

The Planning Omnibus Law of Worker in the Perspective of Modernization and Justice: A Flash Back Review

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Abstract. *There are many overlapping regulations, and also the investment climate that is really needed to grow significantly in competition with the global world, of course to regulate this requires a regulation that can accommodate the many regulations that exist in Indonesia. Since Indonesia's independence in 1945, the government (executive and legislative) has produced laws and regulations to regulate society in the form of *regeling* (regulations) and *beschikking* (decisions).¹ Due to the large number of overlapping regulations, many are then submitted for judicial review or testing of statutory regulations to the Constitutional Court of the Republic of Indonesia. Since the establishment of the Constitutional Court in 2003, many laws have been submitted to the Constitutional Court because they were deemed to be in conflict with the 1945 Constitution of the Republic of Indonesia. And it is true that these regulations have also been annulled by the Constitutional Court and deemed to be in conflict with the Constitution of the Republic of Indonesia.*

Keywords: *Legal; Omnibus; System; Worker.*

1. INTRODUCTION

Since the founding of the Republic of Indonesia, the founding fathers and mothers agreed to form the newly independent country as a rule of law¹, the implementation of which is in accordance with the rules governing

¹See Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "Indonesia is a country of law".

society (rule of law).² Moreover, with the historical fact that the Indonesian people were once colonized by the Dutch and several laws developed, namely Dutch law (*Wetboek van Strafrecht*), Islamic Law and Customary Law. Considering that the application of law used by the Indonesian people is quite diverse, legal unification is very necessary to regulate all Indonesian citizens.

Entering the second period of President Joko Widodo's leadership, to increase investment and the economy, the Government of President Jokowi (nickname) is making a breakthrough in increasing investment in Indonesia so that it can compete with other nations. What we know is that Indonesia has developed a lot of start-up businesses which have grown from unicorns to decacorns because business valuations have reached more than 10 trillion. So, in developing an investment climate, it needs to be protected by related regulations that support the investment climate.

It is difficult for an investment climate to develop if there are too many overlapping regulations from central to regional, and long licensing procedures are a source of unresolved problems. Seeing this, President Jokowi made a breakthrough by using the Omnibus Law on Job Creation or often called the Cilaka Omnibus Law Bill. This is something new in Indonesia, but it is a breakthrough in resolving the legal chaos in Indonesia. However, the Government's wishes received a fairly large wave of demonstrations from workers and the public. The demonstration was based on the contents of the articles in the Job Creation Omnibus Law Bill which were considered detrimental to the Indonesian people and the labor class.

At the beginning of 2020, to be precise, on February 13 2020, the Indonesian Government legally submitted the Job Creation Bill, which is a legislative initiative from the executive to the Legislative Council of the Indonesian People's Representatives. In its technical drafting, the Cilaka Omnibus Law Bill applies the omnibus law concept which is widely used in Common Law countries, while Indonesia applies a Civil Law legal system. The Cilaka Bill covers eleven policy areas as follows:

- a. Simplification of licensing
- b. Investment requirements
- c. Employment
- d. Convenience, empowerment and protection of MSMEs and Cooperatives
- e. Ease of Doing Business

²Rule of law is a concept of state regulation that differentiates between a state of power (*machtstaat*) and a state of law (rule of law) or also commonly called *rechtsstaat*. See Basuki Kurniawan, *Equal Rights to Vote for TNI Polri in General Elections in Indonesia*, Thesis, (Jember: Jember University), 2014, p. 56

- f. Research and Innovation Support
- g. Government administration
- h. Application of Sanctions
- i. Land acquisition, conversion of agricultural land, land and other related issues
- j. National Strategy Investments and Projects
- k. Economic Zone

We all need to know that the Cilaka Omnibus Law Bill has 174 articles, but in substance it contains several changes and cancellation of norms for 79 laws which form the core of regulations in several sectors. Then, the Cilaka Bill also reorganizes approximately 500 implementing regulations to complete the regulation of the 11 fields written in the previous paragraph.

Starting from being initiated as an initiative from the executive until it was handed over to members of the legislative council, the Cilaka Omnibus Law Bill has made the situation in society hot and cold. Community groups who already understand the law more or less have begun to read and analyze the contents of the regulations in the Draft Law, and many disagree and some also support the Government's initiative.

Seeing this phenomenon, the author considers it important to raise legal issues regarding the omnibus law in periodic discussions. The Cilaka Omnibus Law Bill is an interesting legal study to find a solution so that the constitutional mandate to improve the welfare of Indonesian citizens can be truly achieved.

2. RESEARCH METHODS

This research is a descriptive analytical research which explains the problems regarding the Omnibus Law on Job Creation which has been designated as the Job Creation Law. The research and writing of this paper aims to examine and analyze the Job Creation Omnibus Law Bill so that it is in accordance with the workers/labourers' sense of justice and to analyze the Legal Politics of the Job Creation Bill on regional autonomy/decentralization.

3. RESULTS AND DISCUSSION

In analyzing the Job Creation Omnibus Law Bill or often called the Cilaka Bill, there are several interesting things that need to be discussed together.

3.1. There is Centralization of Licensing which has an impact on Decentralization/Regional Autonomy

This Cilaka Bill will no longer apply articles related to regional authority in the main law. The authority stated in this article will be transferred to the Central Government. These regulations in Political Law can be done in many ways, for example, they can be formed by Government Regulations, Ministerial Regulations, Presidential Regulations, and other regulations concerning the authority of the Central Government. In practice, however, the Central Government's resources for complex regional government management are still minimal, especially after the implementation of regional autonomy.

This means that taking authority from the regions to the center will result in a weakening of the regional government. The impact that is clearly felt is the weakening felt by local governments.

Let's just mention changes to the AMDAL process which we all know is a division of authority between the central government, provincial government and district/city governments. In the Cilaka Omnibus Law Bill, the authority regarding the AMDAL process will be the full authority of the central government, this is stated in Article 23 point 4 of the a quo Job Creation Bill, which is a form of amendment to Article 63 of the Law on Environmental Protection and Management.³

3.2. Permit Process

The Job Creation Omnibus Law Bill makes things simple regarding licensing, namely with a relatively short processing process, procedures that are too complicated and costs that can be said to be cheap.⁴This simplification certainly supports the investment climate which requires everything to move quickly to keep up with changing times. The simplification that the author means is as follows:

First, the construction of buildings, the Cilaka Bill will remove all administrative requirements included in the requirements for land rights status, building ownership rights status and building construction permits (IMB).⁵ These requirements were changed to require every building to meet building technical standards to resemble the function and

³Look at Article 23 number 4 of the Job Creation Bill

⁴Excerpted from BPHN, Academic Paper of the Job Creation Bill, 2020, p. 121.

⁵UU no. 28 of 2002 concerning Buildings which states that every building must meet administrative requirements and technical requirements in accordance with the function of the building. See also Law no. 28 of 2002 concerning Buildings Article 7 Paragraph (1).

classification of the building.⁶

Second, licensing for investment and business activities, the Cilaka Omnibus Law Bill also regulates risk-based licensing. This licensing model requires business classification whose licensing requirements will adapt to the risks of the business. The risk assessment is reviewed from the aspects of health, safety, environment, and/or resource utilization, carried out by calculating the type of business activity, and/or resource limitations.⁷In accordance with the mandate of Article 8 Paragraph (7) of the Cilaka Bill, high-risk business activities require a building construction permit. This (permit) is approval from the Central Government to carry out business activities which must be fulfilled by business actors before the business is carried out or developed.

The impact of government regulations regarding risk-based business licensing is that the government must formulate a clear classification regarding the type of business and the type of permit that will be applied. The rules regarding business licensing must be regulated in implementing regulations in Government Regulations.

3.3. Employment Sector

The Job Creation Omnibus Law Bill has more of a tendency towards improving the economy, and pays less attention to improving the quality of human resources. Article 88 of the Cilaka Omnibus Law Bill states that the updated regulations in this bill aim to strengthen protection for workers and increase workforce support in supporting the world of investment in Indonesia. It can be learned that the Cilaka Bill prioritizes investment and economic development, which are the most important things in the development of a nation. Most of the regulations that have been amended and regulated in this bill often mention efficiency and increasing labor productivity. In fact, when talking about workforce productivity, the most important thing is training and coaching. Because in Human Resources Management, when we talk about increasing the productivity of Indonesian workers, it must be accompanied by intense training and coaching. Intense training will make workers more creative and productive in their field of work.

When talking about job creation, we will talk about the quality of workers. The quality of workers can be assessed from education and training. This means that when it comes to the Job Creation Bill, what must be prioritized is education and training. This means that if Indonesian workers have good education and excellent training, the workers will be

⁶Excerpted from Article 7 Paragraph (1) of Law Number 28 of 2002 concerning Buildings.

⁷See Article 8 paragraph (5) of the Job Creation Bill.

more productive and we will not be inferior to foreign workers. The author's concern is that if the Omnibus Law on Job Creation Bill is immediately passed, without any input/participation from the community, it will be Indonesian workers who will be disadvantaged.

Foreign workers are starting to invade the Indonesian work environment. Companies hire foreign workers for the reason that foreign workers have competencies that Indonesian workers do not have. This means that the Job Creation Omnibus Law Bill must also focus on increasing the productivity of Indonesian workers. By focusing on increasing the productivity of Indonesian workers, whether there is an omnibus law or not, Indonesian workers will prosper. Because the philosophical basis for regulations is to improve the welfare of society.

a. Changes regarding Minimum Wage

Every May 1, Labor Day is always celebrated, which is used by workers to vent their feelings, and what is often the demand is a minimum wage. In the Employment Law regarding minimum wages, it can be seen from the provincial area with the provincial minimum wage (UMP) and district/city minimum wage (UMK). So with the Cilaka Bill, these things (UMK and UMP) will no longer apply. The Job Creation Omnibus Bill states that article 88C is:

(1) The governor sets a minimum wage as a safety net. (2) The minimum wage as intended in paragraph (1) is the provincial minimum wage.

From article 88C paragraphs (1) and (2) we can interpret that if the Job Creation Bill is passed in the DPR, then there will no longer be such a thing as a Regency/City Minimum Wage, because what applies is the Provincial Minimum Wage. In fact, what we know is that currently the Regency/City Minimum Wage is higher than the provincial minimum wage. The question is how urgent is the elimination of the UMK in the Cilaka Bill?⁸

b. Changes in the meaning of Termination of Employment

Article 151 paragraph (1) of the Manpower Law regulates Termination of Employment Relations but in the Cilaka Bill there are slight changes regarding the interpretation of layoffs. This change eliminates the initial conception regarding layoffs in the Employment Law which should be seen as something that should be avoided. Formulation of Article 151 Paragraph (1) in the Cilaka Omnibus Law Bill. Layoffs are a fairly private matter between employers and workers/labourers. In addition, labor

⁸See Government Regulation Number 78 of 2015 concerning Wages.

unions have a crucial role in the event of termination of employment relations in bridging employers and workers, mediation carried out by labor unions is a way of resolving disputes to create a win-win solution. However, in the Cilaka Bill article 151 paragraph (2) changes the concept of layoffs, namely the resolution of employment termination through the establishment of an industrial relations dispute resolution institution.

The current Job Creation Bill also gives more power to employers in terminating employment relations without the need for an agreement and/or settlement procedure which requires tripartite and bipartite settlement in accordance with industrial relations disputes.

Article 156 of the Cilaka Bill also eliminates the obligation for companies to provide compensation for rights.⁹Assessing the importance of compensation money when employment is terminated, it would be good for the Cilaka Bill regarding compensation money during layoffs to be reviewed, because this is to protect the rights of workers who have served the company.

3.4. The Relationship between the Job Creation Bill and Government Administration

a. Presidential Authority

In the Cilaka Bill article 164, basically it is true that the authority stated in the statutory regulations is the authority of the President.¹⁰ In constitutional law doctrine which adheres to the principles of the Presidential system, this arrangement is interesting to think about. The problem is that after reform there is a concept of dividing power between the central and regional governments. Where regional regulations, such as regional regulations, regional regulations are regulated by each region. This means that the president cannot completely regulate regional regulations. However, the principle of hierarchy of statutory regulations requires that the regulations below must not conflict with the regulations above.¹¹

⁹The Employment Law requires compensation for rights, but Article 156 Paragraph (4) of the Employment Creation Bill regulates that employers can provide compensation or not provide compensation, because the interpretation of "can" is a choice made by the entrepreneur.

¹⁰See Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

¹¹In the hierarchy of statutory regulations taught by Hans Nawiasky, it is explained that there are higher laws and lower laws. In Indonesia, the application of these legislative regulations is regulated sequentially as follows: (1) the 1945 Constitution of the Republic of Indonesia, (2) MPR Decree, (3) Perppu/UU, (4) Government Regulations, (5) Presidential Regulations, (6) Provincial Regional Regulations, (7) Regency/City Regional Regulations. See Law no. 12 of 2011 concerning the Formation of Legislative Regulations.

The problem that arises when implementing the Job Creation Omnibus Law Bill is the elimination of regional regulations in the regions, or these regional regulations are automatically revoked by the Central Government. In fact, in understanding the testing of statutory regulations, you must carry out a judicial review, executive review or legislative review.

b. Settings regarding Discretion

Discretion or discretion and what is better known as *freis ermissen* is a form of government policy that is caused by force majeure, something that urgently requires legal political policy as soon as possible. Article 165 of the Cilaka Bill amends several provisions in the Government Administration Law. On the one hand, this article makes it easier to use discretion. Discretion is interpreted as a way to provide space for state administrative officials or state administrative bodies to carry out government actions, without having to be completely bound by the law. However, if we look more deeply into the Government Administration Law, there are important provisions regarding discretion, namely when not violating statutory regulations.

On the one hand, the Cilaka Bill creates quite wide discretion with control and supervision mechanisms that are not effective enough. This problem is quite dangerous if misused, such as collusion, corruption and nepotism. And it will be detrimental to state finances if there is no strong supervision. So this Cilaka Bill still needs to be improved in the system for monitoring the implementation of the discretion itself. Don't let the good Cilaka Omnibus Law Bill be misused if there is no proper supervision in the use of budget power.

c. The Meaning of Regional Autonomy

Articles 166-167 of the Job Creation Bill are articles that can be compared to the Universal Sweep Law, which regulates that many laws are regulated in one law and it is not easy to control and implement them. This is even more so for regional governments, because the centralized regime that we once implemented has changed with the concept of regional autonomy (deconcentration). The division of central and regional powers in implementing the Cilaka Bill is a point that needs to be further regulated.

If the centralized or centralized system is revived, we will experience a setback in democracy. The current constitutional practice of the regional autonomy system is starting to mature, this is proven in elections and the increase in welfare in the regions is increasing from time to time. So regional autonomy does have weaknesses, but it only needs to be improved step by step, not to go back to the New Order era.

4. CONCLUSION

Based on the opinion expressed by the author above, we conclude several things. First, the Job Creation Omnibus Law Bill has several deeper corrections, especially in the paradigm aspects and substance of regulations regarding layoffs, permits and regional autonomy (decentralization). Second, the intention of the Cilaka Omnibus Law Bill is to reduce hyper regulation (the large number of laws and regulations). - invitation), but the bill actually creates derivative regulations which result in more and more new regulations being introduced. So, the Job Creation Omnibus Law Bill should need to be re-arranged while still involving the wider community in providing input and views for the perfection of this Job Creation Bill.

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