



Indonesia's Omnibus Law and Protection of Labor Rights¹

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ABSTRACT

Indonesian constitution (Undang-Undang Dasar Republik Indonesia of 1945) regulates that Everyone has the right to choose a job and work and receive omnibus law on job creation is enacted in Indonesia. In 2023, the Government has enacted Law Number 6 of 2023 concerning Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law or so-called Omnibus Law on Job Creation. The objective of this research is to analyze labor rights protection in Omnibus Law Indonesia. Research method used in this research is normative research, using statute approach and conceptual approach. It is analyzed using descriptive method. The result of this research is that the Ominbus Law Indonesia has not given labor rights protection fully in connection with issues of termination of employment, criminal sanctions for entrepreneurs, foreign workers, wages, severance pay, lifelong contract employees, lifetime outsourcing, working time, leave and wages for leave, health insurance and pension guarantees for outsourcing contract workers. This is because lack of lack of community involvement in the formation of laws. Therefore, it needs to be amended.

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1. Introduction

Investment is one of economic activities that aim to increase economic development in a country including in Indonesia. Investment may be defined as investing money or assets by companies or individuals in unspecified time, which objective is to obtain bigger result in the future, not only for investors but also for everyone and country⁴ Regulation concerning Investment in Indonesia has changed few times.

Firstly, Law Number 1 of 1967 about Foreign Investment which then revised with Law Number 6 of 1970, concerning Amendments and Additions to Law Number 1 of 1967 concerning Foreign Investment, in addition Law Number 6 of 1968 in connection with Law Number 12 of 1970 concerning domestic investment which then revised with Law Number 25 of 2007 concerning Investment. There are other Laws in Indonesia that related to

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⁴ Mahersaputri, R. A., & Apriani, R. (2022). Dampak Undang-Undang Omnibus Law terhadap Iklim Investasi di Indonesia. *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora*, 9(3), 1353-1361.

investment. There were around 42.000 regulations in Indonesia⁵ that Mr. Joko Widodo (Jokowi), Indonesian president, complained that these regulations are in contrary one another and cause overlapping regulations. These could obstruct investment in Indonesia. Therefore, omnibus law is considered as a solution for creating regulation harmonization in Indonesia.⁶ Omnibus law was expected to increase investment in Indonesia.

Omnibus Law in Indonesia is called Omnibus Law on Job Creation. Firstly, Omnibus Law was enacted on 2 November 2020 namely by Law Number 11 of 2020 on Job Creation. Later it was replaced by Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation. Furthermore, it was determined by Law Number 6 of 2023 on Determination of Government Regulations in Lieu of Law Number 2 of 2022 on Job Creation become Law.

The latest Law on Job Creation is hoped to be the solution for giving easiness for doing business by simplifying business licenses to attract investors, increasing employment, and eventually for better economic and welfare in Indonesia. The facts are many controversies, investor canceled to invest in Indonesia⁷, workers rejected this Law and submitted judicial review on Omnibus Law on Job Creation because this Law is not on the side of them.⁸

These ideal goals are in fact has not been reached. Therefore, writer is interested to analyze the newest Omnibus Law on Job Creation and protection for labor rights. On the other hand, our constitution has regulated that “everyone has the right to choose a job and receive fair and proper compensation in a work relationship” (Article 28D Paragraph 2 and Article 28E Paragraph 1). Many articles analyze the omnibus law of job creation, but these were before the newest Omnibus Law enacted in 2023. The difference between this article with the others is this article analyze the newest omnibus law enacted in 2023 and its controversies, especially related to labor rights.

2. Method

This research is a normative-judicial research by analysing the policy through a conceptual approach and legislation. Conceptually, this approach seeks to provide an analytical point of view of problem solving referred from the concepts and values contained in the norming of a rule or policy.⁹ The statutory approach is carried out by examining every regulation related to the problems found. Analysis of secondary data derived from literature studies by relying on primary legal materials and secondary legal materials.¹⁰ In this research article, legal sources are collected by library research and analyzed with qualitative method.

3. Omnibus Law Indonesia and Labor Rights Protection

Omnibus Law is a method of simplifying number of regulations. It is a legal product concept which serves to consolidate various themes, materials, subjects, and statutory regulations on each different sectors to become a grand and holistic law product.¹¹

⁵ These regulations including law: Government Regulations, President Regulations, Ministerial Regulations to Governor Regulations, Mayor, and Regent Regulations.

⁶ Fitryantica, A. (2019). Harmonisasi Peraturan Perundang-Undangan Indonesia melalui Konsep Omnibus Law. *Gema Keadilan*, 6(3), 300-316.

⁷ Ali, M. F. (2021). Efektivitas Omnibuslaw dalam Pembangunan Investasi (Studi Kasus Perusahaan Tesla. Inc). *Jurnal Syntax Transformation*, 2(10), 1447-1464.

⁸ Kartikasari, H., & Fauzi, A. M. (2021). Penolakan Masyarakat Terhadap Pengesahan Omnibus Law Cipta Kerja dalam Perspektif Sosiologi Hukum. *Doktrina: Journal of Law*, 4(1), 39-52.

⁹ Purwanda, S., & Dewi, M. N. K. (2020). The Effects of Monism and Pluralism on Legal Development of a Nation. *Amsir Law Journal*, 2(1), 21-26.

¹⁰ Sunaryati, H. (1994). *Penelitian Hukum di Indonesia pada Akhir Abad ke-20*. Bandung: Alumni, p. 134.

¹¹ Putra, A. (2020). Penerapan Omnibus Law Dalam Upaya Reformasi Regulasi. *Jurnal Legislasi Indonesia*, 17(1), 1-10.

Definition of omnibus law is started with the word “*omnibus*”. In Latin, the word *omnibus* means “for all”. In Black Law Dictionary, *omnibus* means: relating to or dealing with numerous objects or item at once; including many things or having various purposes. When collaborated with the word law then it means law for all.¹² It also means that a law made to target big issues in a country. Besides that, it is also to repeal or amend several laws.¹³

In common law system countries, omnibus law has been widely implemented. In the United States, one of the largest omnibus laws ever made is the Transportation Equity Act for the 21st Century or commonly referred to as TEA-21. It replaced the Intermodal Surface Transportation Efficiency Act (ISTEA). The law containing 9 chapters and 9.012 sections regulates the field of transportation comprehensively ranging from federal highway transit, motor carrier security, and others concerning transportation and highways in the United States of America.¹⁴

United State of America also had OCTA (Omnibus Trade and Competitiveness Act of 1988) which purpose is to negotiate reciprocal trade agreement (Uruguay Round), by revising extensively trade law, adjustments assistance, encouragement of exports, harmonization tariffs, international trade policies, agricultural trade and telecommunications, international technology trade, competitiveness policy, foreign corruption policy, procurement government, patent policy, sematech, and budget deficit. With this OCTA, all of these regulations are in one umbrella.¹⁵

Omnibus Law in Indonesia firstly being conversation when the new Jokowi government in the second period was intensively spreading the policy agenda the next five years. One of the main agendas is in terms of regulatory reform with the omnibus law as its main instrument.¹⁶ Background the emergence of the omnibus law originated form the government’s concern about difficulty of procedures to be able to invest in Indonesia. This difficulty is reflected in several aspects, namely taxation, licensing, land acquisition, and other aspects related to ease of doing business and investments. Based on data from Ease of Doing Business 2020 report issued by the World Bank, Indonesia ranks 73 out of a total 190 countries. Then in 2021 President Jokowi targets Indonesia to rise in position to be able to occupy the 50th position in terms of ease of investment.¹⁷

According to Sutrisno & Poerana, the most essential from law reform is an effort to simplify the law by way of deleting to minimalize obstacles in foreign investment by resetting the law and remanaging bureaucracy in form of simplifying terms and conditions business lisencc system and giving tax system insentive.¹⁸ Therefore, in November 2, 2020, People’s Representative Council or DPR together with the government pass the Law Number 11 of 2020 on Job Creation or so-called Omnibus Law on Job Creation. According Airlangga Hartarto, the coordinating minister for the economy, in the Omnibus Law on Job Creation there are 11 discussion clusters,¹⁹ they are:

- 1) Simplification of Licensing;

¹² Fitryantica, A. (2019). *Op.Cit.*

¹³ *Ibid.*

¹⁴ Siregar, A. A. (2022). Legal Studies on Omnibus Law Issues in Indonesia. *International Asia of Law and Money Laundering (LAML)*, 1(4), 270-278.

¹⁵ Utomo, P. (2020). Omnibus Law: Dalam Perspektif Hukum Responsif. *Nurani Hukum*, 2(1), 33-41.

¹⁶ Siregar, A. A. (2022). *Op.Cit.*

¹⁷ *Ibid.*

¹⁸ Wole, B. D., Purwatiningsih, A., & Kamaluddin, K. (2021). Iklim Investasi dalam Penyelesaiannya Penerapan Omnibus Law. *Jurnal Inovasi Ilmu Sosial dan Politik (IISoP)*, 3(2), 118-127.

¹⁹ Siregar, A. A. (2022). *Op.Cit.*

- 2) Investment Requirements;
- 3) Employment;
- 4) Ease, Empowerment, and Protection of MSMEs;
- 5) Ease of Trying;
- 6) Research and Innovation;
- 7) Government Administration;
- 8) Imposition of Sanctions;
- 9) Land Acquisition;
- 10) Investment and Government Projects; and
- 11) Economic Area.

It gets a lot of opposition in its application. The practice of preparing omnibus law is considered far from the essence of omnibus law in legal science and from the initial ideal intention of the government to implemenent this omnibus law. The omnibus law in its substance seems to prioritize mere economic logic so that investors are free to invest in Indonesia and on the other hand ignore the principles of sustainable development and the rights of workers. If the purpose of the Omnibus Law on Job Creation is in accordance with its initial provisions, namely to parse regulatory issues and facilitate investment the aim of ultimately improving the welfare of the people.

Formally, the Job Creation Law has been declared conditionally unconstitutional through Constitutional Court Decision Number 91/PUU-XVIII/2020, so that it is formally invalid until there is a formal revision during the two-year grace period.²⁰ It is decided that If within the two years grace period the legislators are unable to complete improvements to Law Number 11 of 2020 concerning Job Creation, then the Law or articles or content material of the Law that have been revoked or amended by Law Number 11: in 2020, Job Creation must be declared effective again. A year after the Constitutional Court's decision, the government suddenly issued Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation to replace the Job Creation Law which was declared conditionally unconstitutional. The Job Creation Government Regulation in Lieu of Law has received rejection. Workers and even students have repeatedly taken to the streets to voice their aspirations.²¹

However, in 2023 the Government has enacted the Law Number 6 of 2023 on Determination of Government Regulations in Lieu of Law Number 2 of 2022 on Job Creation become Law. This brings many controversies especially in the field of labor rights. Many labors reject the Law. They submitted a judicial review and held demonstrations.²²

²⁰ Sahbani, A. (2022). *MK Kembali Kandaskan Pengujian Materil UU Cipta Kerja*. Available online from: <https://www.hukumonline.com/berita/a/mk-kembali-kandaskan-pengujian-materil-uu-cipta-kerja-lt61f115a3b101c/> . [Accessed August 21, 2023].

²¹ Farisa, F. C. (2023). *Jejak Kontroversi UU Cipta Kerja: Disahkan Kilat, Perppu Diketok meski Banjir Penolakan*. Available online from: <https://nasional.kompas.com/read/2023/03/21/14021541/jejak-kontroversi-uu-cipta-kerja-disahkan-kilat-perppu-diketok-meski-banjir> . [Accessed August 21, 2023].

²² Sari, A. R. (2023). *Partai Buruh dan Organisasi Serikat Buruh Lakukan Judicial Review UU Cipta Kerja ke MK*. Available online from: <https://bisnis.tempo.co/read/1721917/partai-buruh-dan-organisasi-serikat-buruh-lakukan-judicial-review-uu-cipta-kerja-ke-mk> . [Accessed August 20, 2023].

They also put their rejection on the agenda of the 2023 International Labor Conference.²³ Some points in this judicial review are concerning low wages, lifetime outsourcing,²⁴ lifetime contract employee,²⁵ low severance pay, easy layoffs, regulation of leave, regulation of working hours, foreign workers, especially unskilled workers, and several criminal sanctions that were removed in the Omnibus Law on Job Creation.²⁶

This International Labor Conference held in Geneva, on June 4-16th had 5 discussion committee. First, the Finance Committee. Second, the Committee on the Application of Standards. Third, Committee on Apprenticeship. Fourth, Committee on Labor Protection. Fifth, Committee on a just Transition. All of these had one purpose, that is a good labor welfare and a good industrial relationship between employer and labor. Many countries supported Indonesia to revise employment cluster (regulation). If there was no pay attention, it was not impossible for International Labor organization to be tougher to Indonesia. Convention gave a recommendation and resolution to use international standard that guarantee internship quality, labor protection, health insurance, labor protection as well as guaranteeing occupational safety and health, a just transition, and implementation of the 2024/2025 International Labor Organization (ILO) program report and standards. The Labor Party, which is the only political party in Indonesia, submitted a judicial review of the Job Creation Law to the Constitutional Court. Its demands ask the government and DPR to revoke the Job Creation Laws. Then, asked the Constitutional Court to revoke the formal review carried out by the Labor Party regarding the Job Creation Law Number 6 of 2023 and not apply.²⁷ Some points that become problems for labors in Omnibus Law on Job Creation Law are:

- 1) Contract Worker Employment Relationship. Before there were Omnibus Law, maximum time for employment contract is five years. In Omnibus Law, it is regulated that the time limit depends on employment agreement made by contract worker. It needs agreement between employer and worker to determine time limit of employment contract. There is possibility that companies that contract workers for longer than the appropriate time than it should.
- 2) In Law Number 13 of 2003 concerning employment, Article 59 Paragraph 1 it is regulated that: a work agreement for a certain time can only be made for certain jobs which according to the type and nature or activity of the work will be completed within certain time, i.e.:
 - a) work that is completed once or that is temporary in nature;
 - b) work that is estimated to be completed in a short time and a maximum of three years;
 - c) seasonal work; or

²³ Mediana. (2023). *UU Cipta Kerja Babasan Konferensi Buruh Internasional*. Available online from: <https://www.kompas.id/baca/ekonomi/2023/06/11/keompok-pekerja-tetap-menentang-keberadaan-uu-cipta-kerja> . [Accessed August 20, 2023].

²⁴ Rahman, M. S. (2018). Breach of Contract and the Sanction in Agreements to Outsource by the Government: Juridical Analysis of Article 1601 B of the Indonesian Civil Code. *International Journal of Innovative Research & Development*, 7(12).

²⁵ Tarring, A. D., & Karim, K. (2022). Civil Evidence Using Electronic Documents in Indonesia. *International Journal of Multicultural and Multireligious Understanding*, 9(11), 250-256.

²⁶ Sari, A. R. (2023). *Loc.Cit.*

²⁷ Deny, S. (2023). *UU Omnibus Law Jadi Sorotan di Konferensi Buruh Internasional*. Available online from: <https://www.liputan6.com/bisnis/read/5328230/uu-omnibus-law-jadi-sorotan-di-konferensi-buruh-internasional> . [Accessed August 21, 2023].

- d) work related to new products, new activities, or products additions that are still under trial or exploration.²⁸

The law previously regulated PKWT work contracts with duration maximum period of three years, after which it is mandatory to appoint workers or employees as a permanent employee after the three years period has passed. Maximum working time limit for someone with contract worker status previously stated in Law Number 13 of 2003 concerning Employment article 59 was deleted in the Omnibus Law.¹⁸ This creates potential for companies to provide unfair treatment, inadequate protection which includes pension matters and 12 annual leave for 12 days for workers under one year and severance pay Termination of Employment.

In the Job Creation Law article 78 paragraph (1) it is written as follows: entrepreneurs who employ workers/laborers over working hours as stated as intended in Article 77 Paragraph 2 must fulfill the following requirements:

- 1) There is the consent of the worker/laborer concerned; and
- 2) Overtime work can only be done for a maximum of four hours a day one day and eighteen hours in one week.

This regulation was previously contained in Law number 13 of 2003 concerning employment, it states the maximum overtime limit of three hours per day and has a time limit of 14 hours.

- 1) Ease of carrying out layoffs. In the Omnibus Law in the Job Creation Law, several reasons for termination are regulated Employment Relations for efficiency reasons. In the Omnibus law text of the Copyright Law Work on Employment Article 154A Paragraph 1 is written as follows termination of employment can occur for reasons: companies undertake mergers, consolidations, takeover, or spin-off of the company, and the company makes efficiency.²⁹ This means the company can cut 25 workers from a total population of 100 workers permanently. Workers can be subject to termination of contract relations if they violate it norms of the work agreement or what is known as disciplinary layoffs. Before omnibus law, workers who violate norms are not immediately sanctioned with termination of relations work, but subject to statement letter first. There is an omnibus law article 154A provides legal avenues through which companies can fire and terminate workers without prior selection of moderate, serious and light violations. This makes it easy to fire.
- 2) Severance pays. In the omnibus law, the article regarding severance pay is written in article 156. Then, in the Job Creation Law Article 157 Paragraph 4 is written as follows in the event that a month's wages as referred to in Paragraph 3 are lower than minimum wage, then the wage that is the basis for calculating severance pay is wages minimum applicable in the company's domicile area.³⁰

Before the omnibus law, workers who had their contracts terminated were given permission severance pay at least once in a one-year work period. In the omnibus law later replaced with the phrase most without a minimum level. Minimum wage regulations cannot

²⁸ Asmani, N. I., & Fauzi, A. M. (2021). Penolakan Omnibus Law Menurut Paradigma Sosiologi Hukum dan Teori Konflik. *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-undangan dan Pranata Sosial*, 6(1), 102-112.

²⁹ Job Creation Law, Article 154A Paragraph 1.

³⁰ Job Creation Law, Article 157 Paragraph 4.

be applied to small and micro businesses, and the increase thereof using inflation and national economic growth.

The enactment of the Omnibus Law became an alarm and touchstone for the Indonesian people. The journey of ratifying and drafting the Omnibus Law with new legal traditions carried out without democratic participation from the community so that it gets opposition from all levels and elements of the people. This is certainly the focus of the problem which is widely opposed by society, especially workers, activists and students of Indonesia.

4. Closing

The enactment of Omnibus Law Indonesia at first is hoped to be a solution for economic growth in Indonesia, especially giving easynes for doing business in Indonesia. The fact is, the process of drafting and ratifying of this Law is without participation of society of Indonesia, including labors whose rights are supposed to be protected by this law but the fact so many articles not giving advantages for them. I suggest that this Law needs to be revised by involving all parts in Indonesia society so that not only one part gets the advantage of this Law.

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Conflict of Interest Statement:

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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