



REVIEWING THE OMNIBUS CONCEPT IN THE CONTEXT OF ECONOMIC LAW

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Article history:	Abstract:
<p>Received: 1st January 2022 Accepted: 1st February 2022 Published: 4th March 2022</p>	<p>This paper is intended to expand the dialectical pulpit which so far has only been limited to pro-investment arguments and contra narratives on the position of the Omnibus Law in a formal legalistic manner. Even though the rebuttal argument contains truth, it has not been able to solve the core problem that is the urgency of the Omnibus which maintains economic interests. In this paper, how economic legal theory actually formulates prescriptions for effective regulatory criteria for economic development and growth will be discussed and expounded. This is important considering that the dominance of capital accumulation becomes its own nuance in the formulation of the Omnibus Law. Such an idea is essentially beyond the constitution that mandates that the economy must be based on people's empowerment.</p>

Keywords: Future of economic regulation, Economic development and growth, Co-Ownership, Co-responsibility, Co-Determination.

I. INTRODUCTION

The *Omnibus* concept was firstly introduced in the Indonesian legal system by the speech of Joko Widodo, President of Indonesia on 20 October of 2020.ⁱ This initiation was done in light of the current condition of Indonesian legislation that is deemed hyper-regulated and overlapping. Such conditions have brought difficulties for the private sector and their business endeavors. To enter the Indonesian market, entrepreneurs have to go through various complicated and time-consuming procedures. This condition places Indonesia in the 91st position out of 190 countries in the World Bank's assessment of "the ease of doing business" in 2017 and today even though the Omnibus has been ratified, Indonesia still ranks 73rd.ⁱⁱ Likewise with the ranking of the Global Competitiveness Index. The state has always ranked last. This raises a big question, especially when we look at Indonesia's competitiveness index in 2021 when the Omnibus Law has entered into force. The fact constitutes a decrease in Indonesia's assessment compared to the previous year. According to data from the World Economic Forum, Indonesia's point of competitiveness of 2017-2021 ranges from 63,488 to 64,935 points. This year, it decreased up to 0.306 points compared to last year.ⁱⁱⁱ One of the reasons is due to complicated bureaucratic process. According to the data submitted on regulations.go.id to date, there are 40,988 total regulations consisting of 3841 Central Regulations, 16674 Ministerial Regulations, 4491 LPNK Regulations and 15982 Regional Regulations.^{iv}

II. LITERATURE REVIEW

One of the detrimental research projects in understanding the body of Indonesian economic and legal reality is written by Ratih Lestariani a lecturer in Universitas Indonesia. It expounds the modern changes happening in Indonesia's legal environment and how instances of it are against the very nature of Article 33 of the 1945 Environment. It provides a critique of the state of legal and economic life of both the Old and New Orders and how the present situation of the reformation is still to be scrutinized. It also provides on the nature of Article 33 according to Hatta and his thoughts as well as polemics that scholars faced in the midst of amendment to the Constitution in the first years of the Reformation. Another previous research was by Elli Ruslina entitled '*Makna Pasal 33 Undang-Undang Dasar 1945 Dalam Pembangunan Hukum Ekonomi Indonesia*'. It describes in depth the original meaning of Article 33 of the Constitution by reflecting on the spirit upon which it was made. It made comments on the state of legal development throughout the year from a constitutional perspective and critiqued the addition of the phrase "fair

efficiency" done in the 2002 Fourth Amendment of the 1945 Constitution. It analyzes the laws of the reformation era and offer insight to the current contribution of the 1945 Constitution to the development of economic legislation.

III. METHOD

This article essentially used a qualitative method of research wherein in its process, hypothesis, analysis, and conclusion among others up to its writing utilize aspects that are non-numerical, descriptive-situational, and analytical. Principally, qualitative research builds its premises on inductive, and not deductive, reasoning. It is from these elements that questions will be raised and answers will be given by the researcher. Great correlation observed between the researcher and the available data is what differentiate it with quantitative research where the researcher is outside the phenomena that is being investigated upon. Therefore, it is clear that in this mode of research, the researcher is deeply involved in the examination of sources and data and the researcher is to scrutinize all questions and problems posed by the dilemma at hand.

IV. RESULTS AND DISCUSSION

The Omnibus concept is actually intended as an effort to simplify regulations in Indonesia. Like the Paris Omnibuses of the 19th century, the Omnibus legal system is believed to be a strategic vehicle that can solve various regulatory obstacles. Some positive things that are expected to be achieved with the Omnibus Law include:^v

1. The handling conflicting public policy both vertically and horizontally, effectively and efficiently;
2. The harmonization of government policies, both at state and regional levels;
3. The simplification of the licensing process that shall become more integrated and effective;
4. The breaking of convoluted bureaucratic chain;
5. The Improving of coordination between related agencies because of it being regulated in an integrated policy;
6. The providing of guarantees of legal certainty and legal protection for policy makers.

However, the question then becomes: is the Omnibus method actually the right one to be applied as the main guideline for the legal rules related to the current state of the economy? In the various narratives that have emerged, Omnibus Law is considered inappropriate in Indonesia because it is not particularly democratic. Meanwhile, according to Maria Farida Indrati, Omnibus law is not commonly used in civil law countries, considering that this method is more often applied in countries that follow the common law system.^{vi}

From the theory of economic law itself, there is the opinion of a very prominent academic, Leonard J Theberge, wherein in his article entitled Law and Economic Development, he postulates that law basically has a fairly essential role in economic development, especially when viewed from the five positive characteristics of the law itself, which include:^{vii}

a. Stability and Predictability

These two things are considered as prerequisites that are needed as the main requirements for the development of various economic systems. The predictability factor is a very important element that shall be developed, especially for developing countries that are currently at the start of their economic relations. Such relations that are outside of a state's socio-economic habits. In addition, the function of legal stabilization is also needed to balance and accommodate all conflicting interests.^{viii}

b. Fairness

In addition, the element of justice is also very necessary in the legal process, in equality before the law, and in government service standards. The element of justice is especially needed in regulating market mechanisms and avoiding the negative excesses of bureaucracy. The low standard of justice, according to various scholars, is a major problem for a developing country.^{ix}

c. Education and Special Development Abilities of The Lawyer

Law plays an important role in educating the public because Law is the main means in the determination and uniformation of social goals. Law is also expected to be able to create a new societal habit that is based on a sense of nationalism and is not only built upon the interests of groups or families. The role of legal experts and practitioners is also very significant in determining the direction of a country's economic development. A lawyer ideally can perform a sharp analysis of a legal event. In addition, in the judicial process, they are also required to have the argumentative skills needed to reach a qualified decision.^x

However, these three elements are not enough, as several experts further argue that the role of law in economic development is also influenced and supported by several other factors outside the legal aspect itself, including:^{xi}

a. The role of the Legal Institution in Economic Development

Frank B. Cross emphasized that the role of law is needed in economic development. For example in America the regulation of intellectual property rights has eventually become a key element in the growth of its modern economy. In addition, as stated by Douglass North in his book entitled Institutional Challenge and Economic Performance, norms outside the law are also needed to protect legal rights.^{xii} His norm can be in the form of good faith and compliance of the parties in carrying out the contract. Even though norms are stated as important elements for the parties to carry out contracts, Cross does not believe that they are necessarily binding.^{xiii} In a complex society

in particular, it is not norms that are needed to maintain the consistency of the performance of each party in the agreement, but the role of government and law which are the actual main elements that are needed to make business operations more effective. Cross states clearly "when the law has no way of enforcing contracts, the underworld provides it"^{xiv}. This is evident in many countries where criminals take part in running the economy. Meanwhile, in relation to the influence of local culture on development, Amy Chua explained that basically the regulation of economic law that is based on market democracy has experienced success in America, because there are special social tools that developing countries do not have.^{xv} For example, the stagnation of the implementation of Intellectual Property Rights regulations in developing countries such as Mexico, Russia, Ukraine and Indonesia are caused by the informal economic sector which has a dominant contribution in GDP determination.

b. Research related to the role of law in economic growth

There are many determining factors that ultimately affect the economy of a country. The results of a study from the IMF and the World Bank even state the following: "The law may be a necessary but not sufficient condition for growth or it might be neither strictly necessary nor sufficient, but just a contributing factor."^{xvi} Thus, it will be difficult to describe the actual relation between law and economics. When competition law experts state that Antimonopoly Law makes a significant contribution in economic growth, reality concludes that it is not only the Antimonopoly Law that is the determining factor but also other factors such as an effective democratic atmosphere, protection of property rights, judicial independence, and appropriate government arrangements. However, legal studies are still needed considering the role of the government as a regulator is closely related to economic growth. Legal studies are needed to examine whether these regulatory policies are beneficial or counterproductive.

c. Sustainable Legal Research

Legal experts in a country should find out what laws and what organizations or institutions are most effective in generating economic growth. Lon Fuller stated that "more law is not always better than less law".^{xvii} The role of legal academics is very much needed to answer questions such as the urgency of constitutionalization and the formation of regulations. Moreover, law professors are urgently needed to direct the extent to which legal arrangements need to be carried out with implementation that is in accordance with the character of the community. In this concept, the system of the rule of law is considered as a unified entity under the auspices of the constitution and the basis of the state, Pancasila. However, the what and how of the actual ideals of economic law mandated by the constitution have not been clearly narrated in the preamble to the Job Creation Act (Omnibus Law). Specifically in the economic sector, there are at least a number of things that become the main focus of the implementation of the Omnibus Law that are directly related to economic activity, including: providing measurable tax incentives, extensification of excise duty, efficient regulation of human resources, expansion of business fields for foreign investment, and easy access to permits and land acquisition. The whole is also part of the ease of doing business indicator as postulated by the World Bank in its ranking criteria.^{xviii} In fact, if we examine further the words of the basis of the state and the constitution, the understanding of the ideals of Indonesian Economic Law is clearly regulated in the formulation of the fifth principle of Pancasila; Paragraph IV Preamble; Article 1 paragraph 2; Article 27 paragraph 2, Article 33 and Article 34 of the 1945 Constitution which conceptualizes popular consensus in the economic sector. The constitutional narrative related to the economy can be described as follows:

Article 27 of the 1945 Constitution:

(2) *Tiap-tiap warga negara berhak atas pekerjaan dan penghidupan yang layak bagi kemanusiaan* (Every citizen has the right to work and a decent living for the sake of humanity).

Article 33 of the 1945 Constitution:

(1) *Perekonomian disusun sebagai usaha bersama berdasar atas asas kekeluargaan* (The economy is structured as a joint effort based on the principle of kinship).

(2) *Cabang-cabang produksi yang penting bagi negara dan yang menguasai hajat hidup orang banyak dikuasai oleh negara* (Branches of production which are important to the state and which affect the livelihood of the people are controlled by the state).

(3) *Bumi dan air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besar kemakmuran rakyat* (The earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people).

(4) *Perekonomian nasional diselenggarakan berdasar atas demokrasi ekonomi dengan prinsip keadilan, kebersamaan efisiensi berkeadilan, berkelanjutan, berwawasan lingkungan, kemandirian, serta dengan menjaga keseimbangan kemajuan dan kesatuan ekonomi nasional* (The national economy is organized based on economic democracy with the principles of justice, togetherness, efficiency, justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity).

(5) *Ketentuan lebih lanjut mengenai pelaksanaan pasal ini diatur dalam undang-undang* (Further provisions regarding the implementation of this article are regulated in law).

Article 34 of the 1945 Constitution:

(1) *Fakir miskin dan anak-anak yang terlantar dipelihara oleh negara* (The poor and abandoned children are cared for by the state).

(2) *Negara mengembangkan sistem jaminan sosial bagi seluruh rakyat dan memberdayakan masyarakat yang lemah dan tidak mampu sesuai dengan martabat kemanusiaan* (The state develops a social security system for all people and empowers the weak and incapable in accordance with human dignity).

(3) *Negara bertanggung jawab atas penyediaan fasilitas pelayanan kesehatan dan fasilitas pelayanan umum yang layak* (The state is responsible for providing adequate health care facilities and public service facilities).

(4) *Ketentuan lebih lanjut mengenai pelaksanaan pasal ini diatur dalam undang-undang* (Further provisions regarding the implementation of this article are regulated in law).

The entire legal basis was born based on the notion of structuralism where economic law must be aimed at supporting the implementation of economic democracy in Indonesia.^{xix} Furthermore, the Elucidation of Article 33 of the 1945 Constitution states "...In an economic democracy the prosperity of the community is prioritized, not the prosperity of individuals... Prosperity for all...", which means that the prosperity of the people and the position of the people are placed in a central-substantial position.

Reflecting on development activities during the 32 years of the New Order era, which focused solely on efforts to increase economic growth, the development process that is being carried out is not accompanied by efforts to improve the quality of human development as a whole and is not accompanied by efforts to build and strengthen institutions, both public and private, which have an important role in smoothing the running of a good economic system. As a result, when the monetary crisis infected the economy in 1997, it quickly developed into a multidimensional crisis, which included crises in the economic, political, social, and even legal fields. The development achievements of the New Order government did not show significant development in the real structure of the Indonesian economy. The financial crisis that hit Asia in 1997 caused a contraction of the Indonesian economy by 13%, as well as a massive depreciation of the rupiah exchange rate. As a follow-up to the crisis, Indonesia decided to get a loan from the International Monetary Fund (IMF). The IMF program began with the signing of the first Letter of Intent (LOI) in late October 1997, which continued until December 2003.

The attitude of the government which is busy adapting to various patterns and reference indicators determined by world rating agencies, including the Ease of Doing Business and the Global Competitiveness Index, should not result in a policy that is ambiguous. The government must also remember that the ideological nature of Indonesian democracy does not only rely on political democracy but also economic democracy. Thus, the national economy should not only rely on objectives that only prioritize capital flows. Economic growth and development must rely on the people themselves which is what is known as people-based/people-centered economics. The people must also be positioned as a national asset and the state must not, at the end, idolize investment and its flow. Economic development based on people's interests must be carried out through a strategy of increasing productivity and effective utilization of available resources as a form of grassroots-based and resource-based development effort. By relying on that concept, growth will occur simultaneously with equity itself.

However, what we have seen together in the regulation of the Omnibus Law, is that the role of the people is so small that it is limited to one of the instruments of the production process. Its role is placed at the level of Human Resources with restrictions on rights which are aimed at promoting business activities only. This is clearly contained in the Job Creation Act Article 79 paragraph 2, in conjunction with Article 81 and Article 82 which reduces rest/leave time and increases working time; The abolition of Article 59 of the Manpower Act (UUK) which abolished the rule limit that a worker can be contracted results in the worker possibly becoming a contract worker for life; The abolition of Article 89 of the UUK which abolishes district/city sectoral minimum wages; and changes in provisions related to Foreign Workers in Articles 43, 44 in conjunction with Article 106 which greatly facilitates the arrival of expatriate workers – there is no longer an obligation to apply for work permits, it is only enough to submit an RPTKA (Plan for the Use of Foreign Workers) which is not an application but a notification. If we look again at the constitutional basis that mandates economic regulation, the government should not castrate labor rights but increase the bargaining position of workers so that they can actively participate in national productivity. The Omnibus Law should also regulate share ownership for the workforce/people which allows them to participate in co-ownership, co-responsibility and co-determination of the company in which they dedicate part of their life into.

This is concerning, remembering that there are actually many legislative steps that can be pursued to further enlarge economic access to the people. For example, the affirmation of the Negative Investment List (DNI) rule can actually be a middle ground for the interests of both foreign investment and the public. The industrial sectors must be seriously studied on whether they have the potential to be independent without being reliant on foreign capital. Even if it is needed, foreign capital must essentially be complementary. The main goal is to grow the entrepreneurial spirit and the spirit of the community itself. So it is not enough if the rules stop at the DNI. The government must also provide incentives for new entrepreneurs or pioneering business sectors which are projected to develop on a national and international scale in the future. Instead of focusing on the core problem, DNI in various sectors has been eliminated and foreign investment is being opened to the widest possible extent without a clear direction. In fact, even without the abolition of the DNI, it has become an open secret that legal smuggling, such as the nominee share agreement, occurs a lot. The legal implications of law smuggling have also never been regulated by the government with criminal provisions/sanctions.

V. CONCLUSION

The Omnibus Law, which has spent a lot of energy, time, and money in its making, should have been able to achieve its right target. However, what happened in the field was the decline in the level of public confidence in the performance of the legislature. In addition to violating various formal legalistic rules, the fact remains that the Omnibus Law draft in the Job Creation Act cannot narrate the ideals of Indonesian Economic Law comprehensively. The portion of the people in the national economy is only placed on the degree of fulfillment of rights in employment or small businesses - MSMEs. An understanding of the ideological basis and the *rechtsidee* of the economic rules in the constitution is important. In reviewing several theories of economic law, it is stated that the determining indicators of economic progress are not only based solely on regulations but also various determinant variables that must also be pursued in an integrative way, including strengthening the role of institutions/institutions as well as sustainable research in the field of Economic Law.

It is hoped that legislators are not only trapped in the rules of the game set by international rating agencies but are also sensitive to the determinants of the economy that can provide a higher bargaining position for the people. National independence must be at the core of economic regulation. Without full awareness of this, the regulation of economic law will only fall from one macroeconomic formula to another which is not necessarily effective. Economic achievements that are only projected on figures and figurative indices must be immediately replaced with welfare projections and people's empowerment. To get out of the polarization of economic policies that have no definite direction and are full of interests from other countries, the civil society groups in the campus environment, parties, government and even the military must truly understand the ideals of Indonesian Economic Law based on the constitution.

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19. Structuralism in economics is an understanding that rejects structural inequalities as a source of socio-economic injustice. Therefore, the notion of structuralism which is based on "people's sovereignty" should not be dominated by the idea of market sovereignty". Specifically in the meaning of Articles 27 (2) and 34, it is mandated that the people in a participatory and emancipatory manner have the opportunity to be active in economic activities. Thus, national development plans must be able to uncover and investigate structural inequalities and then overcome them through a people-friendly development approach. It must be based on a people-centered environment while, at the same time, strengthening NKR's economic cohesion, Thus at the end, not only pursuing a competitive index and foreign investment flows.