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

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Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

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Wassalamu'alaikum Wr.Wb.

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CRITICISM OF THE COMMUNITY IN THE OMNIBUS LAW BILL

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ABSTRACT

The discourse of reform is still ongoing in almost every area of government. Efforts to continue to improve the system of government for the legislature and executive will focus on the law. A wave of changes in the rule of law stems from the executive with a legal formulation called the omnibus law. The President initiated the Omnibus Law with the intention of creating jobs through accelerating investment, Protests about the essence and existence of omnibus law created by the employment of citizens, workers, regional leaders, and especially civil society.What is the public criticism of the Omnibus Law Bill?Various consequences in the relationship between employers and workers become a form of agreement that is unidirectional and without any moderator. Ideally, in work relations, especially with reference to the history of Roman canon law, it must be based on the legal proposition that is Pacta Sunt Servanda (the agreement must be kept)[149]. That is, the principle of legal certainty in the agreement between employers and workers. The point is that the work agreement entrusted by the government to the two parties (employers and workers) must have the principle of consensualism and if a dispute occurs then it is decided by the judge in court. Right herein lays the weakness in seeing the consequences that will be experienced by workers (laborers). The first argument, they have lost access and relations in trade unions, governments and industrial relations dispute resolution institutions. When examined in the Critical Legal Theory, workers who experience work disputes with employers, almost certainly in the Omnibus Law Bill will be eliminated. The second argument, workers do not have strong economic capital to fight for their rights in court.

Keywords: *criticism, society, omnibus law*

Introduction

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

149. Op.cit Marjuki

side, they claim there are at least three benefits from implementing Omnibus Law: First, it eliminates overlaps between laws and regulations; Second, the efficiency of the process of change / revocation of laws and regulations. Third, it eliminates sectional egos contained in various laws and regulations. The Substance of Omnibus Employment Copyright has been discussed intensively with 31 relevant Ministries / Institutions, and includes 11 clusters, namely: 1) Simplification of Licensing, 2) Investment Requirements, 3) Employment, 4) Ease, Empowerment and Protection of UMK-M, 5) Ease of Doing Business, 6) Research and Innovation Support, 7) Government Administration, 8) Imposition of Sanctions, 9) Land Procurement, 10) Government Investment and Projects, and 11) Economic Zones. Therefore, the President hopes that the DPR can support the government in realizing this plan. "Well, please support this, don't make it too long, and don't complicate things. Because, this is once again to create employment," said the President, as reported by the Setkab.go.id page, Monday (12/09/2019). Some time ago, the Indonesian House of Representatives officially adopted the 2020 National Legislation Program (Prolegnas). Within the Prolegnas 2020, there were planned to be 50 Laws to be discussed and four of them were OmnibusLaw. Omnibus Law meant in the Omnibus Law Employment Copyright, Omnibus Law Taxation, Omnibus Law the National Capital, and Pharmacy Omnibus Law. Among the draft Omnibus Laws, the Employment Copyright Bill (CILAKA) was the most highlighted by the public, especially from the workers[150].

The discourse of reform is still ongoing in almost every area of government. Efforts to continue to improve the system of government for the legislature and executive will focus on the law. A wave of changes in the rule of law stems from the executive with a legal formulation called the omnibus law. The President initiated the Omnibus Law with the intention of creating jobs through accelerating investment, Protests about the essence and existence of omnibus law created by the employment of citizens, workers, regional leaders, and especially civil society.

Citizens who are involved in questioning the existence of the law should through a procedure that requires academic studies from various points of view[151]. In addition, the existence of the omnibus law is also felt to worry workers because it was born with a spirit that seemed to want to (a) revolutionize the law or (b) reform the law. These two terms certainly have implications for the philosophy of law as conceptualized by Edwin W. Patterson that in the history of thought, law moves in an evolutionary spirit[152] (Patterson, 1951: 681).

The Omnibus Law Bill is a problem, due to the existence of a legal hierarchy that does not go through procedures and the emergence of multiple interpretations both due to the selection of legal product names and the written contents of the Draft Law. In designing the law requires an evolutionary process with carefulness and thinking about the consequences of the law now and in the future. The initial intention of the Omnibus Law Bill was to create a more improved world of work, however, if the bill is decided hastily and results in error because the full authority of the policy in the industrial sector is left to the entrepreneurs. This can be a gamble for workers, especially in the informal sector. Data from the Central Statistics Agency in 2020 shows there are 74.04 million people (56.50 percent) in the informal sector[153]. That is, the authority that had existed on the part of the government was transferred to employers, as a result of guaranteeing employment to workers became very risky

150. https://usd.ac.id/mahasiswa/bem/f1l3/SELAYANG%20PANDANG%20OMNIBUS%20LAW.pdf accessed on June 26, 2020

151. Gultom, A. F., Munir, M., & Ariani, I. (2019). Perubahan Identitas Diri Dalam Eksistensialisme Kierkegaard: Relevansinya Bagi Mental Warga. *Jurnal Pendidikan Kewarganegaraan*, *9*(November), 77–84. https://doi.org/10.20527/kewargan egaraan.v9i2.8052

152. Patterson, E. W. (1951). Historical and Evolutionary Theories of Law. Columbia Law Review. https://doi.org/10.2307/1119252 p. 681

153. Badan Pusat Statistik Nasional tahun 2020

The government has submitted the Employment Copyright Bill to the Indonesian Parliament, Currently just waiting for the discussion to be approved. This has triggered various condemnations arising from the jokes and actions of some communities, such as workers' groups. The Confederation of Indonesian Trade Unions (KSPI) threatened to hold massive action if the Omnibus Law Draft Law (Cipta Karya) was passed. KSPI rejected the Omnibus Law RUUCipta Work whose draft had been submitted by the government to the DPR RI. Some of the issues raised in the Omnibus Law are as follows: 1) the drafting of a non-participatory Bill the Omnibus Law task force formed by the government is exclusive and elitist, so that it does not accommodate affected community groups on the Cilaka Bill. It was noted that of the 138 Task Force members, the majority came from government and business circles. 2) A major threat to environmental damage The Cilaka RUU is believed to legitimize investments that damage the environment and not prosper the community. This happens because the government is not selective in attracting investment into Indonesia. Investors who enter have the potential to expand the exploitation of natural resources and environmental damage. The Cilaka Bill encourages the acceleration of the environmental crisis because incoming investment increases ecological disasters, pollution and environmental destruction. Such as forest and land fires that occurred in recent years, mine pits that killed dozens of children, flooding, drought, and air pollution. 3) Centralized licensing. It is considered that this policy is hurting regional autonomy which has been running since the reform. Some licensing authorities in the regions that will be withdrawn to the center include the authority of the provincial government to manage minerals and coal, including the issuance of regulations and permits. This centralization of licensing distanced public services and made it difficult to convey the aspirations of the community.4) The welfare conditions of workers will decline, the Cilaka Bill is considered to open a modern slavery space through labor flexibility in the form of setting wages below the minimum, per hour, and expanding outsourcing. Hourly labor costs will be very small if calculated based on the Jakarta 2020 provincial minimum wage of Rp.4.2 million for 8 hours per day work, which is Rp26.250 / hour. Imagine if you do not work for several hours because of other matters. How much will you lose? 5) Light investment permit. Deprivation and destruction of people's living space in the name of development and economic interests has the potential to increase. The Cilaka Bill makes it easy for corporations to exploit people's living spaces, such as land. YLBHI notes in 2018 there were 300 agrarian conflicts in 16 provinces with an area of 488 thousand hectares. 6) The threat of termination of employment If the Cilaka Bill eliminates severance pay for workers who have been laid off, it is easier for capital owners to relocate to other areas whose wages are cheaper. This will trigger mass layoffs. In addition, the ease of employers in recruiting and firing workers makes working conditions worse. As a result, workers no longer have bargaining power to improve working conditions.

The discussion topic that will be studied focuses on the basic drafting process of the omnibus law (antecedent) and some practical implications that occur when this bill becomes a law (Consequences). This study focuses more on two cases: (a) technical errors; (b) a substantial fallacy from omnibus law; (c) the logical hierarchy flow from the basis of the formulation of the Omnibus Law Bill.

Methods of Research

The approach in this paper is qualitative analytical which will be elaborated using methods such as: critical description, language analysis, comparison and interpretation (interpreting omnibus law as a text that fits the situation of the times and can predict its consequences in the future)[154]

THE PROBLEM

154. Bakker, A. (1984). Metode-Metode Filsafat. Jakarta: Ghalia Indonesia. p. 20

What is the public criticism of the Omnibus Law Bill?

Research Result and Discussion

The discussion of the Draft Omnibus Law (hereinafter abbreviated as OL Bill) in this study is in a contra position. The selection of contra positions for groups is based on the following errors in the name of the legal product, the omnibus law. This mistake has practical consequences, especially regarding freedom if this bill then becomes law. The drafted bill was named Omnibus Law. The two words chosen were mistaken because of a mixture of words from two different languages, namely Latin: omnibus and English: law. Mixing these two terms almost certainly has ambiguity in terms of meaning. In Critical Legal Studies, legal products need to be examined in more detail in their language, especially in their grammar. The reason is rational because, besides there are inconsistencies in the choice of terms that can have an impact on the study and practical function of the law. As long as it is consistent, the name of the bill is at the same time Latin (lex omnibus) or at the same time English (the law for entirely) or translated into Indonesian (integrated / integrated law) (to match the natural conditions of thought of its use). This is certainly in line with Spinoza's advice, "verbs ex solo usu certam habent signification (Legal words get the right meaning only when appropriate from their use)[155].

Errors in the selection of legal product titles (in this case the OL Bill), in our argument with a contradictory position, have an impact on the logical consequences. In the philosophy of law, especially those which began in the modern era, ideally legal products must be studied in detail, especially about the name of the law to be made. Omnibus Law, the term of the formulator or team of legal experts from the executive seems to not pay close attention to the original intent and substance of the basic law that should have preceded the word Omnibus. This is the first mistake. The second mistake, the law in question is Lex in its original intent can refer to Latin grammar. Thus, Omnibus Law must be changed to Lex Omnibus (not Ius Omnibus, although Ius also has a legal meaning). This term change has very substantial implications, because by referring to Thomas Hobbes (1588–1679), an English philosopher, by making a distinction between "Ius" and "Lex". The term "Ius" is often understood as something wrong (ignorantia) where the law means that everyone has the right to everything (omnia), The location of the error of the concept of "Ius" precisely because "Ius" presupposes the existence of absolute freedom for everyone. This situation certainly does not require law (ex lex). The consequence of the absence of legal bias causes social tensions that lead to chaos[156].

In that context, lex can be understood as having to exist, because by law can limit freedom and be coercive[157]. With freedom, crime occurs and authority and power are owned by anyone who has the power of the masses, weapons, charisma. Here, Thomas Hobbes worried that without a law in the form of a social contract, Leviathan would become the ruler. The mistake of "Ius" can then be anticipated in the use of lex, because the concept of lex means rules that restrict freedom. Hobbes states the words ius and lex are clearly not a synonym. Hobbes defines the two concepts as follows:

> "(T) hough they that speak of this subject use to conformed ius and lex, right and law, yet they ought to be distinguished, because right consistency in liberty to do, or to forbear; whereas law determineth

155. Spinoza, B. de. (2019). Theological- Political Treatise. In The Collected Works of Spinoza, Volume II. https://doi.org/10.1515/978140087 3609-006 accessed on June 22, 2020
156. Marzuki, P. M. (1999). Reformasi Hukum dan Pendidikan Hukum di Indonesia. Perspektif. https://doi.org/10.30742/perspektif. v4i1.202 accessed on June 22, 2020
157. Bastiat, F. (2010). Hukum: Rancangan Klasik untuk Membangun Masyarakat Merdeka (Z. Rofiqi, Ed.). Jakarta & Malaysia: Freedom Institute dan Akademimerdeka.org

and bindeth to one of them: so that law and right differ as much as obligation and liberty; which inone and the same matter are inconsistent.[158] "

In short, ius means freedom and lex means a restraint of freedom. This is in line with what Hobbes meant by freedom is the absence of external obstacles. This situation of freedom, for Seppo Sajama, is an external difficulty to change. This can be applied more to irrationality than rationality. Hobbes continues the difference between ius and lex by referring to the concepts of natural rights (natural rights) and natural law (natural law). Ius naturale, for Hobbes is an unlimited individual right that everyone has everything (ius in omnia), while, lex naturalist is a set of principles of practical rationality which govern the boundaries of original freedom ius naturale[159].

Another objection to the Omnibus Law Bill is that there is one article in the Employment Creation Bill that needs to be examined carefully and critically, which is contained in chapter XIII article 170, namely:

> "(1) In the framework of accelerating the implementation of a strategic work copyright policy as referred to in Article 4 paragraph (1), based on this Law the Central Government has the authority to change the provisions in this Law and / or change the provisions in the Act which are not modified in This law. (2) Amendments to the provisions referred to in paragraph one (1) shall be regulated by Government Regulation. (3) In the context of stipulating the Government Regulation as referred to in paragraph (2), the Central Government may consult with the leadership of the House of Representatives of the Republic of Indonesia.[160]"

In the Critical Legal Study, this article will find a number of formal peculiarities, namely: (1) related to executive authority; (2) contrary to stufenbau theory; (3) consultation and not a public test.

First, the intention to facilitate the rule of law starts from the executive with the aim of elaborating and accelerating the rule of law into one legal formula that can summarize all and all. This means that the intention is not just in the idea, but can be a legal act that applies from the central government to regional governments and to the grassroots elements. The idea in the OL bill draft became the initial step of the executive by consulting legal experts and constitutionally to the DPR as a representation of citizens. The crucial point is that the executive who refers to the President of the Republic of Indonesia has full authority to simplify all regulations. In this context, the president may reduce the role of the judiciary and the legislature because he must pay attention to details both every word, phrase, sentence and its implications and that takes time. In addition, it is also necessary to involve citizens and civil society groups in the formulation of the bill.

Second, the written idea to change the law is based on government regulations. In this second paragraph there is an error in casu because government regulations are actually lower than the law. In the stufenbau theory initiated by Hans Kelsen, the legal system is a tiered rule in which the lowest legal norms must hold to higher legal norms, and the highest legal norms (such as the constitution) must hold to the grundnorm (in this context Pancasila)[161] (Kelsen, 2005). Thus, the government regulation used to correct the law is contrary to the principle of law, namely lex superior derogat legi inferior (lower law must not

158. Hobbes, T. (1651). The Leviathan. In Profile Books Ltd. p. 103
159. Sajama, S. (2016). The Labour Pains of The Early Modern Concept of Law: Ius and Lex in Aquinas, Hobbes and Spinoza. In Dawid Bunikowski (Ed.), Historical and Philosophical Foundations of European Legal Culture (pp. 95–111). London: Cambridge Scholars Publishing. p 103
160. *Rancangan Undang-Undang Cipta Kerja Tahun 2020*. (2020). Retrieved from https://www.hukumonline.com/pus atdata/detail/lt5e44b818ae3f4/ranc
161. Kelsen, H. (2005). Pure Theory of Law. New Jersey: The Lawbook Exchange Ltd. p. 25

conflict with higher law). This situation occurs because of the rush to formulate laws without a legal basis. As a result, the logical construction of the law is wrong. If, the executive continues to base his legal logic on accelerating the structuring of the law, then the law is in the logic of short time. That is, the logical thinking and grounding of the making and formulation without regard to the consideration and consequences of the legal product.

Third, the executive who bases his legal logic on Government Regulations then the determination stage is carried out in consultation with the leadership of the House of Representatives. The choice of the word "consult" when analyzed becomes too lax, because the government seems to "request informal approval" from the House of Representatives, even though the trias politica relation should not use the "consultation" diction. The second reason is said to be loose because the DPR is not a consultative body, but an institution that oversees executives and makes legal products. So, in the relationship between the executive and the legislature, ideally the draft OL bill is tested not consulted. The role of the DPR also takes the initiative to involve citizens to play a role in public testing of legal products. In this sense, the DPR as a public representation can carry out textual checks on the draft bill. Then, the DPR is very possible to involve the public as critical citizens to participate in reviewing the OL Bill so that it can become a legal product that can bring about justice[162].

What can we draw from the findings of a misuse of the term omnibus law? So, is the omnibus law that can be used as a support and protection for workers? The first question, we have argued, is that the fallacy of the term in the form of a mixture of Latin and English is somewhat biased in meaning. In addition, in substance, there is a limitation on freedom which on one hand is necessary, but on the other hand, the limitation needs to be in accordance with the feasibility of life, especially for workers.

The second question, the OL bill can hardly be a backrest and protection for workers. We will elaborate this argument, in a counter position, by referring to the draft OL on Cipta Karya. A more detailed explanation is below. The emergence of the draft OL bill caused a variety of responses. In this context, we elaborate on the OL on Cipta Karya in the contra position. Counter position, due to overlapping laws and regulations related to the adjustment of Law No. 13 of 2003 which was included in the OL Bill, of course with some revisions to try to add or remove the articles. The argument from the government is that the OL Bill is indeed with the intention of simplifying the number of regulations (and various derivatives) that is not integrated, even mutually amputating. In this context, we can understand the good intentions of the government. However, some of our argumentative notes need to be examined together. First, from Law No. 13 concerning Manpower, the pattern of employment relations is regulated in the form of cooperation between the government, company owners, trade unions and workers. If there are cases, such as termination of employment, the owner of the company cannot immediately issue a decision to crack down on workers with layoffs. The termination of employment must be carried out in a policy procedure involving the four elements above with a legal procedure that is decided through an industrial relations dispute resolution agency. However, in the OL Bill, termination of employment is submitted in a pattern of relations only between employers and workers (laborers).

At this point, the logical consequence that we propose is that there is a very vulnerable situation for workers (laborers) with a one-way relationship pattern with employers as capital owners. In the history of class relations, the owners of capital are almost certainly in the upper classes (capitalists),

162. Norris, P. (2003). Introduction: The Growth of Critical Citizens? In Critical Citizens. https://doi.org/10.1093/019829568 5.003.0001

while the workers in the lower classes (proletariat). By looking at the stratification of this class, workers can almost certainly be used in accordance with the needs of employers and if their labor and skills are no longer effective, then employers can subjectively make layoffs. These consequences have a negative impact on workers in the OL Bill.

We can see in article 77 A (OL bill) that is written thus,

1) The entrepreneur may impose working hours in excess of the provisions referred to in Article 77 paragraph (2) for certain types of work or business sectors.
2) Working time as referred to in paragraph (1) is carried out based on the work period scheme[163]At this point, the OL on Employment Copyright Bill is changing into forms of abuse for workers. Abuse, because, employers may see workers as machines with the value of effectiveness, efficiency, and use value without regard to decent life and humanity. The work scheme is determined in the desire of employers to be able to increase working hours in order to increase production and distribution which affects the work patterns of the workers. In addition, in articles 92 and article 92A, the wage scheme is determined by employers and this is certainly a form of handing over the fate and lives of workers from the government to the owners of capital. Thus, we can see the consequences, the government as a regulator becomes a kind of "hands off" by surrendering the lives of workers to the decisions of employers, especially in managing the work scheme of the workers.

In addition, vulnerability in regulating the pattern of employment relations between employers and workers may only benefit employers. This is understandable, because in the business world, there is an argument, "profit is a priority". Stubbornness in entrepreneurs will have consequences,

(1) employers can without consideration (consideration) to make the replacement of workers that are not in accordance with company standards, and as a result there is a replacement of workers who are no longer effective and efficient;
(2) The government in its position is too sure that employers will act wisely by prioritizing the worthiness of workers' lives, and here is precisely the weakness of the OL Bill. In fact, workers will remain a fragile element in the world of work;
(3) he Government in an effort to grow investment (both foreign and domestic) to open a lot of jobs, it is important to remember that employment with the most absorption remains in the labor-intensive industrial sectors, while the micro and small sectors only a little.

Conclusion

Various consequences in the relationship between employers and workers become a form of agreement that is unidirectional and without any moderator. Ideally, in work relations, especially with reference to the history of Roman canon law, it must be based on the legal proposition that is Pacta Sunt Servanda (the agreement must be kept)[164]. That is, the principle of legal certainty in the agreement between employers and workers. The point is that the work agreement entrusted by the government to the two parties (employers and workers) must have the principle of consensualism and if a dispute occurs then it is decided by the judge in court. Right herein lies the weakness in seeing the consequences that will be experienced by workers (laborers). The first argument, they have lost access and relations in trade unions, governments and industrial relations dispute resolution institutions. When examined in the Critical Legal Theory, workers who experience work disputes with employers, almost certainly in the OL Bill will be eliminated. The

163. Ibid RUU Cilaka
164. Op.cit Marjuki

second argument, workers do not have strong economic capital to fight for their rights in court.

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MANIFESTATION OF PANCASILA VALUES IN THE OMNIBUS LAW FOR JUSTICE

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ABSTRACT

The purpose of this research is to see and analyze the manifestation of the values of Pancasila to the application of the law which is the fundamental foundation of the Indonesian nation. The approach method used is juridical normative, namely research by examining library materials (secondary data) or library law research. The results of the research obtained show that the manifestation of Pancasila Values on the application of the Omnibus law must be in line with the view of justice in national law based on the basis of the state. Pancasila as the basis of the state or state philosophy has until now been maintained and is still considered important for the Indonesian state. Pancasila, which is the fundamental foundation of the Indonesian nation, must be realized because Pancasila, the philosophy of Indonesian life, is essentially a systematic value. Therefore, as a philosophical basis, the principles of Pancasila are an aspect of unity, hierarchy, and systematic

Keyword: *Justice; Omnibus Law; Pancasila Values;*

INTRODUCTION

The nation and state of Indonesia is a nation that was born "thanks to the grace of Allah the Almighty", and this recognition is officially stated in the highest document of the Preamble of the 1945 Constitution, and God Almighty is included in Chapter XI on Religion Article 29 paragraph (1) of the Constitution of Indonesia.[1]

The statement carries the understanding and recognition that the existence and origin of the Indonesian nation is due to the intervention and will of Allah Almighty, not produced by a society agreement from free individuals such as the concept of a liberal state. For the Indonesian people there is a close relationship between the state and religion that rests on the One Godhead which is the first principle of Pancasila, and thus the Indonesian nation has a noble legal instrument as the foundation of national and state life, namely Pancasila and the 1945 Constitution.

Pancasila as contained in the Preamble to the 1945 Constitution is the basis of the state. If it is linked to Article 1 of the 1945 Constitution of the Republic of Indonesia as a rule of law, it can realize the objectives of the Unitary State of the Republic of Indonesia if implemented based on Pancasila. The realization of one of the goals of the state is to advance the welfare of the people, or in other words, to realize the people's

1. Sri Endah Wahyuningsih, Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai–Nilai Ketuhanan Yang Maha Esa, *Jurnal Pembaharuan Hukum,* Volume I No.1 Januari-April 2014