



Study of Omnibus Law on the Legal Politics of the Indonesian Government in Using Foreign Workers

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Received: 21 October 2020 ▪ Accepted: 7 December 2020 ▪ Published Online: 15 December 2020

Abstract

The Employment Law Cluster in the field of foreign workers, as summarized in the Employment Creation Law, as a result of the Omnibus Law method, is very important to implement because the existing regulations have become chronically obese, obese rules but many hinder investment, so that development and progress of the Indonesian state is hampered, even though Indonesia has declared that it is part of the ASEAN Economic Community (MEA) and is on the line of the 4.0 Industrial Revolution.

Keywords: legal politics, omnibus law, foreign workers, local workers.

1. Introduction

The problem of foreign workers entering Indonesia can no longer be avoided, this is a consequence that the movement of people from one country to another (migration) in the modern era has now become a necessity. The movement of population and labor across national borders is a very important phenomenon in the era of globalization. At least 69 countries in the world have experienced population displacement and around 40 million workers have been involved in this migration.¹ The entry of foreign workers to Indonesia cannot be separated from the discourse of globalization and free trade² the main objective is to push the Indonesian economy even further so that it can compete competitively. Apart from that, foreign workers can also support the smooth running and increase the rate of investment in Indonesia.

There is one problem that makes Indonesia a destination country for foreign workers, there will be many parties and groups who feel disturbed by the presence of foreign workers. In general, in international relations, the countries that are the main destinations for the movement

¹ Segal, A., *An Atlas of International Migration*, London: Hans Zell Publishers, 1993.

² The phenomenon of globalization that humankind has been facing since the 20th century can be characterized by several things, including: Ethnic currents are characterized by high human mobility in the form of immigrants, tourists, refugees, labor and migrants. This flow of people has crossed the territorial boundaries of the country; The flow of technology is marked by technological mobility, the emergence of multinational corporations and transnational corporations whose activities can cross national borders; Financial flows, which are marked by the increasing mobility of capital, investment, purchases via the internet, storing money in foreign banks; Media flows are marked by the increasingly strong mobility of information, both through print and electronic media.

are developed industrial countries in various regions of the world, such as the United States (US), England, France, Germany, Italy, and Australia. Meanwhile, countries in the Asian region which are the main destinations for the movement of workers in addition to countries in the Middle East are Japan, South Korea, Taiwan, Hong Kong, Singapore, and Malaysia.³

If it is studied theoretically using economics that the higher the economic development achieved by a country, the more job opportunities are available for workers, both local workers and foreign workers. This opinion is generally based on the Law of Jean Baptise Say (1767-1832);⁴ that supply will always create demand (supply create its own demand). Greenwood & McDowell;⁵ believes that the entry of foreign workers can encourage economic growth by increasing public demand for goods and services produced and the formation of capital that occurs in the country concerned. This is the reason why the existence of foreign workers is so important in the destination country, in addition to growing the economy (generating investment value), it is also hoped that the presence of foreign workers can bring the destination country to the flow of globalization. In the United States (US) a study by Simon (1988)⁶ was conducted, in the states of California and Los Angeles, the United States found that; "... The high influence of the entry of foreign workers (TKA) on economic growth is due to the high growth of labor in the two regions. During the period 1970-1980, the workforce grew by 46.1% in California and 52.7% in Los Angeles. The increase in workforce growth is the effect of the 5.2% decrease in wages caused by the entry of foreign workers into the labor market in the two states".

Indonesia is a destination country for the arrival of foreign workers (TKA), thus, the presence of foreign workers is expected to participate in national development. This is in line with the opening of the 1945 Constitution (UUD) of the Republic of Indonesia in paragraph IV, which states that; "... In order to advance public welfare, educate the life of the nation, and participate in implementing world order based on independence, eternal peace and social justice, the National Independence of Indonesia was compiled in a Constitution – the Constitution of the State of

³ The effect of the movement of labor on economic growth, employment opportunities and the prevailing wage rate in the destination country has long been the subject of research by economists and political experts. Even UNESCO in collaboration with various universities in the world has conducted various studies on this matter. See in Salt, J. & H. Clout, *Migration in Post-War Europe: Geographical Essays*. London: Oxford University Press, 1976. The research results from the studies that have been carried out lead to the international trade theory developed by Hecksher - Ohlin - Samuelson. See: Simon, J. L., *The Economic Consequences of Immigration in to United States*, Maryland: University of Maryland Press. Simon, J. L., M. Stephen, and R. Sullivan. 1993, The Effect of Immigration on Aggregate Native Unemployment: an Across-City Estimation. *Journal of Labor Resources*, 14(3), 299-316. The three economists argue that: labor as one of the input factors of production will move from one country to another because of the imbalance of human resources and capital between countries. Migration of workers is mainly caused by differences in production costs that occur due to differences in wage levels prevailing in various countries.

⁴ In *Traite d'Economie Politique* (1803), Jean Baptise Say was a supporter of the laissez faire ideology. Say's biggest contribution to the classical school was "every supply will create its own demand" or it is known as "supply creates its own demand". This opinion is often called the Say's Law. Say's law is based on the assumption that the value of production always equals income. Thus, in equilibrium, production tends to create its own demand. See in: Deliarnov, *Perkembangan Pemikiran Ekonomi*, Edisi Ketiga, Rajawali Pers: Jakarta, 2014.

⁵ Greenwood, M. J. and J. M. McDowell, The Factor Market Consequences of U.S. Immigration, *Journal of Economic Literature*, 24(4), 1986, 1773-1785.

⁶ Simon, J. L., *The Economic Consequences of Immigration in to United States*, Maryland: University of Maryland Press, 1998, Lihat pula: Simon, J. L., M. Stephen & R. Sullivan, The Effect of Immigration on Aggregate Native Unemployment: an Across-City Estimation, *Journal of Labor Resources*, 14(3), 1993, 299-316.

Indonesia ...". The excerpt of this sentence is a manifestation of the spirit of the 1945 Constitution which animates to support the existence that Foreign Workers.

As the mandate of the 1945 Constitution that in order to achieve the meaning of the 1945 Constitution, the Government undertakes a policy as a politics to use Foreign Workers, because with the use of Foreign Workers it can make Indonesian relations in the international arena more mature, and ushered into a Developed Country. This means that the Government in this case has its own role to grant permits to foreigners to enter Indonesia for the purpose of working, and directly Indonesia becomes the destination country.

The regulation regarding Foreign Workers is regulated in Law Number 13 Year 2003 which is regulated in Chapter VIII regarding the use of TKA. Then in the context of orderly administration and smooth service to foreigners who have legal certainty regarding the granting of an Immigration Stay Permit as a Foreign Worker it is considered very important for the role of the Immigration Service. The Indonesian Government's Politics regarding foreign workers can be found in various existing laws (positive law), for example we can see in the substance of Law No. 6 of 2011 concerning Immigration,⁷ as an implementation of the spirit of the 1945 Constitution.⁸ In the general explanation that the impact of the globalization era has affected the economic system of the Republic of Indonesia and to anticipate this, it is necessary to change laws and regulations, both in the fields of economy, industry, trade, transportation, manpower, as well as regulations on the traffic of people and goods.⁹

Based on the Selective Policy, which is described in paragraph VIII, the explanation of Law No. 6 of 2011 concerning Immigration which states that; only foreigners who provide benefits and do not endanger security and public order are allowed to enter and reside in Indonesian territory.

Foreigners can easily enter this country, one of which is the application of the visa-free visit policy which was in effect since mid-2015. The issuance of Presidential Regulation (Perpers) Number 21 of 2016 concerning Visit Visa Free, which provides visa-free visits to 169 countries. The existence of this visa-free policy by the government is actually aimed at increasing the number of Indonesian foreign tourist visits. However, the facts on the ground are that many foreign nationals (WNA) use tourist visas to work. The increasing number of foreign workers in Indonesia, especially from China, is very large due to the increasing openness of this country to the traffic of people from other countries. The number of foreign workers residing in Indonesia until November 2016 reached 74,183 workers, an increase of 7.5 percent.

2. Literature review

Etymologically, Omnibus Law is usually juxtaposed with the word law or bill which means a rule that is made based on the compilation of several rules with different substances and

⁷ Philosophical and sociological basis in Law No. 6 of 2011 concerning Immigration are: (a) preventing abuse of power; (b) reform of the bureaucracy and public services that are effective, efficient, and have legal certainty; (c) updating of the implementation of the immigration function based on the information system and immigration management; (d), modernizing the security approach with respect for human rights; (e), promote social welfare by supporting increased investment, tourism and protecting the socio-cultural relations of the Indonesian people in international relations.

⁸ General Elucidation of Law No. 6 of 2011 concerning Immigration.

⁹ C. Sumarprihati Ningrum, *Penggunaan Tenaga Kerja Asing di Indonesia*, HIPSMI: Jakarta, 2006, hlm: 56.

levels.¹⁰ It can be said that the omnibus law is a method or concept of making legislation that combines several rules with different regulatory substances, into a large regulation that functions as an umbrella act, and when the regulation is promulgated the consequences of replacing or changing some of the rules resulting from the merger are good in part or as a whole.

Omnibus Law is a concept as a tradition that grows and develops in countries with common law system traditions, such as the United States. The epistemological concept of the word omnibus is actually: a method, a technique, a way of compiling or normalizing and formulating norms in the draft legislation, then this word is embedded with the word law, which has a fairly broad meaning. In terms of omnibus law, it is omnibus law, so this word is not correct. So that the right word is the omnibus technique / omnibus method in drafting statutory regulations.¹¹

Omnibus comes from Latin meaning “for all”, in the *Black Law Dictionary*, Ninth Edition, Bryan A. Garner¹² mentions omnibus: Relating to or dealing with numerous object or item at once; including many things or having various purposes. This means relating to or dealing with various objects or items at once, including many things or having multiple purposes. This means that from the opinion expressed by Bryan A. Garner, that the omnibus is an effort to connect several diverse objects, which are then conditioned to be combined into an arrangement in a statutory regulation. If it is combined with Law, it means that a rule is made based on the combination of several material rules with different substances, even matter that is complex, even though the subject and object are not always related to each other.

Duhaime’s *Law Legal Dictionary*,¹³ defines Omnibus Law as; Omnibus is a drafts law before a legislature which contains more than one substantive matter, or several minor matter which contains more combined into one bill, ostensibly for the sake convenience. The interpretation of the above is that a bill before the legislature contains more than one substantive issue, or several minor issues that have been combined into one bill as if for the sake of convenience.

In an omnibus bill, sometimes the government can insert substantial changes in the law and present the omnibus bill as an all-or-nothing tactic. The omnibus bill, contrary to most bills presented before the legislature, proposes a mix of changes to various laws or existing subjects that force the body to approve or defeat the entire legislative package.

The definition of the omnibus bill above leads to the understanding that President Joko Widodo’s intentions and objectives are very simple when he says the Omnibus Law is carried out with the aim of overcoming the problem of job creation, micro, small and medium enterprises (MSMEs), and investment, namely to cut laws / regulations – existing regulations, whereby

¹⁰ The word Omnibus comes from Latin, means “for all”. When embedded with the word Law, it has the definition of “as the law for all”. According to some experts, the Omnibus Law is defined as a law designed to target major issues in a country, with the aim of repealing or amending several laws. It is a legal product concept that serves to consolidate various themes, materials, subjects and legislation in each different sector to become one large and holistic legal product. See: Agnes Fitryantica, Harmonisasi Peraturan Perundang-Undangan Indonesia Melalui Konsep Omnibus Law, *Jurnal Gema Keadilan*, Vol. 6, Edisi III (December, 2019), p. 303.

¹¹ As a note from the author, the mistake that occurs when some people say the Omnibus Law is a statutory rule, when in fact it is a method. The definition created is not wrong, because the President and his Ministers have echoed the term omnibus law as law. So the term omnibus law is a new, official term in the realm of law, but has changed to the substance or content of the omnibus law which is considered in various instances as an injustice.

¹² Bryan A. Garner, *Black Law Dictionary*, USA: A Thomas Reuters Business, 2004.

¹³ <http://www.duhaime.org/LegalDictionary.aspx>;
<http://www.duhaime.Org/LegalDictionary/O/OmnibusBill.aspx>.

interrelated laws / regulations can be made into a single regulation which aims to simplify these regulations so as to increase investment in Indonesia.

3. Finding and discussion

The Omnibus law or Omnibus Bill used in Indonesia is a legal concept in the form of a draft law (RUU), as in the draft law contains several pre-existing laws, the goal is to simplify existing regulations and overcome problems overlapping regulations. It is undeniable that Indonesia has too many regulations, both laws and other regulations where it is not uncommon to find overlaps between one another. Through the technique of statutory regulations known as omnibus law, the overlapping of various regulations can be eliminated by uniting (unity) these regulations.¹⁴

Studying changes to Law No. 13 of 2003 concerning Manpower, which was changed through the omnibus law method and then outlined in the Work Creation Act cluster, it is very clear that the position of foreign workers (TKA) is increasingly getting a place and it is easy to enter Indonesian territory.

The results of the author's research, found some disharmony (unsynchronization) between Presidential Regulation No. 20 of 2018 concerning the Use of Foreign Workers (TKA) with Law No. 13 of 2003 concerning manpower, one of which is Article 10 paragraph (1), that TKA employers are not required to have a Foreign Worker Utilization Plan (RPTKA) to employ TKA who are: (a) Shareholders who serve as members of the Board of Directors or members of the Board of Commissioners of the TKA employers; (b) Diplomatic and consular officers at representative offices of foreign countries; TKA in the type of work required by the government.

The provisions of the Presidential Regulation are contrary to Article 43 paragraph (3) of Law No. 13 of 2003 concerning manpower, which stipulates the preparation of the Plan for the Use of Foreign Workers (RPTKA does not apply to government agencies, international agencies and representatives of foreign countries. This disharmony is then eliminated in Article 81 (5) of the Work Creation Law, by removing the substance Article 43 paragraph (3).

Indeed, in the Job Creation Law, the cluster that is highlighted is the loosening of permits for Foreign Workers (TKA) to enter Indonesia, as previously questioned in Presidential Regulation No. 20 of 2018 concerning the use of foreign workers (TKA). There is concern that this clause will shift the rights of job seekers for Indonesian citizens (WNI) in obtaining employment opportunities in their own country.

The aim of the Government to facilitate permits in recruiting foreign workers (TKA), is to cut the bureaucracy so that it is not convoluted, the initial goal is that the transfer of science and technology is not hampered by difficult permits, then this licensing cut is also to reduce corruption in the licensing sector. The legal logic is that the level of investment in Indonesia is still quite good, this is indicated by the fact that there are still many investors who want to invest in Indonesia, both local and foreign investors. However, in investing in Indonesia, investors often come into contact with the complexity of the bureaucratic process. The same thing happened when

¹⁴ As a note that the theory of legislation in Indonesia, the position of the law from the concept of the Omnibus Law has not been regulated. The law resulting from the concept of Omnibus Law can lead to a law that can regulate comprehensively and then have power over other regulations (the Umbrella Law). However, Indonesia does not adhere to the Umbrella Law because the position of the entire statute must be given legitimacy in Law No. 12 of 2011 concerning the Formation of Legislation, which is amended into Law No. 15 of 2019.

dealing with licensing issues, whose requirements were quite complicated, and the processing process was quite long.

The Job Creation Act has a breath to bypass various tortuous investment regulations, and is in line with the spirit of reform. Especially reforms in the field of legislation and bureaucracy. Bureaucratic problems have become a major problem for the Indonesian nation. This problem has made many people, including investors, object to processing permits and choose to pay facilitation payments as a form of corruption, collusion and nepotism practice to make it easier. This of course will also burden investors with additional funds outside the official budget. Some people think that the rejection of the Job Creation Law due to the easing of the recruitment of foreign workers will also result in the existence of a law product which will only make it difficult for contract employees to become permanent employees. The use of foreign workers will be even greater.¹⁵

Based on the manuscript of the Job Creation Law, regulations regarding foreign workers are regulated in the second part of the employment cluster. Article 81 contains amendments, deletions and additions to several clauses in Law Number 13 of 2003 concerning manpower.

As the description above, the amendment is very clear in Article 42 paragraph 1. In Law No. 13 of 2003 concerning manpower that every employer who employs foreign workers is required to have a written permit from the minister or an appointed official. Meanwhile, in the new regulation, a written permit is only replaced by a Plan for the Use of Foreign Workers (RPTKA) which is approved by the central government. Then in paragraph 3, the government adds parties who are free from the requirements listed in paragraph 1. Previously, parties exempted from applying for permits as stated in paragraph 1 only applied to representatives of foreign countries who used foreign workers as diplomatic and consular employees. Meanwhile, under the Law on Job Creation, the exception to the requirements in paragraph 1 is widened not only for diplomatic and consular employees. But also for directors or commissioners with certain shareholdings or shareholders as well as foreign workers (TKA) needed by the employer in types of production activities that have stopped due to emergencies, vocational, start-up companies (start-ups), business visits, and research for a certain period of time.

The Job Creation Act actually regulates that foreign workers can be employed in Indonesia only in an employment relationship for certain positions in paragraph 4 of the article. However, paragraph 5 which states that the provisions in paragraph 4 which must be accompanied by a Ministerial Decree are deleted. As a substitute, in paragraph 5 of the Job Creation Law, the government only adds a clause that foreign workers are prohibited from holding positions in the personnel sector.

The government has also changed paragraph 6 which reads: Foreign workers as referred to in paragraph (4) whose working period has expired and cannot be extended can be replaced by other foreign workers. Article 42 paragraph 6 becomes: Provisions regarding certain positions and a certain time as referred to in paragraph (4) and paragraph (5) shall be regulated by a Government Regulation.

Article 45 in Law No. 13 of 2003 concerning manpower, the Government regulates that all foreign workers employed for technology transfer and skills transfer are required to have an Indonesian citizen companion. Then in the Job Creation Law, this rule is exempted for foreign workers (TKA) who hold positions of directors and / or commissioners. However, the Government added a regulation that accompanies the article, namely that employers are required to return

¹⁵ https://fokus.tempo.co/read/1394222/omnibus-law-karpet-merah-tenaga-kerja-asing-dari-pasal-pasal-yang-rontok?page_num=6.

foreign workers to their home countries after their employment relationship ends. This provision does not apply to foreign workers (TKA) who occupy certain positions.

Article 47 of Law No. 13 of 2003 concerning manpower, this Article regulates the payment of compensation for foreign workers who are employed in Indonesia. In paragraph 1, the article states that the employer is obliged to pay compensation for every foreign worker it employs. Then paragraph 2 reads: The obligation to pay compensation as referred to in paragraph (1) does not apply to government agencies, representatives of foreign countries, international agencies, social institutions, religious institutions, and certain positions in educational institutions. These two verses are not omitted. However, the government changed the sound of paragraph 3 from the beginning: provisions regarding certain positions in educational institutions as referred to in paragraph (2) shall be regulated by a Ministerial Decree; becomes: provisions regarding the amount and use of compensation as referred to in paragraph 1 are regulated in accordance with the provisions of statutory regulations.

The government has also removed paragraph 4 which contains provisions regarding the amount of compensation and its use shall be regulated by a Government Regulation. Instead, the government only includes a clause stating that the amount and use of compensation as stipulated in paragraph 1 are determined in accordance with statutory provisions.

Besides Article 81 of the Job Creation Law, the government abolished three articles in Law Number 13 of 2003 which regulate foreign workers. The articles that were deleted included Article 43, Article 44, and Article 46 of Law No. 13 of 2003 concerning manpower:

- (1) Article 43 regulates: The employer's obligation to have a plan for the use of foreign workers which is approved by the appointed minister;
- (2) Article 44 regulates the following provisions: Regarding the position and competency standards of foreign workers.
- (3) Article 46 regulates: Regarding the prohibition of foreign workers from occupying positions in charge of personnel and/or certain positions.

At first glance, it is very clear that the substance of the Job Creation Law has received too much priority from the government.¹⁶ The provisions in the Job Creation Act threaten the potential of local workers. This means that currently startups where the talents of Indonesian citizens (WNI) or local workers (TKL) have hopes, especially in the midst of the global flow of the Industrial Revolution 4.0, but the tap for foreign workers (TKA) is opened very wide. This means that the Job Creation Law is killing local talent opportunities to work at startups. Can this logic be justified? Maybe from one side of the analysis it is true, but when looking at other analyzes, the potential to be far more advanced with the arrival of foreign workers (TKA) is still very possible.

Economist Bhima Yudhistira Adhinegara assessed that opening the faucet through the loosening of the foreign worker permit (TKA) is also said to have an effect on:

- (1) Repatriation of funds abroad. This is because the salary received by foreign workers (TKA) every month will make foreign exchange abroad flow profusely. This condition is predicted to be detrimental to exchange rate stability in the long term;
- (2) The Job Creation Law deliberately eliminates the obligation to meet the competency standards of foreign workers (TKA). This means that unskilled workers can enter. If so, what is the transfer of skills and knowledge from foreign workers to local workers.

¹⁶ Bhima Yudhistira Adhinegara (*Economic Institute for Development of Economics and Finance (Indef)*). https://fokus.tempo.co/read/1394222/omnibus-law-karpet-merah-tenaga-kerja-asing-dari-pasal-pasal-yang-rontok?page_num=6.

Coordinating Minister for the Economy Airlangga Hartarto denied that the Job Creation Law provides a red carpet for foreign workers. He argued, the regulation regulates that workers who work in Indonesia must have competence and meet various required documents.

Apart from the above discourse, that the Omnibus Law model, to use foreign workers (TKA) as reflected in the Job Creation Act, which is currently being contested by many parties, actually has a positive value for the development and progress of the Indonesian nation, especially in inviting foreign investors, of course the transfer of knowledge and technology will not be hampered. Given current developments, the industrial revolution 4.0 cannot be overlooked.

The positive aspects with this Omnibus Law model are: can enhance the program of fostering basic views of the orientation of the reform of Indonesian workers; improve and develop the quality of Indonesian workers; build true partnerships in accordance with basic views, so as to create mutual loyalty, integrity and professionalism in all fields; as well as being able to resolve labor conflicts, mediator services are needed in case of disputes as well as legal defense for workers. Then the omnibus law model can also provide information services about job opportunities for workers.

4. Conclusion

The Omnibus Law is very important to implement because existing regulations are increasingly experiencing obesity, overweight regulations but hampering investment, so that the development and progress of the Indonesian state is hampered, even though Indonesia has declared to be part of the ASEAN Economic Community (AEC) and is on the line of the Industrial Revolution 4.0. through the omnibus law method, the Job Creation Law has the breath to bypass various tortuous investment regulations, and in accordance with the spirit of reform. Especially reforms in the field of legislation and bureaucracy. Bureaucratic problems have become a major problem for the Indonesian nation. This problem made many people, including investors, object to processing permits and chose to give pelican money as a form of corruption, collusion and nepotism practice so that it would be facilitated.

Acknowledgements

This research did not receive any specific grant from funding agencies in the public commercial, or not-for-profit sectors.

The author declares no competing interests.

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