



Analysis of the Impact of the Work Create Regulation on Natural Resource Law Dimentions of Tourism Business

I Dewa Gede Atmadja¹, I Nyoman Putu Budiarta², Made Wiryani³

^{1,2,3} Faculty of Law, University of Warmadewa
atmadja11061944@gmail.com, budiarta59@gmail.com,
madewiryani60@gmail.com

Abstract. Law Number 11 of 2020 on Work Create, which amends and revokes laws and regulations using the omnibus law method in the framework of simplifying legislation which overlaps and hinders the economy in the era of globalization. Vogel calls this heap of regulations a “flood of norms”, which can be overcome by simplifying legislation through improving legal drafting. The concept of deregulation requires a simple, clear, and principled legal order to anticipate complex and overlapping legal rules. Legal issues are: (a) What is the basic philosophy and juridical the validity of Omnibus Law Act Number 6 of 2023 on Work Create, and the impact toward Nature Resources Dimension on Tourism Business? (b) How the strategy to decrease the negative impact and strengthening the positive impact to Omnibus Law, Act No. 6 of 2023 on Work Create toward negative and positives on dimension Tourism Business? Method in this research that is normative research, law books primary approach – statute and judge decision and secondary law book-philosophy relevant literature. Research result are. (1) The basic philosophy of validity Omnibus Law, Act Number: 6 of 2023 on Work Create is legal realism jurisprudence or pragmatic legal realism theory. (2) On strategy to decrease the negative impact of Omnibus Law, Act of Work Create, according The Optimal Theory of Regulation, based on economy analysis of law that explain regulation must be realize efficiency principle to calculate cost and benefit.

Keywords: Omnibus Law Method, Prospects for Deregulation, Natural Resources, Act of Work Create

1 Background of Problem

Regulation of the Act Work Create, is a public policy strategy, simplifies overlapping laws and regulations, allegedly does not guarantee legal certainty for business activities, hinders ecosystem investment, because it is not conducive to increasing domestic investment and foreign investment. Moreover, Indonesia, which is facing a demographic bonus, of course really needs to expand employment opportunities, to overcome unemployment and poverty.

The Work Create Law launched 11 clusters of simplification of laws which are suspected of hampering the investment ecosystem, namely: 1. Permit-based licensing

© The Author(s) 2023

M. Umiyati et al. (eds.), *Proceedings of the International Conference on “Changing of Law: Business Law, Local Wisdom and Tourism Industry” (ICCLB 2023)*, Advances in Social Science, Education and Humanities Research 804, https://doi.org/10.2991/978-2-38476-180-7_61

becomes a risk-based licensing system; 2. Cooperatives and MSMEs, as well as village-owned enterprises; 3. Investment; 4. Employment; 5. Fiscal Facilities; 6. Spatial Planning; 7. Land and Land Rights; 8. Environment; 9. Construction and Housing; 10 . Economic Zone; and 11. Government Goods and Services.

Our research focuses on the regulation of aspects of Natural Resources, especially in the forestry sector, minerals belonging to the environmental cluster related to investment in the tourism business. The argument is that the tourism business is based on natural resources. Tourism as an economic sector is one of Indonesia's mainstays in general and Bali in particular, the economic sector driving the Balinese economy. Employment is highly dependent on the tourism business.

1.1 Legal Issues

According to the background of the problem, two legal issues are formulated, namely:

- What is the basic philosophy and juridical the validity of Omnibus Law Act Number 6 of 2023 on Legislature of Government Regulations in lieu of laws Number 2 of 2022 on work create into law formulation, and the impact toward Nature Resources Dimension on Tourism Bussiness ?
- How the strategy to decrease the negative impact and strengthening the positivist impact to Omnibus Law, Act No. 6 of 2023 on Legislature of Government Regulations in lieu of laws Number 2 of 2022 on work create into law formulation, toward negative and positives on dimension of Tourism Bussiness ?

1. Purpose and Benefits of Research

1.1 Purpose

- General Purpose, to explore and discover the Philosophical and Juridical validity of the Omnibus Law in the context of natural resources as part of the environmental perspective of the Tourism Business, through analysis of regulations regarding the deepening of the science of Law.
- Specific objectives, including: Analyzing and discovering the function of legal theory and legal principles in the formation of regional regulations in the field of electronic transactions

1.2. Benefits of Research

- Theoretically for academics, legal researchers, the omnibus law method is a relatively new study by Indonesian legal scientists who are influenced by the civil law system, so it needs to become a legal discourse in FGDs (Forum Groups Discussions)
- Practical benefits, for legislators and governments who have regulatory authority, it is hoped that the results of this research can be utilized in using the omnibus law method in drafting laws and regulations to overcome the negative impact of the en-

actment of laws and regulations regarding the management and utilization of natural resources for the greatest prosperity of the people.

2 Literature Review

2.1 Conceptual Framework for Regulatory Analysis

OECD (Organization of Economic and and Development), made a guide that for "developing countries", since 1960, and Richard Posner, standardization in regulations through the Omnibus Law method, so that regulations are of high quality, then standardization, systematics, carefully considers costs (cost). and benefits (benefits), so that from an economic standpoint it is assumed to provide benefits for groups of people who are negatively affected, from changes and/or revocation of these regulations

The Concept of The Omnibus Law.

Black Law Dictionary, that Omnibus Law Method that "a bill including in one act various separate and distinct matters, and particularly one joining number of different subjects in one measure in such a way as to compel the executive authority to accept provisions which does not approve or else defeat enactment Cambell (1957).

The Concept of Natural Resources.

Article 1 point 5 Law Number 23 of 2009 on Environmental Protection and Management. Environment in a straightforward way formulate sources Natural Resources are part of the environment consisting of biological and non-biological resources which as a whole form an ecosystem unit.

The Concept of Tourism Business.

Article 1 point 6 of Law Number 10 of 2009 on Tourism stipulates that the tourism business is an industry as a business that produces goods and services for the needs of tourists. It is assumed to increase the country's foreign exchange, create jobs, and preserve the environment.

2.2 The Theory of Law

The Theory of Law Purposes.

Gustav Radbruch in Kurt Wilk, the Legal Philosophy of Laks, Raadbruch, and Dabin, wried, that:

"The law purposes are justice, expediency, legal certainty. Our discussion that justice is the specific idea of law. Justice demands that equal, different one differently according to their differently. Expediency is reality for society utilities based on their culture background. The other one legal certainty is the essential according philosophy of positivism that are the element are positive norm had manifestation on the

regulation of law and the other one the authority of the law enforcement consequently to implementation of law Wilk (1950).

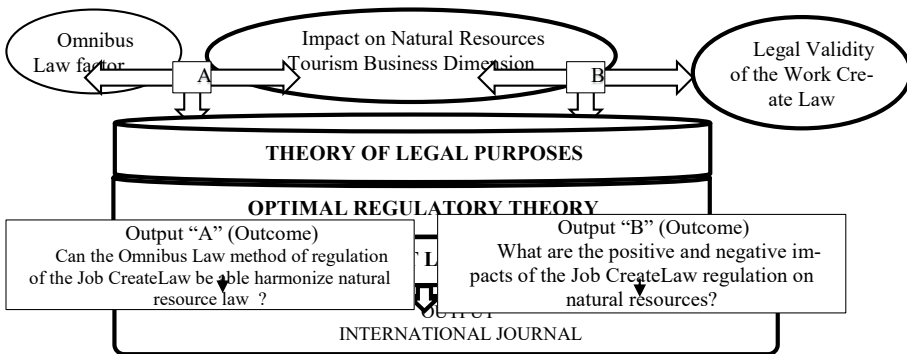
The Theory of Law Development.

We thought that influenced by World Bank, essays Julio Faundez,, “Law Mobile Tool”: “The widespread process of economic s and political liberalism often taking place in developing countries, the World Bank is aware the revision of legal technical on legal drafting Faundez (1996). Indonesia, the theory of law development the op-ponent Mochtar Kusumaatmadja, that the law function as a tool of law as oriented to development norm of law based on regulation and back up by properly of the judges of court decisions.

Theory of Optimal Regulation,.

The core substantial based on economic analysys of law to explain to decrease negative impact on economic condition, that rules must be considered gives compen-sation to social groups to be injured with economic welfare.

The Thinking Scelaton.



3 Research Method

- This type of research is normative research whose scientific realm is prescriptive science with regard to the value of scientific truth of coherence where propositions are coherent, so they are not contradictory in their statements and are located in the realm of normative legal validity. In addition, from the perspective of the theory of the law of scientific truth, "pragmatic truth, or consensus truth, because the propo-sitions in this study depart from an internal standing point.

- Research Approach, the science of normative law is prescriptive in nature, focusing on contextual legal norms. The relevant problem approaches are the statutory approach (statute approach), conceptual approach (conceptual approach), philosophical approach (philosophical approach), and historical approach (historical approach).
- Legal Materials, referring to Cohen's view in his book entitled *Legal Research In a Nutshell* (1970), he uses the term "law books" for legal materials, grouped into three legal books, namely: (1) Primary law books (primary legal materials), consists of laws and jurisprudence that have an authoritative nature, because they are formed, decided by an authorized body or official. However, it is clear that the main source is legislation and not jurisprudence. (2) Secondary law books, in the form of literature or library materials such as rich scientific books, scientific journals whose characters are assessed by their authors as having scientific authority in their respective fields of knowledge.
- Analysis of legal material, relevant to legal issues, researchers carry out legal interpretations of legal evaluations. The entire analysis is strengthened in the form of legal arguments in the characteristics of Indonesian legal reasoning. by maximizing deductive-formal logic and not ignoring inductive logic, where the two logics are the way scientific thinking. In legal reasoning, the IRAC (Legal Issues; Rules; Application, and Conclusion) method is used.
- Techniques for Collection of Legal Materials, in normative legal research legal materials are obtained through library research. Due to limited time and research funds, the library of books that researchers obtained were at the Warmadewa University library, collection books for the Law Doctoral Program (S3) Postgraduate Program at Warmadewa University, Warmadewa University Library.

2. Analysis of the Result Research

3.1 Philosophy and Judicial Analysis of the validity Omnibus Law Work Create

We thought that three Jurisprudence Schools, whose relevance, its:

Classical Naturalism Jurisprudence, that the ontology of law are justice and truth principles. That is why validity of law based on morality. In the medieval period in European history saw the final integrated the rationalist and religious approach, St. Thomas Aquinas (1224-1227), divide fourth of Natural Law: (1) Eternal Law (God's Rational Guidance For All Created Things), (2) Divine Law (Revealed In Scripture), (3) Natural Law (Discovered Through Human Reason), (4) the last one is Human Law (Essence is to be just or *lex injuta non est lex*) Hong (2007). We conclude that the validity of law is integrated religious and human ration.

The revival of Natural Law Jurisprudence. In 20 centuries, American Law Scientist, Lon Fuller, on his books *The Morality of Law*. He reject that substantive moral is validity of law. According Lon Fuller that the validity of law, necessarily to a procedural morality on making rules, consist of prima four principles: (1) the rules must be

express in general terms; (2) the rules must be publicly promulgated, the rule must be prospective in effect; (3) the rules must not be changed so frequently; and (4) the rules must be consistent with one another Fuller (1964).

School of Positivism Jurisprudence, on the develop positivism dived in two kinds: exclusivism positivism (also called hard positivism) denies that validity of law cannot incorporate with moral argument. I think as well as Hans Kelsen (Pure Theory of Law), that the law validity by Basic Norm the function on ideal regulator subscribe, institution authority, without substantive preparation, such as justice and the axiology of law is legal certainty. The other one is Joseph RAZ (1979) subscribe to the Sources Thesis, according to without recourses without to maral argument. (2) Inclusivism positivism, or soft positivism, for example H.L.A. Hart, believe the criteria of validity of law are prima rules, para legal and secondary rules, and back up on sanction. The secondary rules, consists of: rule of recognition that sets rule forth with moral argument for creating, changing, and rule of adjudication; rules 5. the rules must be expressed in understandable terms; 6 the rules must be not require conduct beyond power; and 8 the rules must be administered in a manner consistent with their wording Hart (1964).

The Legal Realism Jurisprudence, the part of jurisprudence school in United States of America, the opponent, are Holmes, Benjamin N. Cardozo, In we are opinion, that analysis of Benjamin Cardozo, on his lecture at Yale University, in article “The Nature of the Judicial Process 1991, write, the classical what Holmes, said that the life of law is not logic, but experience.. But Holmes didn’t tell us that logic is had been, but ignored silent experience, When judges confronted these situation, judges must be as a legislator, with sociological method on his decision. He argued, that today not only in our common law system in this conception made its way. Everywhere there is growing emphasis on the analogy between the function of judges and the function of legislator. Benjamin Cardozo, write, what had Francoi Genny , who as developed the analogy with boldness and suggestive power:

“A priori he says, the process of research, which is imposed upon the judges in finding the law seem to us very analogy to the incumbent on the legislator himself” Benjamin (1991). Judges every day make law over than the legislator, and in most cases stare decisis is still the rules, which it now considers imperative.

3.2 The strategy to decrease of negative and positive impact of the Omnibus Law Act Number 6 of 2023 on Work Create, on The Nature Resources Dimension of Tourism Buisness

The Strategy to decrease of negative impact of the Omnibus Law, Act Number: 6 of 2023 on Work Create on the Nature Resources dimension of Tourism Buisness.

According to the theory of optimal regulation, that to decrease of negative impact could be calculated on regulation making, must be analysis cost and benefit or profit impact. That is way for decrease the negative impact with Omnibus Law, on the rule application, the government bureaucracy must be paid compensation for injury

social groups whose suffer a loss working, like PHK and Out Sours Contract. We thought that policy could be increase Tourism Business activities.

The Strategy Strengthening the Positive Impact of Regulation the Omnibus Law, Act Number 6 of 2023 on Work Create of the Impact of the Nature Resources on Tourism Business Dimension.

Based on the theory of optimal regulation, whose explain that the implementation of this theory, focus on analysis economic of law, consideration hat to make regulation must be consider the eviciency by cost and benefit application. On the other based on development theory of law (Teori Hukum Pembangunan) in Indonesia, we called "Pajajaran University School (Unpad School), explain that making laws, regulation, must be realize national development to increase people welfare, social justice for all Indonesia people.

Indonesia societies opinion on making Omnibus Law have controversial,, most of them as such: factory workers, farmers, fishers, student, and civil society are reject Omnibus Law, Act of Create Works, the crucial problem are about minimum salary, out scour contract, environment ethics contradiction with principle of sustainable development, principle of justice, and principle of autonomy principle specifically recentralization on licensing based on risk. The other such as such business man, industrial and a little fraction such as economic science and business jurist, the opinion that Omnibus Law, Act of Work Create, to improve investment ecosystem, grows of field of workers, and made easy on lisencc for economics activity.

3. Close of the Article

3.3 Conclusion

According we are analysis problem of research, it is two conclusion:

- The basic philosophy of validity Omnibus Law, Act, Number: 6 of 2023 on Work Create is legal realism jurisprudence or pragmatic legal realism theory. Because the method of this theory based on sociological and precedence principle, that judges in legal findings they become legislators.
- On strategy to decrease the negative impact of Omnibus Law, Act of Work Create, according The Optimal Theory of Regulation, based on economy principles analysis of law that explain regulation must be realize efficiency principle to calculate cost and benefit; That's way we conclude according principle of good governance, Government and entrepreneur and industry must be give compensation for society and community groups whose injury by negative impact of Omnibus Law, based on equality protection according equity principles. We thought that policy could be increase tourism business activities.

3.4 Recommendation

- We propose that on validity of law on the Omnibus Law, Act of Work Create, must explicitly to recommended on implementation of public policy to declare focuses on realize to improvement of justice and prosperity of all Indonesian people.
- On increase positive impact of Omnibus Law, Act of Work Create, we recommended that President guarantee to declare that all business persons on economic activity and on business of tourism must be care to environment sustainability.

References

1. H.L.A. Hart, 1964 The concept of Law, Yale University Press.
2. Benjamin N. Cardozo, 1991, The Nature of The Judicial Process, Yale University Press.
3. Julio Faundez (ed), 1996, Good Governance And Law, Legal Reform in Developing Countries, British Council,
4. Kurt Wilk, 1950, Legal Philosophy of Lasks, Radbruch, and Dabin, Harvad University Press, Cambridge-Massachusetts.
5. Lon Fuller, 1964, tHe Morality of Law, Yale University Press
6. Peter Mahmud Marzuki, 2001, Penelitian Hukum, dalam Jurnal Hukum, Penerbitan khusus, Volume 16, No. 2, Fakultas Hukum Universitas Airlangga, Surabaya.
7. Sidharta, 2006, Penalaran Hukum Dalam Konteks Keindonesiaan, C.V. Budi Utomo, Bandung.
8. Zhang Nan Hong, 2007, Jurisprudence, Beijing.
9. Black Cambell, 1957, Fifth Edition, Black Law Dictionary, Sint Mint Paul.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

