

Application of the Omnibus Law Number 11 of 2020 Concerning Work Creation in the Field of Business Licensing: Application and Implications

Gunardi Gunardi^{1,*} Iyan Sentosa Zalukhu¹

¹Faculty of Law, Universitas Tarumanagara, Jakarta, Indonesia

* Corresponding author. Email: gunardi@fh.untar.ac.id

ABSTRACT

Business licensing arrangements in Indonesia have been changed several times with the aim of continuously improving the investment climate in Indonesia. The most recent change is the enactment of Law Number 11 of 2020 concerning Job Creation. The law was made using the Omnibus Law method. The problem faced is how the regulation of business licensing is regulated in the Omnibus Law on Job Creation, and what are the implications of the enactment of the law. The author examines the problem by using normative legal research methods. Prior to the enactment of the Omnibus Law on Job Creation, business permits granted to business actors were regulated based on permits or based on permits, but after the enactment of the omnibus law Law Number 11 of 2011 concerning Job Creation, it changed to risk-based. This means that business licensing is no longer regulated based on the type of license, but based on the level of business risk that will be carried out by business actors. Another difference is that Law Number 11 of 2020 concerning Job Creation was made using the method of establishing the omnibus law, a method of establishing legislation that revises several laws at once.

Keywords: Business Licensing, Omnibus Law, investment

1. INTRODUCTION

Indonesia is a state of law.[1] The juridical or constitutional basis that the Indonesian state is a state of law is clearly reflected in several articles in the 1945 Constitution, namely:

- 1) Article 1 paragraph (3) of the 1945 Constitution states that: The State of Indonesia is a state of law.
- 2) Article 27 paragraph (1) states that: all citizens are equal before the law and government and are obliged to uphold the law and government without exception

Law has a very big role in social life in the midst of society. The great role of law can be seen from order, peace and the absence of tension in society, because the law regulates, determines rights and obligations and protects individual interests and social interests.[2] There is no country that does not have a goal.[3] In terms of the purpose of the state, the state has the duty and responsibility not only to protect the entire Indonesian nation and the entire homeland of Indonesia, but also to promote public welfare, educate the nation's life, eternal peace and social justice. The state also has a basis and a goal at the same time, namely realizing justice for all Indonesian people.[4] To achieve this goal, of course, it is necessary to have laws and regulations that regulate various fields, including laws and regulations in the

economic, health, social, political and so on. However, the number of laws and regulations does not always have a good impact on the implementation of a country's policies, it often becomes an obstacle because there are also many overlapping laws and regulations.

Global competition requires Indonesia to participate in the competition in order to advance the country by bringing in a lot of foreign investment that can drive the pace of the economy in Indonesia. We should be grateful that Indonesia is a country that is blessed with abundant natural resources, but this is not matched by competent human resources. This causes Indonesia to not be able to manage its natural resources independently and sometimes still depends on exports and imports. Therefore, it is very important for the country to present a healthy investment climate in order to encourage a healthy investment climate in order to encourage the smooth production process. The presence of foreign investment, as well as domestic investment is very necessary but in the process there are still many obstacles such as procedural difficulties that must be passed before investing, the complexity of licensing and many overlapping regulations between one law and another or regulations. Central government with Regional Government Regulations. This creates confusion for investors and of course becomes a minus point for Indonesia because foreign investors will be more interested in investing in countries that can provide legal

guarantees and have simpler procedures. To anticipate this, the government took the initiative to make a law that was made to target major issues by revoking or amending several scattered laws, which were intended to streamline and simplify regulations or regulations in terms of numbers to make them more targeted. The government realizes this through the formation of a law that uses the omnibus law method.[5]

At the beginning of the birth of the Omnibus law discourse, questions arose from various parties. Not only the public, legal experts, even government officials are asking what the Omnibus law really means. There are those who say that omnibus law is a type of legislation, both laws and government regulations in lieu of laws, others say that omnibus law is a universal sweep law or superpower law or superpower and superpower law.[6]

Indeed, omnibus law is a method or technique for formulating laws and regulations that have the following characteristics: (1) multi-sectoral or consisting of many sectors with the same theme; (2) consists of many articles, due to the many sectors covered; (3) consists of many laws and regulations which are collected in one new legislation; (4) independent or independent, without being bound or at least bound by other regulations; and (5) negate or revoke part and/or all other regulations. Omnibus law is not a type of statutory regulation as is the type of legislation, for example laws, government regulations in lieu of laws, government regulations, presidential regulations, or even regional regulations.[7] Omnibus must be seen as a method or technique in the formation of laws in the form of laws and regulations relating to efforts to pour policies in the form of laws that are binding on all subjects in state legal traffic.[8]

The term Omnibus Law was referred to by Indonesian President Joko Widodo (Jokowi) in his first speech after being sworn in as president for the second time in October 2019. Jokowi said that the omnibus law will simplify regulatory obstacles that are often convoluted and lengthy, including in terms of processing business permits which are complicated and inefficient. The government claims that the omnibus law on job creation will simplify business licensing arrangements.[9] The omnibus law that will be made by the Indonesian government consists of two major laws, namely the Job Creation Law and the Taxation Law. In accordance with the title, in this study the author will only mention or highlight the Job Creation Act.[10]

On October 5, 2020, the Draft Omnibus Law on Job Creation was ratified by the House of Representatives (DPR) through a plenary meeting, then on November 2, 2020 it was signed by President Joko Widodo and on the same date it was promulgated so that it became Law Number 11 Year 2020 About Job Creation.[11]

From its formulation until it was finally ratified, the Omnibus Law on the Job Creation Law caused a lot of polemics among the public because of the many changes that brought pros and cons. Business licensing is one of the fields that has undergone many changes and is different from the previous arrangement. The previous arrangement based on Article 4 of Government Regulation Number 24 of 2018 concerning Electronically Integrated

Business Licensing Services stated that business licensing was determined based on the type of license (permit-based), namely business licenses and/or commercial or operational permits.[12] Meanwhile, in the Job Creation Law, business licensing is determined based on the level of risk (risk-based) and the rating of the business scale of business activities. Determination of the level of risk and rating of business scale is obtained based on an assessment of the level of danger and the potential for hazards to occur.[13] Based on the reasons stated in the background, the problem can be formulated as follows: How are the arrangements regarding business licensing in Indonesia before and after the enactment of the Omnibus Law Law Number 11 of 2020 concerning Job Creation? And what are the implications of the enactment of the Omnibus Law Law Number 11 of 2020 concerning Job Creation in the field of business licensing?

2. METHOD

To complete the writing of this research so that the objectives are more directed and accountable, a research method is used which is defined as a path that must be taken, then becomes an investigation or research takes place in a certain way The research method used by the author to complete the research is as follows: The author uses a normative legal research method, which is an activity of looking for how, not just looking for. As an activity to find out how, legal research is carried out to solve the legal issues faced. This is where the ability to identify legal problems is needed, perform legal reasoning, analyze the problems encountered and then provide solutions to these problems.[14] In legal research, there are several approaches. With this approach, researchers will get information from various aspects regarding the issue that is being tried to find answers to. In this study, the authors use a legal approach and a comparative approach. The legal approach is carried out by examining the laws and regulations and regulations related to the legal issues being handled.[15] While the comparative approach is carried out by conducting a comparative study of the law from a certain time with the law from another time.[16] In other words, in this study, the comparative legal approach is carried out by conducting a comparative study of the regulation on business licensing in Indonesia before and after the enactment of Law Number 11 of 2020 concerning Job Creation.

Legal research sources can be divided into research sources in the form of primary legal materials and secondary legal materials. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions. The primary legal materials from this research include:

- 1) 1945 Constitution
- 2) Law Number 32 of 2009 concerning Environmental Protection and Management

- 3) Law Number 11 of 2020 concerning Job Creation
- 4) Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services
- 5) Government Regulation Number 5 of 2021 concerning Implementation of Risk-Based Business Licensing.

3. DISCUSSION

3.1. Omnibus Law on Job Creation and Changes in the Concept of Business Licensing Regulations

Omnibus law is not a kind of statutory regulation, but only one of the methods used in the formation of a statutory regulation. This is the method used in the formation of the Job Creation Act. The word "omnibus" comes from the Latin word "omni" and "bus" from English. Originally, this word was used in French to mean a long horse-drawn vehicle that carried people along the main streets of Paris. To be precise, in 1828, a businessman named Stanislas Baudry created a horse-drawn transportation business to serve the Parisians in Nantes using two carriages, each of which could accommodate 16 people. The horse bus vehicle was the first to be referred to as an omnibus.

After that, the term "omnibus" was only widely known and then used also in the United States and Canada, but with the meaning of "for all" or "covering all". For example, in Canada, a new law was created which accommodates and regulates the material provisions derived from several laws at once which are then associated with the term "omnibus". The use of the word "omnibus" is also used in the United States to mean all or all of the above. For example, for arrangements regarding the government budget in the United States. Since the first, the regulation in the law, unlike the State Budget Law (UU APBN) in Indonesia which is integrated, is carried out individually by each ministry and state institutions with their respective laws. Therefore, the APBN Law is one example that is often used to explain what an "omnibus law" is with the example of an "omnibus spending bill". Its contents include all budget plans and all expenditures financed by the state, and require congressional approval for their legitimacy in the form of an omnibus bill.

Therefore, this Omnibus Law is a technique or method of forming new laws which was initially associated with the need to make changes to several existing laws at once. The law that is considered the first to have been enacted in this way is the Canadian Railways Act of 1888 which combined two treaties that were in effect as law at the time into a single draft of a new law which was later associated with the term omnibus. Since then, one by one the practice of omnibus law in Canada has continued to emerge, and each time it appears there are pros and cons that are voiced, but not as loudly as in the United States. In the experience in the United States, the pros and cons of the

practice of drafting the omnibus law are harsher, resulting in the emergence of a ban in 42 respective states.

However, apart from the pros and cons, since it began to be discussed as a legal term and legislation, omnibus law is indeed understood as a method or technique of forming laws with the intention of making changes at once to several existing and previously applicable laws.

Whereas in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia, one of the goals of the Republic of Indonesia is to promote public welfare and educate the nation's life. The mandate implies that the state is obliged to meet the needs of every citizen through a government system that supports the creation of public service delivery, which in this paper is specifically for public services in the field of business licensing.[17] The legal provisions regarding business licensing in Indonesia have been amended several times. The most recent change is the enactment of the Omnibus Law Law Number 11 of 2020 concerning Job Creation, which is further regulated by implementing regulations, namely Government Regulation Number 5 of 2021 concerning Implementation of Risk-Based Business Licensing, which revokes Government Regulation Number 24 of 2018 (PP 24/2018) concerning Electronically Integrated Business Licensing Services. In PP 24/2018, business licensing in Indonesia is regulated based on the type of permit or in other words, permit-based.

Considering that business licensing is the main key to a country's economic growth and investment will determine the progress of a country, the Indonesian government has taken the initiative to overhaul business licensing arrangements.[18] The concept of permit-based business licensing is considered to be very convoluted and the process takes a very long time in its management, so the government submitted a Draft Law on Job Creation to the DPR which was eventually ratified into Law Number 11 of 2020 concerning Job Creation, which overhauled many arrangements. business license.

3.2. Risk Analysis in Risk-Based Business Licensing

Risk-based business licensing is carried out based on the determination of the level of risk and the rating of the scale of business activities including Micro, Small, and Medium Enterprises (MSMEs) and/or large businesses. The determination of the level of risk is carried out based on the results of the risk analysis. Later, this level of risk will determine the type of business license that must be fulfilled by business actors. The risk analysis is carried out by the central government through:

- 1) Identification of business activities
- 2) Hazard level assessment. The hazard level assessment is carried out on aspects of health, safety, environment, and/or utilization and management of resources by taking into account the type, criteria, and location of business activities as well as limited resources, and/or risk of volatility.

- 3) Assessment of potential hazards. This assessment consists of: almost impossible to happen; unlikely to occur; likely to occur; or almost certain to happen.
- 4) Determination of risk level and business scale rating. This determination is obtained based on an assessment of the level of hazard and the potential for hazards to occur.
- 5) determination of the type of business license. Based on the assessment as mentioned above, business activities are classified into business activities by:
 - a. Low risk level
The business license for this business activity is in the form of a Business Identification Number which is the identity of the business actor as well as the legality for carrying out business activities. Especially for Micro and Small Enterprises, Business Identification Number also applies as an Indonesian national standard and a statement of halal assurance.
 - b. Medium risk level
This risk level is divided into medium low and medium high risk levels. Business licenses for business activities with medium low and high risk levels are in the form of NIB and standard certificates. It should be noted that standard certificates issued for business activities of medium, low and high risk levels are different. For business activities with medium high risk level, new standard certificates can be issued after the NIB is issued and business actors make a statement through the OSS system, based on the results of verification of compliance with standards for business activity implementation by business actors.
 - c. High risk level
Business permits for this business activity are in the form of NIB and permits. Both are business licenses for business actors to carry out operational and/or commercial business activities. The permit in question is the approval of the central government or regional government for the implementation of business activities that must be fulfilled by business actors before carrying out their business activities. In the event that business activities with a high level of risk require the fulfillment of business standards and/or product standards, the central or regional government according to their respective authorities shall issue certificates of business and product standards in accordance with verification of compliance with standards.

3.3. Omnibus Law on Job Creation in violation of Law number 12 of 2011 Concerning the Formation of Legislation

According to Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation, there are several stages of

legislation, namely planning, preparation, discussion until determination and promulgation. In the formation of the omnibus law on job creation, the government did not follow these stages from the start. The process of drafting this law is distorted because it is carried out in a closed manner and only involves certain groups. In addition, other weaknesses during the discussion process are the lack of involvement of experts and the lack of research. The non-involvement of the Regional Representative Council intensively was also questioned. This shows that the regional instruments to fight for their rights are very weak, even though the Omnibus Law on Job Creation involves many regional interests.

According to Ahmad Redi, in one of the Forum Group Discussions (FGD) which was broadcast live on the YouTube channel, "The Center for Data Studies and Analysis, the Omnibus Law on Job Creation was problematic in two stages, namely in the preparation and discussion process. According to him, the discussion was carried out quickly and did not involve the public massively. The public is involved, but only as spectators through television or other media. Openness and public participation are the main keys for the effectiveness of the law. This means that if the public is not involved, the law will become an ineffective law. Because if the public is not involved, then automatically they do not know how their legal needs are accommodated in the law.

The Director of the Jakarta Legal Aid Institute, Arif Maulana, regretted the steps taken by the government and the Indonesian House of Representatives to quickly discuss the Omnibus Law on the CiptaKeja Bill. Because on Saturday (3/10-2020) night, the Job Creation Bill was brought to the plenary session of the Indonesian House of Representatives to be passed into law on Thursday (8/10-2020). Arif also highlighted that the process of discussing the Omnibus Law Bill on Job Creation was running quietly. According to him, the discussion process was carried out without involving elements of the workers and affected communities.

Article 96 of Law Number 12 of 2011 concerning the Establishment of Legislations regulates how the public can participate in the formation of Legislations, as follows:

Paragraph (1):

The public has the right to provide input orally and/or in writing in the Formation of Legislation.

Paragraph (2):

Verbal and/or written input as referred to in paragraph (1) can be made through:

- a. public hearings;
- b. work visit;
- c. socialization; and/or
- d. seminars, workshops, and/or discussions.

Paragraph (3):

The community as referred to in paragraph (1) is an individual or group of people who have an interest in the substance of the Draft Legislation.

Article (4):

To facilitate the public in providing input orally and/or in writing as referred to in paragraph (1), each Draft Legislation must be easily accessible by the public.[20]

The process of drafting and discussing the omnibus law on job creation, which is the legal umbrella for risk-based business licensing, in addition to violating the principle of openness, also violates the article mentioned above.

3.4. Implications of the Enactment of the Omnibus Law Number 11 of 2020 concerning Job Creation in the Field of Business Licensing

The process of forming the Omnibus Law on Job Creation is carried out quickly and is called hasty. As a result, this Law does not regulate in detail each cluster in it, so that derivative regulations are needed that regulate more in detail and clearly, so the derivative regulations of the omnibus law on job creation are issued, namely 47 Government Regulations and 4 Presidential Regulations. The implementing regulations that were first completed were 2 Government Regulations related to Investment Management Institutions, namely Government Regulation Number 73 of 2020 concerning Investment Management Institutions and Government Regulation Number 74 of 2020 concerning Initial Capital of Investment Management Institutions. Furthermore, 49 implementing regulations were also completed, consisting of 45 PPs and 4 Presidential Regulations which were prepared jointly by 20 ministries/agencies according to their respective clusters. The ministries/agencies are: Coordinating Ministry for Economic Affairs, Ministry of Manpower, Ministry of Environment and Forestry, Ministry of Finance, Ministry of Agrarian and Spatial Planning/National Land Agency, Ministry of Public Works and Public Housing, Ministry of Agriculture, Ministry of Maritime Affairs and Fisheries, Ministry of Energy and Mineral Resources, Ministry of Industry, Ministry of Trade, Ministry of Transportation, Ministry of Health, Ministry of Cooperatives and Small and Medium Enterprises, Ministry of Law and Human Rights, Ministry of Home Affairs, Ministry of Villages, Development of Disadvantaged Villages, and Transmigration, Ministry of Religion, Ministry of Communication and Informatics, and Government Goods/Services Procurement Policy Institute.

Substantially, the implementing regulations are grouped into 11 regulatory clusters, namely:

- 1) Licensing and Sector Business Activities: 15 Government Regulations
- 2) Cooperatives and MSMEs and Village Owned Enterprises
- 3) Investment: 5 government regulations and 1 presidential regulation
- 4) Employment: 4 Government regulations
- 5) Fiscal Facility: 3 Government regulations
- 6) Spatial Planning: 3 Government Regulations and 1 Presidential Regulation

- 7) Land and Land Rights: 5 Government Regulations
- 8) Environment: 1 Government regulation
- 9) Construction and Housing: 5 government regulations and 1 presidential regulation
- 10) Economic Zone: 2 Government regulations Peraturan
- 11) Government Goods and Services: 1 Presidential Regulation

Coordinating Minister for Economic Affairs Airlangga Hartarto said that the basic things regulated in the government regulation and presidential regulation were changes to ease and certainty in licensing and expansion of fields for investment, in line with the aims and objectives of the Job Creation Act. Of the 51 implementing regulations, there is one regulation that technically regulates business licensing, namely Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing.

3.5. The Ministry of Investment was formed

According to the chairman of Commission VI of the House of Representatives, Faisol Riza, the formation of the Ministry of Investment is a follow-up to the derivative of the Omnibus Law on Job Creation, namely Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector, which states that the function and authority of investment lies with an institution at the Ministry level. The investment ministry was previously the Investment Coordinating Board, but after undergoing a change in the nomenclature the Investment Coordinating Board eventually became the investment ministry. Upon the change in the nomenclature, President Joko Widodo immediately appointed the head of the Investment Coordinating Board, Bahlil Lahadalia, as minister. A number of people hope that the Ministry of Investment can encourage investment performance and labor absorption in Indonesia. Increased investment, both in the form of direct and indirect investment, is important because it is one of the pillars of the national economy.

4. CONCLUSION

Based on the analysis above related to the research that has been done, the author concludes as follows:

1. The arrangement of business licensing in Indonesia before and after the enactment of the work copyright omnibus law is very different. The most fundamental difference lies in the licensing basis. Prior to the work copyright omnibus law, business licenses in Indonesia were granted to business actors based on the type of license (permit-based), namely business licenses and/or commercial or operational permits. Meanwhile, in the omnibus law, the regulation of business licensing granted to business actors is determined based on risk or based on risk. The risk level is divided into four groups, namely low risk, medium low risk, medium high risk and high risk.

Not only that, as the legal basis for risk-based business licensing, Law Number 11 of 2020 concerning Job Creation (Omnibus Law on Job Creation) was formed using the Omnibus Law method, which is a method of establishing laws and regulations that revise several laws at once. The total page of the omnibus law on job creation is 1,187 pages, with 11 clusters that amend 82 laws. The process of establishing the Omnibus Law on Job Creation is carried out quickly and does not involve the public so that it violates Article 96 of Law Number 12 of 2011 concerning the Establishment of Legislation in conjunction with Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning Formation of Legislation.

2. The Omnibus Law on Job Creation demands the birth of derivative rules as implementing regulations. The derivative regulations of the Omnibus Law on Job Creation are 51 regulations, consisting of 47 Government Regulations and 4 Presidential Regulations. The regulation that specifically regulates business licensing is Government Regulation Number 5 of 2021 concerning the Implementation of Risk-based Business Licensing. As part of the follow-up to the derivative of the omnibus law on job creation, namely Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector, an investment ministry was formed which is expected to support investment in Indonesia.

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