

# A DYNAMIC PANCASILA'SOCIAL JUSTICE IMPLEMENTATION IN THE INDONESIAN LABOR LAW DEVELOPMENT

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## ABSTRACT

*Since the wrong choice of social justice theory will bring social consequences that can lead to social injustice in practices such as for workers, it is relevant to conduct a study to evaluate Pancasila social justice' implementation in Indonesian' labor law development. The purpose is to know whether there is a dynamic implementation of social justice' substance, how far it protects workers and which of social power plays a role in determining social justice.*

*This research uses the legal-doctrinal method supported with the statutory and conceptual approach on the Indonesian labor law development before and after the enactment of Omnibus Law of Job Creation 2020, together with Rawls, Mill, and Miller's theories of social justice, and Hayek' standpoint, as the data. The researcher will analyze the data qualitatively.*

*There are three results of the legal issues. First, a different practice colors the essence of Pancasila social justice in developing Indonesian labor law. Second, the new Omnibus Law protects workers by providing specific treatments and protections to get equal rights, opportunities, wealth, and other benefits. It guarantees its fulfillment by establishing and enforcing punitive sanctions for employers who violate the essence of justice. Third, referring to Hayek's standpoint, the state as the social power plays a role in determining social justice for the workers in the Indonesian new employment legal policy. It concludes that there is a dynamic Pancasila' social justice implementation in the Indonesian labor law development wherein the new Omnibus Law the state largely determines the essence of social justice. At the same time, the previous Labor Law of 2003 generally hangs up social justice for workers on the employer's side who typically have a conflict of interest. It indicates developing Hayek's opinion about social power as determining factor of social justice by meant that the state is a determining factor of social justice for the vulnerable group in the society, not the other social powers. The result of this study is beneficial to rethink the modifier regulation in implementing Pancasila social justice to protect vulnerable groups such as workers into a better condition.*

**Keywords:** Development, Labor, Law, Pancasila, Social Justice.

## INTRODUCTION

Social justice is a new principle that colors in many countries. Indonesia has known and adhered to it since 1945 as one principle in the Pancasila ideology. Paragraph 4 of the Preamble

to the 1945 Constitution of the Republic of Indonesia states this Pancasila. Consequently, all legal policies must base on the principles of Pancasila, including social justice.

Unfortunately, the founder did not describe the content of Pancasila social justice clearly. The concept of Pancasila social justice and its application within the present context needs a more detailed explanation. Meanwhile, everyone can only interpret the contents of Pancasila social justice from its formula, namely social justice for all the people of Indonesia. In literature, the concept of social justice can be interpreted in different ways, as proposed by Aristotle (Chroust & Osborn, 1942), Plato (Chibuikem, 2017), Rawls (1971), Miller (Suryawasita, 1989), and Mill (Suseno, 1988).

In the condition of the unclear description of Pancasila social justice, while several theories of justice the state may refer to, it makes a dynamic choice in practices. This different choice will bring different social consequences for the people. On the other hand, social power determining social justice (Hayek, 2003) can consist of the state, substantial capital owners, workers, religious groups, etc. If workers have no solid social control, their fortune depends on other social reliable power determining social justice.

In the employment law, the Government regulates the relationship between two groups of people with different socioeconomic and interests, namely workers and employers. Both tend to conflict with interest. Workers want high welfare through salaries, while companies wish to increased profits by suppressing wages. The position of workers is generally subordinate to the company. In general, social injustice will be experienced by workers when they bargain with companies.

There are two essential employment legal policies in Indonesia, Law No.13 of 2003 and The Omnibus Law No. 11 of 2020 on Job Creation (after this referred to as Omnibus Law). Omnibus Law eliminates the overlap between laws and regulations, improves efficiency in changing or revoking statutory regulations, and reduces the sectoral egos in various rules and regulations (Secretary of Cabinet). Two groups of Omnibus Law's comments remain. One group criticized (Putsanra, 2020) that it is deemed not to provide justice. Other sides believe that Omnibus Law has fulfilled righteousness for the workers (Thea, 2021).

None of the Indonesian researchers explore the dynamics of Pancasila's social justice implementation in the development of labor law from Law No.13 of 2003 to Omnibus Law. Some researchers have studied the previous labor law relating to specific issues other than social justice, such as Matindas et al. (2018) and Harahap (2019). The others have researched social justice focus only on Law No.13 of 2003 or other legal policies, for instance Giyono (2017), and National Legal Development Agency (2018). They also did not explore how social power has been a determining factor of social justice in Law No.13 of 2003. Several researchers have studied focus on Omnibus Law through perspectives other than social justice, like Prabowo et al. (2020), Harjono (2020), Arief & Sutrisni (2021), Safitri (2020), and Busroh (2017).

The wrong choice of social justice theory will bring social consequences that can lead to social injustice in practices such as for workers. Of that situation, it is significant or essential to conduct a study to evaluate the implementation of Pancasila social justice in the Indonesian labor law's development from Law No.13 of 2003 together with its related laws to Omnibus Law. The legal issues are, is there a dynamic implementation of the substance of social justice? Does the existing dynamics protect workers as a vulnerable group? From Hayek's standpoint, which social

power plays a role as a determining factor for the sense and guarantees for the fulfillment of social justice? The purpose is to know whether there is a dynamic implementation of social justice' substance, how far it protects workers, and which of social power plays a role in determining social justice. The result of this study is beneficial to rethink the modifier regulation in implementing Pancasila social justice specifically to protect vulnerable groups such as workers into a better condition.

## LITERATURES REVIEWS

The definition and content of justice, including social justice, has always been debatable from the ancient days of philosophy until nowadays. None of the points of view give a satisfactory formula to everyone. Even none of history's great philosophers -not Plato, Aristotle, Confucius, Averroes, even Rousseau or Kant- consider justice from a social perspective. Social justice is the new notion raised in the industrial era to protest the capitalist exploitation of labor.

Many experts give the content of justice. Until now, the formulation of fair and unfair has always been a debate and has not been a single definite answer (Nasution, 2014). In practice, legal policies and law enforcement ultimately are in the state's authority, legislators, and judges, who will formulate them based on their considerations.

Theories of justice commonly base on certain philosophical schools according to the conditions of human thought at that time. Aristotle divides justice into distributive justice and commutative justice. The first justice gives proportionally different treatment to everyone by considering someone's service or position. This concept is the same to the principle of social justice. Commutative justice gives equal treatment to everyone regardless of the person's position or service (Chroust & Osborn, 1942). Justice, according to Aristotle, emphasizes proportion (Nasution, 2014). Plato briefly gives five principles of social justice, the essence of which is the principle of *suum cuique tribuere*: Justice is realized in a society when every member performs well according to his abilities. These functions are appropriate or in harmony with him (Lee, 1981). While Mill stated that social justice is a child of the utility principle, by putting forward two principles: (1) the greatest happiness for the greatest people; (2) the happiness or benefit includes physical and spiritual happiness (Wilson, 2012; Suseno, 1998). Mill's theory has a weakness for failing to comprehensively understand the acceptable system to everyone (Clark & Elliot, 2001).

Furthermore, Rawls (1971) offers two fundamental principles of social justice. First, everyone has the same right to fundamental freedoms as broad as the same freedoms for all. Second, the social and economic differences must be arranged so that both: (a) are expected to provide benefits for everyone, and (b) provide equal opportunities. Rawls' central area of justice is the basic structure of society-all social, political, legal, and economic institutions – which fundamentally influence an individual's life (Fattah, 2013). Rawls' theory's second principle can justify unequal treatment insofar as it benefits the most backward people, as far as it provides equal opportunities. The International Forum supports Rawls' opinion for Social Development standpoint by stating that the distribution of opportunities for work and remunerated Employment is the primary determinant of income distribution and a key to social justice. However, there are also criticisms of Rawls' theory, such as Hasanuddin (2018), who criticizes Rawls's ideas, stating that Rawls's theory is abstract and monolog. Kogelmann (2019) can't

sustain Rawls' claim about the complete autonomy of the citizen when they act by the principles of justice. Despite criticism, Rawls' two principles of justice are still relevant.

Meanwhile, Miller believes that social justice must consider three principles: justice based on rights, on merit, and based on needs (Suryawasita, 1989) in balance by adjusting the existing context. In determining team member remuneration, these three principles need to be used by considering team member contributions and team member needs. From various theories of justice, Nasution (2014) concludes that its universal characteristics are fair, legal, impartial, equal, worthy, reasonable, and morally correct.

Comparatively, Pancasila's social justice seems close to Rawls' theory of justice. The similarity with Pancasila social justice lies in the phrases everyone and for everyone in the Rawls concept. However, whether the substance of Pancasila social justice indeed describes Rawls' two principles of justice needs to be studied. It is possible that the essence applied is Mill's theory of social justice, which may cause injustice to minority groups who are not among the greatest people, in the application of Law No.1 of 1974 concerning marriage. Different provisions regarding the legal basis of marriage based on religious law and the ground for divorce that are not based on religious law in practice cause injustice to minority religious groups

Hayek (2003) believes that social justice is a regulatory principle, power, or social power that determines the rights of each person in social relations. Thereby, according to Hayek, the determining factor in social justice is a significant social power. The primary central social control is the state, especially a democratic state. Referring to Alsuwailan (2019), Hayek's standpoint may draw an ideal welfare state since the state protects and promotes its citizens' social and economic well-being based on the principles of equitable distribution of wealth and equal opportunity. Rusia is an example of how the communist regime led to social injustice, showing the abundance of poverty and deviant social orientations (Clément, 2019). However, Pierard (2007) found that King Martin Luther created social justice, although not a democrat. These facts show a dynamic implementation of social justice from regime to regime.

A minority group that does not have the social structure will depend on the state or other major social powers. It calls a poor-structurally position or a civil risk (Kobayashi & Ray, 2000), namely the failure to fulfill human rights by the state all the time, space, and place. Suseno (1988) defines a poor-structurally position as poverty caused by individual destiny and his membership in a social group. The examples of minority groups are workers, small-capital enterprises (Henrÿ, 2015), consumers (Smith, 1995), colonized people (Parulian & Smark, 2006), minority religious, a lower or middle class (Glass et al., 2014).

Because society is the target of social justice implementation, Tice (2011) suggested the importance of transforming social justice to society through experience-based learning. Meanwhile, Dessel (2006) sees that community participation is essential in resolving social conflicts to promote social justice and change through intergroup dialogue.

Paragraph IV of the Preamble of the Indonesia'Constitution states the concept of social justice. It provides that the state protect Indonesia's entire citizens and homeland, promote public welfare and educate its life based on social justice.

It appears that Indonesia adheres to the welfare state, based on social justice, and will implement it through legal policies. Article 27 to 34 of Indonesia's Constitution provides citizens' human rights, enforces the state's goal to protect the citizens, promote public welfare, and

educate the nation's life based on social justice. There is a connection between social justice and human rights. Social justice is a fundamental principle to provide and fulfill human rights (Suseno, 1988).

The Indonesian Government enacted The Omnibus Law No.11 of 2020 meant to establish social justice for workers. Social justice is one of the significant impacts to be reached in the legislation product, including Omnibus Law product and welfare and democracy impacts (Indrati, 2007). On the other hand, many legislation productions may cause the potential for disharmony or overlaps each other, which is difficult to avoid. One of the efforts to simplify and harmonize these regulations is using the Omnibus Law concept, adopted from the common law system, as a single bill containing various distinct matters (Garner et al., 2009). United States and Ireland are examples of states using the Omnibus Law method to address the hyper-regulation problem (Anggono & Firdaus, 2020).

## METHODS

The research methodology in this paper uses doctrinal approaches (Ali et al., 2017). It carried out the Indonesian labor legal policies before and after enacting the Omnibus Law. The study focuses on the dynamic application of the social justice concept, its determinant factor to the substance, and the guarantee of its fulfillment. The study takes data from the primary legal material (The Republic of Indonesia' Constitution, Law No.21 of 2000, Law No.13 of 2003, Law No.2 of 2004, Law No.40 of 2004, Law No.24 of 2011, Omnibus Law No. 11 of 2020, The Government Rules (G.R.) No.86 of 2013, GR No.44 of 2015, GR No.34 of 2021, GR No.35 of 2021, and GR No.36 of 2021) and the theories of social justice, including its principles and practices, as collected from journals, books, research reports, news. However, because of a covid-19 outbreak condition, most of the data is collected electronically on the internet. The research uses the qualitative-content analysis by interpreting the content of legal policies and the theories of justice to answer the issues. Hereafter, the conclusion uses a deductive way of thinking (Elo et al., 2014).

## RESULT

Before enacting Omnibus Law No.11 of 2020, the Indonesian government issued legal employment policies to protect laborers. In 2000, the Government passed Law No.21 to provide the right to establish a Labor Union, followed by Law No.13 of 2003, which replaced the previous Law, promulgating the Employment generally. In 2004, the Indonesian Government established The National Social Security System, which included social security for laborers, through Law No.40 of 2004. It is supported by Law No.24 of 2011 of Social Security Administering Body, The Government Regulation No.86 of 2013 on the procedures for imposing administrative sanctions on employers in the implementation of social security, and The Government Regulation No.44 of 2015 on The Implementation of the Employment Insurance and Death Insurance Program. After Omnibus Law enactment, the previous laws and regulations being amended or abolished. The Government also enacts GR No.34 of 2021 on Foreign

Workers' Usage and G.R No.35 of 2021 on The Limit-Time Work Agreement, Outsourcing, work-time periods, rest- periods, and worker' Fire, and G.R No.36 of 2021 on Wages, to implement the related provision of Omnibus Law. The discussion on the dynamics implementation issue of social justice in labor law policies before and after the Omnibus Law promulgation is described below.

## DISCUSSION

The analysis of six legal labor policies in Indonesia from the social justice aspect determines which theory determines it and guarantees fulfillment.

Law No.13 of 2003 aims to ensure equal opportunity and treatment without discrimination to realize the welfare of workers but by considering the business development factor. From the equality of opportunity standpoint, the social justice formulation in Law No.13 of 2003 seems close to Pancasila and Rawls' theory of justice. Since the equality of opportunity is between the workers, not between workers and the company, the impact will differ. In the labor-employer relationship, giving remuneration for workers' welfare must consider the company's interests. Workers will face the interests of the employers. In this condition, employers will mainly undertake to obtain greater profits than provide greater welfare for workers. By looking at the vulnerable position of workers against employers, it is predictable that in the conflict of interest' situation, the employers will take it all. BPHN called this circumstance unfair. The workers' welfare, thus, does not base on the rights, services, and workers' needs as Miller's theory. It bases on the company's interest. Rawls' concept thus can create structural injustice or civil risk, if in getting the same opportunity, the vulnerable and dominant parties compete freely.

Law No.21 of 2000 gives workers the right to establish workers' unions. The goal is to strive for workers' rights and welfare. Even so, workers' unions remain powerless in their struggle that they depend on their employers as 'rulers' based on Law No.13 of 2003's legal basis.

Article 2 of Law No.40 of 2004 emphasizes social security based on social justice to all people, especially workers. Article 17 (2) provides that the Government requires employers to include their workers in the social security program with a sharing system for payment of contributions. The social security program provided under Article 18 includes health insurance, work accident insurance, old-age insurance, pension insurance, and death insurance. The concept of social justice in Indonesia's social security system applies Rawls' theory. The reason is that all workers will be guaranteed to get social security programs that support them in increasing their welfare by obligating employers to include them with a share of payment contribution. The Government Rules (G.R.) No.86 of 2013 set an administrative sanction for employers who do not fulfill the obligation. The existence of obligatory norms and the sanction from the Government make the practices of social justice work well. Even Pancasila social Justice, Rawls, or Miller's theory of justice. The norm of Law No.40 of 2004 develops Hayek's standpoint about the state as a determining factor in social justice. It expanded on the fact that the state determines social justice content and guarantees its fulfillment in the condition where the minor social power

(workers) has a conflict of interest with another significant social power (employers). In that situation, the state intervenes by giving special treatment to workers to create equal rights or opportunities. Therefore, in the Indonesian context, the state is the significant social power in determining social justice, not the employers.

Under Law No.24 of 2011, the Government establishes The Social Security Administering Body (BPJS), which is authorized to coordinate, organize, and supervise the implementation of social security for workers. G.R No.44 of 2015 details how BPJS collects workers' social security contributions from employers, distributes them for various social security benefits for workers and imposes administrative sanctions on employers who violate the rules.

Analyzing Law No.13 of 2003 and Law No.40 of 2004 shows that Rawls' theory of social justice will work more effectively using Hayek's standpoint. Especially on the aspect that in the condition where there is a conflict of interest between a major and a minor social power, the state as the primary social power intervenes by providing special treatment for the favor of an inferior group. Without state intervention, the position of the minor group will always become lost in striving against the influential group that tends to be dominant. The community's class differences and the presence of the state to ensure the fulfillment of social justice are thus influencing Rawls' theory's effectiveness. The same analysis will be carried out on Indonesia's labor law policies in the Omnibus Law, as described below.

In 2020 the Indonesia Government enacted the Omnibus Law on Job Creation, which in its considerations also places Pancasila social justice as the basis of the law. It includes a new policy on employees by amending or replacing the previous procedure with the new one. The Omnibus Law criticizes the last law as not supporting the acceleration for job creation in the preamble. The Omnibus Law will be analyzed comparatively with the previous policy to know the dynamic implementation of social justice, including which major social powers become the determining factor for the substance and the guarantee of social justice.

Article 2 of the Omnibus Law stipulates equal rights as one of the principles for job creation. The principle is still abstract and needs the articles to describe it. According to Pancasila and Rawls's theory of justice, the 'equal right' should mean equal rights among the workers and equal rights between workers and employers. However, equal to previous labor legal policy, if there is no intervention from the state as the supreme social power in determining social justice, the equal rights principle may not work effectively.

Several provisions in the Omnibus Law potentially still cause a conflict of interest between workers and employers. For example, on the one hand, Article 3b and 3c of the Omnibus Law want to guarantee the rights of every citizen to get a job, to receive fair and proper remuneration and treatment in an employment relationship, as well as to support, strengthen and protect small businesses for national industry development. On the other hand, in Article 3d, the Government wants to develop trans-national investment, which is also full of trans-national companies' interest in obtaining maximum profit. The traditional conflicts will mostly occur when the workers' interest in improving their welfare competes with the investors' interest in increasing profits.

Regarding small-scale businesses, Article 3c implies that the Government takes sides and protects them as sub-ordinating groups when dealing with national-scale business and foreign investors. The Government's special protection or treatment of the small-scale companies supports Hayek's opinion that the state is the determining factor of social justice for vulnerable groups. By giving special protection, the state is now a determining factor for the substance of social justice and assures its implementation.

One of the advantages of the Omnibus Law is simplifying the business license process. This simplification hopefully improves the business climate, which will produce more job opportunities. Pancasila's social justice implementation provides opportunities for vulnerable groups, namely the worker, to get a job. All citizens will be strived to obtain a wealthy life equally. These efforts are close to Rawls' theory of justice, where the state must arrange the social and economic differences in such a way to provides both benefits. Other social justice issues for workers between the previous and the new employment legal policy will be listed comparatively in the Table form along with the analysis of each detailed case, as described below.

<b>Table 1 Foreign Workers</b>	
<b>Law No.13 of 2003</b>	<b>Omnibus Law</b>
Article 42(3) There is an obligation to have a permit to employ foreign workers, except for representatives of foreign countries who use foreign workers as diplomatic and consular employees.	Amended: A permit is not required, but the corporation must have a plan for the use of foreign workers, for specific positions, and for a particular time based on the Government Regulation (after this, G.R.). Article 2 GR No.34 of 2021 stipulates the corporate obligation to prioritize Indonesian workers, except for positions they can't occupy, accompanied by administrative sanctions.

Table 1 shows a Changing from the license to employ foreign workers as provided in Law No.13 of 2003 into only a plan for using foreign workers as provided in Omnibus Law. It will make easier import of foreign workers. However, through a system of administrative sanctions, the Government guarantees the priority of using Indonesian workers and the assistance of Indonesian workers for technology transfer. This policy will accelerate Indonesian workers' independence to no longer depend on foreign workers in the future. Creating an opportunity for workers as a minor group to increase their quality and their wealth is a sense of Rawls' theory.

<b>Table 2 Specific Time Work Agreement</b>	
<b>Law No.13 of 2003</b>	<b>Omnibus Law</b>
Article 56: The types of work agreements at the specific time do not need to be regulated by G.R.	Amended: The types need to be regulated by G.R., namely GR No.35 of 2021 Article 15 stipulates the obligation to pay compensation for a specific-period work agreement accompanied by administrative sanctions for companies that violate them.

Table 2 describes that Omnibus Law prefer to regulate the types of specific time-work agreement than previous Law. The regulation guarantees the kinds of specific time-work



agreements to avoid arbitrary interpretations by the employer and guarantee the fulfillment of compensation through a system of administrative sanctions for violators.

<b>Table 3</b>	
<b>Probationary Period</b>	
<b>Law No.13 of 2003</b>	<b>Omnibus Law</b>
Article 58(2) If a limit-period work agreement requires a probationary time, it will be null and void.	Amended: If a limit-period work agreement requires probationary time, it is null and void and counts the working periods.

Table 3 explains that besides nulling and voiding, Omnibus Law also counts the probationary time in a limit-period work agreement as the working periods. The new policy is more protective because it measures the probation period into a whole active period. This latest effort will provide more welfare to workers under the social justice theory of Pancasila and Rawls, namely providing equality or equal rights through more protection for vulnerable groups such as workers.

<b>Table 4</b>	
<b>Rest And Leave Time</b>	
<b>Law No.13 of 2003</b>	<b>Omnibus Law</b>
Article 79 Paragraph (2) d, the company's obligation to give long breaks to workers for at least 2 (two) months	Certain companies can provide long breaks as stipulated in the work agreement, company regulations, or collective work agreement.

In Table 4, previous law obliges the company to give long breaks to workers, while Omnibus Law makes it, not the company's obligation. As a result of this, the obligation to give extended leave replace to provide a long break. As guaranteed by the state, workers' rights to extended leave are reduced to an agreement with the employer to depend on the employer's policy. The company, as a dominant social power, gets more benefits than workers. If it is permissible to interpret the capital owners as the most significant people, Mill's principle is applied here by providing great happiness for great capital owners. This condition violates the equality of rights as mandated by Pancasila. By submitting an extended leave to agreements with certain companies, the social power that determines social justice for workers in Hayek's view here is no longer the state but the employer as the capital owner.

<b>Table 5</b>	
<b>Wages Structure And Scale</b>	
<b>Law No.13 of 2003</b>	<b>Omnibus Law</b>
Article 88 There is a policy of proportional wage structure and scale	Amended, from proportional to remuneration based on the right to a decent living based on humanity (see Article 4 GR No.36 of 2021)

As shown in Table 5, there is a change of the wages' structure, from a proportional in Law No.13 of 2003 into remuneration by the right to decent living based on humanity in Omnibus Law. The replacement from commensurate wages into wages based on humanity's decent living illustrates Miller's concept of social justice, namely justice based on rights,

services, and needs in a balanced sense.

<b>Table 6</b> <b>Equal In Wages</b>	
<b>Law No.13 of 2003</b>	<b>Omnibus Law</b>
No provision	A new policy, Article 88A(2): Every worker has the right to receive equal wages for equal work.

Table 6 points that Omnibus Law explicitly declares the worker's right to receive equal wages for equal work, while Law No.13 of 2003 does not. The explicit declaration affirms equal wages for similar work, thus implementing Pancasila social justice and Rawls, that everyone has the same rights.

<b>Table 7</b> <b>Minimum Wages</b>	
<b>Law No.13 of 2003</b>	<b>Omnibus Law</b>
Article 90(2): The state may suspend the paying for employers who are unable to pay the minimum wage.	Removed and replaced: The state prohibits employers from paying wages lower than the minimum wage, except for small and medium-sized businesses based on an agreement with certain minimum conditions as regulated by G.R. Article 88A(5): Suppose the agreement provides a lower amount of wages which is contrary to the laws and regulations. In that case, the deal is null and void, and the company should arrange wages following the provisions of the legislation. Article 88A(6): Negligence that results in delay in payment of wages is subject to a fine according to a certain percentage of the worker's wages. Article 88A(7): The Government regulates the imposition of fines on entrepreneurs and labor.

Table 7 explains that Law No.13 of 2003 may suspend the employer from paying wages lower than minimum wages, while Omnibus Law prohibits it. There is more protection for workers, with strict sanctions from the Government for employers who violate the minimum wage provisions. The formulation of these sanctions develops Hayek's opinion, namely the state as a determining factor for social justice, which includes determining the substance of social justice and determining the guarantee of its fulfillment.

<b>Table 8</b> <b>Claim for Wages</b>	
<b>Law No.13 of 2003</b>	<b>Omnibus Law</b>
Article 96: Claim for payment of workers/laborers' wages and all expenses arising from an employment relationship expires after exceeding 2 (two) years since the entitlement arises.	abolished

Table 8 shows that Omnibus Law abolishes the expiration date to claim workers' wages and all expenses arising from an employment relationship as provided previously in Law No.13 of 2003. The abolition of the previous policy protects workers because they can claim their rights without expiry limits. This policy is following Miller's first principle of social justice, namely,

justice based on fairness. The state, in this case, is present as a social force that determines the substance of social justice.

<b>Table 9</b>	
<b>Firing For The Reasons Of Marriage</b>	
<b>Law No.13 of 2003</b>	<b>Omnibus Law</b>
Article 153: It forbids to fire workers who have blood ties or marital ties with other workers in the same company unless a work agreement, a company regulation, or a collective-work agreement has stipulated it.	Amended: The state prohibits it.

Table 9 describes the change of blood ties or marital ties as the reason to fire workers. Omnibus Law prohibits it, while Law No.13 of 2003 may use it to fire workers. The new policy protects workers better on the fact that there is no discrimination based on marital status. This policy is under the sense of Rawls's concept of social justice, namely equal rights, and the state intervenes as a social force to determine the substance of social justice.

<b>Table 10</b>	
<b>New Reasons to Fire</b>	
<b>Law No.13 of 2003</b>	<b>Omnibus Law</b>
No provision	New policy: Article 154A: If the team member reports a crime committed by the employer, a company can't fire him. Workers also have the right to be terminated if they experience lousy treatment and violations of rights and work agreements.

Table 10 relates a reporting employers' crime as a reason to fire workers. Omnibus Law sets that it is prohibited as the reason to fire. Law No.13 of 2003 does not put it. In the previous policy, there were workers' rights to demand fulfillment of the rights or to demand workers' interests in the event of unfair treatment. The right to ask to be terminated is a new thing because workers generally prefer to keep working. Therefore, the workers have more options to claim their rights, including an opportunity to argue for leaving with compensation, of course. This option is per Miller's social justice, and the social factor that determines the substance of social justice, according to Hayek, in this case, is the state.

<b>Table 11</b>	
<b>Compensation Money For Housing</b>	
<b>Law No.13 of 2003</b>	<b>Omnibus Law</b>
Article 156(4)c Compensation for housing and treatment and care of 15% of the severance pay or service payment for those who meet the requirements if dismissed from work	abolished

Table 11 shows how Omnibus Law abolishes the housing' compensation and other treatment and care payment for those who meet the requirements if dismissed from work, as set otherwise by Law No.13 of 2003. This policy reduces the rights of workers to obtain welfare in the event of dismissal, thereby reducing the substance of social justice, especially Miller's social justice, namely justice based on rights, services, and needs in a balanced sense. The state as a determinant of the substance of social justice, in this case, does not provide social justice for

workers.

<b>Table 12</b> <b>List of Serious Crimes of Workers</b>	
<b>Law No.13 of 2003</b>	<b>Omnibus Law</b>
Article 158 lists the severe crimes of workers as reasons for firing	abolished

In Table 12, it seems that Omnibus Law abolishes severe crimes as a stigma for workers. The abolition provides justice, especially equal treatment, by eliminating the stigma of brutal crimes for workers who commit violations because there is no such stigma even for employers.

<b>Table 13</b> <b>Strike Sanction</b>	
<b>Law No.13 of 2003</b>	<b>OMNIBUS LAW</b>
Article 186: There is a penal sanction for strikes that violate the rules	abolished

Table 13 explains that Law No.13 of 2003 penalizes workers for strikes that violate the rules, while Omnibus Law abolishes that sanction. The abolition of the criminal sanctions provides more protection for workers who want to strike as one of their rights.

<b>Table 14</b> <b>Sanctions in The Placement of Foreign Workers</b>	
<b>Law No.13 of 2003</b>	<b>Omnibus Law</b>
Article 187: Violation of licensing and competence of foreign workers will be punished	The punishment is abolished.

Table 14 shows that Omnibus Law abolishes the sanction of licensing and competence of foreign workers' violation which provided otherwise by Law No.13 of 2003. The policy of eliminating sanctions reduces the function of the state as a determining factor in substance and guarantees the fulfillment of social justice. Workers will face non-state determinants of social justice, namely the employer, who has a conflict of interest with the worker, so it is challenging to expect his side.

<b>Table 15</b> <b>Social Security Program</b>	
<b>Law No.40 of 2004</b>	<b>Omnibus Law</b>
Article 18 regulates the types of social security programs: Health insurance, work accident insurance; old-age insurance; pension insurance; insurance of the death.	It was amended by adding a new social security program, namely job loss insurance, managed by the Social Security Management Agency, the principle of social insurance. New provision: Article 46A(1) Workers who experience termination of Employment are entitled to a job loss guarantee in the form of cash, access to labor market information, and job training.

Table 15 displays that the new labor law sets the new social security programs other than the previous Law, namely: a job loss guarantee in the form of cash, access to labor market

information, and job training. This new norm is a form of state siding with vulnerable groups, namely unemployed workers, by the social justice concept of Pancasila and Rawls.

Based on the comparison of Law No.13 of 2003 and Omnibus Law as set in Table 1 to Table 15, it may be said that there is a dynamic implementation of the social justice concept from the comparison between the previous policy and the latest policy. The previous policy provided less social justice for workers when compared to the new one. In other words, the dynamics of Pancasila's social justice in the new labor law leads to the implementation of Rawls and Miller for workers. However, four slight deviations remain from 15 issues. First, it is the changing from the license to employ foreign workers into only a plan for using foreign workers as set in Table 1. Second, previous law obliges the company to give long breaks to workers, while Omnibus Law makes it not the company's obligation, as shown in Table 4. Third, the new employment legal policy abolishes the housing' compensation and other treatment and care payment for those who meet the requirements if dismissed from work, as described in Table 11. Fourth, Omnibus Law abolishes the housing' compensation and other treatment and care pay for those who meet the requirements if dismissed from work, as explained in Table 14. According to Pancasila, Rawls, or Miller, the state in Omnibus Law protects or gives the workers the social justice better.

Which social power is the determining factor of social justice that will affect the fate of the workers? From the implementation of Pancasila's social justice in Omnibus Law, it appears that the state, not the employers, is a determining factor for social justice as a regime that increasingly protects the workers' side. It develops Hayek's opinion by showing that among the social power, the state should be a determining factor to provide social justice, especially for the vulnerable group in the society. These findings show that Rawls and Miller's theories implemented well to color Pancasila's social justice only by the state intervention to protect the minority group for equal rights, position, opportunities, and benefits. Without state intervention through its legal policy that takes sides, the fate of workers will depend on other social forces, namely employers who do not necessarily provide justice because generally, they have conflicts of interest with workers. It is challenging to rely on the fate of workers on employers.

The difference in the quality of protection between the previous policy and the new one also shows that the state as a determining factor can also have different commitments in providing social justice for parties whose positions are weaker, such as workers. The new regime has reformed the previous policy (Law No.13 of 2003) with the new one (Omnibus Law). Thus, the commitment and political interests also influence the state in providing the substance of Pancasila's social justice for workers.

## CONCLUSION

Finally, based on the legal issues' analysis, it demonstrates three answers. First, a different practice colors the essence of Pancasila social justice in developing Indonesian labor law. Second, the new Omnibus Law protects workers by providing specific treatments and protections to get equal rights, opportunities, wealth, and other benefits. It guarantees its fulfillment by establishing and enforcing punitive sanctions for employers who violate the essence of justice. Third, referring to Hayek's standpoint, the state as the social power plays a role in determining social justice for the workers in the Indonesian new employment legal policy. It concludes that there is a dynamic Pancasila' social justice implementation in the Indonesian labor law

development wherein the new Omnibus Law the state largely determines the essence of social justice. At the same time, the previous Labor Law of 2003 generally hangs up social justice for workers on the employer's side who typically have a conflict of interest. This research also develops Hayek's opinion about social power as determining factor of social justice. First, to provide social justice for peoples whose socioeconomic position is not balancing, such as between workers and employers, the social force that determines social justice must be the state, not other social power. Second, the regime can only provide social justice for vulnerable groups by providing a unique or different treatment to give them equal rights and opportunity people benefits. Third, the state shall determine social justice's substance, as well as warrants its fulfillment. The result of this study is beneficial to rethink the modifier regulation in implementing Pancasila social justice to protect vulnerable groups such as workers into a better condition.

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