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

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

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## PREROGATIVE RIGHTS OF PRESIDENTS IN OMNIBUS LAW

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### ABSTRACT

*Omnibus Law can be interpreted as a law (Act) created to target a major issue that might be able to revoke or change several laws at once so that it becomes simpler. Some people think that the President's actions are still in the corridor of the constitution, because they are seen as part of the President's prerogative. Some other groups have different views, which the President's actions are not within the framework of the President's prerogative rights, but rather violations or arbitrariness. The problem in this paper is the question that arises, whether the 1945 Constitution guarantees prerogative rights to the president, especially in relation to the omnibus law? In general it can be understood that the 1945 Constitution grants prerogative authority to the President through Article 10 through Article 15 and Article 17, so that the President in exercising his authority does not need to seek approval from other institutions, such as the DPR (House of Representatives). However, with the Omnibus Law plan in Indonesia, including the Omnibus Law for Employment and Omnibus Law, Taxation needs to be reviewed and approved by the DPR (HOUSE OF REPRESENTATIVES). In the future, the power of the President must be explicitly regulated in the constitution or law so that its implementation can be easily controlled. For this reason, the DPR (HOUSE OF REPRESENTATIVES) must actively oversee the administration of the government by using its rights optimally and proportionally.*

**Keywords:** *Omnibus law, prerogative rights, President*

### INTRODUCTION

In order to increase the interest in investing, President Joko Widodo has made many changes in the regulations that hamper investment. In addition the government also shortens licensing procedures by simplifying and accelerating the licensing process in doing business. During this time in managing business licenses always have time and certainty constraints, the length of business licensing is not predictable, and unclear regulations and conflicting business licensing procedures always become obstacles in business.

Constraints in investment regulations and licensing led President Joko Widodo to bring up the concept of Omnibus Law in legislation. This concept was first conveyed by President Joko Widodo in his

first speech after his inauguration as the second president for the 2019-2024 periods. This idea certainly makes politicians and legal experts re-review what is meant in the Omnibus Law.

Since the end of 2019 yesterday, the discussion about Omnibus Law began to surface and is still a hot topic of conversation in many places, including the campus office. As it should be, students are smart people who are most diligent in flicking various government policies that are perceived as not in favor of the general public, including the Omnibus Law. How about a brief explanation of the Omnibus Law that is being used as talk material for students?

Referring to the general understanding, Omnibus Law can be interpreted as a Law (Act) created to target a major issue that might be able to revoke or change several Laws at once so that it becomes simpler.

Some people think that the President's actions are still in the corridor of the constitution, because they are seen as part of the President's prerogative. Some other groups have different views that the President's actions are not within the framework of the President's prerogative rights, but rather violations or arbitrariness.

Some constitutional law experts are of the view that the 1945 Constitution grants prerogative rights to the President, as so far understood by the public, regulated in the 1945 Constitution Article 10 to Articles 15 and 17.

## **The Problem**

The question that arises is whether the 1945 Constitution guarantees prerogative rights to the president, specifically related to the omnibus law?

## **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 research, because in this study describes the situation that occurs at present in a systematic and factual manner with the aim to explain and the resolution of the problem under investigation, namely whether the 1945 Constitution guarantees prerogative rights to the president, specifically related to the omnibus law.

Primary data obtained by researchers refers to data or facts and legal cases obtained directly through literature 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 which starts with the information obtained to achieve clarity of the problem to be discussed.

## **Research Result and Discussion**

The era of government leadership President Ir. H. Joko Widodo from the beginning always echoed to facilitate investment, this enthusiasm could be not because of other party elements but the experience before becoming a president was a furniture businessman, who in running his business experienced obstacles in licensing procedures and other regulations that hindered him in attempted.

Several times President Joko Widodo stressed, investment and exports are two important things to be increased. These two things are sustaining national economic growth and opening up employment opportunities in Indonesia. This was stated by President Jokowi when opening the Plenary Cabinet Session at the State Palace on Wednesday, May 16, 2018 afternoon, before the Working Cabinet ministers.

Omnibus law is a statutory regulation that is made to refer to one major issue that may be able

to revoke or change several laws into one law that is simpler and more complete to avoid overlapping regulations. This is done to amend several laws into one new law. Literally, Omnibus law is the law for all. Languages are derived from Latin, which is Omnis which means ‘for all’ or ‘many’

According to Bryan A Garner, in the Black Law Dictionary the Ninth Edition states:

“Omnibus: relating to or dealing with numerous objects or items at once; including many things or having various purposes.” This means the omnibus law has to do with various objects or things at once, and has several goals.

Prerogative linguistically comes from the Latin *praerogativa* (chosen as the first to vote), *praerogativus* (asked as the first to vote), and *praerogare* (asked before asking others)<sup>1</sup>.

As a legal institution (constitutional law), prerogatives originate from the British constitutional system. Until now, prerogative institutions have remained one source of law, especially the source of constitutional law in the United Kingdom. It is not easy to formulate an understanding of prerogative powers, both because of their historical sources as legal institutions and their scope. At present, prerogative powers are increasingly limited, either because they are regulated by law or restrictions on how they are implemented.

Some circles consider the prerogative of the remnants of the era of authoritarianism before the enlightenment in Europe. On June 15, 1215 when King John was enthroned, the wind of change blew when the Magna Charta was ratified. The charter contains the special privileges of high nobles. The charter is considered a milestone that began the efforts of the people’s participation in power management. After the Charter was released, slowly but surely, the power of the king or the British might diminishes. All cuts are included in the law. The prerogative is the power left in the hands of the king or queen and is not regulated by law. Now, practically the king or queen of England is just a symbol. In the practice of state administration its role is almost zero. The prerogative form that is still used by kings or queens, for example, confer nobility to someone<sup>2</sup>.

An absolute prerogative theory in executives has been rejected by the United States Supreme Court. Therefore, according to the American constitutional system, the executive only has powers either expressly stated by the Constitution or the Law, or by drawing conclusions from certain conclusions from the Constitution or Law. Therefore, in a famous case, *Youngstown Sheet & Tube Co. v. Sawyer*, The United States Supreme Court rejected President Truman’s seizure order, in which the President ordered the Minister of Trade to take over the steel industry in order to avoid the threat of strikes at steel mills and to ensure the continued supply of steel that was badly needed for national defense. The court was of the opinion that the prerogative power to confiscate the steel industry was not one of the president’s constitutional powers.

According to the British and Canadian constitutions, the executive still has some discretionary power, famous as the prerogative of the king. This last term is used to encompass a large set of rights and privileges that are owned by the king and are exercised without a direct statutory authority. Besides that, if parliament wants, by law he can overthrow the prerogative. In other words, prerogatives exist as long as and to the extent recognized and permitted by law<sup>3</sup>.

In order to reduce the undemocratic nature and the dangers of the President’s prerogative rights,

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1. Bagir Manan. *UUD1945 Tak Mengenal Hak Prerogatif*. Harian Republika. Saturday, May 27, 2000. p. 8.
  2. Ni'matul Huda. 2011. *Hak Prerogatif Presiden dalam Perspektif Hukum Tata Negara Indonesia*. Jurnal Hukum No. 18, Vol. 8. October 2011
  3. Ismail Suny. 1986. *Pergeseran Kekuasaan Eksekutif*. Jakarta: Aksara Baru. p.61.

the use of prerogative powers is limited to being passed into law, possibly being tested by judicial review, or if it is to be carried out by the king / queen, first have to listen to opinions or minister's consideration. A prerogative which is regulated in a law is not called a prerogative anymore, but rather as a law based right. So, prerogative power contains several characters; (1) as residual power, (2) constitutes discretionary power (fries ermissen, be / e / d): (3) does not exist in written law; (4) restricted use; (5) will disappear if it is regulated in a Law or the Constitution.

In line with the proposal of Bagir Manan, Mahfud MD also urged that the use of the president's prerogative in the formation of government institutions and the appointment of certain state officials by the President in the future should be sought confirmation from the Parliament. This is intended so that prerogative rights are not used to bolster political support or get rid of political opponents and even build collusion partners in various matters. Besides that, to control the President's prerogative in the field of legislation it is necessary to provide a way to conduct a judicial review institution<sup>4</sup>.

In the 1945 Constitution system as explained by Supomo, it is indeed designed in such a way that the power is centered on the President (concentration of power and responsibility upon the President) or according to a popular phrase: executive heavy. In fact, in the Dokuritzu Zyunbi Chosa Kai trial, Soepomo "said:

"... for the daily administration of the President, it is the incarnation of people's sovereignty".

"... This is the embodiment of the people's right, the President, not the House of Representatives".

Likewise, the affirmation contained in Article 4 paragraph (1) of the 1945 Constitution, said that the President of the Republic of Indonesia holds governmental authority according to the Constitution. So, the executive function is left to the President<sup>5</sup>.

Strictly speaking, Harun Alrasid does not say that the President in the framework of the 1945 Constitution has prerogative rights, but from the description it can be seen that the President has prerogative rights. For example, the President holds the highest authority over the Army, Navy and Air Force, so that the top level decisions in the military field are in the hands of the President.

President, authorized to declare a state of danger. This means that in the case of all or part of the territory of a country will be declared in a state of civil emergency, military emergency, or state of war, fully the authority of the President without the approval of other positions.

President also without the approval of another position, authorized to appoint ministers. Ministerial provisions are appointed and dismissed by the President, associated with the provisions that the power of government is held by the president, making conclusions that the presidential system of government applies.

Furthermore, in the case of a matter of urgency, the President has the authority to issue regulations which are the same level as the Law (noodverordeningsrecht), which is a government regulation in lieu of a law (Perpu). By using this authority, the President can unilaterally revoke a law that is still in force or regulate something that should be determined by law.

Not only regarding the issuance of a Perpu that is emergency, even in the case of a state in an emergency, the President also plays an important role because he can use what in the theory of constitutional law is called the "state emergency right" (staatsnoodrecht). Based on this unwritten authority, if the President

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4 Moh. Mahfud MD. 1999. *Hukum dan Pilar-pilar Demokrasi*. Yogyakarta; Gama Media. p. 269-270.

5 Harun Alrasid. *Jabatan Presiden RI Sebuah Tinjauan Hukum Tata Negara*. Pidato DiesRedepada Sidang SenatTerbuka Dalam Rangka Dies Natalis Ull Yogyakarta. November 8, 1999. p. 15

considers that the country is in a state of emergency then to overcome this he can make decisions that violate applicable regulations, even the provisions of the Constitution<sup>6</sup>.

Article 4 in paragraph (1) above confirms that during the New Order era it was considered as a source of authority and was used as the legal basis for various Presidential Decrees. Use of Article 4 paragraph (1) as the source of this person spearheaded by Hamid Attamimi, who said:

“If the power of regulation by the president with the approval of the DPR (HOUSE OS REPRESENTATIVES) born from Article 5 paragraph (1) of the 1945 Constitution embodies the law, and that which is born from Article 5 paragraph (2) embodies government regulations, then what form is born from the power of regulation by the President based on Article 4 paragraph (1) of the 1945 Constitution? There are a number of opinions on this matter both those coming from theoreticians and practitioners ...”

As a result, during the same five-year term, the President can exercise all power (authority) that is centralized on him. Although the de jure of the President is untergeordnet (subordinate) in the MPR, but given his position as the Head of State and Head of Government, the President is the most important official in the Indonesian state administration.

What about the authority of other Presidents, for example omnibus law? Although Article 10 has not been (not yet) amended by the MPR as other articles, it has substantively limited the authority of the President as stipulated in Article 10 of the 1945 Constitution. In other words, the President no longer fully has the prerogative in terms of establishing the omnibus law because of the necessity DPR (HOUSE OS REPRESENTATIVES) approval.

## Conclusion

In general it can be understood that the 1945 Constitution grants prerogative authority to the President through Article 10 through Article 15 and Article 17, so that the President in exercising his authority does not need to seek approval from other institutions, such as the DPR (HOUSE OS REPRESENTATIVES). However, when the 1945 Constitution was amended three times, the structure of the 1945 Constitution underwent an extraordinary change. Articles which previously gave full authority to the President to run the government, after the changes (first, second and third) of the 1945 Constitution, the authority of the President experienced a substantial reduction. There is a requirement for the President to seek approval from the DPR (HOUSE OS REPRESENTATIVES) (Articles 11 and 15), but there are those who “must” pay attention to the DPR (HOUSE OS REPRESENTATIVES)’s deliberations (Article 13, Article 14 paragraph (2), or the Supreme Court’s consideration (Article 14 paragraph (1).

Likewise with the Omnibus Law plan in Indonesia including Omnibus Law Employment Copyright and Omnibus Law Taxation needs to be reviewed and approved by the DPR (HOUSE OS REPRESENTATIVES). In the future, the power of the President must be explicitly regulated in the constitution or the law, so that its implementation can be easily controlled, For this reason, the DPR (HOUSE OS REPRESENTATIVES) must actively oversee the administration of the government by using its rights optimally and proportionally.

## Suggestion

Considering that Indonesia is a constitutional state based on democracy, by looking at matters as described above, it is fitting to be considered to reconsider the omnibus law method if it will be implemented in the formation of laws in Indonesia.

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6 A. Hamid S. Attamimi. *Peranan Keputusan Presiden RI dalam Penyelenggaraan Pemerintahan Negara*. Disertasi. Universitas Indonesia. Jakarta. 1990. p. 182-183



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