

THE PLANNING OMNIBUS LAW OF WORKER IN THE PERSPECTIVE OF MODERNIZATION AND JUSTICE: A FLASH BACK REVIEW

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ABSTRACT

*There are numerous overlapping regulations, as well as a need for a robust investment climate that can foster significant growth and competitiveness on a global scale. To address this, regulations must be developed to accommodate the various existing laws in Indonesia. Since Indonesia's independence in 1945, the government—both executive and legislative—has enacted laws and regulations to govern society, in the form of *regeling* (regulations) and *beschikking* (decisions). However, due to the large number of overlapping regulations, many of these laws have been subjected to judicial review by the Constitutional Court of the Republic of Indonesia. Since its establishment in 2003, numerous laws have been submitted to the Constitutional Court for review, as they were considered to be in conflict with the 1945 Constitution of the Republic of Indonesia. Indeed, several of these laws have been annulled by the Court for being unconstitutional.*

Keywords: Legal; Omnibus; System; Worker.

INTRODUCTION

Since the establishment of the Republic of Indonesia, the nation's founding fathers and mothers have agreed to form an independent state based on the rule of law. This principle was to be implemented in accordance with societal regulations. Additionally, considering Indonesia's history of colonization by the Dutch and the subsequent development of several legal frameworks—namely Dutch law (*Wetboek van Strafrecht*), Islamic law, and customary law—the application of law within Indonesia is notably diverse. Consequently, legal unification is essential to regulate the entire Indonesian population effectively.

Under the second term of President Joko Widodo, the Indonesian government has initiated reforms aimed at boosting investment and fostering economic growth, positioning Indonesia to compete more effectively with other nations. Notably, Indonesia has seen significant growth in its start-up sector, with several companies achieving unicorn and decacorn status due to their valuations surpassing 10 trillion rupiahs. In fostering an investment-friendly environment, it is crucial to have supporting regulations that protect and sustain the investment climate.

However, the development of such an environment is hindered by the existence of overlapping regulations at both the national and regional levels, as well as by lengthy and complex licensing processes. In response to these challenges, President Jokowi introduced the Omnibus Law on Job Creation, commonly known as the "Cilaka" Omnibus Law Bill. While this concept is new to Indonesia, it represents a significant effort to address the legal complexities within the country. Despite the government's intentions, the proposal faced substantial opposition, including widespread protests from workers and the public, who believed the law's provisions were detrimental to the welfare of the Indonesian people and the labor class.

On February 13, 2020, the Indonesian government formally submitted the Job Creation Bill, a legislative initiative from the executive branch to the Legislative Council of the Indonesian People's Representatives. The technical drafting of the Cilaka Omnibus Law Bill employs the omnibus law concept, commonly used in Common Law countries, whereas Indonesia follows a Civil Law legal system. The Cilaka Bill encompasses eleven key policy areas, as outlined below:

- a. Simplification of licensing
- b. Investment requirements
- c. Employment
- d. Convenience, empowerment and protection of MSMEs and Cooperatives
- e. Ease of Doing Business
- f. Research and Innovation Support
- g. Government administration
- h. Application of Sanctions
- i. Land acquisition, conversion of agricultural land, land and other related issues
- j. National Strategy Investments and Projects
- k. Economic Zone

It is essential to recognize that the Cilaka Omnibus Law Bill consists of 174 articles. In essence, it introduces several amendments and the revocation of provisions across 79 laws, which form the foundation of regulations in various sectors. Additionally, the Bill reorganizes approximately 500 implementing regulations to support the governance of the 11 fields mentioned earlier.

Originally initiated by the executive branch and later presented to the legislative council, the Cilaka Omnibus Law Bill has sparked a range of reactions within society. Groups with a deeper understanding of the law have started to review and analyze the provisions in the Draft Law, with many expressing disagreement, while others have expressed support for the government's initiative.

Given this situation, the author believes it is crucial to address the legal implications of the omnibus law through periodic discussions. The Cilaka Omnibus Law Bill presents a compelling legal issue, providing an opportunity to explore solutions that would ensure the constitutional mandate of improving the welfare of Indonesian citizens is genuinely realized.

RESEARCH METHODS

This study is a descriptive-analytical research that explores the issues related to the Omnibus Law on Job Creation, which has been enacted as the Job Creation Law. The purpose of this research and paper is to examine and analyze the Job Creation Omnibus Law Bill to ensure its alignment with the sense of justice for workers/laborers, as well as to analyze the legal politics surrounding the Job Creation Bill in the context of regional autonomy and decentralization.

RESULTS AND DISCUSSION

In the analysis of the Job Creation Omnibus Law, commonly referred to as the Cilaka Bill, there are several key aspects that warrant thorough discussion.

There is Centralization of Licensing which has an impact on Decentralization/Regional Autonomy

The Cilaka Bill will no longer include provisions related to regional authority within the main legislation. The authority specified in these articles will be transferred to the Central Government. These regulations in Political Law can be implemented in various ways, such as through Government Regulations, Ministerial Regulations, Presidential Regulations, and other regulations concerning the authority of the Central Government. However, in practice, the Central Government's capacity to manage complex regional governance remains limited, particularly after the implementation of regional autonomy.

This shift in authority from regional to central government will likely lead to a weakening of local governments. A tangible effect of this is the diminishing power experienced by local governments.

One example is the changes to the Environmental Impact Assessment (AMDAL) process, which has traditionally involved a division of authority between the central government, provincial government, and district/city governments. Under the Cilaka Omnibus Law Bill, the authority over the AMDAL process will be entirely vested in the central government, as outlined in Article 23, Point 4 of the aforementioned Job Creation Bill, which amends Article 63 of the Law on Environmental Protection and Management.¹

Permit Process

The Job Creation Omnibus Law Bill simplifies licensing processes by providing a relatively quick processing time, reducing overly complicated procedures, and minimizing costs, which can be considered low. This simplification supports the investment climate by ensuring that processes move swiftly in order to adapt to changing times. The author's intended simplification is as follows:

First, in the context of building construction, the Cilaka Bill removes all administrative requirements, including those related to land rights status, building ownership status, and building construction permits (IMB). These requirements have been replaced with a mandate for all buildings to comply with technical building standards that align with their intended function and classification.²

Secondly, regarding the licensing of investment and business activities, the Cilaka Omnibus Law Bill also incorporates a risk-based licensing framework. This licensing model necessitates business classification, with licensing requirements adjusted according to the risks associated with the business. Risk assessments are conducted by evaluating factors such as health, safety, environmental impact, and resource utilization, which are determined by analyzing the nature of the business activities and/or resource limitations. As stipulated in Article 8, Paragraph (7) of the Cilaka Bill, high-risk business activities are required to obtain a building construction permit. This permit represents approval from the Central Government to engage in business activities, and it must be obtained by business operators prior to commencing or expanding their operations.

The impact of government regulations concerning risk-based business licensing is that the government must establish a clear classification system for business types and the corresponding permits that will apply. The rules for business licensing are required

¹Look at Article 23 number 4 of the Job Creation Bill

²Excerpted from Article 7 Paragraph (1) of Law Number 28 of 2002 concerning Buildings.

to be outlined in implementing regulations within Government Regulations.

Employment Sector

The Job Creation Omnibus Law Bill appears to prioritize economic improvement while giving less attention to enhancing the quality of human resources. Article 88 of the Bill indicates that the updated regulations aim to strengthen worker protections and provide greater workforce support in bolstering Indonesia's investment climate. This suggests that the Bill places a higher emphasis on investment and economic development, which are crucial for national progress. Many of the amendments in this Bill highlight efficiency and increased labor productivity. However, when discussing workforce productivity, the most critical factors are training and development. In Human Resources Management, boosting productivity among Indonesian workers must be paired with intensive training and development programs. Such training helps workers become more creative and productive in their respective fields.

When addressing job creation, the quality of the workforce is central. Worker quality can be assessed through education and training. Therefore, the primary focus of the Job Creation Bill should be on improving education and training. If Indonesian workers receive strong education and excellent training, their productivity will increase, and they will be competitive with foreign workers. The author is concerned that if the Omnibus Law is passed without adequate community input, it will be Indonesian workers who suffer.

Foreign workers are increasingly entering the Indonesian labor market, with companies hiring them due to their competencies, which are often perceived as superior to those of local workers. This underscores the need for the Job Creation Omnibus Law Bill to focus on enhancing the productivity of Indonesian workers. By prioritizing this, whether or not the Omnibus Law is enacted, the welfare of Indonesian workers will improve, as the fundamental purpose of any regulation should be to enhance societal well-being.

a. Changes regarding Minimum Wage

Every May 1, Labor Day is always celebrated, which is used by workers to vent their feelings, and what is often the demand is a minimum wage. In the Employment Law regarding minimum wages, it can be seen from the provincial area with the provincial minimum wage (UMP) and district/city minimum wage (UMK). So with the Cilaka Bill, these things (UMK and UMP) will no longer apply. The Job Creation Omnibus Bill states that article 88C is:

(1) The governor sets a minimum wage as a safety net. (2) The minimum wage as intended in paragraph (1) is the provincial minimum wage.

From article 88C paragraphs (1) and (2) we can interpret that if the Job Creation Bill is passed in the DPR, then there will no longer be such a thing as a Regency/City Minimum Wage, because what applies is the Provincial Minimum Wage. In fact, what we know is that currently the Regency/City Minimum Wage is higher than the provincial minimum wage. The question is how urgent is the elimination of the UMK in the Cilaka Bill?³

b. Changes in the meaning of Termination of Employment

Article 151 paragraph (1) of the Manpower Law regulates Termination of Employment Relations but in the Cilaka Bill there are slight changes regarding the interpretation of layoffs. This change eliminates the initial conception regarding layoffs in the Employment Law which should be seen as something that should be avoided. Formulation of Article 151 Paragraph (1) in the Cilaka Omnibus Law Bill. Layoffs are a fairly private matter between employers and workers/labourers. In addition, labor unions have a crucial role in the event of termination of employment relations in bridging employers and workers, mediation carried out by labor unions is a way of resolving disputes to create a win-win solution. However, in the Cilaka Bill article 151 paragraph (2) changes the concept of layoffs, namely the resolution of employment termination through the establishment of an industrial relations dispute resolution institution.

The current Job Creation Bill also gives more power to employers in terminating employment relations without the need for an agreement and/or settlement procedure which requires tripartite and bipartite settlement in accordance with industrial relations disputes.

Article 156 of the Cilaka Bill also eliminates the obligation for companies to provide compensation for rights.⁴Assessing the importance of compensation money when employment is terminated, it would be good for the Cilaka Bill regarding compensation

³See Government Regulation Number 78 of 2015 concerning Wages.

⁴The Employment Law requires compensation for rights, but Article 156 Paragraph (4) of the Employment Creation Bill regulates that employers can provide compensation or not provide compensation, because the interpretation of "can" is a choice made by the entrepreneur.

money during layoffs to be reviewed, because this is to protect the rights of workers who have served the company.

The Relationship between the Job Creation Bill and Government Administration

a. Presidential Authority

In the Cilaka Bill article 164, basically it is true that the authority stated in the statutory regulations is the authority of the President.⁵ In constitutional law doctrine which adheres to the principles of the Presidential system, this arrangement is interesting to think about. The problem is that after reform there is a concept of dividing power between the central and regional governments. Where regional regulations, such as regional regulations, regional regulations are regulated by each region. This means that the president cannot completely regulate regional regulations. However, the principle of hierarchy of statutory regulations requires that the regulations below must not conflict with the regulations above.⁶

The problem that arises when implementing the Job Creation Omnibus Law Bill is the elimination of regional regulations in the regions, or these regional regulations are automatically revoked by the Central Government. In fact, in understanding the testing of statutory regulations, you must carry out a judicial review, executive review or legislative review.

b. Settings regarding Discretion

Discretion or discretion and what is better known as *freis ermissen* is a form of government policy that is caused by force majeure, something that urgently requires legal political policy as soon as possible. Article 165 of the Cilaka Bill amends several provisions in the Government Administration Law. On the one hand, this article makes it easier to use discretion. Discretion is interpreted as a way to provide space for state administrative officials or state administrative bodies to carry out government actions, without having to be completely bound by the law. However, if we look more deeply into the Government Administration Law, there are important provisions regarding discretion, namely when not violating statutory regulations.

On the one hand, the Cilaka Bill creates quite wide discretion with control and supervision mechanisms that are not effective enough. This problem is quite dangerous if misused, such as collusion, corruption and nepotism. And it will be detrimental to state finances if there is no strong supervision. So this Cilaka Bill still needs to be improved in the system for monitoring the implementation of the discretion itself. Don't let the good Cilaka Omnibus Law Bill be misused if there is no proper supervision in the use of budget power.

c. The Meaning of Regional Autonomy

Articles 166-167 of the Job Creation Bill are articles that can be compared to the Universal Sweep Law, which regulates that many laws are regulated in one law and it is not easy to control and implement them. This is even more so for regional governments, because the centralized regime that we once implemented has changed with the concept of regional autonomy (deconcentration). The division of central and regional powers in implementing the Cilaka Bill is a point that needs to be further regulated.

If the centralized or centralized system is revived, we will experience a setback in democracy. The current constitutional practice of the regional autonomy system is starting to mature, this is proven in elections and the increase in welfare in the regions is increasing from time to time. So regional autonomy does have weaknesses, but it only needs to be improved step by step, not to go back to the New Order era.

CONCLUSION

Based on the views expressed by the author, we can draw several conclusions. First, the Job Creation Omnibus Law Draft contains significant issues, particularly in terms of the underlying paradigms and the substantive content of regulations concerning layoffs, permits, and regional autonomy (decentralization). Second, while the intention behind the Omnibus Law Draft is to reduce excessive regulation (the proliferation of laws and regulations), it inadvertently generates additional derivative regulations, leading to the creation of even more new regulations. Therefore, the Job Creation Omnibus Law Draft should be reconsidered, with active participation from the broader community to provide input and perspectives for its refinement.

⁵See Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

⁶In the hierarchy of statutory regulations taught by Hans Nawiasky, it is explained that there are higher laws and lower laws. In Indonesia, the application of these legislative regulations is regulated sequentially as follows: (1) the 1945 Constitution of the Republic of Indonesia, (2) MPR Decree, (3) Perppu/UU, (4) Government Regulations, (5) Presidential Regulations, (6) Provincial Regional Regulations, (7) Regency/City Regional Regulations. See Law no. 12 of 2011 concerning the Formation of Legislative Regulations.

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