise that the goal of the state is to realise general welfare and social justice, protect the entire nation and all of Indonesia's blood, advance general welfare, educate the nation's life and participate in implementing world order based on independence, eternal peace, and social justice (Hamid & Hasbullah, 2022).

According to Khusna (2023), the welfare state is closely related to the protection of the rights of every citizen. Manan (1996) explains that the concept of a legal welfare state is a nation or government that is not only a guardian of security or behaviour but also the main authority in creating social justice and general welfare. The concept of a welfare state in the context of an ideal legal framework means that the state has an obligation and is required to expand its responsibility to social problems faced by society as a legal entity. Social law (also known as social security law, social protection law or social welfare law, hereinafter referred to as social law) can be considered both as a normative regulatory system and as a legal discipline, one of the most typical examples of law that was born and raised in and because of the form of political organisation of the welfare state (Teubner, 1986). As Friedman in Gurvitch (1941) points out, the focus of the welfare state on social law is because this form of political organisation primarily aims to meet the search for security, haven, comfort and others.

According to law as a tool of social engineering, it is law as a tool to renew or engineer society. The term law as a tool of social engineering was coined by Roscoe Pound, which means law as a tool for social renewal, where law is expected to play a role in changing social values in society (Safira, 2017). Law as a tool/share of social engineering can also be interpreted Canada as law is a means of social control (Rahardjo, 2006a). According to Kusdarini et al. (2022), all basic community needs, such as access to education, health services, and decent employment opportunities, are the duties and responsibilities of the state. Therefore, according to the constitution, the government has the authority and function to realise welfare (1945 Constitution of the Republic of Indonesia). In this context, the certainty and

benefits of law in the legal business are guidelines for behaviour and must reflect aspects of balance between the interests of individuals, society, the state and the law to encourage the creation of order, legal certainty, equality before the law and justice (Soewono, 2006).

The concept of a welfare state in the context of an ideal legal framework is the basis for the position and function of government (*bestuurfunctie*) in modern countries to realise a condition of welfare for the people (Bandiera & Levy, 2011). Then, from that, the concept of a modern legal state or a welfare legal state contains three aspects, namely political, legal, and socio-economic aspects (Manan, 1996). Manan (1996) stated the following: 1) The political aspect requires that there be limitations on state power in political life; 2) The legal aspect requires the state to have the principle of the supremacy of law in the process of law enforcement, the principle of legality, and the rule of law; and 3) The social aspect requires the creation of social justice and general welfare. Therefore, the task of the state in the case of government is to formulate every law so that the goal, namely the welfare of society, can be realised so that it will be seen and can be felt in real terms that the law plays a very important role in realising the welfare of society (Manan, 1996). In line with this view, Rahardjo (2006b) even goes so far as to say that the law should make people happy.

According to Bandiera & Levy (2011), the basis of the position and function of the government in the administration of government is through services, assistance, protection, and prevention, as well as its responsibility to social problems faced by the community (Hamidi, 2009). Soewono (2006) stated that the law is a guideline for behaviour and must reflect aspects of balance between the interests of individuals, society, and the state. In addition, the law encourages the creation of order, legal certainty, equality before the law and justice (Soewono, 2006). Therefore, legal certainty and benefits in business are important agendas for entrepreneurs, and this can be realised through the implementation of an ideal legal framework. Legal certainty ensures fair and equal application of the law, Key protects business rights, and encourages a stable environment for investment and growth. A clear, consistent, and predictable legal framework is essential for businesses to operate effectively, minimise risk, and increase confidence in the market. Furthermore, legal certainty in a business context includes several main aspects:

1) Clarity and Predictability—Laws and regulations should be clear, unambiguous and easily understood by all business actors. This allows businesses to plan their activities with a reasonable degree of certainty about the legal consequences of their actions.

2) Protection of Rights—Legal certainty ensures that businesses can rely on the protection of their rights, including property rights, contractual rights and intellectual property rights.

3) Fairness and Equality—Legal certainty implies that the law is applied fairly and equally to all businesses, regardless of their size or origin. This prevents arbitrary or discriminatory action by authorities and promotes a level playing field.

4) Reduced Risk and Increased Trust—When businesses operate in a stable and predictable legal environment, they are more likely to invest, innovate and expand. This reduces the risk of unexpected legal challenges or penalties and fosters confidence in the market.

5) Effective Dispute Resolution—Legal certainty includes efficient and accessible mechanisms for resolving disputes. This ensures that businesses can resolve conflicts fairly and expeditiously, minimising disruption to their operations.

6) Compliance and Enforcement—Legal certainty supports compliance with the law and facilitates effective enforcement. When businesses understand their obligations and can anticipate the consequences of non-compliance, they are more likely to comply with legal requirements.

In this regard, the normative legal framework and the ideal legal framework are expected to provide legal certainty and guarantee legal benefits for employers in the Job Creation Law Post—the Constitutional Court Decision 168/PUU-XXI/2023. This Constitutional Court Decision 168/PUU-XXI/2023 asks lawmakers to immediately form a new employment law and separate or remove it from that regulated in Law 6/2023 (*Mahkamah Konstitusi Republik Indonesia, 2024b*). Legal certainty and ensuring legal benefits are the essence of the purpose of law. According to *Sidharta (2004)*, the law aims to realise high legal certainty and predictability so that the dynamics of life together in society are predictable, and the principles contained in or related to the principle of legal certainty are as follows:

- 1) The principle of legality, constitutionality, and supremacy of law;
- 2) The principle of law establishes various regulatory instruments regarding how the government and its officials carry out government actions;
- 3) The principle of non-retroactive legislation, before the law must first be enacted and announced properly;
- 4) The principle of free, independent, impartial, and objective, rational, fair and humane justice;
- 5) The principle of non-liquet, judges may not reject cases because the law does not exist or is unclear;
- 6) Human rights must be formulated and their protection guaranteed in laws or the Constitution; and
- 7) Equality before the Law (*Similia Similius* or Equality before the Law)—In a state of law, the government may not favour certain people or groups of people or discriminate against certain people or groups of people. This principle includes the guarantee of equality for all people before the law and government and the availability of mechanisms to demand equal treatment for all citizens.

In the future, the renewal and formation of new employment laws are expected to meet the ideal legal framework. This means that the process of legal renewal or the formation of new employment laws in Indonesia must follow the legal form, according to the case, and be fair to the affected parties. The legal process must be carried out in the manner normally determined by law, and the legal process must be adjusted to the objectives to be achieved to protect the parties, both workers

and employers. Therefore, the legal process must allow them to be heard regarding justice so that it can be upheld, paying attention to and maintaining the principles of freedom and justice. Thus, the evaluation of the implementation of the Job Creation Law Post—the Constitutional Court Decision 168/PUU-XXI/2023 is expected to reflect and realise a legal commitment based on a positive legal framework by Article 7 paragraph (1), Law Number 12 of 2011 concerning the Formation of Legislation and the ideal legal framework as stated in the fourth paragraph of the Opening of the 1945 Constitution of the Republic of Indonesia, the philosophy of Pancasila.

The renewal and formation of the new employment law aim to regulate the rights and obligations of employees and employers to maintain harmony and meet the needs of the business world. In this case, efforts are needed to create fairer employment law standards to create an employment law ecosystem in Indonesia. The employment law ecosystem includes provisions on employment law and its practices. With the new law, the Job Creation Law Post—the Constitutional Court Decision 168/PUU-XXI/2023, where the Constitutional Court requested improvements to regulations related to layoffs, including layoff procedures, the rights of workers affected by layoffs, and mechanisms for resolving layoff disputes, is expected to be biased towards both workers and employers. Furthermore, the employment laws and regulations must be made more detailed and comprehensive to implement the Constitutional Court's decision and ensure the protection of the rights of workers and employers. Then, the government, together with the House of Representatives of the Republic of Indonesia, are expected to be able to include provisions on employment law based on a positive legal framework and an ideal legal framework. This aims to ensure that the problem of the threat of disharmony and inconsistency in the material/substance of employment laws can be analysed, reorganised, and resolved immediately, and several materials/substances of laws and regulations that are hierarchically below the law, including in several government regulations, are included as material in employment laws (Mahkamah Konstitusi Republik Indonesia, 2024b).

Therefore, the new employment law provisions, the Job Creation Law post—the Constitutional Court Decision 168/PUU-XXI/2023, are expected to cover various rules and regulations governing the relationship between employers and employees, covering areas such as minimum wages, working hours, overtime pay, leave, termination of employment, and protection against discrimination. In essence, the new employment law, the Job Creation Law Post—the Constitutional Court Decision 168/PUU-XXI/2023, is aimed at creating a fair and safe working environment for employees while providing clear guidelines to employers on their responsibilities. This can only be achieved if state administrators have a strong commitment and political will to implement the principle of legality of the role of state administrators and the *trias politica* concept related to the renewal and formation of new employment laws so that they can provide legal certainty and guarantee legal benefits for employers in the Job Creation Law Post—the Constitu-

tional Court Decision 168/PUU-XXI/2023 as described in **Figure 2** below:



Figure 2. Implementation of the Principle of Legality of the Role of State Administrators and the Concept of Trias Politica in the Positive Legal Framework and the Ideal Legal Framework.

Referring to **Figure 2** above, it can be interpreted that there is a need to implement the principle of legality of the role of state administrators and the trias politica concept within a positive legal framework and an ideal legal framework to provide legal certainty and guarantee legal benefits for entrepreneurs in the Job Creation Law Post—the Constitutional Court Decision 168/PUU-XXI/2023 as follows:

1) Principle of Legality of the Role of State Administrators—State administration is all actions, activities, and processes carried out by the government (executive, legislative, and judiciary) and other state officials in carrying out their functions and duties to achieve state goals. This includes all activities related to state management, both in policy making, programme implementation, and law enforcement. Therefore, related to the formation of labour legislation, the state administration is expected to be consistent in implementing the various stages in the formation of labour laws in Indonesia as regulated in Articles 162-173 of *Undang-undang (UU) Nomor 13 Tahun 2019 Perubahan Ketiga atas Undang-Undang Nomor 17 Tahun 2014 tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah* or the Republic of Indonesia Law Number 13 of 2019 Third Amendment to Law Number 17 of 2014 concerning the People’s Consultative Assembly or *Majelis Permusyawaratan Rakyat* (MPR), the People’s Representative Council or *Dewan Perwakilan Rakyat* (DPR), the Regional Representative Council or *Dewan Perwakilan Daerah* (DPD), and the Regional People’s Representative Council or *Dewan Perwakilan Rakyat Daerah* (DPRD) and its amendments (Law 13/2019 concerning MD3). MD3 is an abbreviation of the Law on the People’s Consultative Assembly, the People’s Representative Council, the Regional Representative Council, and the Regional People’s Representative Council. In short, the MD3 Law regulates the institutions and duties of representative institutions in Indonesia, including the MPR, DPR, DPD, and DPRD. Law 13/2019 concerning the MD3 Law contains

regulations regarding the authority, duties, and membership of the MPR, DPR, DPRD and DPD, as well as the rights, obligations, code of ethics and details of the implementation of duties that are also regulated. In addition to being regulated in the MD3 Law, the process of forming laws in Law 12/2011 and its amendments is divided into several stages, including planning, regulated in Articles 16 to 42; draughting, regulated in Articles 43 to 64; discussion, regulated in Articles 65 to 71; ratification, regulated in Articles 72 to 74; and promulgation, regulated in Articles 81 to 87. This legality principle is a very important agenda so that it can be used as a guideline by state and government administrators to make the law a means to realise a welfare state and a democratic state. In particular, in the process of forming laws, the role of state administrators is always based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia as guidelines that must be obeyed.

2) *Trias Politica Concept*—The state recognises and organises a system of division of powers and supervises and balances each other, as Indonesia is one of the democratic countries that adheres to the concept of *trias politica*. The *Trias Politica* concept applied in Indonesia divides state power into three branches of state institutions: executive, legislative, and judiciary. The aim is to prevent abuse of power and maintain balance in the system of government. This concept is the embodiment of the principle of “checks and balances” in the system of government, where state power is divided into three branches of state institutions. This aims to ensure that no single institution has absolute power, and this principle aims to ensure that each institution monitors and balances each other, prevents abuse of power, and maintains balance in the administration of the state.

Therefore, the implementation of the principle of legality of the role of state administrators and the concept of *trias politica* in the positive legal framework and the ideal legal framework aims to provide legal certainty and guarantee legal benefits for entrepreneurs in the Job Creation Law post—the Constitutional Court Decision 168/PUU-XXI/2023. This can be realised if it meets several factors, including 1) the existence of an independent and impartial judiciary that guarantees justice for everyone, including against abuse of authority by those in power; 2) The existence of protection of human rights that is balanced with the obligations of the principle of humanity; 3) The application of the principle of democracy in community, national, and state life; 4) The application of the principle of balance, harmony, and harmony between rights and obligations; and 5) the existence of recognition and realisation of the principle of good governance so that justice, order, legal certainty, benefits, welfare, and happiness are realised for every citizen, worker, and entrepreneur.

Based on the various previous descriptions, it can be interpreted that the ideal legal framework in providing legal certainty and guaranteeing legal benefits for entrepreneurs in the Job Creation Law post—the Constitutional Court Decision 168/PUU-XXI/2023 is to have benefits for businesses in Indonesia. Legal certainty and legal benefits for entrepreneurs related to the ideal legal framework are as follows: 1) Increased Investment—can encourage increased investment; legal cer-

tainty encourages domestic and foreign investment by reducing uncertainty and risk; 2) Economic Growth—a stable legal environment encourages economic growth by encouraging innovation, competition, and job creation; 3) Innovation and Competition—Legal certainty allows businesses to focus on innovation and competition, rather than navigating a complex and unpredictable legal landscape; 4) Reduced Costs—By minimising legal risks and disputes, legal certainty can help businesses reduce their legal costs; and 5) Better Reputation—Businesses that operate within a clear and transparent legal framework tend to have a stronger reputation and attract more customers and partners.

Thus, an evaluation of the implementation of the Job Creation Law (Law 6/2023) following Constitutional Court Decision 168/PUU-XXI/2023 is essential, particularly regarding the positive and ideal legal frameworks. This aims to achieve legal certainty and legal benefits in business in Indonesia from the perspective of entrepreneurs. Legal certainty and legal benefits for entrepreneurs in the Job Creation Law post-Constitutional Court Decision 168/PUU-XXI/2023 are not merely legal principles. They are also important driving factors related to economic growth and business success in Indonesia. Although this study does not conduct empirical testing, this study uses qualitative analysis and qualitative research philosophy, which is descriptive, and focuses on Indonesian employment law as a national regulation, not a regional regulation. Constitutional Court Decision 168/PUU-XXI/2023 is expected to provide legal certainty and legal benefits for entrepreneurs under the Job Creation Law and to ensure fair labor practices and strong economic growth. This decision, which states 21 provisions in Law No. 6 of 2023, is conditionally unconstitutional, emphasizing that while this law aims to encourage investment and entrepreneurship, it must also protect workers' rights and provide clear guidelines for business operations. In essence, the Constitutional Court's ruling underscores that true economic progress requires a legal framework that is not only investor-friendly but also strongly protects the rights and welfare of its workforce, thus achieving a balance between economic goals and social justice. Therefore, Constitutional Court Decision 168/PUU-XXI/2023 is expected to serve as a foundation for improving labor regulations and creating a balance between investment interests and the protection of workers' rights. Going forward, collaboration between the government, employers, and labor unions will be key to achieving a fair and sustainable labor system in Indonesia.

4. Conclusion

The Constitutional Court Decision of the Republic of Indonesia Number 168/PUU-XXI/2023 provides direction for legal reform and the formation of new labour laws. The aim is to strengthen the protection of workers' rights, ensure clarity of norms, and adjust regulations to economic and social developments. The scope of reform in the Constitutional Court Decision of the Republic of Indonesia Number 168/PUU-XXI/2023 covers various aspects, including the use of foreign workers, fixed-term employment agreements (PKWT), outsourcing, wages, leave,

termination of employment (PHK), and other workers' rights. This Constitutional Court decision is an important moment for carrying out comprehensive improvements to labour regulations in Indonesia to create more harmonious, fair, and sustainable industrial relations. In this context, it can be interpreted that the essence of the objectives and scope of the reform and formation of new labour laws for workers, employers, and the government is expected to be able to navigate changes in the work environment effectively and encourage fair and equal working conditions. Then, legal reform and the formation of new labour laws should be based on the principle of justice. The principle of justice is an important component in creating a fair, productive and sustainable work environment. Therefore, legal reform and the formation of new labour laws are aimed at creating a fair and equal workplace, ensuring that both employers and employees are treated fairly and with respect for their rights and obligations. Therefore, the Constitutional Court Decision 168/PUU-XXI/2023 is also expected to encourage improvements in the supervision and enforcement system of labour laws in Indonesia for workers, employers and the government as guaranteed by the constitution.

Thus, an evaluation of the implementation of the Job Creation Law (Law 6/2023) following Constitutional Court Decision 168/PUU-XXI/2023 is essential, particularly regarding the positive and ideal legal frameworks. This aims to achieve legal certainty and legal benefits in business in Indonesia from the perspective of entrepreneurs. Legal certainty and legal benefits for entrepreneurs in the Job Creation Law following Constitutional Court Decision 168/PUU-XXI/2023 are not merely legal principles but also important driving factors related to economic growth and business success in Indonesia. In the absence of empirical testing, the focus is on national regulations, not regional regulations. By prioritizing legal certainty and legal benefits for entrepreneurs in the Job Creation Law following Constitutional Court Decision 168/PUU-XXI/2023, the government is expected to create a more conducive environment, namely, an environment that allows ideas to develop and innovation to flourish for businesses to thrive. Therefore, legal certainty and legal benefits for entrepreneurs in the Job Creation Law following Constitutional Court Decision 168/PUU-XXI/2023 are expected to foster a culture of collaboration, design interactions, embrace technology, encourage diversity and inclusion, and provide flexibility.

Novelty

Evaluation of the implementation of the Job Creation Law (Law 6/2023) post—the Constitutional Court Decision 168/PUU-XXI/2023 based on a positive legal framework and an ideal legal framework is very necessary to realise legal certainty and legal benefits in business in Indonesia from the perspective of entrepreneurs.

Acknowledgements

Thank you to Universitas Pancasila for allowing us to carry out the Tri Dharma Perguruan Tinggi, and we can complete this research. Lastly, we would like to

express my deepest gratitude to our colleagues at the Faculty of Law, Universitas Pancasila, Jakarta, who have always provided constructive support to us.

Conflicts of Interest

The authors declare that they have no conflicts of interest, financial or otherwise, regarding the publication of this article.

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Appendix

Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia Nomor III/MPR tentang Sumber Hukum dan Tata Urutan Peraturan Perundang-undangan

Penetapan Peraturan Republik Indonesia Pemerintah Pengganti Undang-Undang (Perppu) Nomor 2 Tahun 2022 tentang Cipta Kerja

Peraturan Pemerintah Republik Indonesia Nomor 35 Tahun 2021 tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja dan Waktu Istirahat, dan Pemutusan Hubungan Kerja

Peraturan Pemerintah Republik Indonesia Nomor 36 Tahun 2021 tentang Pengupahan

Peraturan Menteri Ketenagakerjaan Republik Indonesia Nomor 16 Tahun 2024 mengatur tentang Penetapan Upah Minimum Tahun 2025

Putusan Mahkamah Konstitusi Republik Indonesia Nomor 91/PUU-XVIII/2020 dalam perkara Pengujian Formil Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

Putusan Mahkamah Konstitusi Republik Indonesia Nomor 168/PUU-XXI/2023 (Putusan MK 168/PUU-XXI/2023) sebagai tanggapan atas permohonan pengujian materiil terhadap Undang-Undang No. 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang No. 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang (UU Cipta Kerja atau UU 6/2023)

Surat Edaran Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2015 tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2015 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 tentang Ketenagakerjaan

Undang-Undang Republik Indonesia Nomor 10 Tahun 2004 tentang Pembentukan Peraturan Perundang-Undangan

Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan yang diubah oleh Undang-Undang Republik Indonesia Nomor 15 Tahun 2019 Tentang Perubahan Atas Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-undangan diubah Undang-Undang Republik Indonesia Nomor 13 Tahun 2022 Tentang Perubahan Kedua Atas Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan

Undang-Undang Republik Indonesia Nomor 13 Tahun 2019 Perubahan Ketiga atas Undang-Undang Nomor 17 Tahun 2014 tentang Majelis Permusyawaratan Rakyat (MPR), Dewan Perwakilan Rakyat (DPR), Dewan Perwakilan Daerah (DPD), dan Dewan Perwakilan Rakyat Daerah (DPRD) beserta perubahannya

Undang-Undang Republik Indonesia Nomor 7 Tahun 2020 tentang Perubahan Ketiga atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konsti-

tusi

Undang-Undang Republik Indonesia Nomor 11 Tahun 2020 tentang Cipta Kerja

Undang-undang Republik Indonesia Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang