



# THE 1st PROCEEDING

**International Conference And Call Paper** 

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

## **IMAM AS' SYAFEI BUILDING**

Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh : **UNISSULA PRESS** 

ISBN. 978-623-7097-74-7

# COMITTE OF THE 6<sup>th</sup> PROCEEDING INTERNATIONAL CONFERENCE AND CALL PAPER

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

Susunan Panitia

Pengarah : Prof.Dr.H. Gunarto, S.H., S.E.Akt., M.Hum.
Penanggung Jawab : Dr. Hj. Anis Mashdurohatun, S.H., M.Hum.
Ketua : Dr. Hj. Sri Endah Wahyuningsih, S.H.,M.Hum

Sekretaris : Nailul Mukorrobin, S.Psi Bendahara : Erna Sunarti, S.Pd., M.Hum

Seksi Acara : Muhammad Ngazis, S.H., M.H.

Marcela Dinda, S.Kom

Shinta Puspita, SE.

Seksi Konsumsi : Bambang Irawan

Siti Pardiyah

Riswanto

Kesekertariatan : Slamet Ariyanto, S.T.

Agus Prayoga

Reviewer : Prof. Dr. Eko Soponyono, SH., M. Hum.

Prof. Dr. Hj. I Gusti Ayu KRH, SH., MM.

## Hak Cipta © 2020, pada penulis

Hak Publikasi pada penerbit UNISSULA PRESS

Dilarang memperbanyak, memperbanyak sebagian atau seluruh isi dari buku ini dalam bentuk apapun, tanpa izin tertulis pada penerbit.

Hal I-IX, 1-258

#### Cetakan Pertama Tahun 2020

## Penerbit UNISSULA PRESS

Jl. Raya Kaligawe Km. 4 Semarang 50112

PO BOX 1054/SM,

Telp. (024) 6583584, Fax. (024) 6594366

ISBN. 978-623-7097-74-7

## **Editor:**

M. Ngazis, SH.,MH Erna Sunarti, S.Pd.,M.Hum. Nailul Mukorobin, S.Psi.

## **Desain Cover:**

Muh. Arifin, S.Kom

Desain Lay Out:

Suryo Atmojo, SH

**ISBN**:

978-623-7097-74-7

Penerbit:

**UNISSULA PRESS** 

## Alamat:

Jl. Raya Kaligawe KM. 4 PO. Box. 1054/SM

Semarang 50112 – Indonesia

Phone: +6224 6583584 (8 Saluran) psw. 569

Fax. + 6224 6592735

Email: pdih.fh@unissula.ac.id

www.pdih.unissula.ac.id / www.apic.unissula.ac.id

## KATA PENGANTAR

## Bismillahirrohmanirrohim

## Assalamu'alaikum Wr. Wb.

Puji syukur kehadirat Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadirat Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "Omnibus Law Opportunities And Challenges Towards Entrepreneurs And Labor: Comparative Review" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah mebahas berbagai keilmuan Hukum dan Humaniora.

Sesungguhnya keberhasilan dalam mencapai tujuan pendidikan yang dicitacitakan sangat tergantung pada sikap mental, partisipasi serta disiplin setiap unsur yang terlibat dalam prosesbelajar mengajar. Mudah-mudahan seminar Internasional yang sederhana ini dapat memberi sumbangsih dalam mencerdaskan bangsa Indonesia serta semoga Allah SWT selalu menyertakan ridho-Nya. Amin. Akhir kata, kami mengucapkan terima kasih kepada pimpinan Universitas Islam Sultan Agung, pimpinan fakultas Hukum Unissuala, pemakalah, editor dan serta pihak-pihakyang telah membantut erselenggaran ya seminar ini dengan lancar tan pahambatan suatu apapun.

Wassalamu'alaikum Wr.Wb.

## Table Of Content

STRENGTH AND WEAKNESSES OF UNINIBUS LAW IN INDUNESIA	
Saprodin, Widarto	1
OMNIBUS LAW BETWEEN JUSTICE AND BENEFITS	
Hartanto, Aris Sudarmono	7
JURIDICAL REVIEW OF THE FORMATION AND IMPLEMENTATION OF OMNIBUSLAW IN LAW SYSTEM  Amir Darmanto ,Muh. Tommy Fadlurohman	14
IMPACT OF LAW OMNIBUS APPLICATION IN INDONESIA IS POSSIBLY HAPPENING TO ENVIRONMENT DEGRADATION	
Sunarto ,Eva Kurniasih	19
Omnibus Law in Progressive Law Views in Indonesia  Nasrudin ,Joko Prasetyo	25
OMNIBUS LAW WAS REVIEWED FROM THE EXCESS AND LACKS OF THE I CODIFICATION SYSTEM IN INDONESIA	LEGAL
Binov Handitya ,Jarot Jati Bagus Suseno	32
OMNIBUS LAW AS SIMPLIFICATION OF LEGISLATION IN INDONESIA	
FA Alexander GS ,Sundoyo	38
PREROGATIVE RIGHTS OF PRESIDENTS IN OMNIBUS LAW	
Tri Mulyani ,Sih Ayuwatini	44
OMNIBUS LAW AND IT'S IMPLEMENTATION OF INDONESIAN COUNTRY MARITIME DEFENSE AND ISLAMIC LAW VIEWS ABOUT STATE DEFENSE	
Aminudin Yakub ,Teddy Prayoga	50
OMNIBUS LAW AND PROBLEMATICS LABOR IN INDONESIA  Nukhbatul Mankhub , Aep Saepudin <sup>2</sup>	57
OMNIBUS LAW IN INDIGENOUS LAW VIEWS IN INDONESIA	
Carolina da Cruz ,Suwitno	63

OMNIBUS LAW IN RENEW OF CRIMINAL LAW	
Lukman Muhadjir ,Salidin	69
URGENCY OF THE OMNIBUS LAW BILL	
Andi Lala ,Sudiharto	77
THE APPLICATION OF OMNIBUS LAW IN THE EFFECT OF LEGAL REINDONESIA	CFORM IN
Warijan ,Tri Setyadi Artono	85
OMNIBUS LAW IN ECONOMIC DEVELOPMENT CONTEXT IN INDONI	ESIA
Indrayana Addhywibowo Kusumawardana ,Iva Amiroch	93
IMPLEMENTATION OF OMNIBUS LAW IN LAW OF WORK FIELD IN I	NDONESIA
Yimmy Kurniawan ,Henny Rosita	101
OMNIBUS LAW OPPORTUNITIES AND CHALLENGES IN THE INDONE LEGISLATION SYSTEM	ESIAN
Yuni Nurkuntari ,Sunardi	109
OMNIBUS LAW IN COMPLETION OF LAND REGULATION PROBLEMS	S
Enju Juanda, Mairul	117
LAW OF OMNIBUS LAW BUSINESS AGENCY FOR INDONESIAN COMN WELFARE	MUNITY
Ilham Akbar ,Ahmad Husaini	125
THE CONCEPT OF OMNIBUS LAW RELATED TO NORMAL LAW APPLINDONESIA	ICABLE IN
Ariyanto ,Joncik Muhammad	133
OMNIBUS LAW FOREIGN INVESTMENT IN INDONESIA	
Adhi Budi Susilo ,Irwanto Efendi	141
OMNIBUS LAW AND THE NEED OF INDONESIAN ECONOMIC INVEST VIEWED FROM ISLAMIC LAW VIEWS RELATED TO ECONOMY	MENTS
Ahmad Syauqy S , Yanto Irianto	149

CRITICISM OF THE COMMUNITY IN THE OMNIBUS LAW BILL	
Sitta Saraya ,Puguh Triatmojo	156
MANIFESTATION OF PANCASILA VALUES IN THE OMNIBUS LAW FOR JUSTI	CE
Andri Winjaya Laksana	164
LEGAL REVIEWOF LAW PROTECTION THEORY IMPLEMENTATION IN DISP OF ADMINISTRATIVE COURT	
Ahmad Yani	174
OMNIBUS LAW ON JOB CREATION BILL IN THE ZEMIOLOGY PERSPECTIVE	C
Arif Awaludin, Eti Mul Erowati, Ninik Hartariningsih	182
Application Of <i>Omnibus Law</i> In The Investment Field As A Efforts To The Settlement Licensing Regulation And Harmonization Of Law Regulation In Indonesia  Galuh Kartiko Ludfi Djajanto, Rosy Aprieza Puspita Zandra	101
	171
DEAL CONSTRUCTION OF THE IMPLEMENTATION OF A CONSTITUTIVE SYSTEM ("FIRST TO FILE") IN BRAND REGISTRATION	
Hani Subagio	202
CRIMINAL PUNISHMENT AGAINSTPERPRETRATORS OF HUMAN TRAFFICK Johny Koesoema	
WEAKNESSES OF THE LEGISLATION FUNCTION OF THE REGIONAL	
REPRESENTATIVE COUNCIL IN THE BICAMERAL PARLIAMENT SYSTEM IN INDONESIA	[
Kelik Endro Suryono	220
UTILIZATION OF VILLAGE FUNDS ACCORDING TO LAW NO. 6 OF 2014 TO PREVENT CRIMINAL ACT OF CORRUPTION	
M. Rohmidhi Srikusuma	227
POTENTIALS OF NATURE TYPE AROUND BY THE ADVANCED: JURIDICAL ANALYSIS OF LAW OMNIBUS LAW DRAFT OF LAW	
Subaidah Ratna Juita, Deni Setya Bagus Yuherawan	225
moanaan Kana Jana, Deni berya Dagas Tanerawan	433

MEDIATION ROLE IN SOLVING SHARIA ECONOMIC DISPUTE AS CIVILI	ZATION
TOWARD ETHICAL VALUE OF ISLAM	
Santoso	240
THE IMPLEMENTATION OF CRIMINAL CONVICTIONFOR CHILDREN UN	DER
THE AGE OF CRIMINAL RESPONSIBILITY BASED ON JUSTICE VALUE	
Yustinus Bowo Dwinugrono	251
Re-Conceptualizing Workers' Constitutional Rights in the Cipta Kerja Bill based o	n the
Indonesian Welfare State Principles	
Zulkarnain Ridlwan, Yuswanto, Muhtadi, Yusdiyanto	258

# Application Of *Omnibus Law* In The Investment Field As A Efforts To The Settlement Licensing Regulation And Harmonization Of Law Regulation In Indonesia

## GaluhKartiko<sup>1</sup> Ludfi Djajanto<sup>2</sup> Rosy ApriezaPuspita Zandra<sup>3</sup>

1,2,3 Accounting Department, State Polytechnic of Malang, Malang Indonesia galuh.kartiko@polinema.ac.id

#### Abstract

This study aims to analyze the conceptual implementation of the omnibus law that should be in the legal system of legislation in Indonesia and the application of the Omnibus law in the field of investment in resolving licensing regulatory issues. The doctrinal examines the basic rules and legislation regarding the problems faced in the application of the omnibus law in response to problems that are almost investment in Indonesia. Omnibus Law can be simply interpreted as one law that can change several laws at once. There are three conditions for practicing the omnibus law, that is, the law to be changed is directly related, the law to be changed is not directly related, and the law to be changed is not related but is in tangent practice. The target to be achieved is to create a friendly and adequate investment ecosystem to support the demographic bonus currently being experienced by Indonesia. The regulation is directed at the ease of doing business and the simplification of regulations in investment, overlapping legislation. Implementation regulations need to be prepared immediately. The Draft Investment Law is accelerated because of the increasingly competitive competitive global economic competition in filtering and creating a friendly, effective and efficient investment climate.

Keywords: omnibus law, investment, harmonization of laws and regulations

## Introduction

The background to the emergence of the *omnibus law*idea is the complexity of investing in Indonesia. The complexity arises in several ways, namely licensing, taxation, land acquisition, and other aspects related to investment.

The presence of the *omnibus law* is expected to make it easier for investors to invest. The investment benefits for the state are (1) getting new capital to help the government build infrastructure, (2) opening up employment opportunities, (3) advancing certain fields, (4) increasing state revenue, and (5) protecting the country.

The existence of domestic investment will correlate with the entry of new capital to assist the government in the framework of infrastructure development. The role of investment is very significant for

infrastructure development given the limited funds owned by the government to finance various types of infrastructure projects. In addition to infrastructure, other sectors are also considered attractive to investors for funding. In this case the Indonesian government has always competed with countries other to attract foreign investors to fund the urgent sectors.

The problems faced in increasing investment are worsening investment climate due to long and expensive investment licensing procedures, low legal certainty, weak investment incentives, low quality human resources and limited infrastructure, there is no clear policy to encourage technology transfer from foreign investment (PMA). It continues to be a *concern* and attention to when this response to the fact disharmony Law conveniences expected level of investment and branches doing business in Indonesia is difficult, the government has made various efforts to overcome them. One of them is by issuing PP No. 24 of 2018 concerning Electronic Integrated Licensing Services or more popularly called PP OSS *(Online Single Submission)*. *The* OSS *platform* is to simplify the management of investment permits into one door. In addition, the promised permit application will be faster, even in just one hour. The OSS system was built because of the many complaints from investors regarding convoluted licensing and bureaucracy. The handling cannot be monitored to what extent it runs. With this application, investors are certain to be able to directly monitor the progress of the proposed permit. So once the permit is found to stop at the local government, for example, it can be immediately dealt with quickly by the task force.<sup>1</sup>

The author is of the opinion that Indonesia can adopt an *omnibus law* to create investment legal instruments that can increase investment interest in Indonesia. This is because the problems regulated in investment law are very complex. Not only the problem of investors coming and investing their capital, but it is closely related to various aspects such as employment, infrastructure, fiscal and non-fiscal incentives and others as such. The complexity of this problem is what it has not yet been regulated in the Investment Law. Later it was only thought of and its arrangement was issued in the form of PP, Perpres or Permen. Article 7 paragraph (1) of Law no. 12 of 2011 concerning the Formation of Regulations and Regulations as amended by Law Number 15 of 2019 (Law No. 12 of 2011) contains the types and hierarchy of legislation consisting of:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Stipulation of the People's Consultative Assembly;
- c. Law / Government Regulation in Lieu of Law;
- d. Government regulations;
- e. Presidential decree;
- f. Provincial Regional Regulations; and
- g. Regency / City Regulations.

The legal force of legislation in accordance with the hierarchy in Article 7 paragraph (1) of Law no. 12 of 2011 (Law No. 12 of 2011). Regulation of the legal force Legislation is closely related to the theory of Hans Kelsen level legal norm as a norm of lower sourced and based on the higher norm. So that lower legislation should be harmonious with higher legislation.

Harmonization of the laws and regulations of the *common law : Omnibus law is* very important in the development of law in Indonesia. *Omnibus Law was* born from the tradition of the *common law* system and many countries with *civilian* traditions have used it. In Indonesia, the practice of *omnibus law* can be seen in Perpu Number 1 of 2001, Law Number 23 of 2014 concerning Regional Government, Omnibus Law

has been stipulated at the level of TAP MPR RI, namely RI MPR Decree Number I / MPR / 2003. The law resulting from the *Omnibus Law* concept can be referred to as an umbrella law because it is fully regulated and then has power over other rules. The harmonization of *Omnibus law* becomes a protector for regional officials who want to innovate and create for economic progress and investment.

Some of the objectives of establishing the Omnibus Law include:

- 1. Overcoming conflicts of laws and regulations quickly, effectively and efficiently;
- 2. Uniforming government policies both at the central and regional levels to support the investment climate;
- 3. Licensing management is more integrated, efficient and effective;
- 4. Able to break the long bureaucratic chain;
- 5. Increased coordination relationships between related agencies because it has been regulated in an integrated omnibus regulation policy;
- 6. There is guaranteed legal certainty and legal protection for policy makers<sup>2</sup>

According to Maria Farida Indrati"changes in a statutory regulation are made, if there are provisions in the laws and regulations that are no longer in accordance with the situation or conditions prevailing in society.<sup>3</sup>

Amendments to a law or regulation may include the following:

- 1. Add or add new provisions, refine or delete existing master regulations, both in the form of chapters, sections, paragraphs, chapters, paragraphs, as well as wording, letters, punctuation marks and others.
- 2. Replacing a provision with other provisions, in the form of chapters, sections, paragraphs, articles, paragraphs, as well as words, numbers, letters, punctuation marks and others.<sup>4</sup>

Seeing the disharmony facts of the Law for investment and the level of youth development in Indonesia which is difficult, making *omnibus law* applicable in Indonesia. The writing is the result of this research.

Describing How can Implementation of *the omnibus law* yang should the legal system Legislation in Indonesia and Is Application*Omnibus law* in the field of investment can solve the problems of regulation and Licensing.

The concept of law in Indonesia in the sequence of legislation as regulated in Law No. 11 of 2012 concerning the formation of laws and regulations only set the law as the highest, do not know the rules above the law. But if you regulate the same regulatory objects, it might not matter because you don't touchother legal objects. 5 *Omnibus Law is* in the form of a Law and is not a Basic Law, but which is equivalent to other Laws wholly or partly amended or removed by making new norms. 6

### **Methods of Research**

The paradigm used in this study is the constructivism paradigm which is the opposite of understanding which places observation and objectivity in discovering reality or science.<sup>7</sup> The paradigm also views social science as a systematic analysis of the Action of Social Meaning through direct and detailed observation of the problem being analyzed.

This research is a qualitative research. Writing aims to provide a description of the community or a certain group of people or a description of symptoms or between two or more symptoms.

The approach (approach) of this research is to use the Socio-Legal approach<sup>8</sup>, which is based on legal norms and law enforcement theories that exist from a sociological point of view as interpretations or interpretations.

The research sources used in this study are:

- 1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
- 2. Secondary Data, is an indirect source that is able to provide additional and strengthening research data. Secondary data sources include: Primary Legal Materials and Secondary Legal Materials and Tertiary Legal Materials.

In this study, researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data<sup>9</sup>. Qualitative data analysis is the process of searching for, and systematically collecting data obtained from interviews, field notes and documentation by organizing data into categories, describing them into units, synthesizing, organizing into patterns, choosing important names and what will be learned and make conclusions

## **Research Result and Discussion**

## 1. The application of the *omnibus law* that should be in the legal system of legislation in Indonesia

According to Heri, the concept of the *omnibus law* in its manufacturing mechanism must follow the procedures set out in Law No. 15 of 2019 concerning the Formation of Legislation, ranging from planning, drafting, discussion, to endorsement. He considered, the *omnibus law* scheme was too sectoral and narrow. However, on the other hand it is good for stimulating investment and exports. Indeed, if the *omnibus law is* applied, it must of course have a significant impact on better economic growth.<sup>10</sup>

Economic growth which is currently experiencing a slowdown and only reached a figure in the range of 5 percent is considered not enough to avoid the threat of *Middle Income Trap* (MIT). Indonesia itself is still an *Upper Middle* Income country .P there in 2019 with a GNI per capita of USD 6,010. Therefore, in the National Medium-Term Development Plan (RPJMN) National Development Planning Agency (Bappenas) for 2020-2024, the Government has targeted economic growth to grow an average of 6 percent in 5 years and GDP per capita growth of 4.0 +/- 1 percent.

## 2. Problems and Potential Overlap / disharmony between articles in the Act or between articles between Laws:

From the results of assessment issues and potential overlap/disharmony Regulation of law, it can be described as follows:

- a. Aspects of authority;
  - There is an inconsistency between Article 1 number 1 and Explanation of Article 2 of Law No. 25 of 2007 concerning Capital Arrangement related to investment concept / terminology. (Revised Article 1 number 1 of Law No. 25 of 2007 concerning Equation of Capital)
  - The non operation of the articles related to mining business permits (Revised Article 6 paragraph 1 letters f and g of Law No. 4 of 2009 concerning Minerba).

- Misuse of sales and transportation permits by holders of Exploration IUP (Revised Article 43 paragraph (2) of Law No. 4 of 2009 concerning Minerba).
- Overlapping and duplication related to mining permit authority between the Ministry of Energy and Mineral Resources and the Ministry of Industry (Revised Article 104 paragraph (2) with Law No. 5 of 1984)
- Article 124 paragraph (3) of the Minerba Act is not operational related to Limitation of mining service business. (Revised Article 124)
- Investment authority in the electricity sector related to licensing that is repetitive in the duration of time (Revision of Article 5 of Law No. 30 of 2009 concerning Electricity)
- Multiple interpretations of the authority in the provision of electricity (Revised Article 11 paragraph 3 and paragraph (4) of Law No. 30 of 2009 concerning Electricity.
- Theselling price of electricity and electricity grid leases surrendered to the market mechanism caused the price to be uncontrolled (Revised Article 33 paragraph (1) of the Electricity Law.

## b. Aspects of Rights and Obligations, including:

- Transfer of investor assets to the parties desired by investors creates legal uncertainty (Revised Article 8 paragraph (1) of Law No. 25/2007 concerning Capital Investment
- Ease of service and / or licensing of 8 terrestrial land conflicts with the Basic Agrarian Law (Revised Article 22 of Law No. 25 of 2007 concerning Investment)
- Conflict between Law No. 4 of 2009 concerning Minerba (Article 91) with Law no. 22 of 2009 concerning Road Traffic and Transportation (Revised Article 28 paragraph 1)
- The ambiguity of the definition of "heavy company" and / or "national" provides a number of entries for a number of businesses that actually have better competence (Revised Article 127 of Law No. 4 of 2009 concerning Minerba)
- The non-operation of the provisions in Article 170 of the Minerba Law is related to the obligation for KK holders to carry outpurification as mandated in Article 103 paragraph (1). (Revised Article 170)
- Understanding the definition of strike strikes multiple interpretations (Revised Article 1 paragraph (23) of Law No. 13 of 2003 concerning Labor.
- Provisions on Specific Time Work Agreements give rise to multiple interpretations (Revised Article 56 Paragraph (1) of Law No. 13 of 2003 concerning Manpower.
- The term extension and interpretation which has multiple interpretations (Revised Article 59 paragraph (50 and paragraph (6) of Law No. 13 of 2003 concerning Manpower).
- Layoff mechanism that requires a long process and time that has the potential to harm both parties (workers and employers) (Revised Article 155 of Law No. 13 of 2003 concerning Employment).
- The amount of severance pay granted creates compensation uncertainty (Revised Article 156 of Law No. 13 of 2003 concerning Employment.
- There is an injustice in granting compensation between layoffs caused by violations and layoffs due to resignation (Article 161 of Law No. 13 of 2003 concerning Labor)
- Differences in interpretation related to provisions regarding compensation money (severance pay) (Revised Article 163 of Law No. 13 of 2003 concerning Labor).
- The provision of Article 10 is contrary to the decision of the Constitutional Court No. 001-001-

- 022.PUU-I / 2003 dated 15 December 2004 which has canceled Article 16, Article 17 paragraph (3) and Article 68 of Law No. 20 of 2002 concerning Electricity related to efforts to provide labor (Revoke Article 10 of Law No. 30 of 2009 concerning Electricity)
- The regulation of technical requirements to fulfill electricity standards needs to refer to Law No. 20 of 2014 concerning Standardization and Conformity Evaluation (Revised Article 46 paragraph) letter c)
- Obligations for the government and regional governments to make and carry out environmental strategic studies are not accompanied by sanctions (Revised Article 15 of Law 32/2009 concerning Environmental Protection and Management).
- Allocation of budgets for the recovery of polluted / damaged environments by not providing strict sanctions for their polluters (Revised Article 46 of Law No. 32 of 2009 concerning Environmental Protection and Management)

## c. Protection aspects, including:

- Outsorcing provisions that are multiple interpretations resulting in conflicts between workers and employers (Revised Article 64 of Law No. 13 of 2003 concerning employment)
- Provisions regarding long breaks are unclear so they are not operational (Revised Article 79 paragraph (4) of Law no. 13 of 2003 concerning Employment)
- Determination of the State Reserve Area (WPN) to become a Special Mining Business Area (WUPK) within the conservation forest (Article 27) collides with Law No. 5 of 1990 concerning Conservation and Living Natural Resources (Revised Article 8)
- Understanding related to the principle of equal treatment and does not distinguish the origin of the unity (Revised Article 3 paragraph (1)) of Law no. 25 of 2007 concerning Investment)
- The inconsistency of regulation in the Act with its implementation regulations related to the use of foreign workers (Revised Article 42 of Law No. 13 of 2003 concerning Manpower and Article 10 of Law No. 25 of 2007 concerning Investment)

### d. Law Enforcement Aspects, including:

- Ineffective sanctions against perpetrators of forest fires (Revised Article 108 of Law No. 32 Year 2009 concerning Environmental Protection and Management).

Based on the above problems, in structuring regulations, Indonesia needs to implement a new legislation technique, the *Omnibus Law* technique .By using the *Omnibus Law* technique, problems in various laws can be resolved without having to revise various laws whose substance is related to licensing, but only by making a new law amending the articles in several laws.

Omnibus Law is a method for making a regulation or law that consists of many subjects or subject matter for certain purposes in order to deviate from a regulatory norm. Omnibus is different from most of the draft rules in terms of the amount of the substance is covered, the number of articles that set (size), and the last of sisikompleksitas. Dalam an Act Omnibus includes almost all substance-related material. The Omnibus Law reflects anintegration, codification of regulations whose ultimate goal is to make the application of these regulations effective. Omnibus law legislation techniques from both theoretical and practical aspects are still not very well known in Indonesia.

Omnibus law is a method for producing quality laws not in the form of legal products. As well as various techniques / methods of forming legislation that have been quite popular in Indonesia such as:

Regulatory Impact Assessment (RIA) and Rule, Opportunity, Capacity, Communication, Interest, Process ,Ideology (ROCCIPI). In that case, there are norms in regulations legislation that is produced through legislation techniques delete or change a norm and re-regulate it in the Law that is formed is a common thing in the formation of the Act. However, given the omnibus law legislation technique, it is still very rarely practiced in Indonesia.

# 3. Implementation Omnibus law in the field of investment and settlement of problems of regulation and Licensing

The government as the state organizer has an important and strategic role in economic development aimed at improving the quality of life and welfare of all its citizens. (Increasing public welfare is one of the objectives of the Indonesian State, the affirmation of this is contained in the opening of the 1945 Constitution along with all the ideas contained in the Body of the Constitution, namely that the state wants to realize social justice for all people. Embodiment of the principles of economic democracy in Indonesia is translated in article 33 paragraph (1) of the 1945 Constitution which reads "The economy is prepared as a joint effort on the principle of kinship".

The use of the principle of kinship as a form of Indonesian economic democracy that is not based on individualism, but to achieve mutual prosperity and as an affirmation of the economic sovereignty of the Indonesian nation) Investment is seen as one of the ways believed to be able to improve people's welfare by increasing infrastructure development activities that absorb labor, and repair infrastructure such as electricity that is still lacking in various regions and other facilities and infrastructure that can support development. The objectives of capital investment can be achieved if the factors that hinder the investment climate can be overcome, among others, through improved coordination between central and regional government agencies, creation of an efficient bureaucracy, legal certainty in the field of investment, competitive economic costs and a conducive business climate in the field of employment and business security. With the improvement of various supporting factors, it is expected that investment realization will improve significantly. (General Explanation of Law Number 25 Year 2007 concerning Investment).

The substance of the *omnibus law* will later be across the legal sector. This clearly contradicts the formation of a law in a strict *civil system* and its rigidity is limited to the title of the law . *The omnibus law* is a format for the formation of a comprehensive law by taking part in regulating the material of other laws which are interrelated with the substance governed by the amended or formed law. <sup>11</sup>

One of the government's strategies in order to encourage economic growth through increased investment is reforming regulations in the field of business licensing. Reforms need to be made to resolve investment barriers, namely the length of the bureaucratic chain, overlapping regulations, and the number of regulations that are not harmonious, especially in central and regional regulations (*hyper-regulation*). Therefore, deregulation of the provisions regarding business permits, investment requirements, employment, Micro, Small and Medium Enterprises (MSMEs), land acquisition, economic development, implementation of government projects, and provisions on government administration and the imposition of criminal sanctions are regulated in various The law.

In the case of the deregulation process, it is carried out on a *business-as-usual* basis by amending one law at a time, so it will be difficult to complete in a quick and integrated time. Therefore, the application

<sup>11.</sup> Asshiddiqie, J( 2019). UU Omnibus (Omnibus Law) Penyederhanaan Legislasi dan Kodifikasi Administratif. Tersedia online

of the *OmnibusLaw*method is *needed*, (*Omnibus Law* is a practice of drafting legislation, which is mostly carried out in countries that adopt the *commonlaw / Anglo-Saxon system* such as America, Canada, Britain, the Philippines and others. The process is called *Omnibus Legislating* and the product is called *Omnibus Bill, the* word Omnibus comes from Latin which means everything or everything (*for everything*).

By forming a thematic law that changes the various provisions stipulated in various other laws. The *concept of the omnibus law* can actually be a solution to simplify too many regulations, as experienced by Indonesia today. As revealed by Bappenas, from 2000 to 2015, the central government issued 12,471 regulations, with the ministry becoming the largest producer with 8,311 regulations. The next type of regulation is 2,446 government regulations. Meanwhile, the regulations issued by the regional government were dominated by 25,575 regency / city regulations, followed by the provincial regulation with 3,177 regulations.<sup>12</sup>

In addition to the regulation is too much, there are some other fundamental issues, first, non synchronization of planning regulations legislation, both at the central and regional planning and development policies. Second, there is a tendency for laws and regulations to deviate from the material content that should be regulated. Third, disobedience to the material content raises the problem of "hyper-regulation". Fourth, the effectiveness of legislation is also often a problem that arises during implementation. The situation is exacerbated by the absence of procedures for monitoring and evaluating legislation and the absence of specialized institutions that handle all aspects of the statutory system.<sup>13</sup>

The public is the subject of the enactment of the law must participate in it. The community must take part in determining the policy direction of the preparation of priority laws and regulations, without community involvement in its formation, it is impossible for these laws and regulations to be accepted and implemented properly. According to Nonet and Selznick, the importance of community participation in the formation of legal products must be seen in the participatory process of formation by inviting as much participation as possible from all elements of society, both in terms of individuals or groups of people, in addition it must also be aspirational that comes from the desire or will from the community.<sup>14</sup>

## 4. Harmonization Mechanism of Laws and Regulations

Actually the idea of making the *omnibus law* was previously expressed by SofyanDjalil as the Minister of Agrarian Affairs and Spatial Planning / National Land Agency of the Republic of Indonesia in 2017 as reported by okezone.com where a lot of rules that hinder the acceleration of development due to conflicting regulations so that the government has deliberate the *omnibus* law as an effort to shorten licensing. Edmond Makarim in his speech at the discussion of the Association of Alumni Organizations of State Universities in Indonesia on February 6, 2020 stated that Law No. 11/2008 on Electronic Technology and Information is one example of *omnibus slaw* where legal issues concerning cyberspace has been successfully outlined in one Law which fills the legal void.

In accordance with the president's directives that there will be 3 (three) laws that are made as a form

<sup>12.</sup> Bappenas dalam Pusat Studi Hukum dan Kebijakan Indonesia, Kajian Reformasi Regulasi di Indonesia: Pokok PermasalahandanStrategiPenanganannya, Jakarta, PSHK, 2019, hlm. 54.

<sup>13.</sup> Hukumonline.com, Menimbang Konsep Omnibus Law Bila Diterapkan di Indonesia, dipublikasi pada Jumat, 17 February 2017, https://www.hukumonline.com/berita/baca/lt58a6fc84b8ec3/menimbang-konsep-omnibus-law-bila-diterapkan-di-indonesia/

<sup>14.</sup> Philipe Nonet dan Philip Selznick, Law and Society in Transition: Toward Responsive Law, dalam A. Ahsin Thohari, "Reorientasi Fungsi Legislasi Dewan Perwakilan: Upaya Menuju Undang-undang Responsif", Jurnal Legislasi Indonesia, Vol. 8 No. 4 Desember 2011

of the *omnibus law* namely the taxation law, employment copyright law and the UMKM empowerment law. Third Law of the future will replace the related regulations are very diverse and cross sectoral. In this case Indonesian government has always competed with other countries to attract foreign investors to fund the sector-sektor important. If investment licensing is complicated and unclear, investors will be reluctant to invest and will prefer to invest in other countries. Based on the 2020 *Ease of Doing Business* report released by Bank World, Indonesia was ranked 73 out of 190 countries. In 2021 the EODB assessment indicator was the ease of investing in Indonesia.

The influx of foreign investment into Indonesia also have a positive impact that will be the emergence of new employment opportunities for job seekers. This employment is very beneficial for the community where it can provide an income to support their families. However, there is also a negative impact, which will civilize the community to depend on investors for their fate and if one day the investor leaves Indonesia will make the community have no income.

Foreign investment that enters Indonesia will be accompanied by the introduction of technology and knowledge that can later be copied and developed by the public. The existence of this new technology also indirectly brings Indonesia to be able to develop and subsequently compete with other countries.

Foreign investment is definitely correlated with the entry of fresh funds into Indonesia where the funds are always in the form of foreign exchange. To be able to use the foreign exchange will be taxed. The tax directly becomes the country's opinion.

Regional protection is one of the benefits of the entry of foreign investment into Indonesia because investors and the government will certainly try and try to maintain domestic stability. Where to happen ha l- things that are not desired, then the result in the termination of investment activities by investors and put the black list in its investment targets. Unwanted circumstances such as riots or security instability will be detrimental to investors.

Omnibus law becomes one of the solutions to attract foreign investors to Indonesia. Many, sectoral and overlapping regulations are the background of omnibus law. Omnibus law is also a solution for the slow process of legislation in Indonesia.

In the harmonization stage, there are 2 (two) problems that occur in the mechanism of the formation of laws and regulations: first, in the harmonization of the formation of laws, Presidential decree or Perpres; and second, harmonization in the formation of local regulations.<sup>15</sup>

So far, the problem of harmonization in the formation of Laws, PPs, and Perpres occurs because this stage looks more at the relationship of one regulation or draft regulation with other legislation without looking at the suitability of the substance with the material content of the type of statutory regulation. Impact, born of the substance of regulation is not the substance of the type of regulatory legislation specific.<sup>16</sup>

## **Conclusion**

Efforts to improve the welfare of the community require investment, but, in this regard, the community or the government faces various problems that hinder such efforts, including:

- 1. Business licenses are many types and convoluted and coupled with a process that requires a long time
- 2. Incriminating investment requirements

16. Ibid

- 3. Support of industry research that is low and not quite right in the business world
- 4. Procurement of land that is difficult and long and uncertain
- 5. Protection of UMK-M empowerment that is not yet optimal
- 6. Procurement of government projects that are less efficient
- 7. Government administration / bureaucracy is slow
- 8. Employment is not yet productive compared to neighboring countries
- 9. Imposing sanctions on investment/entrepreneurs which are mostly in the form of criminal sanctions
- 10. Special economic zone that is not optimal for encouraging investment in the region
- 11. Increased business for investors who are able to absorb labor.

If these problems can be overcome, it will have a positive impact on the improvement and improvement of the investment ecosystem in the midst of increasingly competitive world economic competition.

Furthermore, legally the existing laws and regulations overlap and lock in with each other, making them ineffective and inefficient and incurring high costs.

The target to be achieved is to create a friendly and adequate investment ecosystem to support the demographic bonus currently being experienced by Indonesia. The regulation is directed at increasing the workforce, ease of doing business and simplifying regulations

Implementation regulations need to be prepared immediately The investment bill needs to be expedited because of the connection with increasingly competitive global economic competition in filtering and creating a friendly, effective and efficient investment climate.

### References

- 1. Ambaranie Nadia, 'UrusIzin Investasi Hanya 1 Jam dengan Online Single Submission' (Kompas. com, 25 Mei 2018) <a href="https://ekonomi.kompas.com/read/2018/05/25/124931526/urus-izin-investa-si-hanya-1-jam-dengan-online-single-submission">https://ekonomi.kompas.com/read/2018/05/25/124931526/urus-izin-investa-si-hanya-1-jam-dengan-online-single-submission</a>>diakses 2 mei 2020
- 2. Asshiddiqie, J. 2019. UU Omnibus (OmnibusLaw): PenyederhanaanLegislasidanKodifikasi Administratif.
- 3. Bappenas dalam Pusat Studi Hukum dan Kebijakan Indoneisa, Kajian Reformasi Regulasi di Indonesia: Pokok Permasalahan dan Strategi Penanganannya, Jakarta, PSHK, 2019.
- 4. Black, H.C. 1968. Black's Law Dictionary. St.
- 5. Dewan Perwakilan Rakyat, Skema "*Omnibus Law*' Sangat Sektoral, <a href="http://www.dpr.go.id/berita/detail/id/26322/t/Skema+%E2%80%98Omnibusw%E2%80%99+Sangat+Sektoral">http://www.dpr.go.id/berita/detail/id/26322/t/Skema+%E2%80%98Omnibusw%E2%80%99+Sangat+Sektoral</a>, 2 Mei 2020)
- 6. Faisal, (2010), Menerobos Positivisme Hukum, Rangkang Education, Yogyakarta.
- 7. FirmanFreaddyBusroh, "KonseptualitasOmnibur Law dalam Menyelesaikan Permasalahan Regulasi Pertanahan", *Arena Hukum*, Vol. 10, No. 2, (Agustus 2017).

- 8. Henry Donald Lbn. Toruan, *PembentukanRegulasiBadan Usaha dengan model Omnibus Law*, Jurnal-Hukum to-ra, Vol.3, No. 1, April 2017.
- 9. https://www.academia.edu/41009264/UU TERPADU Omnibus Law.)
- 10. Hukumonline.com, Menimbang Konsep Omnibus Law Bila Diterapkan di Indonesia, dipublikasi pada Jumat, 17 February 2017, <a href="https://www.hukumonline.com/berita/baca/lt58a6fc84b8ec3/menim-bang-konsep-omnibus-law-bila-diterapkan-di-indonesia/">https://www.hukumonline.com/berita/baca/lt58a6fc84b8ec3/menim-bang-konsep-omnibus-law-bila-diterapkan-di-indonesia/</a>)
- 11. Johnny Ibrahim, (2005), Teori dan Metodologi Penelitian Hukum Normatif, Bayumedia, Surabaya.
- 12. Kementerian Koordinator bidang Perekonomian Republik Indonesia, dalam FGD Persiapan Omnibus Law denganjudul: *Penyiapan Omnibus Law EkosistemInvestasi (KemudahanBerusaha)*.
- 13. L. Moleong, (2002), Metode Penelitian Kualitatif, PT Remaja Rosdakarya, Bandung.
- 14. Maria Farida Indrati, *IlmuPerundang-undangan I1* (Kanisius 2007).
- 15. Nonet dan Philip Selznick, Law and Society in Transition: Toward Responsive Law, dalam A. Ahsin Thohari, "Reorientasi Fungsi Legislasi Dewan Perwakilan: Upaya Menuju Undang-undang Responsif", Jurnal Legislasi Indonesia, Vol. 8 No. 4 Desember 2011
- 16. Paul Minn, West Publishing Co.
- 17. Penjelasan Umum Undang-undang Nomor 25 Tahun 2007 tentang Penanaman Modal.)
- 18. Pusat Studi Hukum dan Kebijakan Indonesia, 2019, Kajian Reformasi Regulasi di Indonesia: Pokok PermasalahandanStrategiPenanganannya, PSHK: Jakarta.
- 19. Rongiyati, S. 2019. Menata RegulasiPemberdayaan UMKM Melalui Omnibus Law.Vol. XI No.23.
- 20. Suradinata, V. 2019. *Penyusunan Undang-undang Bidang Investasi : Kajian Pembentukan Omnibus Law di Indonesia*. Refleksi Hukum : JurnalIlmu Hukum. Volume 4 Nomor 1.