



Retrospecting the Legal Implications of Omnibus Law on Job Creation to the Decentralization

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Abstract. The existence of the Job Creation Law in essence not only has an impact on the community, but also on the implementation of regional autonomy. The emphasis on regional autonomy is strongly influenced by central policies that can change the scope of regional authority, including the job creation law. The omnibus law of the Job Creation Law is a “homework” for each region to respond to the demands that have been regulated through the law. The existence of the Employment Creation Law has brought so many influences and impacts on the administration of local government, including the regional regulations which are the rules and forms of regional policies in the context of implementing decentralization. Therefore, this research is needed to find the legal implications of the Job Creation Law on the implementation of decentralization. This study aims to regulate the direction of local government legal policies in order to meet legal demands on regional regulations after the issuance of the Job Creation Law. This study uses a conceptual approach and laws and regulations, which are expected to be able to produce a concept of the legal implications of the omnibus law of the Job Creation Law on the implementation of decentralization.

Keywords: omnibus law · decentralization · legal implications

1 Introduction

According to the 1945 Constitution, two core values underlie the practice of local autonomy in Indonesia. The value of unity and the value of decentralization. A fundamental unified value is embodied in the view that Indonesia has no governmental institutions other than the state. In other words, the inherent sovereignty of the Indonesian people, nation and republic is not shared between local or local government agencies. The core value of decentralization is realized through the formation of districts and the delegation of authority to manage government affairs submitted or approved as district budget areas [1].

In a unified state, the central government is generally responsible for carrying out state functions. However, as Indonesia’s administrative system follows the principle of decentralization and unitary state, there are certain tasks that local governments themselves manage. This makes all policies created and implemented by regions an integral part of national policy.

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The legal basis for managing municipalities is currently governed by Law No. 23 of 2014 on Local Government, which has been amended several times, most recently by Law No. 11 of 2020 on Job Creation. is applied. Fixed without. This law justifies local governments to carry out duties and powers divided between central government, states and counties/municipalities.

Parallel to development, Law No. 11 of 2020 on Job Creation (UU Cipta Kerja) brings dynamism to the management of municipalities. This Job Creation Act is a collective act consisting of several clusters. In short, at the same time as the Job Creation Act, we also changed the legal regulation of local authority. A comprehensive law on the Jobs Creation Act curtailed many local authorities. This certainly has implications for regional decentralization and regulatory implementation. This study specifically examines the legal impact of the Jobs Creation Act on local regulation. The results of this research will provide directions for local law policies to deal with the impact of the birth of the Employment Creation Act on the implementation of decentralization.

2 Research Methods

This research is a normative legal study to examine various laws and regulations that form the basis of legislation in order to analyze the impact of omnibus laws on local ordinances from the perspective of decentralization. The legal research model used is a comprehensive and analytical study of primary and secondary legal sources. Considering that this study is a normative jurisprudence study, the approach of this study uses legal and conceptual approaches [2]. Data should be qualitatively described by describing the data generated from the investigation in a systematic descriptive form in order to provide a clear picture of the problem under investigation and to draw a priori conclusions on the results of the data analysis.

3 Discussions and Analysis of Results

To understand and answer research problems, the following will be presented in the following sub-chapters descriptions and analysis.

A. *Omnibus Law on Job Creation and Applicability of Regional Regulations*

Local government implementation improves services, empowerment, and community participation by upholding the principles of democracy, equality, justice, privilege, and uniqueness, and by enhancing local competitiveness, thereby serving the common good. A government-controlled process designed to accelerate the achievement of the region in the unitary state system of the Republic of Indonesia [3]. Regions issue regional regulations to enforce regional autonomy and co-government. This is stipulated in Article 236, Paragraph 1 of Law No. 23 of 2014, "In order to fulfill the obligation of local autonomy and assistance, local governments shall establish local ordinances." Local governments have the right to decide local policies in order to carry out public affairs under their jurisdiction."

Local ordinances, both mandatory and voluntary, are legal instruments for enforcing matters under the authority of local governments. In the legal and regulatory hierarchy, regional regulation is the lowest regional legal norm within the authority of the Regional People's Representative Council (DPRD) along with the regional head. Regional regulation is of fundamental strategic importance as it is given a clear constitutional basis in Article 18(6) of Her 1945 Constitution of the Republic of Indonesia.

Local ordinances have several functions. First, it serves as a political tool to strengthen regional autonomy and support the mandates set out in the Constitution of the Republic of Indonesia 1945 and the Regional Government Law. Second, it addresses local uniqueness and diversity and communicates the needs of local people. But reconciliation is within the framework of Pancasila and her 1945 Constitution-based Republic of Indonesia and, third, serves as a development tool to improve the common good. The fourth function is as a rule for implementing higher-level laws and ordinances [4].

According to the order of legal norms and the position of local ordinances in legal regulations, the content of local ordinances should not contradict higher-level regulations. Local regulations are the lowest regulation in the hierarchy of laws and regulations and are the most comprehensive and the least flexible as they must comply with the above laws and regulations.

The existence of the Job Creation Comprehensive Law contained in Law No. 11 of 2020 is explicitly included in the content material, but only amends some laws and invalidates them. Essentially, however, it indirectly leads to the enactment of local ordinances.

There are at least several reasons why the Comprehensive Job Creation Act has such a large impact and impact on the formulation of local ordinances.

- Local regulations are regulations derived from laws affected by the Comprehensive Jobs Creation Act.
- Local policies contained in local regulations conflict with bus company copyright laws.
- An omnibus law on job creation will bring about a shift in capacity between regions.
- This situation will affect the deregulation of various local regulations after enactment of comprehensive legislation on job creation.

Job creation law as a product of omnibus law cannot be separated from the concept of omnibus law itself. Omnibus laws are laws that relate or regulate many subjects at once, including many purposes. An omnibus law is therefore, conceptually, a comprehensive and comprehensive regulation that is not tied to any particular regime [5]. This is why the Jobs Creation Act has so much content and covers a wide variety of laws.

Omnibus law is a new term in the field of legal education. According to Jimly Asshidiqie, an omnibus is a method or technique of making law in the form of laws and regulations, an attempt to create guidelines in the form of laws binding on all subjects of government legal transactions [6].

The relevance of comprehensive legislation for job creation and local enforcement is therefore very clear. Since the emergence of copyright law on works, specific regional regulations have been enacted as a result of the positioning of regional regulations and the hierarchy of laws and regulations in Indonesia. The existence of the Jobs Creation

Act may deregulate certain areas as rules resulting from laws that have changed since the existence of the Jobs Creation Act.

B. *Implications of the Omnibus Law on Job Creation on the Implementation of Decentralization*

Government agencies can be divided into two parts:

A horizontal separation of powers based on types of tasks of different nature, creating different types of institutions within the country, and a vertical separation of powers according to the level of government that decentralizes the relationship between central and local. Created in a compressed state. decentralization [7].

The general characteristics of the implementation of decentralization in Indonesia in accordance with the 1945 Constitution are [7]:

- Regional government is the result of formation by the Government, it can even be removed by the Government through a legal process if the region is not able to carry out its autonomy after going through empowerment facilitation;
- In the context of decentralization, in the territory of Indonesia, provinces are formed and in the provinces, districts and cities are formed as autonomous regions;
- As a consequence of the characteristics of points 1 and 2, the decentralization policy is drawn up and formulated by the Government, while the implementation of regional autonomy is carried out by the Regional Government and the Regional People's Representative Council by involving the community as a reflection of democratic governance;
- The relationship between the autonomous regional government and the national government (Central) is dependent and subordinate. This is different from the relationship between the state government and the federal government which adheres to federalism;
- The implementation of decentralization requires the distribution of government affairs by the government to autonomous regions as public legal entities. Government affairs that are distributed are only government affairs that are the competence of the Government and do not include matters that are the competence of State Institutions in charge of the legislature or Law-forming and Judicial Institutions or State institutions authorized to oversee State finances.

The unitary state applies the principle that all affairs of the state are not divided between central government (central government) and local government (local governments), and state affairs remain unanimous (enheid) in a single state. Yes, and the supreme power is the central government of the country [8].

Decentralization is the delegation of government powers to regions to regulate and manage government and community interests [9]. Decentralization policy is pursued within the framework of vertical separation of powers as a constitutional separation of powers [10]. Therefore, the scope and limits of regional authority in implementing decentralization are greatly influenced by central government policies.

The Omnibus Jobs Creation Act is one of many central government laws and regulations that have a significant impact on the implementation of decentralization. However, the existence of the birth of work copyright by the omnibus law is interesting. Because

it is the first time in the history of the emergence of laws in Indonesia that one law has amended dozens of other laws.

This comprehensive law on job creation amended at least 82 laws at once and abolished two laws [11]. On the other hand, with the enactment of the Job Creation Law, the central government is obliged to issue implementing regulations, which are stipulated in the form of government regulations, presidential regulations, and ministerial regulations, and the number of them is certainly not small.

The Jobs Creation Act contains several content materials directly related to the implementation of decentralization, including:

The first is the environmental regulations stipulated by Law No. 32 Year 2009 on Environmental Protection and Management. Due to the existence of the Jobs Creation Act, at least Section 27 of Section 32 of the Act 2009, i. has changed., 63, 69, 71, 72, 73, 76, 77, 82, 88, 109, 111, and 112. Addition of four provisions provided for in Sections 61A, 82A, 82B and 82C. Articles 29, 30, 31, 36, 38, 40, 79, 93, 102 and 110 of 10 have been deleted based on the amended norms of the Environment-Related Job Creation Act. Here are some articles related to the environment. Consultation with local governments, including repeal of environmental permits, determination of the types of companies and/or activities that must be completed on the UKL-UPL, designation of banks to manage guarantee funds, etc. of reduced local government.

The second is local taxes and fiscal policy related to local taxes. If the central government seeks to encourage investment or create as many jobs as possible, the central government may adjust tax rates and/or levies set by local regulations. The role of the central government is governed by the Jobs Creation Act on Local Taxes and Local Taxes, whose provisions can be found in Sections 114, 176 and 185(b) of the Jobs Creation Act. Before the Jobs Creation Act, the central government could not change the country's local tax rates, but under the Jobs Creation Act, the central government could intervene in local politics to set and change tax rates.

The implications of the omnibus law on job creation on the implementation of decentralization, from the aspect of authority, can be seen from two sides. First, reducing some of the regional authority in managing and administering the region, thereby limiting the space for regional governments to move. Second, adding and reinforcing the focus of local government administration in accordance with central government policies. This is basically a consequence of the implementation of decentralization within the framework of the Unitary State.

Furthermore, in implementing decentralization, local governments play a role in harmonizing and synchronizing local regulations, ensuring that governance processes are optimally carried out in accordance with the provisions of higher laws and regulations. The process of harmonizing and synchronizing local regulations is carried out by ministries or agencies with national administrative duties and those with administrative duties in the legislative field. This order is based on Article 181, Paragraphs 1 and 2 of the Employers Act.

Thus, the implementation of decentralization is also affected by the birth of the omnibus law on job creation. Regional governments in carrying out government affairs must observe the limits of authority, some of which have undergone changes in the Job Creation Law and its implementing regulations.

4 Conclusions

Based on the description described above, it can be concluded that retrospect of the birth of the omnibus law on job creation in the implementation of decentralization has implications for the applicability of a regional regulation and the scope of regional authority in government affairs. The dynamics of the portion of regional authority in the implementation of decentralization is inseparable from the concept of the Unitary State of the Republic of Indonesia, where the central government is in control of the division of authority over government affairs. Therefore, local governments need to understand every policy change that has been set by the central government so that the implementation of decentralization runs optimally.

References

1. Tim Penyusun, *Naskah Akademik Rancangan Undang-Undang tentang Hubungan Kewenangan Pemerintah Pusat dan Daerah*, 2011, p.34
2. Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Prenada Media, 2005.
3. General explanation in Law Number 23 of 2014
4. Bagir Manan, *Fungsi dan Materi Peraturan Perundang-Undangan*, Jakarta:1993, p. 47.
5. Henry Donald Lbn. Toruan, "Pembentukan Regulasi Badan Usaha dengan Model Omnibus Law," *Jurnal Hukum to-ra*, Vol.3, No.1, April 2017. In Rudy, et al, *Model Omnibus Law: Solusi Pemecahan Masalah Penyederhanaan Legislasi dalam Rangka Pembangunan Hukum*, Bandar Lampung: Pusaka Media, 2021, p.13
6. Jimly Asshiddiqie, *Omnibus law dan Penerapannya di Indonesia*, Jakarta: Konstitusi Press, 2020, p. 54
7. Moh. Kusnardi & Harmaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia*, cet. ke-5. Jakarta: Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia, 1983, p. 171.
8. Ni'matul Huda, *Perkembangan Hukum Tata Negara Perdebatan dan Gagasan Penyempurnaan*. Yogyakarta: FH UII Press, 2014, p. 241
9. Rondinelly & Nellis, *Analyzing Decentralization Policies in Developing Countries: a Political-Economy Framework*, *Jurnal Development and Change*, Volume 20, 1989. p.5
10. Abdul Kholiq Azhari & Abdul Haris Suryo Negoro, *Desentralisasi dan Otonomi Daerah di Negara Kesatuan Republik Indonesia*, Malang: Intrans Publishing, 2019, p.v
11. Apart from that, you can read it carefully in the Job Creation Law, you can also see it. <https://peraturan.bpk.go.id/Home/Details/149750/uu-no-11-tahun-2020>

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