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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 INDIGENOUS LAW VIEWS IN INDONESIA

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ABSTRACT

Omnibus law Bill of Employment Creation contains many problems in many ways, from legal conventions to sectoral articles. More and more criticism is directed at the omnibus law, a draft regulation that aims and simplifies overlapping rules. In Indonesia, the Cipta Karya omnibus law will be used to facilitate investment. The government under President Joko Widodo believes that the overlapping of regulations makes investments not go in so that the economy does not go fast. In writing this paper, the problem is how is Omnibus Law viewed from the view of customary law in Indonesia? Omnibus law is a product of the Act that can revoke or amend several existing laws that can be scattered in several regulations, then streamlined in one Act to better target the solution to a conflict between government administrators and regulations legislation with specific objectives to improve the investment climate and as a guarantee of legal certainty and legal protection for policy makers. In the hierarchy / sequence of laws and regulations in Indonesia, the concept of Omnibus Law has not been included as a principle in legal sources, but harmonization of laws and regulations in Indonesia is continuously carried out to minimize conflict of laws and regulations. The assumptions and perspectives on the problem are not comprehensive, such that since the beginning of the idea of forming the Omnibus Law, the Government has failed to examine the facts that occur in the field and also failed to put the Indigenous Peoples in the right position. Excessive worship of large scale investment so far has shown facts that are very detrimental to Indigenous Peoples. On top of this worship, customary territories were seized and then given permission to invest in the forestry, plantation, mining and other sectors.

Keywords : *omnibus law, customary law*

INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly states that, "The State of Indonesia is a state of law." As a consequence of the mandate of the constitution, Indonesia wants to adhere to the concept of the rule of law in carrying out all aspects of the life of the state.

The key word for *rechtsstaat* is the existence of a basic norm which underlies the creation of laws in

the territory of the Unitary Republic of Indonesia, and of course the basic norm that we all know is Pancasila. This was also reinforced by Soepomo's¹³ statement which said that "by understanding the integral nature of law, where the state as the organizer of justice for the whole people, then we will be able to carry out a unified and just Indonesian State, as already contained in the Panca Dharma"¹⁴. Then, Soepomo continued, "then the state can only be fair, if the country carries out a sense of justice for the people and leads the people to noble ideals, according to the flow of the times"¹⁵.

The realization of Soepomo's statement is clearly stated in the 1945 Constitution of the Republic of Indonesia Article 27, 31 and 32. In essence, the State adheres to a social justice system that is kinship in nature, which is clarified in article 32 regarding the care of neglected children and the poor by the state. Next go back to article 31 which states that the economic system is composed by joint efforts based on the principle of kinship as well, which demands that natural resources be controlled by the state for the common interest as extended families. In the end, to formulate laws in each region, it should always be done with a system of consultation in accordance with the 4th principle of Pancasila¹⁶.

Apart from what Soepomo had formulated normatively. The spirit of the judicial law in Indonesia must be at least in accordance with, first, law enforcement that breathes on divine values. Second, law enforcement in Indonesia is not only fair but also civilized. Third, Indonesian law enforcement underlies its decision on considerations that are concerned with national unity. Fourth, Indonesian law enforcement cannot be one-sided, but must go through dynamic and wise deliberations. Fifth, Indonesian law enforcement must be equitable in the overall spectrum (*Vivendi mode*), not beneficial to either party.

That has been stated above shows that Indonesian law does not refer to a formal-positive truth. Indonesian law must also pay attention to the realities that live in society. Indonesian law is actually a law like Holmes said that legal life ... has not been logic, it has been experience.

Law is a legal regulatory instrument in the rule of law. The main purpose of the law according to Mochtar Kusumaatmadja is the guarantee of order, justice and certainty¹⁷. Thus, law is a system that has characteristics and characteristics that become the driving force and regulator of people's lives. The law manifests in the form of laws and regulations, a set of written laws in various forms that govern all aspects of state and community life. According to Mahfud MD, statutory regulations are all laws in the broadest sense that are formed in a certain way by the authorized official and stated in written form¹⁸.

As for the phenomenon regarding the laws and regulations that are now surfacing and drawing debate, when the government submits the Draft Bill on the Employment Copyright to the House of Representatives¹⁹. The debate over this arose not without reason, because the Draft Bill on Employment Copyright was formed by the government through the Omnibus Law. Not only that, even of the 50 Draft Laws included in the 2020 National Legislation Program (*Prolegnas*), four of them are omnibus law which consists of a Bill on the

13 Body compiler of the 1945 Constitution passed cumlaude at the University of Leiden, the Netherlands.

14 Yudi Latif. *Negara Paripurna*. (Jakarta : Kompas Gramedia, 2011) p.530. What Panca Darma meant by Soepomo were the five guidelines for *Chuo Sangi In's* life.

15 *Ibid* hlm 530

16 Bakhrul Amal, *Paradigma Hukum (Suatu Pengantar Dalam Memahami Perilaku Manusia Terhadap Hukum)*. December 2013

17 Mochtar Kusumaatmadja, *Konsep-Konsep Pembangunan Hukum dalam Pembangunan*, (Bandung: Alumni, 2002), p.5-6.

18 Mahfud MD., *Konstitusi dan Hukum dalam Kontroversi Isu*, (Jakarta: Rajawali Pers, 2009), p. 255.

19 CNBC Indonesia, <https://www.cnbcindonesia.com/news/20200212114420-4-137233/hari-ini-draft-omnibus-law-Cipta-Lapangan-Kerja-diserahkan-ke-dpr>

State Capital, a Bill on Pharmaceuticals, a Bill on Copyright on Employment, and a Bill on Provisions and Tax Facilities for Strengthening the Economy²⁰.

The ‘omnibus law’ system prioritizes and idealizes writing and drafting, in addition to being integrated, also harmonious with various legal materials governing subjects and objects that differ from other laws in one united system of a rule of law state based on the constitution as the highest source of law . The system that is currently practiced in Indonesia, is a codification system, but is limited to the codification of legislation containing material cohesiveness as long as it is related to a thematic subject and object, which cannot reach matters relating to other themes or topics.

The Problem

The problem in writing this paper is how is Omnibus Law viewed from the view of customary law in Indonesia?

Methods of Research

The method of approach in this study uses the type of normative juridical research. Normative juridical research is research focused on studying 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 resolution of the problem under study, the Omnibus Law in terms of the view of customary law in Indonesia.

Primary data obtained by researchers refers to data or facts and legal cases obtained directly through library 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

The definition of Omnibus Law starts from the word Omnibus. The word Omnibus comes from the Latin language and means for everything. In the Black Law Dictionary Ninth Edition Bryan A. Garner mentioned the omnibus: relating to or dealing with numerous objects or items at once; including many things or having various purposes, meaning that it is related to or dealing with various objects or items at once; including many things or having various goals. When coupled with the word Law, it can be defined as a law that has a variety of related objects / items or all related.

According to Sofyan Djalil in the article www.hukumonline.com on February 16, 2017, who was then serving as Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency, has proposed the concept of Omnibus Law in the procedure for managing or checking the status of land ownership. According to him, the concept of omnibus law is a step to issue a law that can improve so many laws that have been considered to overlap and hamper the process of ease of business (omnibus law). With the issuance of one Law to amend many Laws, because with so many Acts it cannot be accelerated because many Acts still regulate and can contradict each other.

From the description of the legal experts opinions above, the main characteristics of the Omnibus Law can be drawn are (1) it consists of multiple sectors or consists of many sectors with the same theme; (2) consists of many articles, due to the many sectors covered; (3) independent or independent, without being bound or minimally bound by other regulations; and (4) negate / revoke parts and / or all other regulations.

20 CNN Indonesia, <https://www.cnnindonesia.com/nasional/20200122164312-32-467714/4-ruu-omnibus-law-dikebut-dpr>

In addition, it can also be known that the goals raised by the Omnibus Law ideas are (1) to resolve conflict of laws and regulations quickly, effectively and efficiently; (2) standardize government policies both at the central and regional levels to support the investment climate; (3) that licensing management is more integrated, efficient and effective; (4) to break the long chain of administrative bureaucracy; (5) to improve the coordination relationship between related agencies because it has been regulated in an integrated omnibus regulation policy; and (6) as a guarantee of legal certainty and protection for policy makers.

Examining this Omnibus law can not only be viewed from the Legitimacy Aspect of Laws and Regulations. We can also approach the Omnibus Law Concept through Legal Theory, namely²¹:

Omnibus law Bill of Employment Creation contains many problems in many ways from legal conventions to sectoral articles. More and more criticism is directed at the omnibus law, a draft regulation that aims and simplifies overlapping rules. In Indonesia, the Cipta Karya omnibus law will be used to facilitate investment. The government under President Joko Widodo believes that the overlapping of regulations makes investments not go in so that the economy does not go fast.

The Work Draft Bill (RUU) is one of the omnibus laws whose designs have been submitted to the House of Representatives. Collecting 79 legislation under way, the Work Creation Bill contains 1,224 articles with a thickness of more than 1,000 pages. The Association for Community-Based and Ecological Legal Reform (Huma) that reviews the Cipta Karya Bill found several fundamental flaws. For example, from all of the clusters, the Cipta Karya Bill is not in accordance with the conventions or rules on making laws that have been used in Indonesia. The Work Cipta Bill does not refer to the object it wishes to regulate, such as other laws and regulations such as the Forestry Law, the Food Law, the Defense Law. The name of the Work Cipta Karya Bill refers to the results and ideals or expectations to be achieved from the articles contained in it, which is to present as much investment as possible. So if investment does not increase and employment is not created, this law can be said to be a failure. Formally and the Work Cipta Bill process is not in accordance with the law.

The first result of the Cipta Karya Bill which only simplifies is most pronounced in the regulation of indigenous peoples. Not only does it contradict the 2012 Constitutional Court ruling stating that customary forests are excluded from state forests, the CiptaKerja Bill even includes various definitions and definitions of indigenous peoples. There are 72 articles in the Work Creation Bill that mention customary law communities with all its variants: customary law communities, indigenous peoples, traditional communities, local wisdom, customary rights, traditional rights, customary territories, customary management areas, and so on.

The differences in the designation show that the Work Draft Bill is not a codified law, but merely takes customary affairs out of various existing laws and was drafted by many government agencies. So far, indigenous peoples are governed by many institutions by many rules with different definitions. For this reason, it can be said that the Work Cipta Bill has deviated from the goal to be achieved by the government in making an omnibus law that is synchronizing sectoral rules to facilitate investment. The Cipta Karya Bill failed to harmonize excuses with reality.

As a result, the Cipta Karya Bill is not a solution; the Cipta Karya Bill cannot solve the complicated problem of indigenous peoples, namely overlapping permits in their area, especially with industries that are given the right by the government to manage an area. Even its contents make vulnerable the seizure of indigenous territories. From terminology, omnibus means a large bus that carries many people who walk

21 Hamidi, J., Sugiharto, M. A., & Ihsan, M. (2013). *Membedah Teori-Teori Hukum Kontemporer*. Universitas Brawijaya Press. Nonet, P., & Selznick, P. (2008). *Hukum Responsif*. Cetakan II. Nusa Media. Bandung.

to the same destination. In the case of the Cipta Karya omnibus, the aim is to attract as much investment as possible. Therefore, this bill will cut anything that impedes that goal. Indigenous peoples considered to have the same goals as other passengers in attracting investment. So far, indigenous peoples have been considered as obstacles to investment because they often conflict with industry due to overlapping permits. Therefore, it is not surprising that the Work Draft Bill has no intention of resolving this serious problem, which has an impact on the environment.

At first the public learned that the Omnibus Law, which was being drafted secretly, was called the Employment Copyright Bill or abbreviated as the Employment Copyright Bill. Civil society groups immediately reacted to the Omnibus Law Draft mainly because of its elitist and much closed formulation process. Shortly after, this draft was renamed the CiptaKerja Bill. Once explored, it was immediately known that the Omnibus Law Draft was indeed worthy of bearing the name of the Employment Copyright Bill because it was found that its substance had the potential to harm Indigenous Peoples and the environment.

The impression is that the Proposed Omnibus Law on Employment Copyright for investment and neglect of the recognition and protection of Indigenous Peoples' rights cannot be covered up. This attitude is demonstrated by ways of removing, adding, or re-interpreting the provisions in at least 79 existing laws. The steps of elimination, addition, or re-interpretation are carried out to serve one goal, which is to "facilitate investment", so as to create broad employment opportunities for the people, and to boost the stagnant national economy lately. One of the issues highlighted and described on page 118 of the Academic Paper on the CK Bill explains that one of the current problems is "the difficulty of obtaining land in investing in Indonesia, there is a disharmony between the Spatial Planning Law, the Basic Agrarian Law, the Law on Agrarian Affairs, the Law Forestry and other sector laws".

At a glance the description in the Omnibus Law Cipta Karya does not look wrong. But the analysis of the various conflicts and violence experienced by Indigenous Peoples as a result of the seizure of indigenous territories has led us to the conclusion that without waving a green flag and stretching the red carpet to investment despite the fact that so far the state has shown a pro attitude and practice on investment and ignoring the protection of Indigenous Peoples and customary territories and the natural resources contained therein. That is, it is the Indigenous People who should be more worthy of shouting about the disharmony of the various existing laws and regulations.

The assumptions and perspectives on the problem are not comprehensive, such that since the beginning of the idea of forming the Omnibus Law, the Government has failed to examine the facts that occur in the field and also failed to put the Indigenous Peoples in the right position. Excessive worship of large scale investment so far has shown facts that are very detrimental to Indigenous Peoples. On top of this worship, customary territories were seized and then given permission to invest in the forestry, plantation, mining and other sectors.

The Omnibus Law on Employment Copyright clearly contradicts the recognition and protection of Indigenous Peoples that have been regulated in the 1945 Constitution. One proof is the abolition of provisions in the Environmental Protection and Management Law which exclude cultivation activities by burning as an expression of the traditional wisdom of Indigenous Peoples from criminal threats. The abolition of the exclusion article clearly shows anti-state attitudes which clearly threaten indigenous peoples and their traditional wisdom in managing their customary territories.

Not only farming activities by burning, the absence of protection of indigenous territories will actually have an impact on the increasingly massive seizure of indigenous territories for investment purposes. And this will have an impact on the loss of various traditional Indigenous occupations (farming, fishermen,

honey collectors, incense, etc.) and have a further impact on the loss of Indigenous Peoples' identities. Thus, the Omnibus Law on Employment Copyright is not only openly contradictory to the recognition and protection of the Constitution for Indigenous Peoples as stipulated in Article 18 B paragraph (2) and Article 28 paragraph (3) of the 1945 Constitution but also shows an attitude contrary to the law Human rights in particular ILO Convention 111/1958 which regulates and provides guarantees for Indigenous Peoples to carry out work traditionally or hereditary in their care, which by the ILO Convention 111 is called traditional occupation. Furthermore, seizure of indigenous territories is also a violation of the CERD Convention. Both conventions have been ratified by the Government of Indonesia.

Conclusion

Omnibus law is a product of the Act that can revoke or amend several existing laws that can be scattered in several regulations, then streamlined in one Act to better target the solution to a conflict between government administrators and regulations legislation with specific objectives to improve the investment climate and as a guarantee of legal certainty and legal protection for policy makers. In the hierarchy / sequence of laws and regulations in Indonesia, the concept of Omnibus Law has not been included as a principle in legal sources, but harmonization of laws and regulations in Indonesia is continuously carried out to minimize conflict of laws and regulations.

Assumptions and perspectives on issues that are not comprehensive, as from the very beginning the idea of establishing the Omnibus Law, the Government has failed to examine the facts that occur in the field and also failed to put the Indigenous Peoples in the right position. The draft Omnibus Law Employment Copyright clearly contradicts the recognition and protection of Indigenous Peoples that have been regulated in the 1945 Constitution.

Suggestion

The DPR RI and the Government should prioritize discussion and ratification of the Draft Law on Indigenous Peoples into Law. As an alternative, an understanding of executive codification can also be developed, namely that the compilation of an integrated text, which is harmonious with various other laws, is carried out by the government with reference to all laws and even other legislation that are interrelated to one another, Others, both directly and indirectly, with a view to facilitating the subject of regulated law and all the people to seek justice and find the truth of the law.

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