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THE 1ST PROCEEDING INTERNATIONAL CONFERENCE AND CALL PAPER

Omnibus Law Opportunities And Challenges Towards
Entrepreneurs And Labor : Comparative Review

June 27 2020

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*" Omnibus Law Opportunities And Challenges Towards
Entrepreneurs And Labor : Comparative Review law"*

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*"Omnibus Law Opportunities And Challenges Towards Entrepreneurs And Labor
: Comparative Review"*

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Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

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IMPLEMENTATION OF OMNIBUS LAW IN LAW OF WORK FIELD IN INDONESIA

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ABSTRACT

In a speech delivered after his inauguration as President of the Republic of Indonesia 2019-2024 term at the MPR Plenary Session of the Republic of Indonesia on October 20, 2019, President Joko Widodo alluded to the plan to implement the Omnibus Law which aims to simplify regulatory issues related to investment in Indonesia that are complicated and overlapping. . The problem in this research is how is the implementation of Omnibus Law in the Employment Copyright Act in Indonesia? The idea of the Omnibus Law immediately got a polemic in the community because in the drafting of the Employment Copyright Bill, the sociological foundation was made up and did not reflect the actual needs of the community. It can even be said that in the formation of the Employment Creation Bill it is most likely that there is a paradigm difference that is the paradigm for the sake of the people or for the sake of the country. Paradigm for the sake of the people prioritizes the things that are needed by the community while the paradigm of the government in the establishment of the Employment Copyright Bill is more to the creation of rapid economic growth. This can be seen from various government statements which state that the Employment Creation Bill is a means of simplifying and harmonizing regulations aimed at facilitating investment in Indonesia in the hope of having a positive impact on increased investment.

Keywords: *omnibus law, employment, investment.*

Introduction

In terms of Omnibus comes from Latin which means for all. In the Black's Law Dictionary: Ninth Edition Bryan A. Garner mentioned the omnibus is relating to or dealing with numerous objects or items at once, which means something that is related to or dealing with various objects or items at once. So if the word omnibus is combined with the word Law, then the omnibus law can be defined as law for all⁴⁴. The concept of omnibus law has different definitions in each country, for example in America the omnibus law has a separate definition, namely as a policy making laws that contain more than one substantive problem, or several small problems that have been combined into one draft Constitution⁴⁵. So based on the above definition, the Omnibus law itself, can also be defined as a government and legislative policy, which is intended to overcome various kinds of legal regulatory issues, where the regulation, departs from the fact that there has been an overlap of rules, which is caused by the many legal products governing a

44. F. Busroh. (2017). *Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan*. Arena Hukum, 10(2), p. 227–250. <https://doi.org/10.21776/ub.arenahukum.2017.01002.4>

45. L. Massicotte. (2013). *Omnibus Bills in Theory and Practice*. Canadian Parliamentary Review, 36(1). Hlm.13–17.

particular issue. The practice of implementing omnibus law in the world has been going on for a long time, where for its implementation, carried out in accordance with the legal needs of the problems that are being experienced by their respective countries. As in America, in 1988, at that time, America issued a policy on the omnibus law on issues concerning economic policy in the country by combining several legal regulations governing export-import, international policy, trade policy, agricultural trade, telecommunications, policy competitiveness, foreign investment, the Foreign Corrupt Practices Act, patent policy, and others⁴⁶.

According to the Duhaime Legal Dictionary the meaning of the omnibus is all or for all, Tracing the history of the Omnibus Law in all parts of the world will be concluded that the Omnibus Bill or Omnibus Law actually boils down to countries with Anglo-Saxon legal systems or the Common Law System. Specifically it is the United States which has recorded an Omnibus Bill in 1888 which was motivated by the existence of a private agreement relating to the separation of two railroads in the United States⁴⁷. Like Ireland, that in 2008 has issued laws similar to the Omnibus Law, because it repealed more or less 3,225 laws⁴⁸. 3 Canada also has an arrangement that is characterized by the Omnibus Law namely the Criminal Law Amendment Act of 1968-1969⁴⁹.4 through the above explanation it can be concluded that the concept of the Omnibus Law has developed well in the Common Country Law

In a speech delivered after his inauguration as President of the Republic of Indonesia 2019-2024 term at the MPR Plenary Session of the Republic of Indonesia on October 20, 2019, President Joko Widodo alluded to the plan to implement the Omnibus Law which aims to simplify regulatory issues related to investment in Indonesia that are complicated and overlapping. . Where these regulations amount to about 42 thousand rules, which include among others the Laws, Government Regulations, Presidential Regulations, Ministerial Regulations to Regulations of Governors, Mayors and Regents in the regions. The number of these regulations results in conflicting regulations between one another, resulting in a slow pace of government attitude in making a decision and conveying ideas to streamline regulation by forming two laws (Laws), namely the Employment Copyright Act and The Micro Small and Medium Enterprises (MSME) Empowerment Act, whereby the formation of these two laws at the same time will cut dozens of Omnibus Law regulations into an issue that is currently being heavily discussed in Indonesia. That fact proves that the development of existing law has demanded deeper attention together. The current heated debate seems to require us to take part in evaluating the second period of Joko Widodo's legal politics; Debates that focus on the formal and material parts are constantly rolling between the legal experts and academic figures. The Draft Bill on Employment (the Employment Copyright Bill) was the first to be discussed and immediately led to debates that created pros and cons at various levels in Indonesia.

The Jokowi's version of the Omnibus Law will be in the form of a law which regulates various things and is then combined with the aim of abolishing existing provisions. Apart from the various views, it can be concluded that the Omnibus Law regulates a variety of different substances and the formation of the Omnibus Law aims to simplify various existing regulations. When viewed in plain view, this Omnibus Law makes it easy for the government to create a regulation that can cover various fields of life in a single legal product.

46. David E. Birenbaum. (1989). The Omnibus Trade Act of 1988: Trade Law Dialectics. U. Pa. J. Int'l Bus. L., 10(04), P. 653-661.

47. Berita Hukum Online, Januari 25, 2020, "Menelusuri Asal-Usul Konsep Omnibus Law", <https://www.hukumonline.com/berita/baca/1t5e2c1e4de971a/menelusuri-asal-usul-konsep-omnibus-law/>, accessed on June 21, 2020.

48. Ibid

49. Tribun Jateng, "Penjelasan Omnibus Law dan Negara-Negara yang Sudah Menerapkan", <https://jateng.tribunnews.com/2019/12/16/penjelasan-omnibus-law-dan-negara-negara-yang-sudah-menerapkan>, accessed on June 21, 2020 Pukul. 19.51.

The idea of the Omnibus Law immediately got a polemic in the community because in the drafting of the Employment Copyright Bill, the sociological foundation was made up and did not reflect the actual needs of the community. It can even be said that in the formation of the Employment Creation Bill it is most likely that there is a paradigm difference that is the paradigm for the sake of the people or for the sake of the country. Paradigm for the sake of the people prioritizes the things that are needed by the community while the paradigm of the government in the establishment of the Employment Copyright Bill is more to the creation of rapid economic growth. This can be seen from various government statements which state that the Employment Creation Bill is a means of simplifying and harmonizing regulations aimed at facilitating investment in Indonesia in the hope of having a positive impact on increased investment.

The plan to implement the Omnibus Law to increase the number of investors as it is now is not the first time, about 25 years ago President Soeharto issued PP No. 20/1994 concerning Share Ownership in Companies Established in the Framework of Foreign Investment as a form of implementing regulations for various laws including the Atomic Energy Law, the Press Law, the Foreign Investment Law, the Domestic Investment Law, the Electricity Law, the Telecommunications Law, the Railway Law, Aviation Law and Shipping Law. However, PP No. 20/1994 is considered contrary to the various laws because it has changed the material content that is closed to foreign capital and contrary to Article 33 of the 1945 Constitution⁵⁰.

However, in the course of the implementation of the omnibus law against the Employment Copyright Law and the Law on Empowerment of Micro, Small and Medium Enterprises (MSMEs), they have been rejected by various elements of the Indonesian community, where the basis for such refusal is because the discussion of the Law referred to felt by the community was very hurried, by its closed nature, it is not democratic and only involves entrepreneurs⁵¹. The absence of broad community involvement resulted in the process of creating employment copyright law through the Omnibus law not reflecting the principles or principles of establishing a good law, whereby, the principle states that all levels of society have the broadest opportunity to provide input in the formation of laws and regulations⁵².

The Problem

How is the Omnibus Law implemented in the Employment Copyright Law in Indonesia?

Methods of Research

The method of approach in this study uses the type of normative juridical research. Normative juridical research is research focused on examining the application of rules or norms in positive law. This type of research is a type of qualitative descriptive study, because in this study describes the situation that occurs at the moment systematically and factually with the aim to explain and resolve the problem under study, the Omnibus Law in the Employment Copyright Act in Indonesia.

Primary data obtained by researchers refers to data or facts and legal cases obtained directly through library studies relating to research objects and practices that can be seen and related to research objects.

The data analysis method used is normative qualitative, namely the decomposition of data analysis

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50. Maria Farida, "Omnibus Law", UU Sap Jag at?", <https://kompas.id/baca/opini/2019/12/31/omnibus-law-uu-sapu-jagat/>, accessed on June 21, 2020
 51. Sonia Asabi. (2020). Frisk Rakyat Indonesia Inlay Omnibus Law Cite Lasagna Karaj Berate Colonial. Kompas.Com. <https://nasional.kompas.com/read/2020/01/30/13344111/fraksi-rakyat-indonesia-nilai-omnibus-law-cipta-lapangan-kerja-berwatak>.
 52. Mia Kusuma Fitriana. (2015). Peranan Politik Hukum dalam Pembentukan Peraturan Perundang-Undangan di Indonesia sebagai Sarana Mewujudkan Tujuan Negara (Laws And Regulations In Indonesia As The Means Of Realizing The Country ' S Goal). Jurnal Legislasi Indonesia, 12(02), 1–27.

which starts with the information obtained to achieve clarity of the problem to be discussed is Omnibus Law implemented in the Employment Copyright Law in Indonesia.

Research Result and Discussion

Omnibus Law implemented in the Employment Copyright Law in Indonesia

The Omnibus Law concept as outlined in the Employment Creation Bill is a byword for the general public regarding its legal validity. In case, the public questioned whether the a quo bill was legal or not and how it stood in the statutory regulations⁵³. To test whether a law is formally valid, we need to review the Law on the Formation of Legislation (Law P3). Law P3 becomes the government's basic reference in forming legislation and becoming a legal standard for whether a law is drafted. When there is a bill that is being drafted and contradicts Law P3, then the bill that is being drafted will be null and void by conflicting reasons. Another case when a bill is drafted not based on P3 Law, but the content of the content is not regulated in the P3 Act the status is not invalidated because it does not meet conflicting prohibitions. There are two reasons why the Employment Copyright Bill is said to be normatively valid and there are several reasons regarding the Employment Copyright Bill being invalid as law.

First, the Employment Creation Bill has a legal basis in accordance with statutory regulations with reference to Law P3.²³ The a quo bill is considered valid because it has the status of a Law as referring to the provisions in article 7 of Law P3 which reads as follows;

Article 7

- (1) Types and hierarchy of statutory regulations consist of:
 - a. The 1945 Constitution of the Republic of Indonesia;
 - b. Decree of the People's Consultative Assembly;
 - c. Government Act / Regulation in Lieu of Law;
 - d. Government regulations;
 - e. Presidential decree;
 - f. Provincial Regional Regulations; and
 - g. Regency / City Regulations.

In the above paragraph, the Employment Copyright Bill is located in the hierarchy of Law P3 as a law that has a legal and recognized position so that the a quo bill has formal and binding legal force⁵⁴. Second, the omnibus as a concept forming the Employment Creation Bill is not prohibited in Law P3. Even if it is not regulated in a quo Law, the omnibus concept is a new breakthrough that is not prohibited by law, so it is possible if the omnibus concept is applied in making statutory regulations. So far, the Employment Creation Bill has no formal problem regarding its validity as a law made by the government with a concept that is quite different from other laws in general. However, if we look at the subject matter in the appendix to the Employment Copyright Bill, special attention needs to be given to the type of legislation a quo. This is indicated by the lack of clarity in the types of laws and regulations of a quo bill. Even though the dictum contained in the attachment to the a quo bill stipulates that the type of regulation on the Employment Copyright Bill is the law referred to in article 7 of Law P3, but the main material governed in this bill is the subject matter of the amended bill. The amendment bill material only contains amendments consisting of revocation, replacement, or addition of subject matter from the previous law. The point that needs to be underlined here is the technique of drafting legislation between the new law and the different amendment

53. Dian Kurniati, "Jika Omnibus Law Perpajakan Sah, Tiga Objek Ini Bakal Kena Cukai", <https://news.ddtc.co.id/jika-omnibus-law-perpajakan-sah-tiga-objek-ini-bakal-kena-cukai-18887>, accessed on June 21, 2020

54. Ibid

law. The Employment Copyright Bill can be said to be a change bill with reference to the evidence contained in article 17 and 18 of the Employment Copyright Bill which reads as follows:⁵⁵

Article 17

In the context of simplifying the basic requirements of Business Licensing and to provide certainty and ease for Business Actors in obtaining suitability for spatial use activities, this Law amends, deletes, and / or stipulates new provisions for several provisions stipulated in...

Article 18

Several provisions in Law Number 26 of 2007 concerning Spatial Planning (State Gazette of the Republic of Indonesia Number 68, Supplement to the State Gazette of the Republic of Indonesia Number 4725) are amended: ...

There is one thing that is the conclusion of the Employment Copyright Bill. A quo bill has unclear status as a source of law. It is still a question as to whether the law is a change law or a new law. If the a quo bill is recognized as a new law and the main material in this law is the subject matter of the amended bill, then this law is invalid because it contradicts the main material set out in the annex to P3 Law where the main subject of the a quo bill is subject matter of change. This is contrary to the technique of drafting the type of legislation. Other problems also arise if the Employment Creation Bill is a change bill because the main subject matter is set against the annex to Law P3 where the a quo systematic regulation material changes in laws and regulations, the material for legislation changes more than 50% (fifty percent), and change the essence of the amended laws with new enthusiasm, namely the spirit in creating jobs, improving the investment ecosystem, and accelerating national strategy projects⁵⁶. The provisions governing this matter read as follows:

If a change in statutory regulation results in:⁵⁷

- a. the systematic changes in the statutory regulations;
- b. the material of the Statutory Regulations has changed more than 50% (fifty percent); or
- c. the essence changes.

The amended legislation is better revoked and rearranged in the new legislation regarding the matter. There are two alternative solutions to the problem in this problem. First, Zainal Arifin argues that in order to ratify the Employment Creation Bill on the status quo it is necessary to make changes to the P3 Law to further regulate the a quo bill⁵⁸. It should be remembered that the provisions contained in the P3 Law determine the validity of a statutory regulation. In addition, this is supported by the fact that there is a contradiction in the existing arrangements between the Employment Copyright Bill and the P3 Law, so that one of the rules must yield and change according to each other. The holding of the changes will have implications for further regulation of the laws and regulations and a quo bill can be accommodated in legislation that does not conflict with Law P3. However, changes to the P3 Law must consider its urgency because the P3 Law was revised one year ago and the issuance of Law No. 15 of 2019 as the Second Amendment Law to Law P3. Second, following the facultative order number 237 appendix II of Law P3, the Employment Copyright Bill as a contradictory law can be formally revoked and revised to include material that is contrary to Law P3, so that in the end the content of the bill a quo corresponds to the material content regulated in Law P3.

55. Lihat Pasal 17 dan 18 Rancangan Undang-Undang Cipta Kerja

56. Ibid

57. Lihat Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan (Lembaran Negara Nomor 82, Tambahan Lembaran Negara Republik Indonesia Nomor 5234)

58. Seminar Nasional "Peluang dan Tantangan Menuju Omnibus Law di Indonesia. Dies Natalis Fakultas Hukum Universitas Gadjah Mada 2020. Thursday, February 13, 2020

General provisions are one of the parts contained in each Act that covers issues of understanding the terms and phrases of the material content governed by the Law and contained in article 1⁵⁹. General provisions also contain any general definition or definition applicable to the next article that reflects between the provisions which reflects principles, intentions, and goals⁶⁰. This general provision, according to the expert, is one of the concerns in the government discourse in issuing Omnibus Law. Maria Farida argued that the drafting of this concept would make it difficult to formulate general provisions in drafting legislation⁶¹. This is also supported by the argument that the omnibus is as a general lex, ie as a general law, not a lex specialis. As a general lex, the omnibus is general in nature and regulates some material content related to other laws, both directly and indirectly. Correlation regarding general provisions and the nature of the lex general omnibus has implications for the possibility of inconsistencies in public provisions caused by the generalization of several general provisions into one.

There are three things that can be studied here. First, if we look at the first paragraph, the authority of the central government in changing the provisions of the law is very broad. The central government referred to by referring to the general provisions of the Employment Creation Bill is the President of the Republic of Indonesia⁶². The President has the authority to determine the provisions of laws which are regulated and which are not regulated in a quo bill. This certainly violates the principle of trias politica power sharing in which the executive power is very strong in intervening in the main tasks carried out by the executive and judiciary institutions.

Second, government regulations do not have the power to change laws because government regulations are in the hierarchy of statutory regulations, in casu, article 7 of the P3 Law is lower than the position of the law⁶³. The hierarchy in article 7 of a quo law is a manifestation of stufenbau theory originated by Hans Kelsen, where legislation is basically hierarchical⁶⁴. 36 Basically, this theory argues that there are rules that are higher and there are rules that are lower than other rules.³⁷ This theory is known to be a legal principle that reads *lex superior derogate inferior legi*. This principle implies that the lower law must not contradict the higher law.³⁸ this mistake is very fatal and violates existing laws and regulations. As we know that government regulation is one of the implementing regulations that functions as a regulation that regulates technical matters and is a delegation of material provisions concerning the Law. It's funny that the government made a very basic mistake in placing implementing regulations that could change laws of a higher degree.

Third, if we pay attention in Article 170 to the third paragraph, the central government as the President of the Republic of Indonesia has an alternative option to consult with the leadership of the Indonesian House of Representatives in changing the provisions of the law. The president as an executive has been arranged to have very broad authority as explained in the first argument. The existence of facultative options for the president will have implications for the impact of not including the DPR as a legislative body in changing the provisions of the law so that power will be skewed in the executive field

Discussing the diffusion of the Omnibus Law in Indonesia is closely related to the P3 Law, because the a quo Act as the implementer of the 1945 Constitution of the Republic of Indonesia is related to the formation of legislation in Indonesia. Knowing the law that provides regulations relating to the formation of

59. Ibid

60. Maria Farida, 2006, Ilmu Peraturan Perundang-undangan, Penerbit PT Kanisius, Jakarta. p. 122.

61. Loc.cit. Seminar Nasional

62. Lihat Ketentuan Umum RUU Cipta Lapangan Kerja

63. Loc. Cit UU No. 12 Tahun 2011

64. Hans Kelsen, 2000. Pengantar Teori Hukum, Terjemahan Siwi Purwandari, Nusa Media, Bandung. p. 105

the law will lead to the question of the Omnibus Law as the urgency of law in Indonesia - is it appropriate because the a quo Law does not regulate the Omnibus Law intended above. LBH Jakarta Director Arif Maulana said “This Omnibus Law has no legal basis ...”⁶⁵. His words have the implication that there is no foundation for Omnibus Law in Indonesia. In addition, more questions arise that are more relevant to the solution of legal order in Indonesia if the Omnibus Law continues to be applied, will it change the existing provisions in the Act a quo for the sake of an Omnibus Law or create a legality mechanism for the new Omnibus Law without touching Law on the formation of laws and regulations. Even the Coordinating Minister for Political Law and Human Rights (Menkopolhukam), Mohammad Mahfud MD, said that the initial stage of realizing Omnibus Law must be initiated by revising Law P3⁶⁶.

If we look at the relationship with P3 Act it does not exist because it is within the body of P3 Law it does not contain material content about the Omnibus Law even after an update was made in Law Number 15 Year 2019. However, the relationship between the P3 Law as the basis for the formation of laws and regulations in Indonesia with Omnibus Law as a breakthrough does not mean there is no absolute. Considering that the Omnibus Law will also constitute a legal basis for sectional problems in Indonesia, in presenting it must comply with the P3 Law both from the technical formation to the formulation mechanism. The formulation mechanism includes the attitude of not ignoring some of the principles that have become its provisions as well as the participatory principle that must be met by the government. The statement is based on legal concerns that have legal force and are legally enforced so that they can ensnare citizens with criminal provisions means that they act equally as laws that have both legality and legitimacy in society.

Compliance with Law P3 must be a priority because if it is ignored, it will cause several problems including the following,

1. If the Omnibus Law is not compliant with P3 Law, there is a possibility that the Omnibus Law has no legitimacy in the community even though the government unilaterally enforces its legality.
2. If the Omnibus Law does not comply with the provisions in Law P3, there will be a risk of legal distortion because the foundation built since 2011 has been damaged by the existence of the government that is currently carrying the reins of government.
3. If the Omnibus Law is presented in a way that is enforced and ignores the technical legality of the laws stipulated in Law P3, then there will be an absence of certainty, usefulness, and justice that has been aspired by every rule of law.

Conclusion

The idea of the Omnibus Law immediately got a polemic in the community because in the drafting of the Employment Copyright Bill, the sociological foundation seemed fabricated and did not reflect the actual needs of the community. It can even be said that in the formation of the Employment Creation Bill it is most likely that there is a paradigm difference that is the paradigm for the sake of the people or for the sake of the country. The paradigm for the sake of the people prioritizes the things that are needed by the community while the paradigm of the government in the establishment of the Employment Copyright Bill is more for the creation of rapid economic growth. This can be seen from various government statements which state that the Employment Creation Bill is a means of simplifying and harmonizing regulations aimed at facilitating investment in Indonesia in the hope of having a positive impact on increased investment.

65. Arif Maulana dalam Jumpa Pers di Jakarta, Wednesday, January 8, 2020

66. Berita Hukum Online, “Menkopolhukam: Omnibus Law Butuh Revisi UU Pembentukan Peraturan”, <https://www.hukumonline.com/berita/baca/lt5dcbd9a089d87/menkopolhukam--omnibus-law-butuh-revisi-uu-pembentukan-peraturan/>, Accessed June 21, 2020,22.43.

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