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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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KATA PENGANTAR

Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

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Table Of Content

THE APPLICATION OF OMNIBUS LAW IN THE EFFECT OF LEGAL REFORM IN INDONESIA

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ABSTRACT

Pros and cons of opinion that enlivened the government's plan among those who supported the government's plan stated that the Omnibus Law was the right solution to address the problem of overlapping laws and regulations in Indonesia. But the opponents or contra think that the omnibus laws plan is considered as an effort to delegitimize the rights of each sector of the nation's life, especially concerning Labor and other sectors that can be affected due to its validity. The problem in this paper is how should the concept of the omnibus law be applied in an effort to reform regulations for the better? Laws that will be revised and / or repealed through the omnibus law need to be properly reviewed. In this case, what needs to be understood is that there are no perfect laws. However, in terms of correcting these imperfections also must pay attention to other aspects. If laws are perfected in one sector, the other sectors must not be ignored or sacrificed. For the record, referring to many reports, the government is reported to have removed the EIA and IMB obligations in the licensing process in order to facilitate investment. In this case, it certainly will not be a problem if the government already has other alternatives to prevent environmental damage that is better than EIA and IMB, so this discourse is raised. Conversely, if in a case like this the government abolished the EIA solely to facilitate investment in the presence of better alternatives for controlling environmental impacts; it would certainly be a danger alarm. Things like this that must be wary of. It should also be understood, economic and investment issues are the problems that most intersect with the interests of the community. Not infrequently, investment actually causes conflicts that cause human rights violations and environmental damage by investors.

Keywords : ***omnibus law, reform, legislation.***

Introduction

In the world position of science Theory occupies an important position as a means to summarize the problem being discussed better. Seeing the Actual Phenomenon which is currently still warm in our public conversation is about the government's plan to initiate the implementation of the Omnibus Law in our country. For legal scholars, both academics and practitioners, not a few who commented on the government's plan which he considered as something contradictory to be applied to the conditions of our country today. Omnibus Law or known as the Omnibus Bill which is often used in countries that adopt a common law system such as the United States in making regulations. The regulation in this concept is tomake a new law to amend several laws at once[1]

In January 2017 the President launched a phase II legal reform policy, one of which was

regulatoryregulation[2]. Through structuring regulations the President emphasizes that the Government will evaluate a number of regulations that are out of sync and which can lead to multiple interpretations. This is important considering that multiple interpretations of regulation can have an impact on Indonesia's weak competitiveness in the global arena[3]. The strong political will that has been demonstrated by President Joko Widodo has been followed up by several related ministries, one of which is the Ministry of Law and Human Rights which have the task and function of carrying out government affairs in the field of legislation. President Joko Widodo (Jokowi) also said that many regulations hampered the economy and investment. Obligations such as Environmental Permits, Environmental Impact Analysis (EIA) and Obligations to Establish Buildings (IMB) make it difficult for investors. Therefore, a lot of regulations must be reduced, and the EIA and IMB obligations in investment licensing must be abolished.

In its development, what the President had proposed began on January 30, 2020, when Minister of Finance Sri Mulyani, who represented the President, submitted a Presidential Letter (Surpres) related to the Omnibus law on the Tax Draft Law (RUU) to the House of Representatives (DPR). This was followed on 12 February 2020 Coordinating Minister for the Economy Airlangga Hartarto submitted the Surpres and omnibus law to the Cipta Karya Bill to the DPR[4]. Specifically regarding the empowerment and development of UMKM, in the end it did not become a separate bill but instead became a part of the Cipta Karya Bill[5].

Indonesia has indeed become a country with many regulations. In fact the number in 2017 has reached 42,000 (forty-two thousand) rules. In terms of economy and investment, the Government has mapped 74 (seventy four) laws that have the potential to hamper the economy and investment. Of the 74 (seventy four) laws, the government will draft 2 (two) big laws, namely the Draft Bill on employment creation and empowerment of micro, small and medium enterprises (MSMEs) in order to increase competitiveness and encourage investment in Indonesia[6].

The problem is whether the number of regulations is a problem or there are other things, such as disharmony regulations that actually become a problem. If many regulations are a problem, then simplifying regulations through the concept of the omnibus law is certainly the right step, because the omnibus law is a law that focuses on simplifying the number of regulations because of its nature which revises and repeals many laws at once.

The problem will certainly be different if the problem of regulation is not only in terms of numbers, for example such as overlapping regulations, inappropriate content material, problems of sectional ego formation of uncontrolled regulations, to the problem of non-participatory formation processes so that regulations that are born receive rejection from Public.

Pros and cons of opinion that enlivened the government's plan, among those who supported the government's plan, stated that the Omnibus Law was the right solution to address the overlapping issues of several laws and regulations in Indonesia. But the opponents or contra think that the omnibus laws plan is considered as an effort to delegitimize the rights of each sector of the nation's life, especially concerning Labor and other sectors that can be affected due to its validity[7].

2. Hukumonline.Com, "Ini 3 Agenda Paket Reformasi Hukum Jilid II", https://www.hukumonline.com/berita/baca/lt587e0fdb06ea8/ini-3-agenda-paket-reformasi-hukum-jilid-ii/, accessed on June 21, 2020
3. Ibid
4. Kompas.id, "UMKM dan Koperasi dalam Omnibus Law RUU Cipta Kerja", https://kompas.id//baca/ riset/2020/02/18/umkm-dan-koperasi-dalam-omnibus-law-ruu-cipta-kerja/, accessed on Jun 21, 2020.
5. Hukumonline.Com, "Lima Langkah Penataan Regulasi untuk Pemerintahan Jokowi Jilid II", https://www. hukumonline.com/berita/baca/lt5db95c405cce2/lima-langkah-penataan-regulasi-untuk-pemerintahan- jokowi-jilid-ii/, accessed on June 21, 2020
6. Fitra Moerat Ramadhan, Demi Investasi dan Daya Saing Global, Jokowi Usulkan Omnibus Law, https://grafis.tempo.co/read/1864/demi-investasi-dan-daya-saing-global-jokowi-usulkan-omnibus-law, accessed on November 2019.
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The Problem

How should the concept of the omnibus law be applied in an effort to reform regulations for the better?

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 solution of the problem under study namely the concept of the omnibus law is applied in an effort to reform regulations for the better.

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

The data analysis method used is normative qualitative, namely the decomposition of data analysis which starts with the information obtained to achieve clarity of the problem to be discussed.

Research Result and Discussion

The principle of supremacy of the constitution requires that the contents of laws and regulations that exceed or contradict the substance of the 1945 Constitution. The principle of supremacy of the constitution also requires compliance of state administrators and citizens to the decision of the Constitutional Court (MK) which by the 1945 Constitution has been given the task to safeguard the constitution by given the authority to cancel the Act that contradicts the 1945 Constitution. If you look at the draft of the Employment Bill that has been submitted to the Parliament, a number of problems are seen related to adherence to the principle of constitutional supremacy. The substance of the Cipta Karya Bill contains 15 Chapters, 174 Articles, 79 Laws with 1203 Affected articles, from this substance it was found that the provisions that revived the article that had been canceled by the Constitutional Court were Article 251 Law − Law Number 23 Year 2014 concerning Regional Government governing the Regulations Regions that contradict the provisions of the higher laws and regulations can be revoked and declared invalid by Presidential Regulation[8]. Then exceeding the provisions of the 1945 Constitution through the provisions of Article 170 which grants the PP authority can change the provisions of the Act that is in the framework of accelerating the implementation of a strategic work copyright policy the Central Government has the authority to change the provisions in this Law and change the provisions in the Law that are not modified in this Law with PP.

The concept of the omnibus law can actually be a solution to simplify regulations that are too numerous, as experienced by Indonesia today. As revealed by Bappenas (National Development Planning Agency), from 2000 to 2015, the central government issued 12,471 regulations, with the ministry being 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 / cityregulations, followed by the provincial regulation with 3,177 regulations[9], Then, referring to the Indonesian Center for Law Study and Policy, from 2014 to October 2018, 7621 Ministerial Regulations, 765 PresidentialRegulations, 452 Government Regulations, and 107 Laws[10]. The data does not include

8. Putusan MK yang membatalkan kewenangan Pembatalan Perda oleh Eksekutif adalah Putusan MK Nomor 137/ PUU-XIII/2015 dan Nomor 56/PUU-XIV/2016
9. Bappenas dalam Pusat Studi Hukum dan Kebijakan Indonesa, Kajian Reformasi Regulasi di Indonesia: Pokok Permasalahan dan Strategi Penanganannya, Jakarta, PSHK, 2019, p. 54.
10. Pusat Studi Hukum dan Kebijakan Indoneisa, 2019, Kajian Reformasi Regulasi di Indonesia: Pokok Permasalahan dan

regulations published in the span of the past year, from November 2018 to now. In addition to the excessive number, the regulations also overlap, so it is not enough to fix one problem by revising only one law. For example, if there are problems in regulating forestry issues that require regulations to be improved, then what must be revised is Law No. 41/1999 concerning Forestry. However, there are still obstacles in other regulations, such as Law No. 32/2009 concerning Environmental Protection and Management (PPLH) or Law No. 5/1960 concerning Basic Rules on Agrarian Principles[11].

In addition to too many regulations, there are a number of other fundamental problems, firstly, the synchronization of laws and regulations planning, both at the central and regional levels with development planning and 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 legal system. In terms of material content, basically forming legislation is pouring public policy into legal norms that bind citizens[12]. A norm sentence in laws and regulations can be an obligation or obligation, prohibition, and permissibility[13]. According to Sri Hariningsih, in forming the statutory regulations, the formatter must first know what type of legislation to be formed[14].

Content material for the types of statutory regulations under the Law, namely Government Regulations (PP) and Presidential Regulations (Perpres) contain material for carrying out or ordered by law[15]. In addition, the content of the Perpres can also be used to carry out PPs or material to carry out the administration of government power[16]. In practice, many topics of problems that can actually be regulated by one product of the legislation but in fact are actually regulated in a number of laws and regulations, For example, in the education law[17]. In addition to Law Number 20 of 2003 concerning the National Education System, there are also laws that are specific to the education sector, namely Law Number 12 of 2012 concerning Higher Education and Law Number 20 of 2013 concerning Medical Education[18].

Legally, Law Number 12 Year 2011 regarding Formation of Laws and Regulations has not included the concept of Omnibus Law as one of the principles in the formation of laws. However, omnibus law is not a prohibited thing. Having historical red threads, although it still sounds foreign, is not really a matter new. Although not referred to as omnibus law, we have applied the same concept when the People's Consultative Assembly published RI MPR Decree Number I / MPR / 2003 on Review of Material and Legal Status Provisional MPR Provisions and RI MPR Decrees of 1960 to 2002. Then, this concept was also applied in the Election Law, although it is not called an omnibus law, the concept used is similar. Law No. 7 of 2017 concerning Elections basically unifies and revises 6 (six) laws. The six laws united and revised are Law Number 32 Year 2004, Law Number 8 Year 2005, Law Number 12 Year 2008, Law Number 42 Year 2008, Law Number 15 Year 2011, and Law Number 8 Year 2012. Long before, the Omnibus Law had also been practiced by Indonesia in simplifying around 7000 Dutch legislation to around 400 regulations[19].

Louis Massicotte further explained 2 advantages or benefits derived from the adoption of the omnibus

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Strategi Penanganannya, PSHK:Jakarta, p. 65

11. Hukumonline.com, Menimbang Konsep Omnibus Law Bila Diterapkan di Indonesia, published on February 17, 2017, https://www.hukumonline.com/berita/baca/lt58a6fc84b8ec3/menimbang-konsep-omnibus-law-biladiterapkan-di-indonesia/
12. Bayu Dwi Anggono, 2014, Asas Materi Muatan yang Tepat dalam Pembentukan Undang-undang, serta Akibat Hukumnya: Analisis Undang-undang Republik Indonesia yang Dibentuk pada Era Reformasi (1999-2012), Disertasi Doktor, Universitas Indonesia: Jakarta, p. 45.
13. Pusat Studi Hukum dan Kebijakan Indonesia, 2019, Kajian Reformasi Regulasi…Op.Cit. p. 31.
14. Sri Hariningsih, Dalam Pusat Studi Hukum dan Kebijakan Indonesia, Ibid. p.30
15. Pusat Studi Hukum dan Kebijakan Indonesia, 2019, Kajian Reformasi Regulasi…, Op.Cit. p. 33.
16. *Ibid*
17. Ibid. p. 34.
18. Ibid.
19. Satya Arinanto, Reviving omnibus law: Legal option for better coherence, Harian Jawa Post, https://www.thejakartapost.com/news/2019/11/27/reviving-omnibus-law-legal-option-better-coherence.html

law technique in the formation of laws namely: First, the omnibus law technique saves time and shortens the legislation process because it does not need to make changes to many laws to be amended but rather through a single draft law contains a lot of material changes from various laws. By only one law that contains a lot of material changes from various laws, it can be avoided the length of debate between members of the legislature against each of the laws if the changes are done in the usual way[20]. Second, create relations with the opposition party (minority)) and the majority in parliament whose habit is the principle of winning and losing in the discussion of the draft law, then with the omnibus law both have the opportunity[21].

However, efforts to reform regulations must not stop until it reaches the Omnibus Law. Regulatory problems are complete problems. Reforming or reforming regulations is not enough to only be interpreted as the integration of many laws into 1 (one) law or only seen as legal reforms such as changing the regulation of colonial inheritance with new laws, but must be seen as a comprehensive improvement starting from the formation, harmonization and evaluation.

The formation of laws must be participatory, so even in forming laws with the concept of the omnibus law. Participation is to accommodate aspirations; the public gives input to the preparation of the bill, while socialization is to introduce the existing draft. Omnibus Law has special characteristics that can endanger democracy[22]. The application of this concept can be infiltrated by many interests; therefore, the Parliament and the government must open access to information and involve the public at large. Formation of Laws and Regulations, provisions of Article 96 of Law 12 of 2011 concerning Formation of Laws and Regulations must be carried out not merely as a formality. In this case, the state must create a place to accommodate and a flow to convey clear public participation. So far, the mechanism of public participation is still vague, so that public participation in the formation of laws and regulations is only seen as a formal condition. The public is the subject of the enactment of the law must participate in it. The community must participate in determining the direction of policy priorities in the formulation of laws and regulations, without community involvement in its formation, it is impossible for such laws and regulations to be accepted and implemented properly[23]. This is because as one of the important conditions for producing responsive laws is community participation.

According to Nonet and Selznick, the importance of community participation in the formation of legal products must be seen in the participatory formation process by inviting as much participation as all elements of society, both in terms of individuals or groups of people, in addition it must also be inspirational in origin. When referring to Law Number 12 of the wishes or wishes of the community[24].

However, there is a rejection of a law which will not occur if the people's aspirations are accommodated in the formation. When a policy is not inspirational, suspicion can arise regarding the criteria in determining who gets what. Conversely, the policy making process that is carried out in an open manner and supported with adequate information, will give the impression that there is nothing to hide. Likewise in realizing the government's desire to apply the concept of the omnibus law to revise and / or repeal many laws that are

20. Louis Massicotte, "Omnibus Bills in Theory and Practice", Canadian Parliamentary Review/Spring 2013, p.15.
21. ibid
22. Pusat Studi Hukum dan Kebijakan Indonesia, PSHK Sampaikan Masukan Prolegnas dan Omnibus Law, published on November 21, 2019, https://pshk.or.id/highlight-id/pshk-sampaikan-masukan-prolegnas-dan-omnibus-law/
23. Yuliandri Tim Pengkajian Hukum, 2014, Laporan Akhir Pengkajian Hukum tentang Partisipasi Masyarakat dalam Penentuan Arah dan Kebijakan Prioritas Penyusunan Peraturan Perundang-undangan.
24. Lihat 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, December 2011

considered to hamper the economy and investment. No matter how good the concept is offered, but without public participation, the resulting legal products will still be difficult to accept.

Especially when referring to the times, the provision of public space or the existence of community participation is an absolute demand as an effort to democratize. The public is increasingly aware of their political rights, so that the making of legislation can no longer be an area of dominance by bureaucrats and parliament. Although this community participation is too ideal and is not a guarantee that a law that is produced will be effective in the community, but at least the participatory steps taken by the legislative body in every law formation will encourage the community to accept the presence of a law[25]. Seeing the importance of public participation, the existence of public participation in forming laws as regulated in Article 96 of Law No. 12 of 2011 concerning the Formation of Legislation and Regulations needs to be clarified how the mechanism and mechanism. It is intended that there are clear benchmarks of the extent of public participation, and avoid the existence of laws that are only formed in elite areas with public participation.

Meanwhile, for example, the problem of harmonization in the formation of local regulations is dominated by overlapping authority involving the Ministry of Law and Human Rights through regional offices (regional offices) and also the Ministry of Home Affairs as coaches of local governments[26]. The two ministries felt they had the authority to carry out harmonization, or even the formation of regional regulations. At the time the Ministry of Law and Human Rights issued Minister of Law and Human Rights Regulation No. 22 of 2018 concerning the Harmonization of Draft Laws and Regulations formed in the Regions by the Draft Law Minister of the Ministry of Home Affairs expressed objection to the provision and sent a letter numbered 180/7182 / SJ containing a request to cancel the Permenkumham (minister of law and human rights regulations)[27]. Related to the harmonization of this Perda (district regulation), it has actually been accommodated in the revision of Law 12 of 2011 which was conducted in early September. However, it also left some notes, namely related to regional autonomy.

Initially, the harmonization of the draft regional regulation was regulated as the authority of the bureau or the legal part of each local government, but in the revision of the harmonization authority was drawn into the affairs of ministries or institutions that carry out governmental affairs in the field of legislation formation. As stated by Khairul Fahmi in "Centralized Formation of Regional Regulation", Article 58 paragraph 2 has delegitimized the authority of the regional government. According to Khairul Fahmi, the provision of Article 18 paragraph (6) of the 1945 Constitution confirms 2 (two) matters relating to regional regulations. First, regional regulations are attributed to the 1945 Constitution so that their formation becomes a constitutional right of the regional government. As an attribute of authority, regional regulations can be formed without having to wait for delegation arrangements from higher regulations[28]. In terms of harmonization, the provisions of article 58 paragraphs (2) will also provide a burden of harmonization that must be carried out by the center through ministries or agencies in charge of very heavy legislation. Hierarchically, regulations will go down more and more, if at the level of Law only 1, Government Regulation can be 5, 1 Government Regulation will also be responded to at least one local regulation in each region. Of course, the provisions

25. Yuliandri Tim Pengkajian Hukum, 2014, Laporan Akhir Pengkajian Hukum tentang Partisipasi Masyarakat dalam Penentuan Arah dan Kebijakan Prioritas Penyusunan Peraturan Perundang-undangan
26. Ibid
27. Agus Sahbani, Permenkumham Harmonisasi Peraturan Dinilai Konflik dengan UU, hukumonline.com, published on November 2, 2019. https://www.hukumonline.com/berita/baca/lt5bdc39c5d3a98/permenkumham-harmonisasi-peraturan-dinilai-konflik-dengan-uu/
28. Khairul Fahmi, Sentralisasi Pembentukan Perda,Harian Kompas October 21, 2019, https://kompas.id/baca/opini/2019/10/21/sentralisasi-pembentukan-perda/

of Article 58 paragraph (2) need to be reviewed.

These problems also prove that it is not enough to overcome the regulatory problem only to the omnibus law. If there is no clear harmonization mechanism, the application of the omnibus law to overcome regulatory problems will also not be effective, because the problem is not just too much regulation, but also disharmonious regulatory problems. At this stage, there needs to be a single authority that does it. It is intended that harmonization is centralized and there is no overlapping authority. In this case, the formation of a special regulatory body as promised by the president needs to be considered to be realized. In addition, Law 12 of 2011 concerning Formation of Regulations and Regulations needs to be revised again.

Conclusion

Laws that will be revised and / or repealed through the omnibus law need to be properly reviewed. In this case, what needs to be understood is that there are no perfect laws. However, in terms of correcting these imperfections also must pay attention to other aspects. If laws are perfected in one sector, the other sectors must not be ignored or sacrificed. For the record, referring to many reports, the government is reported to have removed the EIA and IMB (building permits) obligations in the licensing process to facilitate investment[29]. In this case, it certainly would not be a problem if the government already had other alternatives to prevent better environmental damage from EIA and IMB, so this discourse is raised. Conversely, if in a case like this the government abolished the EIA solely to facilitate investment in the presence of better alternatives for controlling environmental impacts; it would certainly be a danger alarm. Things like this that must be wary of. It should also be understood, economic and investment issues are the problems that most intersect with the interests of the community. Not infrequently, investment actually causes conflicts that cause human rights violations and environmental damage by investors.

Do not let this happen just because they want to attract as much investment as possible, but instead cause people to be persecuted because their rights are deprived. Therefore, before going far, the government needs to properly review the plan before the omnibus law is actually implemented. Overcoming regulatory problems is not enough just omnibus law. We need a special authority that is really focused on studying regulatory issues, both at the stage of formation, harmonization and evaluation. Later, the results of the study from the authority will be the basis for revising and / or revoking the law using the concept of the omnibus law.

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