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The Problems of the Omnibus Law in the Employment Cluster Related to Licensing to Hire Foreign Workers

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Abstract— This paper aims to analyze the omnibus law's problems in the labor cluster related to permits to employ foreign workers. Where in the development of legal products in new normal era, after the issuance of the Omnibus Law. One of them is the omnibus law in the employment cluster in the licensing sector for foreign workers. Previously, permits for foreign workers were regulated in Law number 13 of 2013 concerning Manpower and also regulated in Law number 6 of 2011 concerning Immigration with certain limitations in managing permits for foreign workers. The investors who have invested in a certain period in Indonesia will receive facilities in the form of a visa permit process. Concerning the workforce copyright law, which uses the concept of the omnibus law, which currently is the right answer to increasing economic growth in the context of the welfare of the Indonesian nation, however, what is still a problem is the application of the omnibus law concept, the public's view of the ease of licensing foreign workers in The omnibus law provides benefits for foreign investors only because basically the ease of licensing for foreign workers into the omnibus law is intended to accelerate investment.

Keywords: Omnibus Law, Employment, Licensing, Foreign Workers.

I. INTRODUCTION

Increasing economic growth is one of the ways to improve the welfare of the Indonesian people, which is part of our country's specific goals of efforts to increase economic growth through the workforce sector, one of which regulates foreign workers and those who work in Indonesian companies (Kurniawan & Managi, 2018). To increase economic growth to achieve an increasingly prosperous society, the government has taken steps to revise various statutory provisions using the Omnibus Law concept, one of which is in the labor sector, which regulates permits for foreign workers (Fitryantica, 2019).

Foreign Workers (hereinafter referred to as TKA) today have become a common phenomenon because basically they have also existed since the start of industrialization on this earth. The use of foreign workers in Indonesia itself continues to develop

and change according to its era, starting from the Dutch colonial era to the present. From the past until now there are basically two employment problems, namely the problem of job opportunities and the problem of the quality of the workforce. The high rate of population growth in Indonesia has resulted in the number of the workforce increasing every year, while the available job opportunities have not been able to meet work needs in accordance with the number of job seekers. This results in an imbalance between the large number of people who need work and the available job opportunities. Moreover, now coupled with the large number of workers who experience termination of employment from the company where they work. The problem of lack of job opportunities has made a lot of unemployment in Indonesia. Indirectly, the use of foreign workers in this context will also increase the level of competition for jobs and make the unemployment problem in this country more complex.

Omnibus law is a law whose substance is to revise and/or revoke many laws. This concept developed in common law countries with Anglo Saxon legal systems such as the United States, Belgium, England and Canada. The concept of omnibus law offers to fix problems caused by too many regulations (over regulation) and overlapping (overlapping). If the problem is solved in the usual way, it will take quite a long time and cost a lot of money. Not to mention that the process of designing and forming laws and regulations often creates deadlocks or is not in accordance with interests (Busroh, 2017).

One of the countries that adopted the omnibus law concept was Serbia in 2002 to regulate the autonomous status of Vojvodina Province. The law formed under this concept covers the jurisdiction of the Vojvodina Provincial government regarding culture, education, language, media, health, sanitation, health insurance, pensions, social protection, tourism, mining, agriculture, and sports (Busroh, 2017). Apart from Serbia, as published on Privacy Exchange.org (A global information resource on consumers, commerce, and data protection worldwide National Omnibus Laws), the concept of omnibus law has also been adopted by countries such as



Argentina, Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, The Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Thailand, and United Kingdom (Busroh, 2017).

The concept of omnibus law can be a solution to simplify too many regulations, as Indonesia is currently experiencing. As revealed by Bappenas, during 2000 to 2015, the central government issued 12,471 regulations, with the ministry being the largest producer with 8,311 regulations. The next most common type of regulation is government regulation as many as 2,446 regulations. Meanwhile, regulatory products issued by local governments are dominated by district/city regulations with a total of 25,575 regulations, followed by provincial regulations with 3,177 regulations.

Then, referring to data from the Center for the Study of Indonesian Law and Policy, from 2014 to October 2018, 7621 Ministerial Regulations, 765 Presidential Regulations, 452 Government Regulations, and 107 Laws were issued. This data does not include regulations issued in the last one year, from November 2018 to now. Apart from being too many in number, these regulations also overlap, so to fix one problem it is not enough to just revise one law. For example, if there is a regulatory problem regarding forestry which requires the regulation to be corrected, then Law no. 41/1999 on Forestry. However, there are still obstacles in other regulations, such as Law no. 32/2009 on Environmental Protection and Management (PPLH) or Law no. 5/1960 concerning Basic Regulations on Agrarian Principles (Putra, 2020).

In addition to too many regulations, there are several other fundamental problems, first, the unsynchronized planning of laws and regulations, both at the central and regional levels, with development planning and policies. Second, there is a tendency for laws and regulations to deviate from the content that should be regulated. Third, disobedience to the content material raises the issue of "hyper-regulation". Fourth, the effectiveness of laws and regulations is also often a problem that arises during implementation. The situation is exacerbated by the absence of procedures for monitoring and evaluating laws and regulations and the absence of a special institution that handles all aspects of the legislative system (Anggono, 2014).

In simple terms, it can be translated that the omnibus law is a law that can change many rules (Goldstein & Pewen, 2013). Jimmy Asshiddiqie, in the subject of comparisons to the constitution on September 28, 2017, conveyed three conditions for practicing omnibus law, namely the law that will be amended is directly related, the law to be amended is not directly related, and the direction that will be amended is not related but in practice intersect (Tisnanta et al., 2018).

Legally, Law Number 12 of 2011 concerning the Establishment of Legislation has not included the concept of the Omnibus Law as one of the principles in the formation of laws. However, the omnibus law is not forbidden. Looking at the historical thread, although it still sounds foreign, it is not

something really new. Although it is not called an omnibus law, we have applied the same concept when the People's Consultative Assembly issued MPR Decree No. I/MPR/2003 concerning Review of the Material and Legal Status of Provisional MPR Decrees and MPR RI Decrees 1960 to 2002. Then, This concept is also applied in the Election Law, although it is not called an omnibus law, but the concept used is similar. Law Number 7 of 2017 concerning General Elections basically unifies and revises 6 (six) laws. The six laws that were put together and revised are Law Number 32 of 2004, Law Number 8 of 2005, Law Number 12 of 2008, Law Number 42 of 2008, Law Number 15 of 2011, and Law Number 8 of 2012. Long before, the omnibus law had also been practiced by Indonesia in simplifying around 7,000 Dutch regulations to around 400 regulations (Arianto, 2019).

The omnibus law problem can be seen in the difficulties in forming laws, which seem to have long been felt by the people of Indonesia as a developing country (HaraHap & Hamid, 2020). The difficulty in developing this law is thought by the Indonesian people facing various social problems, fundamental multidimensional structural and cultural issues. (Hector & Nabil Baydoun, 2007). That the construction of this law now and in the future will continue to increase in response to society's demands along with the increasing complexity of development conditions and culture. (Philip K. Thornton, 2010).

The Employment Creation Law, according to the Omnibus Law prepared by the government, will facilitate the entry of foreign workers (TKA) into Indonesia (Samawati & Sari, 2020). According to the news that the author reports from the reactor.co.id, foreign workers (TKA) often have difficulty obtaining a (KITAS) permit with the Immigration Law. Therefore, there will be convenience related to this. (Hamzah, 2020).

Previously, permits for foreign workers were regulated in Law number 13 of 2013 concerning Manpower Article 1 number 13 states: "Foreign Workers are foreign citizens holding visas with the intention of working in Indonesian territory" and regulated in Law number 6 of 2011. (Prabowo et al., 2020). Regarding Immigration Article 39 letter a which states: Limited stay visas are granted to foreigners: As clergy, experts, workers, researchers, students, investors, older people, and their families, as well as foreigners who are legally married to Indonesian citizens who will do so (Arifin & Wiraputra, 2020). Travel to the territory of Indonesia to live for a limited period (Peluso, 2018).

However, with the existence of the omnibus law, according to the Expert Staff for Economic and Political Relations, Law and Security at the Coordinating Ministry for Economic Affairs, it is said that investors who have invested in a certain period in Indonesia will get facilities in the form of a visa permit process. (Salacuse, 2013).

Problems related to the omnibus law problem, in this case, it appears that the omnibus law will only provide benefits for foreign investors because basically, the ease of licensing for foreign workers into the omnibus law is intended to accelerate investment. Based on this fact, of course, correct and proper law

enforcement must be applied. (Tejomurti & Sukarmi, 2020).

II. METHODS

This research is normative legal research (Normative Legal Research) using a normative juridical approach (Normative legal analysis). (Soekanto & Mamudji, 2011) the data in the study were obtained through a literature study by collecting and analyzing various available primary, secondary, and tertiary legal materials. (Ibrahim, 2020). Primary standard materials, namely basic norms or rules, introductory provisions or regulations, as well as statutory regulations and traditional secondary materials, namely traditional materials which provide further explanation of primary standard materials in the form of literature, journal articles, and also relevant research results. (Ali Rido, 2020).

Data were collected by a literature study of books, articles, research results, and statutory regulations. Data analysis was carried out in a descriptive qualitative manner in discussing the formulation of research problems.

III. MAIN HEADING OF THE DISCUSSION (FIRST)

The Role of Immigration Relating to Licensing of Foreign Workers

Regional victims (TKA) who enter the territory of a country will be subject to the laws of that country on the citizens of that country (Alvi Syahrin et al., 2018). However, most countries place people under some kind of disability or assign schools to a different level of rigor (Carroll & Muller, 2018). Often these people are not given voting rights or rights to exercise certain professions or the power to own immovable property. Currently, Indonesia cannot avoid global economic competition. This happened along with the implementation of free trade in Southeast Asia and even the world (Yue, 2004). In the era of globalization and the current free market, movement of investment, capital and labor between countries is unavoidable (Bordo, 2017). As a consequence of the investment, there will automatically be the use of foreign workers. This is where immigration plays an important role in carrying out immigration monitoring of the presence of foreign workers (TKA) working in the country (Alexander & Eberly, 2018).

Today's global development encourages the mobility of the world's population which has various impacts, both beneficial and detrimental to the interests and life of the nation and state of the Republic of Indonesia, so that laws are needed to guarantee legal certainty that is in line with respect, protection and promotion of human rights (Choudaha & van Rest, 2018).

Immigration policy will greatly affect the investment climate, the willingness of foreign people or potential investors to come and invest in Indonesia (Alvi Syahrin et al., 2018). Ease of immigration regulations through regulations and simple technical implementation, especially in obtaining visas, entry permits, and other immigration permits will greatly affect to attract foreign investors to look and develop in Indonesia in

addition to other related matters (Helbling & Leblang, 2019). With such a background in mind, the government continues to fix immigration problems, for example by punching various things or obstacles such as the following (Firdaus et al., 2020).

In handling visas, there have even been visa-free cases for certain countries for short visits, including for business activities based on mutual benefit and more specifically in the field of tourism and those related to the growing ease of visits to visit.

The limited stay permits which was originally only for one year was increased to 2 (two) years and can be extended for 2 (two) times each for 2 (two) years.

Commitment to be active in globalization policies and international commitments related to various immigration policies (Baker & McGuirk, 2017).

IV. MAIN HEADING OF THE DISCUSSION (SECOND)

National Arrangements Concerning Foreign Workers

Law of the Republic of Indonesia Number 5 of 2011 concerning Immigration

Along with developments in the international world, there have been changes in the country that have changed the paradigm in various aspects of the constitution along with the rolling of reforms in all fields (Jones & Dovidio, 2018). This change has had a profound influence on the realization of equal rights and obligations for every Indonesian citizen as part of human rights (Nurhidayatulloh et al., 2018). With this development, every Indonesian citizen has the same opportunity to exercise his right to leave or enter the Indonesian Territory (Jurriëns & Tapsell, 2017).

Therefore, based on this Law, the provisions regarding deterrence do not apply to Indonesian citizens (Missbach, 2017). The impact of the globalization era has affected the economic system of the Republic of Indonesia and to anticipate it requires changes in laws and regulations, both in the fields of economy, industry, trade, transportation, labor, and regulations in the field of traffic of people and goods (Foghani et al., 2017). These changes are needed to increase the intensity of relations between the Republic of Indonesia and the international community which have a huge impact on the implementation of the functions and duties of Immigration (Dasgupta & Beard, 2007).

Simplification of the Immigration procedure for foreign investors who will invest in Indonesia needs to be done, including the ease of granting Permanent Stay Permits for investors who have met certain conditions (Putra & Arifin, 2020). Thus, it is hoped that a pleasant investment climate will be created and it will attract more foreign investors to invest in Indonesia (Oh et al., 2018).

On the other hand, the supervision of foreigners needs to be further improved in line with the increase in international crimes or transnational crimes, such as human trafficking, human smuggling, and narcotics crimes, which are mostly committed by organized international crime syndicates.

Law No. 13/2003 concerning Manpower

At first, labor law was referred to as labor law, and even now

both are still used by legal experts and in the academic world, where labor law comes from the word "arbeidsrecht". The word arbeidsrecht itself, has many limitations of understanding (Agus, 2011: 12). Equate the term labor with workers. In Article 1 number 2 of Law no. 13 of 2003 concerning Manpower, the term labor contains a general understanding, namely, everyone who is able to do work to produce goods and services to meet their own needs and that of the community (Salam, 2009). In employment law, a worker is any person who works for another person by receiving wages or other forms of remuneration. Other forms of remuneration referred to are goods or objects whose value is determined on the basis of an agreement between employers and workers (Jehani, 2006). Manpower is regulated in Law no. 13 of 2003, which was promulgated in the 2003 State Gazette Number 39 on March 25, 2003, and came into force on the date of promulgation, manpower development as an integral part of development

The existence of the Job Creation Act is designed as an Omnibus Law that can balance the three general types of regulation, namely: first, economic regulation, intended to ensure market efficiency, partly through the promotion of adequate competitiveness among business actors. Second, social regulation, is intended to promote the internalization of all relevant costs by actors. Third, administrative regulation, which aims to ensure the functioning of public and private sector operations (Matompo and Izziyana, 2020).

The Job Creation Act amends 31 (thirty-one) Articles, deletes 29 (twenty nine) Articles, and inserts 13 (thirteen) new Articles in the Manpower Law (hereinafter referred to as the Manpower Act). The process of drafting this law has a lot of public opinions that do not agree, this public opinion is due to the fact that President Jokowi's deadline is only 100 days and does not involve many parties in making it. However, there is one thing that is very important and becomes the main problem in the preparation of this law. One of these problems is the existence of severance pay cuts to workers who have been terminated by the company, the loss of maternity leave and so on. Because of that, many workers and the public have rejected the existence of this Job Creation Bill. This shows that there are dynamics in the formation of the Job Creation Act, both formally and materially (Matompo and Izziyana, 2020).

Prior to the birth of Law Number 13 of 2003 concerning Manpower (UUK), the use of foreign workers in Indonesia was regulated in Law Number 3 of 1958 concerning the Placement of Foreign Workers (UUPTKA). In its journey, regulations regarding the use of foreign workers are no longer regulated in a separate law, but are already part of a compilation in the new Manpower Law. In the UUK, regulations on the use of foreign workers (TKA) are contained in Chapter VIII, Article 42 to Article 49. The regulation starts with the obligation of employers to use TKA to obtain written permits; has a plan for the use of the TKA which contains the reasons, type of position and period of time for using the TKA; the obligation to appoint Indonesian citizens to accompany foreign workers; to the obligation to return the foreign worker to the country of origin after the end of the employment relationship.

UUK emphasizes that every entrepreneur is prohibited from

employing foreigners without written permission from the Minister. The definition of foreign workers is also narrowed, namely foreign nationals holding visas with the intention of working in Indonesian territory. In this provision, it is reaffirmed that every employer who employs foreign workers is required to have a written permit from the Minister or an appointed official. To provide wider employment opportunities for Indonesian workers (TKI), the government limits the use of foreign workers and carries out supervision.

V. MAIN HEADING OF THE DISCUSSION (THIRD)

The concept of Omnibus Law in the Employment Cluster Relates to Licensing to Employ Foreign Workers

Basically, the use of foreign workers in Indonesia has been facilitated by the issuance of Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers. Indonesian people are being stung by Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers (TKA). How not, if the problem of employment is still a major problem for some Indonesians. Moreover, it turns out that this minimal job opportunity causes the lower middle class to prefer to become migrant workers. Whereas the government should provide guarantees for its citizens to get decent jobs as mandated by the constitution. The opening of job opportunities for foreign workers in Indonesia is actually a big irony, considering the unemployment rate is still very high. The issuance of Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers (TKA), actually hurts the sense of justice in the community, even though the reason being rolled out is that the foreign workers are not unskilled laborers (Hanifah, 2020: 12).

However, in 2020 a regulation emerged which was deemed to have made it easier for foreign workers to enter Indonesia to work. Based on Article 1 point 1 of the Draft Law on Job Creation, it is stated that job creation is an effort to create work through efforts to facilitate, protect, and empower cooperatives and micro, small and medium enterprises, improve the investment ecosystem and ease of doing business, and invest in the Central Government and accelerate projects. national strategy. Article 2 paragraph (1) states that this Law is implemented based on the following principles:

1. Equal rights
2. Legal certainty
3. Ease of doing business
4. Togetherness, and
5. Independence

Basically the Job Creation Act was born with a good aim, namely to increase the economy and selling prices and the quality of MSEs in Indonesia. Article 3 of the Employment Creation Law outlines the objectives of the creation of the Job Creation Law, namely:

1. Creating and increasing job opportunities by providing convenience, protection, and empowerment to cooperatives and MSEs as well as national industry and trade as an effort to be able to absorb the widest possible Indonesian workforce while taking into account the

balance and progress between regions within the national economic unity.

2. Ensuring that every citizen gets a job and gets fair and proper remuneration and treatment in an employment relationship.
3. Adjusting various regulatory aspects related to alignments, strengthening, and protection for cooperatives and MSEs and national industries.
4. Adjusting various regulatory aspects related to improving the investment ecosystem, facilitating, and accelerating national strategic projects oriented to national interests based on national science and technology guided by the ideology of Pancasila.

The era of globalization requires workers to compete with each other to prepare themselves to get the best job for themselves. The demand to further improve competitiveness is felt by entrepreneurs in conducting international trade. Foreign investors who will invest their shares in Indonesia prefer an employment contract system that does not cause many problems than implementing permanent workers. What is meant by casual daily workers/laborers are workers/laborers who work to perform certain jobs which vary in terms of time and volume of work and the wages received are based on attendance. For certain jobs that vary in terms of time and volume of work as well as wages based on attendance, this can be done by means of a casual daily work agreement. A casual daily work agreement is made on the condition that the worker/laborer works less than 21 (twenty-one) days in 1 (one) month. Freelance daily work agreements are excluded from the general terms of the PKWT. Employers who employ casual daily workers/laborers are obligated to make a written daily casual work agreement, which can be in the form of a list of workers/laborers performing the work, at least containing the name/address of the entrepreneur or employer; Name/address of worker/laborer; Type of work performed; and Amount of wages and/other rewards. If the daily casual work agreement is made on the condition that the worker/laborer works 21 (twenty-one) days or more for 3 (three) consecutive months or more, the daily casual work agreement changes to a PKWTT or permanent worker (Shalihah, 2017: 151- 152).

The provisions of the applicable laws and regulations as mentioned above in their implementation have not been effective, where in order to extend the PKWT from the 2 years that have ended, to continue with the addition of the PKWT time for a maximum of 1 year, the company must terminate the employment relationship for 30 years. After that, then the company and workers can re-engage with PKWT status for a maximum period of 1 year. This means that the labor law has limited a person to only be able to work with a certain employment status for a maximum of 3 years with the above provisions. If the company wants the working relationship to continue, then inevitably in entering the 4th (fourth) year, the company must change the status of the work agreement to PKWTT (Salihah, 2017: 152).

At a conceptual level, can the Omnibus Law delivered by Audrey O Brien and Ahmad Redi maximize law enforcement in the field of manpower, especially foreign workers so that it

can foster economic development in the context of the welfare of the Indonesian nation? In connection with the omnibus law problem with foreign worker licensing, it is discussed in three aspects, namely:

1. The aspect of legal substance, namely statutory regulations is regulated in two legal umbrellas, namely, labor laws and are scattered in many implementing regulations and immigration laws are scattered in many implementing regulations as mentioned above, which in fact creates confusion in the application of statutory provisions -Which law is correct and correct, not only in terms of legal substance, namely which legal provisions will be applied but also to the apparatus, namely the matter of legal structure.
2. Aspects of legal structure in this case are law enforcement officers in the field of manpower, in fact, law enforcement officers in the field of manpower, especially for foreign workers, have a disagreement on whether it is carried out by Civil Servant Investigators (PPNS) at the Ministry of Manpower or PPNS at the Directorate General of Immigration, in fact in Central Kalimantan Law enforcement against foreign workers is carried out by PPNS Immigration and the sanctions applied are administrative penalties for fines and deportation that are not carried out pro Justisia, namely investigations that are continued to court trials as stipulated in Article 122 of the immigration law. This shows the dualism of PPNS and the lack of capacity of PPNS resources in terms of law enforcement, resulting in not maximal law enforcement against foreign workers.
3. The aspect of legal culture in law enforcement in the field of manpower, especially for foreign workers, is inseparable from the external legal culture, namely the community, which in fact is a community living within the company.
4. Based on the study using the concept of the omnibus law from the aspect of legal substance, namely the laws and regulations governing permits for foreign workers, the omnibus law requires that it be regulated in one statutory law, this is of course to avoid overlapping legislation as regulating foreign workers and companies. foreign workers in force at this time.

It can be concluded that basically the concept of the omnibus law in the labor cluster related to permits to employ foreign workers can actually answer and overcome the lack of law enforcement for foreign workers from the aspect of legal substance. In relation to the workforce copyright law which uses the concept of the omnibus law which currently is actually the right answer to increasing economic growth in the context of the welfare of the Indonesian nation, however, what is still a problem is the application of the omnibus law concept, the public's view of the ease of licensing foreign workers in The omnibus law provides benefits for foreign investors only, because basically the ease of licensing for foreign workers into the omnibus law is intended to accelerate investment.

VI. CONCLUSION

Basically, the concept of omnibus law in the labor cluster related to permits to employ foreign workers can actually answer and overcome the lack of law enforcement for foreign workers from the aspect of legal substance. In relation to the labor copyright law which uses the concept of the omnibus law which currently is actually the right answer to increasing economic growth in the context of the welfare of the Indonesian nation, however, the problem remains the application of the omnibus law concept, the public view of the ease of licensing foreign workers in The omnibus law provides benefits for foreign investors only, because basically the ease of licensing for foreign workers into the omnibus law is intended to accelerate investment.

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