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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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IMPACT OF LAW OMNIBUS APPLICATION IN INDONESIA IS POSSIBLY HAPPENING TO ENVIRONMENT DEGRADATION

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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). As a consequence, regulations regarding environmental protection appear to be the main targets to be changed and simplified. Therefore, the potential for environmental neglect that develops into a criminal direction is very likely to occur because in the process of environmental degradation that is detrimental to various parties. In the writing of the problem, the problem is: What is the potential for environmental degradation as a result of the omnibus law and its relation to the crime of environmental destruction? 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. Eliminating AMDAL in national projects is one form of serious risk to the environment. AMDAL according to Article 24 paragraph 1 of Law No. 32 of 1999 states that AMDAL is a source of eligibility in environmental testing. The AMDAL document will include a business impact assessment, evaluation of activities in the vicinity of the affected location, input suggestions and responses from the affected communities forecasts of the magnitude of the impact, evaluation of management and environmental monitoring.

Keywords: Omnibuslaw, degradation, environment

Introduction

Indonesia is one of the developing countries in the world which since the beginning of its independence has continued to strive to increase its quantitative competitiveness against other countries in the world. Various attempts have been made by the government since the old order era to the reform order in increasing Indonesia's quantitative competitiveness in the eyes of the world. Investment is one of the preferred steps in increasing competitiveness. The reform era, especially the era of president Joko Widodo, prioritized investment in public infrastructure. In President Joko Widodo's nawacita program, good infrastructure is expected to increase state revenue.

In his inaugural address, President Jokowi mentioned five government priorities in the second period of his leadership (2019-2024)¹, namely human resource development, infrastructure development, simplification of regulations, simplification of bureaucracy, and economic transformation. One of the ways that will be taken to realize the third priority is to compile an omnibus law, which is explained by the President as “a law which also revises several (dozens) laws.” Initially the President stated that there were two omnibus laws to be prepared, namely the Omnibus Law Employment Creation (CLK) and the Omnibus Law Empowerment for SMEs (PMUKM). On various other occasions, the President stated that the omnibus law was needed to accelerate the issuance of regulations that encourage investment ease.²

Investment in infrastructure is an expensive and challenging investment. Indonesia’s investment climate is currently hampered by convoluted and overlapping regulations. According to data from the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency of the Republic of Indonesia there are approximately 632 regulations on land where 208 regulations are no longer in force and 424 regulations still apply. 424 existing regulations have many problems in implementation and often clash with other agencies. The chaotic regulatory system in Indonesia causes decision-makers often get administrative problems and sometimes leads to criminal problems. The existence of confusion in the existing regulations in Indonesia causes the decision makers to be hesitant in determining attitudes so that an existing problem often becomes completely unresolved.³

Land law in Indonesia is mostly a legacy of the colonial era, especially the Netherlands. Indonesia currently still applies several Agrarische Wet, Agrarische Besluit laws, Wetboekurgerlijk, Besluit Koninklijk, Regering Reglement, Indische Staatsregeling which was originally formed to give power to the colonials and suppress proletarian natives. Dutch law gave a considerable amount of power to the nobility and the bourgeoisie while the non-owners of capital or the proletariat became increasingly marginalized by development and ownership.⁴

The government has at least drawn up the CLK Omnibus Law Draft. Unfortunately, the process of making the omnibus law is very closed, even the manuscript is not accessible to the public. The government in its official statement stated that it would only consider public input and considerations when the draft omnibus law was submitted to the DPR.⁵

The Indonesian government is trying to make changes to the longstanding Dutch legal system. Omnibus law is a new draft law created by the government to simplify existing regulations and is said to be very pro to the interests of the people. Omnibus law is basically a regulation that combines several related articles into a single article. Omnibus law is an Anglo-Saxon law (common law) which makes court decisions as a legal basis. The existence of this draft law is debated by legal experts considering that if this law is applied it can be a source of state law. Indonesian law which is a civil law will be shifted to a common law that has many problems in its contents, especially in employment and less attention to environmental aspects.

1 Kompas.com, “Naskah Lengkap Pidato Presiden Joko Widodo dalam Pelantikan Periode 2019-2024”, diakses dari <https://nasional.kompas.com/jeo/naskah-lengkap-pidatopresiden-joko-widodo-dalam-pelantikan-periode-2019-2024>

2 Berbagai liputan media. Antara lain: Detik.com, “Pemerintah akan bikin 2 Omnibus Law untuk revisi puluhan UU”, <https://news.detik.com/berita/d-4753213/jokowi-akan-bikin-2-omnibus-law-untuk-revisi-puluhan-uu>

3 Goesniadhie, Kusnu. 2010. *Mewujudkan Tata Pemerintahan Yang Baik*. Malang: Nasa Media.

4 Sihombing, B.F. 2005. *Evolusi Kebijakan Pertanahan Dalam Hukum Tanah Indonesia*. Jakarta: Toko Gunung Agung Tbk.

5 Berbagai media. Antara lain: <https://nasional.kompas.com/read/2020/01/22/14114001/polemik-dan-klarifikasi-pemerintah-soal-ruu-omnibus-law-cipta-lapangan-kerja?page=all>; <https://ekonomi.bisnis.com/read/20200124/12/1193738/pekan-depan-pemerintahserahkan-draf-omnibus-law-ke-dpr>.

As a consequence, regulations regarding environmental protection appear to be the main targets to be changed and simplified. Therefore, the potential for environmental neglect that develops into a criminal direction is very likely to occur because in the process of environmental degradation that is detrimental to various parties.

The problem is How is the Omnibus Law viewed from a progressive view of 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 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.

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 qualitative normative, which is the decomposition of data analysis which starts with information obtained to achieve clarity of the problem to be discussed, namely the potential for environmental degradation as a result of the omnibus law and its relation to criminal acts of environmental destruction.

Research Result and Discussion

Omnibus Law Viewed From A Progressive View Of Law In Indonesia

Based on the factors causing it, the form of environmental damage can be divided into 2 types, namely:

1. Forms of Environmental Damage Due to Natural Events

Various forms of natural disasters which recently hit Indonesia have caused impacts of environmental damage. The enormity of the tsunami that devastated the Mecca and Nias Serambi, and the 5-scale Richter earthquake that flattened the DIY area and its surroundings, are examples of natural phenomena that can instantly change the shape of the earth's surface.

Other natural events that have an impact on environmental damage include:

a. Volcanic eruptions

Volcanic eruptions occur because of the activity of magma in the bowels of the earth that causes strong pressure out through the top of the volcano. The danger caused by volcanic eruptions include:

1. Rain of volcanic ash, causing respiratory problems.
2. Lava is hot, damaging, and deadly whatever is passed.
3. Hot clouds, can kill living creatures traversed.
4. Gas containing poisons.
5. Solid material (rocks, gravel, sand), can override housing, and others.

b. Earthquake

Earthquakes are vibrations of the earth's crust that can be caused by several things, including the activities of the magma (volcanic activity), the occurrence of land subsidence, or because of the movement of the plates at the bottom of the ocean. Humans can measure the intensity of an earthquake, but humans cannot predict when an earthquake will occur.

Therefore, the danger posed by the earthquake is more devastating compared to volcanic eruptions. At the time of the earthquake several events occurred as a direct or indirect result, including:

1. Various buildings collapse.
2. Land on the surface of the earth breaks, the road becomes broken.
3. Landslides due to shocks.
4. Flooding occurred, due to damage to the embankment.
5. Earthquakes that occur on the seabed can cause tsunamis (tidal waves).

c. Hurricane

Hurricanes occur as a result of air flow from areas with high pressure to areas with low pressure. These differences in air pressure occur because of striking differences in air temperature. Typhoon attacks for countries in the Pacific and Atlantic Oceans are common. For regions in California, Texas, to Asian regions such as Korea and Taiwan, the danger of a hurricane is a seasonal disaster. But for Indonesia it was only felt in mid-2007. This shows that there has been a change in climate in Indonesia which is caused by symptoms of global warming.

The danger of a hurricane can be predicted through satellite photographs that illustrate the state of the Earth's atmosphere, including images of hurricane formation, direction, and speed. Angintopan (tornado) attacks can cause environmental damage in the form of:

1. Tear down the building.
2. Damage to agricultural and plantation areas.
3. Danger the flight.
4. Cause large waves that can sink the ship.

2. Some forms of environmental damage due to human factors, including:

- The occurrence of pollution (air, water, soil and sound pollution) as a result of the presence of an industrial area.
- The occurrence of floods, as a result of adverse drainage or drainage systems and errors in maintaining watersheds and the effects of forest destruction.
- Landslides have occurred, as a direct result of forest destruction.

Some human actions that directly or indirectly have an impact on environmental damage among others:

1. Illegal logging (deforestation).
2. Illegal hunting.
3. Destroying mangrove forests.
4. Storage of swamps for settlement.
5. Garbage disposal in any place.
6. Wild buildings in watersheds (DAS).
7. Excessive use of natural resources beyond limits.

Potential Occurrence of Environmental Degradation as the Impact of Omnibus Law and its Relation to Criminal Acts on Environmental Damage

Indonesia as a state of law should be able to provide legal certainty and equality for its people. The presence of the so-called omnibus law will be a protective law for the people to draw criticism from various

elements of society. One form of criticism of the omnibus law is the existence of the Gejayan Calling movement which was initiated by students, NGOs and various elements of the people of Yogyakarta and Central Java. According to a report from CNN Indonesia, various elements of society and students staged an action to reject the Omnibus Law Working Copyright Bill along Jalan Gejayan, Yogyakarta on Monday 9 March 2020. The period of action voiced that this regulation had many irregularities and harmed small communities and the environment.

Omnibus law is a law that is very foreign to Indonesia in terms of the mechanism of regulation formation. According to law number 15 of 019 regarding amendment of Law no 12 of 2011. In its definition the Omnibus law contains many rules which are considered to be related to one rule as applied.

Conclusion

Based on historical comparisons of existing regulations in Indonesia, the omnibus law was made to renew the Agrarische Wet, Agrarische Besluit, Burgerlijk Wetboek, Koninklijk Besluit, Regering Regulations, Indische Staatsregeling which are still applied by Indonesia. The initial purpose of the omnibus law may be aimed at accommodating the common interests, but in reality this rule is not suitable for implementation in Indonesia. Omnibus law which is a common law law can cause turmoil in society. This law is also suspected to exacerbate the degradation of existing land due to the easier and more concise manner in obtaining land use permits by investors. Eliminating AMDAL in national projects is one form of serious risk to the environment. AMDAL according to Article 24 paragraph 1 of Law No. 32 of 1999 states that AMDAL is a source of eligibility in environmental testing. The AMDAL document will include a business impact assessment, evaluation of activities in the vicinity of the affected location, input suggestions and responses from the affected communities forecasts of the magnitude of the impact, evaluation of management and environmental monitoring.

Suggestion

1. Provide recommendations to the Government and Parliament to: Arrange omnibus law transparently and involve all stakeholders (including affected and / or interested communities) in the drafting process, both at the government and DPR levels, and open to all opinions expressed.
2. Review rational choices related to the elimination of MDAL and LP3H in Indonesia.
3. Maintaining the threat of criminal sanctions for administrative violations (including permit violations) due to: a. Business actors who have received administrative sanctions do not obey or repeat their actions again; b. There are actions which if carried out without permission will pose a huge danger to the environment and cannot be recovered (irreversible damage); so more severe sanctions (criminal sanctions) are needed to ensure the deterrent effect and uphold justice. Maintain, even strengthen, rules related to community involvement to be in line with the principles of sustainable development. Thus the policy encourages the acceleration of investment and development chosen to be more inclusive and gain support from the community (legitimate).

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