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

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

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# POTENTIALS OF NATURE TYPE AROUND BY THE ADVANCED: JURIDICAL ANALYSIS OF LAW OMNIBUS LAW DRAFT OF LAW

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## Abstract

*The Omnibus Act has achieved superiority and badness in the national rank. The government's background increases the enactment of the Omnibus Bill because it hopes the investment will become a national economy that is utilized. There are several points that are at the core of the Omnibus Bill, namely the simplification of business maintenance, the need for investment, employment, the ease and protection of MSMEs, the ease of using commerce, alignment and effort, the administration of the government, the imposition of restrictions (for mortgages), adjustments, trial and trial and zoning the economy. These nine aspects are the main reserves that are expected to contribute to most of the expectations that can be obtained. In the draft Omnibus Bill there are articles that do not take sides with environmental, social and cultural issues. Law Number 32 Year 2009 concerning UUPPLH will be amended through an agreement made by a related party with a direct release by the business. . Therefore, this change is very vulnerable to manipulative practices in measuring the assessment of the natural surroundings, even possible for businesses in the interests of their demands and needs for smooth investment and use of commerce. In addition, the Omnibus Bill can provide a loophole for the protection of businesses that carry out natural environment (illegal logging, logging, and other forest destruction activities). Traders easily walk around to exploit the environment to access capital. One that facilitates the use of Forest Areas (IPKH), Borrowing and Using Forest Area Permits (IPPKH), and Launching Forest Areas. This is what will be discussed further in this paper.*

**Keywords:** *Natural surroundings, legal trade, Rang of the Omnibus Act.*

## Introduction

The Draft Employment Bill (RUU CK) compiled using the Omnibus Law approach (the Omnibus Law Bill) tries to compile and integrate 79 laws, the majority of which differ in principle from one another. The Omnibus Law approach was chosen in the hope of being able to reform licensing to make it simpler, easier to obtain for business people and to have an impact on employment and economic growth.

There are several points that become the substance in the Omnibus Law bill, namely: simplification of business licensing, investment requirements, employment, ease and protection of MSMEs, ease of doing business, research and innovation, government administration, imposition of sanctions (abolishing criminal), land acquisition, and the ease of government projects and economic zones. The nine aspects are the main

points of the proposal which are expected to contribute to the creation of large jobs in the hope of being able to reduce the number of open unemployment by 6.82 million.<sup>1</sup>

One of the affected laws is Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH). There are 30 amended UUPPLH Articles, 17 amended articles and 1 additional article. Amendments and deletions of this article generally have a negative impact on the UUPPLH and also in later implementation. There are at least 5 aspects that are definitely affected: risk-based business licensing, environmental licensing (environmental permits and AMDAL), access to information and public participation, supervision and law enforcement (absolute responsibility).

In the Omnibus Law Bill there are articles that are not in favor of environmental, social and cultural issues. One of the proposals in the draft bill is how the evaluation mechanism on environmental impact analysis (EIA) contained in Article 29 of Law Number 32 Year 2009 will be amended through an assessment mechanism carried out by a third party by direct appointment by business actors. Thus, these changes are very vulnerable to manipulative practices in measuring environmental impacts, and it is even possible for businesses to order the results according to their demands and needs for smooth investment and running a business.

In addition, the Omnibus Law Bill can become a loophole for business actors who commit environmental crimes (illegal logging, deforestation, and other forest destruction activities). Business actors easily stroll to exploit the environment for capital accumulation. One way is to facilitate the use of forest areas, the ease and acceleration of Forest Area Use Permits (IPKH), Borrowing and Use of Forest Areas Permits (IPPKH), and the release of forest areas.

## Discussion

The environment is an inseparable thing from life. A good environment can be created if there is a balance between its components. However, now there is a lot of environmental destruction caused by humans. One of them is because companies do not process waste properly until forest fires. The government has recently proposed an Omnibus Law bill aimed at facilitating investment, but in it there are problematic articles that can damage the environment, if the environment is damaged then life will end.

The government stresses that the Omnibus Law is needed to attract investment so that it can increase employment. With investment, the more factories that produce, the more waste that can damage the environment. Even factories cannot absorb a lot of labor, so it is not proportional to the impact of existing damage. Yet in Indonesia there are still many workers who need the environment, such as farmers, fishermen and so on.

Governments who insist on attracting investment tend to blame existing rules. Until the end was the abolition of regulations in the environmental sector which were considered as investment impediments. Even though the regulation was made to protect the ecosystem so that it could form a balance, stability, and productivity of the environment and ensure environmental safety. If the Omnibus Law is passed by the DPR, Indonesia will contribute to worsening the climate crisis in the world. Penghapusan dan perubahan regulasi yang telah diatur dalam Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup (PPLH) ini tidak perlu dilakukan oleh Pemerintah. Adapun poin yang disoroti disini adalah Pasal 24 sampai 29 yang berkaitan dengan Amdal, Pasal 40 mengenai izin lingkungan, Pasal 88 mengenai tanggung jawab mutlak (*strict liability*), Pasal 98, 99, 109 mengenai penghapusan sanksi hukum pidana.

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1. Andi Tri Haryono, "Omnibus Law and Misinterpretation of Investments", accessed on June 26, 2020.

Regarding environmental permits, which are regulated in Article 40 of Law No. 32 of 2009 concerning PPLH, an environmental permit is a requirement to obtain a business and / or activity permit. If the environmental permit is revoked, the business and / or activity permit is canceled. However, in this Omnibus Law Bill the article was deleted. The environmental permit is replaced by an environmental agreement in simplifying the business permit. Whereas environmental permit can be used as a control tool for the government to control the impact and risk of environmental pollution and damage. If this article is abolished, the government could lose its control device, making it difficult to monitor and enforce the law.

Regarding EIA in Article 26, it should also not need to be changed by the government. In this Omnibus Law Bill, the government reduced the provisions for Amdal preparation. EIA is no longer used as a basis for determination, but only as a basis for due diligence. Environmental Impact Assessment documents are only prepared by the proponent. Providing information to the public that is transparent and complete and notified before the implementation activities are deleted. The involvement of the community which initially included the affected community, environmentalists, and those affected by decisions in the EIA process, now in the Omnibus Law is only limited to the people directly affected. Submission of a statement of EIA documents was deleted. This regulation change, as if the government considers the community as an inhibiting factor in investment. If this bill is passed, then the permit will be haphazard and without being sued by people who have the right to the environment. The bad impact will occur damage that causes a decrease in the quality of life.

Article 88 of Law No. 32 of 2009 concerning PPLH was also revised by the government. In this article, the concept of absolute responsibility or strict liability is abolished. Strict liability is interpreted as a legal liability imposed on an individual or corporation for a business activity and / or environmental destruction activity that is within its control, which will arise immediately during a breakage without questioning the defendant's error in advance. Even though this strict liability is a powerful step for the state to ensnare corporations that burn forests and damage the environment, and prove successful.

The Omnibus Law Bill appears to degrade the provisions related to strict liability, at least in two laws, namely Law 32 of 2009 concerning PPLH and Law Number 41 of 1999 concerning Forestry. In Law 41 of 1999, provisions relating to strict liability were removed by changing the liability responsible for the occurrence of forest fires in the work area to only be required to make efforts to prevent and control forest fires. The editorial changes change as follows:

### **Law Number 41 of 1999 concerning Forestry:**

Article 49 Rights holders or permits are responsible for forest fires in their working area.

### **Omnibus Law Bill:**

Article 37 number 16 regarding amendments to article 49 of the Forestry Law Right holders or business licenses are obliged to carry out efforts to prevent and control forest fires in their working areas.

Even though Act 41 of 1999 is not mentioned as a norm of strict liability, environmental law experts in Indonesia agree that this provision can be referred to as strict liability and even tends to be absolute liability (because it does not contain elements of defense or escape clause). This provision has also been used several times in cases of forest fires.

In addition, the formulation of Strict liability in Law 32 of 2009 also changed. Even though the provisions on absolute liability were not removed, the editorial article was amended as follows:

## **UU No. 32 of 2009:**

Article 88 Everyone whose actions, businesses and / or activities use B3, produce and / or manage B3 waste, and / or that pose a serious threat to the environment, is solely responsible for losses that occur without the need to prove the element of error.

## **Omnibus Law Bill:**

Article 23 number 35 regarding amendment to article 88 of Law No. 32 of 2009 Every person whose actions, businesses and / or activities use B3, produce and / or manage B3 waste, and / or that pose a serious threat to the environment, is solely responsible for losses resulting from its business and / or activities.

When referring to the Academic Manuscript, it seems that this deletion is an intentional effort due to the compiler's misunderstanding.<sup>2</sup> The reason for eliminating the "element of error" is because every criminal must prove the element of error. Of course this reason becomes irrational because the strict liability referred to in Law 32 of 2009 is for civil law enforcement. If this concept is abolished by the government, then land clearing by companies with forest fires will increase. As we know that forest fires have a direct impact on public health, the economy, damage to ecosystems and have an impact on large areas and long periods of time.

Articles 98, 99 and 109 of Law No. 32 of 2009 concerning PPLH which was originally a criminal law sanction, now in the Omnibus Law the sanction was abolished, reduced to administrative sanctions. If the Omnibus Law is passed, then there is no deterrent effect for perpetrators of environmental crimes. State control tools for perpetrators of environmental crimes will also be lost, and bad environmental conditions will be damaged.

If important articles are abolished by the government, there will be no legal umbrella that can ensure the sustainability and functioning of the environment to support ecosystems and life. Even though the community has the right to a good and healthy environment, there is Article 28H paragraph (1) of the 1945 Constitution. These problematic articles in the Omnibus Law can threaten environmental sustainability, environmental violations, and threaten natural resources. Even the bad impact is environmental damage that will cause disasters and worsen the world climate crisis.

BNPB data throughout 2018-2019, there was an increase in disaster by 12% or 371 events, out of the total number in 2018 of 3,397 events and in 2019 of 3,768 events.<sup>3</sup> The increase in disasters indicates that the world is not okay. Because in Indonesia if there is rain will flood, if the dry will drought. For this reason, the government should pay attention to the environment, not just economic investment.

## **Closing**

From the above explanation, the author can provide the following conclusions:

1. Claim that this Omnibus Law Bill is a bad regulation and does not need to be approved. This regulation is only concerned with investment, without regard for a sustainable environment.
2. The Omnibus Law Bill is like two sides of a knife, the legal umbrella on one side can spur investment, but on the other hand it can be a time bomb that can threaten environmental sustainability, biodiversity, even culture and local wisdom.
3. The Omnibus Law bill may be a tool to control the power of the elite's capital. Therefore all

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2. See KLHK Appeals Memory in Decision No. 51 / PDT / 2016 / PT.PLG, p. 90-91

3. Andi Tri Haryono, Loc.Cit.

exponents must look critically behind the proposed bill. Do not let on behalf of investment and employment creation many things are sacrificed.

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