

Omnibus Law Debriefed: A Quick Guide to Indonesia’s Job Creation Act

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A. BACKGROUND

Indonesia has been facing the issue of complex regulatory environment for a long time. In March 2016, President Joko Widodo noted that there were 42.000 regulations at the national level and 3.000 regulations at the regional level, believed to have hampered national development.¹ Consistent with that fact, Indonesia was ranked 73rd out of 160 countries according to the 2019 Ease of Doing Businesses report, lagging behind Thailand’s rank at 27th and Vietnam at 69th.² In order to tackle this issue, the government of Indonesia has been pushing various initiatives to conduct a regulatory reform. One of the most recent initiatives is the enactment of Act No. 11 of 2020 on Job Creation (“Omnibus Law”).

The main purpose of the Omnibus Law is to simplify various existing regulations.³ Besides simplifying existing regulations, the Omnibus Law also serves to eliminate regulatory overlaps, allow efficient amendment and revocation of regulations, and eliminate sectoral egos in various laws and regulations⁴ which in turn will benefit workers and businesses. Through the Omnibus Law, the government proceeds to amend over 1.200 articles from nearly 80 different regulations.

B. OVERVIEW OF THE OMNIBUS LAW

The Omnibus Law contains 15 chapters with each chapter regulating different sectors. In general, however, Article 4 of the Omnibus Law outlines the strategic policies on Job Creation, which constitute their respective chapters comprising of:

Policy	Chapter in Omnibus Law
Improvement of investment and business ecosystem	Chapter III (Arts. 6-79)
Employment and labour	Chapter IV (Arts. 80-84)
Easing of permit, protection & empowerment of cooperatives & Micro, Small and Medium Enterprises (MSMEs)	Chapter V (Arts. 85-103)
Ease of doing business	Chapter VI (Arts. 105-118)
Support for Research and Innovation	Chapter VII (Arts. 119-121)
Land Provisions	Chapter VIII (Arts. 122-147)
Economic Zone	Chapter IX (Arts. 148-153)
Government Investment and National Strategic Projects	Chapter X (Arts. 154-173)

¹ Bayu Dwi Anggono, ‘Omnibus Law sebagai Teknik Pembentukan Undang-Undang: Peluang Adopsi dan Tantangannya dalam Sistem Perundang-undangan Indonesia’ (2020) 9 *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 17, 18.

² Indah Dwi Qurbani & Muhammad Rafid Zuhdi, ‘Analysis of the Energy and Mineral Source Regulation in the Formulation of Job Creation Law (Omnibus Law)’ (2020) 1 *Administrative and Environmental Law Review* 84, 84.

³ Bayu Dwi Anggono & Fahmi Ramadhan Firdaus, ‘Omnibus Law in Indonesia: A Comparison to the United States and Ireland’, 7 *Lentera Hukum* 319, 323.

⁴ Bayu Dwi Anggono & Fahmi Ramadhan Firdaus, ‘Omnibus Law in Indonesia: A Comparison to the United States and Ireland’, 7 *Lentera Hukum* 319, 329.

Government Administration in Support of Job Creation	Chapter XI (Arts. 174-176)
Sanctions	Chapter XII (Arts. 177-179)

Article 3 of the Omnibus Law establishes the purpose of the Omnibus Law, which are:

- a. to create and improve employment opportunities by facilitating, protecting and empowering cooperatives and MSMEs, as well as national industries, to absorb Indonesian workforce as workers;
- b. to ensure that every citizen is employed, paid, and treated fairly in work;
- c. to adjust regulations on cooperatives, MSMEs and national industries; and
- d. to adjust regulations on improving investment ecosystem, as well as acceleration of national strategic projects focusing on national interests.

The purposes set forth in Article 3 of the Omnibus Law can be further streamlined into 2 key features, namely (i) creation of jobs, and (ii) simplification of regulation.

Creation of Jobs

Protection of workers’ rights is central to ensuring the creation of jobs as envisioned in the Omnibus Law. This is reflected in the provision of Article 3 of the Omnibus Law which can be seen in the following diagram⁵:

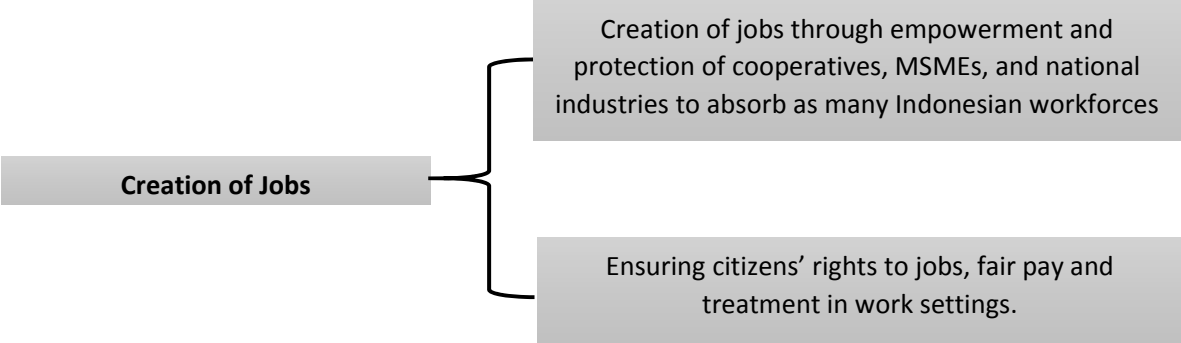


Figure 1 Employee-oriented purposes of Omnibus Law

Under the Omnibus Law, outsourced workers’ rights are protected by their outsourcing companies in which the employment agreement must include the terms concerning the transfer of workers’ rights protection in the event of a change in outsourcing companies provided that the object of work remains.⁶ Companies are also required to pay workers according to government regulations. If workers are paid below the minimum limit set by law, their work agreements concerning salary will be voided by operation of law and they are to be paid according to government regulations.⁷

⁵ Article 3 (a) & (b), Act No. 11/2020 on Job Creation.
⁶ Article 81 (20) (amending Article 66 (3), Act No. 13/2003 on Manpower), Act No. 11/2020 on Job Creation.
⁷ Article 81 (25) (addition of Article 88A (3) & (4) to Act No. 13/2003 on Employment), Act No. 11/2020 on Job Creation.

Moreover, workers also benefit from the empowerment of national businesses in the context of job creation. Omnibus Law provides for workers or workforces in general to develop entrepreneurship, where this would empower MSMEs and also create jobs.⁸ This can also be seen as a move to encourage workforce flexibility, as this would encourage Indonesia's economic growth.⁹

Omnibus Law also ensures workers and workforces of their work-related rights. The amended Article 95 of Act No. 13 of 2003 on Employment under Omnibus Law requires liquidated companies to prioritize paying workers' salaries before paying all the other creditors, with the exception of those holding property rights.¹⁰ Additionally, workers subject to a severance of working relation with their companies remain entitled to their severance pays.¹¹

Simplification of Regulation

Omnibus Law caters for regulation adjustment and simplification to support national businesses and investments, as illustrated by the diagram below¹²:

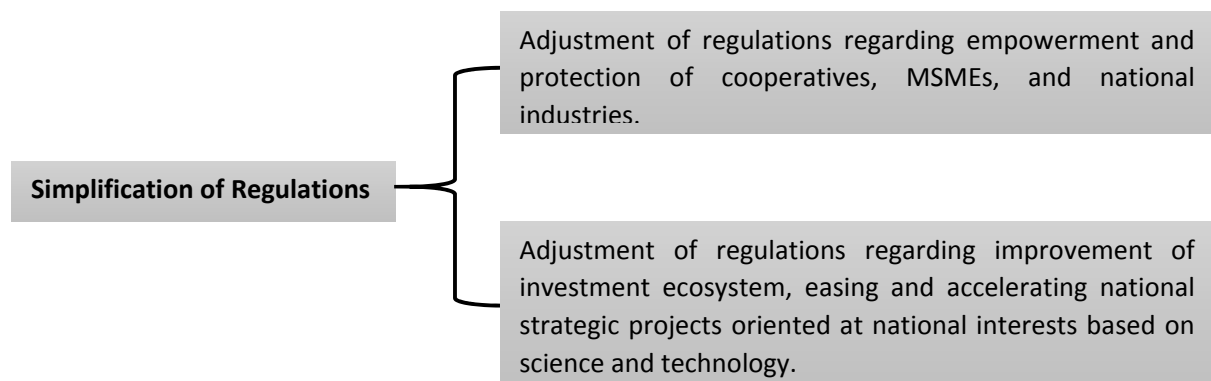


Figure 2 Business and investment-related purposes of Omnibus Law

Due to the regulation simplification under the Omnibus Law, businesses will receive various benefits. One of which is that low-risk businesses will only need to possess a Business Identification Number (*Nomor Induk Berusaha*) for registration purposes¹³ while medium and high-risk businesses will only have to possess a standard certificate and license, respectively.¹⁴

Empowerments of national businesses – especially MSMEs – are also considered in relation to regulation adjustment and simplification under Omnibus Law. This is due to the fact that MSMEs are the backbone of national economy as they amount to 64.2 million (99%) of total businesses in Indonesia, contributing

⁸ Tarsisius Murwadi *et al*, 'People's Business Credit: Omnibus Law and Business Reengineering Community Financial Institutions' (2020) 1 *Transnational Business Law Journal* 21, 22.

⁹ Catur JS *et al*, 'Perlindungan Hukum terhadap Kesejahteraan Pekerja melalui Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja' (2020) 1 *Jurnal Lex Specialis* 178, 184.

¹⁰ Article 81 (33) (amending Article 95 of Act No. 13/2003 on Employment), Act No. 11/2020 on Job Creation.

¹¹ Article 81 (44) (amending Article 156 (1) & (2) of Act No. 13/2003 on Employment), Act No. 11/2020 on Job Creation.

¹² Article 3 (c) & (d), Act No. 11/2020 on Job Creation.

¹³ Article 8, Act No. 11/2020 on Job Creation.

¹⁴ Articles 9 (2) – (6) & 10, Act No. 11/2020 on Job Creation.

61.07% to Indonesia's Gross Domestic Product.¹⁵ MSMEs may now be incorporated as single-member limited liability company under Omnibus Law, requiring only a letter of establishment.¹⁶ Besides, they are also entitled to relaxation of fees on establishing a legal entity of their own.¹⁷

Omnibus Law also prioritizes investment ecosystem improvement as a factor in adjusting and simplifying existing regulations. This is done through the allocation of facilities to investors by the Government, both to those who are expanding their businesses and conducting new capital investments.¹⁸ As a result, investors will be enticed in committing capital investments in Indonesia. The reason is because the Omnibus Law also implements 'priority list' on certain business sectors, namely businesses that also employ a large amount of workforces.¹⁹

C. MAIN ISSUES AND CHALLENGES OF OMNIBUS LAW

Two main issues are identified with the enactment of the Omnibus Law, namely on regulation and ease of doing business aspects. On the regulatory aspect, the Omnibus Law is not compatible with Indonesia's regulatory system as it is not recognized under Constitution of 1945 nor Act No. 12/2011 on Legislation.²⁰ In addition, the central government becomes the sole actor in issuing and regulating business licenses under Omnibus Law. This gives an impression of a return to centralization of powers to the Government at the expense of regional government's authority on such issue.²¹

While Omnibus Law aims to promote ease of doing business, the amendments introduced through the Omnibus Law is not without issues. The act, while providing an opportunity for MSMEs to start a business by establishing single-member limited liability company, does not clearly define the term 'single-member limited liability company'.²² Meanwhile, Act No. 12 of 2011 on Legislation stipulates the need for regulations to comply with the principle of clarity, where regulations shall not cause confusion or multiple interpretations in regard to its wording and legal vocabulary, which must be clear and easily

¹⁵ Muhammad Faiz Aziz & Nunuk Febriananingsih, 'Mewujudkan Perseroan Terbatas (PT) Perseorangan bagi Usaha Mikro Kecil (UMK) melalui Rancangan Undang-Undang tentang Cipta Kerja' (2020) 9 *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 91, 93.

¹⁶ Article 109 (5) (adding Article 153A (1) & (2) to Act No. 40/2007 on Limited Liability Company), Act No. 11/2020 on Job Creation.

¹⁷ Article 109 (5) (adding Article 153J to Act No. 40/2007 on Limited Liability Company), Act No. 11/2020 on Job Creation.

¹⁸ Article 77 (4) (amending Article 18 (1) & (2) of Act No. 25/2007 on Capital Investment), Act No. 11/2020 on Job Creation.

¹⁹ Muhammad Insa Ansari, 'Omnibus Law untuk Menata Regulasi Penanaman Modal' (Omnibus Law for Arranging Investment Regulations) (2020) 9 *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 71, 82.

²⁰ Bayu Dwi Anggono, 'Omnibus Law sebagai Teknik Pembentukan Undang-Undang: Peluang Adopsi dan Tantangannya dalam Sistem Perundang-undangan Indonesia' (2020) 9 *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 17, 31.

²¹ Sigit Gunawan *et al*, 'Pros and Cons of Law of Creation Based on Legal Sociology Analysis' (2020) 8 *Jurnal Hukum Replik* 47, 55-56.

²² Muhammad Faiz Aziz & Nunuk Febriananingsih, 'Mewujudkan Perseroan Terbatas (PT) Perseorangan bagi Usaha Mikro Kecil (UMK) melalui Rancangan Undang-Undang tentang Cipta Kerja' (2020) 9 *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 91, 103.

understandable.²³ Hence, the definition of limited liability company under Omnibus Law shall be modified to accommodate single-member limited liability company for the purpose of clarity.²⁴

Additional issues also exist pertaining to features of the Omnibus Law. While it requires outsourcing companies to ensure workers' protection, there are no limits as to the field of work for outsourced workers.²⁵ This will lead to increase in numbers of outsourced work and workers, where there is a tendency to pay these workers less than 'in-sourced' workers.²⁶ Furthermore, Omnibus Law does not pay attention to the issue of human competence for workers and only focuses on business and investment growth. Consequently, the Omnibus Law does not contain provisions to improve workers' competence.²⁷

Lastly, Omnibus Law also introduces new issues for businesses and investors. Omnibus Law amends and simplifies multiple existing regulations, but also contains numerous implementing regulations. As these regulations are still being drafted, it takes time to see realization of improving investment ecosystem in Indonesia.²⁸ Consequently, investors and businesses have to observe existing implementing regulations of acts amended by Omnibus Law for a duration of 3 months since its enactment on November 2020 until February 2021.²⁹

D. CONCLUSION

Omnibus Law aims to simplify multiple regulations and promote ease of doing business.³⁰ To achieve these goals, Omnibus Law outlines its purposes, oriented at workers' and businesses' interests, where the act also describes its policies constituting chapters of Omnibus Law. Its purposes as elaborated in Article 3 also serve as key features, benefitting workers and businesses alike.³¹ However, issues exist in implementing the regulation.

Regulation-wise, Indonesian legislation regulation and legal system does not provide for Omnibus Law.³² Besides, the goal of easing of business is also jeopardized due to lack of clarity in defining certain terms, such as the aforementioned single-member limited liability company. Moreover, in relation to its key features, outsourced workers may be paid lower due to omission of limitation on field of works for outsourced workers, while no attention is given to enhance workers' competence. Finally, as Omnibus

²³ Explanation to Article 5 (f), Act No. 12/2011 on Legislation.

²⁴ Muhammad Faiz Aziz & Nunuk Febriananingsih, 'Mewujudkan Perseroan Terbatas (PT) Perseorangan bagi Usaha Mikro Kecil (UMK) melalui Rancangan Undang-Undang tentang Cipta Kerja' (2020) 9 *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 91, 103.

²⁵ Petra Mahy, 'Indonesia's Omnibus Law on Job Creation: Reducing Labour Protections in a Time of COVID-19' (Working Paper No. 23, 2021) 8-9.

²⁶ Petra Mahy, 'Indonesia's Omnibus Law on Job Creation: Reducing Labour Protections in a Time of COVID-19' (Working Paper No. 23, 2021) 9.

²⁷ Kuku Terjomurti & Sukarmi Sukarmi, 'The Critical Study of the Omnibus Bill on Job Creation Based on John Rawls View on Justice' (2020) 6 *Unnes Law Journal* 187, 191.

²⁸ Nandang Sutrisno & Sigar Aji Poerana, 'Reformasi Hukum dan Realisasi Investasi Asing pada Era Presiden Joko Widodo' (2020) 3 *Undang: Jurnal Ilmu Hukum* 237, 256.

²⁹ Article 185 (b), Act No. 11/2020 on Job Creation.

³⁰ Eko Noer Kristiyanto, 'Urgensi Omnibus Law dalam Percepatan Reformasi Regulasi dalam Perspektif Hukum Progresif' (2020) 20 *Jurnal Penelitian Hukum De Jure* 233, 236.

³¹ Article 3, Act No. 11/2020 on Job Creation.

³² Eko Noer Kristiyanto, 'Urgensi Omnibus Law dalam Percepatan Reformasi Regulasi dalam Perspektif Hukum Progresif' (2020) 20 *Jurnal Penelitian Hukum De Jure* 233, 237.

Law's implementing regulations are not yet enacted, it will take time to see effects of regulation adjustment for businesses and investments.

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Act No. 11/2020 on Job Creation.

Act No. 12/2011 on Legislation.