

The Issue of Enacting the Omnibus Law on Job Creation from the Perspective of Indonesian Constitutional Law

Aryuni Fitri Djaafara

Universitas Tarumanagara, Indonesia

Email: aryuni.205210084@stu.untar.ac.id

* Correspondence: aryuni.205210084@stu.untar.ac.id

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ABSTRACT

The formation of the Job create law is one of breakthroughs that government has in the field of law to improve overlapping regulations, in particular conflicting or similar laws and regulations and then changes to regulations will be made. The purpose of this writing is to figuring the problem to makes occurs in formation of the law labor through Law Number eleven 2020 years concerning work creation. The formulation of the Job Creation Law uses the Omnibus Law approach by drafting laws that have different principles from one another. This approach was chosen with the hope of making licensing simpler and more accessible to investors and could have a positive impact on economic growth and employment. At the time of writing, the author using normative legal methods like collecting data from products in the area of law. With the birth of the law creating jobs should be hoped that it can increase investment so that it can create as many jobs as possible to reduce unemployment. And the government can issue regulations that benefit employers and workers so that they can comply with regulations that protect workers' rights. Because labor is a major part of the running process of a company.

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Introduction

Legislation is the main source of law in countries that adopt the Continental European legal system or *Civil Law System* (Redi, 2018). Laws and regulations are written regulations that contain legal norms that are binding in general and are formed or determined by State institutions or authorized officials through procedures stipulated in laws and regulations. Indonesia is the country with the most regulations, in 2019 regulations in Indonesia reached 50,000 regulations. The government considers that the *Omnibus Law* is the right method for cutting regulations.

Omnibus Law is a law that regulates and covers various types of content material that varies or regulates all matters regarding a type of content material (Fitri & Hidayah, 2021). The Job Creation Law or *Omnibus Law* is one of the laws and regulations formed by the government within a very short period of time with its discussion contained therein, considered fairly fast when compared to other bills (Perdana et al., 2022). In the process of forming the Job Creation Law or *Omnibus Law*, there are several legal problems that

arise, one of which is that there are legal norms in it that are considered contrary to the constitutional rights of citizens as stipulated in the Constitution of the Republic of Indonesia Year 1945 (Alam et al., 2022).

On October 5, 2020, the Job Creation Bill was officially passed by the House of Representatives of the Republic of Indonesia, then signed by the President on November 2, 2020. Although it has been passed, the text of this regulation has undergone many revisions both in terms of the number of pages and the deletion of articles contained therein (Setyawan, 2020). The Job Creation Bill, which after being passed into Law Number 11 of 2020 concerning Job Creation, comes from the Government Initiative Bill submitted to the House of Representatives on February 13, 2020. The government deliberately made preparations for the Job Creation Bill with the aim of obtaining a strategy for economic development efforts of the State of Indonesia as a means to attract the attention of investors in order to invest and invest in the State of Indonesia (Fitri & Hidayah, 2021). During the drafting process of the formation of the Job Creation Law, various controversies arose and many people did not agree with the existence of the Job Creation Bill. The thing that causes many people and workers to disagree with the implementation of the Job Creation Bill is because of the reduction in wages to work workers whose employment relationship is decided by the employer (Miran et al., 2022).

The formulation of the problem in the research is: What is the concept of *the Omnibus Law approach* in the process of making law regulations? What are the legal problems that occurred during the formation of the Job Creation Law in accordance with the formation of laws and regulations?

Research Methods

In conducting research, researchers use normative legal methods by collecting data derived from legal products. With the existence of the Job Creation Law, all parties hope to be able to increase investment so that it can create as many jobs as possible to reduce unemployment (Efendi et al., 2016). The Government can issue regulations that can benefit both parties, both employers and workers so that they can meet regulations that can protect workers' rights. Because labor is a major part of the process of running a company (Amiruddin, 2016).

Results and Discussions

1. The Concept of *Omnibus Law Approach* in the Law Regulation Making Process

Omnibus Law comes from two words, namely *omnis* which means "all" in Latin and *law* which means law. According to Fachri Bachmid, a constitutional law expert, the definition of omnibus law is "a concept of making legal products that function as affiliates starting from determining themes, preparing materials, and forming laws in different groups to become legal products" *Omnibus Law is a law that covers various types of material in it, the policy areas covered by the Omnibus Law include:*

- a. Improvement of the investment ecosystem and business activities
- b. Employment
- c. Convenience, protection, and empowerment of cooperatives and MSEs
- d. Ease of doing business
- e. Research and innovation support
- f. Land acquisition
- g. Economic zone

- h. Central Government Investment and Acceleration of National Strategy Projects
- i. Implementation of Government Administration
- j. Imposition of sanctions

The concept of the Omnibus Law approach is a regulation made with the aim of eliminating conflicting and conflicting regulations that can cause obstacles to the growth of State development as well as to make regulations that are in harmony with several aspects to make a legal product. The Omnibus Law was first implemented by the State of Vietnam which wanted to combine the law with the WTO in 2006. Omnibus Law is well known by many countries that use the "common law-anglo saxon" legal system, such as Ireland and America have recognized omnibus law in the regulation of the Law. In "Southeast Asia" Countries In Law No. 12 of 2011 concerning the establishment of laws and regulations, it is not specifically explained about the procedures or procedures for the formation of laws with the concept of an omnibus law approach. The concept of the omnibus law approach is still included in the scope of the State which uses a civil law legal system that is very rare to use the omnibus law concept in the process of forming laws. Omnibus law is one of the concepts that has no influence on the legal system in force in the country, but which is the subject of omnibus law to be used as a special solution for making law regulations and is described in the form of a hierarchy as follows: 1) the 1945 Constitution of the Republic of Indonesia, 2) MPR Decrees, 3) PP Law in Lieu of Law, 4) Government Regulations, 5) Presidential Regulations and 6) Provincial Regulations and 7) District/City Regional Regulations (Wahyudin, 2020).

2. Pros of Legal Problems that Occur During the Formation of the Job Creation Law in accordance with the Formation of Laws and Regulations

The people are part of the elements of the administration and implementation of the State. All authority, power, policy is in the hands of the people, because the people are in the interest of the State. All regulations and the formation of laws must be in accordance with the purpose of the law. The Job Creation Bill that uses the concept of the Omnibus Law raises many cons among the public. Some articles that are considered problematic include:

- a. It is feared that the job creation law could raise concerns and transfer some rights from local governments to the central government. 2) Business Actors submit an application to the Central Government for approval of the suitability of space utilization activities for commercial activities through electronic commercial licenses in accordance with the provisions of laws and regulations. Article 77 contained in Article 23 of the Job Creation Bill states: "The central government may impose administrative sanctions on the person in charge of a business and/or activity if the central government believes that the local government is intentional No administrative sanctions are imposed for serious violations. violations in the field of environmental protection and management. Life". Article 6 paragraph (5) is contained in Article 35 of the Manpower Procurement Law which reads: "If the district/city government does not designate the land as community grazing land in accordance with paragraph (3), the central government may designate the land as public grazing land." In the previous three articles, it was stated that the central government had taken over the power of local governments, so it was feared that the central government could not take over authority because of the large number of provinces and districts. / cities in Indonesia are very large 514 cities or rule in

Indonesia.

- b. The Job Creation Law has caused controversy at the time of its passage, not because it is not pro to local governments. However, because at the time of implementation it can cause confusion for parties, especially law enforcement officials, academics, business actors, the community, the central government, and the regional government. The initial purpose of making the Job Creation Bill was to eliminate overlapping regulations from the number of 82 Law Regulations to be made into 1 Law to make it easier for investors to invest in the State of Indonesia, instead of making it easier but making it more complicated because the removal of the previous regulations was only a few articles and did not repeal one Law regulation. The Job Creation Bill does not have simplified regulations so that it makes the public, law enforcement, business actors confused if they want to use the regulations of the Job Creation Bill because there are chapters and articles totaling 1028 pages.

The Job Creation Bill cannot run smoothly in implementation if it has been made into an actual law regulation, because the *Omnibus Law* Job Creation Bill needs to be complemented by regulations in implementation. If the Job Creation Bill becomes a Job Creation Law, there may be 14 Presidential Regulations, 1 Ministerial Regulation, 519 Government Regulations that need to be formed. The total number of regulations of the Job Creation Bill if calculated there are 534 Implementing Regulations that need to be formed. The term of formation takes a very long time, it is impossible to be about one to two years. This is because there are still many overlapping regulations so that they cannot run effectively because special implementing regulations have not been formed until the law regulations are repealed and new regulations are made.

Conclusion

The process of forming law regulations using the concept of omnibus law approach has not been clearly and specifically stipulated in Law 12/2011 concerning the Establishment of Law. Omnibus law has the characteristic of abolishing and changing several regulations into one regulation that can reach the entire scope. The process of forming regulations in a short time can replace many laws into one regulation and in line. Although the concept of omnibus law still sounds very foreign, the formation of law regulations should be carried out with a mature concept so that it can be accepted by all parties and can be implemented properly so as not to cause new problems in people's lives. The government in using the omnibus law concept to form the Job Creation Bill did not consider the formation so that it caused many pros and cons in people's lives. So there are a lot of weaknesses and can potentially cause problems. Regulatory issues are found in the provision of severance pay, awards, work leave issues, and others. So that there are so many workers who reject the existence of the Job Creation Law which is considered to be in favor of employers to enslave workers.

The very short process of forming the bill has replaced many laws into one regulation that is in line and this is not balanced with the regulations created should be a solution to avoid problems that occur. The Job Creation Bill still has weaknesses. This problem lies in the provision of severance pay and work leave. Until now, there are many employers or employers who commit violations in providing severance rights to workers. The Job Creation Bill was formed by the Government to be used as a tool for the country's economy to become more advanced. However, the Government must not forget and avoid

the interests of the people. And the Government must find ways to attract potential investors to invest in Indonesia without having to sacrifice many people.

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