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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.

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.

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Wassalamu'alaikum Wr.Wb.

Table Of Content

OMNIBUS LAW IN COMPLETION OF LAND REGULATION PROBLEMS

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ABSTRACT

The change of President and cabinet of government resulted in the birth of many laws and regulations in accordance with the wishes of each government in power at that time. This then raises regulatory issues where there are several laws and regulations that overlap, causing a policy conflict between one ministry / department and another ministry / department.The problem in writing this paper is how can Omnibus Law solve the regulatory issues in the land sector in Indonesia? The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency of the Republic of Indonesia need to improve the relationship of coordination between related institutions or government institutions in resolving conflicts such as conflicts over plantation land, taking up state forest land. The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency of the Republic of Indonesia have been given authority regarding all attributions relating to the management, use and allocation of land. Therefore, the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency of the Republic of Indonesia must intensify coordination with related ministries in resolving land conflicts.The problem of land is a complex national problem mainly because it involves the lives of many people. Land is a means of production and helps guarantee the welfare of the people. As a result, land conflicts are prone to occur especially if the community no longer has access to land. To fix all land issues, it is imperative to reform regulations in the land sector. Omnibus Law which can later be realized in the form of integrated regulations (Omnibus Regulation) will minimize the clash of statutory regulations related to certain fields, for example the land sector. Land law can be an integrated statutory regulation governing land law policy. Land issues in Indonesia have become one of the factors reducing the investment climate in Indonesia.

Keywords: *omnibus law, regulation, land.*

INTRODUCTION

The cause of land conflicts in Indonesia is partly due to regulatory issues in the land sector. Some laws and regulations related to the land sector often collide with each other. As stated by Ruslan Burhani quoted from page Antaranews.com, the Head of the Indonesian National Land Agency, Hendarman Supandji, who previously raised the issue of regulations in the field of land and the National Land Agency

will collaborate with tertiary institutions, practitioners and related institutions both from the government and non-governmental organizations (NGOs) to be able to provide input for harmonization and synchronization of regulations in the agrarian sector, which amounts to 632 regulations. After reviewing almost 208 regulations that are no longer valid, so the numbers of land regulations that still apply in Indonesia is around 424 regulations. The aforementioned statutory regulations consist of various levels of the order of the laws and regulations from the level of the Law up to a circular issued by the ministry[93].

As a result of these regulatory problems resulting in policy makers who do not understand the structure of the relevant laws and regulations can lead to administrative errors, civil losses and criminal acts. This resulted in policy makers being hesitant and even afraid to take policy because it could have a legal impact on him. Land law policies in Indonesia have long been regulated in various laws and regulations originating from the Netherlands based on the principle of concordance. The legal products from the Netherlands include Agrarische Wet, Agrariche Besluit, Burgerlijk Wetboek, Koninklijk Besluit, Regering Reglement, Indische Staatsregeling. These regulations are very detrimental to the Indonesian nation and benefit the colonial nation. One of the land rights that were regulated during the Dutch colonial period included eigendom rights, namely the absolute property rights generally granted to the colonialists and given legal certainty by being registered in the land book register. Whereas indigenous Indonesian native communities do not have proof of ownership of land rights because they still adhere to the understanding of customary law so that if there is evidence of customary ownership in the form of girik, ketitir, pipir and the like. These rights are still often used during the land registration process.

After Indonesian independence, the government at that time drafted regulations on agrarian issues through the Agrarian Committee that was formed at that time so that Law Number 5 of 1960 concerning Basic Agrarian Principles hereinafter referred to as UUPA, was implemented since September 24, 1960 up to now.

Indonesia has passed the government regime from the Old Order government to the Reform Order. The change of President and cabinet of government resulted in the birth of many laws and regulations in accordance with the wishes of each government in power at that time. This then raises regulatory issues where there are several laws and regulations that overlap, causing a policy conflict between one ministry / department and another ministry / department. This has come to the attention of the government and practitioners in the agrarian sector. To solve the regulation problem, an appropriate legal breakthrough is needed and one of the solutions is through the Omnibus Law concept.

For some people, it is still strange to hear the term Omnibus Law. Even some legal academics are still debating the concept of the Omnibus Law if it is implemented it is feared that it will disrupt the Indonesian constitutional system because it is allegedly the cause of the legal system adopted in Indonesia, which is the dominant Civil Law, while the Omnibus Law comes from the Common Law system. This is then the idea becomes interesting to study from the applicable legal system in Indonesia.

The problem in writing this paper is how can Omnibus Law solve the regulatory issues in the land sector in Indonesia?

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

93. Ruslan Burhani, "BPN Sederhanakan Aturan Pertanahan", http://www.antaranews.com/berita/376127/bpn-sederhanakan-aturan-pertanahan, diakses 21 Juni 2020

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 study, the Omnibus Law, can resolve land regulatory issues in Indonesia.

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 is Omnibus Law can solve the regulatory issues in the land sector in Indonesia.

Research Result and Discussion

Can Omnibus Law Solve The Regulatory Issues In The Land Sector In Indonesia

Indonesia is a state of law as stated in the Indonesian Constitution stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, namely the State of Indonesia is a state of law (Rechtstaats) not a state of power (Machtsstaat). In countries that uphold the laws have legal goals, among others, order, peace, peace, prosperity and happiness in social life[94] 2 Countries that uphold the law must be based on law that is steady, strong and provides a sense of justice the eye becomes a social engineering tool, but more than that to uphold justice and protect human dignity. Not a few human rights are entrusted to the law to be protected or protected, because without legal protection, there will be many violations of law.

The constitution has an important position in the administration of the rule of law. According to Aristotle, the constitution is the arrangement of positions in a country and determines what is meant by the governing body and the end of each society. The constitution is the rules and the state authorities must regulate according to these rules5. Aristotle's opinion is basically a constitution is the legal basis of all laws rather than the ruler So that the constitution is the basic foundation of a country.

One of the problems experienced by the Indonesian people is that there are still many disputes in the land sector. Land disputes that occur due to one of them are a regulatory problem. When examined closely the problems of regulation in the field of land are due to changes in the political law of land law which often changes following the wishes of the current government regime.

Indonesia's land policy is still unstable and often changes according to the wishes and interests of the authorities. Land politics should be more responsive in responding to land regulation problems. Responsive law also means that the fundamental values of the Indonesian nation contained in the Pancasila and the 1945 Constitution of the Republic of Indonesia must be the soul of land policy[95].

Law Number 5 of 1960 or often referred to as UUPA is one of the legal products that were born in the era of the Old Order government which aims to change and update the regulations / laws and regulations in the field of agrarian and land law for the realization of development based on Pancasila and the Constitution 1945. Government policies of the Old Order era were more aimed at realizing the prosperity and welfare of the people as mandated by Article 33 paragraph (3) of the 1945 NRI Constitution.

In the era of the New Order government, land law policies were oriented towards micro-economic policies to support development. This could be noted by many lighthouse projects that explored and exploited natural resources on a large scale. The New Order government policy was felt to be detrimental to the Indonesian people so that a wave of protests often occurred. But it could be muted and silenced by dictatorial means. Many small communities were marginalized, especially farmers and laborers. In the

94. Firman Freaddy Busroh, *Teknik Perundang-undangan suatu Pengantar*, (Jakarta: Cintya Press, 2016), hlm. 17
95. Bernhard Limbong, *Konflik Pertanahan*, (Jakarta: MP Pustaka Margaretha, 2012), hlm. 159

New Order era, there were many cases of violations of human rights (HAM) which have not yet been fully resolved. The law governing agrarian law should be an umbrella act. However, from some legislation related to agrarian law it does not become a juridical basis for a number of laws and regulations. This has created a disharmony between the LoGA and a number of sectional laws and regulations.

Land regulatory issues related to other sectional laws such as Law Number 7 of 2004 concerning Water Resources. The existence of these laws and regulations does not turn out UUPA as a legal basis and has problems such as the granting of Water Use Rights (HGA), Water Use Rights (HGUA) and Water Use Rights (HGPA). The term right is not quite right because the real form is licensing. This shows the difference with Article 47 of the BAL. Moreover, UUSDA has been canceled by the Constitutional Court with Decision Number 85 / PUU-XI / 2013 so that it re-enacts Law No. 11/1974. This raises regulatory issues in its implementation to date.

Furthermore, problems arose with Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law). Inconsistency arises because it does not make LoGA as a source of law. The Minerba UU orientation tends to favor production rather than conservation. This benefits the private sector and managers and can harm the country. Polemic on the Mining Law between government regimes also strengthened due to differences in regime interests. Since the existence of the Minerba Law, the government is deemed inferior to the interests of the company because many companies do not fulfill their obligations and tend to ignore their obligations to the government. Law No. 4/2009 also does not expressly regulate compensation for holders of land rights whose land is taken for mining purposes.

Regulatory problems also occur with Law No. 41 of 1999 concerning Forestry (UUK). The LoGA recognizes the existence of state land, customary communal land and land rights while the UUK only recognizes the existence of state forests and private forests. This often causes implementation problems in the field because of the wrong assignment due to lack of coordination between BPN and the Ministry of Forestry. The UUK does not recognize the existence of customary forests, even though customary forests are part of customary rights that are still protected by the state as mandated by the LoGA. The Law on Laws incorporates the LoGA as a legal basis, but its body does not refer to the articles in the LoGA, thus creating disharmony in the laws and regulations.

The government has tried to revise the LoGA as mandated in RI Decree No. MPR. IX / MPR / 2001 concerning Agrarian Reform and Natural Resource Management and Presidential Decree No. 34 of 2003 concerning National Policy in the Field of Land. Despite these norms, legal reform in the field of agrarian affairs has not yet been realized. The draft Land Law that has been discussed in the legislature in fact up to now there has been no progress and results though the existence of the Land Law has urgently needed. The renewal of agrarian law must continue to place the Pancasila and the 1945 Constitution of the Republic of Indonesia as the main principle as the country's goal is to prosper the lives of the Indonesian people.

Regulatory issues in the field of land can be concluded including:

1. The emergence of authority disputes in the management of natural resources between the central government and regional governments after the issuance of laws and regulations governing the issue of regional autonomy and coordinating relationships between departments / agencies, due to the issuance of sectional laws and regulations where their existence is conflicting and more leaning to prioritize the interests of each department / institution. So that it has the potential to cause ego-sectional conflict in terms of natural resource management;
2. Still lack of recognition of the position of indigenous peoples or indigenous people who have lived in the local area (Indigenous people) as owners of customary land in the current era

of development. Many indigenous peoples have been victims of land acquisition to realize development;

3. The emergence of various laws and regulations that are sectional in which norms are not subject to or in accordance with the principles contained in the LoGA;
4. Most of the land in Indonesia has not been certified even there are still many cases of the emergence of a double certificate in the field of land issued by the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency of the Republic of Indonesia[96].

As a dynamic process that is constantly undergoing changes in accordance with the dynamics of society, the renewal of the legal substance and the formation of legislation in the land sector needs to pay attention to 3 (three) aspects, including:

First, the history of the Indonesian nation is the basis for consideration and learning. Experience and consideration regarding past history must not be eliminated in the process of forming legislation so that it is in line with the objectives of the formation of the Indonesian state.

Second, the objective conditions that occur in the current government. The government needs to pay attention to legal aspects Formation of good laws and regulations so that the laws and regulations that are designed, formed and published in accordance with the applicable laws and regulations, are higher or equal in their hierarchy and can be in accordance with the real needs of the community, so they can implemented effectively and efficiently.

Third, the ideals to be achieved in the future. A perspective on the future is needed so that legislative bodies in forming legislation are able to anticipate the inevitable development of society, culture, science, technology, and information in the era of globalization.

As a state of law (rechsstaat) the principles of the rules of law must be upheld in the Republic of Indonesia. For us, the principle of the rules of law is none other than the rules of justice, law enforcement with the core of justice. Such a principle needs to be emphasized, because discrimination in the application of law in reality is too conspicuous. The product of law and its enforcement is more in favor of the ruling class, a group of people who have economic or political power to other parties. The rights of justice seekers who mostly come from powerlessness groups are always sidelined, substantive or sociological justice is always enjoyed by those who are powerful while powerless only gets formal justice. Such a situation in a newly independent country can still be understood because it involves the availability of human resources[97].

Regulatory problems in Indonesia can not only be resolved through harmonization, but one of which requires legal breakthroughs through the concept of the Omnibus Law. The concept of the Omnibus Law which is applied in several countries such as the United States, Belgium, and United Kingdom offers a solution to the problem of the emergence of conflict and overlapping a norm / legislation. If you want to be addressed one by one it will take quite a long time and costs that are not small. Not to mention the process of drafting and forming legislation on the part of the legislature often causing deadlocks or not in accordance with interests.

This in turn consumes energy, time; costs and goals to be achieved are not on target Plus the decline in the level of public confidence in legislative performance. For this reason, a legal breakthrough from the government is needed to resolve regulatory issues.

96. Lastuti Abubakar, "Revitalisasi Hukum Adat sebagai Sumber Hukum dalam Membangun sistem Hukum Indonesia", *Jurnal Dinamika Hukum Vol. 13, No. 2*, (Mei 2013): 323.
97. Satjipto Rahardjo, *Masalah Penegakan Hukum*, (Bandung: Sinar Baru, 1983), hlm. 109.

To achieve this, strong regulations must be based. One of the countries that adopted the Omnibus Law was Serbia. Omnibus Law is a law adopted in 2002 which regulates the autonomous status of Vojvodina Province which is included in Serbia. The law covers the jurisdiction of the Vojvodina provincial government regarding culture, education, language, media, health, sanitation, health insurance, pensions, social protection, tourism, mining, agriculture, and sports.

Demands for improvement and improvement of overlapping laws and regulations in Indonesia are very urgent to do. One of the ideas of the Omnibus Law is likely to be implemented in Indonesia provided that space and legal foundation are given.

Omnibus Law is not a new thing in the world of legal science globally; it's just that in Indonesia it is already very necessary to fix the overlapping laws and regulations. The process of harmonizing laws and regulations in addition to the obstacles above also takes a long time. With the Omnibus Law concept, regulations deemed irrelevant or problematic can be resolved quickly.

However, there are also some academics who think that if the concept of the Omnibus Law is applied it is contrary to the principle of democracy, because the concept of the Omnibus Law is considered by some to be anti-democratic. But the biggest question is: do we have to continue to allow conflict of laws and regulations? The government needs to make a legal breakthrough in order to be able to resolve the overlapping problems of some of these laws and regulations.

The order of the laws and regulations in Indonesia must be revised and provide space to apply the concept of the Omnibus Law. Moreover, the current state of policy makers can be easily criminalized by law enforcement officials. The understanding of legal science of the majority of law enforcement officers uses the lens of legal positivism, making it difficult to provide a policy-making space in this case officials to discretion. Often discretion carried out by policy-making officials' leads to criminal offenses because they are charged with committing criminal acts of corruption.

It is an irony that Indonesia as a rule of law with all its instruments aims to protect human rights and provide justice for most of its citizens who are very urgent now to "bring justice to the people" (to bring justice to the people) by resolving the problems properly a problem which the people deem must be resolved legally Other problems when the act is not liked or hated by the community because it harms or causes victims. In other words, the extent to which the problem or action is contrary to the values prevailing in society and the community considers it appropriate or inappropriate to be punished in the context of carrying out community welfare and security.

The purpose of abstract law in the midst of a complex society can only be realized through a complex organization. This meant that the community would accept the purpose of the law. The purpose of the law, among others, is to create peace and uphold justice. Thus the public will not conduct vigilante or street justice. The legal community will fully submit to the legal process because it is able to provide a sense of legal certainty (rechtszekerheid).

Order and security become tangible through the actions of the Police. It can be argued that law enforcement will always involve humans in it and with human behavior itself. The law cannot run alone but must be implemented by the community. The legal regulations are intended to become a social contract and provide legal certainty in the community. Thus the legal awareness arises by itself as an increase in trust in the law enforcement apparatus. Such law can be in the form of criminal law, civil law, family law and other fields of law.

The idealized agrarian justice seems to be a utopia for the people of this country, whose majority

of their livelihood is in the agrarian field. Access to land has not yet been fully felt by farmers. At the same time, land conflicts have never ceased, especially conflicts that are motivated by land ownership and use or what are known as structural conflicts. The community is in conflict with the structural community, whether it is the government or private legal entity. This fact provides an assertion that agrarian reform is urgent to be carried out. Agrarian justice must be upheld and manifest in the distribution of land and the availability of access to land for the community.

Agrarian reform must be proven in concrete action, not merely rhetoric or theory. In the MPR Decree RI Number: IX / MPR / 2001 mandates the House of Representatives of the Republic of Indonesia together with the President to immediately regulate further implementation of agrarian reform and management of natural resources as well as revoke, change and / or replace all relevant laws and regulations that are not in line with the provisions this. This mandate should be followed up concretely by the Government and the Parliament by reviewing existing legislation and synchronizing it and adjusting it to the principles and policy directions mandated in this provision. The implementation of agrarian reform will certainly produce land law politics that is able to guarantee legal protection and increase welfare and encourage economic activities for the community.

The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency of the Republic of Indonesia as an institution given special authority to manage national land must be addressed institutionally and organizationally from the central to the regional level. The Ministry of Agrarian Affairs and Spatial Planning / BPN RI must implement the principle of 3G (good governance) or good governance in carrying out its authority. Professional services, transparency, accountability must really be implemented and implemented starting from the ranks of the leadership to the ranks of the executor of the task.

Conclusion

The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency of the Republic of Indonesia need to improve the relationship of coordination between related institutions or government institutions in resolving conflicts such as conflicts over plantation land, taking up state forest land. The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency of the Republic of Indonesia have been given authority regarding all attributions relating to the management, use and allocation of land. Therefore, the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency of the Republic of Indonesia must intensify coordination with related ministries in resolving land conflicts.

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