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Analysis of Omnibus Law Creation Law: Scope of Labor

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Abstract

This type of research is normative legal research, namely research that puts law as a system of norms, namely about principles, norms, laws and regulations, court decisions, agreements and doctrines. Based on the explanation above, it can be concluded that omnibus law is a legal concept that focuses on simplifying the number of regulations because it revises and revokes many laws at once. Therefore, before the omnibus law concept is actually applied in forming regulations, the principles of participation, transparency, and accountability need to be put forward first. Law Number 11 of 2020 concerning Job Creation, which was designed with the aim of transforming the economy towards advanced Indonesia by 2045, in its Draft and Academic Papers encountered many problems. Especially in the Employment cluster, these problems are related to the reduced rights of workers/laborers. Although it's undeniable that Law Number 11 of 2020 concerning Job Creation has several positive sides such as providing job loss guarantees for workers/laborers after Termination of Employment, but in reality the positive side of Law Number 11 of 2020 concerning Job Creation is not commensurate with the number of problems that exist.

Keywords: *Creation; Labor; Omnibus Law*

Introduction

Since before the independence of the Republic of Indonesia, labor law and employment law have existed in Indonesia. The regulations regarding employment were issued by the Dutch, who at that time were colonizers. In that era there were 4 labor and employment laws, namely forced labor, slavery, servitude, and *poenale sanctie*. These four laws made the Indonesian people suffer tremendously at that time, so after Indonesia proclaimed its independence, the Old Order Government under the leadership of President Soekarno issued regulations that provided protection for workers, including 1). Law Number 33 of 1947 concerning Payment of Compensation to Workers Who Get Accidents Related to Employment Relationships. 2) Law Number 12 of 1948 concerning the Work Act of 1948. 3) Law Number 23 of 1948 concerning Labor Supervision of 1948. 4) Law Number 21 of 1954 concerning Labor Agreements Between Labor Unions and Employers. 5) Law Number 22 of 1945 concerning Settlement of Industrial Relations Disputes. 6) Law No. 18 of 1956 concerning the International Labor Organization's Concession Agreement No. 98 Concerning the Applicability of the Fundamentals of the Right to Organize and Collective Bargaining.

Omnibus Law is a legal concept that emphasizes simplification of the number of regulations, due to its nature to revise and revoke many laws at once.(Taufiq 2021) It should be realized that regulatory

issues are complete problems. In its development, the word *Omnibus Law* is often directed to the term *Omnibus bill*, which means a (Draft of Law) Law that regulates various different things, separates and combines a number of different subjects in one way, so that it can force executives to be able to cancel all invitations and also accept the terms that aren't approved.(Fernando, Pratiwi, and Putra 2021)

The regulation regarding termination of employment is intended to provide protection for workers/laborers. One of the things regulated in Law Number 13 of 2003 concerning Manpower is matters related to Termination of Employment. This is so that the workforce has the same opportunity to realize prosperity for themselves and their families. Regarding termination of employment according to the Manpower Act, there are several reasons that can lead to termination of employment, one of which is absenteeism.

Article 168 paragraph (1) of Law Number 13 of 2003 concerning the Employment of workers/workers who are absent for 5 working days or more in a row without any written statement accompanied by valid evidence, and has been summoned by the entrepreneur 2 times properly and It is also written that his employment relationship can be terminated because he is qualified to resign.

There are also other problems that occur due to the lack of accommodation by Law Number 13 of 2003 concerning Manpower, one of the breakthroughs is through the business simplification scheme initiated by President Joko Widodo, by including Law Number 13 of 2003 concerning Manpower in the simplification of the Law Number 11 of 2020 concerning Job Creation.

Indonesia is the country that has the most regulations. Even in 2017 the number has reached 42,000 rules. In terms of investment and the economy, the Government has mapped out 74 laws that have the potential to hinder the economy and investment. Of the 74 laws, the government will draft 2 major laws, namely the law on job creation and empowerment of micro, small and medium enterprises in order to increase competitiveness and encourage investment in Indonesia. Based on the description in the background of the problem, it can be formulated the problem in this study, namely Law Number 11 of 2020 concerning Job Creation, it's sufficient or not to carry out regulatory reforms and the implementation of the *Omnibus Law* in the legal system of the Republic of Indonesia can be applied in the legislative system invitation of the Republic of Indonesia.

Research Methods

This type of research is normative legal research, namely research that puts law as a system of norms, namely about principles, norms, laws and regulations, court decisions, agreements and doctrines (Hage 2012).

Result and Discussion

Simplification of Regulations and Omnibus Law

As revealed by the National Development Planning Agency from 2000 to 2015, the central government issued (12,471) regulations with the ministry being the largest producer with (8,311) regulations. *Omnibus law* can actually be a solution to simplify regulations, as Indonesia is currently experiencing. The next most common type of regulation is Government Regulation (2,446) regulations. Meanwhile, regulatory products issued by local governments are dominated by district/city regulations as many as (25,575) regulations, followed by provincial regional regulations as many as (3,177) regulations.(Indonesia 2019)

Then referring to the Center for the Study of Indonesian Law and Policy from 2014 to October 2018, it has issued (7621) Ministerial Regulations, (765) Presidential Regulations abbreviated, (452) Government Regulations, and (107) Laws.

In addition to too many regulations, there are also several other problems, first, the unsynchronized planning of laws and regulations both at the central and regional levels with development policy planning. Second, there is a tendency for laws and regulations to deviate from the content material and should be regulated. Third, non-compliance with the content material raises the issue of hyper-regulation or the issuance of many laws and regulations (Perpu) at the executive level. In terms of content, basically forming laws and regulations is to pour public policies into legal norms that bind citizens. A norm sentence in the legislation can be an obligation or necessity, prohibition, and permissibility.

Article 7 of Law Number 12 of 2011 concerning the Establishment of Legislation, according to Bayu Dwi Anggono, the type of legislation can be seen that(Anggono 2014) 1) Every formation of legislation must have a clear legal basis; 2) Not all laws and regulations can be used as a legal basis, but only those of an equal or higher level; 3) Only regulations that are still in force may be used as a legal basis; 4) Regulations to be revoked may not be used as a legal basis; 5) There are certain content materials for each type of legislation that differ from each other between types of legislation. However, efforts to reform regulations should not stop at the *omnibus law*. Regulatory issues are complete problems. Regulatory reform or reform is not enough to only mean the unification of many laws into 1 (one) law or only to be seen as legal reform such as changing colonial legacy regulations with new laws, but must be seen as a comprehensive improvement starting from the formation, harmonization and evaluation.(Gaffar et al. 2021)

The formation of laws must be participatory. Likewise in forming laws with the concept of *omnibus law*. Borrowing what was said by Bivitri Susanti, there is a difference between participation and socialization.(Susanti, n.d.)

When referring to Law Number 12 of 2011 concerning the Formation of Legislation, it must be carried out not only as a formality. In this case, the state must create a channel to convey clear public participation.(FOREST 2020) So far, the mechanism for public participation is still unclear so that public participation in the formation of legislation is only seen as a formal requirement.

Formally, Article 96 of Law Number 12 of 2011 concerning the Formation of Legislation has provided guarantees for citizens to be involved in the process of drafting laws and regulations in the legislature. Then there is also stated in Article 170 paragraph (6) of Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council and the Regional People's Representative Council as well as Article 138 paragraph (8) of the House of Representatives Regulation Number 1 of 2014 on the Rules of the House of Representatives. However, the container to accommodate and the flow to convey public participation is not clear, so that public participation in forming laws is only used as a formal requirement without any clear benchmarks. The absence of a clear platform and flow also causes claims that public participation is only a manipulative result.(Khozen 2021)

Likewise, in realizing the government's desire to apply the *omnibus law* concept to revise and/or revoke many laws that are considered to be hampering the economy and investment. No matter how good the concept offered, without public participation, the resulting legal product will still be difficult to accept. One of the missing articles from the text of Law Number 11 of 2020 concerning Job Creation is Article 46 of Law Number 22 of 2001 concerning Oil and Gas which is already held by the government. That article is no longer included in the text.

The article containing 4 paragraphs is missing and there is no information that the article in question is deleted. Whereas in the 812-page manuscript of Law Number 11 of 2020 concerning Job Creation which was submitted by the House of Representatives to the government, the article still exists and consists of 4 paragraphs. The following reads the missing Article 46: 1). Supervision of the implementation of the supply and distribution of Oil Fuel and Transportation of Natural Gas through pipelines is carried out by the Regulatory Body as referred to in Article 8 paragraph (4). 2). The function of the Regulatory Body as referred to in paragraph (1) is to make arrangements so that the availability and distribution of Oil and Gas Fuel as determined by the Central Government can be guaranteed throughout the territory of the Unitary State of the Republic of Indonesia and to increase the utilization of Natural Gas in the country. 3) The task of the Regulatory Body as referred to in paragraph (1) includes the regulation and determination of (a) the availability and distribution of Oil Fuel; (b) national fuel oil reserves; (c) utilization of Oil Fuel Transportation and Storage facilities; (d) tariffs for transportation of Natural Gas through pipelines; (e) Natural Gas prices for households and small customers; and (f) business of transmission and distribution of Natural Gas. 4)The duties of the Regulatory Body as referred to in paragraph (1) include supervisory duties in the fields as referred to in paragraph (3)

Manpower Article Review: Specific Time Work Agreement

According to the Decree of the Minister of Manpower and Transmigration No. KEP.100/MEN/VI/2004, a Specific Time Work Agreement is a work agreement between a worker/labourer and an entrepreneur to establish a working relationship for a certain time or for certain jobs. Meanwhile, an Indefinite Work Agreement is a work agreement between a worker/labourer and an entrepreneur to establish a permanent working relationship.(Dolot 2020) The employment agreement (Simonenko 2021) becomes an important condition which then becomes the basis of the work agreement between the entrepreneur and the worker/laborer. Citing the contents of Article 51 paragraph (1) of Law Number 13 of 2003 concerning Manpower, a work agreement is made in writing or verbally. One of the Employment *sub-clusters* in Law Number 11 of 2020 concerning Job Creation which is also affected is the Specific Time Work Agreement.

Table 1: The provisions of Article 89 of Law Number 11 of 2020 concerning Job Creation amend Article 57 paragraph (2) of Law Number 13 of 2003 concerning Manpower

Law Number 13 of 2003 concerning Manpower	Law Number 11 of 2020 concerning Job Creation
1. A work agreement for a certain time is made in writing and must use Indonesian and Latin letters.	1. A work agreement for a certain time is made in writing and must use Indonesian and Latin letters.
2. A work agreement for a certain time which is made unwritten contrary to the provisions as referred to in paragraph (1) shall be declared as a work agreement for an indefinite period of time.	2. In the event that a work agreement for a certain time is made in Indonesian and a foreign language, if there is a difference in interpretation between the two, then the work agreement for a certain time made in the Indonesian language shall prevail.
3. In the event that the work agreement is made in Indonesian and a foreign language, if then there is a difference in interpretation between the two, then the work agreement made in the Indonesian language shall prevail.	

In addition, if at another time the company makes a default which is detrimental to the worker/laborer, it will be very danger when the worker/labourer intends to claim what should be his/her rights through legal channels. It's said to be danger because the worker/labourer doesn't have a basic work agreement.

Table 2:The provisions of Article 89 of Law Number 11 of 2020 concerning Job Creation abolishes Article 59 of Law Number 13 of 2003 concerning Manpower

	Law Number 13 of 2003 concerning Manpower	Law Number 11 of 2020 concerning Job Creation
1.	A work agreement for a certain time can only be made for certain jobs which according to the type and nature or activities of the work will be completed within a certain time, namely: a. an agreement that is once completed or temporary in nature; b. work which is estimated to be completed in a not too long time and a maximum of 3 (three) years; c. seasonal work; or d. work related to new products, new activities, or additional products that are still under trial or exploration.	DELETED
2.	A work agreement for a certain time cannot be made for permanent work.	DELETED
3.	The employment agreement for a certain time can be extended or renewed.	DELETED
4.	A certain time work agreement based on a certain period of time may be held for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of 1 (one) year.	DELETED
5.	The entrepreneur who intends to extend the work agreement for a certain period of time, no later than 7 (seven) days prior to the expiration of the work agreement for a certain period of time, has notified the relevant worker/labourer in writing.	DELETED
6.	Renewal of a certain time work agreement can only be made after the 30 (thirty) day grace period ends. year	DELETED
7.	A work agreement for a certain time that doesn't meet the provisions as referred to in paragraph(1), paragraph(2), paragraph(4), paragraph(5),and paragraph(6) is null and void and becomes a work agreement for an indefinite period of time.	DELETED
8.	Other matters that haven't been regulated in this article will be further regulated by a Ministerial Decree.	DELETED

The reason for the amendment of Article 59 of Law Number 13 of 2003 concerning Manpower in Law Number 11 of 2020 concerning Job Creation which was later deleted as a consequence of the change in the provisions of Article 56 of Law Number 13 of 2003 concerning Manpower where the type and nature of work while the Work Agreement Certain Time which was originally limited in nature was changed to be open to all types and nature of work. The opening of the type and nature of the work of a Specific Time Work Agreement for all types and nature of work makes Article 59 paragraph (1) of Law Number 13 of 2003 concerning Manpower abolished, due to restrictions related to the completion time of a job which tends to be completed in a short time (Santosa, Sudiarawan, and Wijaya 2021).

Regarding the abolition of this article, the Specific Time Work Agreement allows for the type and nature of work to be carried out in the long term. This is reinforced by the abolition of the maximum limit of a Specific Time Work Agreement. Then, the worker/laborer has the opportunity not to get a permanent job, but will become a contract worker without any time limit.

Study of Manpower Articles: Company Outsourcing

Nowadays, in employment, not only permanent workers and contract workers are known, but there are other names for workers who work from a supplying company to a company that accepts jobs, while this is referred to as partial delivery of outsourcing. In *Blacks Law Dictionary eighth edition, Outsourcing is an agreement between a business and a service provider in which the service provider promises to provide necessary service, especially : data processing, and information management, using it own staff and equipment, and usually at its own facilities"*.(Garner 2004)

Meanwhile, Article Number 13 of 2003 concerning Manpower does not recognize the term company outsourcing.(Waugh and Hodkinson 2021) Where is a worker agreement with the delivery of part of the work implementation to another company. In its application, the type of company outsourcing work is regulated in Article 17 paragraph (3) of the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 namely *cleaning services, catering, security units, supporting service* businesses in mining and oil and providing transportation services for workers/laborer.

Not only that, the regulation related to this matter has also become a sub-theme in the material change of Law Number 11 of 2020 concerning Job Creation which was previously regulated in Law Number 13 of 2003 concerning Manpower Articles 64-66 to Article 89 letters 16-18 with the phrase sub-section of Protection of Workers/Labourers in Outsourced Companies. A clearer explanation can be seen in the following section.

Table 3: The provisions of Article 89 of Law Number 11 of 2020 concerning Job Creation as abolishing Article 64 of Law Number 13 of 2003 concerning Manpower

Law Number 13 of 2003 concerning Manpower	Law Number 11 of 2020 concerning Job Creation
The company may hand over part of the execution of the work to other companies through a written contract of work or the provision of worker/labor services.	DIHAPUS

In this article, there is a change, namely removing Article 64 because in the context of outsourcing business relations, it should be regulated in laws and regulations outside the sector of legislation on employment, because related matters relating to this matter must relate to the working relationship between outsourcing companies and workers/labor.

However, the problem is the impact of legal certainty and protection(Ayu Taduri 2021) that becomes uncertain, because the article gives meaning to *outsourcing* itself. So the impact of the abolition of the meaning becomes broader in meaning so that jobs that previously didn't recognize outsourcing may be able to *outsource*.

Table 4: The provisions of Article 89 of Law Number 11 of 2020 concerning Job Creation change the Article 66 of Law Number 13 of 2003 concerning Manpower

Law Number 13 of 2003 concerning Manpower	Law Number 11 of 2020 concerning Job Creation
1. Workers/laborers from companies providing worker/labor services may not be used by employers to carry out main activities or activities directly related to the production process, except for supporting service activities or activities not directly related to the production process.	1. The working relationship between the outsourcing company and the workers/labourers it employs is based on a work agreement for a certain time or a work agreement for an indefinite time.
2. Workers/labor service providers for supporting service activities or activities not directly related to the production	2. Protection of workers/labor, wages and welfare, working conditions and

process must meet the following requirements: a. the existence of a working relationship between the worker/ laborer and the service provider company for the worker/ laborer; b. the work agreement that is valid in the employment relationship as referred to in letter a is a work agreement for a certain time that meets the requirements as referred to in Article 59 and/or a work agreement for an indefinite time which is made in writing and signed by both parties; c. protection of wages and welfare, working conditions, and disputes that arise are the responsibility of the service provider company for workers/laborers; and d. an agreement between a worker/labor service user company and another company acting as a worker/labor service provider company is made in writing and must contain the articles as referred to in this law.	disputes that arise are the responsibility of the outsourcing company.
3. The worker/labor service provider is a form of business that is a legal entity and has a permit from the agency responsible for manpower affairs. In the event that the provisions as referred to in paragraph (1), paragraph (2) letter a, letter b, and letter d as well as paragraph (3) are not fulfilled, then by law the status of the employment relationship between the worker/laborer and the company providing services for the worker/labourer is switched. become a working relationship between the worker/laborer and the company providing the job.	3. The outsourcing company as referred to in paragraph (2) is in the form of a legal entity and must fulfill a Business Licensing.
4. In the event that the provisions as referred to in paragraph (1), paragraph (2) letter a, letter b, and letter d as well as paragraph (3) are not fulfilled, then by law the status of the working relationship between workers/labourers shall change to a working relationship between workers/labor workers and employers.	4. Further provisions regarding the protection of workers/laborers as referred to in paragraph (2) and Business Licensing as referred to in paragraph (3) shall be regulated by a Government Regulation.

This article is undergoing changes because related to manpower, only matters relating to the working relationship between the outsourcing company and its workers/labor are regulated. Then a business license for the provision of worker/labor services or outsourcing is needed as a monitoring tool for the implementation of the provision of worker/labor services, considering that it does not only involve the use of workers/labor services but also certainty over the implementation of a working relationship in accordance with decent work principles.

However, the problem that occurs is that in paragraph (1) of Law Number 11 of 2020 concerning Job Creation there is ambiguity where in practice work agreements tend to be used for Specific Time Work Agreements, making it easy for companies to terminate employment if the company no longer needs them.

Conclusion

Based on the explanation above, it can be concluded that *omnibus law* is a legal concept that focuses on simplifying the number of regulations because it revises and revokes many laws at once.

Therefore, before the *omnibus law* concept is actually applied in forming regulations, the principles of participation, transparency, and accountability need to be put forward first.

Law Number 11 of 2020 concerning Job Creation, which was designed with the aim of transforming the economy towards advanced Indonesia by 2045, in its Draft and Academic Papers encountered many problems. Especially in the Employment *cluster*, these problems are related to the reduced rights of workers/laborers. Although it's undeniable that Law Number 11 of 2020 concerning Job Creation has several positive sides such as providing job loss guarantees for workers/laborers after Termination of Employment, but in reality the positive side of Law Number 11 of 2020 concerning Job Creation is not commensurate with the number of problems that exist.

The process is rushed and does not involve the workers/laborers, making this cluster receive many rejections. Although the economy and investment are considered as the needs of Indonesia today and in the future, it doesn't mean that for these needs it reduces their rights. The government should understand the consequences of a democratic country that has to listen a lot and involve the wider community in the hope that the results of being pro-active can be used as material to rearrange this Employment *cluster*.

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