

**PROS AND CONS LAW OF CREATION BASED ON LEGAL  
SOCIOLOGY ANALYSIS**

**Sigit Gunawan, Muhammad Rasyid Ridho, Amiludin**

sigitgunawan181@yahoo.com

rasyidmohammed.inbox@gmail.com

**Post Graduate of Law Universitas Muhammadiyah Tangerang**

Abstract

The Omnibus Law of the Job Creation Act initiated by President Joko Widodo during the second term of office is one of the largest bureaucratic simplification projects ever undertaken by the Indonesian nation. The purpose of the Job Creation Law is to stimulate investment growth to support the country's economy is facing an increasingly competitive international economic climate. The Job Creation Law is a bureaucratic simplification package in the form of changes to laws in various lines, such as investment, labor, and spatial planning. As a form of the legal product discussed and ratified by the executive and legislative powers, the Job Creation Law also does not escape the responsibilities of the people who support and reject it. Strong rejection is expressed in the form of protests both in writing and using mass actions, mostly carried out by workers, environmental activists, and academics. Sociology of law as a science that studies the interrelationship between law and social phenomena that occur empirically in society can be used as a tool of analysis to determine how the effectiveness of the Job Creation Law as a tool of social control, social engineering. The better the public's response to a legal product, then sociologically, the product can be used for its intended purpose.

Keywords: Omnibus Law, Job Creation Law, Sociology of Law

**INTRODUCTION**

Basically, there is no single definition of the meaning of the omnibus law. Legal dictionaries and legal experts have their own definitions of omnibus law, but they are still related. (Darmawan, 2020; Suriadinata, 2019) As the rule of law, Indonesia has the authority to make laws that apply to all citizens and the scope of its territory. (Asshiddiqie, 2011) However, there are still many laws and regulations in Indonesia so far that are inconsistent and overlapping, including laws and regulations regarding the formation of statutory regulations. These overlapping laws and regulations can be a colonial legacy or those created by the government Indonesia, after independence. (Asshiddiqie, 2010) Omnibus Law consists of two

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syllables, namely Omnibus and Law. Omnibus comes from Latin, *Omnus*, which means "all," and Law comes from English, which means "law." Furthermore, the Omnibus Law, in general, can be defined as the law for all. According to Audrey O'Bryan, the Omnibus Law is a bill that covers more than one aspect, combined into one law. Meanwhile, according to Barbara Sinclair, Omnibus Law is a complex process of making regulations. The resolution takes a long time because it contains many materials, issues, and programs that are not always related. (Pitriyantini, 2020)

The study of legal sociology is a study that is subject to legal phenomena but uses the optics of social science and sociological theories. (Adi, 2012) Soerjono Soekanto defines the Sociology of Law as a branch of science that is analytically and empirically, which analyzes or studies the reciprocal relationship between law and other social symptoms. (Soekanto & Abdullah, 1980) R. Other Salaman and Anthon F. Susanto define sociology of law as the study of the interrelationship between law and other social phenomena empirically (analytically). It is clear from the definitions of experts that the sociology of law is all human social activity which, seen from its legal aspect, is called the sociology of law. Sociology of Law is the study of the interrelationship between law and other social phenomena empirically and analytically. In the study of legal sociology, this approach seeks to understand the real law (*quid fact*), not what it should be (*quid jury*). (Otje Salman & Susanto, 2012)

It is a fact that laws are related to one another, different, and overlapping with social phenomena. National Law, which was initially absorbed by many people, will continue to change along with society and the State itself. (Prakoso, 2009) In this development process, there is a possibility that several legal principles, norms, institutions, and legal institutions lose their social role and thus lose their enforceability. Meanwhile, the universal concept of law will live forever. Thus, it is imperative to study the legal system applicable in various regions supported by different ethnic groups and interests to create legal products following the social needs itself. (Adi, 2012; Cahyadi & Danardono, 2009)

## **METHODOLOGY**

Each science has its own method, including law, for analyzing the issues raised. According to Peter Mahmud Marzuki, legal research is a process to find legal rules, legal principles, and legal doctrines to address legal issues at hand. This type of research is normative. This research focuses on the Pros and Cons of the Job Creation Law's substance based on the Sociological Analysis of Law.(Marzuki, 2017)

A normative study requires a statutory approach. Because what is being studied is various legal products that are the central focus. This study's statutory approach was carried out to examine the shortcomings of Law No.37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations related to cross-border bankruptcy. It also examines the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment as a reference to complement these deficiencies.

## **RESULT AND DISCUSSION**

### **1. Omnibus Law Creation And Sociology Law Act**

When referring to the history of the birth of the omnibus law, of course, there are many different approaches from each legal expert. Prof. DR. Mohammad Mahfud MD explained that in 1830 in the city of Paris, the French State, for the first time came a phenomenon of buses or public transportation that can transport goods and people to the same destination. This phenomenon became a mutual joy for a discovery because, at that time, the problem of transporting both people and goods in large quantities was still complicated to process because there was no reliable public transportation to transport people and goods once. So from that, a word came up to name the Bus, namely, omnibus. Omnibus law is a law whose substance is to revise and/or repeal many laws. This anyept 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 problem-solving caused by over-regulation and overlapping (overlapping)overlapping.(Putra, 2020)

Sociological studies explain that regulations are considered effective regulations if they do

not forget how community needs, the community wants, and community interactions with these regulations. So that in this study, the reality of society includes the legal needs of society, the condition of society, and the values that live and develop (the sense of community justice). Sociology of law thinking focuses more on the empiric or factual enforceability of law. This shows that the sociology of law is not directly directed at law as a conceptual system but at the reality of a social system, in which law is present as the main actor. The main object of the sociology of law is society, and at the second level are the rules of law.

## **2. Omnibus Law Copyright As A Social Contro Tool**

As a means of social control, the law is defined as a process carried out to influence (including changing / reforming) people to behave following society's expectations. This theory clearly implies the law's functional position, which acts as a force that oversees the wheels of social life. (Suadi, 2018) The behavior of community members is always under legal observation and accountability. The Omnibus Law, The Job Creation Law, was created to fulfill its sociological role as a means of social control, especially in the fields it regulates. As in the investment sector, the Work Cup Law regulates how Indonesian citizens and foreigners carry out investment activities. The changes in the Job Creation Law are intended to facilitate investment activities. Procedures, terms, technical provisions, and sanctions for violators are also an implementation of the legal function as a means of social control.

The investment sector regulated in the Job Creation Law is described in groups such as regional authority changes, changes in the delegation of legal products, regulation of witnesses, and licensing regulations. These groups will later become a guide for the community to carry out investment activities in the corridors determined by the State through the legal product of the Job Creation Law. The Job Creation Law contains a draft discussion and amendments to 73 laws deemed to hinder investment and Indonesia's trade process. Part of the amended laws, namely the Investment Law, the Manpower Law, the Spatial Planning Law, and the Limited Liability Company Law with a summary of the changes as follows:

### **a. Law Number 25 of 2007 concerning Investment**

The amendment's background to this law is because this law is considered not to be

the main reference in the implementation of investment in Indonesia, where several sectors regulate and limit the fields and requirements for investment, both domestic (PMDN) and foreign (PMA). This causes the limitation of business fields and hampers the implementation of the investment. The available employment opportunities are insufficient to accommodate the unemployed, part-time workers, and new workers who increase every year.

**b. Law Number 13 the Year 2003 concerning Manpower**

The employment cluster is the cluster that attracts the most attention of the public compared to other clusters. Trade unions, media, and society in general, have responded to this issue with various attitudes. Some of them support and trust the government to make changes to the Labor Law, but others accuse the government of trying to improve the investment climate by neglecting workers' rights and other types of workers. The scope of amendments in the Manpower Law covers wages and minimum wages, severance pay, working time, contract or permanent workers (PKWT / PKWTT), outsourcing, licensing of expert foreign workers, job loss insurance program (JKP), and Another award. Technically, the changes made to this law are in the form of changes to 30 articles, which are then accompanied by the elimination of 30 articles, up to the addition of 15 new articles.

**c. Law Number 26 the Year 2007 regarding Spatial Planning**

The purpose of amendments to this law is to simplify licensing and Spatial Plan documents to prevent obesity and overlapping regulations. Simplification of the Spatial Plan document is intended so that local governments focus more on improving the RTRW and preparing the RTDR. The scope of amendments in this law includes location permits using digital maps (RDTR), integration and simplification of spatial plans and zoning plans and integrating location permits and marine management permits. The Spatial Planning Law will undergo amendments to 24 articles, then 12 articles will be deleted, and 2 new articles are added to it.

**d. Law Number 40 of 2007 concerning Limited Liability Companies**

Amendments to this law are motivated by the government's desire to push for regulations that encourage Special Individuals' birth for MSMEs. This is expected to provide legal legality in the form of a legal entity for MSME actors to reach wider access to credit. Besides, the amendment to this law also aims to correct several provisions that are no longer relevant to the current situation, for example, the Supplement to the State Gazette of the Republic of Indonesia (TBN RI) regarding the deed of establishment and deed of the amendment, initially the obligation to announce was in the hands of the Minister of Law and Human Rights, but later changed to the Board of Directors only.

Groups of amendments to this Law show that the Omnibus Law on Cipta Kerja regulates, restricts, and sanction lawbreakers. This social control is the nature of the Job Creation Law. This vast capacity in determining the corridors of the bureaucracy reflects how law can really be used as a means of social control

### **3. Pro Contra Of The Creation Action By Legal Sociology**

Law is one of the fields whose existence is essential to ensure the life of society and the state, especially as Indonesia is a state of law, which means that every act of state officials must be based on law, and every citizen must obey the law. With today's increasingly complex world developments, it is not uncommon for them to cause serious problems that need attention as early as possible. We cannot explain the effectiveness of law without first discussing law at the normative level (law in books) and law in action because without comparing these two variables, it is impossible to measure the level of legal effectiveness. Donald Black argues that the effectiveness of a law is a major problem in the sociology of law, which is obtained by comparing the legal reality in theory and the legal reality in practice so that there appears to be a gap between the two. The law is considered ineffective if there is a difference between the two. To find a solution, what steps should be taken to bring the legal reality (*das Sein*) closer to the legal ideal (*das sollen*) so that 2 (two) variables (law in books and law in action) are the same.

The community response as a form of social phenomenon also shapes the Work Court Law starting from the initiation stage, discussion to ratification. Supporting parties think that the Law on Employment will directly and massively affect the improvement of the investment

climate and other business worlds by simplifying bureaucracy, ease, and speed of time. Meanwhile, those who refuse tend to view that the Job Creation Law neglects labor rights, environmental protection, management of the State's natural resources, and the potential for centralization of power to the central government, which triggers corrupt and destructive actions.

**a. Support for the Job Creation Law**

Some people think that the Job Creation Law can respond to the country's economic challenges. The advantages obtained through this UU are as follows:

**1) Employment**

A vital part of the employment cluster is the distribution of severance pay. Article 89 regulates the provision of severance pay and reward money for workers who are laid off. In article 89 paragraph 1, this provision amends the provisions of article 156 paragraph 1 of Law Number 13 of 2003 concerning workforce, which reads:

"In the event of termination of employment, the entrepreneur is obliged to pay severance pay and/or service pay and compensation fees that should be received." This editorial is changed to "In the event of employment termination, the entrepreneur is obliged to pay severance pay and/or money. tenure awards".

The amendment of this provision decreases workers' welfare, which eliminates the provision of compensation money that workers should receive. The provisions of the compensation money that should be received are as follows: First, annual leave that has not been and has not been canceled, Second, the cost or return fee for the worker and his family to the place where the worker is accepted, Third, housing compensation as well as medication and care is set at 15% of the severance pay and/or service pay for those who meet the requirements. Fourth, other matters stipulated by work agreements, company regulations, or collective working agreements.(Kurniawan, 2020)

On the one hand, the government provides other guarantees for the welfare of

workers when they are laid off by companies, namely the guarantee of job loss in article 90 of the Job Creation Bill, which changes the provisions of article 18 of Law Number 40 of 2004 concerning the national social security system and the provisions of article 6 of the Law. Number 24 of 2011 concerning social security administering bodies. This is a responsible effort by eliminating the rights of workers so that it is clear that the existence of the Job Creation Bill in the Employment Cluster should be able to have a positive impact on the state by not eliminating the value of justice rather than the existence of the law intended for the community.

## **2) Investment Climate**

An increase in investment is projected at 6.6- 7.0% to build new businesses or develop existing businesses that will create new jobs and improve worker welfare, thereby encouraging increased consumption (5.4-5.6%). Fifth, empowerment of MSMEs and cooperatives supports an increase in the contribution of MSMEs to GDP, which is estimated to be 65%, and an increase in the contribution of cooperatives to GDP to be 5.5%. Besides, the Omnibus Law will specifically improve every regulation in the economic sector, which includes investment, taxes, development, and the availability of jobs. Even though it still applies at the central level, the Omnibus Law will be implemented in all regions to create harmonious rules between the local government and the central government. The belief in advanced Indonesia is getting closer. So there is no need to linger any longer to implement this rule immediately. After all, all parties and elements of society realize the importance of simplifying regulations to realize economic improvement and national welfare.

## **b. Rejection of the Job Creation Law**

### **1) Nomenclature of the Job Creation Law**

The Job Creation Law, which regulates various community interaction fields related to the economy, also received various responses. However, what stands out



the most is how ordinary people focus on labor issues, which, of course, involve the majority of workers in Indonesia. In the RDPU BALEG DRI RI, Chairman of the Regional Leadership Council of the Indigenous Indonesian Entrepreneurs Association (DPP HIPPI), Sarman Simanjorang, M.Si stated that the government did not think much about the impact of naming the omnibus law so that the Community Creation Bill was terminated with the interests of workers and other types of workers in Indonesia. Sarman then suggested changing the name for the Job Creation Bill to the Ease of doing Business and Investing Bill. (Suriadinata, 2019)

The law that regulates the workforce has actually been regulated in Law Number 13 of 2013 concerning Manpower. This law defines employment as anything related to labor before, during, and after the work period. 94 However, the Job Creation Bill also contains an Employment Cluster that specifically discusses the wage system, PKWT / PKWTT, Job Loss Guarantee status, and several other matters related to the rights and obligations of workers/labor. This is what causes the community, especially workers, to be very focused on escorting and even demonstrations against the Job Creation Bill, which is considered a product that will violate the rights of workers that were previously regulated.

## 2) Centralization of power

The Job Creation Law is impressed that it will slightly return Indonesian governance to a regime of centralization of power held by the Central Government. The Central Government currently considers the authority that the regional government currently has does not reflect the spirit of economic equality and is often contrary to economic growth. For example, what is regulated in the Work Creation Bill, Cluster Spatial Planning? Indonesian spatial arrangements have actually been regulated in Law No.26 of 2007 on Spatial Planning. In this law, business actors must have a location permit as a condition for considering the suitability of spatial plans issued by local governments. Which authority is transferred from the local government to the central government through the Job

Creation Bill. For example, the Job Creation Bill made amendments to Law No. 32 of 2009 concerning Environmental Protection and Management. The Job Creation Bill amends Article 20 paragraph (3), which previously stipulated that permits must be obtained from the Minister, Governor, or regent/mayor following their authority to obtain approval from the Central government. Then in Article 39, where the announcement of every environmental permit application made by the Minister, Governor, Regent / Mayor becomes the Central Government's authority electronically. Furthermore, Law No.4 of 2009 concerning Mineral and Coal Mining is also not immune to changes. Article 4 of this Law regulates that the state's management of minerals and coal is managed by the Government and/or the central government. However, the Job Creation Bill changed this authority to be administered only by the Central Government.

3) Potential damage to the environment

Environmental protection and management in the Job Creation Bill emerged during the discussion where Law No. 32 of 2009 on Environmental Protection and Management also experienced changes. The amendment to this law's background is the completion of an Environmental Impact Analysis (AMDAL) and environmental permits, which are considered to emphasize long and long bureaucratic procedures compared to their function. Besides, several procedures are still not efficient and have the potential for the long process of completing environmental documents.

Environmental permits should be enforced as a measure to prevent the impact of pollution and environmental damage. They are eliminated in the Job Creation Bill. Even AMDAL, as a study of the important impact of a business on the environment, which is indispensable for the decision-making process regarding the conduct of a business and/or business activity, is also eliminated (for small and medium risk businesses). For some environmentalists, the draft Job Creation Bill only puts forward the objective of facilitating investment licensing but ignores the potential environmental damage resulting from these business activities. As stated

by the Pause Action Coordinator for Climate, Novita Indri. Novita assessed that the draft work creation bill's policies only prioritize investment and infrastructure development but ignore the environment. Novita also explained that the Job Creation Bill's investment permit is considered not independent and does not involve the community.

## **CONCLUSION**

As a legal product, the Job Creation Law must be a solution to the Indonesian nation's problems. The purpose of the Job Creation Law as a means of social control by regulating fast and simple regulations and bureaucracy to improve the investment climate for economic progress must be truly effective and right on target. The branch of Sociology of Law can then measure this effectiveness. The indicators presented in the sociology of law, such as accuracy of targeting, enforceability, and compliance by the community, will provide a clear picture of how the Job Creation Law carries out its functions and objectives. This sociological study can also make it easier for power holders, academics, activists, and the general public to assess whether the job creation law's legal products can be applied properly and achieve targets in the form of constructive criticism and suggestions for mutual progress. Furthermore, the government must use sensitivity and be responsive to social symptoms among the community in responding to the Job Creation Law. Because basically, the law was created as it should be for the benefit of society itself.

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