

# Legal Breakthrough Steps as an Effort to Improve Competitiveness Climate and Guarantee Legal Certainty for Investment in Indonesia

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## ABSTRACT

In the midst of a weakening global economic situation due to the impact of the Corona Virus pandemic, Covid 19, the competition to attract foreign investment is getting tougher and more difficult. Investment, in the form of foreign investment, is believed to still be the main support for Indonesia's economic growth, domestic capital is felt to be insignificant, sufficient to turn the wheels of national development. To attract foreign capital to Indonesia is not easy, because it must compete with other countries in the ASEAN region such as Malaysia, Thailand, Vietnam, the Philippines, and so on, which have created a competitive climate in the first place. As a guide to investing abroad, the World Bank has set ten indicators measuring the ease of doing business in a country (EoDB). Indonesia is currently ranked 73rd in the world, and 6th in ASEAN. The purpose and objective of this research are to find out and find solutions to the legal problems of increasing foreign investment in Indonesia. The main problems of this research are: What legal breakthrough steps should be taken by the Indonesian government to improve the competitive climate and legal certainty for investing in Indonesia? The research method used is the juridical-normative approach, using secondary data in the form of legislation, literature, journals, and the internet. Meanwhile, the data collection technique was carried out by means of a literature study. Data analysis techniques are using a qualitative descriptive analysis. The results showed that in the context of implementing investment, investment, various laws, and regulations governing investment in Indonesia (obesity, hyper-regulation, with at least 72 regulations) were found, which are feared to reduce investment attractiveness. To overcome legal problems, the government is required to make legal breakthroughs by simplifying various laws and regulations into one law that adheres to the omnibus law system, namely by establishing Law Number 11 of 2020 concerning Job Creation (UUCK). It is hoped that this can trigger, make it easier for investors to invest while guaranteeing legal certainty, as well as improving the climate for investment competitiveness in Indonesia.

**Keywords:** *Legal Breakthrough, Law on Job Creation, Investment Competitiveness, Legal Certainty.*

## 1. INTRODUCTION

Several indicators in EoDB serve as a reference for investors in investing in a country. The higher the EoDB index of a country, the higher the chances of that country to get investors. The EoDB indicator is a

parameter for a country to fix regulations related to investment, it can be measured from the start of the business, until the end of the business running according to plan, according to the agreed contract. One of the work programs of the President/Vice President, Jokowi-Maruf Amin, is to build effective

legislation to create employment opportunities, increase the role of Micro, Small, and Medium Enterprises (MSMEs), and improve the investment climate in Indonesia. According to data from the Investment Coordinating Board (BKPM), investment in the first quarter of 2019 grew 5.3 percent to Rp. 195.1 trillion. This achievement is the realization of investment for the period 2014-2019, despite growing from the first quarter of 2018. Departing from these conditions, the Government is to stimulate investment in Indonesia as well as to harmonize obesity, various laws, and regulations that regulate investment, investment, through the implementation of the Omnibus Law. Besides that, it is also a way to eliminate the sectoral ego of the ministry. In the past, the clash between economists was a conflict of understanding, while now it is a clash of "interests". But what is clear is that the economy has established its position and form as one of the members of a large scientific building. Many scientists define economics as "one of the branches of science that strives to provide knowledge and understanding of social phenomena that arise due to human actions to meet needs or to achieve prosperity".[1]

Therefore, the government must massively overhaul the articles, related to licensing in the investment sector, which are listed in 72 laws, through a new law with an omnibus law system. The same thing was conveyed by the Coordinating Minister for the Economy of Indonesia, Airlangga Hartarto, the existence of the Omnibus Law will make licensing simplification starting from location permits, Building Construction Permits, Environment as investment requirements which of course will have a broad reach. One of the factors that cause Indonesia not to take advantage of a trade war, as do many other Southeast Asian countries, is that Indonesia's land and legal certainty is considered not good, as stated by the Chairman of the Indonesian Advocates Association (IKADIN).[2]

Increasing rule of law in all fields has changed the characteristics of economic law from *droit economique* to *droit de l'economic*, namely as a rule of law scattered in all fields of law, not only in the fields of civil law and commercial law, but also in the field of constitutional law, criminal law, international criminal law, tax law, and state administrative law. So that the rules of economic law not only increase in number but also in quality.[3] The implementation of the Omnibus law in Indonesia is a new breakthrough because a concept like this has never been

implemented in Indonesia. The definition of Omnibus Law starts from the word Omnibus. The word Omnibus is Latin and means "for everything." In the Black Law Dictionary, Bryan A. Garner's Ninth Edition mentions omnibus as relating to or dealing with numerous objects or items at once; "including many things or having various purposes", means relating to or dealing with various objects or items at once. From a legal point of view, the word omnibus is juxtaposed with the word law or bill so that omnibus law is a method or concept of making regulations that combine several rules with different regulatory substances into a large regulation that functions as a legal umbrella (umbrella act) which consequently revokes several rules resulting from the merger. and its substance is declared invalid, either in part or in whole.

Omnibus Law is a new thing in Indonesia although other countries have implemented such as the United States (The Omnibus Act of June 1868, The Omnibus Act of February 22, 1889), Canada (Criminal Law Amendment Act, 1968-69), Philippines (Tobacco Regulation Act of 2003) and 39 countries that adopted the Omnibus Law in terms of personal data protection released such as Argentina, Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, The Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Thailand, and United Kingdom.

Although Indonesia adheres to a civil law legal system, while omnibus law was born from the tradition of the common law legal system, in the world of the digital ecosystem and global governance, there is nothing wrong with Indonesia breaking through this boundary space. The Philippines has started to reform the law in the investment context by issuing The Omnibus Investment Code. Furthermore, Vietnam also studied the technique of making omnibus law, as part of its regulatory reforms. Indonesia is a legal state as stated in Article 1 paragraph (3) of the 1945 Constitution, namely the State of Indonesia is a state of law (*Rechtstaats*) not a state of power (*Machtsstaat*). In a country that upholds the law, it has legal objectives, including order, tranquility, peace, prosperity, and happiness in the order of social life.[2] Therefore the Constitution has an important position in the administration of the rule of law. According to

Aristotle, in essence, the constitution is the legal basis of all laws rather than the ruler. So that the constitution becomes the foundation of a country. The development of economic law as a result of the development of economic institutions' activities, also gave birth to new legal institutions that regulate economic regulation in Indonesia.

In line with these developments, the forms of economic activity in this era of globalization continue to develop rapidly following the development of forms of business activities. Economic activity is a series of activities carried out by humans to meet their needs, both primary, secondary, and tertiary needs. These activities have started since the beginning of human civilization and continue to this day.[4]

The House of Representatives (DPR) has ratified the omnibus law, namely Law Number 11 of 2020 concerning Job Creation (Law CK). The government and the DPR stated that this law guarantees ease of doing business and investment. The Job Creation Law includes amendments and simplifications of 79 laws and 1,203 articles. This broom rule contains 15 chapters and 186 Articles consisting of 905 pages. The Omnibus law is made into 3 (three) clusters that are included in the Act, namely Job Creation, Taxation, and Community Empowerment. The three clusters are then further divided into several sub-clusters. The Omnibus Law in the UUCK is expected to be one of the breakthroughs to increase the ranking of the Ease of Doing Business Index or known as the Ease of Doing Business (EoDB) 2020. Based on the World Bank report on EoDB 2020, Indonesia is ranked 73 out of 190 countries surveyed. Indonesia's ease of doing business is still far below that of Singapore, which is ranked 2nd, Malaysia is ranked 12th, Thailand is ranked 21st and Vietnam is ranked 70th.: Starting a business, Licensing related to building construction, Electricity connection, Property registration, Credit Access, Minority Investor Protection, Tax Payment, Cross-border Trade, Contract Enforcement, Bankruptcy Case Settlement.

Can the ease of doing business in the Omnibus law of the Job Creation Act attract foreign investors to invest in Indonesia? Therefore, the main issues in this research are: What legal breakthrough steps should be taken by the Indonesian government to provide competitiveness and legal certainty for investing in Indonesia? One of the problems experienced by the Indonesian people is the problem of many regulations related to disharmony of laws and regulations which result in, among others: The emergence of legal

uncertainty, The implementation of laws and regulations becomes ineffective and efficient, The occurrence of different interpretations of a statutory regulation, Law as a guideline society and government are not functioning properly. So that the process of forming good laws and regulations will affect law enforcement.

## **2. RESEARCH METHODS**

The research method used is the juridical-normative approach, using secondary data in the form of legislation, literature, journals, and the internet. Meanwhile, the data collection technique was carried out by means of a literature study. The data analysis technique used descriptive analysis, qualitative normative, where the writer arranges the research by explaining and analyzing the provisions of laws and regulations that are adapted to current conditions or phenomena.

This study uses secondary data sources consisting of primary legal materials, namely: Law Number 11 of 2020 concerning Job Creation; Law Number 25 of 2007 concerning Investment (UUPM); Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution; Law Number 5 of 1968 concerning the Settlement of Disputes between the State and Foreign Citizens concerning Investment; Regulation of the Supreme Court Number 1 of 1990 concerning Procedures for Implementing Foreign Arbitration Awards; The ICSID Convention which has been ratified by Indonesia through Law No. 5 of 1968 concerning the settlement of disputes between the State and foreign nationals regarding investment, which was established on the basis of the Convention on the Settlement of Disputes between States and Foreign Citizens concerning Investment (Convention on the Settlement of Investment) Investment Disputes between States and Nationals of Other States) of 1966; Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court.

Then, secondary legal materials in the form of literature books and mass media news. In pandemic conditions, data collection techniques are carried out online with data analysis techniques ranging from collecting, sorting data, displaying data, and drawing conclusions on the data to create an analysis in this study. While tertiary legal materials consist of legal dictionaries and encyclopedias.

### **3. FINDING AND DISCUSSION**

#### ***3.1. The Importance of Increasing Investment Activities***

Investment is one of the indicators that is quite vital to determine whether national economic development will continue to increase so that various kinds of policies issued by the government can help investors and potential investors. Therefore, increasing investment is believed to be able to make a major contribution to the economic development of a country. In addition, investment also plays a role as a component of national income, Gross Domestic Product (GDP). This investment will be related to GDP and national income, if investment increases then GDP will also increase, and vice versa.

Regarding the relationship between investment and economic growth, the Harrod-Domar theory is used, which suggests that there is a good influence between investment activities on the economic growth process of a country. In this theory, investment activities are considered as an important factor and have two roles at the same time to influence the economy, namely: First, investment has a positive relationship with state income. Therefore, the easier the investment process, the more investment activities will be carried out and the higher the income generated by the state. Second, investment can increase the production capacity of the economy by increasing the capital stock. This capital formation is considered an expenditure that will increase the demand for the needs of the whole society. So, investment can affect demand as well as affect supply. In the long run, investment not only affects aggregate demand but also affects aggregate supply through changes in production capacity.

Every investment will make a major contribution to the economic growth of a country because the investment will encourage the development of the overall economic activity. Dumairy said, "Investment is the first step in production activities. With such a position, investment is essentially the first step in economic development activities. Investment dynamics affect the level of economic growth, reflecting the rampant economic downturn. To that end, the government will create an investment climate that is globally competitive, by carrying out the main activities, including improving laws and regulations in the investment sector, simplifying service procedures, and so on.

Indicators and rankings compiled based on EoDB become a benchmark for every country and investors in investing in a country. So, the government is trying to encourage an increase in the EoDB rating by implementing regulatory efficiency, which is a breakthrough to eliminate various hindering regulations. So that the long and convoluted licensing procedures and times that have occurred so far can be trimmed and simplified by simplifying licensing. Ease of doing business is not only given to medium and large business actors but also to micro and small business actors. The efficiency of this regulation is also expected to reduce transaction costs that have been hampering investment. This breakthrough in the acceleration of licensing only attracts investors but does not provide legal certainty. In the investment world, the certainty of law enforcement and its application in a country is one of the most important factors as a reference for businesspeople to invest in a country. This is in accordance with the purpose of the law which provides certainty, benefit, and justice. The main idea of economics is related to dealing with the main problem, namely the problem of choice because of the scarcity of resources, producing them, and distributing them. So that economics is related to the regulation of resources, the allocation of resources during conditions of scarcity. This economic study is limited to human efforts to achieve prosperity by using available economic resources in a safe and productive manner. So it can be ascertained that the regulation in the use of economic resources has not been oriented to how to achieve justice and legal certainty in the process and achievement of its objectives.[5] Foreign investors need legal certainty to do business because when they invest in Indonesia it will be done in the form of cooperation between foreign investors and the government or foreign investors with the private sector.

#### ***3.2. Omnibus Law Legal Breakthrough Steps on Obesity, Hyperregulation and Overlapping of Investment-Related Regulations***

Since Indonesia's independence, Indonesia has gone through various government regimes. From the Old Order government, the New Order to the Reform Order. Changes from time to time, accompanied by changes in presidents and government cabinets, clearly resulted in the birth of many laws and regulations in accordance with the context of the problems and challenges at that time. During more than 76 years of

independence, this increasing number of regulatory productions has then caused its own problems, such as disharmony and overlapping regulations. As a result, there are also many conflicts of policy or authority between one ministry/institution and another ministry/institution, as well as between the Central Government and the Regional Government. Unfortunately, this disharmony and overlapping regulations not only hinder the government from moving swiftly and responsively to the problems and challenges that arise but furthermore hamper the implementation of development programs and worsen the investment climate in Indonesia.

Considering that the production of regulations, starting from the level of legislation throughout independent Indonesia, has accumulated and has given rise to the phenomenon of "obesity, hyper regulation", then every government administrator intending to innovate, or breakthrough will certainly cause a conflict with statutory regulations. Meanwhile, if the revision of laws and regulations is to be carried out conventionally, it is easy to predict that it will take a very long time to harmonize and synchronize the many existing regulations. At the same time, the challenges of the digital society ecosystem era are within sight. Indonesia should not be entangled by formal procedures for long. A policy breakthrough in the process of drafting the law must be born soon. Based on this urgency, the only way to simplify and at the same time uniform regulations quickly is through the Omnibus Law scheme.

The definition of Omnibus Law comes from the words omnibus and law. The word omnibus comes from the Latin, *omnis*, which means "for all" or "many". When coupled with the word law, then Omnibus Law can be defined as law for all. In Bryan A Garner's *Black Law Dictionary Ninth Edition* it is stated: "omnibus: relating to or dealing with numerous objects or item at once; including many things or having various purposes", which means relating to or dealing with various objects or items at once; include many things or have multiple purposes. So, the concept of Omnibus Law is a comprehensive rule, not tied to a single regulatory regime.

Omnibus Law itself is defined as a method used to replace and/or revoke provisions in the Act or rearrange several provisions in the Law into one (thematic) Act. But another legal language, omnibus comes from the Latin, *omnis* which means many. This means that the omnibus law is cross-sectoral which is

often interpreted as a universal sweep law. It can also be said that it is the law of all for all because the Coordinating Minister for Politics, Law and Human Rights of Indonesia, Mahfud MD makes an analogy that the current legal system is full of scattered laws. Therefore, we need a medium that can embrace the whole system of laws.

The purpose and objective of the drafting of the Omnibus Law on the Job Creation Law are to facilitate legal provisions and furthermore to promise a better condition of the workforce ecosystem in the form of increased protection for workers and changes to several provisions related to the employment sector and worker protection (existing) and expansion of employment. As well as improving a conducive and attractive business climate for investors, increasing Indonesia's economic growth, increasing legal certainty, and encouraging the interest of Foreign Citizens (WNA) to work in Indonesia which can encourage the transfer of skills and knowledge for the quality of Indonesian human resources, encourage voluntary compliance of taxpayers (WP) and create business justice between domestic business actors and foreign business actors.

This legal product consists of 1,028 pages with 684 content pages and 244 explanation pages. This law consists of 15 chapters and 174 articles which include: Chapter I General Provisions (Article 1); Chapter II Purpose and Objectives (articles 2-6); Chapter III Improving the Investment Ecosystem and Business Activities (Articles 7-87); Chapter IV Employment (Articles 88-92); Chapter V Ease, Protection, and Empowerment of MSMEs and Cooperatives (Articles 93-117); Chapter VI Ease of Doing Business (articles 108-118); Chapter VII Research and Innovation Support (article 119); Chapter VIII Land Acquisition (articles 120-139); Chapter IX Economic Zones (articles 140-145); Chapter X Central Government Investment and Ease of National Strategic Projects (articles 146-161); Chapter XI Implementation of Government Administration to Support Job Creation (Articles 162-166); Chapter XII Sanctions (articles 167-169); Chapter XIII Other Provisions (Articles 170-171); Chapter XIV Transitional Provisions (article 172); Chapter XV Closing Provisions (articles 173-174).[6] Since its emergence, Omnibus Law brings about quite complicated problems here and there. One of the questions pertains to what the Omnibus Law is and the urgency so that the discussion is accelerated by the House of Representatives until its ratification on Monday, October 5, 2020.[6]

According to Swedish linguist Tore Janson,[7] the word omnibus comes from the Latin word meaning "for all". In the field of legislation and constitutional law, omnibus law (bill) is defined as a single package of laws covering various sectoral regulations. In 2016, New Zealand used it for the Trans-Pacific Partnership. Previously, Serbia also used it when dealing with Vojvodina's autonomous status in 2002. Long before that, Canada used the omnibus law method to amend the Criminal Law Act (1968), the Republic of Ireland also used it when in the process of the second amendment of its Basic Law (1941). The United States has even used it four times since the mid-19th century. The first omnibus law was the omnibus law on the Compromise of 1850, a package of laws consisting of five separate Acts that the United States Congress passed in September 1850. According to S John C. Waugh,[8] Historian, that: The Treaty changed America's wider territory in just one day from 1,753,588 square miles to 2,944,337 square miles – extending nearly 68 percent from the east to west coast. On the one hand, it is a victory, but on the other hand, it is a threat to the life of the state. The fact renewed a bitter sectoral deadlock and again jeopardized the fragile political balance between states that legalized slavery and those that did not, a problem that has long divided the union of states in the south and north. However, the sparks that emerged from the new territory were initially not realized by President Zachary Taylor (1849-1850). In early December (1849) he said: The United States of America is today the most stable permanent government in the whole world.

Henry Clay Sr,[9] put forward the idea of the Omnibus Act as a compromise measure. However, a similar method was proposed again by Illinois senator Stephen Douglas,[10] scraping the bullet points from a number of Acts in Senator Clay's initial omnibus package of proposals to draft a new package of laws for submission to congress.[11] In Australia, for example, there is the Act on Implementation of the United States Free Trade Agreement, a trade agreement between Australia and the US that contains 9 laws ranging from customs to copyright. Krutz called it 'one massive bill'; Independent, independent, and without being bound or at least bound by other regulations.

### ***3.3. Legitimacy of Omnibus Law in the Civil Law Legal System***

One of the characteristics of omnibus law is that it is independent so that it is not bound to other regulations of the same level and kind. In drafting legislation with the omnibus law, legislators turn a blind eye to the substance contained in other laws so that the formulation of norms changes drastically according to the legal politics adopted. Omnibus laws can reformulate, negate, or revoke part or all other regulations. The omnibus technique is used to solve various normative problems that are scattered in other laws and regulations. Overlap, disharmony, obesity, or dissonance are important parts that are changed, re-normalized, or completely abolished through the omnibus law. This can lead to a paradigm shift in legislation.

Is this method in line with Law No. 12 of 2011 concerning the Establishment of Legislation, as amended by Law no. 15 of 2019? Has this method ever been practiced in Indonesia? The most basic question: what exactly is omnibus law? Referring to Law Number 12 of 2011 in conjunction with Law Number 15 of 2019 concerning the Mechanism for the Establishment of Legislation, it does not recognize the concept of omnibus law. However, we recognize that the omnibus law, especially the job creation law, has the same position as the law because both types are laws. Omnibus Law itself is a method to produce quality laws, not a form of a legal product. Various techniques/methods for the formation of similar laws and regulations have been quite popular in Indonesia, for example, Regulatory Impact Assessment (RIA) and Rule, Opportunity, Capacity, Communication, Interest, Process, Ideology (ROCCIPI). It is a common thing in the formation of laws when there are norms in laws and regulations that are produced through legislation techniques that delete or change 1 (one) norm and re-regulate it in the law.

The omnibus law method also changes the discussion, which was originally deliberative, is now accelerated, because usually omnibus law meets the target, the law is the observance of legal principles that are regulated hierarchically. This can be understood from the theory of legal levels by Hans Nawiasky. The legal norms of any country are always multi-layered and tiered. The lower norms apply sourced and based on higher norms, higher norms apply sourced and based on higher norms until a higher norm is called the Basic Norm. The hierarchical arrangement of laws and

regulations is one of the important principles in the process and technical preparation of laws and regulations.[12]

Although Indonesia adheres to a civil law system, this concept can be used by the Indonesian government to overcome the problem of obesity, hyper-regulation of regulations. However, the issue that will arise is regarding the position of the law as a result of this omnibus law. In theory, the legislation in Indonesia, the position of the law from the concept of omnibus law has not been regulated. If you look at the legal system in Indonesia, the law as a result of the omnibus law concept can lead to the umbrella law because it regulates thoroughly and subsequently has power over other regulations. However, Indonesia does not adhere to the Umbrella Law because the position of all laws is the same. It becomes a problem in theory with the laws and regulations regarding its position so that its position must be given legitimacy in Law No. 12 of 2011 concerning the Establishment of Legislation. It must be revised, what if there is no revision of Law no. 12 of 2011? There is a strong desire from the center to increase investment, however, there are certain investments that cannot be accepted by the regions because they are considered to be able to diminish the cultural value of the local community. So you need to be careful with it.[13] Regarding policies regarding natural resources and also the economy, it will be a matter of very deep consideration to be studied, because the government is eager to open investment links to foreign countries, whether in terms of profit the state can fight for it and in terms of employment can have policies so that the economy in Indonesia in line with these policies.[14]

The term Omnibus Law is better known as an omnibus bill in the Common Law legal system. The lemma omnis comes from the Latin, omnis, which means for all, or many. The omnibus law, then, is the law for all. People better understand it as a universal sweep law. Black's Law Dictionary defines an omnibus bill as a single bill containing various distinct matters, usually drafted in this way to force the executive either to accept all the unrelated minor provisions or to veto the major provisions; a bill that deals with all proposals relating to a particular subject, such as an 'omnibus judgment bill' covering all proposals for new judgment or an 'omnibus crime bill' dealing with different subjects such as new crimes and grants to states for crime control.

According to Glen S Krutz,[15] defines an omnibus bill as a piece of major legislation that spans three or more major topic policy areas or ten or more subtopic policy areas, and is greater than the mean plus one standard deviation of major bills in size.

Regarding the problem of the weakness of the Legislation Drafting method with the concept of Omnibus Law, in Indonesia, several academics and legal practitioners have criticized the use of omnibus law. Professor of Legislation and former constitutional judge, Maria Farida Indrati, was among those who questioned the omnibus law method and requested that its use in the Job Creation Bill not be rushed. Adam M. Dodek, noted three objections to the omnibus law method. First, it makes parliament powerless and makes it difficult to hold the government accountable. Second, it is difficult for parliamentarians to conduct research that is balanced with research conducted by the government. Third, there is a radical impression because it changes and simplifies many articles and many laws. Dodek called the omnibus law an abusive method. One of the problems that will be faced when trying to push for an omnibus law is skepticism about whether the omnibus bill can really be passed.

In the Omnibus Law controversy, the Government is optimistic that the omnibus law will increase Indonesia's economic growth so that it can reach 6%. There are 82 laws and 1,100 articles that so far overlap and hinder investment, so they must be harmonized through the omnibus law. Example: a property developer who complains about the process of applying for a location and spatial permit which takes longer than the construction of the property project. For example: for hotels, the licensing process takes two years, whereas hotel construction is completed within a year. Omnibus Law is also expected to be able to encourage investment in the property sector, related to this, University of Indonesia (UI) economist Faisal Basri has a different view on omnibus law. In terms of investment, investment growth is also considered not too bad. Moreover, the perception of foreign investors towards Indonesia continues to improve.

Soenardi Pardi's lawyer from the Hendra Soenardi Law Firm has a different opinion: Omnibus law can be a solution to overcome the complicated bureaucracy that hinders investment. Currently, there are 43 government regulations, this does not include regulations from government agencies, if a company acquires, it must check national regulations to regional regulations. This results in inefficient business

processes and creates investment uncertainty. They invested how many tens of millions of dollars and still have to think about licensing. With omnibus law, convoluted laws are turned into norms. Minor things can be handled by self-assessment. More complex matters are regulated in laws or government regulations.

Coordinating Minister for Economic Affairs Airlangga Hartarto said that various types of businesses now no longer require permits with the omnibus law. Coordinating Minister for the Economy Airlangga Hartarto said the Omnibus Law on Job Creation would make it easier for individual entrepreneurs to form a Public Company (PT). With this regulation, it is hoped that it will stimulate the business climate. An entrepreneur can make a PT with up to the capital, there is no minimum limit. As is known, the formation of a company has several requirements.

Law No. 40 of 2007, Article 7 paragraph (1), states: a company can be established by two or more people. Omnibus Law is expected to encourage investment in the Property Sector. Article 32 paragraph (1) also states that the formation of a company must have a capital of at least Rp 50 million. Therefore, it is certain that entrepreneurs will not be limited by minimum capital requirements. So, with PT, business risk will be transferred to the company. PT's kitchen and family will be safe.

In addition, through the omnibus law, the government will also facilitate the licensing of Micro, Small, and Medium Enterprises (MSMEs) only with the Capital Identification Number (NIK) of the KTP. The NIK is needed to track the data of the related entrepreneur. In addition to SME licensing, the government will restructure various laws and regulations related to business licensing. Thus, a business license is not based on the principle of licensing but is based on business risk. In addition, various types of businesses now also no longer require a permit. Licensing is only used for types of businesses that are considered dangerous and have security, health, and environmental risks (risk-based license). Meanwhile, other types of businesses only use general standards and supervision.[16]

Entrepreneurs Free from Criminal Law Under the Omnibus Law, as is known, the Employment Creation Omnibus Law is divided into 11 clusters, namely: Simplification of Licensing; Investment

Requirements; Employment; Ease, Empowerment, and Protection of MSMEs; Ease of Doing Business; Research and Innovation Support; Government administration; Imposition of Sanctions; The land acquisition; Government Investments and Projects; and Economic Zones.[17]

It is also expected to be able to move investor confidence, including in the property sector. The government since 2021 has begun to disburse a series of incentives for this sector, namely: Housing subsidies for low-income communities; Increasing the limit not subject to value-added tax or simple house VAT according to the region; Exemption of VAT on houses or buildings of victims of natural disasters; An increase in the value limit for luxury residences subject to Income Tax (PPh) and Sales Tax on Luxury Goods (PPnBM) from Rp 10 billion to Rp 30 billion; The decline in PPh sales of luxury homes and apartments with prices above Rp 30 billion from 5% to 1%. Sixth, simplification for the validation of PPh sales of land and buildings from 15 days to 3 days.[18] With the splash of incentives, property entrepreneurs are billed to encourage the sector. Last year, the property sector only grew by 3.5%. The contribution of this sector to the Gross Domestic Growth of GDP is still below 3%. [19]

The taxation omnibus law includes six pillars, namely: investment funding, territorial system, individual tax subjects, taxpayer compliance, business climate justice, and facilities. In the tax omnibus law, the central government wants the authority to set tax rates in the regions. The government will also reduce the income tax rate or corporate income tax gradually from 25% to 20% in 2023. Then, taxpayers who receive foreign dividend income will be tax-free as long as the dividends are reinvested in Indonesia. In addition, the Ministry of Finance will reorganize tax and interest sanctions to improve tax compliance. Currently, the interest penalty for underpayment and late tax is 2% per month.[20]

The Omnibus Law is expected to boost the Growing Economy. The Minister of Agrarian and Spatial Planning, Sofyan Djalil, hopes that the Omnibus Law will encourage economic growth of up to 6%. So far, several business actors have complained about the old licensing. One of them, property developers complain that the process of applying for a location and spatial planning permit is taking longer than building. For example, the permit process for the establishment of a hotel takes two years, whereas it



only takes one year to build it. Therefore, the government considers the Omnibus Law to be urgently needed. Optimistically, foreign investors will start looking at investment in Indonesia with this regulation. Hopefully 2021 our economy will be better.[21] These include simplification of licensing, investment requirements, employment, convenience, empowerment, and protection of Micro, Small, and Medium Enterprises (MSMEs), as well as ease of doing business.[22]

Omnibus Law can support the growth of SMEs in the tourism sector. can support the growth of micro, small and medium enterprises (MSMEs) in the tourism sector. This regulation can help the tourism sector MSMEs in obtaining permits and bringing in investment capital from partners who are still constrained by the tourism MSME bureaucracy. He explained that the tourism sector is currently very liberal because many assets are owned by the private sector and are able to shift the role of MSMEs.[23]

The Omnibus Law on Job Creation also facilitates Environmental Permits/AMDAL Investors for large companies and MSMEs. The government ensures that the Amdal regulation is a principle in Law Number 32 of 2009 concerning Environmental Protection and Management. Head of the Investment Coordinating Board (BKPM) Bahlil Lahadalia said through the Ciptaker Bill, the government wanted to simplify and speed up the process of applying for environmental permits by large investors, as well as micro, small and medium enterprises (MSMEs).[24]

Basically, law and economics[25] are two different disciplines and have different scientific paradigms and traditions. The history and the different origins of the two disciplines are not an obstacle for experts to master. The development of the economic activity, in general, is always followed by the progress and development of values, ethics, and morals of each actor. The development of business ethics or ethics and morals that surround economic activities will bring prosperity and prosperity together. These ethics and morals will give birth to certain habits that will become the rules of the game in certain businesses.[4] Business is more focused on commercial business and the interaction between the actors, which is related to the company's economy/micro-economy. The characteristics of business mainly lie in the goal of achieving profit. Business activities include the production, consumption, and sale of goods and services for profit. Emerging economic law combines

private and public aspects and integrates various approaches. The following characteristics of economic law will further show the difference with business law, although they have similarities as the development of Commercial Law.[26] The general characteristics of economic law include public and private law, its scope is wider than civil law and commercial law, is a combination of civil, criminal, commercial, international law, state administration, state administration, so that it can be said to be an interdisciplinary, multidisciplinary legal science. and transnational, regulate in detail, balance economic interests, and public interests, and are influenced by the economic system.[27]

The Omnibus Law on Job Creation also has a negative impact on the ease of ownership of houses and land for foreign countries. One of the substances is regarding the arrangement of flats (Sarusun) units for foreigners. Article 136 of Law Number 11 of 2020 states that the right of ownership of the apartment unit, hereinafter referred to as the right of ownership of the condominium unit, is the right of ownership of the apartment unit that is individual apart with joint rights to joint parts, shared objects, and shared land. In Article 137 paragraph 1, condominium ownership rights can be granted to Indonesian citizens, Indonesian legal entities, foreign citizens who have permits in accordance with the provisions of laws and regulations, foreign legal entities that have representatives in Indonesia, or representatives of

### ***3.4. Legal Assurance for Investment Dispute Resolution***

Foreign countries and international institutions that reside or have representatives in Indonesia. Paragraph 2 of the article explains that condominium ownership rights can be transferred or transferred and guaranteed. Paragraph 3 explains that the ownership rights of an apartment unit can be guaranteed by being encumbered with mortgage rights in accordance with the provisions of the laws and regulations. Foreign citizens have the legal umbrella to own and control flats in the country. They are no longer given usufructuary rights, but property rights. With Indonesia's extraordinary potential, foreigners from everywhere will compete to have a condominium unit in Indonesia. In such conditions, the sovereignty of the nation is questioned: whether to side with foreigners or the Indonesian people themselves, which in fact in many cases still need the government's attention, including in the matter of meeting housing needs.

The Indonesian state has often faced foreign corporations in international arbitration institutions such as The International Center for Settlement of Investment Disputes (ICSID). Most of the arbitration lawsuits were filed by foreign corporations. The reason is that they feel disadvantaged by the existence of new regulations or policies taken by the government. For example, consider PT Newmont Nusa Tenggara's lawsuit against the Indonesian government in 2014 because Law Number 4 of 2009 concerning Mineral and Coal Mining requires companies to build smelters. Previously, Churchill Mining sued the Indonesian government over the issuance of dual mining area permits.

The protection of the interests of the owners of capital is not new, it has become a customary regime even since the colonial era. Investment protection has become a universal legal system of international treaties. However, there has been a change in its form to suit the times. Investment protection agreements did become known after World War II ended. The agreement was made to provide a guarantee of protection for the existence of foreign investment. Countries that invest outside their borders feel the need for protection. The reason behind the investment protection agreement is that the colonized countries became independent and then took over assets or nationalized them. Therefore, in investment protection agreements, capital owners usually ask for equal and fair treatment between foreign and domestic investors. Another clause that is usually contained in an investment protection agreement is the state's obligation to compensate corporations for wars, armed conflicts, revolutions, state emergencies, riots, or rebellions. Usually, the compensation is given in the form of compensation or reparation. In addition, the agreement also stipulates the protection from acts of nationalization. In the judicial settlement of disputes, the position of the state and corporations is equal.

Investment Dispute Settlement Patterns can be done through Litigation: Through district courts; State Administrative Court (TUN). Is a settlement pattern that occurs between the disputing parties through a court mechanism, the decision is binding and has several levels of dispute resolution and extraordinary legal remedies. The stages of dispute resolution are: In the event of a dispute between the government and investors, it must first be resolved through deliberation and consensus; If consensus is not reached, arbitration or alternative dispute resolution can be taken according to the law; In the case of a dispute between the

government and domestic investors, the settlement through arbitration is based on the agreement of the parties, if it is not agreed, it will be taken through court; In the case of a dispute between the government and foreign investors, the settlement through arbitration must be agreed upon by the parties. Settlement through Non-litigation: Through arbitration and alternative dispute resolution, namely: Consultation; Negotiation; Mediation; Conciliation; Expert assessment; Arbitration and Alternative Dispute Resolution are regulated in Law Number 30 of 1999.

Settlement of disputes between domestic investors and foreign investors, according to article 32 of Law Number 25 of 2007, the pattern of dispute resolution between the government and domestic investors is Deliberation and Consensus; Arbitration; Alternative dispute resolution (consultation, negotiation, mediation, conciliation, and expert judgment); court. Settlement of Foreign Investment Disputes, related to foreign investment: In accordance with the provisions of Article 32 paragraph (1) of Law Number 25 of 2007 concerning Investment. If there is a dispute in the investment sector between the government and the investor, the parties must first resolve the dispute through deliberation and consensus. If deliberation and consensus are not reached, the dispute resolution can be carried out through arbitration or alternative dispute resolution or courts in accordance with the provisions of the legislation. According to Article 32 Paragraphs (2) and (3) of Law Number 25 of 2007, the pattern for resolving disputes between the government and foreign investors is Deliberation and Consensus; International Arbitration.

Settlement of foreign capital disputes can be carried out according to the ICSID Convention, International Arbitration in question, namely: ICSID (International Center for the Settlement of Investment Dispute) which has been ratified by Indonesia through Law Number 5 of 1968 concerning the settlement of disputes between States and foreign citizens regarding investment. The mechanisms are: To enforce the ICSID Arbitration award, a statement from the Supreme Court is required, that the decision can be implemented; Before resolving disputes through the ICSID agency, the parties are required to go through legal and administrative remedies based on the provisions in force in Indonesia; Indonesian general courts have the authority to examine, decide and settle any investment disputes.

One classic example of such a case is the Indonesian government through the Investment Coordinating Board, versus the Kartika Plaza hotel investors (AMCO Asia corporation, Pan American development, PT Amco Indonesia). The Indonesian government revoked the PMA permit from AMCO Asia DKK, for violating the direct investment commitment that had been registered with BI of US\$ 3 million and only included US\$ 983,000. The government is not to blame for the revocation of the permit because it is in accordance with national law (Law No. 1/1967) moreover, the investor has been given three warnings. The government is blamed for vigilante action because vigilantism in taking over the management of the hotel by bringing the police and army to force the takeover, should have canceled the contract by asking the competent legal entity. For this action, ICSID imposed a fine to the Indonesian government of US\$ 50,000. The case of the dispute between the Government of Indonesia versus PT. NNT. Regarding the 10% share divestment obligation in 2006 and 2007, the government sued PT. NNT to the International Arbitration Institution through UNCITRAL (United Nations Commission on International Trade Law) in Jakarta.[28] Settlement through the State Administrative Court ("PTUN") can only be carried out if: there is no request to decide the dispute concerning foreign investment at the International Center for Settlement of Investment Disputes ("ICSID"), and the object of the dispute is a state administrative decision.[29] Hikmahanto Juwana in the ICSID article, Battlefield of Foreign Investors and the Government, describes that ICSID is an alternative dispute resolution forum that has two special characteristics, namely: First, ICSID only resolves disputes involving investment. Second, the litigants are investors and the government of a country where the investors invest their capital. What is disputed is the government's actions that harm foreign investors. However, if there is a dispute concerning foreign investment, the settlement can be done at the Administrative Court, as long as the object of the dispute is a state administrative decision.

Based on Article 1 point 9 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts, a state administrative decision is a written determination issued by a state administrative body or official containing legal actions state administration based on the prevailing laws and regulations, which are concrete, individual, and final, which have legal consequences for a person or civil legal entity.

Some examples of cases in which disputes between foreign investors and the government were resolved through the Administrative Court, including Decision of the Palembang State Administrative Court Number 26/G/2017/PTUN-PL. In this case, the Plaintiffs (PT. Brayan Bintang Tiga Energi and PT. Sriwijaya Bintang Tiga Energi) are foreign investment companies (p. 52). The object of the lawsuit is the Decree of the Governor of South Sumatra Number 724/KPTS/DISPERTAMBEN/2016 concerning Revocation of Exploration Mining Business Permits and Mineral and Coal Production Operations in South Sumatra Province dated November 30, 2016 (p. 5). The Plaintiffs considered that the Governor of South Sumatra was not authorized to revoke the Plaintiffs' mining business permits. The panel of judges of the Palembang Administrative Court then declared that they had the absolute and relative authority to examine, decide and resolve disputes related to the object of the lawsuit. The panel of judges then granted Plaintiff's claim in its entirety, declaring that the Decree of the Governor of South Sumatra Number 24/KPTS/DISPERTAMBEN/2016 was invalid. The governor of South Sumatra was ordered to revoke the decision.

Since Indonesia ratified the ICSID convention in 1968, there have been around (seven) cases where the Indonesian government has had disagreements with foreign investors. Based on ICSID data, Indonesia's seven disputes with foreign investors are Amco Asia Corporation (1981), Camex Asia Holding (2004), Kaltim Prima Coal (2007), Ravat Ali Rizvi (2011), Churchill Mining and Planet Mining Pty Ltd (2012), PT. Newmont Nusa Tenggara (2014), and Oleovest Pte Ltd (2016). In the settlement of disputes in the field of investment between the Indonesian government and foreign investors through ICSID, it is suspected that the impact of big losses on Indonesia. These losses are in the form of material and immaterial such as a long settlement period, the amount of costs is an issue that is no less important for us as a developing country.[30]

#### **4. CONCLUSION**

In the context of implementing investment, investors in Indonesia found approximately 100 pieces of legislation that regulate investment in Indonesia. Regulatory obesity, which is feared could reduce the attractiveness of investing. To overcome this legal problem, the government made a breakthrough by simplifying various laws and regulations into one law that adheres to the omnibus law system, namely Law Number 11 of 2020 concerning Job Creation, which is

expected to trigger, facilitate investors to invest at the same time. raise the rating of ease of doing business in Indonesia; create the widest possible employment opportunities for the people of Indonesia equally, with quality and welfare of workers in a sustainable manner to fulfill a decent living through Ease of Doing Business, Protection and Empowerment of Micro, Small and Medium Enterprises (MSMEs) and Cooperatives; Improvement of the Investment Ecosystem; Ease of Doing Business; Increased Protection and Welfare of Workers; and Central Government Investment and acceleration of national strategic projects; Simplification and harmonization of regulations and permits; Achievement of quality investment. The stipulation of the omnibus law in the UUCK which harmonizes and simplifies licensing to invest in Indonesia is expected to attract investment and immediately make Indonesia the main destination for foreign investment. This situation and condition should be followed by guarantees of legal certainty regarding the judicial settlement of investment disputes, investment, implementation of arbitration decisions The International Center for Settlement of Investment Disputes (ICSID) so that an increase in the competitive investment climate can be achieved to encourage national economic growth.

### **AUTHORS' CONTRIBUTIONS**

All authors have the same rights, obligations, and contributions to the proportion, use, and utilization of this paper.

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### **REFERENCES**

- [1] Tim Pengajar Mata Kuliah Hukum Ekonomi Fakultas Hukum Universitas Brawijaya, "Kumpulan Materi Kuliah Hukum Ekonomi.," Malang, 2006.
- [2] H. Putra, "Omnibus Law dalam Pembentukan Peraturan Perundang-Undangan dan Prespektif Negara Hukum Indonesia," <https://www.tribunnews.com>, 2019. .
- [3] J. Assiddiqie, "Konstitusi Ekonomi," *PT Kompas Media Nusantara*, Jakarta, p. 76, 2010.
- [4] S. R. Hartono, *Hukum Ekonomi Indonesia*. Malang: Bayumedia Publishing, 2007.
- [5] R. Suherman, *Pengantar Teori Ekonomi, Pendekatan Kepada Teori Ekonomi Mikro dan Makro*. Jakarta: Raja Grafindo Perkasa, 2006.
- [6] M. Chryshna, "Rancangan Undang Undang Cipta Lapangan Kerja," <https://kompaspedia.kompas.id/>, 2020. .
- [7] Tore Janson, "A Natural History of Latin." Swedia.
- [8] J. C. Waugh, *On the Brink of Civil War: The Compromise of 1850 and How It Changed the Course of American History*.
- [9] G. Matthews, *More American Than Southern, pada 29 January 1850. (Library of Congress)*. 1850.
- [10] S. S. A. D. & peta A. pasca-C. 1850. (Library of Congress)., *The Life of Stephen A. Douglas by William Gardner*.
- [11] R. Wirayudha, "Omnibus Law dari Masa Lampau," <https://historia.id/>, 2020. .
- [12] S. M. Arian Syahputra, S.H dan Sofian, "Peraturan Perundang-Undangan yang Telah Diatur di Indonesia," <https://www.kanigoro.com>, 2020. .
- [13] D. U. U. Pakar Hukum Tata Negara, Jimmy Z Usfunan, "Pakar Hukum Tata Negara." Bali, 2020.
- [14] "Presiden Joko Widodo didampingi Wakil Presiden Ma'ruf Amin memimpin rapat

- terbatas lanjutan pembahasan perkembangan penyusunan Omnibus Law Cipta Lapangan Kerja dan Omnibus Law Perpajakan di Kantor Presiden, Jakarta, Rabu (15/1/2020).” 2020.
- [15] G. S. Krutz, *Getting Around Gridlock: the Effect of Omnibus Utilization on Legislative Productivity*. 2000.
- [16] A. Hartarto, “Menteri Koordinator Bidang Perekonomian menjelaskan hal tersebut di Menara Kadin, Jakarta, Rabu (18/12-2019).” Jakarta.
- [17] R. Alika, “Lewat Omnibus Law, Pembentukan Perusahaan & Izin UMKM Bakal Dipermudah Airlangga Memastikan, Pengusaha Tidak Akan Dibatasi Dengan Persyaratan Modal Minimum.” *katadata*, 2019. .
- [18] W. M. K. S. Nazara, “Memberikan penjelasan saat ditemui di Gedung Kementerian Keuangan, Jakarta, Rabu (18/12-2019).” Jakarta, 2019.
- [19] A. O. Victoria, “Omnibus Law Diharapkan Mampu Dorong Investasi di Sektor Properti,” <https://katadata.co.id>, 2019. .
- [20] “Direktur Penyuluhan, Pelayanan, dan Hubungan Masyarakat Ditjen Pajak Hestu Yoga Saksama, memberikan penjelasan di Hotel Millenium, Jakarta, Rabu (18/12-2019):” .
- [21] “Menteri Koordinator bidang Perekonomian Airlangga Hartanto, didampingi Menteri Agraria dan Tata Ruang Sofyan Djalil, Wakil Menteri Keuangan Suahasil Nazara, dan Ketua Kadin Rosan Perkasa Roeslani (kanan), memberikan keterangan kepada wartawan usai Rapat K.” .
- [22] R. Alika, “Pemerintah Berharap Omnibus Law Dongkrak Ekonomi Tumbuh hingga 6%, Menteri Agraria memperkirakan, omnibus law berkontribusi 1% terhadap pertumbuhan ekonomi Indonesia, Jakarta, 20 Desember 2019,” 2019. .
- [23] “Muhammad Baiquni, Peneliti Universitas Gadjah Mada (UGM), ahli studi pariwisata, memberikan pernyataan di Jakarta, Senin (31/8/2020). Beritasatu.com – RUU Cipta Kerja Dukung Pertumbuhan UMKM di Sektor Pariwisata, Jakarta, Senin, 31 Agustus 2020 | 22:56 WIB.”
- [24] “Ketua Badan Legislasi (Baleg) DPR sekaligus politisi Partai Gerindra, Supratman Andi Agtas sepakat dengan pemerintah,” kata Supratman dalam keterangannya, Rabu (5/8/2020); Staf Ahli Kementerian Koordinator Perekonomian Elen Setiadi; Kepala Badan Koordinas.” .
- [25] *Ilmu ekonomi adalah bagian dari ilmu sosial. Istilah Ekonomi sendiri lahir di Yunani, dan berasal dari bahasa Yunani pula “oikos nomos” yang sebenarnya sulit diterjemahkan secara tepat. Barat menyederhanakannya menjadi “oikos” artinya rumah tangga, dan “n. .*
- [26] S. B. dan Dahlan, *Pokok-Pokok Hukum Ekonomi dan Bisnis*. Bandung: PT Citra Aditya Bakti, 2000.
- [27] T. M. Lubis, *Hukum dan Ekonomi*, 1992. Jakarta: Pustaka Sinar Harapan, 1992.
- [28] “<https://insertpoin.blogspot.com/2016/05/pe-nyelesaian-sengketa-penanaman-modal.html>.”
- [29] *Rabu, 13 May 2020, Wewenang PTUN Menyelesaikan Sengketa Penanaman Modal Asing, Oleh: Dr. Flora Dianti, S.H., M.H. Bisnis & Investasi, LKBH-PPS FH UI. .*
- [30] “<https://www.kompasiana.com/evita40556/5cbf505495760e67554e4bf8/peran-icsid-sebagai-lembaga-penyelesaian-perselisihan-penanaman-modal-asing>.”