



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

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*" Omnibus Law Opportunities And Challenges Towards
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IMAM AS' SYAFEI BUILDING

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COMITTE OF THE 6th PROCEEDING INTERNATIONAL CONFERENCE AND CALL PAPER

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

Susunan Panitia

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| Pengarah | : Prof.Dr.H. Gunarto, S.H., S.E.Akt., M.Hum. |
| Penanggung Jawab | : Dr. Hj. Anis Mashdurohatun, S.H., M.Hum. |
| Ketua | : Dr. Hj. Sri Endah Wahyuningsih, S.H.,M.Hum |
| Sekretaris | : Nailul Mukorrobin, S.Psi |
| Bendahara | : Erna Sunarti,S.Pd.,M.Hum |
| Seksi Acara | : Muhammad Ngazis, S.H., M.H. Marcela Dinda, S.Kom Shinta Puspita, SE. |
| Seksi Konsumsi | : Bambang Irawan Siti Pardiyah Riswanto |
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| Reviewer | : Prof. Dr. Eko Soponyono,SH.,M.Hum. Prof. Dr. Hj. I Gusti Ayu KRH, SH.,MM. |

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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

Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

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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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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

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STRENGTH AND WEAKNESSES OF OMNIBUS LAW IN INDONESIA

Saprodin¹

^{1,2}, Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia
saprodinsangadi@gmail.com

Widarto²

^{1,2}, Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia
dartowidarto04@gmail.com

ABSTRACT

Omnibus law is a method or concept of making regulations that combines several rules with different regulatory substance, into a large regulation that functions as a legal umbrella (umbrella act). And when the regulation is enacted the consequence is to revoke some of the rules resulting from the merging and its substance subsequently declared invalid, both in part and as a whole. So Omnibus Law wants to answer two things at once, there are namely legal efficiency and harmonization of the law. In the description of writing, the problem is how are the strengths and weaknesses of the omnibus law in Indonesia? As for some of the benefits of establishing an Omnibus Law which is at the same time a force in the realm of positive law in Indonesia, among others: 1. Omnibus Law can overcome conflicting laws and regulations quickly, effectively and efficiently; 2. Omnibus Law can be able to uniform government policies both at the central and regional levels to support the investment climate; 3. Licensing management is more integrated, efficient and effective with the existence of Omnibus Law; 4. Omnibus Law can break the long bureaucratic chain; 5. Omnibus Law can improve coordination relationships between related agencies because it has been regulated in an integrated omnibus regulation policy; 6. With the Omnibus Law can guarantee legal certainty and legal protection for policy makers with existing. As for some of the issues raised in the Omnibus Law as well as its weaknesses are as follows: 1. Drafting of bills that are not participatory; 2. Omnibus Law has great potential in terms of environmental damage; 3. Omnibus Law is the centralization of licensing.

Keywords : *Omnibus law, strength, weakness*

INTRODUCTION

During the past year, discussions about Omnibus Law began to surface and are still a hot topic of conversation in many places. As it should be, intellectuals are intelligent people who are most diligent in flicking various government policies that are perceived as not in favor of the general public, including this Omnibus Law.

Referring to the general understanding, Omnibus Law can be interpreted as a Law (Act) created to target a major issue that might be able to revoke or change several Laws at once so that it becomes simpler.

Seeing Indonesia's average economic growth in the last 5 years is 5% and 1% economic growth

is only able to absorb as many as 400 thousand workers, the government hopes through the Employment Copyright Bill is economic growth of 6% per year to absorb 7 million unemployed and absorb 2 million new workforces. Investment as a way to open more jobs becomes the government's way to achieve the target of 6% economic growth per year. Therefore a new investment of 4.800 trillion is needed because every 1% of economic growth requires 800 trillion. If investment is one of the paths chosen by the government, the government needs to pay attention to how the investment absorbs labor in Indonesia. The long-term goal of the Draft Employment Copyright Law is that Indonesia can become a developed country by 2045. Not only that, the Indonesian government also expects Indonesia's GDP to reach 7 trillion US dollars so that Indonesia becomes the top 5 country. The world economy with poverty is near zero percent.

The Problem

From the background description above, the formulation of the problem that I want to explain is how the strengths and weaknesses of the omnibus law policy 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 examining the application of rules or norms in positive law. This type of research is a type of qualitative descriptive study, because in this study describes the situation that occurs at present in a systematic and factual manner with the aim to explain and resolution of the problem under study, namely the strengths and weaknesses of the omnibus law policy in Indonesia.

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

Conceptually-definition, Omnibus Law starts from the word Omnibus. The word Omnibus comes from the Latin language and means for everything. In the Ninth Edition Black Law Dictionary Bryan A. Garner mentioned the omnibus: "relating to or dealing with numerous objects or items at once; including many things or having various purposes", where the meaning 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 law for all. In other words, the presence of the Omnibus Law principle is intended to provide a basis for the practice of forming a specific law that revokes various relevant laws or different substances¹.

Sort of making legal protection to be more efficient, Or more simply, According to Paulus Aluk², it can be said that omnibus law is a method or concept of making rules that combines several rules with different regulatory substance, into a large regulation that functions as a legal umbrella (umbrella act). And when the regulation is enacted the consequence is to revoke some of the rules resulting from the merging and its substance subsequently declared invalid, both in part and as a whole. So Omnibus Law wants to answer two things at once namely legal efficiency and harmonization of the law.

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

1 Firman Freaddy Busroh. 2017. Omnibus Law. Jurnal Arena Hukum, p.242

2 *Ibid*, p. 242

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 states³:
“*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.

Strengths and Weaknesses of the Omnibus Law Policy

In various countries, especially common law, it is common to use omnibus law such as the United States, Canada, the Philippines and Australia. Indonesia is relatively new to this. Although in limited cases such as Law Number 7 of 2017 concerning Elections repeal three laws at once, namely: Law Number 42 of 2008 concerning Election of President and Vice President, Law Number 15 of 2011 concerning Election Organizers and Law Number 8 of 2012 about the DPR, DPD and DPRD elections.

Omnibus Law Plans in Indonesia include Omnibus Law Employment Copyright and Tax Omnibus Law. In fact, the Government and Kadin (Commerce and Industry organization) have formed the Omnibus Law Task Force. Of course there are challenges to consider, as follows⁴:

First, ideally, Law Number 12 of 2011 concerning the Formation of Legislation needs to be amended so that the principle or concept of the Omnibus Law gets legal reinforcement and uniformity of patterns. Including ensuring at the regional level, existing regulations can use the concept of Omnibus Law as at the center.

Second, when referring to the thought of Mochtar Kusumaatmadja who sees the law not only as a rule and principle, but also includes institutions and processes to realize the law in reality, then the consideration of strengthening the awareness and legal culture in society becomes necessary. Without it, the law is only text, lost its context of implementation.

Third, harmonization with regional policies needs to be considered. Because, Omnibus Law at the level of National Constitution able to cancel District Constitution. However, a deep study is needed so that it does not seem to reduce autonomy. Or even towards the centralization of power which is contrary to the vision of reform.

Fourth, the reform of rules through the Omnibus Law is only one strategy to be investment friendly. Strong law enforcement needs to be accompanied so that investors feel comfortable because legal certainty becomes necessary, not only rules but norms are compatible with implementation.

As for some of the benefits of establishing the Omnibus Law which is at the same time a force in the realm of positive law in Indonesia, including⁵:

1. Omnibus Law can resolve conflict of laws and regulations quickly, effectively and efficiently;
2. Omnibus Law can be able to uniform government policies both at the central and regional levels to support the investment climate;
3. Licensing management is more integrated, efficient and effective with the existence of Omnibus

3 A.Garner, Bryan. 2004. Black’s Law Dictionary Eeighth Edition. USA: West Publishing Co.

4 R. Muhammad Miharadi. 2019. Omnibus Law: Menuju Hukum Ranah Investasi. Bogor: Universitas Pakuan.

5 Firman Freaddy Busroh, “Konseptualitas Omnibus Law dalam Menyelesaikan Permasalahan Regulasi Pertanahan”, Arena Hukum, Vol. 10, No. 2, (August 2017), p. 247.

Law;

4. Omnibus Law can break the long bureaucratic chain;
5. Omnibus Law can improve coordination relationships between related agencies because it has been regulated in an integrated omnibus regulation policy;
6. With the Omnibus Law can guarantee legal certainty and legal protection for policy makers with existing.

From the government side, they claim there are at least three benefits from implementing Omnibus Law. First, it eliminates overlaps between laws and regulations; Second, the efficiency of the law and regulation changing and law and regulation revocation process. Third, it eliminates sectional egos contained in various laws and regulations. The substance of the Employment Copyright Omnibus has been discussed intensively with 31 relevant Ministries / Institutions, and includes 11 clusters, namely: 1) Simplification of Licensing, 2) Investment Requirements, 3) Employment, 4) Ease, Empowerment and Protection of MSMEs, 5) Ease of Doing Business, 6) Research and Innovation Support, 7) Government Administration, 8) Imposition of Sanctions, 9) Land Procurement, 10) Government Investment and Projects, and 11) Economic Zones. Therefore, the President hopes that the DPR can support the government in realizing this plan. "Now, please support this, don't be too long, and don't complicate things. Because, this is once again to create employment," said the President⁶.

The government has submitted the Employment Copyright Bill to the Indonesian Parliament; currently just waiting for the discussion to be approved. This has triggered various condemnations arising from the jokes and actions of some communities, such as workers' groups. The Confederation of Indonesian Trade Unions (KSPI) threatened to hold massive action if the Omnibus Law Draft Law (Cipta Karya) was passed. KSPI rejected the Omnibus Law Working Draft Bill which the government had submitted the draft to the Indonesian Parliament. As for some of the issues raised in the Omnibus Law as well as its weaknesses are as follows⁷:

1. Drafting a non-participatory bill

The Omnibus Law task force formed by the government is exclusive and elitist, so it is feared that the drafting of a bill is based on the interests of certain groups and not based on the aspirations of justice for the people of Indonesia.

2. Omnibus Law has great potential in terms of environmental damage

The Working Bill is believed to legitimize investments that damage the environment and not prosper the community. This happens because the government is not selective in attracting investment into Indonesia. Investors who enter have the potential to expand the exploitation of natural resources and environmental damage. The Working Bill encourages the acceleration of the environmental crisis because incoming investment increases ecological disasters, pollution and environmental destruction. Such as forest and land fires that occurred in recent years, mine pits that killed dozens of children, flooding, drought, and air pollution.

3. Omnibus Law is the centralization of licensing

It is considered that this policy is hurting regional autonomy which has been running since the reform. Several licensing authorities in the regions that will be withdrawn to the center include the

6 www.setkab.go.id

7 Anggita, Louis dan Kasiano. 2019. *Selayang Pandang Omnibus Law*. Jakarta: Badan Eksekutif Mahasiswa Universitas Sanata Dharma.

authority of the provincial government to manage minerals and coal, including the issuance of local regulations and permits. This centralization of licensing alienates public services and complicates the delivery of people's aspirations.

Considering the strengths and weaknesses of the omnibus law policy, the discussion of this bill should pay attention to input from the public and the business world, and consider the opinions of legal experts in Indonesia so as not to improve the justice and welfare of the Indonesian people.

Conclusion

Omnibus Law Plans in Indonesia include Omnibus Law Employment Copyright and Tax Omnibus Law. In fact, the Government and Kadin have formed the Omnibus Law Task Force in an effort to increase investment opportunities from both foreign and domestic investors for the advancement of the Indonesian economy. As for some of the benefits of establishing an Omnibus Law which is at the same time a force in the realm of positive law in Indonesia, among others: 1. Omnibus Law can overcome conflicting laws and regulations quickly, effectively and efficiently; 2. Omnibus Law can be able to uniform government policies both at the central and regional levels to support the investment climate; 3. Licensing management is more integrated, efficient and effective with the existence of Omnibus Law; 4. Omnibus Law can break the long bureaucratic chain; 5. Omnibus Law can improve coordination relationships between related agencies because it has been regulated in an integrated omnibus regulation policy; 6. With the Omnibus Law can guarantee legal certainty and legal protection for policy makers with existing. As for some of the issues raised in the Omnibus Law as well as its weaknesses are as follows: 1. Drafting of bills that are not participatory; 2. Omnibus Law has great potential in terms of environmental damage; 3. Omnibus Law is the centralization of licensing

Suggestion

Given the omnibus law is also a new term and method in the formation of laws in Indonesia. So it needs to be considered the extent of the suitability of the method to be applied in the formation of laws in Indonesia. When examined in depth, in fact the omnibus law has various shortcomings. Departing from the concept of democracy, the omnibus law has actually injured deliberative democracy by narrowing public space to present discourse and gathering people's aspirations in the discussion of the draft law because of the short and rushed discussion time.

In addition, the Omnibus Law Bill both in the process of formation and in its position has also been contradictory with the provisions concerning the formation of laws according to Indonesian Law Number 12 of 2011 concerning the Formation of Legislation. Even looking at it from the perspective of the community, in fact the Omnibus Law has received a response from some groups. Thus, considering Indonesia as a state based on democracy, by looking at matters as described above, it is fitting to be considered to reconsider the omnibus law method if it will be implemented in the formation of laws in Indonesia.

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