

IMPLICATIONS OF THE APPLICATION OF THE OMNIBUS LEGAL WORK BILL IN THE CONTEXT OF ECONOMY IN INDONESIA

Mandapat Parulian Nainggolan

ABSTRACT

The speech of the President of the Republic of Indonesia at the plenary session of the Indonesian People's Consultative Assembly in the context of the inauguration of the President and Vice President of 2019-2024 on 20 October 2019 said that the government invited the House of Representatives to issue the Work Copyright Act to address obesity. and economic improvement in Indonesia with the omnibus law method commonly used in countries that follow a common legal system such as America. A total of 79 Laws and 1,203 articles were influenced by the existence of the omnibus law in the Cipta Karya Bill. (i) is the concept of the omnibus law of the copyright bill in accordance with the spirit of the Indonesian economic constitution, (ii) how to overcome obesity regulations for ease of investment and economic improvement in Indonesia, the concept of the omnibus law answers the challenge of how to solution economic improvement with a deregulation system in the context Pancasila

Key words: Presidential speech, economic improvement, Pancasila

A. INTRODUCTION

The Draft Employment Copyright Bill (RUU Cipta Karya) proposed by the President is being debated in the community. The draft Omnibus Law is intended to expand employment opportunities to facilitate investment requirements to improve national economic growth. Provisions in the draft law that potentially violate the constitution and the constitutional rights of citizens.¹ The controversy over this bill is also related to the concept of omnibus law legislation which in the common law tradition is called an omnibus bill which can be defined as a draft law before alegistature which contains more than one substantive matter or several minor matters which have been incorporated into one bill, ostensibility for the sake of convenience.² In simple terms, the omnibus law is interpreted as a single law consisting of a combination of the plural of other laws that aim to change many legal rules in the law in one law only.³

B. PROBLEMS

(i) How is the omnibus law concept of the work copyright bill in accordance with the spirit of Indonesian Constitution? (ii) How to overcome regulatory obesity in accordance with the spirit of Indonesia Constitution?

C. METHODS

The writing is juridical approach to spesification descriptive analytical research. selection normative legal research methods based on several reasons, among other: first with the many problem of law faced in society, both with regard to the legal norms tha until today yet progresive legal grounding. Secondary data were collected from the primary legal materials. Either in the form of statutory provisions and their implementation; secondary law constitutes tertiary data from various literatures related to this research⁴

D. RESULTS AND DISCUSSION

Preventive efforts to prevent irregularities through state administrative law are with good governance, namely the use of government power in a transparent and participatory manner. This principle is basically a rule of public law that must be followed by the Administrator in implementing positive law.⁵ Future arrangements will be related to procedural principles relating to the policy making process and substantial principles relating to the material or content of the policy.

The material or content of policies made should pay attention to the principle of equality, the principle of legal certainty, prohibition of abuse of authority, duty of caution care) and the principle based on reason (principle of reasonableness). 2. The Principle of Legal Certainty, is the principle in the rule of law that prioritizes the basis of the provisions of the laws and regulations, propriety, constancy, and justice in every government administration policy. 3. Principle of Benefit, is a benefit that

¹ KODE Inisiatif , 2019, *Membaca 16 Tahun Mahkamah Konstitusi: Data Uji Materi Undang-Undang terhadap UUD 1945 (2003-2019)*, Jakarta: Yayasan Konstitusi Demokrasi Inisiatif, hlm.1

² Kemkoperekonomian, 2019, *Naskah Akademik Rancangan Undang-Undang Cipta Kerja*, hlm.1

³ *Ibid.*

⁴ Ganda Surya Satya J.A.P, 2016, *Implikasi Privatisasi Pada Kinerja Perusahaan Ketenagalistrikan Untuk Kepentingan Publik*, Disertasi Universitas Diponegoro, Semarang, hlm.32

⁵ Ganda Surya Satya, J.A.P, 2014, *Membangun Politik Hukum Pemilu Yang Demokratis Dengan membumikan Konsep Negara Hukum Pancasila*, Jurnal Undip, Semarang, hlm.11

must be considered equally between: (1) the interests of one individual with the interests of other individuals; (2) individual interests with the community; (3) the interests of community members and foreign communities; (4) the interests of one community group and the interests of other community groups; (5) the interests of the government and community members; (6) the interests of the present generation and the interests of future generations; (7) the interests of humans and their ecosystems; (8) the interests of men and women.

The context of the omnibus law draft work copyright law has combined 79 applicable laws so that the arrangement consists of 11 clusters of regulations, 12.03 articles affected by the omnibus law. Therefore, the complexity of the substance and the ideals to foster national economic growth despite being guarded by the structure and ideals to deviate the foundation of the constitution as the supreme law of the land and aimed at the welfare of the people. One of the constitutional building references referred to can refer to the interpretation of the Constitutional Court (MK) in each decision on the decision on the law that is decided. Based on 16 years of initiative code data, the Constitutional Court upheld the constitution, 29 out of 79 laws that were amended by the draft work copyright law that was tested in the Constitutional Court. In addition there are 54 constitutional court decisions related to laws amended by the work copyright bill, the initiative code notes that there are 31 constitutional court decisions that are not heeded by the government in preparing the substance of the draft law for the substance of the work copyright law .⁶

This ignorance can be seen from the first three polarization decisions of the Constitutional Court which were not followed up in the draft copyright of works in other words the norms that had been canceled or interpreted by the Constitutional Court were not accommodated in the work copyright draft, the second was a follow-up to a partial constitutional court decision or only partially accommodated in the draft work copyright law, the emergence of the three articles that were canceled by the constitutional court because the conflict with the constitution was brought to life by the government in the draft work copyright law.⁷

By not accommodating the constitutional interpretation in the context of constitution and in the work copyright draft, the government has the potential to straddle constitutional norms, namely as follows:

1. Article 1 paragraph (2) of the 1945 Constitution which lays the foundation that sovereignty is in the hands of the people and is carried out according to the constitution
2. Article 1 paragraph (3) of the 1945 Constitution which lays the foundation that the state of Indonesia is a state of law
3. Article 18 paragraph (2) of the 1945 Constitution which regulates that regional, provincial, regency and municipal governments regulate that the provincial, regency / municipality regional governments regulate and manage their own governmental affairs according to the principle of autonomy and assistance tasks

All potential violations of the spirit and norms of the constitution must be a serious concern for the government because deviations from some of the draft work copyright law to the constitution cannot be interpreted as deviations in part of the draft work copyright law to the constitution cannot be interpreted as partial deviations but deviations systemic. This prevents the reading of the law,⁸ especially the draft work copyright law, which must be carried out systematically as a building entity, the absence of one rule cannot confirm the existence of other regulations, not only the economic and investment sectors but can also spread to the legal, social, the environment, natural resources, employment and even the order of local government, the neglect of the government and the people's representatives on constitutional values can also have massive implications, which is to create chaos on the continuation of constitutional democracy under the rule of law and potentially violate the constitutional rights of citizens.⁹

E. CONCLUSION

The President and the House of Representatives must uphold the constitutional values and ensure the constitutionality of the material content in the draft work copyright law by accommodating the constitutional interpretations of the constitutional court and The President and the House of Representatives must evaluate and make room for those who are directly implicated in the draft work copyright law and consider any input that is equitably oriented towards the welfare state

REFERENCES

Hayyu, Pradany, Sinyal Baik dalam Kemudahan Berusaha, *Mediakuangan* (Vol. XIII / No. 128 / Mei 2018).

Inisiatif, Kode, 2019, *Membaca 16 Tahun Mahkamah Konstitusi: Data Uji Materi Undang-Undang terhadap UUD 1945 (2003-2019)*, Jakarta: Yayasan Konstitusi Demokrasi Inisiatif.

Kemenkoperekonomian, 2019, Naskah Akademik Rancangan Undang-Undang Cipta Kerja.

⁶ Pradany Hayyu, "Sinyal Baik dalam Kemudahan Berusaha", *Mediakuangan* (Vol. XIII / No. 128 / Mei 2018), hlm. 17.

⁷ Lenvine dikutip AG.Subarsono, 2005, *Pelayanan Publik yang Efisien, Responsif, dan Non-Partisan dalam Agus Dwiyanto, 2005, Mewujudkan Good Governance Melalui Pelayanan Publik*, Gajah Mada University Press, Yogyakarta, hlm.4.

⁸ Peter Herman, "Monopoly Watch," Dokumentasi Proses Seminar Sehari Indonesian Business Competition: Present and Future Challenge, Hotel Park Plaza, Jakarta, Mei 2002, hlm.45.

⁹ Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, (Semarang: PT. Citra Aditya Bakti, 1998), hlm.48.

- Lenvine dikutip AG.Subarsono, 2005, Pelayanan Publik yang Efisien, Responsif, dan Non-Partisan dalam Agus Dwiyanto, 2005, *Mewujudkan Good Governance Melalui Pelayanan Publik*, Gajah Mada University Press, Yogyakarta.
- Peter Herman, "*Monopoly Watch*," Dokumentasi Proses Seminar Sehari Indonesian Business Competition: Present and Future Challenge, Hotel Park Plaza, Jakarta, Mei 2002.
- Surya Satya, J.A.P, Ganda, 2014, Membangun Politik Hukum Pemilu Yang Demokratis Dengan membumikan Konsep Negara Hukum Pancasila, Jurnal Undip, Semarang.
- , 2016, Implikasi Privatisasi Pada Kinerja Perusahaan Ketenagalistrikan Untuk Kepentingan Publik, Disertasi Universitas Diponegoro, Semarang, hlm.32
- Nawawi Arief, Barda, 1998, Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana, (Semarang: PT. Citra Aditya Bakti, 1998)

Mandapat Parulian Nainggolan
Pelita Harapan University, Jakarta Indonesia
Email: Mandapat Parulian9@gmail.com