

## GOVERNMENT REGULATION IN LIEU OF LAW NUMBER 2 OF 2022 CONCERNING EMPLOYMENT CREATION IN PERSPECTIVE

By

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### ABSTRACT

The purpose of this study is to review the urgency of issuing Perppu Number 2 of 2022 and what is the business law perspective in responding to the ratification of Perppu Number 2 of 2022. The research method used by the author is normative legal research conducted by analyzing the substance of the Perppu Cipta Kerja. The author considers that the Job Creation Perppu has no urgency to force the Government to issue it, because it is precisely an assessment of stable economic conditions and nothing threatening. Even if the threat of a global recession is something to be feared, then Indonesia can adopt the principle of reciprocity in facilitating trade between countries. Perppu Cipta Kerja when viewed from a business law perspective, it will concern two things, namely regulations governing entrepreneurs or business people and regulations governing workers. Workers feel disadvantaged by the existence of the Perppu Cipta Kerja because of the rules that are not in their favor, such as the abolition of long leave, uncertainty in wages, and criteria for outsourced workers (*outsourcing*). On the other hand, entrepreneurs actually benefit from the Perppu Cipta Kerja's commitment to the policy of empowering MSMEs and improving the investment ecosystem, which is expected to increase investment so that many workers can surrender.

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## 1. INTRODUCTION

The goal of the Indonesian state is to advance public welfare. The government's steps in fulfilling people's welfare begin with policies or legal regulations governing the nation's economy. The more intense the development of the business world, the law must continue to grow in response to the changes that occur. Business is not only profit-oriented but also how to participate in the advancement of community welfare. This is where the role of law becomes very crucial, that law acts as a counterweight between the desire for large profits of employers with the welfare of its workers. Business law is part of the embodiment of regulating business activities in Indonesia, which of course leads to the economy and people's welfare. Business law is a set of legal rules to regulate and resolve problems that arise in human-to-human activities in business activities.<sup>1</sup> The human-to-human issues referred to from the understanding of business law are regarding business actors and workers.

Business relationships are not only limited to interactions between people, but also include the environmental ecosystem used for these business activities. These various relationships are regulated by respective laws and regulations, ranging from investment, employment, economic zones, empowering MSMEs (Micro, Small and Medium Enterprises) to space utilization for business permits. It is deemed necessary to simplify the many laws and regulations so that there is no overlap between one regulation and another. This simplification concept is known as the omnibus law.

The Omnibus law was first introduced by Ir. Joko Widodo when delivering a state speech in the context of his

inauguration as the 7th President of the Republic of Indonesia for the 2nd period before the MPR-RI session. Indonesia's first conception of the omnibus law is the Job Creation Omnibus Law, which was passed on October 5, 2020 by the government through Law Number 11 of 2020. The ratification of the Job Creation Omnibus Law faced various reactions of rejection until the Constitutional Court ruled in MK Decision No. 91/PUU-XVIII/2020, November 25 2021 that the Job Creation Omnibus Law/Constitutional Job Creation Law is Conditional. However, the government recently issued Government Regulation in Lieu of Law (Perppu) Number

2 of 2022 on December 30, 2022. The Perppu delegitimized the previous Constitutional Court Decision which stated that the Job Creation Law was Conditionally Unconstitutional.

The purpose of this study is to review what is the urgency of issuing Perppu Number 2 of 2022 and what is the point of view of business law in addressing the ratification of Perppu No. 2 of 2022. Will the ratification of Perppu No. 2 of 2022 be a solution for simplification and effectiveness of a series of business regulations or can it become a new problem in the business world. Given still *premature* the concept of the omnibus law in Indonesia

## 2. RESEARCH METHODS

The research method used in the preparation of this research is normative legal research. Normative legal research has a legal study subject that is conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. Studies on normative research are sourced from an inventory of positive law, legal principles and doctrine, legal discovery, legal systematics, legal synchronization, legal comparisons, and legal history

## 3. RESULTS AND DISCUSSIONS

According to Erman Rajagukguk, legal uncertainty will affect the economy. There are 3 (three) factors that cause no legal certainty in Indonesia, namely first, the hierarchy of laws and regulations does not work and there is still overlapping of regulated material, second, the apparatus is weak in carrying out the rules and third, settlement of disputes in the field the economy is unpredictable.<sup>3</sup> The solution to the overlapping of laws and regulations invitation is to apply the concept of the omnibus law.

The concept of an omnibus law or omnibus bill is commonly used by countries that use the Anglo Saxon Common Law legal system. Several Common Law countries that have used the omnibus law concept in their legislation are America, Canada, Ireland and Suriname. In Southeast Asia, Vietnam became the first country to use the Omnibus Law concept adopted as a result of its accession to the WTO in 2006.<sup>4</sup> Indonesia itself is not adhering to common law or civil law, but a prismatic law state that becomes the adopter and filter between the common law and civil law legal systems. The omnibus law method has a positive side in terms of efficiency, because the government can compile a package of amendments to a large number of laws in a nutshell, only through one regulation. Moreover, if the substance of the amended law is still related to one another, it can accommodate all discussions between the government and parliament simultaneously. On the other hand, if it turns out that the substance of the discussion is very broad or even completely unrelated to each other, then this will cause problems from a democratic perspective.<sup>5</sup> Even if it is not discussed thoroughly it will cause a wave of protests because it is true

The omnibus law will involve and have an impact on various parties. In fact, after the government officially promulgated Law Number 11 of 2020 Concerning Job Creation (hereinafter referred to as the Job Creation Law) on 03 November 2020, this legal product has generated controversy in the public. The discussion process was very fast, not transparent, and the lack of public involvement was the reason why many parties disagreed. Data from the Ministry of Home Affairs noted that there were at least 860 regional legal products in the form of provincial regional regulations, 870 in the form of governor regulations, 9,352 regency/city regional regulations and 5,960 regent/mayor regulations that were affected by the passage of the Job Creation Law. One of the impacts of the Job Creation Law is that there is a change or delegation of authority from the local government to the ownership of the central government.<sup>6</sup>

The Job Creation Law was submitted for judicial review to the Constitutional Court and resulted in MK Decision No. 91/PUU-XVIII/2020, 25 November 2021 that the Job Creation Law is Conditional and must be amended within a deadline of 2 (two) years. As time went on, the Government on December 30 2022 actually issued Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation.

The considerations in Perppu Cipta Perppu have the following important points:

- a. Absorption of manpower as wide as possible
- b. Adjustment of regulations relating to facilitation, protection and empowerment of cooperatives and micro, small and medium enterprises, improvement of the investment ecosystem, and acceleration of national strategic projects, including increasing the protection and welfare of workers.
- c. Changes in regulations related to facilitation, protection and empowerment of cooperatives and

micro, small and medium enterprises, improvement of the investment ecosystem, and acceleration of national strategic projects, including increasing the protection and welfare of workers who have not yet supported the realization of synchronization in guaranteeing the acceleration of job creation, so a breakthrough is needed and legal certainty to be able to resolve various problems in several laws into one law in a comprehensive manner using the omnibus method.

- d. Global dynamics caused by rising energy prices and food prices, climate change (*climate change*), and supply chain disruptions (*supply chain*) has caused a decline in world economic growth and an increase in inflation which will have a significant impact on the national economy which must be responded to with new policy standards to increase national competitiveness and attractiveness for investment through economic transformation contained in the Job Creation Law.

In consideration, considering that the issuance of the Perppu in the event of a pressing emergency because of the threat to the national economy is in contrast to the statement of the Minister of Finance, Sri Mulyani on December 21, 2022 at the 2023 Indonesia Economic Outlook Forum, Indonesia's current economic condition is in a stable position, good that is from the macroeconomic, fiscal-monetary, and financial sector in general. Minister of Finance mentions that state revenues are in good condition and Indonesia's trade balance is in a good position.<sup>7</sup>

The threat to the national economy due to the global economic recession became a topic that was echoed at the same time as the issuance of the Job Creation Perppu. In terms of business law, the law is able to provide a more definite picture of a solution in solving the problem of tackling the economic recession that has occurred through two gradual steps. First, the steps and stages of business law procedurally (procedural capability). Second, legal steps play a role in creating a balance, because they are related to economic development initiatives as well as play a role in determining a clear definition and status (definition and clarity of status).<sup>8</sup>

Practically speaking, there is the Reciprocity Principle which is regulated in Article II of the 1947 GATT, as a concrete step in suppressing the phenomenon of global recession. This principle requires reciprocal treatment among fellow WTO member countries in international trade policies. This means that if a country, in its international trade policy, lowers entry tariffs on imported products from a country, then the exporting country of that product must also reduce import tariffs for products from the first country. Referring to this principle, it is expected that each country mutually provides convenience for the traffic of goods and services. This ultimately makes each country mutually enjoy the benefits of free and uninterrupted international trade.<sup>9</sup>

Apart from the controversy over the claim that the Indonesian economy is threatened with a global recession, the substance of the Job Creation Perppu has also become the focus of attention of many parties. Especially those concerning employment because that is indeed the case<sup>7</sup>

it relates to the general public. The articles that have undergone changes in the employment cluster include:

1. Long Break Elimination

Pursuant to Article 79 of Law Number 13 of 2003 concerning Manpower, there is a stipulation that a break of at least 2 (two) months will be carried out in the seventh and eighth years, 1 (one) month each for workers/laborers who have worked for 6 (six) months. ) year continuously

continuously at the same company with the provision that the worker/laborer is no longer entitled to his annual rest in the next 2 (two) years and thereafter applies for every multiple of 6 (six) years of service. However, in Perppu Number 2 of 2022 the long break provision is abolished.

2. Wages Article

The Job Creation Perppu abolishes Article 91 of Law Number 13 of 2003 concerning Manpower, which reads:

- a. The wage setting determined by agreement between the entrepreneur and the worker/laborer or trade union/labor union may not be lower than the wage provision determined by the prevailing laws and regulations.
- b. In the event that the agreement referred to in paragraph (1) is lower or contradicts the laws and regulations, the agreement is null and void, and the entrepreneur is obliged to pay the wages of the worker/laborer according to the applicable laws and regulations.
- c. The article was deleted regarding the company's obligation to pay wages according to the minimum wage standard in government regulations. This can lead to underpaid workers.

3. Criteria for Outsourced Workers

Rules regarding outsourced workers are contained in Articles 64-66 of the Job Creation Perppu. In these articles there is no clarity regarding any work that can be categorized as outsourced or outsourced workers. This can threaten the welfare of workers because it is assumed that all types of work can be outsourced.

Apart from a workforce perspective, Perppu Number 2 of 2022 concerning Job Creation is considered to be

a breath of fresh air for entrepreneurs, both on a small and large scale. In the field of MSMEs (Micro, Small and Medium Enterprises), the Job Creation Perppu pays special attention to the provisions in Article 3 that the Job Creation Perppu aims to create and increase employment opportunities by providing convenience, protection and empowerment to cooperatives and MSMEs as well as national industry and trade as efforts 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.

Guarantees for ease of investment are also regulated in a separate chapter in the Job Creation Perppu. Improving the investment ecosystem and business activities is carried out by:

1. implementation of risk-based Business Licensing;
2. simplification of the basic requirements for Business Permits;
3. simplification of sector Business Permits; And
4. simplification of investment requirements.

#### 4. CONCLUSION

Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation in the perspective of business law relates to two different sides, namely from the point of view of the entrepreneur or businessman and the point of view of the workers. The workers feel disadvantaged by the Perppu Cipta Kerja because of the rules. Rules that are not in their favor, such as long write-offs, wage uncertainty, and outsourced worker criteria (*outsourcing*). On the other hand, entrepreneurs actually benefit from the Perppu Cipta Kerja's commitment to the MSME empowerment policy and improving the investment ecosystem, which is expected to increase this investment to absorb a large number of workers. The government should be more accommodating to the aspirations of the people. The wave of protests against the Job Creation Perppu is a sign that the aspirations of the people, especially workers who are directly affected by the Perppu, are not being channeled. The Job Creation Perppu must ensure sensitivity to all the aspirations of the Indonesian people, namely the bureaucracy, academia, the business and industrial world, the working community, and the mass media. It is also necessary to review the exigencies of compelling circumstances because there are no compelling conditions that cause a Perppu to be issued

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