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The forming aspects of the foreign direct investment policy in omnibus law on job creation

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Abstract

This research aims to explore how the history of regulations related to foreign investment in Indonesia. Then what are the purpose of its formation and the aspects that influence the construction of the Omnibus Law on Job Creation or Law No. 11 of 2020 on Job Creation. This research method is an empirical juridical legal research type of legal history research. The results showed that globalization aspects, political aspects, economic aspects, socio-cultural aspects, and science and technology aspects were the main aspects that influenced the formation of the Omnibus Law on Job Creation.

Keywords: omnibus law, FDI, political aspect, investment aspect

Introduction

During the Covid-19 pandemic, where the Large-Scale Social Restriction policy is being implemented in Indonesia, it seems that many people regardless of the danger of being exposed to Covid-19. Some elements of society have taken to the streets to demonstrate against the ratification of the Omnibus Law on Job Creation. Some have accused the government and the Indonesian parliament of deliberately passing this law during the pandemic so that the process runs smoothly by taking advantage of the Covid-19 issue to limit demonstrations from being massive ^[1]. The community is divided into three, namely those who reject the ratification of the Omnibus Law on Job Creation, those who support the ratification of the Omnibus Law on Job Creation, and those who don't care about the issue.

However, the Indonesian government has strong reasons why the Omnibus Law on Job Creation needs to be ratified and implemented immediately. As said by Roeslani, Chairman of The Indonesian Chamber of Commerce and Industry (KADIN), that if the government waits after the Covid-19 pandemic is over before passing the Omnibus Law on Job Creation, then Indonesia will not be able to catch up with Vietnam, Malaysia and Thailand in providing attractiveness to foreign investors ^[2]. So, the effort to attract foreign investors to invest in Indonesia is one of the main issues in the ratification of the Job Creation Omnibus Law, which is to increase economic growth through the injection of foreign investment and increase the number of jobs that will improve the people's economy, as well as generate MSMEs that will synergize in collaboration with companies invested in Indonesia.

As explained in the Explanation of Number 3 Article 13 Paragraph (1) of Law No. 11 of 2020 on Job Creation: "In the framework of protecting Cooperatives and Micro, Small and Medium Enterprises: (1). Foreign investment is only allowed on large scale businesses and can only partner with Cooperatives and Micro, Small and Medium Enterprises."

Susilo and Efendi said that the Omnibus Law on Job Creation could not be separated from the background of the inauguration speech for the President and Vice President for the period 2019-2024, which was delivered on October 20, 2019. President Joko Widodo, in his speech, said that Indonesia is currently experiencing a demographic bonus, which is the age of the population. Productive age is higher than the unproductive age, and this is at the same time an opportunity as well as a problem for Indonesia. Capturing this opportunity is only possible if job opportunities are wide open, and for that, it requires increased investment, not only from domestic investors but also foreign investors. Simplify and refine regulations is necessary to support an investment climate that attracts investment. Then the government, with the approval of the Indonesia Parliament, will immediately launch the Omnibus Law on Job Creation ^[3].

This study intends to explore how the history of regulations related to foreign investment in Indonesia, the purpose of its formation, and the aspects that influence the formation of the Omnibus Law on Job Creation or Law No. 11 of 2020 on Job Creation. And based on the above background, the formulation of the problems in this study are: (1) How is the history of foreign investment regulations in Indonesia? (2) What is the purpose of establishing the Omnibus Law on Job Creation or Law no. 11 of 2020 on Job Creation? (3) What aspects influence the formation of the Omnibus Law on Job Creation or Law no. 11 of 2020 on Job Creation?

Research Method

This research uses the juridical empirical legal research method, a type of legal history research. It is a method of conducting legal research that identifies the stages of legal development that can be narrowed in scope to the history of statutory regulations ^[4]. As a legal history study, this study seeks to answer three research questions such as the following: (1) What is the history of

investment regulations in Indonesia? (2) What is the purpose of establishing the Omnibus Law on Job Creation? And (3) what aspects influence the formation of the Omnibus Law on Job Creation or Law?

The data that is used as legal material in this study include primary and secondary legal materials. According to Ali⁴, which provides for primary legal materials, among others are (1) statutory regulations, (2) official records and minutes in the making of statutory regulations, and (3) judges' decisions. UU no. 11 of 2020 on Job Creation is the main primary data in this research.

Meanwhile, which includes secondary data in legal research, according to Zainuddin Ali, are all publications on law, which can consist of: (1) text-books on law, (2) legal dictionaries, (3) legal journals, and (4) comments on the judge's decision^[4]. Secondary data mainly used in this research are textbooks on law, legal journals, and expert comments regarding the Omnibus Law on Job Creation in the mass media.

Results and Discussion

History of Investment Regulations in Indonesia

The laws and regulations related to investment have been regulated or under the umbrella of the following laws: Law no. 1 of 1967 jo. Law No. 11 of 1970 on Foreign Investment, Law no. 6 in 1968 Jo. Law No. 12 of 1970 on Domestic Investment, then amended by Law no. 25 of 2007 on Investment⁵. Then the Omnibus Law on Job Creation became a breakthrough to simplify existing regulations in Indonesia, one of which is the simplification and structuring of investment regulations^[5].

Ras and Suroso^[5] stated that the Omnibus Law is an old law product that has been implemented by several countries in the world, including the United States, Ireland, Singapore, and Canada. So, it is no longer a problem for its material implementation because the references are sufficient to be applied. Then, according to Alexander and Sundoyo, the Omnibus law is a product of laws that can revoke or amend several existing laws that are scattered in several regulations. Then streamline them into one law to further target conflict resolution between government officials and statutory regulations with the specific aim of improving the investment climate and as a guarantee of legal certainty and legal protection for policymakers^[6]. One of which is regulated in the Omnibus Law on Job Creation or Law no. 11 of 2020 on Job Creation is a policy related to Foreign Investment.

Purpose of the Formation of the Law on Job Creation

According to the Coordinating Minister for the Economy, Airlangga Hartarto, this Omnibus Law on Job Creation amended at least 79 Laws and 1,244 Articles. Airlangga Hartarto also said that before the Omnibus Law on Job Creation was passed, the government had first drafted a Regulations draft for the implementation of the Omnibus Law^[7].

The purpose of forming the Omnibus Law on Job Creation is clearly stated in Law no. 11 of 2020 on Job Creation Article 3:

This law was formed with the aim of:

- a. creating and increasing employment opportunities by providing convenience, protection, and empowerment for cooperatives and MSMEs as well as national industry and trade as an effort to be able to absorb the widest possible

Indonesian workforce while still paying attention to the balance and progress between regions in the national economic unity;

- b. guarantee that every citizen can obtain a job and receive compensation and fair and decent treatment in an employment relationship;
- c. make adjustments to various regulatory aspects related to alignments, strengthening, and protection for cooperatives and MSMEs well as national industry; and
- d. make adjustments to various regulatory aspects related to improving the investment ecosystem, facilitating and accelerating national strategic projects oriented towards national interests based on national science and technology based on the ideology of Pancasila

The Forming Aspects of the Omnibus Law on Job Creation *Globalization Aspects*

According to Ireland *et al.* (2011)^[8], in this era of globalization and free markets, many companies from developed countries choose to make a foreign direct investment (FDI) rather than indirect investment because it is considered to provide better protection for their assets. Foreign direct investment in developing countries, in general, will receive special treatment because they have the bargaining power to provide employment and knowledge transfer experience to domestic professionals and experts. However, the company will study carefully to invest in other countries. The legal environment related to laws and regulations and regulations on business is one of the factors studied and analyzed in depth before investing. Legal factors are believed to significantly impact their company's performance^[8]. During competition with neighboring countries to attract foreign investors, Roeslani considered that the Omnibus Law on Job Creation would catch up with Indonesia from Vietnam, Malaysia, and Thailand in terms of attracting foreign investors^[9]. Law No.11 of 2020 on Job Creation, it is explained: "*Considering (a) that with work copyright it is expected to be able to absorb the widest possible Indonesian workforce in the midst of increasingly competitive competition and the demands of economic globalization.*" It shows that this Omnibus Law on Job Creation was passed. One of them is motivated by the awareness of the increasingly competitive competition in the midst of the current economic globalization.

Thus, one of the aspects behind the formation of the Omnibus Law on Job Creation is globalization. It was motivated by the political and government awareness that developing countries were competing to convince foreign investors, especially from developed countries, to invest their capital in their countries. These countries, including the Indonesian government, realize that foreign investment can increase national economic growth, create wider employment opportunities, transfer knowledge, and opportunities for national MSMEs to collaborate with large foreign companies investing in Indonesia.

Political Aspects

According to Aristotle (in Manan, 2018)^[10], politics is a master of science and is very important in people's lives in a country¹⁰. Then Manan^[10] said that legal politics is a series of concepts and principles that form the outline and basis of plans in implementing a job, leadership, and ways of acting in the field of law. Political socialization, political recruitment, articulation of

interests, and aggression of interests are input functions needed so that legal, political activities can run well.

John Austin ^[10] said that the law is an order given by the authorities or law to command lawgivers. Apeldoorn ^[11] said that the law itself is actually power. Sometimes the revision of laws reflects the distribution of rulers in the drafting process ^[12]. Although, according to the viewpoint of legal realism, the law does not always order from the authorities, according to Manan ^[10], politics often intervenes in the actions and implementation of the law. Then Kusumaatmadja ^[13] said that law without power is wishful thinking, power without the law is tyranny. Likewise, according to Rasjidi ^[14], the law in its implementation requires the power to support it.

According to Kirchhoff and Tsuji ^[15], the Omnibus Law as a government initiative is presented positively and presented to the public. According to Mulyani and Ayuwatini¹⁶, the ratification and implementation of the Omnibus Law is part of the prerogative of the president. The political aspect is one of the aspects of the birth of the Omnibus Law. Then the Omnibus Law on Job Creation was passed and enforced as a government effort to increase investment and open employment opportunities and national economic growth.

According to Susilo and Efendi ^[3], it cannot be denied that Indonesia needs the presence of foreign investors. However, in the implementation of foreign investment activities, there is the possibility of a dispute between the foreign investor and the Indonesian government. Various reasons caused the dispute. Some of the political aspects were the revocation of investment permits by the government and the takeover or nationalization of foreign companies. Therefore, efforts to provide guarantees in foreign investment activities in Indonesia as a form of protection for foreign investors through the Omnibus Law are certainly expected to increase the flow of foreign investment into Indonesia ^[3].

According to Sihombing and Hamid ^[17], legal ambiguity in various laws and regulations becomes an obstacle in investing, so that this becomes the attention of the government and practitioners in the investment sector, and critical reforms are needed. In addition, according to Alexander and Sundoyo ^[6], the Omnibus Law is a product of laws that can revoke or amend several existing laws that are scattered in several regulations. Then streamline them into one law to further target conflict resolution between government administrators and statutory regulations with the specific aim of improving the investment climate and as a guarantee of legal certainty and legal protection for policymakers.

According to Ras and Suroso ^[5], there are several reasons behind the passing of the Omnibus Law, including that the government sees the overlap of several laws, for example Law Number 4 of 1996 concerning Land Mortgage Rights and Government Regulation Number 41 of 1996 concerning Home Ownership/Residence/Occupancy by foreigners who are domiciled in Indonesia. Then in Government Regulation Number 41 of 1996, it is stated that foreign investors are allowed to control land and buildings in Indonesia with the status of use rights for 25 years, extendable for 20 and 25 years. In addition, investment climate, legal certainty, labor issues, taxation, and customs and infrastructure problems are seen as the cause of foreign investors to invest in Indonesia ^[5]. Apart from that, there are still regional regulations that burden investors ^[5]. Then Ras and Suroso ^[5]

emphasized that the Omnibus law can be a breakthrough in an effort to simplify existing regulations in Indonesia because the Omnibus law tries to transform the diversity of laws into just one law.

According to Ras and Suroso ^[5], the government has a strategic role that can attract foreign investors to invest in Indonesia, which can positively impact the economy, technology transfer, job creation, and other benefits for the creation of people's welfare. Omnibus Law is believed to provide legal certainty from a regulatory perspective, although it does not necessarily provide legal certainty from a law enforcement perspective. However, it is hoped that the ratification of the Omnibus Law can increase investment interest in Indonesia, both investors from abroad as well as domestic investors.

Roeslani, Chairman of The Indonesian Chamber of Commerce and Industry, said that a number of foreign investors prefer to invest in Vietnam over Indonesia because of licensing and tax issues. Licensing overlapping is one of the most complained of by foreign investors. Roeslani assessed that the Omnibus Law on Job Creation would catch up with Indonesia from Vietnam, Malaysia, and Thailand to attract foreign investors ^[9].

Rosan Roeslani means that the overlapping possibility is the overlapping of licenses, one of which is the tug of interest between the central government and local governments. Therefore, in the Omnibus Law on Job Creation or Law no. 11 of 2020 on Job Creation, Article 26A states that *"In the context of foreign investment, the use of small islands and the utilization of the surrounding waters must comply with the Business License from the Central Government and be in accordance with the provisions of laws and regulations in the investment sector."* Then Article 40 also states that *"The transfer of ownership of plantation companies to foreign investors can be carried out after obtaining the approval of the central government."* Then Roeslani hopes that through simplification of licensing, regulations, regulations, bureaucracy, and several other incentives, it can attract foreign investors to invest in Indonesia⁹. In the midst of the controversy over the discussion of the Omnibus Law on Job Creation, Puan Maharani, Chairman of the Indonesia Parliament, emphasized that the Legislation Body in the Indonesia Parliament provides space to address employment issues in the discussion of the Job Creation Bill so that the existence of the Bill will harm no one party. According to Puan Maharani, regarding the workforce cluster in the Omnibus Law on Job Creation, the Indonesian parliament received input from the public and workers, the government, and investors in its discussion ^[18].

Then, according to the Coordinating Minister for the Economic, Airlangga Hartarto, the government must provide employment and improve the quality of the workforce. Investors' presence in Indonesia is one of the answers to this government program¹⁹. Politically, increasing job creation is one of Jokowi's fulfillments of political promises. Therefore, it is hoped that the Omnibus Law on Job Creation will be a means to attract investors to invest in Indonesia to realize an increase in the number of jobs.

Economic Aspects

Indonesia needs job creation. The belief that foreign investment can create job opportunities has prompted the government to attract foreign investors to invest in Indonesia. According to Marbun *et al* ^[20], changes and improvements to various related

laws are needed to implement strategic job creation policies. Amendments to the law itself cannot be done by changing one by one existing laws because, in addition to being ineffective and efficient, it will also take a long time lama^[20].

Investors understand that legal factors are one of the factors that will affect the company's performance. Legal factors can cause them to gain or lose in doing business in certain jurisdictions. Therefore, according to Ras and Suroso, investors need legal certainty in running a business. This legal certainty will be the guide for investors in running the business from their investment activities. Legal certainty can also attract foreign investors to invest in Indonesia^[5]. Then Ras and Suroso⁵ stated that the Omnibus Law was passed as a government effort to attract foreign investors to invest in Indonesia.

Kusumawardana and Amiroch^[21] said that the Indonesian government had made various efforts to encourage increased investment, but various policies that the government has taken to improve the investment climate have not attracted people to invest in Indonesia. It is said that it is believed that one of the reasons why investors are reluctant to invest in Indonesia is the complexity of various regulations related to business in Indonesia. Presidential Regulation Number 91 of 2017 concerning Acceleration of Business Implementation has not significantly boosted investment in Indonesia. So that with the passing of the Omnibus Law on Job Creation, it is hoped that it can attract foreign investors to invest in Indonesia and will have a positive impact by creating many jobs for job seekers^[21].

From an economic point of view, a foreign investment encouraged by the passing of the Omnibus Law on Job Creation is expected to increase foreign exchange income and taxes, which can promote economic growth and national development^[21]. The same thing was conveyed by Marbun *et al.* that the ease and simplification of regulations related to investment with the passing of the Omnibus Law on Job Creation will be able to increase foreign investment in Indonesia. And which is believed to boost economic development, national income, GDP, and the welfare of the Indonesian people^[20].

According to the Coordinating Minister for the Economy, Airlangga Hartarto, the Omnibus Law on Job Creation was born as a response to Indonesia's economic conditions affected by Covid-19 and also a response to the President Letter (Perpres) No. 82 of 2020 related to the establishment of the Committee for Handling Covid-19 and National Economic Recovery^[22].

According to Minister Airlangga Hartarto, the Omnibus Law of the Job Creation Law can be an instrument for empowering MSMEs and regulatory reforms to carry out economic transformation. There are tens of millions of people who need jobs every year. It is hoped that the Omnibus Law on the Job Creation Law will allow them to be absorbed in the job market. Besides that, they can become entrepreneurs. And of course, this complicated licensing makes it difficult for entrepreneurs to start a business. The Job Creation Law is simplified, the bureaucracy is simple to reduce illegal fees. And of course, it will also reduce or prevent corruption and make it easier for businesses to start^[23].

According to Minister Airlangga Hartarto, the Job Creation Law is one way that Indonesia can be freed from the trap of a middle-income country. President Joko Widodo's ambition was previously expressed when Jokowi delivered a state speech in October 2019^[19]. As in the analysis of Oxford Analytica^[24] that

to simplify business regulations and provide more incentives for investment in Indonesia, President Joko Widodo wanted the parliament to pass "omnibus" laws. According to Oxford Analytica^[25], this Omnibus Law on Job Creation was designed to improve the ease of doing business in Indonesia.

Socio-Cultural Aspects

According to Manan^[10], aspects of changing the law in terms of socio-culture include social stratification, external cultural influences, saturation with the established system, and the depletion of public trust in the law. The changes that occur in society, according to Abdul Manan, give birth to various forms of new values that occur in people's lives that are different from previous values. This condition requires people to make legal changes according to the demands of the times^[10]. Likewise, it is said by Friedmann^[26] that the law should follow social changes and adapt to those changes, and not the other way around.

The Omnibus Law on Job Creation, which is expected to attract foreign investors to invest in Indonesia, not only has an impact on the availability of jobs but many parties and the public are also worried that this law will have a negative impact on people who will depend on investors^[21]. Ras and Suroso⁵ mentioned corruption as an element of the legal culture. Corruption and gratification are believed to be one of the main reasons investors are reluctant to invest in Indonesia, which impacts the slowing down of national economic growth. The Omnibus Law is seen to solve this problem, namely reducing corruption to create a conducive climate for investment.

Science Technology Aspects

According to Kusumawardana and Amiroch^[21], foreign investment entering Indonesia, which is encouraged by the passing of the Omnibus Law, is expected to be accompanied by the introduction of technology and science that can be imitated and developed by the community. The existence of this new technology also indirectly leads Indonesia to be able to develop and then compete with other countries^[21].

With the increasing number of foreign investors investing their capital directly in Indonesia, this will be an opportunity to create jobs. It also can generate cooperation opportunities between MSMEs and companies as described in the Explanation of Number 3 Article 13 Paragraph (1) of the Omnibus Law on Job Creation: "*In the framework of protection of Cooperatives and Micro, Small and Medium Enterprises: (1). Foreign investment is only allowed on large scale businesses and can only partner with Cooperatives and Micro, Small and Medium Enterprises.*" These opportunities also create other options, namely knowledge transfer and technology transfer. In the end, it is hoped that the time will come for Indonesia to develop and manage its own national companies with knowledge and technology users that are no less competitive than foreign companies.

Chairman of the Association of Indigenous Indonesian Entrepreneurs of DKI Jakarta, Sarman Simanjanrang, said that the omnibus law Law Number 11 of 2020 on Job Creation requires foreign investors to transfer or transfer technology to Indonesian workers. He hopes that this technology transfer will enable Indonesian workers to compete. Sarman Simanjanrang emphasized that there must be an obligation from business actors or foreign investors to transfer technology to local workers. Thus,

it is hoped that the transfer of technology will increase the skills and competencies of Indonesian workers ^[27].

The Commissioner of the Indonesia Stock Exchange (IDX), Pandu Sjahrir, assessed that the Omnibus Law Cipta Kerja would bring changes to all economic sectors, including positively impacting the technology sector. Pandu Sjahrir explained that the Job Creation Law was the answer to the times. The new legal umbrella will be a golden opportunity for the technology sector to develop more ^[28].

Conclusion

From the results of the analysis above, it can be concluded that the purpose of establishing the Omnibus Law on Job Creation, especially those related to Foreign Investment, is to increase the investment attractiveness of foreign investors. To create jobs and open opportunities for MSME Cooperation to increase growth and national economic progress. The results showed that aspects of globalization, political aspects, economic aspects, socio-cultural aspects, science and technology aspects were the main aspects that influenced the formation of the Omnibus Law on Job Creation or Law No. 11 of 2020 on Job Creation.

The limitation of this research is that the research only focuses on studies related to Foreign Investment in Omnibus Law Job Creation for foreign workers and other matters in the Omnibus Law on Job Creation. Based on the limitations of the above research, the suggestion for future research is to examine issues of employment, competition between domestic workers and foreign workers, or maybe other things made in the Omnibus Law on Job Creation.

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