



Faculty of Law Unissula

THE 1ST PROCEEDING INTERNATIONAL CONFERENCE AND CALL PAPER

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

June 27 2020

June **27th** 2020

THE 1st PROCEEDING

International Conference And Call Paper

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

IMAM AS' SYAFEI BUILDING

Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh :
UNISSULA PRESS

ISBN. 978-623-7097-74-7

COMITTEE OF THE 6th PROCEEDING INTERNATIONAL CONFERENCE AND CALL PAPER

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

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Hal I-IX, 1-258

Cetakan Pertama Tahun 2020

Penerbit UNISSULA PRESS

Jl. Raya Kaligawe Km. 4 Semarang 50112

PO BOX 1054/SM,

Telp. (024) 6583584, Fax. (024) 6594366

ISBN. 978-623-7097-74-7

Editor :

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Erna Sunarti, S.Pd.,M.Hum.
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Desain Cover :

Muh. Arifin, S.Kom

Desain Lay Out :

Suryo Atmojo, SH

ISBN :

978-623-7097-74-7

Penerbit :

UNISSULA PRESS

Alamat :

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Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

Puji syukur kehadiran Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadiran Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "Omnibus Law Opportunities And Challenges Towards Entrepreneurs And Labor : Comparative Review" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah membahas berbagai keilmuan Hukum dan Humaniora.

Sesungguhnya keberhasilan dalam mencapai tujuan pendidikan yang dicita-citakan sangat tergantung pada sikap mental, partisipasi serta disiplin setiap unsur yang terlibat dalam proses belajar mengajar. Mudah-mudahan seminar Internasional yang sederhana ini dapat memberi sumbangsih dalam mencerdaskan bangsa Indonesia serta semoga Allah SWT selalu menyertakan ridho-Nya. Amin. Akhir kata, kami mengucapkan terima kasih kepada pimpinan Universitas Islam Sultan Agung, pimpinan fakultas Hukum Unissuala, pemakalah, editor dan serta pihak-pihak yang telah membantu terselenggaranya seminar ini dengan lancar tanpa hambatan suatu apapun.

Wassalamu'alaikum Wr.Wb.

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OMNIBUS LAW AND IT'S IMPLEMENTATION OF INDONESIAN COUNTRY MARITIME DEFENSE AND ISLAMIC LAW VIEWS ABOUT STATE DEFENSE

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ABSTRACT

*President Joko Widodo stated that the enforcement of maritime sovereignty is one of the main programs to realize Indonesia as a global maritime foundation. One area, which is complicated and requires serious attention from the government, is the maritime security sector. At present, Indonesia has at least 17 laws governing law enforcement at sea with nine law enforcement agencies operating. At present, various laws regulate various law enforcement agencies at sea. Each institution has a different mandate in a particular maritime zone. For example, the Indonesian Navy and BAKAMLA and the Ministry of Maritime Affairs and Fisheries have the authority to carry out law enforcement through the Exclusive Economic Zone (EEZ). Water police only have authority in the waters of the Indonesian archipelago, internal water, and territorial sea. In practice, there is no single ideal model for law enforcement at sea. From the background description above, the formulation of the problem that the author wants to analyze is how is the implementation of the omnibus law in Indonesia's maritime national defense as well as the Islamic legal perspective on national defense? In Islam, International Relations are characterized as *Mua'malat* taken from Arabic or also in Islamic law as *Syiar* which is International Islamic law. In addition, Islam also has the principle of International Relations that regulates relations between nations in other countries both Muslim and non-Muslim. The form of the relationship is *mu'minun* and *mu'ahidun* or *mu'minun* with people without an agreement. Defending the country is one form of patriotism; patriotism must be proven by practice as has been carried out by the Prophet Muhammad in personal and social life. With the existence of the omnibus law, it is hoped that there will be no overlap and conflict in maritime defense in Indonesia in particular, so that a full state defense can also be realized.*

Keywords: *Omnibus law, defense, maritime, Islamic view*

INTRODUCTION

Indonesia is the largest archipelago in the world with a coastline of ± 81,000 km, and 17,499 islands consisting of 5,698 named islands and 11,801 nameless islands (Lestari, 2015). The concept of an island

nation set out in the United Nations Convention on International Maritime Law (UN Convention on the Sea / UNCLOS) in 1982 was ratified by Law Number 17 of 1985 (Indonesian Law, 1985). Regionally, Indonesia has national jurisdiction ± 7.8 million km². ± 5.9 million km² or two-thirds of Indonesia's national jurisdiction are oceans, 2.7 million km² of which are the Indonesian Exclusive Economic Zone (EEZ) while the rest (± 3.2 million km²) are territorial sea, island waters, and waters inland¹.

President Joko Widodo stated that the enforcement of maritime sovereignty is one of the main programs to realize Indonesia as a global maritime foundation (Indonesia as the World Maritime Axis, 2015)². The concept of the Global Maritime Fulcrum has been stated in Presidential Regulation No. 2 of 2015 concerning the 2015-2019 National Medium-Term Development Plan (RPJMN). To realize Indonesia as a global maritime foundation, President of the Republic of Indonesia, Joko Widodo, stated the five main pillars of the global maritime fulcrum policy, where the fifth pillar was stated that the government would build a maritime defense force (Indonesia as the World Maritime Axis, 2015). In addition, the Government has issued Presidential Regulation Number 2017 (RI, 2017) concerning Indonesian Maritime Policy. In one of the 7 pillars it is determined that Indonesia's maritime policy will have pillars relating to defense and security. With this government policy, the word maritime and sea defense, which used to be only part of the Indonesian Navy, became a key word among government agencies in Indonesia and non-governmental organizations.

In 2014, President Joko Widodo stated his vision to turn Indonesia into a global maritime power. Underlying this vision is a new realization of Indonesia's geostrategic interests and a changing strategic environment. While nontraditional, trans-national maritime security threats such as piracy, armed robbery and smuggling and human trafficking continue to threaten order in Indonesia's maritime jurisdiction, more traditional conventional military threats reappear as major powers such as China, the United States, Australia, and India continue to expand their field of strategic interest.

Because it contradicts previously overly optimistic foreign policy doctrines, many were cautious about the Global Maritime Fulcrum (GMF) when it was first launched. It was considered a sign that Indonesia was beginning to abandon its simple foreign and security policies; Indonesia is considered more outward-looking and even resolute in pursuing its strategic interests. Indeed, GMF's foreign policy doctrine, among other things, seeks to build the country's maritime defense capabilities to enable it to play an active role in the Indian Ocean and Pacific, two oceans that are pressing Indonesia. The decades-old vision of having green water navy seems finally to be seen.

In Islam, International Relations are characterized as *Mua'malat* taken from Arabic or also in Islamic law as *Syiar* which is International Islamic law. In addition, Islam also has the principle of International Relations that regulates relations between nations in other countries both Muslim and non-Muslim.

The Problem

From the background description above, the formulation of the problem that the author wants to analyze is how is the implementation of the omnibus law in Indonesia's maritime national defense as well as the Islamic legal perspective on national defense?

Methods of Research

1 Dewanti Lestari. (2015). Garis pantai Indonesia terpanjang kedua di dunia from <https://www.antaraneews.com/berita/487732/garis-pantaiindonesiaterpanjang-kedua-di-dunia> accessed on June 2, 2020.

2 Joko Widodo and Jusuf Kalla, "Jalan Perubahan Untuk Indonesia Yang Berdaulat, Mandiri dan Berkepribadian: Visi, Misi, dan Program Aksi," (May 2014), p. 12. Accessible at kpu.go.id.

The method of approach in this study uses the type of normative juridical research. Normative juridical research is research focused on examining the application of rules or norms in positive law. This type of research is a type of qualitative descriptive research, because in this study describes the situation that occurs at present in a systematic and factual manner with the aim to explain and the solution of the problem under study is the implementation of the omnibus law in Indonesia's maritime national defense as well as the perspective of Islamic law regarding national defense.

Primary data obtained by researchers refers to data or facts and legal cases obtained directly through literature studies relating to research objects and practices that can be seen and related to research objects.

The data analysis method used is normative qualitative, namely the decomposition of data analysis which starts with the information obtained to achieve clarity of the problem to be discussed.

Research Result and Discussion

Omnibus law is a statutory regulation that is made to refer to one major issue that may be able to revoke or change several laws into one law that is simpler and more complete to avoid overlapping regulations. This is done to amend several laws into one new law. Literally, Omnibus law is the law for all. Languages are derived from Latin, which is *Omnis* which means 'for all' or 'many'

According to Bryan A Garner, in the *Black Law Dictionary the Ninth Edition* states:

"Omnibus: relating to or dealing with numerous objects or items at once; including many things or having various purposes." This means the omnibus law has to do with various objects or things at once, and has several goals.

Over the past few months, the omnibus law has become a popular mantra throughout Indonesia. Indonesia's President, the Joko Widodo administration is currently trying to make a big leap in creating employment by proposing an omnibus law on employment and taxation. Omnibus laws combine several laws into one. Omnibus laws are laws that are made for certain problems that might affect by changing or canceling certain laws to make it more simplified. Indeed, it is widely known that Indonesia has many complex and sometimes conflicting laws. Sometimes it also causes overlapping effects between authorities from various regions.

One area, which is complicated and requires serious attention from the government, is the maritime security sector. At present, Indonesia has at least 17 laws governing law enforcement at sea with nine law enforcement agencies operating. Some of them are the Indonesian Navy, the Ministry of Maritime Affairs and Fisheries, the Water Police, the Ministry of Transportation, the Ministry of Energy, Customs and Excise, the Ministry of Environment, the Ministry of Energy, and Immigration. Indeed, as an archipelago with an area of around 3.25 million square kilometers, maritime security is very important for Indonesia, not only to protect Indonesia's sovereignty at sea but also to protect the sovereign rights of resources at sea³.

During Jokowi's first term, he handled this problem by forming the Indonesian Maritime Security Agency (BAKAMLA), which was mandated to coordinate institutions for all law enforcement agencies at sea. However, since its establishment in 2014, BAKAMLA has limited law enforcement resources including patrol boats.

At present, various laws regulate various law enforcement agencies at sea. Each institution has a different mandate in a particular maritime zone. For example, the Indonesian Navy and BAKAMLA and

3 Murniningtyas, E. (2016). *Optimalisasi Pemanfaatan Potensi Kelautan Menuju Terwujudnya Indonesia Sebagai Poros Maritim*. Jakarta: Bappenas.

the Ministry of Maritime Affairs and Fisheries have the authority to carry out law enforcement through the Exclusive Economic Zone (EEZ). Water police only have authority in the waters of the Indonesian archipelago, internal water, and territorial sea. In practice, there is no single ideal model for law enforcement at sea. Based on research conducted by the Center for Sustainable Marine Policy in 2016 comparing various law enforcement mechanisms at sea from countries such as the United States, Australia, Malaysia and India, each country has its own model, adapted to geographical conditions and challenges they face.

At present, there are two institutions assigned as Indonesian coast guards, namely BAKAMLA and the Indonesian Coast and Sea Guard under the Ministry of Transportation. The institutional claim of two coast guards is a direct result of uncoordinated Indonesian law. Omnibus legal needs for maritime security in Indonesia are increasing.

Over the past few years Indonesia has faced various challenges, ranging from the security of sea borders in the North Natuna Sea, piracy and armed robberies, and problems of the marine environment.

At present, the Coordinating Ministry for Political, Legal and Security Affairs is discussing a proposed bill for maritime security. However, it is important to ensure that the new law on maritime security reaffirms which institution will lead this initiative. Leading institutions are needed for several reasons. First, Indonesia currently has many institutions that have law enforcement authority at sea. Therefore, Indonesia must repeat the Multi-Institutional Single Task to ensure all institutions have law enforcement authority at sea under a coordinated system. Thus, whenever there is a need for a quick response, the coordinating agency can instruct each agency to make an appropriate response to illegal fishing rates in Indonesian waters. Central to a centralized maritime information platform is important so that various agencies have access to relevant information at all times.

The current institution that has the most powerful infrastructure for law enforcement at sea is the Indonesian Navy, and strengthening the role of BAKAMLA as the main coordinator of law enforcement at sea will not diminish their role, instead strengthening cooperation. The Navy is still an important element of law enforcement at sea under the coordination of BAKAMLA, playing a central role in defense at sea. Therefore, Indonesia currently needs an omnibus law on maritime security to coordinate and strengthen law enforcement systems at sea.

International relations according to Islam is an interaction that occurs in several countries to establish cooperation in various fields that can benefit the country or an academic and public policy field and can be positive or normative because it seeks to analyze and formulate the foreign policy of certain countries.

A Muslim relation with non-Muslims in Islam is characterized by what has been practiced by Rasulallah SAW both in terms of war and harmony with non-Muslims. This can be seen when the Apostle moved to Yastrib when he was tormented by the infidels of the Quraysh in Mecca. Although some non-Muslims in Yastrib did not accept, but at that time there were also some non-Muslims in Yastrib Can live in harmony with Rasulallah. Therefore, Abdullah bin Abbas divided non-Muslims in Yastrib into two parts, namely: mushriki ahl harb (non-Muslims from among conflicting people) and mushriki ahl 'ahd (non-Muslims from among those who commit weapon shock).

But it is different from the view of Ibn Qoyim in his book entitled *Zad al-Ma'ad*. He believes that non-Muslims are divided into three parts, namely: muharibun (non-Muslims in a state of war with Muslims), ahl al-'ahd (non-Muslims who are bound in agreements with Muslims) and ahl al-dhimma (non-Muslim protected under a surrender agreement).

In Islam, International Relations are characterized as *Mua'malat* taken from Arabic or also in Islamic

law as Syiar which is International Islamic law. In addition, Islam also has the principle of International Relations that regulates relations between nations in other countries both Muslim and non-Muslim. The form of the relationship is mu'minun and mu'ahidun or mu'minun with people without an agreement. Then relations in the Islamic world are divided into 3 parts, namely: muharibin (people in the covenant of war), ahlal-ahd (people in agreement with Islam) and ahl-adhimma (people who are respected, tolerated and protected). Besides that, Muslim scholars also divide the world into two parts, namely: Islamic territory (dar al-islam) and war territories or non-Muslim territories that are hostile to Islam (dar al-harb).

Dar al-Islam and dar al-harb are two legal concepts that became polemic among Muslim scholars in searching for definitions of the two legal concepts. According to Shaybani, dar al-Islam is a dar or territory which has an Islamic authority where the region is the place where Islamic law is applied. So that guarantees Muslims live peacefully in it and the possibility of non-Muslims are also protected in the region. According to Amr G.E.Sabet in his book, one of the countries or regions that have Islamic authority that can lead other Islamic countries is Iran because the Iranian state allows it to maintain Islamic solidarity for other Islamic countries.

The Basic Law (Dalil) is in QS al-Hujurat verse 13. Allah SWT said:

مُكَافَأْتِ أَهْلَهُ لَدُنَّ عَمَلِكُمْ لَكُمْ إِنِ أَوْفَرَ أَعْتَلْتُمْ لِي أَبَقُوا أَبَوْغُشٌ مُكْفَانٌ لَعَجَّوْ يَثْنُ أَوْ رَكَذْنُمْ مُكْفَانٌ لَخِ أَنْ سَأَلْنَا هَيْأَ أَي

Ingredients Mean:

“O people, verily we created you from a man and a woman and made you a nation - a nation and a tribe so that you knew one another. Surely the most noble among you by Allah is the most pious among you. Surely Allah is All-knowing, All-knowing. “

Islam supports the ideology of nationalism, in Arabic known as Al-Qaumiyyah. Indeed the word qaum in the Qur'an is repeated 322 times⁴, but it is not enough for us to conclude that the Qur'an supports nationalism because the word is repeated so many times. Moreover, the word qaum is not always meaningful in accordance with the meaning of nationalism that we understand today. We can see from the words of the prophets who called their people with the word “yaa qaumi” even though their people did not believe.

The nationalities that we understand are the characteristics that mark the national group, taken from the word nation which means the unity of people who are of the same origin, their ancestry, customs, language and history, and self-government⁵. The characteristics that mark the nation group consist of several elements, namely:

- a. Unity or unity,
- b. Origin of offspring,
- c. Language,
- d. Customs,
- e. History, and
- f. Love the motherland

From the elements of nationality it turns out that it is not at all contrary to the teachings of the Qur'an and Sunnah, even all the elements that give birth to that understanding are inclusive in the Qur'an, so that a good Muslim must be a member of a good nation⁶.

4 Muhammad Fu'ad Abdul Baqi, al-Mu'jam al-Mufahros li al-Fadz al-Qur'an al-Karim, (Kairo: Dar al-Kutub al-Mishriyyah, 1364 H), p. 583-587

5 Tim Penyusun Kamus Pusat Bahasa DEPDIKNAS, ... p. 132

6 Muhammad Quraish Shihab, Wawasan Al-Qur'an, (Bandung: Mizan, 2013), p. 456

Defending the country is one form of patriotism; patriotism must be proven by practice as practiced by the Prophet Muhammad. In personal life as well as community life, it is not only proven by popular expressions which are considered by some to be the hadith of the Prophet Muhammad, *Hubbul wathan minal iman* (Love of the motherland is part of faith). The Qur'an combines the defense of religion and the defense of the state in His word.

“Allah does not forbid you to do well and do justices to those who do not fight you because of religion and do not (also) expel you from your country. Surely Allah loves those who act justly. Indeed Allah only forbids you to make your friends those who fight against you because of religion and drive you out of your country, and help (others) expel you. And whoever makes them friends, they are the wrongdoers. “(Surat al-Mumtahanah [60]: 8-9).

Ahmad, al-Bukhari and Muslim narrated the hadith regarding the descent of this verse from Asma 'bint Abu Bakar ra,

“My mother came to me, he was a polytheist in the time of the Messenger of Allah, and then I asked this to the Messenger of Allah:” Can I do well to him? “, The Prophet said:” Yes, do well to your mother “7.

Then Allah revealed the above verse to emphasize that it is not forbidden to do good to those who are not hostile to Allah's religion⁸. It means that doing good with anyone is not prohibited, even with enemies, because guidance comes only from Allah, cannot be forced by humans. In the sense that humans cannot give guidance to others, let alone force someone to follow the instructions that are believed to be true.

From the meaning of the verse above it can be understood that the defense of the state is the same as our defense of religion. The composition of the verse begins with those describing doing well with those who are not hostile, showing that the most important thing is doing good itself, peace and unity. However, if they are hostile to the point of endangering the welfare of religion and the state, they are expressly enemies. With the existence of the omnibus law, it is hoped that there will be no overlap and conflict in maritime defense in Indonesia in particular, so that a full state defense can also be realized.

Conclusion

In Islam, International Relations are characterized as *Mua'malat* taken from Arabic or also in Islamic law as *Syiar* which is International Islamic law. In addition, Islam also has the principle of International Relations that regulates relations between nations in other countries both Muslim and non-Muslim. The form of the relationship is *mu'minin* and *mu'ahidun* or *mu'minin* with people without an agreement. Defending the country is one form of patriotism; patriotism must be proven by practice as practiced by the Prophet Muhammad. In personal life as well as community life, it is not only proven by popular expressions which are considered by some to be the hadith of the Prophet Muhammad, *Hubbul wathan minal iman* (Love of the motherland is part of faith). The Qur'an combines the defense of religion and the defense of the state in His word. With the existence of the omnibus law, it is hoped that there will be no overlap and conflict in maritime defense in Indonesia in particular, so that a full state defense can also be realized.

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8. Wahbah bin Musthafa al-Zuhaili, *Tafsir al-Munir fi al-Aqidah wa al-Syari'ah wa al-Manhaj*, (Damaskus: Dar al-Fikr al-Ma'ashir, 1418 H), Juz XXVIII, p. 134

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