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

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OMNIBUS LAW IN ECONOMIC DEVELOPMENT CONTEXT IN INDONESIA

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ABSTRACT

One of the objectives of the state contained in the Preamble to the 1945 Constitution is the achievement of the welfare of the Indonesian people. For this reason, the foundation of the Indonesian economy needs to be strengthened, one of which is by attracting investors to the maximum possible investment in Indonesia. The entry of investment in Indonesia is expected to encourage the creation of employment opportunities to the fullest extent for all Indonesian people. There needs to be innovation from the Government to attract investors. The problem in writing this paper is how is Omnibus Law in the context of Indonesia's economic development? Legal reform in the concept of the Omnibus Law to increase investment in Indonesia must be carried out effectively and accountably. Omnibus Law in its instrumentalist-democratic understanding, that on the one hand can be used as a "tool" and oriented to the fulfillment and strengthening of long-term oriented rule of law while creating a sustainable participatory democracy-climate. In the instrumentalist-democratic understanding, the legal tradition of law (common law and civil law) is not seen as a separate system. Due to the fact, the two traditions have long borrowed from each other experiences (conventions), concepts, and practices of constitutional borrowing. Omnibus law can play an effective role in reducing disharmony and norm conflicts in legislation, but on the other hand also has democratic legitimacy that is accountable through public testing mechanisms and broad public participation and is carried out with the precautionary principle. In order to guarantee the principle of prudence in the formulation of legislation, the Omnibus Law must be formulated by first making efforts to consolidate norms, conceptual definitions, and determine the subject who will carry out the Omnibus Law.

Keywords: *omnibus law, development, economy.*

Introduction

One of the objectives of the state contained in the Preamble to the 1945 Constitution is the achievement of the welfare of the Indonesian people. For this reason, the foundation of the Indonesian economy needs to be strengthened, one of which is by attracting investors to the maximum possible investment in Indonesia. (Kurniati, 2018) The inclusion of investment in Indonesia is expected to encourage the creation of the broadest possible employment opportunities for all Indonesian people. There needs to be innovation from the

Government to attract investors³⁰.

Various efforts to encourage increased investment were carried out by the government, but in the midst of the Fourth Industrial Revolution era, various policies that have been taken by the government to improve the investment climate have not given investors an interest in investing in Indonesia.

One of the causes of investor reluctance to invest in Indonesia is the difficulty of doing business in Indonesia³¹. The last effort made by the government is to increase the ease of doing business in Indonesia with the President's steps to issue Presidential Regulation No. 91 of 2017 concerning the Acceleration of Business Implementation³².

In his writings, Pradany Hayyu stated that world investment in Indonesia was still low at 1.97% (one point ninety-seven percent) from the average per year (2012-2016) of USD 1,417.8 billion and achieving an investment ratio target of 32.7 percent (2012-2016) which is below the target of the National Medium-Term Development Plan (RPJMN) of 38.9% (thirty-eight point nine percent) by 2019. Pradany Hayyu's view suggests that many things still need improvement by the government in a climate of ease of doing business³³.

With the omnibus law, it is expected that the entry of foreign investment into Indonesia will also have a positive impact, which will be the emergence of new jobs for job seekers. This employment is very beneficial for the community where it can provide an income to support their families. However, there is also a negative impact that will civilize the community to depend on investors for their fate and if one day the investor leaves Indonesia will make the community have no income.

Foreign investment that enters Indonesia will be accompanied by the introduction of technology and knowledge that can later be copied and developed by the public. The existence of this new technology also indirectly brings Indonesia to be able to develop and subsequently compete with other countries.

Foreign investment is definitely correlated with the entry of fresh funds into Indonesia where the funds are always in the form of foreign exchange. Taxes can be used to use this foreign currency. The tax directly becomes the country's opinion.

Regional protection is one of the benefits of the entry of foreign investment into Indonesia because investors and the government will certainly try and try to maintain domestic stability. If things happen that are not desirable, it will result in the cessation of investment activities by investors and blacklisting in their investment targets. Unwanted circumstances such as riots or security instability will be detrimental to investors.

Omnibus Law / Working Draft Bill which when compiled by the Government is the flagship program of the Jokowi-Ma'ruf Amin administration to boost economic growth and enter the 2020 Priority Prolegnas³⁴. Some groups criticize the formation of the Omnibus law with various reasons and arguments related to the method of drafting one regulation (the Law) just replace / delete several articles in one or more applicable regulations. However, not a few circles support the establishment of the Omnibus Law as one of

30. Kurniati, P. N. (2018). Urgensi Reformasi Birokrasi dan Reformasi Regulasi dalam Membangun Tata Kelola Ekonomi di Indonesia. *Jurnal Analis Kebijakan*, 2 p. 1

31. Tempo, "Sulitnya Berinvestasi di Indonesia", <http://www.kolom.tempo.co/read/1143060/sulitnya-berinvestasi-di-indonesia> (accessed June 14, 2020).

32. Indonesia, Peraturan Presiden Nomor 91 Tahun 2017 tentang Percepatan Pelaksanaan Berusaha. Lembaran Negara Republik Indonesia Tahun 2017 Nomor 2010.

33. Pradany Hayyu, "Sinyal Baik dalam Kemudahan Berusaha", *Mediakuangan* (VOL. XIII / NO. 128 / Mei 2018), p. 17.

34. Mayasari, I. (2020). Kebijakan Reformasi Regulasi Melalui Implementasi Omnibus Law Di Indonesia. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, p. 9

the regulatory reform strategies to overcome the conditions of obesity / hyper regulation, especially in the ease of doing business sector³⁵.

When examined, there are several negative implications from the formation of the Omnibus Law (Employment Copyright Bill), including harming workers, detrimental to agriculture, land monopoly, cutting and changing the concept of administration, market-oriented education, and the existence of irregularity. In the context of harming workers, the Omnibus Law is detrimental to workers because: i) extending working hours and overtime; ii) setting low minimum wages; iii) potential for violations of workers' rights to associate; iv) there is a reduction in trade union authority; and the loss of the rights of women workers to leave for menstruation, pregnancy and miscarriage.

The Omnibus Law is also feared that it will cut and change the concept of administrative requirements, this is related to business practices that will cause damage / change the function of space or the environment, among others: the centralization of policies, eliminating community involvement, flexibility and spatial adjustment, removal of permits constructing buildings, reducing the AMDAL substance, and eliminating environmental criminal sanctions.

On the one hand, the Omnibus Law will also have implications for the perpetuation of market-oriented educational practices, such as: commercialization, links and matches in the industrial world, and the establishment of work-oriented education curricula. The focus in writing this article is how the Omnibus Law politic law in the context of economic development in the concept of the welfare state and how the Omnibus Law legal framework is ideal for driving the economy and investment to realize the welfare of all the people of Indonesia.

The Problem

The problem in writing this paper is how is Omnibus Law in the context of Indonesia's economic development?

Methods of Research

The nature of the research in this paper is descriptive conducted with a normative juridical approach. Types and sources of data used are secondary data. Data collection is carried out primarily by document study techniques (library research and online research) by inventorying the secondary data needed, in the form of primary, secondary or tertiary legal materials, then tracing its history and synchronizing between these legal materials.

The primary legal material used consists of legislation primarily related to the preparation of legislation and the role of law in economic development. Secondary legal materials that will be used are among others: scientific work, research results and literature relating to the substance of research. Tertiary legal materials used are materials that support information on primary and secondary legal materials, including data from newspapers, journals, dictionaries, encyclopedias.

Research Result and Discussion

Omnibus Law in the context of Indonesia's economic development

The omnibus law is a format for the formation of a comprehensive law by participating in regulating

35. Anggono, B. D. (2020). Omnibus Law Sebagai Teknik Pembentukan Undang-Undang: Peluang Adopsi Dan Tantangannya Dalam Sistem Perundang-Undangan Indonesia. *Jurnal RechtsVinding*. hal.1

the material of other laws that are interrelated with the substance governed by laws that are amended or formed (Asshiddiqie, 2019)³⁶. With the format of the formation of the Omnibus Law, the formation of a single law is carried out by considering all material provisions that are directly or indirectly interrelated that are regulated in various other laws at once. This was also confirmed by Mirza Satria Buana as quoted by Sulation Rongiyati that the omnibus law could be considered as the ‘Sapu Jagad’ (sweep the universe) Law which could be used to replace several legal norms in several laws³⁷.

In the civil law system, the concept of the omnibus law has never been heard because in the legal system the civil law emphasizes the codification of regulations to overcome overlapping and partial regulations. The purpose of codification according to the Indonesian Big Dictionary (KBBI) is (1) a collection of various regulations into laws; terms of drafting the law; (2) classification of laws and laws based on certain principles in a standard law book; (3) recording norms that have been produced by standardization in the form of grammar books, such as pronunciation guidelines, spelling guidelines, guidelines for forming terms, or dictionaries; (4) assigning numbers or symbols to the estimated items, journals, invoices, or other documents that serve as a tool to distinguish posts from one another which belong to one group. The codification is a designation for the results of an effort to gather the rules of law in one book of law. Efforts to gather these rules are called codifying. Henry Campbell Black said that what was meant by codification or in English was called codification was “Process of collecting and arranging the laws of a country or state into a code, i.e. e., into a complete system of positive law, scientifically ordered, and promulgated by legislative authority”³⁸.

The definition of codification in KBBI and Black’s Law Dictionary has in common that is a collection of rules of law to be made in one book. The effort to codify was limited to collecting existing laws and regulations to be made into a single book which was initially spread out in several laws and then to be made into one book / book. The examples of the results of the codification effort are the Criminal Law Act (KUHP) and *Burgelijk Wetboek* (the Civil Law Book). Unlike the case with the Omnibus Act which will replace many existing laws. The existing law has substance that can be adopted into the Omnibus Law with adjustments or replaced with a new substance. While the codification will not make a new law which in turn replaces the existing law, but merely gathering various laws into one book the results of the codification will be a substitute for the law that has been included in the codification list.

In general, the Omnibus Law concept is also 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 to create a new law to amend several laws at once, so that the Omnibus Law concept is expected to be able to answer the problem of overlapping laws and regulations in Indonesia. However, the concept of the Omnibus Law which is usually applied in countries that adopt a common law system is rather difficult to determine in Indonesia that adopts a civil law system. Basically there is a problem of conflict between government administrators, when they want to make innovations or policies which then clash with the laws and regulations. The Omnibus Law, which is carried out at the level of the Law, is one way out that the government can take to resolve the conflict.

The Omnibus Law concept can be used in Indonesia to uniform central and regional policies in supporting the investment climate, where this concept becomes a short way as a solution to conflicting laws and regulations, both vertically and horizontally. The Omnibus Law concept is intended to facilitate

36. Asshiddiqie, J. 2019. UU Omnibus (Omnibus Law): Penyederhanaan Legislasi dan Kodifikasi Administratif. Tersedia on-line https://www.academia.edu/41009264/UU_TERPADU_Omnibus_Law. P. 10

37. Rongiyati, S. 2019. *Menata Regulasi Pemberdayaan UMKM Melalui Omnibus Law*. Vol. XI No.23. p. 20

38. Black, H.C. 1968. *Black’s Law Dictionary*. St. Paul Minn, West Publishing Co. p 15

investors to invest in Indonesia. For the record, the ease of doing business in Indonesia or Ease of Doing Business (EODB) is gradually showing significant improvement, where in 2016 it was ranked 106, currently ranked 91.

However, in formulating the Omnibus Law it needs a deep study in legal and economic perspectives, so that what is expected and becomes the goal in the Omnibus Law conception to increase investment and welfare of all Indonesian people can be realized.

The purpose of the state in the concept of the welfare state is for general welfare. The state organizes power to control administration and politics to modify markets for the social welfare and economic capacity of its people. Haksoon Kim, in his research said that the political stability created would create a good investment climate to attract foreign investors. In economic development, especially investment development which embodies the responsibility of the state within the framework of the welfare state, the Omnibus Law regulation as an effort to attract investors to invest in Indonesia must provide legal certainty in formulating the Omnibus Law³⁹.

The welfare state refers to an ideal model of development that focuses on improving welfare through giving an important and greater role to the state to provide comprehensive and comprehensive social services to its citizens. Paul Spicker states that "... stands for developed ideal in which welfare is provided comprehensively by the state to the best possible standards". Economic development greatly affects the level of prosperity of a country. Government policy aims to change the condition of the country for the better. Economic development as a form of state participation in economic development efforts to improve people's welfare. Jhon Maynard Keynes stated that state participation is an answer to market imperfection conditions that demand a greater role for government in its function as an agent of development, including in the management of government investment⁴⁰. However, Rian Duchin and Denis Sosyura stated that government intervention needs to be limited so that it does not interfere with existing investment implementation mechanisms⁴¹.

In the framework of the thinking of the welfare state it takes the responsibility of all parties including legal experts to prepare regulations oriented to the welfare of the people and the protection of society. In implementing the Omnibus Law to increase investment in the framework of the welfare state, the regulations in the Omnibus Law in Indonesia must provide legal certainty to increase investment in Indonesia in order to realize the welfare of all the people of Indonesia. According to Paul Rose, improving investment management in a country shows that there is a strong link between regulation and the politics of a country, where the law provides legal certainty in investment management policies⁴². (Rose, 2008)

Legal conception as a means of social renewal believes that law is a system that has a new content charge that aims to influence and cause social change in a directed and planned manner. According to Mochtar Kusumaatmadja, law has a close correlation with development, law is a means of community renewal based on the assumption that there is order or order in the development or renewal effort that is something that is desired or even considered (absolutely) necessary⁴³. Law as a means of development holds that law in the

39. Kim, H. (2010). Political stability and foreign direct investment. *International Journal of Economics and Finance*, 2(3), 59–71.

40. Sastradipoera, K. (2007). *Sejarah Pemikiran Ekonomi: Suatu Pengantar Teori dan Kebijakan Ekonomi*. Bandung: Kappa-Sigma. p 21

41. Duchin, R., & Sosyura, D. (2012). The politics of government investment. *Journal of Financial Economics*, 106(1), 24–48.

42. Rose, P. (2008). Sovereign wealth fund investment in the shadow of regulation and politics. *Geo. J. Int'l L.*, p. 40

43. Kusumaatmadja, M. (2002). *Fungsi dan Perkembangan Hukum Dalam Pembangunan Nasional (Dalam Buku Konsep*

sense of rules or legal regulations can function as a tool (regulator) or a means of development in the sense of channeling the direction of human activity in the direction desired by development or renewal. Law and development approach are the key to success in implementing Omnibus Law in several countries that have implemented it.

In the context of the idea of applying the Omnibus Law in Indonesia, that the formation of the omnibus law is commonly applied in countries that adopt a common law system, it needs an in-depth study so as not to cause problems in the system of drafting legislation. Combination of several laws with other laws that differ in material and authority needs to be done carefully and coordination of the Government and Parliament to harmonize them needs to be done from the beginning. In applying Omnibus Law, revocation of rules must be done carefully. The concluding provisions of the Omnibus Law must emphasize the revocation of articles from the affected law so as not to cause debate over legal norms.

Another thing that also needs attention is that each law has a different philosophical, sociological, and juridical basis, so consideration of philosophical, sociological, and juridical aspects of the rules to be revoked must be done carefully, especially regarding the constitutional rights of citizens. Problem identification must also be done carefully. Changes or revocation should be done at the level of legal substance, while at the level of aspects of the application or culture of community law that is needed is a change in the implementation of the policy.

Omnibus Law theoretically can be a solution to the conflict of laws and regulations quickly, effectively, and efficiently. However, it is necessary to pay attention to the principle in Indonesian laws and regulations, namely the *lex posterior derogat legi priori* principle (Laws passed later will still be able to override omnibus law if the material content is different). Careful harmonization needs to be done not only for laws to be revoked with the omnibus law, but also with other bills being discussed, so that Government Regulation in lieu of Laws (Perppu) can be an option for the form of Omnibus Law. Omnibus Law as a concept of legal reform to increase investment in Indonesia that is conveyed in this paper must move from the existing system of drafting legislation. The Omnibus Law process must pay attention to juridical, political, sociological and economic aspects. In a juridical context, the legal system must be balanced in terms of effectiveness and accountability.

In the political, sociological, and economic context that in society still causes polemics and considers that Omnibus Law will potentially cause ecological, economic and social chain damage. The substance of the Omnibus Law which is considered detrimental to workers' rights, giving too much authority to the Government, simplifying licensing by eliminating many licensing instruments is feared to close the judicial space in carrying out the control function to review executive administrative decisions, transferring licensing authority from the regions to the central government that injures the spirit of the spirit decentralization, the loss of some important provisions in the field of environment (removal of environmental permits combined with business licenses), are some things that are socially, economically and ecologically must be studied in depth by the Government in formulating the Omnibus Law. Omnibus law in the perspective of comparative law in other countries has fulfilled the aspect of effectiveness, because in the Omnibus Law mechanism it is streamlined and simplified from several laws and regulations.

In the context of accountability, that the Omnibus Law as an instrument to support economic development, it is necessary to stress what role the economic sector wants from the existence of the Omnibus Law in the community. Development of economic law should be directed to accommodate the dynamics of economic activity by creating activities that are efficient, productive, and contain predictability.

Omnibus Law as a legal concept can contribute and influence greatly to increase investment and economic development in Indonesia if there are elements of predictability, procedural ability, codification of objectives, balancing factors, accommodation, and definition and clarity of status as conveyed by legal experts J.D. Mrs. Hart.

Conclusion

Legal reform in the concept of the Omnibus Law to increase investment in Indonesia must be carried out effectively and accountably. Omnibus Law in its instrumentalist-democratic understanding, that on the one hand can be used as a “tool” and oriented to the fulfillment and strengthening of long-term oriented rule of law while creating a sustainable participatory democracy-climate. In the instrumentalist-democratic understanding, the legal tradition of law (common law and civil law) is not seen as a separate system. Due to the fact, the two traditions have long borrowed from each other experiences (conventions), concepts, and practices of constitutional borrowing. Omnibus law can play an effective role in reducing disharmony and norm conflicts in legislation, but on the other hand also has democratic legitimacy that is accountable through public testing mechanisms and broad public participation and is carried out with the precautionary principle. In order to guarantee the principle of prudence in the formulation of legislation, the Omnibus Law must be formulated by first making efforts to consolidate norms, conceptual definitions, and determine the subject who will carry out the Omnibus Law.

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