Framing Paper Series
Indonesia for Global Justice (IGJ)
April 2020

Framing Paper IGJ
Omnibus Law on Job Creation

Team of Authors:
Rachmi Hertanti, Hafidz Arfandi, Rahmat Maulana Sidik, Olisias Gultom, M.Teguh Maulana, Muslim Silaen

Executive Summary

Jokowi's economic development agenda to accelerate economic growth is done through increasing economic competitiveness by strengthening national industrialization financed by foreign investment. This agenda was then carried out by Jokowi with the broadest de-regulation strategy by issuing the Omnibus Law on Job Creation which encourages changes in investment policies, trade, and sectoral priorities to maximize natural resources. However, all of that has a condition and must be redeemed at a price that is not cheap, and it's become strong evidence that the Omnibus Law is not a regulation that will work to protect the interests of the people. Three fundamental reasons are:

1. De-regulation in encouraging the transformation of the national industry which regulated in the Omnibus Law on Job Creation is a World Bank prescription implemented by the Government of Indonesia in order to open space for capitalism to exploit and carried out more massive economic monopolies in Indonesia as a way out for stagnation in capital turnover due to the crisis of global capitalism.
2. The efforts to increase the added value of production to encourage economic competitiveness require Indonesia to adopt market liberalization rules ratified by Indonesia through various free trade agreements. Therefore, de-regulation in the Omnibus Law on Job Creation is a priority of the Government in relation to harmonizing national regulations with market liberalization rules. Therefore, this Government has ignored the Constitution as the state's foundation, especially in making laws and regulations.
3. Instead of answering the Middle Income Trap, the Omnibus Law on Job Creation instead deepens the trap for the laborers. Changes in labor regulations in the Omnibus Law on Job Creation are carried out to respond to the demands of industry 4.0, such as skilled labor and labor regulations that can adopt changes to the employment relationship model created by industry 4.0. However, all of that has implications for the loss of guarantees for the fulfillment of laborers' rights, as well as being a reason for employers to avoid their obligations. * * *

Preface

In the midst of the Corona Virus (Covid19) pandemic outbreak, instead focusing on handling and preventing the spread of the pandemic, the Government and Parliament encourages the completion of the Omnibus Bill on Job Creation Bill and the Omnibus Taxation Bill. As if the Omnibus Law can be the answer to today's economic problems. The crisis of capitalism is permanent. Even though today's condition cannot be answered by a capitalistic economic monopoly system, but rather the people's economic power which will become the solution.

The completion of the Omnibus Law discussion amid the global economic turmoil due to the COVID 19 pandemic outbreak is not the right solution for economic growth. Amid the uncertainty of the global economy, there is also limited industrial movement, so there is little chance of being able to attract foreign investment to drive industrialization as capital for economic growth. No investor wants to invest their capital in the midst of very high financial risk. Therefore, the discussion of Omnibus Law during the **Covid 19 pandemic outbreak** increasingly shows that the Government and the Parliament are not sensitive to people's lives, and causing an increasingly acute humanitarian crisis in this country.

Therefore, strengthening the critical analysis of the Omnibus Bill on Job Creation must be enriched continuously by social movements in Indonesia to reinforce the situation of political-economic reading that occurs, to expand the consolidation of the people's struggle against the economic development agenda which is monopolized by the capitalist's interests.

This paper is part of the IGJ analysis series on the Omnibus Bill on Job Creation. The Framing paper of Omnibus Bill on Job Creation is intended to provide a framework of thinking about the importance of the globalization agenda behind the Omnibus Law drafting, specifically the Omnibus Law on Job Creation by President Jokowi. And to later become the basic analysis of the Omnibus Law on Job Creation in several specific sectors, such as the economy, food, health, and labor, which will be published separately from this framing paper.

Omnibus Law: Corporate Monopoly

Because of the deregulation is done as usual (business as usual), namely by changing the Law one by one, it is difficult to resolve the various existing investment barriers and open space for new wider investment[1] "
(Airlangga Hartarto, Coordinating Minister for Economic Affairs)

The plan to compile the Omnibus Law has been determined by Jokowi since his inauguration speech as President on November 20th, 2019. The aim is to simplify the regulation in the context of simplifying the business licensing process and eliminated the regulations that impede the investments. Dimensional structuring licensing regulations considered will create the ease of doing business and increase an investment in Indonesia, which in turn will create jobs that can absorb many job seekers.

The plan is for the Government to issue 5 (five) Draft of Omnibus Laws, including the Omnibus Law on Job Creation (CILAKA), the Omnibus Law on Taxation Bill, the Omnibus Law on Pharmaceutical Bill, the Omnibus Law for the nation's capital, and the Omnibus Law on the Maritime Security Agency (BAKAMLA)[2]. In January 2020 the Indonesian Parliament passed three Omnibus Laws as the 2020 National Legislation Program Agenda, namely the Job Creation Bill, the Taxation Bill, and the Nation's Capital Bill[3].

In the Academic Paper for the Job Creation Bill, it is stated that accelerating Indonesia's economic growth to 5.30% can only be manifested by enacting the Job Creation Bill and the Tax Facilities Bill.

[1] Siaran Pers Menko Perekonomian, diunduh dari link file:///C:/Users/IGJ/Downloads/FINAL%2012.12.2019%20-%20Siaran%20Pers%20Rakor%20Omnibus%20Law.pdf
[2] https://igj.or.id/omnibus-law-payung-hukum-menarik-investasi-atau-melegitimasi-eksploitasi/
[3] https://www.beritasatu.com/politik/596570/politik/596570-dpr-bahas-tiga-ruu-omnibus-law

Dok.IGJ 2020

The government has been aware from a long time ago that during this time, Indonesia has structural economic problems. The stagnation of the national economic growth caused primarily due to the low level of productivity as the ineffectiveness of structural transformation[4]. Therefore, Indonesia's economic growth which only depends on the non-productive sector ultimately has implications for the "*middle income trap*" situation.

The problems surrounding Indonesia's current economy are the consequence of the economic choice model chosen by the Government of Indonesia after 1967, where the economic development relies more on foreign investment and extraction of natural resources. Therefore, what is faced by Indonesia today is the impact of neo-liberal economic policies that have continued to be maintained by the Indonesian Government since the New Order era, reformation, until the current regime[5].

The national development plan, especially in the economic sector, has not moved from the classic problems faced by developing countries, namely; Current Account Deficit (CAD). The current account deficit problem is nothing but the result of past policies that may still exist today, namely; relying on commodities from natural resources as a base for panning foreign exchange as well as dependence on foreign funds to finance development by both the state and the private sector.

Both bear the burden in the future, where foreign funds both in the form of investment and debt have costs that must be borne by the economy. While dependence on commodities is often lenient, where the guarantees of abundant availability make the developing countries tend to be royal by boosting loans for accelerating growth. But the fact is the indiscipline in the fiscal or institutional context, mainly due to corruption. Creating the development trap is a serious burden on the economy in the future. This is especially when it's faced with two conditions; first, the fall in prices of mainstay commodities and second, overpopulation, which causes consumption demands to exceed the availability and capacity of national production.

[4] Narasi RPJM Nasional 2020-2024, hal.9
[5] Catahu IGJ 2019, "*Agenda Keadilan Ekonomi Indonesia Dalam Pemilu 2019*", Jakarta Januari 2019.

Jokowi's frustration with the national economy has increasingly become a result of Indonesia's inability to take advantage of the trade war situation between the US and China. Jokowi hopes that Indonesia can increase export trade to the US and China markets when the two countries limit trade with each other so that it can have a positive impact on Indonesia's balance of payments. However, this did not happen due to Indonesia's trade is dominated by raw commodities and has no added value trade products. Even when Jokowi hopes that China moves its investments into Indonesia by building industry to supply the US market and its trading partners, as a result, is China prefers Vietnam rather than in Indonesia.

World Bank provocation also helped to strengthen Jokowi's confidence in his economic policy choices. The World Development Report 2020 released by the World Bank in September 2019 stated that Indonesia's lack of involvement in global supply chain activities has resulted in the lack of investor interest investing in Indonesia.[6] Especially amid the global market sluggishness that has resulted in investors delaying their investment activities until the situation improves.

The problems surrounding Indonesia's current economy are a consequence of the economic choice model chosen by the Government of Indonesia after 1967, where the economic development relies more on foreign investment and extraction of natural resources.

In its report, the World Bank recommends that developing countries, especially Indonesia, immediately take an active role in Global Value Chain (GVC) activities. The World Bank believes that by encouraging the expansion of the Global Value Chain can help the world to get rid of the economic crisis of capitalism. This is based on the argument that there is a potential shift in the strength of the GVC to new locations and this should be an opportunity for developing countries like Indonesia.[7] For the World Bank, this could be a potential for new economic growth and increase market trust to start investing again.

However, to become a state that will actively participate in GVC activities, the World Bank warns that it is not enough to simply switch from exporting raw commodities to manufactured basic commodities such as garments. Nonetheless, the industrial transition must be encouraged to be engaging in more sophisticated production activities that are full of technological innovation activities. Companies involved in GVC tend to be more productive and capital intensive than labor-intensive. Of course this kind of industry transition requires an improvement in the quality of skills, especially labor, connectivity, and institutional regulation.[8].

According to the World Bank, the main key to the success of GVC as a source of new economic growth is to transform trade towards the industrial revolution 4.0. It is believed that this 4.0 industry has contributed to higher productivity and a greater scale of production. Thus the new production of technology will increase the demand for imported inputs from developing countries and again encourage the growth of global trade.[9] This World Bank Solution is a recipe but not for Indonesia, but a recipe offered to make room for capitalism to be able to exploit and monopolize the economy even more massive way in Indonesia.

---

[6] https://www.msn.com/id-id/ekonomi/ekonomi/bank-dunia-beberkan-penyebab-indonesia-susah-dapat-investasi-asing/ar-AAH2eas

[7] World Development Report 2020: *Trading for Development in the Age of Global Value Chains", Bank Dunia, hal.2*

[8] Ibid. Hal.3

[9] World Development Report 2020, Bank Dunia, Hal. 15

The 2008 global financial crisis has become the culmination point of a global capitalist crisis in which the recovery can no longer be answered in the usual classic way. On the contrary, at this time the distrust toward globalization is most loudly shouted out by the adherents of capitalist fundamentalism itself. It is a form of frustration in failing to deal with the global financial crisis of 2008, where at the end impacted the legitimacy collapse of the system itself.[10]

The fundamental reason why the current capitalism crisis in 2008 has yet to find a solution is that acceleration of economic growth is no longer enjoyed by industrialized countries in the north due to a direction shift of globalization which experienced a turning point in the mid-2000s. For Paul Krugman, political issues of today's globalization are not due to free trade which leads to inequality of wages or loss of blue-collar laborers work in northern countries, but rather because of the profits lost from shifting world trade flows[11]. This is because the capitalist economic growth is supported by the southern countries. This opportunity has now shrunk due to the narrowing of the space of domination that it can do.

The causing factors of the shift in the globalization direction are strongly influenced by the strengthening industries of developing countries in Asia. Krugman marked the conditions where developing country exports grew much more between 1995 and 2010 than predicted by the consensus of the 1990s. For some economies, this condition is called "Hyperglobalization" where there has been an erosion of the value-added chain of production and the occurrence of the second stage of un-bundling activities caused by technological developments. One unique aspect of the hyper globalization era is that developing countries (especially larger ones) export FDI (which embodies sophisticated production factors, including entrepreneurial and managerial skills and technology) and not only to developing countries or other countries[12].

The McKinsey report said China's rapid growth had been a factor in the globalization shift due to changes in the global value chain model. China industry has surpassed the production assembly of imported inputs into the production of the final goods. In fact, making it a major part of almost all global value chains of goods production. Global value chain activities are increasingly regionalized compared to global[13]. There is no more (the division task of labor) between the north and south countries that specialize between the north country as a capital-intensive developed industry and the south country as a labor-intensive developing country (read: cheap labor costs).

Capitalist economic stagnation in the US and economic contractions in the Eurozone in recent years have reinforced the idea that the world is at a turning point in the balance of power between the economies of developed countries in the North and the new economies of developing countries in the South such as China, India, Brazil, and South Africa[14].

McKinsey suggested that developing countries begin to explore new specializations and new roles in global value chain[15] by utilizing existing technological developments. This will encourage many multinational companies to consider investing in new production capabilities that are closer to the

[10] Transnational Institute's Working Report, "*Understanding and Confronting Authoritarianism*", Pg.6-7, Amsterdam 2017
[11] https://www.bloomberg.com/opinion/articles/2019-10-10/inequality-globalization-and-the-missteps-of-1990s-economics
[12] Arvind Subramanian and Martin Kessler, "*The Hyperglobalization of Trade and Its Future*", Working Paper, July 2013, diunduh dari: https://www.piie.com/sites/default/files/publications/wp/wp13-6.pdf
[13] McKinsey Global Institute Report 2019: *"Globalization in Transition: The Future Trade and Value Chains", Hal.13*
[14] Dorothy Grace Guerrero, "*China Rising: A New World Order or an Old Order Renewed*?", Transnational Institute,
[15] McKinsey Global Institute Report 2019: *"Globalization in Transition: The Future Trade and Value Chains", Hal.23*

consumer market to strengthen the coordination of their supply chains more efficiently, especially in time[16].

The condition of Indonesia's industry which still relies on the strength of labor-intensive industries will be difficult to compete amid the shifting trends in the global value chain today. The pursuit of a low-wage workforce is no longer attractive to investors because they are increasingly looking for a balance that emphasizes the proximity of demand (market) and innovation. However, future industrial models that are more dependent on the use of technology (automation) will have an impact on the limited job creation in labor-intensive manufacturing, even though the output will continue to grow. Of course, this will be a middle income trap (middle income trap) if the state is unable to overcome the problems that will arise from automation of production.

Once again, the World Bank recipe is agreed by the Indonesian Government[17]. For Jokowi, it seems that there is no other way but to follow the recipe offered by the World Bank to create economic growth for Indonesia. The dependence of Indonesia's economic growth on external funds means that the Indonesian Government cannot abandon this classic recipe. The Jokowi's economic development agenda was outlined in the Narrative of National medium-term development plan 2020-2024 to encourage on enhancing economic added value as one of its main keys[18] through improving economic competitiveness by strengthening industrialization.

There are at least three main strategies drawn from the 2020-2024 RPJMN, namely: first, encouraging downstream industries to increase production of high value-added commodities in order to make Indonesia as the key actor in the global value chain by making the most of Indonesia's economic resources; and, second, encouraging the expansion of export markets through increased economic diplomacy, especially the ratification of international trade agreements; and third, improving the business climate and labor reform to increase investment.

Jokowi's success in implementing the economic transformation agenda to remove Indonesia from Middle Income Trap surely has its own risks. All of these have conditions and must be redeemed to a price that is not cheap at all. The World Bank requires countries that want to successfully make the class transition from the specialization of raw commodities to value-added manufacturing, to take steps such as:

First, it must exploit its comparative advantage (natural resources and human capital) by removing barriers to investment and ensuring that labor is competitively valued; Second, liberalize trade to expand access to markets and production inputs; and Third, improve connectivity and reduce trade costs, such as: Improving customs and border procedures, promoting competition in transportation services, improving port structure and governance, opening up the domestic market for global third-party logistics providers and express delivery services, building Special Economic Zones (SEZs), and improving the connectivity of information and communication technology (ICT) - the aforementioned strategies can reduce the trade costs related to time and uncertainty[19].

All of this was translated by Jokowi through the widest de-regulation agenda. Seems to be the magic words, Jokowi's decree regarding the drafting of Omnibus Law on Job Creation has become like magic that must be realize to achieve the economic transformation of Indonesia.

[16] Ibid, hal.23

[17] https://nasional.kontan.co.id/news/menko-airlangga-ingin-perkuat-peran-indonesia-dalam-global-value-chain

[18] Narasi RPJM Nasional 2020-2024, hal.12

[19] World Development Report 2020, World Bank, Hal:186

Therefore, the Omnibus Law on Job Creation is not a development agenda created for the welfare of the Indonesian people, but an agenda aimed at recovering the global capitalist economy by providing space for it to be able to exploit and more massive economic monopolies in Indonesia. The pragmatic solution of the global capitalist crisis will again make a third world country like Indonesia become a paradise of maximum exploitation for capitalist profit.

Omnibus Law: Constitution VS Economic Liberalization

The revitalization of national industrialization to maximize national economic growth through strengthening the mechanism of the global value chain will only open up a new monopoly space for corporations towards economic resources owned by the people.

It can be seen in the Job Creation bill that the industrialization policy model works as what the Government of Indonesia wants to do. The agenda of industrialization to increase added value, employment, and investment in the real sector is carried out by maximizing the utilization of abundant natural resources. By utilizing natural resources, Jokowi wants to make Indonesia to be a supplier of raw materials in global economic activities that are semi-finished processed in order to get added value from trade. It is seen from some of the focus development of the industrial sector, such as:

> *(1) improving the processing industry based on agriculture, forestry, fisheries, maritime, and non-agro that are integrated upstream-downstream; (2) improving industrialization based on the downstreaming of natural resources, including through the development of smelters and industrial areas, especially outside Java; (3) improving the competitiveness of destinations and the tourism industry which are supported by strengthening supply chains and tourism ecosystems, including nature tourism; (4) improving the added value and competitiveness of products and creative and digital businesses; (5) improving the business climate and increasing investment, including labor reform; (6) developing the halal industry[20].*

However, developing Jokowi's style of industrialization again must be answered with the investment. For Jokowi, by foreign investment, it will encourage technology transfer, innovation development, and export product diversification. For this reason, the main focus of Omnibus Law on Job Creation is to open up the widest possible investment facilitation, especially in relation to foreign asset ownership (*read: Investment liberalization).* In addition, some basic principles in investment liberalization laws based on free-market agreement regimes include providing a lot of protection to investors related to: policies regarding capital flows and repatriation of profits, policies on taxes, policies on fiscal and non-fiscal incentives including work permits, access to resources natural resources and human capital, and the most important thing is centralized investment decision making[21].

All this time, investment liberalization in Indonesia has not been considered optimal by the investors. Although several times the Government tried to make revisions to the List of Closed and Open Investment through Presidential Regulation.

The revision of the negative list of investments in the Omnibus Law on Job Creation is intended to further eliminate the requirement of investment ownership restrictions (See Box 2: Changes of

[20] RPJMN 2020-2024, hal: 64
[21] World Development Report 2020, hal: 164

Investment Liberalization in the Job Creation Bill)The government said that among several ASEAN countries, Indonesia still had a low level of liberalization where there were still 20 closed business sectors, 495 business sectors that were open with special conditions, such as the amount of PMA investment and were only open to MSME's businesses.

Box 2
Changes of Investment Liberalization in the Job Creation Bill

- In Job Creation Bill, the amendment to Article 12 of Law No.25 of 2007 concerning Investment abolished the word "open with conditions". In fact, the text of the amendment to Article 12 of the Investment Law in Job Creation Bill has the tendency that almost all sectors have been 100% open to foreigners except those stipulated in the Bill. The Job Creation Bill also eliminates the criteria for closed and limited business fields based on issues of national interest, namely protection of natural resources, protection, development of micro, small, medium and cooperative businesses, supervision of production and distribution, improvement of technological capacity, the participation of domestic capital, and cooperation with business entities appointed by the Government.

- The Job Creation Bill also abolished article 13 paragraphs (1) of the Investment Law which regulates the Government's obligation to establish business fields that are reserved for micro, small, medium and cooperative businesses as well as business sectors that are open to large businesses on the condition that they must cooperate with micro-businesses, small, medium and cooperative. The obligation was lost and only replaced by the provision to "provide facilities, empowerment, and protection for micro, small, medium and cooperative businesses in implementing investment" in the amendment to article 13 of the Job Creation Bill. ****

The last attempt to revise the negative investment list was carried out when Jokowi's leadership was in the first period by issuing the "Policy Package" Volume X. The revised of Negative Investment List (DNI) was then regulated by Presidential Regulation (Perpres) No. 39 of 2014 concerning on the List of Closed Business Sectors and Open Business Sectors with the Requirements in the Investment Field. In the package, the Government issued 35 business sectors from DNI.

The business fields include the crumb rubber industry; cold storage; tourism (restaurants; bars; cafes; recreation, arts, and entertainment businesses: sports venues); the film industry; organizers of electronic trading transactions (market places) with a value of Rp100 billion and upward; the establishment of telecommunications equipment testing institutions; toll road; management and disposal of non-hazardous waste; and the drug raw material industry. Other things, through the Presidential Regulation the Government has eliminated the recommendation provisions in 83 business sectors, including hotels (non-star, one-star, two-star); motel; recreational, arts and entertainment businesses; billiards, bowling, and golf courses. The DNI revision also opened 20 business sectors to foreigners with certain shares, which were previously 100 percent (Domestic Investments) PMDN[22].

[22] https://www.kemenkeu.go.id/publikasi/berita/paket-kebijakan-ekonomi-jilid-x-tingkatkan-investasi-lindungi-umkmk/

Picture 1:
Comparison of Negative Investment Lists in ASEAN Countries

Bidang usaha tertutup	20 Bidang Usaha	0 Bidang Usaha	0 Bidang Usaha	0 Bidang Usaha	1 Bidang Usaha	6 Bidang Usaha
Bidang Usaha Terbuka dengan persyaratan	495 Bidang Usaha	4 Bidang Usaha	11 Bidang Usaha	45 Bidang Usaha	33 Bidang Usaha	243 Bidang Usaha
Total	515 Bidang Usaha	4 Bidang Usaha	11 Bidang Usaha	45 Bidang Usaha	34 Bidang Usaha	249 Bidang Usaha

Source: Investment Coordinating Board in the Academic Paper of the Job Creation Bill

So far, the effectiveness of the First Period Jokowi Economic Policy Package has indeed been deemed unsuccessful, especially related to Policy Package X. This is because the implementation of Presidential Regulation 39/2014 is hampered by sectoral laws which have not been revised in accordance with the Presidential Regulation itself. Thus, the presence of Job Creation Bill was intended by the Government to facilitate synchronization of the existing Presidential Regulation with dozens of sectoral laws. However, this synchronization effort has the potential to conflict with the Constitution, given that the Constitutional Court has issued decisions on several sectoral laws that strengthening the prohibition of foreign ownership domination, one of which is the Horticulture Law. (See Box 2: People's Victory over the Horticulture Law)

In addition there are also an efforts to cut the sectoral procedures that are considered to hamper investment, for example; in the Plantation Law the minimum requirement of 20% in the development of community plantations (plasma) is eliminated, but the government still regulates the obligation to provide incentives and assistance to the development of community plantations by holders of plantation licenses. This is carried out so that the company is more flexible in conducting its operation, where in fact the majority of business actors have not been able to reach the minimum limit of 20% of the total land area. Elimination of sectoral boundaries can be found in almost all parts of the revision of the sectoral laws.

Box 2
People's Victory over Corporate Monopoly Efforts in the Horticulture Sector

Investors' insistence that the Government of Indonesia revises foreign ownership in this sector is hampered by various things. Some horticultural seed producers association made efforts to annul Article 100 of Law Horticulture through a Judicial Review at the Constitutional Court in 2014. They argued that the restrictions on foreign investment in a horticultural subsector maximum of 30% which stipulated in Article 100 of Law No. 13 Year 2010 concerning Horticulture have disturbed the investment climate and create legal uncertainty.[23].

The entrepreneur's efforts were responded by the peasant movement and civil society groups in Indonesia who are the members of the Plant Breeder Advocacy Network. The coalition took an

[23] https://investor.id/archive/uu-hortikultura-ganggu-iklim-investasi-perbenihan

intervention suit to the Constitutional Court as a directly affected party by the association's application of the horticultural seed producers'.[24].

On March 19th, 2015, the Constitutional Court issued a decision which contained of rejecting all of the applications from the Manufacturers' Association. The Court stated that the limitation of foreign ownership is in accordance with Article 33 Paragraph (4) of the 1945 Constitution which states that the national economy will be implemented based on the principle of independence. This means that the national economy does not always depend on foreign parties, in this context depends on the amount of foreign direct investment. Moreover, Indonesia has the ability to produce seeds independently[25].

Now the Omnibus Law on Job Creation bill will eliminate the 30% limit, so the foreign investment can invest 100% in the horticulture sector in the name of the investment climate. This will result in the liberalization of the food and agriculture sectors without competitiveness. However, of course, if this regulation is passed then the Job Creation Bill has contradicted the Constitution which has been reaffirmed through the Constitutional Court Decision No.20 / PUU-XII / 2014. ****

Certainly, in addition to investment liberalization, to support the implementation of the government's industrialization agenda, it will also provide facilities for the investor's convenience. Given the focus of foreign investment invited by the Government is that it can increase the added value of production based on the utilization of natural resources, one of which is the mining sector. Some Omnibus Law on Job Creation proposals is directed to make changes and additions to several articles especially related to downstream obligations. The government will provide incentives for investors who are willing to undertake downstream activities in the form of additional licensing periods, mining areas, and specifically for coal, there is no Domestic market obligation and the imposition of a royalty equal to 0%.

In addition, by building the competitiveness of export-oriented industries, once again the Government through the Omnibus Law wants to legitimize the opening of import faucets. So far the problem of imports continues to be polemic in this country which actually has a very structured impact on the inability of small businesses such as farmers and fishermen to compete.

Under the pretext of efficiency in production costs, the use of imported products becomes a justification as a way out of the creation of competitive products. In fact, local products are considered to have lower quality than imported products, so the industry is reluctant to absorb them. Including, opening up to 0% market access that reaches up to 99% of commodity tariff posts makes Indonesia merely a target market rather than a production base that is capable of creating employment opportunities.

The choice of industrialization strategy adopted by the Government of Indonesia in response to the economic liberalization agenda has also been misdirected. Industrialization aimed at export activities has abandoned to what has been the strength of Indonesia during this time, namely agriculture. As for Ankie Hoogvelt (in Wasisto R. Jati, 2011[26]), in the context of north-south inequality in globalization, he stated that inequality in core-periphery itself occurs because of the disruptive economic pattern caused by the entry of foreign private economies into Southern countries. The disruptive position lies in market participants whose characteristics include; compromise with the market, open-door policies

[24] http://sawitwatch.or.id/2014/04/21/siaran-pers-jaringan-advokasi-petani-pemulia-tanaman/

[25] https://www.hukumonline.com/berita/baca/lt550ae9749c631/mk--pembatasan-modal-asing-di-sektor-perbenihan-hortikultura-konstitusional/

[26] Wasisto Raharjo Jati, "Ketimpangan Utara-Selatan Dalam Globalisasi", Jurnal UMM, 2013

to encourage international investment and trade, and export-oriented without regard to strengthening the national economy in globalization.

The harmonization of national regulations with the international free market regime has become the main objective in the de-regulation process under the OmnibusLaw on Job Creation Bill. This is to legitimize the opening of import faucets on the grounds of building the competitiveness of export-oriented industries.

The compromise with market law was justified by Jokowi's desire to harmonize domestic policy with the applicable law in the international free market regime. In fact, the harmonization of national regulations with the international free market regulation regime has become the main goal in the de-regulation process under the Omnibus Law on Job Creation. As mandated in the Long-Medium Term National Development (RPJMN) 2020-2024, efforts to attract investment to increase exports including tourism must also be done through international economic diplomacy, which in practice has not run optimally due to the lack of harmony in domestic regulations that support the implementation of trade agreement negotiations[27].

This harmonization strategy becomes important for the Government if Indonesia wants to encourage the expansion of its export markets in order to increase its economic competitiveness by massive involvement of Indonesia in various regional and international trade cooperation through the ratification of the free trade agreements. The government had targeted to ratify the tariff Preferential Agreement (PTA) or a free trade agreement (FTA) or Comprehensive Economic Partnership Agreement (CEPA) of 20 (cumulative) in 2020, and 40 (cumulative) by 2024[28].

In fact, the harmonization of national regulations with the rules of the free market regime is a justification for the Government to prevent Indonesia from the lawsuit under the World Trade Organization (WTO) dispute settlement mechanism because it is considered to have violated the contents of its agreement. The concrete evidence that can be seen from this agenda is that the Omnibus Law on Job Creation Bill will change four laws due to Indonesia's defeat from the lawsuit of the United States, New Zealand and Brazil at the WTO related to food import policies. The four laws, namely: Law No. 18 of 2012 concerning Food, Law No. 19 of 2013 concerning Protection and Empowerment of Farmers, Law No. 18 of 2009 concerning Animal Husbandry and Animal Health, and Law No. 13 of 2010 concerning Horticulture.

These four laws were questioned by the United States, New Zealand and Brazil because they hampered their export products to Indonesia. Import regulations in Indonesia are still limited at the main harvest time and when the current domestic food demands are still fulfilled by national food production and reserves. For these countries, this regulation is considered contrary to the provisions of WTO and should be harmonized. Amendment to Article 14 of the Food Law in the Omnibus Law on Job Creation Bill removes the restriction by stating that the source of the national food supply comes from national food reserves and food imports.

The harmonization of import ease regulations which regulated in the Omnibus Law on Job Creation Bill also wants to legitimize the problem of chaos with the trading system imported food, which has led to many corrupt practices. By eliminating prioritization of domestic production to fulfill the national food demands, importers may be free to import without any restrictions because there are

[27] RPJMN 2020-2024, Hal: 52.
[28] RPJMN 2020-2024, Hal: 59

no more import quota requirements and letters of recommendation that must be issued by the Ministry of Agriculture and the Ministry of Trade in relation to the data of domestic production adequacy. Certainly, it is legitimate the rent-seekers (profit seeker mafia) in the food sector and rogue importers who have been doing the import, but ignored the provisions of the legislation.

Moreover, this was reinforced by the elimination of criminal sanctions in Article 101 of the Plant Protection bill. The Omnibus Law on Job Creation has amended and eliminated the provisions regarding the punishment of businesses that import food when domestic food commodities are fulfilled. Therefore, this article guarantees that there will be no sanctions for business actors and or importers when importing domestic food. Of course, this has a negative impact on the sustainability of farmers' lives and national food sovereignty. National food dependence on imports will be even higher.

In addition, the harmonization of regulations with free-market regimes related to imports is to make rules to accelerate the entry of imported products by eliminating the provisions on food safety assurance. Article 87 of the Job Creation bill would revise Article 87 of the Food Law deleted the provision of food must pass the laboratory testing prior to marketing. As a result, the food they consume is not assured of its safety and quality. In fact, the act of screening imported food is very important to ensure consumer safety. In addition, screening measures through domestic regulations can also be used as protection so that there are restrictions on imported food that is not qualified.

The replacement of local products with imported products will ultimately have an impact on the impeded development of Indonesia's leading sectors. In this case, Indonesia's agricultural sector is the most affected. The opening of the imported door in the agricultural sector without any efforts to improve the quality of Indonesian agricultural development ultimately eliminates the opportunity of local food businesses, in this case, farmers and fishermen, for Indonesia to be able to enjoy the cake of development. Oman Sukmana (in Mochamad Syawie, 2011) states that the substance of the gap is unequal access to economic resources where the Omnibus Law on Job Creation Bill will only strengthen corporate monopolies rather than the equitable distribution of local farmers' resources.

Therefore, the Omnibus Law on Job Creation Bill must be rejected because it is against the Constitution. This is evidenced by the many changes to the regulation that the Omnibus Law intends to do that contradict the Constitutional Court ruling that has been enacted as law. The imposition of the stipulation of the Omnibus Law on Job Creation Bill can be categorized as an act of constitutional violation. In addition, the agenda of harmonizing national regulations with free-market regimes in the Omnibus Law has ignored the Constitution as the foundation of the state, especially in making laws and regulations, and prioritizes the provisions of the international regime.

Omnibus Law: A Trap for Workers

The industrial transformation which is also expected by the Government is a change in the future industrial model which is more dependent on the use of technology (automation) or industry 4.0. This will be adjusted by the Government in the Omnibus Law on Job Creation Bill to respond to the demands of industry 4.0, such as skilled labor and labor regulations that can adopt changes to the employment relationship model created by industry 4.0.

This is done by Jokowi in order to attract foreign investment to Indonesia. For investors today, the pursuit of low-wage labor is no longer interesting because now they are increasingly seeking a balance that emphasizes proximity to the demand (market) and innovation.[29].

The industrial transformation towards industry 4.0 will certainly have an impact on the limited job creation in labor-intensive manufacturing, although output will continue to grow. Of course, this will be a middle income trap if the state is unable to overcome the problems that will arise from the automation of production when Indonesia is experiencing an increase in demographic bonuses. This is the main focus to be regulated in the Omnibus Law on Job Creation Bill as stated in the Academic Paper.[30].

Amendments of Law No. 13 of 2003 concerning Manpower in the Omnibus Law on Job Creation Bill indicate that the Government is working to change the form of employment relations under the form of industry 4.0 which will have implications for the fulfillment of labors' rights. For example, some numbers of the provision in the Omnibus Law on Job Creation Bill reinforce the legitimacy of flexible forms in the employment relationships, including efforts to eliminate the regulations about the core business. And this has implications for some of the regulations relating to the remuneration components, including the regulations on layoffs and severance. *(Further analysis of changes to articles in the Manpower Law will be published separately).*

> *"Instead of answering the Middle Income Trap, the Omnibus Law on Job Creation instead deepens the trap for the laborers"*

Another strategy for the government in overcoming the problem of low labor absorption in the formal sector is through the provision of a social safety net called the Job Loss Guarantee and pre-employment cards. This would be legitimized by the Government in the Omnibus Law on Job Creation Bill to respond to the potential impact arising from industry 4.0 activities due to the rising number of unemployment.

Keep in mind, two-thirds of Indonesian workers work in the informal sector. If a lot of people who lose formal sector employment by reason of industrial 4.0, then this figure can be increased. Transfer of severance minus ratio with a guarantee of job loss is not appropriate in labor market conditions dominated by the informal sector. Moreover, it is still unknown how the financing scheme will be carried out by the Government to ensure the fulfillment of this social safety net.

Both of these policies refer to the unemployment benefit scheme that is widely applied in developed industrial countries. The Unemployment Benefit Scheme requires an optimal labor market with dominance in the formal sector or the Full Employment System. This guarantee scheme requires residuals, or those who are excluded from the system must be smaller than the portion of those absorbed in the formal labor market. Conversely, with the demographic conditions of laborers in Indonesia where the informal portion is high, the residue will be much greater, because it will be difficult to distinguish those who are unemployed from those who work informally with uncertain income.

In the Job Creation Bill, the revision of labor regulations related to the above matter is embodied in the revision of three related laws namely; Labor Law, National Social Security System Law and Health Care and Security Agency Law. Regarding the Manpower Law, there are 68 articles, either amended,

[29] McKinsey Global Institute Report 2019: *"Globalization in Transition: The Future Trade and Value Chains"*
[30] Naskah Akademik RUU Cipta Lapangan Kerja, Hal: 11.

added or eliminated. Whereas the National Social Security System (SJSN) Law and the Health Care and Security Agency (BPJS) Law only amended 2 articles each to accommodate the Employment Loss Guarantee which was born as the compensation for reducing severance pay in the amendment of Manpower Law.

Another aspect of the Government of Indonesia's strategy to overcome the middle income trap is also directed at the development and empowerment of the micro, small and medium business sector. The development of micro and small industries will be an incentive to reinforce the backward industry. The 2016 Economic Census confirmed the number of industries with medium-large categories reaching 35,163 companies, while the micro and small categories reached 4.3 million. In fact, the small micro-industry can accommodate as many as 11.7 million laborers, while the large medium industries can only accommodate 6.3 million laborers.

Unfortunately, the Omnibus Law on Job Creation Bill only provides administrative structuring space for MSMEs and Cooperatives, while the development program design has not been adequately planned. The Omnibus Law on Job Creation Bill is indeed trying to revise the size of micro, small and medium scale businesses. However, it is not clearly described how the size will be arranged. This opens legal loopholes for the employers of the labor-intensive sector who always take refuge in the status of small and medium scale businesses to avoid all their obligations in fulfilling labors' rights. Instead of creating jobs, on the contrary, it will shift many laborers to informal small entrepreneurs without adequate protection. While opening the investment as wide as possible by easing the Negative List of Investment and opening the largest import faucets will also 'kill' small businesses, fishermen, farmers, and the informal sector, or subsequently handed them under the control of small-scale foreign investors who will be controlling in all sectors.

****

Indonesia for Global Justice (IGJ)
Email: igj@igj.or.id atau keadilan.global@gmail.com
Website: www.igj.or.id