

Omnibus Law Legal Certainty in the Perspective of Legislation

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ABSTRACT

In the midst of the Covid-19 pandemic, the government passed Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (Law Number 11-2020) which is expected to improve the Indonesian economy during a pandemic. This law itself is intended to create the broadest possible job opportunities for the people of Indonesia equally. This type of research in legal research is normative or doctrinal legal research. There is legal uncertainty when the Government of the Republic of Indonesia. This is due to non-compliance with the drafting of laws and regulations so that what is stated in the working copyright law should be null and void. In the law, there is no regulation regarding creating an omnibus law for the formation of laws and regulations.

Keywords: *Omnibus law, Legal certainty.*

1. INTRODUCTION

During the Covid-19 pandemic, the government then passed Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (Law No. 11-2020) which is expected to improve the Indonesian economy during a pandemic by facilitating the requirements for investors to invest. This law itself is intended to create the broadest possible employment opportunities for the people of Indonesia equally. This is done in order to fulfill a decent living. With the law related to job creation, there is a mandate in the form of simplification and harmonization of regulations and permits and the achievement of quality investments. Besides these benefits, the omnibus law itself also removes several provisions, such as the provisions for contract workers, which in the previous law were The Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower (Law No. 13-2003) states that the contract period for an in-person work is a maximum of 2 (two) years and can be extended by 1 (one) year. 11-2020, this provision is amended, and there is no longer any limit on when the worker can be appointed as a permanent worker. Of course, if viewed from the point of view of the benefits, the omnibus law has not been able to provide direct benefits to the community because this pandemic has caused many companies to lay off workers unilaterally. Subsequently, various government regulations were issued to implement Law no. 11-2020 where the most impacting on workers or laborers is Government Regulation of the

Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment (PP No. 35-2021) and the Government of the Republic of Indonesia Indonesia Number 36 of 2021 concerning Wages (PP No. 36-2021). Law no. 12-2011 only regulates government regulations in lieu of laws. Law no. 11-2020 tends to eliminate such an academic text, to how it is disseminated by accepting public participation. The impact is a lot of overlapping rules, either at the same hierarchical level or with regulations below it. So it requires the concept of omnibus law in the legislation. Harmonization of statutory law from common law: omnibus law is essential in the development of law in Indonesia. Omnibus law can lead to an umbrella law because it regulates thoroughly and has power over other rules.[1]

The background to the emergence of the idea of omnibus law is the complexity of investing in Indonesia. These complications arise in several ways, namely licensing, taxation, land acquisition, and other aspects related to investment. The presence of the omnibus law is expected to make it easier for investors to invest. The benefits of investment for the state are (1) obtaining new capital to help the government build infrastructure, (2) creating job opportunities, (3) progressing in specific fields, (4) increasing state income, and (5) protecting the state.[2]

On this basis, the research question arises, how is the correlation between omnibus law and the formation of laws and regulations in Indonesia?

2. METHOD

This research was conducted through a normative juridical method with an analytical approach and a statutory approach. In the method of approaching legislation, researchers need to understand the hierarchy and principles in the legislation.[3] The hierarchy of laws and regulations is needed as a perspective in viewing a legal product, so it is hoped that there will be no overlap between a legal product and other legal products in the hierarchical system of laws and regulations in Indonesia. It is undeniable that the issuance of the omnibus law has implications for several regulatory areas, which incidentally change the previous arrangement in a separate statutory regulation.

3. RESEARCH AND DISCUSSION

There is a principle in Article 5 (Law No. 12-2011):

- a. A clear goal (clarity of purpose).
- b. Created by a state agency or authorized official. Can be canceled if not authorized (appropriate forming institution or official).
- c. Pay attention to the right content material by the type and hierarchy of the Laws and Regulations (compatibility between the type, hierarchy, and content material).
- d. currents consider the effectiveness of these laws and regulations in society, both philosophically, sociologically, and juridically (can be implemented).
- e. Made because it is needed and helpful in regulating the life of society, nation, and state (utility and usability).
- f. Meet the technical requirements for the preparation of laws and regulations, systematics, choice of words or terms, and legal language that is clear and easy to understand so as not to cause various kinds of interpretation in its implementation (clarity of formulation).
- g. Planning, preparation, discussion, ratification or determination, and promulgation are transparent and open. So that the whole community has the opportunity to provide input (openness).

And Article 6 of Law no. 12 of 2011 regarding mandatory cargo materials:

- a. Protect to create community peace (protection).
- b. Reflecting the protection and respect for human rights and the dignity and worth of every citizen and resident of Indonesia proportionally (humanity).
- c. Reflecting the nature and character of the pluralistic Indonesian nation while maintaining

the Unitary State of the Republic of Indonesia (nationality).

- d. Reflecting consensus (family) deliberation.
- e. Taking into account the interests of the entire territory of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia (archipelago).
- f. Paying attention to the diversity of SARA (Bhinneka Tunggal Ika).
- g. Reflecting proportional justice (fairness).
- h. Does not contain different things based on background, among others, religion, ethnicity, race, class, gender, or social status (equality in law and government).
- i. Order and legal certainty.
- j. Balance, harmony, and harmony.[4]

Concerning the material principle of the content of the legislation, it can be compared with IC Van der Vlies's thinking that setting clear goals, imperatives, proper organs, can be implemented, consensus, explicit and systematic terminology, recognizable, legal equality, governance, often Sometimes it is necessary to exercise discretionary power for individual law enforcement and readiness to respect expectations.

The government is active in community activities, especially in carrying out public service functions (bestuurszorg). Just as the court may not refuse a case submitted because of no regulations, the government should not refuse to provide public services because no regulations govern it. The government is obliged to play an active role in assessing a problem that exists in society. Not only that but the government is also required to solve it quickly or in a short period. The scope of discretionary authority is, first, decision-making or discretionary action based on an existing choice. Second, the making of every decision or action of a government official is based on a legal vacuum, or there are no rules. Third, every decision or action taken by government officials must be based on a legal norm that is unclear, incomplete, and contradictory.

Moreover, fourth, making every decision or action of a government official is based on a government stagnation that interferes with government administration. Based on the above, the scope of discretion is only limited to the existence of choice. There are no rules, it is not clear, and there is stagnation of government. If these four elements are not present, it cannot be said to be discretionary authority or invalid based on discretion. Progressive law wants to free itself from all types of liberal law. Progressive law does not act a priori to liberal law because things can be taken from liberal law, but many things must be rejected.

Progressive law contains a very strong moral content, does not want to make the law a technology with no conscience but a moral institution. At each stage in the legal journey, works and decisions are made to achieve the legal ideals made by the legislature, judiciary, and executive. Every decision leads to final justice.

One example of a figure who can be said to apply progressive law is former Supreme Court Justice Bismar Siregar, who always in his decisions thinks about justice above the law. This caused Bismar Siregar to be known as a controversial judge because his decisions were more listened to and followed his conscience than the result of reading the law. MR Sidabutar was brought before the trial because he did not want to be responsible for his actions against the victim-witness K Boru Siahaan. The defendant was tried in court on cumulative charges of committing obscene acts with minors (Article 293 of the Criminal Code), the second was fraud (Article 378 of the Criminal Code), and the third was causing feelings of displeasure (Article 335 of the Criminal Code). Bismar Siregar, through his decision, expanded the word "goods," not only an object that is a tangible object but also a service. In this case, Bismar expands that the word "goods" includes the female genitalia, namely the victim. This refers to the Tapanuli language that goods are equated with "bonda" (in the Tapanuli language). In the Tapanuli area, the word "Bonda" is often used to refer to the genitals. The logic of the interpretation of Article 378 is that the element of "handing over the goods due to persuasion" is considered fulfilled in case the victim surrenders the honor/shame due to the persuasion of the defendant so that the defendant is considered to have violated the provisions as stated in Article 378 of the Criminal Code. This decision is debatable and provides a new thought in the world of law (progressive law), although it was eventually overturned at a higher level. However, this thought has become an idea for the direction of the development of legal science in Indonesia.

The law that is very concerned about by progressive law is to stick to the words or sentences in the legal text. This method is widely legalized in the legal community (maintaining legal certainty).

Laws are texts and remain as they are before being acted upon by the legislature. It should also be noted that progressive law emphasizes the willingness to free oneself and understand the status quo. The idea of self-liberation is related to a person's psychological factor, namely courage. The inclusion of the courage factor will widen the way to act in the law, namely prioritizing rules and behavior.

In the end, implementing progressive law requires empathy and concern for the suffering experienced by a country. The interests and welfare of the people must be the point of orientation and the ultimate goal of administering the law. Moreover, the change process is no longer centered on regulations but on the creativity of legal actors to actualize the law in a suitable space and time.[5]

Discretionary authority can only be exercised in certain circumstances, for government officials can determine and interpret circumstances requiring discretionary authority. One of the functions of discretionary authority is to complement the principle of

legality, namely the legal principle that determines that every government action must be based on law. Legislation is very unlikely to be able to regulate the overall actions that exist in society. This is especially true in solving a fundamental and sudden problem. For that, the government must act quickly and solve it. Therefore, the government is given discretionary authority as a complement to the formal legality principle. [6]

However, in discretionary authority, government officials are often misinterpreted as having abused their authority. Government officials are easily subject to criminal provisions, threatening to punish officeholders who abuse their authority. Whereas in the theory of administrative law, officials only act to represent the authority of the office. Government officials who use discretionary authority, as long as this is carried out within their formal authority or in the context of carrying out office authority, will all consequences be the position's responsibility. For this reason, it is not appropriate for government officials to be threatened with crime easily in carrying out their authority.

A government that acts beyond its formal authority, it can be said that the government's actions contain elements of maladministration, and the responsibility imposed is a personal responsibility. A policy carried out by the government is considered deviant if there is an element of abuse of authority and arbitrariness. In the Dutch wet AROB, the policy will be considered arbitrary if the policy is "kennelijk onredelijk" (obviously unreasonable). So what are the limits of government action that are still in its formal environment? Of course, this becomes a confusion. If this is left unchecked, government officials will not have the courage to take policies so that public services will be hampered.[7] As part of the world community, Indonesia is bound by the agreements contained in the legal instruments of international treaties. In such circumstances, norms that have become habits will become enforceable in a country. In this context, Indonesia, when there was an omnibus law, had fulfilled the state entity in fulfilling the rights and obligations of its citizens. What is meant by this is how its citizens are guaranteed a work-life to their social life.[8]

4. CONCLUSION

The existence of an omnibus law makes a fundamental change in the formation of legislation in Indonesia. The omnibus law should not be carried out when no regulations are governing it. Then the way to overcome this is to focus on changes to Law no. 12-2011, or the president can form a government regulation in lieu of a law. This is important because the essence of omnibus law is legal justice.

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