

The Controversy over the Omnibus Bill on Job Creation¹

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Jakarta, November 20th, 2019. Often discussed publicly, as if Mr. Jokowi's decree about the Omnibus Law on Job Creation Law in his inauguration speech on 20th October 2019 has become like magic. The public has not finished protested against the controversial bills toward his inauguration, the plan on the drafting of a new law that was beyond public expectations is suddenly come up again.

"Omnibus Law?" Not many people understand this word. Like a foreign word that raises the suspicion of a large compilation followed by the phrase "Job Creation". Is this good news or bad news that Mr. Jokowi wants to convey to all Indonesian people?

The drafting plan of Omnibus Law cannot be separated from Mr. Jokowi's policy in this second period, which promised to seriously improve the licensing process and eliminating the laws and regulations which hampered the investment to facilitate foreign investors to come to Indonesia. The preparation of the Omnibus Law on Job Creation is motivated by the situation where low investment goes to Indonesia so it's impacted the decline of Indonesia's primary revenues and leads to the worsening deficit of payment transactions in Indonesia.

Moreover, in the midst of the trade war situation between the United States and China, there was global uncertainty, which reduced the investment interest by investors due to the high risk of the global economy. However, the failure of Indonesia to take advantage of the United States and China trade war to attract foreign investment has triggered Mr. Jokowi's anger on the issue of the ease of investing in Indonesia that still unfinished.

Mr. Jokowi will closely monitor the implementation of this policy plan. In fact, it is planned that in December 2019 the Omnibus Law draft will be submitted by the Government to the Indonesian Parliament for immediate discussion and then ratified in a short time¹. From the circulated information, Mr. Jokowi's priority for the Omnibus Law on Job Creation opens the possibility of delaying the discussion of other controversial bills such as the Land Bill, the Mining Bill, the Criminal Code Bill, and others.

Of course, the experience of discussing the previous controversial bill which is very undemocratic will be repeated over the Omnibus Law discussion. Moreover, it is very strong with investor interests. To that end, the people's movement needs to scrutinize more about the Omnibus Law on Job Creation, so that criticism of this law can be massively raised to the public.

¹ <https://ekonomi.bisnis.com/read/20191123/9/1173648/omnibus-law-siap-didaftarkan-ke-dpr-pada-Desember-2019>

Omnibus Law: What and How?

The drafting of the Omnibus Law caused a lot of debate among legal experts. At least this illustrates that the Omnibus Law is not easy to be agreed upon by all relevant parties. Legal experts states that drafting the Omnibus Law requires political costs that are not simple, considering the Omnibus Law consists of very multi-sectoral issues and superpower. Moreover, Omnibus Law is a tradition in a country with an Anglo Saxon legal system, so it may not necessarily be applied in a country with a Civil Law tradition such as Indonesia².

The Omnibus Law has special characteristics, namely: (1) it consists of many Articles, due to many sectors are covered and multisectoral; (2) can negate / can be revoked in some part and/or all other regulations, and (3) independent or stand-alone, without being bound or minimally bound by other regulations. This is why the Omnibus law will become a superpower law. The plan will incorporate as many as 89 legislations. The Omnibus Law itself has the meaning of a statutory regulation that contains more than one regulatory content.

The position of the Omnibus Law in the structure of Indonesian statutory regulations has not yet been regulated. However, the Omnibus Law is not something new in Indonesia. In fact, the Government has already made laws in the form of the Omnibus Law and based on the theory of legal level, or ideally at the level of Laws or the lieu of law (*Perpu*). Two forms of Omnibus Law that have ever existed in Indonesia, namely: *Perpu* on Access to Financial Information for Tax Interest No. 1 of 2017, and Law on Regional Government No.23 of 2014.

Although in its understanding, the Omnibus Law will combine many multisectoral laws into one law, it does not mean that the Omnibus Law will later eliminate all the combined laws. This is because the Omnibus Law will only take certain articles related to the purpose of its formation to be merged into it³.

Crucial Issues in the Omnibus Bill on Job Creation

a. Strengthening the Central Authority

In essence, the regulation of Omnibus Bill on Job Creation is geared to fix up the ease of licensing investment in Indonesia. With the ease of business licensing, Mr. Jokowi hopes that more investment will come in so that it can open up employment opportunities in Indonesia, including how foreign investors will be able to collaborate with MSMEs sector in order to strengthen the business sector.

In addition to strengthening the business licensing registration system in an integrated and electronic manner (also known as the Online Single Submission / OSS system), but then, these statutory regulations are also directed to structuring the government authority and tightening supervision and guidance by the Government.

² <https://www.hukumonline.com/berita/baca/lt58a6fc84b8ec3/menimbang-konsep-omnibus-law-bila-diterapkan-di-indonesia/>

³ <https://news.detik.com/berita/d-4756789/mengenal-omnibus-law-revolusi-hukum-yang-digaungkan-jokowi>

The main issue in the Omnibus Law is the matter of structuring the government authority in order to cut down the licensing bureaucracy that hampered the investment. So, all licenses that have already granted to the regional government will be withdrawn to the President's authority. Even though the authority will be withdrawn directly to the President, the President can delegate the mandate to the designated state institution.

The main target of structuring the government authority in the Omnibus Law is expected to eliminate sectoral egos (Ministry of Institutions and Regions). Of course, this law will impact the authority of the minister and the regional government, which subsequently withdraws all authority directly to the President. Thus, this Omnibus Law will have a major impact on the Regional Government Law. One aspect that was alluded to in terms of structuring the government authority was regarding the issuance of permits by the Regional Government.

The great authority of the President is being able to cancel regional regulation that contradicts with the law. In preventing inconsistencies between regional regulations and the law is by providing direct authority to the President to set *NSPK* (norms, standards, procedures, and criteria) for government affairs and must be obeyed by the Minister and regional government. The stipulation of *NSPK* by the President will later become a reference for regional governments in making regional regulations⁴.

b. Enforcement of Standard & Certification Regimes: Impact on environmental impact analysis (AMDAL) and Location Permits

To simplify business licensing, the Omnibus Bill on Job Creation will classify business licensing based on risk. In the future, not all forms of business require a permit. But permission is only needed for business groups that have a high risk. While businesses that have a moderate or low level of risk, in the registration process, they only need to fulfill the standard requirements and register in the OSS⁵.

The measuring instruments in assessing risk are determined by three aspects, namely; health, security and safety, and the environment. There are at least three types of business groupings according to the risk or Risk-Based Approach (RBA), namely: first, the natural resource risk group; second, processing industry risk groups; and third, the service sector group.

The simplification of the licensing system that will be regulated in the Omnibus Bill on Job Creation refers to the Online Single Submission (OSS) system that has been previously regulated in Government Regulation No.24 of 2018 concerning the Electronic Integrated Business Licensing Services. However, the implementation of the OSS system is considered not able to run well because there are still overlapping regulations and authorities between the center and the regions.

⁴ <https://republika.co.id/berita/pye5so370/presiden-bisa-batalkan-perda-melalui-emomnibus-lawem-investasi>

⁵ <https://ekonomi.bisnis.com/read/20190918/9/1149787/prosedur-perizinan-bakal-berbasis-risiko>

⁶ <https://www.oss.go.id/oss/portal/download/f/PedomanIndonesia.pdf>

The OSS system will simplify the management of various business licenses, both prerequisites for doing business (location, environment, and building permits), business licenses, as well as operational licenses for business operations at the central or regional levels with the mechanism for fulfilling the commitment of permit requirements⁶. Of course, this simplification will have an impact on the system changes that had been in effect before, especially in the management of business licenses that require compliance and completeness of requirements such as location permits, environmental permits, and IMB. In operating the OSS System, not all requirements must be fulfilled to issue a business permit, because it depends on the business risk analysis that will be carried out.

In obtaining a business license, the business actor only needs to provide a statement of ability to fulfill the commitment permit for the prerequisite license completion, namely; Location Permit, Environmental Permit, the building permit (IMB), or other business permit requirements (if required). Before fulfilling commitments, business actors can only have business licenses with very limited business activities, such as procurement of facilities, procurement of human resources, the fulfillment of certification, and implementation of production. However, to be able to carry out an operational or commercial activity, business actors must have an operational or commercial license and immediately fulfill commitments that have been stated to be agreed, such as standards, certificates, and/or licenses; registration of goods/services; and/or customs and tax registration.

With the system implemented in the OSS, it has an impact to fulfill the requirements model of an environmental impact assessment, the building permit (IMB), even related to location permits. Previously, the Deputy Minister of Agriculture and Spatial Planning (ATR) / National Land Agency (BPN) stated that in its field implementation, the building permit (IMB) and an analysis of environmental impacts assessment were actually hampering the investment process. For this reason, the Government will remove the IMB and AMDAL requirements to simplify permit⁷.

Related to the Environmental Impact Assessment (AMDAL) obligation that must be done for investors, in the OSS system, entrepreneurs will only be asked to apply the environmental management standards and announcements. The use of the standard regime in the Omnibus Law will remove environmental permits.

For instance, mining companies get mining business licenses, and if they want to build a smelter installation, then these entrepreneurs are required to adopt the standards imposed by the OSS system, usually referring to ISO standards. Then the applicable standards will be appearing by the OSS system. Thus, international standards are adopted into the OSS system.

The weakness of this scheme is that the entrepreneur can build the construction beforehand, and then the government will come afterward to conduct supervision/inspection of the entrepreneur's commitment to implementing the specified business standards. Unfortunately, if the entrepreneurs build and not applying the standards and then the community will be massively impacted.

The use of standard regimes in this regulation will later involve professional organizations who took the state's role in conducting environmental feasibility assessments. The role of the state will only oversee the course of inspections conducted by professional organizations. The results of the feasibility assessments by professional organizations will be the basis for the OSS system to issue an Environmental Feasibility Certificate (SLL). The use of standard regimes will remove environmental permits.

⁷ <https://nasional.kompas.com/read/2019/11/19/14200131/wakil-menteri-atr-bpn-sebut-imb-dan-amdal-penghambat-investasi>.



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The above environmental feasibility issuance scheme will also be applied to the rules for Building Permit (IMB) issuance. The obligations to have IMB will be replaced by fulfilling; first, building standards (Decent Function Standard / SLF); and second, the suitability of zoning in the Detailed Spatial Plan (RDTR)

⁷ <https://nasional.kompas.com/read/2019/11/19/14200131/wakil-menteri-atr-bpn-sebut-imb-dan-amdal-penghambat-investasi>.

In carrying out the construction, it will require the use of professional certified constructor services in all stages consisting of planning, implementation, supervision, and testing which then eliminates the process of evaluating the technical plans of buildings that carried out by the Government. In fact, a professional statement from a certified examiner regarding the feasibility of the buildings will be used as the basis for issuing a Certificate of Decent Function Standard by the Government.

Including on the matter of location permits will experience a significant change. With the OSS system, businesses only check the suitability of the business location with the Detailed Spatial Plan (RDTR) that is in the system. The OSS system will automatically read the location of the business whether it is in the green, yellow or red zone. If the OSS system reads the red zone, it will automatically be rejected by the system, but if it is in the green zone it does not need to require a location permit and is immediately issued by the OSS system licensing, either high risk, middle risk, or lower risk according to the risk analysis.

The issue is now regional governments are did not have many details and Spatial Plan (RDTR) both land and water yet. The regional government will be urged to immediately make the RDTR, and if it's not made within the specified time it will be immediately taken over by the central government, in this case, is the Minister of ATR / BPN. However, the preparation of the RDTR will certainly cause a lot of conflict in the community. This is because there is very little possibility of community involvement in the preparation of the RDTR. It could be that the RDTR was prepared only to facilitate the interests of investors, and not really to protect the public interest in the environment and its sustainability. The preparation of the RDTR will be highly questionable especially in providing a fair spatial arrangement for the life of the wider community.

c. Eliminating the Criminal Sanction

Another important note concerning the Omnibus Bill on Job Creation is the plan to eliminate the form of criminal sanctions that are applied in various laws, to become an administrative sanction only. The government reason to eliminate the criminal sanctions is for the law's effectiveness toward the business actors⁸.

Oftentimes, criminal sanctions are considered ineffective in carrying out law enforcement against the business actors. The imposition of criminal sanctions is usually only imposed at the managerial level and does not cover the highest level of the company. So the idea of the government is to cripple the business entity that violates the law through the revocation of business licenses, or bankrupting, and imposing fines. The rail effect will be more pronounced than criminal sanctions. For them in this way the deterrent effect will be more pronounced.

However, the elimination of criminal sanctions will injure the rights of affected people's from corporate business activities that have taken away their living space and resources.

Employment Issues in the Omnibus Law

When the plan for the Omnibus Bill on Job Creation was talked by Mr. Jokowi, there was a major concern about the discussion on the planned revision of Manpower Law No. 13 of 2003. The big question was whether this Omnibus Law would include sensitive rules related to labor issues, such as wages, employment status, severance pay, etc?

⁸ <https://www.tribunnews.com/nasional/2019/11/22/perusahaan-tidak-bisa-kena-sanksi-pidana-dalam-omnibus-law>



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In a statement to the media, the Minister of Manpower, Ida Fauzia, explained that the Manpower Law will also be included in the Omnibus Law. But it does not say clearly what are the provisions will be raised. However, related things to job creation will be certainly included⁹.

The idea which later enclosed the Manpower Law in the Omnibus Law was based on the idea hoping that the issue of job training institutions could later become an agenda for strengthening human resources that could be up to the business world, including empowering the MSMEs sector. However, related to Article 178 of the Manpower Law concerning labor inspection, this will be amended by withdrawing the authority of the Regional Government to the President which can be delegated to the designated agency through a Government Regulation.

This supervision issue has become very important in labor issues. Moreover, with the withdrawal on the matter of supervision to the central government, it will not make the Manpower Law that still applies become unequal in its implementation. This is considering, the Omnibus Law was created to provide protection and facilities to investors rather than protection to workers. Not to mention, from the foreign investment that will come to Indonesia whether the investors will be able to obey the national legislation. In practice, there are many bad and unlawful investors.

However, looking at the construction of Article 178 of the Manpower Law that still applies, the matter of supervision is currently still held by regional agencies which we know is very poor in practice. Therefore, the idea of the Omnibus Law is to take all the supervision to the Central Government.

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⁹ <https://ekonomi.bisnis.com/read/20191111/9/1169063/uu-ketenagakerjaan-masuk-omnibus-law-cipta-lapangan-kerja>