



Job Creation Omnibus Law and Tourism Industry in Indonesia

Andy Omara, and Novira Maharani

Universitas Gadjah Mada School of Law, Yogyakarta, Indonesia

andy.omara@mail.ugm.ac.id

Abstract. Job Creation Law provides “new” model of the Indonesian legislation. Unlike the conventional law which regulate specific issues, Job Creation Law consists of multiple topics which are not necessary related each other. The Law contains rules on permits, manpower, forestry, environment and so on and so forth. All together the Law amended roughly 70 laws. This new model of law is intended to harmonies and simplifies the 70-ish existing laws. The question is, does this Job Creation Omnibus Law impact tourism industry in Indonesia, while the Law does not expressly state tourism in its body? If so, how serious is the impact of the Job Creation Omnibus Law toward tourism development in Indonesia? The paper argues that while the Job Creation Omnibus Law does not explicitly mention tourism, it significantly impacts tourism sector. The paper will elaborate the good intentions and the challenges contains in Job Creation Law toward tourism industry in Indonesia. The paper will employ doctrinal approach by studying relevant legislations, minutes of the formulation of Job Creation Law, journals and media coverages to obtain comprehensive information. The paper is expected to broaden the discussion concerning Job Creation Omnibus Law law by including tourism sector as the focus of discussion. As tourism is a sector that is not expressly stated in the Law yet significantly impacted by the issuance of Job Creation Law.

Keywords: Job Creation Omnibus Law; Tourism industry; Indonesia.

1 The Indonesian Legislative System

The Indonesian legislative system is specifically regulated in Law on the Establishment of Legislation. The Law explains multiple issues including the types of legislation, the hierarchy of legislation, the content of legislation, the step by step of formulating legislation, the actors establishing the legislation and so on and so forth. Overall, types of legislation can be divided into national and regional legislation. The national legislation includes: The Constitution, the MPR Stipulation, Laws/Statutes/Acts, Government Regulation, Presidential Regulation and Ministerial regulation. The regional regulations include provincial regulation, head of province regulation, district regulation and head of district regulation. In addition to the above-mentioned regulations, there are many other regulations including central bank regulation, governor of central bank regulation, supreme court regulation, constitutional

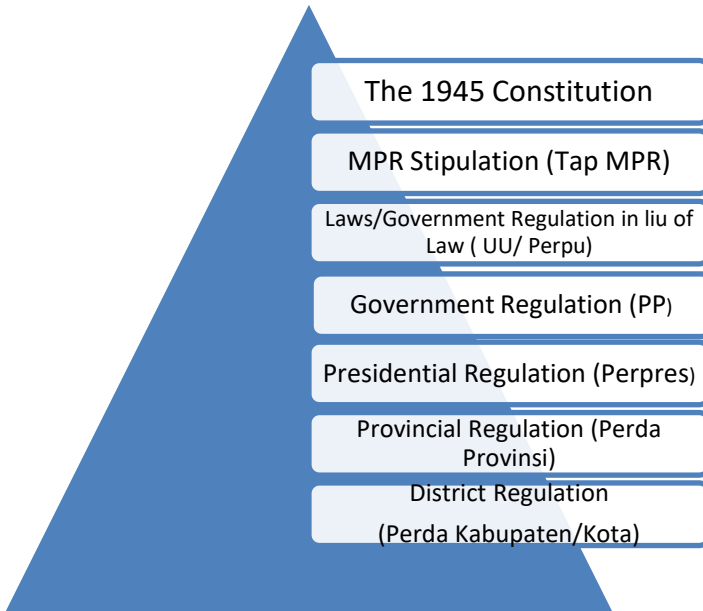
© The Author(s) 2023

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_18

court regulation, parliament regulation, ministerial regulation and so on and so forth. These regulations are not in the hierarchy but they are legally recognized and acknowledged as long as they are established by competent officials.

Table 1: The hierarchy of the Indonesia legislation



The consequences of adopting hierarchy of legislation is that the higher level of legislation shall be the reference of the lower level of legislation. Hence, the lower level of legislation cannot be contradictory to the higher level of legislation. These two above-mentioned rules are important because violating them can be the basis to question the constitutionality or the legality of legislation.

2 Problems of the Indonesian Legislation

Historically Indonesia did not expressly regulate hierarchy of legislation both in the constitution and legislation until 1960s. We can assume that certain legislation is higher than other by understanding the wordings of the constitution. In reality, however, there are many types of legislation both in national and regional level which are not expressly mentioned in the constitution. The existence of multiple legislation potentially creates disharmony among legislation if it is not well regulated. Hierarchy of legislation was therefore introduced in 1960s as a way to avoid legislation chaos.

The Indonesian hierarchy of legislation shows there are many types of legislation as well as actors who are competent to establish legislation. Such system is, on the one

hand, important to ensure that: (1) all laws and regulations are very well structured. The higher-level laws should be the basis of the lower level laws. Or the lower law and regulation should always refer to the higher level of legislation. (2) In addition, the abstract and general provisions of laws which are not directly implementable in real world situation, can be properly implemented in the real-world situation as they are further elaborated by implementing regulations. (3) in the even that certain regulations contradict against higher regulation, the hierarchy of legislation provide mechanism to review such regulation.

On the other hand, multiple laws and regulations may raise problem of hyperregulations because of the massive quantity of regulations. The hyperregulation situation may slow down the way we anticipate the new situation as we are surrounded by many regulations which often makes inflexibility to anticipate. In todays era agility and quick response to anticipate the new situation is necessary, if not, we will certainly lack behind. In addition, the big quantity of legislation potentially leads to disharmony. This is because each and every agency which has the capacity to make law and regulation may prioritize their portfolio to be regulated. The fact that different agencies have different responsibilities open the possibility to make law and regulation which are not coherent. They may be different or contradictory each other.

3 Tourism and Job Creation Omnibus Law

Law Number 10 of 2009, which pertains to the field of tourism, serves as the fundamental framework for the regulation and management of tourism-related activities within the Republic of Indonesia. The definition of tourism, as outlined in the Law of October 2009, encompasses a range of tourism activities that are accompanied by a diverse array of facilities and services. These provisions are made possible via the collaborative efforts of the community, commercial entities, as well as governmental and regional authorities. The function of tourism in development encompasses three key dimensions: the economic aspect, which involves generating foreign cash and tax revenue; the social side, which entails job creation; and the cultural aspect, which involves the dissemination of our cultural heritage to tourists.

The world economy, including Indonesia, experienced adverse effects when the COVID-19 pandemic emerged on a global scale in 2019. The tourist business is one of the sectors most affected by the Covid-19 pandemic worldwide. There was a substantial decline observed in the volume of tourist visits, encompassing both international and domestic tourists. According to data provided by the Indonesian Central Statistics Agency (BPS), the total number of foreign tourist arrivals in Indonesia in 2020 amounted to 4.02 million visits. This figure represents a significant decline of 75.03 percent compared to the corresponding period in 2019, during which the number of foreign tourist visits reached 16.11 million.

The government is trying to improve Indonesia's economic by increasing economic growth through investment and job creation through enacting Law Number 11 of 2020 concerning Job Creation. The 11/2020 Law was later amended by Law Number 6 of 2023. Approximately 70 laws have simplified and harmonized their arrangements

in the Job Creation Law. This Law is aiming for overcoming the problem of hyperregulations, disharmony issues, sectoral egos among state institutions. Overcoming regulatory issues however is not enough just by enacting omnibus law.

The Job Creation Law encompasses various strategic policies, such as the enhancement of the investment ecosystem and business operations, promotion of employment, facilitation, protection, and empowerment of Cooperatives and Micro, Small, and Medium Enterprises (MSMEs), streamlining of business processes, support for research and innovation, land acquisition procedures, establishment of economic zones, Central Government investments, acceleration of national strategic projects, improvement of government administration, and enforcement of sanctions.

The primary objective of the Job Creation Law is to address employment concerns and facilitate business licensing across several industries, including the tourism industry. The Job Creation Law brought about amendments to certain articles of the Tourism Law of October 2009. The Job Creation Law also offers business permits to enterprises operating in the tourism industry via the Online Single Submission (OSS) System.

4 Discussion

Indonesia, being a nation endowed with immense and diversified natural and cultural resources, possesses significant potential within the realm of tourism. The factors that contribute to the attraction of both domestic and international tourists towards exploring different places in Indonesia are as follows. Tourism plays a significant role in generating foreign exchange revenues and stimulating national economic growth, particularly through mitigating unemployment rates and enhancing a country's productivity. Tourism is a pivotal industry that necessitates maximum advancement in order to contribute to national growth. The economic impact of the tourism industry can be seen through the generation of foreign exchange revenues and the influx of international tourists to Indonesia.

According to the Ministry of tourist and Creative Economy, the Indonesian tourist sector generated foreign exchange earnings amounting to US\$4.26 billion in the year 2022. The value has experienced a significant increase of 869.39% in comparison to the preceding year, during which it amounted to a mere US\$0.49 billion. According to the Central Statistics Agency (BPS), the influx of international tourists to Indonesia in December 2022 amounted to 895.12 thousand visits, indicating a substantial growth of 447.08% when compared to the corresponding period in December 2021. In contrast to November 2022, there was a notable increase of 36.19% in the number of foreign tourist visits in December 2022. In 2022, Indonesia experienced a significant surge in the number of foreign tourist visits, with a total of 5.47 million visits recorded. This figure represents a remarkable growth rate of 251.28% when compared to the corresponding number of international tourist visits in 2021.

Tourism development can be undertaken autonomously by a nation or collaboratively through a cooperative framework involving multiple countries. Tourism development carried out by an area independently, is not necessarily carried out only by

that area. But it also involves the central and regional governments as well as the surrounding community. The success of tourism management in Indonesia is, of course, influenced by several supporting factors, both related to natural resources, human resources, and the effectiveness of government policies and programs.

The Government employs the omnibus law model to facilitate the acquisition of business licences from the tourism industry, hence enhancing convenience for the community, particularly business actors. The Omnibus Law represents a strategic measure aimed at consolidating multiple laws that have been identified as potentially redundant or obstructive to the facilitation of corporate operations. The Job Creation Law creates conditions that make it easier for investors. The focus of the current government is also directed at the tourism area. One of the actions taken is to promote a very important tourist destination. Of course, in line with this, efforts to facilitate investment will also facilitate land acquisition for the tourism sector, which has so far experienced several obstacles. Although it facilitates land acquisition, this change is also seen as having a negative impact, which can result in environmental damage and agrarian conflict.

There is concern that the acceptance of this easy investment will be in line with the potential threat of confiscation of indigenous peoples' territories under the pretext of ease of investment. The Job Creation Law is supposed to provide a solution to regional problems, especially land used for the tourism sector, but instead it can trigger structural conflicts.

Several provisions in the Tourism Law underwent several changes regulated by the Job Creation Law. In the Job Creation Law Paragraph 13 Article 67 regarding tourism, there are 6 articles from the previous Tourism Law that have undergone changes, such as Articles 14, 15, 26, 29, 30 and 54, as well as the deletion of 3 articles, namely Articles 16, 56 and 64.

Amendments to Article 14 emphasize that the tourism business includes tourist attractions; tourism area; tourist transportation services; tour travel services; food and beverage services; provision of accommodation; organizing entertainment and recreation activities; organizing meetings, incentive trips, conferences and exhibitions; tourist information services; tourism consultant services; tour guide services; water tourism; and spa, are no longer regulated by Ministerial Regulations, but regulated in Government Regulations. The strengthening of the legal basis governing the tourism business sub-sector shows that there are efforts by the government to guarantee legal certainty in running tourism businesses, so that the policies set by the government must be obeyed by regulations under it such as regional regulations. This condition can certainly encourage increased investment in tourism businesses in Indonesia.

The subsequent revisions made to Article 15 highlight the requirement for tourism businesses to adhere to the business permits issued by the central or local government, in accordance with their respective authorities and the norms, standards, procedures, and criteria established by the Central Government. These regulations are further detailed in Government Regulations. The emphasis on norms as the basis for permitting tourism businesses shows that the tourism business that is run must be in accordance with the rules and regulations of behavior that apply in the local community. In

addition, tourism businesses must also have standards, procedures and criteria that allow them to provide comfort and protection to local communities and tourists

Furthermore, in Article 26 an additional paragraph is included, namely paragraph 2, which states that in addition to the provisions of the entrepreneur's obligations that must be fulfilled for business licensing will be regulated in a Government Regulation.

The Job Creation Law significantly impacted the facilitation of providing permits for tourism businesses. The amendments made to Article 29, paragraph 1, letter c, and Article 30, paragraph 1, letter d, of the Tourism Law pertain to the modification of the regional governments' jurisdiction in relation to the processes of registration, recording, and data collection concerning the registration of tourism businesses. These amendments now grant the regional governments the authority to issue business permits. The central government aims to actively engage in and assure the ability of provincial and district/city governments, who serve as permit issuers, to consider the granting of permits in alignment with established norms, standards, procedures, and criteria. This alteration is anticipated to serve as a favorable impetus for increased engagement of the broader community in the tourism industry. This alteration additionally reinforces the jurisdiction of local governments, which is anticipated to serve as a catalyst for augmenting regional earnings.

The last change is in Article 54 which regulates tourism business standards which include products, services, and tourism business management. Currently, tourism business standards are no longer carried out through business certification, but are carried out by fulfilling business licensing requirements. From the changes to Article 54, it can be seen that the government wants to create unity, namely in fulfilling business standards, it is enough to fulfill business licensing which includes business certification. So that in opening a tourism business, entrepreneurs don't have to bother taking care of business permits and certification because the two have become one unit, and have the opportunity to attract investment because of this convenience.

The articles in the Tourism Law that were deleted and no longer valid are Articles 16, 56 and 64. In Article 16 of the Tourism Law which was abolished in the Job Creation Law it is stated that the government or local government can postpone and review the registration of tourism businesses if they are not in accordance with the procedural provisions as meant in old Article 15. With the abolition of Article 16, the Government does not want any more delays or reviews of business registration, because the only choice is whether to approve or not. If you want to be approved, it must be in accordance with the norms, standards, procedures and criteria regulated by the central government.

Furthermore, the policy that was deleted was regarding the expert workforce of foreign nationals which was regulated in Article 56 of the Tourism Law. The elimination of this article can actually be a weak point in the Job Creation Law because there are no clear rules for tourism entrepreneurs in hiring skilled foreign nationals. In addition, skilled workers from foreign nationals can work without further recommendations from tourism professional association organizations. The abolition of this article is a dilemma, because on the one hand employers can easily employ skilled workers of foreign nationality without having to ask for recommendations from professional tourism workers' associations, on the other hand there will be jealousy and concern

from local workers and the role of workers' associations will be neglected. for the supervision of skilled workers of foreign nationals.

The article that was excluded in the Job Creation Law pertains to policies in the tourism sector, namely Article 64 of the Tourism Law. According to Article 64, Paragraph 1 of the Tourism Law, individuals who deliberately and unlawfully cause harm to the physical tourist attractions mentioned in Article 27 will face a maximum prison sentence of seven years and a fine of up to Rp. 10,000,000,000.00 (ten billion rupiah). Paragraph 2 of the document stipulates that individuals who, through negligence and in violation of the law, cause physical damage or diminish the value of a designated tourist attraction, as mentioned in Article 27, shall be subject to a maximum prison sentence of one year and/or a fine of up to Rp. 5,000,000,000.00 (five billion rupiah). The elimination of this article is regrettable as it highlights the inadequate safeguarding of tourist sites, including the diverse range of natural, cultural, and man-made assets that hold significant tourism value. However, on the other hand, it should also be understood that the elimination of criminal provisions and heavy fines can also be intended to provide a sense of comfort for tourists. Protection of these tourists in the world of tourism business is very important to attract them to visit tourist destinations. Moreover, there are not a few tourist attractions that are vulnerable to damage due to lack of maintenance from the management.

Apart from this, of course the protection of tourist attractions must not be neglected and needs to be regulated clearly and firmly. Apart from that, the policy regarding the expulsion of expert foreign nationals in the tourism sector needs to be a serious concern for the government. This is very important to show the government's alignment with local workers, and on the other hand, of course, to protect the rights of foreign workers who are employed.

The amendments made to the articles of the Tourism Law, as well as the removal of some provisions in the Job Creation Law, have undoubtedly exerted a substantial influence on the formulation and implementation of policies within the tourism industry. The positive impact obtained is the growth of investment and tourism entrepreneurs will be even greater because of the ease of licensing. There will also be negative impacts, due to the abolition of several tourism articles, which will raise concerns for local workers and professional tourism workers' associations regarding skilled workers of foreign nationals who can easily enter Indonesia, as well as weak protection of tourist attractions such as the diversity of natural resources, culture, and man-made products that have tourism value.

Relevant Ministerial Regulations which have been used as the legal basis and guidelines by the government, as well as tourism business actors, can no longer be used. This condition is of course very risky and will prolong the polemic if it continues. For this reason, it is hoped that the government can immediately issue a Government Regulation as a more technical legal basis, as well as a guideline for all parties in carrying out tourism businesses in order to realize sustainable tourism development.

5 Conclusion

The tourist industry plays a significant role in generating foreign exchange for a country and has the potential to stimulate national economic growth by reducing unemployment rates and enhancing productivity. The tourist sector is considered a pivotal industry that should be effectively harnessed for the purpose of promoting tourism growth as an integral component of national development.

The tourism sector is indeed not explicitly stated within the scope of the Job Creation Law, but there are several articles that have undergone changes and have been deleted related to tourism regulations in it. Even though the Job Creation Law does not explicitly mention the tourism sector, this has had a significant impact on the tourism sector. The positive impact obtained is the growth of investment and tourism entrepreneurs will be even greater because of the ease of licensing. Then there will also be negative impacts, due to the abolition of several tourism articles, which will raise concerns for local workers and professional tourism workers' associations regarding skilled workers of foreign nationals who can easily enter Indonesia, as well as weak protection of tourist attractions such as the diversity of natural resources, culture, and man-made products that have tourism value.

References

1. Cahyani, C.M., and Rahman, A. (2021). Kajian Yuridis Pengadaan Tanah Bagi Kepentingan Umum Pasca Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja. *Private Law*. Vol. 1. No.2.
2. Dwiyanti, T., Bangsawan, M.I. (2023). Penataan Tata Ruang Dalam Nasib Tanah Industri Pariwisata Pasca U-Undang Cipta Kerja. *Jurnal Seminar Nasional Pariwisata dan Kewirausahaan (SNPK)*, Vol. 2.
3. Elistia. (2020). Perkembangan dan Dampak Pariwisata di Indonesia Masa Pandemi Covid-19. *Prosiding, Konferensi Nasional Ekonomi Manajemen dan Akuntansi (KNEMA)*. <https://jurnal.umj.ac.id/index.php/KNEMA/article/view/9066/5361>.
4. Firdaus. (2018). Potency of Integrated Cultural Tourism Development at Maninjau Lake Area, West Sumatera. *Mimbar*. Vol. 34. No. 1.
5. Matompo, O.S., Izziyana, W.V. (2020). Konsep Omnibus Law dan Permasalahan RUU Cipta Kerja, *Rechstaat Nieuw*, Vol. 5.No. 1.
6. Minardi, A., Taufik, Afriantari, R., Hasanah, N.U. (2020). Indonesian Tourism Diplomacy to India, *Indonesian Journal of Tourism and Leisure*. Vol. 1. No. 1.
7. Murdiastuti, A., Rohman, H., Suji. (2014). *Kebijakan Pengembangan Pariwisata Berbasis Democratic Governance*. Surabaya: Pustaka Radja.
8. Omara, Andy, Legal Measures Legal Measures in Overcoming COVID-19 Pandemic in Indonesia,
9. in *Legal Measures for Tackling Pandemic in Asia*, pp 45-87, ALIN-KLRI, 2021.
10. Omara, Andy, and Gunawan Tauda. "Developing Tourism in Indonesia Through Functional
11. Asymmetrical Decentralization." *3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022)*. Atlantis Press, 2023.
12. Pradana, M.W.I. dan Mahendra, G.K. (2021). Analisis Dampak Covid-19 Terhadap Sektor Pariwisata Di Objek Wisata Goa Pindul Kabupaten Gunungkidul. *Journal of Social Politics and Governance*. Vol. 3. No. 2.

13. Putra, A. (2020). Penerapan Omnibus Law Dalam Upaya Reformasi Regulasi. *Jurnal Legislasi Indonesia*. Vol. 17. No. 1.
14. Sari, R.M. (2021). Potensi Perampasan Wilayah Masyarakat Hukum Adat Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja. *Mulawarman Law Review*. Vol. 6. No. 1.
15. Tjitrawati, A.T, Amalia, R., Hamdan, F.Z.Z. (2022). Legalitas Perizinan Kawasan Wisata Sebagai Upaya Pengembangan Desa Wisata. *Media Iuris*. Vol. 5. No. 1.
16. Wahyuni, D. (2021). Upaya Pemulihan Pariwisata Yogyakarta pada Masa Pandemi Covid-19. *Aspirasi*. Vol. 12. No. 2.
17. Wardhani, D.K.. (2020). Disharmoni Antara RUU Cipta Kerja Bab Pertanahan Dengan Prinsip-Prinsip UU Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA), *Jurnal Komunikasi Hukum*, Vol. 6. No. 2.
18. Yakup, A.P.. (2019). Pengaruh Sektor Pariwisata Terhadap Pertumbuhan Ekonomi Di Indonesia. *Tesis*. Universitas Airlangga.
19. Yudhakusuma, A.I., Supriono. (2017). Analisis Saluran Distribusi Wisatawan Mancanegara Di Indonesia (Studi pada Daerah Khusus Ibukota Jakarta). *Jurnal Administrasi Bisnis*. Vol. 50. No. 6.

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.

