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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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Seksi Konsumsi	: Bambang Irawan Siti Pardiyah Riswanto
Kesekretariatan	: Slamet Ariyanto,S.T. Agus Prayoga
Reviewer	: Prof. Dr. Eko Soponyono,SH.,M.Hum. Prof. Dr. Hj. I Gusti Ayu KRH, SH.,MM.

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Editor :

M. Ngazis, SH.,MH
Erna Sunarti, S.Pd.,M.Hum.
Nailul Mukorobin, S.Psi.

Desain Cover :

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Jl. Raya Kaligawe KM. 4 PO. Box. 1054/SM

Semarang 50112 – Indonesia

Phone: +6224 6583584 (8 Saluran) psw. 569

Fax. + 6224 6592735

Email : pdih.fh@unissula.ac.id

www.pdih.unissula.ac.id / www.apic.unissula.ac.id

KATA PENGANTAR

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OMNIBUS LAW ON JOB CREATION BILL IN THE ZEMIOLOGY PERSPECTIVE

Arif Awaludin¹, Eti Mul Erowati², Ninik Hartariningsih³

¹ Faculty of Law Wijayakusuma University Purwokerto, Indonesia

Abstract

The government's ambition to form a model of legislation such as the omnibus law raises much public opposition. The Omnibus Law will cut down existing regulations and will create 493 (four hundred ninety three) Government Regulations, 19 (nineteen) Presidential Regulations, and 4 (four) new Regional Regulations so that they can be able to run. Many advantages and disadvantages that will occur. The omnibus Law on job creation bill will bring social harm for labor. The zemiology approach is part of critical criminology. The approach will provide a new perspective in assessing plans for making omnibus law in Indonesia. Structural violence is one of the themes being discussed. Public rejection of the omnibus law is not related to the promise of improvement in the people's economy but rather to the actual structural violence that will occur. Denial and violation of human rights is the price exchanged from the making of the omnibus law. The government as the organizer of the State should protect the interests of the people rather than protecting the interests of investors. That is the promise that must be fulfilled by the State administrators, as in the 1945 Constitution.

Keywords: Omnibus Law, Job Creation Bill, Zemiology

Introduction

The pandemic Covid-19, which took place in February 2020, created many problems, especially for the workers. The workers have the effect of termination of mass work, being deployed, or disconnecting. This condition is exacerbated by the discussion in the House of Representative on Job Creation Bill which is part of the omnibus law. On February 12, 2020 Draft on Job Creation Bill submitted by the Government to the House of Representative for discussion,¹ namely the Bill Omnibus Law Job Creation and the Bill Omnibus Law Taxation. Both of the Omnibus Bill is prepared to strengthen the national economy through the improvement of Indonesia's investment ecosystem and competitiveness, especially in the face of the uncertainty and throttling of the global economy.

The Omnibus bill of law generally gets rejection from various circles, both labour, academics, environmentalists, indigenous peoples to various community organizations. This condition indicates there is a major problem in the public perception regarding this the bill Omnibus law. The Bill of Omnibus Law is viewed as a law that will threaten the lives of people and pose a great danger. This reaction is happening since before the pandemic of Covid-19 until now.

Bill of Omnibus Law Job Creation includes 11 clusters,² namely: 1) simplification of licensing, 2) investment requirements, 3) employment, 4) facilities, empowerment, and protection of middle, small and micro businesses, 5) ease of effort, 6) research and innovation support, 7) government administration, 8) the imposition of sanctions, 9) land procurement, 10) investment and project government, and 11) economic area. Job Creation bill work consists of 79 legislation with 15 chapters and 174 chapters.

The discussion of the omnibus law bill of the creation job will involve seven commissions in the house of representative.³

This Paper will describe as well as analyze the public reaction to the plan for the Omnibus Law on Job Creation Bill in Zemiology perspective. A profound perspective that examines the phenomenon of social harm. This perspective is part of a critical criminological flow. Critical criminology is part of criminology that critically analyzes a social structure (legal, political, economic, cultural) because it is deemed to have resulted in social injustice.⁴ In general, critical criminology can be seen as a defining perspective of evil as a suppression. Some groups in society such as the working class (especially poor people), women, and ethnic minorities and refugees are the most likely to be those who experience oppressed social relationships.⁵

A new perspective of critical criminology is zemiology or a study of social harm. The purpose of this perspective is to expand the parameters of criminological Studies limited to adverse actions only defined by law. Unlike the study of zemiology which establishes various kinds of dangers such as sexism, racism, imperialism, and economic exploitation as a concern and focus in criminological investigation.⁶

Based on the perspective of Zemiology in critical criminology, structural violence against workers is one of the most important aspects to be examined in criminological thinking. Various acts of adverse and reported Labor occurred in an unequal belief relationship between entrepreneurs, governments and workers as victims. Consequently the action is not seen as a crime.

Based on the explanation above, the problem that will be discussed in this paper is the social harm of the Omnibus Law Bill on Job Creation, especially for the workers and potential Omnibus Law as a statutory product that is not in accordance with the interests of the people of Indonesia.

Research Methods

The research done for this writing uses a critical approach that is, social research that has the purpose of creating knowledge to advance the purpose of political moral issues, including helping to promote social justice in favor of defending the helpless people.⁷ This study proved that the social realities of labour and other vulnerable parties were seen as being considered ordinary, but when viewed critically, the reality was a reality formed by a degrading social construction and inflicting loss and suffering, due to structural violence. The data collection techniques used are, through the study of literature and analysis of various news gained from online media since January – June 2020.

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2. <https://www.cnbcindonesia.com/news/20200212114420-4-137233/hari-ini-draft-omnibus-law-cilaka-diserahkan-ke-dpr> accessed June 16, 2020
 3. <https://nasional.kompas.com/read/2020/02/13/07160731/bola-di-tangan-dpr-mungkinkah-pembahasan-omnibus-law-rampung-100-hari?page=all> accessed June 17, 2020
 4. Muhammad Mustofa. (2010). *Kriminologi edisi kedua Kajian Sosiologi Terhadap Kriminalitas, Perilaku Menyimpang dan Pelanggaran Hukum*. Depok: Sari Ilmu Pratama, hlm. 142
 5. Burke, Roger Hopkins. 2009. *An Introduction To Criminological Theory Third Edition*. Willan Publishing. Hlm. 206
 6. Ibid., hlm. 212
 7. Nueman, W.L (2007). *Basic Social Research: Qualitative And Quantitative Approach*. Boston: Allyn & Bacon, hlm.44

Results and Discussion

Criminology focuses on crime, the criminal and the resolution of problems through the criminal justice system. However, the events and actors we label crimes and criminals operate in a wider context that it often ignores. Criminology has the limitation to reveal any danger. Criminology only provides analysis on the cause of crime and the determination of crimes constitutive according to the criminal justice system. So criminology focuses more on individual mistakes, does not respond towards policies designed to minimize future harms.⁸ The new discipline is called zemiology, derived from the Greek word Zemia, which means danger. Since then it has been described as “terrible name “.⁹ Others are more pleased with the word “Zemiotik “. The use of social harm terms, seems to be easier to understand.¹⁰

Social harm theory rejects the boundaries of it and the exclusive focus on crime and criminals. It seeks to place crime in the context of other harms, an approach which allows us to respond to the totality of harms generated by a particular problem. Social harm theory seeks to embrace not only physical harms but also financial/economic, emotional and psychological harms.¹¹

1. Social harms in the Bill of Omnibus Law on Job Creation.

The main goal of making Omnibus Law the creation Job Bill work is to foster a conducive investment climate and open job opportunities for Indonesians who have a large workforce. Creation Job Bill work consists of 79 legislation with 15 chapters and 174 chapters. Indeed, the Legislation that passed the House of Representative and the government party into a rule that requires power is subject to the Act. The implementation and formation of it can not muzzle the freedom of speech and benefit a handful of interests and afflict the people. Denial of rejection continues to drive public space without pause. State and all its devices such as against the will of the people, who do not accept the Bill Creation Job present as an act.

Some issues that could potentially become social harms are:¹²

- a. Protection of workers ‘ rights sacrificed for capital accumulation
The theme of labour flexibility as a major discourse, but does not guarantee protection for workers. Models of flexible working relationships that exist during this change anomaly. This aggravated worker exploitation and worker productivity was interrupted because it was haunted by the uncertainty of his fate after the end of employment relationship.
- b. Elimination of women’s Workers ‘ rights
The Job Creation Bill puts forward the calculation of productivity, including in the context of wages, including in the context of wages, measured through time units and outcomes. This method of the wage clearly discriminated against women workers who were previously secured

-
8. Dorling, D. et al., 2008, *Criminal Obsessions: Why Harm Matters More Than Crime ?*. <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Criminal+obsessions.pdf> diakses pada 14 Juni 2020
 9. **Richard Hil dan Rob Robertson, 2003**, *What sort of future for critical criminology?*, *Crime, Law and Social Change*, vol. 39, no. 1, School of Law and Justice, pp. 91-115.
 10. Paddy Hillyard, Christina Pantazis, Steve Tombs dan Dave Gordo, 2004, *Beyond Criminology: Taking Harm Seriously*, Pluto Press, hlm.10 dan 285 diakses dari <https://www.jstor.org/stable/j.ctt18fscmm>
 11. Hillyard, P., and Tombs, S., (2008) ‘*Beyond Criminology*’ in Gordon, D., Hillyard, P., Pantazis, C., Pemberton, S., and Tombs, S., eds. 2nd edition, *Criminal Obsessions: Why Harm Matters More Than Crime, Centre For Crime And Justice Studies*: London http://www.crimeandjustice.org.uk/opus912/Criminal_obsessions.pdf, hlm.15 accessed June 15, 2020
 12. <https://www.bantuanhukum.or.id/web/ringkasan-eksekutif-omnibus-law-ruu-cipta-kerja-obsesi-pembangunan-yang-merampas-ruang-dan-mengorbankan-pekerja/> accessed June 17, 2020

by the state in the manpower law to obtain the right of menstrual leave, pregnant, childbirth and breastfeeding.

c. Support for lifetime contract work system

“Contract work” has been amended and removed by the draft Bill of creation Job. Changes and its removal then create a lifetime contract work system. Workers have no guarantee of certainty on their employees.

d. Expanding Outsourcing practices: Workers are increasingly uncertain of his fate

Job Creation removes the provisions in the labor Law governing the terms of conducting a work agreement, a form of work that can be handed over to other companies, working relationship and the transition of working relationship status to employer companies when not eligible.

e. Extending uptime

The Bill Creation Job work still allows entrepreneurs to employ workers in a particular business sector more than 40 (forty) hours 1 (one) week. The conditions it contains add overtime, which was initially arranged at most 3 (three) hours in 1 day and 14 (fourteen) hours in 1 (one) week to 4 (four) hours in 1 (day) and 18 (eighteen) hours in 1 (one) week. This extension certainly resulted in a shortage of downtime which can precisely impact the decline in the performance or productivity of workers due to fatigue both physically and mentally.

f. Remove labor ‘ leave rights

The creation job Bill also removes the labor leave rights previously secured in the manpower law. In its design, the Bill of creation job negates these rights. List of leave of workers removed: menstruation, married, married, classify children, get children, give birth, miscarriage, family members in one house dies, carry out obligations to the State, conduct religious-ordered worship, carry out the duties of unions/trade unions, and carry out the education duties of the company.

g. Supports politics of cheap wages

Creation Job Bill work is increasingly worsening the politics of cheap wages because before the existence of the Bill of creation job, the legitimacy of the politics of cheap wages has been accommodated by government regulation No. 78 year 2015 on wage.

h. Opening the entrepreneur’s space to conduct mass termination of employment.

Job Creation Bill also makes it easy for entrepreneurs to do mass termination of employment through agreements, to legitimize with efficiency reasons.

i. Workers ‘ right to post termination and reduced employment.

Job Creation Bill removes the calculation of the money reward for workers with 24 (twenty-four) years or more of the work period. Previously, the Manpower Law Guarantees 10 (ten) months of wages, but now in the Bill of creation Job, workers with the working period only got 8 (eight) months of wages.

j. Criminal elimination of Labour

The government reduces the types of criminal acts of labour through the Bill of creation Job. There were 13 (thirteen) types of labor crimes that were removed. Some types of criminal acts are converted into administrative sanctions.

Henry & Lanier (2004) explained that there were a number of unperceived or unrealized hiddencrimes

that were detrimental and violent as a number of offenses addressed by law enforcement.¹³ Workers/laborers become threatened social harms.¹⁴ A relatively invisible crime or hidden crime is a variety of evils usually committed by people who have power. This crime is usually done in a personal context such as in the organization and in the workplace environment involving trusted relationships. When referring to Burke (2009) based on the thought of Zemiology within the Critical at, in fact the social danger experienced by Labour is a crime that has a more serious and widespread impact than most other criminal behavior. However, the social hazards received by workers are not defined as a crime or criminal offense and the seriousness of crimes suffered by laborers is ignored and not accounted for.

Structural hardness theory provides a useful framework for understanding human rights violations through examination of how the structure restricts an individual or institution, causing unfulfilled human basic needs. Just as Galtung (1993) defines violence as a disorder that avoids the achievement of basic human needs.¹⁵ Galtung (1969) also stated that structural violence was the violence built into the structure that resulted in the emergence of unequal power, resulting in an uneven chance of life.¹⁶ Paul Farmer (2005) asserted that structural violence was not the result of compulsion, but direct or indirect consequences of human institutions. In particular, these human institutions are involved through structures reflecting uneven distribution of power.¹⁷

According to Galtung (1969) The inequality that exists in terms of life is disproportionately because of the immediate poverty caused by the distribution of resource gaps, and the underlying problem is that there is a force from one party over the other that causes the distribution of resources to be uneven. Galtung (1990) also mentions the uneven distribution of the systematic detrimental to the same people who have power, so that the onset of structural violence.

Policy pyramid used by the government in the Bill of creation Job is precisely reversed: put entrepreneurs on the highest protection hierarchy while placing workers on the bottom layer. Job Creation Bill is not an appropriate

breakthrough to solve the investment problem, in addition to the fact that the technical regulations increase implementation, also enhance the character regime that is easily dictated by the financier. The expected economic growth of the Creation Job Bill will never happen, when the rights of workers are sacrificed and the economic inequality in society continues to be allowed. Creation Job Bill work will only multiply the collection of social conflicts in the urban community because the philosophy only accommodate the interests of investors. The Creation Job Bill is responsible for the loss of workers ' rights and becomes a means of state legitimacy against structural depletion.

2. Omnibus Law of The Job Creation Bill does not match the interests of the people.

Henry and Milovanovic (2000) in the evaluation of the development of Constitutive at influenced

13. [Mark M Lanier, Stuart Henry](#), 2004, *Essential Criminology*, Avalon Publishing

14. https://nasional.tempo.co/read/1307814/5-aturan-omnibus-law-cipta-kerja-yang-dianggap-rugikan-pekerja?page_num=2 accesses June 17, 2020

15. Kathleen Ho. (2007). *Structural Violence As A Human Rights Violation*. Essex Human Right Review Vol. 4 No. 2 September 2007. Hlm.3-4

16. Ibid

17. Paul Farmer, 2005, *The Palgrave Handbook of Social Theory in Health, Illness and Medicine: Structural Violence and the Embodiment of Inequality*, hlm. 675-690

by Postmodernism explained that the formation of a crime can be done through discourse by humans in their inter-relationships with cultural products, social institutions, and extensive social structures. Social construction that degrades labor is reflected in the policy formed by the state, which is actualized one of them through the Omnibus Law of The Job Creation Bill along with the programs and practices that occur therein. One of the policy of the country as a social construction about Labour becomes something that is believed to be shared by the community as an ideology of belief, which is contained in the policy of national development and in policies made by the Ministry of Labor of the Republic of Indonesia. The definition is made by the State based on the social problems faced by workers, including the problem of poverty. An article from Mason, Carlisle, Watkins, & Whitehead (2005) mentions that the definition associated with the problems given to Labour is not in spite of the fact that Labour has various issues that are regarded as a burden for entrepreneurs and business climates.

The method of legislation used by the government to make the product Creation Job Bill is also unusual. With the efficiency of cost and time of discussion, the Government chose to use the method ‘ Omnibus Law ‘ to realize its formula, although it is actually not known in the construction of Law No. 11 year 2012 on the establishment of legislation as amended in Law No. 15 year 2019. As if the close of the eye, the government denied that in many other parts of the world, the method of Omnibus Law was regarded as a not-democratic and even despotic way.

Some countries that use the omnibus law model include:¹⁸

1. Canada which adheres to the Common Law system uses an omnibus approach to implementing international trade agreements. As a result, modifying 23 laws that have occurred to be subject obligations to the WTO.¹⁹
2. Turkey which adheres to the Common Law system uses omnibus Law to make amendments to taxation regulations. As a result The addition of currency difference as a VAT base, making “consumer price ratio “ as the basis for determining the leasing price increase, as well as exemption of 70% tax on private flight personnel salary payment.
3. New Zealand which adheres to the Common Law system uses an Omnibus Law within the tax sector enhances. As a result, tax settings that are currently in effect within broad-base and low-rate.²⁰
4. Australia which adheres to the Common Law system uses an Omnibus Law to be able to apply international treaties in its country. Implemented free trade agreements between the United States and Australia.²¹
5. Philipines which adheres to the Common Law system uses an Omnibus Law to reform law in the context of investment. As a result Set of regulations that provide comprehensive incentives, both fiscal and non-fiscal, which are considered by the Government of the Philipines as a priority development of the fate.²²

18. http://iaiglobal.or.id/v03/files/file_publikasi/07112019_Paparan%20Yustinus%20Prastowo_RTD%20IAI.pdf accessed Juni 19, 2020

19. Study Paper, 2006, Possible Use of the Omnibus Legislative Technique for Implementation of Vietnam’s WTO Obligations and Commitments, Institute of Law Science The World Bank

20. Explanatory Note, Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill New Zealand.

21. Study Paper, 2006, Possible Use of the Omnibus Legislative Technique for Implementation of Vietnam’s WTO Obligations and Commitments, Institute of Law Science The World Bank

22. Regulus E Cabote, 2001, Investment Incentives Under The Omnibus Investment Code Of The Philipines, Mondaq: Philipines

An exaggerated deregulation discourse does not seem to align with the substance of the conceived Bill of Job Creation. In a record previously created by the Centre for Legal Studies and policy, Omnibus Law, which is a spirit of pruning a strong regulation, will create 493 (four hundred ninety three) government regulations, 19 (nineteen) Presidential Regulations, and 4 (four) new regional regulations in order to be able to run. That is, there are 516 (five hundred Sixteen) new implementing regulations that were born Creation Job Bill.²³

Henry and Milovanovic (2000) explained that the human tendency to interact with each other through a relationship of domination and subordination is a crime.²⁴ The Program established by the State institution of one of them through policies relating to the elderly issue that is being made in the Omnibus Law Bill on Creation Job is more an attempt to govern other people, in this case the labour/workers, who are subordinated in it and risk experiencing loss and suffering. The Program of forming the Omnibus Law Bill on Creation Job established by the Government and the House Representative is intended as an effort to improve the climate investment and to open a wider workforce throughout Indonesia simultaneously.

In practice the programs still reflect the occurrence of wrong treatment that is detrimental to the labor/worker as a result of degrading social construction. The coercion of wills in realizing the Bill of Creation Job involving the police and the State Intelligence Agency (BIN) against the various actions of rejection of this Bill is very improper. The police and the BIN are legally able to exceed its authority. And potentially make state equipment for the benefit of power to smooth the Bill of Creation Job. Of course this becomes a violation of the Constitution and leads to abuse of power.²⁵

Labour study and harm in the workplace represent significant challenges to society that dominant capitalist systems are unwilling or unable to fully recognise. Supported by a social harm perspective, Scott emphasises that the political, economic, legal and cultural systems of society frequently cause work-based harm, rather than being an exclusive problem of individual ‘rogue’ employers; And that legal interventions alone are insufficient to address such caused problems. Omnibus Law Bill would potentially be a tool for worker exploitation. The reason for investing in the birth of this bill is not appropriate. The main problem experienced by the Indonesian nation is the competitiveness of the nation, so the main problem is corruption and inefficiency bureaucracy, not the slow investment.

Conclusion

Utilizing the perspective of zemiology is the best way to prevent exploitative practices and social hazards that will occur in the future. Labor exploitation should be minimised even eliminated. The interests of entrepreneurs and workers need to be facilitated collaboratively in an aspirational law product. Democratically formed laws will produce a comfortable and profitable business climate. Greed will always be a bad moral that should be overcome together. State interventions in the form of legislation should refer to national objectives, namely protecting all people and advancing the general welfare. If a product is not in accordance with national objectives of nation and state it must be rejected and cancelled to prevent social hazards.

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