The Urgency of Indonesian Omnibus Law Implementation Related to Foreign Investment

Anak Agung Sagung Laksmi Dewi¹, Mella Ismelina Farma Rahayu,² Ni Made Puspasutari Ujianti,¹ Hartini Saripan,³ Anak Agung Ngurah Adhi Wibisana,¹

¹ Faculty of Law, Universitas Warmadewa, Indonesia  
² Faculty of Law, Universitas Tarumanagara, Indonesia  
³ Universiti Teknologi MARA, Shah Alam, Selangor, Malaysia

email correspondence: gung.wibisana1122@gmail.com

ABSTRACT

Investment is one of the driving means of strengthening the country's economy. One of the expected ways to increase investment is through foreign investment. Various regulatory measures have been carried out by evaluating and analyzing regulations and policies related to the licensing process for foreign investment. A new legal breakthrough is in the form of the enactment of the Omnibus Law on the Job Creation Law that is being pursued by the government aims to make it easier for foreign investors to obtain a permit. The formulation of problems that can be studied include how the omnibus law applies to simplifying licensing in an effort to facilitate the licensing process related to foreign investment. This study aims to examine the urgency of the implementation the Omnibus Law to simplify the licensing process in an effort to facilitate foreign investment in Indonesia. This research is normative legal research, which uses primary, secondary, and tertiary legal materials. The results of the study show that efforts to simplify the licensing process for foreign investment in Indonesia become a reference for the government with foreign investors in facilitating sustainable development efforts in the tourism sector which aims to increase large amounts of investment, the availability of jobs, and is expected to improve the country's economy. So, in the application of the Omnibus Law, it is expected to be able to accommodate interests that aim to prosper the community.

Keywords: Investment; Law Implementation; Omnibus Law;

INTRODUCTION

The main source of national development funds in Indonesia is domestic funds. However, the amount of domestic funds available is very limited, so the government utilizes funds from abroad. One of the sources of funds from abroad that can be used to finance Indonesia’s national development is foreign investment. (Winata, 2018) Indonesia has many
potential resources, both natural resources and human resources. In addition to human resources, the resources in question are geographical locations, including the area and diversity of natural, cultural, culinary and wealth resources in the country. This resource is the main attraction for domestic and foreign tourists. Especially today, Indonesia has many exotic and stunning destinations. Not only diverse natural tourism, cultural and historical tourism in Indonesia is also no less interesting. This is because Indonesia has hundreds of cultural tribes spread from Sabang to Merauke. (Suntoro & Nureda, 2022) Limited capital makes the state unable to properly process and manage existing resources so that this limitation hinders the process of strengthening the country’s economy. Investment is one of the drivers of the process of strengthening the country’s economy, therefore in the framework of its economic policies some countries are trying hard to increase their investment. One of the expected ways of increasing investment is through foreign investment. Investors invited to enter a country are expected to bring fresh funds directly in the hope that the incoming capital can move the wheels of industry which in turn can drive a country’s economy. (Andani, 2020; Subiyanto et al., 2022)

Indonesia is not yet an attractive option for investment compared to other Asian countries, such as Vietnam, Taiwan, Bangladesh and South Korea. (Pudjo, 2020) Investment is the act of assigning capital as cash or other important resources into an item, organization, or party in the hope that financial backers will benefit after a certain period of time. As a result of the desire to make a profit from now on, this business is called speculation. (Kristhy et al., 2022)

At the inauguration of the President and Vice President for the 2019-2024 period which was held on October 20, 2019, Indonesian President Joko Widodo in his speech said that Indonesia is currently experiencing a demographic bonus, where the number of people of productive age is much higher than the number of people of unproductive age. (Suriadinata, 2019) President Joko Widodo complained about the many regulations that Indonesia has. The regulation, ranges from around 42 thousand rules that include laws, government regulations, presidential regulations, ministerial regulations to governors, mayors and regents in the regions. 42 thousand of these regulations are contradictory. The large number of regulations makes the speed of the government’s attitude to make decisions slow. The President’s concern is reasonable, because given that the production of legislation is too partially regulated. (Fitryantica, 2019) Various deregulation measures have been carried out by evaluating and analyzing various regulations and policies regarding investment activities. (Kristianti, 2021)

A new legal breakthrough in the form of an omnibus law is being pursued by the government. Omnibus in the claim can overcome the overlapping regulations that exist in our country, especially in the field of investment. Omnibus law is a form of law that regulates various complex subjects, then united in a legal forum. Omnibus law generally takes over previously existing regulations because they are considered to have to be improved and refined. The spirit of the Job Creation Bill is relaxation in various fields comprehensively and quickly. A common
belief in how to increase productivity and competitiveness the fastest is relaxation or liberalization. Relaxation is believed to attract more investment so as to create more job opportunities. (Muqsith, 2020) Omnibus law has captured the attention of the public because of the purpose of the omnibus law to replace the existing law with a new law. The new law was created as a legal umbrella for all relevant legal provisions and could be cross-sectoral in nature. (Prabowo et al., 2020)

If you look closely, there are several negative implications of the establishment of the Omnibus Law or Job Creation Bill, including harming workers, harming agriculture, land monopolies, trimming and changing administrative concepts, market-oriented education, and the existence of transparency. In the context of harming workers, the Omnibus Law harms workers because it extends working hours and overtime, the establishment of a low minimum wage, the potential for violations of the right to unionize, the existence of cuts in the authority of trade unions; and the loss of women’s workers’ rights to menstrual leave, pregnancy and miscarriage. (Darmawan, 2020) Every country is always trying to improve the development, welfare and prosperity of its people. These efforts are carried out in various ways that are different from one country to another. From the purpose of the formation of the Indonesian State, there are noble ideals, namely creating a just and prosperous society. In this regard, just and prosperous are two couples who are inseparable in the philosophy of society and are the purpose of their lives. (RAS & Suroso, 2020) It is hoped that the omnibus law can provide good services for the community and attract foreign investors to invest in Indonesia. The background of the emergence of the omnibus law idea is the complexity of investing in Indonesia. This complexity arises in several ways, namely licensing, taxation, land acquisition, and other aspects related to investment. The presence of the omnibus law is expected to make it easier for investors to invest. (Fakhri Ali, 2021) The strong desire of the center for increased investment is not necessarily accepted by the region, because it is considered to be able to fade the cultural value of the local community. So that the role of regional autonomy is very dominant in the will of the regions in regulating their regions. This has been slowly improved through the One-Stop Integrated Service, so this omnibus law may not be necessary to simplify the central and regional licensing systems. Omnibus law seems authoritarian, because with one law this can cut all other laws, while the legal culture of each region is very different. This omnibus law consists of two major laws, namely the Job Creation Law and the Tax Law. If the main purpose of the birth of omnibus law is as strengthening and improving the investment ecosystem, basically all that is needed is the improvement of investment law, trade law and the renewal of economic law. Because if only investment is the main basis for the birth of this omnibus law, it will definitely reap the process, because investment is considered to soften the culture/culture of the local area directly or indirectly. That's where various protests arise when a new rule is born.
that is not in accordance with the local legal culture. Therefore, the role of regional autonomy is one of the efforts in shaping the legal culture in the region. (Jatmika, 2020)

The pros and cons of the opinion that enlivened the government's plan, among those who supported the government's plan, stated that the Omnibus Law was the right solution to answer the problem of overlapping several laws and regulations in the country. But opponents or cons consider that the omnibus law plan is regarded as an attempt to deligitimize the rights of every sector of the nation's life, especially regarding Employment and other sectors that can be affected as a result of its applicability. (Arham et al., 2019) Inconsistencies Legal certainty in the Job Creation Law is currently a problem for foreign investors, this is due to the Job Creation Law which was declared unconstitutional by the chairman of the Constitutional Court Anwar Usman on November 25, 2021 through decision number 91/91/PUU-XVIII/2020. The court stated that the establishment of the Job Creation Law was contrary to the 1945 Constitution and had no conditionally binding legal force if no improvements were made within 2 years of the decision being pronounced. In the ruling, the court also stated that within a grace period of 2 years the framer of the law could not complete the improvement of the Job Creation Law, then the law or articles or material content of the law that had been repealed or amended by the Job Creation Law was declared valid again. Although the court has provided an explanation regarding the reasons for the Job Creation Law to be declared conditionally unconstitutional with the aim of avoiding legal uncertainty and to prevent major impacts that will arise, the court also provides an opportunity for the framer of the law to improve the Job Creation Law based on the procedures for forming laws that meet the way of a definite, standard, standard method and must also comply with the fulfillment of the requirements of the principles of formation predetermined laws. (N. Aryani et al., 2020; Mayasari, 2018) The Court also ordered the Government to suspend all actions or policies that are strategic and have a broad impact and are not allowed to issue new implementing regulations related to Law Number 11 of 2020 concerning Job Creation. However, this remains a problem for foreign investors if the Job Creation Law is not successfully corrected within 2 years and the re-enactment of the old Law that was previously amended by the Job Creation Law. From this background, the formulation of the problem was obtained, including how to apply the omnibus law on the Job Creation Law to simplify licensing in an effort to facilitate the licensing process related to foreign investment.

METHOD

This research uses normative legal research methods that make it possible to study law from an internal perspective with the object of research being legal norms, which uses primary, secondary, and tertiary legal materials. The approach used in this study includes (i) analytical and conceptual approaches, where all problems are studied based on the concepts, principles,
and applicable laws and regulations, namely Omnibus Law related to Law No. 11 of 2020 concerning Job Creation. (Qamar et al., 2017; Tan, 2021).

ANALYSIS AND DISCUSSION

A. Application of Omnibus Law Related to The Job Creation Law as a Simplification of The Licensing Process in Investing in Indonesia

Law No. 12 of 2011 does not recognize the term Omnibus Law. However, the provisions of the Omnibus Law as a law should be subject to the regulation of Law No. 12 of 2011 both regarding its position and content material. The method of preparing the Omnibus Law Bill still refers to Law No. 12 of 2011 concerning the Establishment of Laws and Regulations because Law No. 15 of 2019 which is an amendment to Law No. 12 of 2011 does not revise the procedures for drafting laws and regulations. Therefore, the omnibus law must be given legitimacy in Law No. 12 of 2011, which therefore means that Law No. 12 of 2011 must be revised. If it is not revised, it must be seen how the provisions in the Umbrella Law are, whether they are general or detailed like ordinary laws. (Muda, 2021) If it is general, then not all provisions are repealed but only those that are contrary. But if the provisions are general, it will be a problem if they are clashed with the principle of lex specialist derogat legigeneralis (rules that specifically override general rules. Therefore, it must be regulated in the hierarchy of legislation regarding its position. If referring to article 7 of Law No. 15 of 2019, the amendment to Law No. 12 of 2011 is clear that in the hierarchy and order of the laws and regulations there is no concept of Omnibus Law as a principle in the source of law so that the question is in the hierarchy of legislation the position of this Omnibus Law whether it is parallel to the law or above the law. (Harjono, 2020)

On October 5, 2020, the Omnibus Law on Job Creation was passed by the government and also the House of Representatives, since the passage and enactment of the Omnibus Law on Job Creation, the positive impact began to be felt by the capital market and mutual fund investment sectors. This investment has greatly increased because dividends are no longer the object of taxation. Dividends are the profits of a company whose proceeds are partially given to shareholders, which is decided at the General Meeting of Shareholders (GMS). (Apriani & Mahersaputri, 2022) The ultimate goal of the omnibus law is to encourage national economic growth. By using a method or concept, making regulations that combine several rules that are substantially different, into one regulation that functions as a legal umbrella. (Sukarman & Prasetiya, 2021) Although what is striking is the negative response of the public in responding to the Job Creation Law. Of course, it is not without reason that various elements of this society do not approve of the ratification of the Job Creation Law. As previously explained, this law was created to create a conducive investment climate in Indonesia and advance the country's
economy. Through the Omnibus Law, the Government will revise UUK No. 13 of 2003. The points to be revised include; minimum wage provisions, outsourcing, TKA, severance pay, working hours, and witnesses, especially criminal sanctions for employers. (Kartikasari & Fauzi, 2021)

What must be done is the harmonization of various laws and regulations that are obstacles to investment. The essence of omnibus law is to create synergy between regulations related to investment under one legal umbrella, for example, investment rules, licensing, employment, and so on. Due to the importance of omnibus law for many sectors, especially investment, its formation must be able to convert conflicts and overlaps between various laws and regulations, into productive synergies. The establishment of an omnibus law not only summarizes a number of laws and regulations that were originally sectoral, but is also able to create laws and regulations as investment incentives so as to increase investment competitiveness. For example, in managing permits, tax incentives, and so on. (Sadono & Rahmiaji, 2021) If business issues are ignored, productivity will decrease, but if the two countries have different legal systems, there must be special efforts made by the disputants to solve the problem. (M. Simanjuntak et al., 2021)

The establishment of laws and regulations should not be an exclusive area for regulatory shapers alone. The public will be encouraged to accept the presence of the regulation if the participatory steps undertaken are in accordance with the purpose of forming the law. (C. Aryani, 2021) Save the author that foreign investment in this case is very necessary to improve the country’s economy and public welfare, the complexity of the business licensing process in Indonesia, the many requirements that must be met are a scourge for investors to start a business. And simply to take care of these requirements, documents from many agencies are needed that must be taken care of one by one. This is very tiring, time-consuming and costs are not small because each table or agency passed must be spent which sometimes in addition to official costs also need "extra costs" so that affairs can run smoothly. Therefore, it is very necessary to simplify a licensing process.

The Job Creation Law includes changes and simplifications to 79 laws and 1,203 articles. This sweeping rule contains 15 chapters and 186 Articles consisting of 905 pages. This rule came out for the sake of labor absorption in the midst of increasingly competitive competition. One of the clusters on Simplification of Business Licensing is related to foreign investment, including:

1. Application of Risk-Based Licensing
   a. Change the licensing approach from license base to risk-based:
      1. High risk, business licensing in the form of Permits
      2. Medium risk, business licensing in the form of Standard Certificate
3. Low risk, business licensing in the form of registration / NIB (Business Identification Number) from OSS).

2. Spatial Suitability
   a. Basic licensing for spatial planning is carried out through Spatial Planning Conformity to Provincial/District RDTR/RTRW.
   b. Integrating spatial plans (land, coastal, and sea)
   c. Acceleration of RTRW determination and implementation of One Map Policy.

3. Environmental Approval
   a. Integrating environmental approvals into business permits.
   b. AMDAL remains in place for business activities that have an important impact (high risk) on the environment

4. Building Approval and Certificate of Feasibility of Function (SLF)
   a. Application of building technical standards
   b. For simple building buildings follow standards / prototypes.

Risk-based Business Licensing is carried out based on the determination of the level of risk and business scale rating of business activities, based on the assessment of the level of danger and the potential for harm, which is carried out on aspects of: health, safety, environment, and/or utilization and management of resources. (Hidayatullah & Wiradiputra, 2021) For certain activities, the hazard level assessment can include other aspects according to the nature of the business activity, taking into account: type of business activity, criteria for business activities, location of business activities, limited resources, and/or volatility risk. Assessment of the potential occurrence of hazards includes: near impossible to occur, unlikely to occur, likely to occur, or almost certain to occur. Based on the above assessment, the level of risk and business scale rating of business activities are determined to be low-risk business activities, medium-risk business activities, and/or high-risk business activities.

Business Licensing for medium-risk business activities is divided into two, namely: Business Licensing for medium-low risk business activities in the form of Business Identification Number and standard certificate is a statement of Business Actors to meet business standards in order to carry out business activities. Business Licensing for medium-high risk business activities in the form of business identification numbers and standard certificates is a business standard certificate issued by the Central Government or Regional Government according to its authority based on the results of verification of compliance with business activity implementation standards by Business Actors. In the event that medium-risk business activities require product standardization, the Central Government issues a product standard certificate based on the results of verification of compliance with standards that must be met by Business Actors before carrying out product commercialization activities. Simplification of Sector Business Licensing and Investment Facilities and Requirements are regulated in the Job Creation Law Chapter III.
Part Four from Article 26 to Article 75, which consists of sectors: marine and fisheries; agriculture; Forestry; energy and mineral resources; nuclear power; Industry; trade, legal metrology, halal product assurance, and standardization of conformity assessment; public works and public housing; transportation; health, medicine and food; education and culture; tourism; religious; postal, telecommunications, and broadcasting; and defense and security. (Santoso, 2019)

The Job Creation Law presented by the current government is a new policy designed with the aim of providing various conveniences and benefits for foreign investors if they want to invest or invest in Indonesia. This is expected by the Indonesian government in order to change the investment climate in Indonesia and can be a solution in the development of the country's economy. However, the benefits felt by FDI at this time can be assumed only as a cool breeze that is beneficial. This is because the Constitutional Court decision states that the Job Creation Law is contrary to the 1945 Constitution and has no conditionally binding legal force because in the process of drafting and drafting the Job Creation Law has violated several rules that contradict Law Number 12 of 2011 so that the Job Creation Law is declared formally flawed. Therefore, the court gave a grace period of 2 years to the framer of the law so that it could complete the improvement of the Job Creation Law within the specified time. The court also stated that if the Job Creation Law cannot be corrected within the specified time, then the law or articles or material content of the law that has been repealed or amended by the Job Creation Law is declared valid again. Related to the old law that will reapply if the Job Creation Law fails to be improved, in this case, foreign investors will feel disadvantaged due to the uncertainty of investment law in Indonesia, in addition to violating the rights of FDI which should be entitled to various facilities and benefits in the Job Creation Law. Therefore, efforts that can be taken to avoid various conflicts that will arise between Indonesia and FDI if the Job Creation Law is declared permanently unconstitutional can be taken by enacting transitional provisions and additional regulations. Transitional provisions aim to avoid legal vacuums, provide legal guarantees, provide legal protection for parties affected by changes in a law, and to regulate transitional / temporary matters.

CONCLUSION

The urgency of the Omnibus Law on the Job Creation Law is an alternative for Foreign Investors to obtain convenience in a business licensing process. However, the benefits felt by Foreign Investors today can be assumed only as a cool breeze that is profitable. This is because the Constitutional Court decision states that the Job Creation Law is contrary to the 1945 Constitution and has no conditionally binding legal force because in the process of drafting and drafting the Job Creation Law has violated several rules that contradict Law Number 12 of 2011 so that the Job Creation Law is declared formally flawed. So what must be done is harmonization of various laws and regulations that are obstacles in investment. The essence of
omnibus law is to create synergy between regulations related to investment under one legal umbrella, such as investment regulations, licensing, employment, and so on. Given the importance of omnibus law for many sectors, especially investment, its formation must be able to transform conflicts and overlapping laws and regulations, into productive synergies.

REFERENCE


