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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 Entrepreneurs And Labor : Comparative Review law"

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Bismillahirrohmanirrohim

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Wassalamu'alaikum Wr.Wb.

Table Of Content

OMNIBUS LAW AND PROBLEMATICS LABOR IN INDONESIA

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ABSTRACT

Omnibus Law is a merging of several laws into one regulation. The purpose of the government to create an omnibus law is to combine 1,244 articles and 79 laws in one regulation. One of the laws which are incorporated in the omnibus law is the Manpower Act. In the Draft Omnibus Law Employment Copyright will create 11 changes including simplifying licensing, investment requirements, foreign workers, working hours, workers' rights and protection, adding to the types of layoffs, and strengthening social security. The problem in this paper is how are the problems surrounding labor law as a rule of law included in the omnibus law agenda?Basically, this omnibus law is one of the opportunities seen by the president where this could be the answer to the problems that exist in Indonesia. Because he is tackling convoluted policies, but in the eyes of the people, especially the affected people, actually judge by the loss of rules this even eliminates the certainty set out in Law No. 13 of 2003 concerning Manpower. In addition there are rules which are not abolished, but are conceptually replaced, which can have implications that lead to other conflicts, especially related to the rights of local workers who are Indonesian citizens who must be protected by a just law.

Keywords : ***omnibus law, employment.***

INTRODUCTION

The Work Cipta Karya Bill (RUU Cipta Karya) became public discussion after it was published several months ago. Not something ordinary, because the Work Cipta Bill was formed using the omnibus law method which is still very foreign to the ears of the Indonesian people, even though the method has long been known in law. So that it is not something new to the ears of the legal academics related to the omnibus law. However, the main problematic is the lack of public understanding related to the concept of the omnibus law offered by the Government of the Republic of Indonesia through the Cipta Karya Bill.

According to Prof. Dr. Aminuddin Ilmar, SH., MH. (Professor of the Faculty of Law at Hasanuddin University) explained that in *letterlijk*, the word "omnibus" comes from the Latin word "omnibus" (many). In the sense that the omnibus is a lot of law in terms of arrangements carried out across sectors and can revoke or cancel conflicting provisions. So the concept of the omnibus law is a method or concept of

making regulations that combines several rules with different regulatory substance, into one rule in one legal umbrella. The concept is also known as the omnibus bill which is basically often used in countries that adopta common law system such as the United States whenforming a regulation[9].

Omnibus Law is a merging of several laws into one regulation. The purpose of the government to create an omnibus law is to combine 1,244 articles and 79 laws in one regulation. One of the laws which are incorporated in the omnibus law is the Manpower Act. The Draft Omnibus Law on Employment Creation will create 11 changes including simplifying licensing, investment requirements, foreign workers, working hours, workers' rights and protection, adding to the types of layoffs, and strengthening social security[10].

But with the issuance of the Omnibus Law Bill, it will create pros and cons among the people, which allows workers to think that their rights will be reduced while working hours will remain or increase. This triggered a debate between the union and the government. As local workers, the workers reject a greater opportunity for foreign workers to work in Indonesia. This policy triggered the emergence of a demonstration period rejecting the Omnibus Law Bill for various reasons and made the public's trust in the government less and less. While the government itself considers that this is the right policy to overcome the existing problems in the community so far. This policy will later reduce regulation overlaps and accelerate national growth according to the government[11].

The existence of pros and cons regarding this omnibus law attracted the author's interest to raise it as a topic in this paper. The author would like to examine the impact arising from the existence of this omnibus law and the author's opinion on what if labor law is included in the Omnibus Law Bill.

In simple terms it can be understood that in the concept of the omnibus law, regulations that are formed are always carried out to make new laws by canceling or revoking also amending several laws and regulations at once. The main purpose of the concept of the omnibus law is that a law aims to target a large (central) issue that enables repeal or amendment of several laws at once (across sectors) to be simplified in its regulation. So it is hoped that there will be no concurrency between one norm and another.

Many mistakes occurred in the community in understanding this omnibus law issue. There is an understanding of the community that considers the omnibus law with the Work Creation Bill to be the same thing, even though the two are very much different. Omnibus law is a method of forming laws and regulations that are known through scientific methods, while the Cipta Karya Bill is a legal product produced from the omnibus law method. So that what is up for debate is the substance of the Work Draft Bill which is a legal product as a result of the omnibus law method. Therefore there must be an understanding in the community that between the omnibus law and the Work Creation Bill are different things in a theoretical context.

The Problem

From the background description above, the formulation of the problem that the author wants to examine is how the problems surrounding labor law as a rule of law are included in the omnibus law agenda?

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

9 https://www.suara.com/yoursay/2020/03/26/121338/omnibus-law-ruu-cipta-kerja-untuk-siapa
10 https://www.youtube.com/watch?v=a3EntbpjbyY
11 https://www.youtube.com/watch?v=TFPN2aVYqTk&t=4235s

occurs at present in a systematic and factual manner with the aim to explain and resolution of the problem under study, problems surrounding labor law as a rule of law are included in the omnibus law agenda.

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 emergence of the idea of a Work Copyright Bill using the omnibus law method was the forerunner of President Joko Widodo's speech as the elected President in the 2019 Presidential Election which in his main point stated that the Government would invite the House of Representatives (DPR) to issue 2 (two) laws the big one is the Work Creation Law and the UMKM (Micro small and Medium Enterprises) Empowerment Act. Where both of these laws will become an omnibus law that is one law will revise several laws, even dozens of existing laws with the aim of creating simplification, cutting and trimming regulations that hamper job creation.

In response to this, it is fitting for us to think clearly so that there is no a priori mindset (presupposing before knowing) about the Government's plan. Therefore it is necessary to read and understand the substance of the existing Work Draft Bill as one of the legal products offered by the Government. In addition to the simplification of regulations, it can also be a solution to solving the problem of concurrency norms in several laws and regulations in Indonesia.

However, what needs to be considered is the substance of the regulation, because what has been contested so far is the many political interests that are often not in accordance with the interests of the people so that there has been a massive rejection in several draft laws offered by the Government and the Parliament.

In fact, the Bill of Employment will streamline around 79 laws and 1,239 articles into 15 chapters and 174 articles covering 11 clusters from 31 Ministries and related institutions namely simplification of licensing, investment requirements, employment, facilities, empowerment and protection of MSMEs, business ease, research and innovation support, government administration, sanctions, land acquisition, investment and government projects, and economic zones. The author will elaborate on several articles in the Work Creation Bill that are alleged to have a tendency to create new problems as below[12]:

First, the elimination of the phrase "without the need to prove the element of error" in Article 88 of Law Number 32 Year 2009 concerning Environmental Protection and Management (PPLH Law).

Initially Article 88 of the PPLH Law reads "Every person whose actions, efforts and / or activities use B3, produce and / or manage B3 waste, and / or that pose a serious threat to the environment is absolutely responsible for losses that occur without the need for proof of elements error."

But in the Employment Creation Bill Article 88 of the PPLH Law is amended to "Every person whose actions, businesses and / or activities use B3, produce and / or manage B3 waste, and

12 M. Aris Munandar. 2020. *Omnibus Law RUU Cipta Kerja Untuk Siapa*? Makassar: Dewan Pertimbangan Nasihat KAMMI, 2019-2020 period.

/ or that pose a serious threat to the environment is solely responsible for the loss occurred from the business and / or activities ".

The implication is that these regulations can cause weaknesses in law enforcement for environmental destroyers. In addition, the deterrence and scaring effects are also lost for the perpetrators of environmental crimes.

Secondly, the addition of administrative sanctions for violators of environmental quality standards in the form of ambient air, water and sea water quality standards in Article 98 paragraph (1) of the PPLH Law. Initially Article 98 paragraph (1) of the PPLH Law reads "Any person who intentionally commits an act that results in exceeding ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria, shall be punished with a minimum of 3 prison terms (three) years and a maximum of 10 (ten) years and a fine of no less than Rp. 3,000,000,000.00 (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah) ".

But in the Work Cipta Bill Article 98 paragraph (1) of the PPLH Law is amended to "Any person who intentionally commits an act that results in exceeding ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria are subject to administrative sanctions in the form of fines of at least Rp.3, 000,000,000.00 (three billion rupiah) and a maximum of Rp10, 000,000,000.00 (ten billion rupiah)."

The implication is that there is an extraordinary leeway for violators of environmental quality standards, even those provisions tend to be more pragmatic and do not provide a deterrent effect for the perpetrators.

Criminal sanctions should be the main applied (primum remidium) for offenders of environmental quality standards as the principle of harmony and balance in the PPLH Law.

Third, the abolition of the public's right to conduct administrative lawsuits through testing of environmental permits and / or business permits through the State Administrative Court (PTUN) in Article 93 of the PPLH Law. As is known, Article 93 of the PPLH Law reads "Everyone can file a lawsuit against the state administration decision".

The lawsuit according to the provisions in the PPLH Law can be made if the state administrative body or official issues an environmental permit to businesses and / or activities that must be AMDAL (Environmental Impact Analysis) but not equipped with environmental impact documents, the state administrative agency or agency issues an environmental permit to activities that are required UKL- UPL (Environmental Management Efforts and Environmental Monitoring Efforts), but not equipped with UK-UPL (Environmental Management Efforts and Environmental Monitoring Efforts) (documents, and / or state administrative bodies or officials that issue business licenses and / or activities that are not equipped with environmental permits.

However, in the Bill of Employment Work the provisions of Article 93 of the PPLH Law were abolished. This certainly contradicts the participatory principle contained in the PPLH Law, and eliminates the role of the community in participating in protecting the environment.

Fourth, do not pay attention to the hierarchy of statutory regulations. Article 170 paragraphs (1), (2) and (3) clearly explain that "In the context of accelerating the implementation of strategic work copyright policies as referred to in Article 4 paragraph (1), based on this Law the Central Government has the authority to change the provisions in the Act This Act and / or amend provisions

in this Law that are not amended in this Law." He further explained that "Amendment to the provisions referred to in paragraph (1) shall be regulated by Government Regulation."

The implication of this provision is that it violates the provisions in Law Number 12 of 2011 concerning the Formation of Regulations and Regulations which expressly state that Government Regulations (PP) is under the law. Thus the PP cannot cancel or change the provisions contained in the law, because the PP is the implementing regulation of the law itself.

Fifth, the elimination of responsibility for fires in the concession area in Article 49 of Law Number 41 Year 1999 concerning Forestry (Forestry Law). Initially Article 49 of the Forestry Law reads "Rights holders or permits are responsible for forest fires in their work area."

But in the Work Cipta Bill Article 49 of the Forestry Law was changed to "Rights holders or Business Licensing must make efforts to prevent and control forest fires in their work area." The implication of these provisions is the loss of absolute responsibility of the perpetrators of forest fires in the event of a fire; this of course further weakens law enforcement for forest destroyers.

The phrase "prevention and control" in the Work Copy Bill without mention is already a moral responsibility for every right or permit holder, so what needs to be regulated is the criminal liability of the perpetrators of the forest damage.

Sixth, the elimination of concrete boundaries related to 1 (one) Special Mining Business Permit Area (WIUPK) for the stage of production operations of metal mineral and coal mining in Article 83 of Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law). Initially in the Minerba Law it was explained that "the area of 1 (one) WIUPK for the stage of metal mineral mining production operations is given to an area of at most 25,000 (twenty five thousand) hectares." and "area of 1 (one) WIUPK for the stage of coal mining production operation activities shall be given a maximum area of 15,000 (fifteen thousand) hectares".

However, in the Work Draft Bill the provisions of Article 83 letter (c) of the Minerba Law are amended to "Area 1 (one) WIUPK for the stage of Production Operation activities of metal and coal mineral mining given based on the results of the Central Government's evaluation of the work plan of all regions proposed by special mining business actors."

The implication of this provision is the occurrence of legal uncertainty in providing 1 (one) area of metal and coal mining operations. It even tends to open up opportunities for limiting operational activities that are not in accordance with the previous provisions. Of course if happens it is very detrimental to the environment.

Seventh, the exclusion of the minimum rest period for workers / laborers is not included in the provisions of Article 79 of Law Number 13 Year 2003 concerning Labor (Manpower Law).

Initially the sound of Article 79 paragraph (2) letter b of the Manpower Law, namely "Long rest for at least 2 (two) months and carried out in the seventh and eighth years of 1 (one) month for workers / laborers who have worked for 6 (six) years continuously at the same company with the provisions of the worker / laborer is no longer entitled to an annual break in 2 (two) years running and thereafter applies to every multiple of the work period of 6 (six) years. "

But in the Work Draft Bill, the provisions of Article 79 paragraph (2) letter b of the Manpower Law are no longer clearly regulated. Article 79 Paragraph (5) of the Work Cipta Bill only regulates long leave that is regulated through work agreements, company regulations, or collective labor agreements, so that the

binding power is very weak compared to if stipulated in the law.

In addition, when viewed from a psychological point of view, it is very possible for workers / laborers in making a work agreement to experience psychological pressure so that the decision making is not in accordance with the actual wishes of the workers / laborers, especially in terms of requesting employer policies to be included in the rest period. .

Eighth, the removal of the authority of the Minister or appointed official to give permission for employers employing Foreign Workers (TKA) as in Article 42 paragraph (1) of the Manpower Act, as well as facilitating Foreign Workers because each TKA sponsor company requires only the Use of Foreign Workers (RPTKA) whereas in Presidential Regulation Number 20 Year 2018 Concerning the Use of Foreign Workers, at least 2 (two) employers and TKA obligations are required, namely having a RPTKA and a Limited Stay Visa (Vitas). Initially, the article 42 paragraph (1) of the Manpower Act is "Every employer who employs foreign workers must have written permission from the Minister or appointed official."

However, in the Employment Creation Bill, the article 42 paragraph (1) of the Manpower Act is amended to "Every employer who employs foreign workers must have ratification of the plan to use foreign workers from the Central Government." The impact is that there is no more complex licensing mechanism for TKA as stipulated in the previous Manpower Act.

This will also imply that Vitas is no longer used in the mechanism for recruitment of foreign workers as stipulated in Article 17 paragraph (1) and (2) of Presidential Regulation No. 20 of 2018 concerning the use of foreign workers that "Every foreign worker working in Indonesia is required to have Vitas to work."

And "Vitas as referred to in paragraph (1) is requested by the TKA or TKA Employer to the minister in charge of government affairs in the field of law and human rights or a designated immigration official."

These provisions should be very easy for the entry of foreign workers in Indonesia, while the complexity of the problem of local labor remains unresolved. Therefore, the amendment to Article 42 of the Manpower Law through the Work Creation Bill must be reconsidered by the Government, because it will have an impact on the availability of employment for the people of Indonesia.

Conclusion

Basically, this omnibus law is one of the opportunities seen by the president where this could be the answer to the problems that exist in Indonesia. Because he is tackling convoluted policies, but in the eyes of the people, especially the affected people, actually judge by the loss of rules this even eliminates the certainty set out in Law No. 13 of 2003 concerning Manpower. In addition there are rules which are not abolished, but are conceptually replaced, which can have implications that lead to other conflicts, especially related to the rights of local workers who are Indonesian citizens who must be protected by a just law.

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