

## THE FAITH OF THE SACRIFICE CROWN POLICY SYSTEM REGIONAL GOVERNMENT AFTER THE IMPLEMENTATION OMNIBUSLAW IN INDONESIA

Saeiful Kholik

### ABSTRACT

*The issuance of Law Number 11 of 2021 concerning Job Creation or the omnibus law in Indonesia has created a polemic the legal working system, based on the government concept based on the Risk Based Approach (RBA). The implementation of this regulation has not been maximized, causing problems, especially the regulation regional government policy systems with the concept that regional governments are given broad authority to regulate regional governments according to their respective authorities, but this mandate is contrary to the omnibus law because there are provisions drawn through the center so that the sacredness of the regional government system has faded. Therefore, the main objective of this research is to firstly get an overview good and equitable local government policies with the concept good governance after the implementation omnibus law in Indonesia. Second, to analyze the complexity of working local government law after the implementation omnibus law in Indonesia. The results of this journal study are expected to provide insight for the Indonesian government to apply omnibus law regulations which have the concept authority to local governments regulate regional households based on the principle of decentralization as before. This study can also be expected to contribute to the development of constitutional law, state administrative law, regional government law and regional autonomy. located in the southeast asian region which is being studied for its legal comparison.*

Key words: Omnibus Law, Regional Government, Regional Autonomuy, Policy, Law

### INTRODUCTION

The concept of local government comes from the translation the concept local government which essentially contains three meanings, namely the first means local government, second means local government, and third means local area. Local government is seen as a unit of public legal entity (Jeddawi Murtir, 2008 ). In its position as a local government public legal entity, apart from being seen as the implementing organizational unit of the central government, the regional government is also an independent organization that represents the interests of the people in the region. This implies that within certain limits the local government is entrusted with certain government affairs to be regulated, managed and managed. (Hoessein in Hanif Nurcholi, 2007).

According to Muchtar Koesumaatmadja in Fauzan's book, he explains that deconcentration is the delegation of authority from higher-level state equipment to subordinates to facilitate work in carrying out government duties, for example the delegation of power from the authority of the minister. to the Governor, from the Governor to the Regent and so on (Fauzan 2006). According to Rondinelli, in Koeswara deconcentration is essentially only a division of administrative authority and responsibility between the central department and field center officials. According to Bryant, deconcentration is mostly just a shift in the volume of work from the central department to its representatives in the regions without any delegation of authority to take the responsibility. decision or freedom to make decisions (Koeswara, 2002).

Recognition of the regional government system based on the 1945 Constitution, the state of Indonesia is a unitary state in the form of a republic. In accordance with the provisions of article 4 paragraph (1) of the 1945 constitution, in the administration government it is stated that the resident of the republic of Indonesia holds governmental power. Given the vast territory of Indonesia, the 1945 constitution and its amendments have provided a constitutional basis for the administration of regional government in Indonesia. Among these provisions are:

1. The principle of state recognition and respect for customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the unitary state of the Republic of Indonesia;
2. The principle of the regions to regulate and manage their own government affairs according to the principles autonomy and co-administration;
3. The principle of exercising the widest possible autonomy;
4. The principle of recognizing and respecting special and special regional governments;
5. The principle of the representative body being directly elected in an election; the principle of relations between the center and the regions must be implemented in a harmonious and fair manner;
6. The principle of the relationship authority between the central government and regional governments must take into account the specificity and diversity the regions;
7. The principle of financial relations, public services, utilization natural resources and other resources between the central government and regional governments is carried out fairly and in harmony based on the law; (BPHN, 2022).

By reviewing article 18 of the 1945 constitution as a result of the amendment, Bagir Manan stated that there had been a very basic change in terms of structure and substance. Structurally, article 18 which was previously only one article has become three articles. There was a complete replacement including the explanation. So, currently the constitutional basis for the implementation of regional government is article 18, Article 18A and Article 18B. Meanwhile, in substance, Bagir explained, both conceptually and legally, the new articles on Regional Government in the Constitution contain new paradigms and new political directions of government. (Share Manan, 2021). Regional government as one of the subsystems of the Indonesian government system is the main element in the administration of regional government. Therefore, the goal is the same as that of the central government, namely realizing national ideals as formulated in the preamble to the 1945 constitution. In the administration of government, if viewed from the management aspect, there is a division of authority, duties and responsibilities between the central

government and regional governments. However, the final responsibility remains with the central government. (Simorangkir Bonar, 2000).

Of course, on the basis of some of these acknowledgments, it has been acknowledged that Pancasila and the 1945 Constitution of the Republic of Indonesia are basic values and views of the Indonesian people's life that cannot be ignored. Sourced from Pancasila and the 1945 constitution. The enactment of Law Number 11 of 2021 concerning Job Creation or this omnibus law is indeed based on the source of Pancasila and the 1945 constitution which has the aim of;

1. Streamlining the resolution of the need for new policies through regulation in a single process of law-making considering that currently there are so many laws and regulations in Indonesia;
2. Legislation needs to be arranged in a harmonious way because every opportunity to make changes to one law, the substance contained in many other laws can be integrated into new laws at the same time, the laws are more integrated and directed;
3. For the business world, the world of work and society in general, there are still benefits that can be enjoyed by an integrated and harmonious system of laws and regulations in force;
4. With this omnibus law method, the applicable state and government policies are binding because they are officially stated in the form of laws and regulations that can be more easily understood; (Jimly Asshiddiqie, 2020).

However, in the implementation of the expectation the birth Law Number 11 of 2021 concerning job creation or this omnibus law, it does not fully run as expected and stated, for example, there is a fact that there is a disharmony of authority between the job creation act and Law Number 9 of 2015 Amendments to Law Number 23 of 2014 concerning Regional Government, which was originally the purpose of this work copyright law, can be expected to harmonize and provide hope for harmonization of laws and regulations, but in reality it is not fully what is expected.

- a. The conception of Law Number 9 of 2015 amendments to Law Number 23 of 2014 concerning the regional government system that the government can run a regional government system based on its authority recognized by the 1945 Constitution, but after the existence of Law Number 11 of 2021 concerning Copyright This work or omnibus law has a lot of authority or local government policies taken over by the central government, such as several policies, including:
- b. Article 10 Paragraph (2) Law Number 26 of 2007 concerning Spatial Planning, the Provincial Government has several authorities, including planning, utilization, and controlling the use of provincial space. These provisions also apply to regency or municipal governments in carrying out their authority, but all of these provisions are abolished in the job creation law.
- c. The land cluster, the articles of which are contrary to the spirit of article 33 paragraph (3) of the 1945 constitution, and TAP MPR IX/MPR/2001 because it is only for a few people (oligarchy), not for the greatest interest of the people.
- d. Articles regarding land banks in the omnibus law are discussed in articles 125 to 130, where the formation is carried out by the central government. At least 30 percent of state land is designated for land banks and will be managed by a supervisory agency. In its implementation, the land bank will be given management rights in the form of cultivation rights, building rights and use rights.

Of course, this provision confirms that local governments cannot provide policies in accordance with the initial conception of the birth of local government laws based on the principle of decentralization, meaning that regional governments in carrying out their regional household systems are based on their authority.

## RESEARCH PROBLEMS

The problem with the birth of the omnibus law from the point view of the authority the regional government system is the loss of honor and dignity or the crown of regional government system policies.

1. What is the policy system for regional regulations after the implementation of the omnibus law in Indonesia?
2. How is the complexity the operation of regional government law after the implementation of the omnibus law in Indonesia?

## METHOD

This study uses a normative juridical approach, which prioritizes the use of secondary data in the form of legal materials. The legal materials needed for this research are primary, secondary, and tertiary legal materials. Primary legal materials are legal materials obtained directly from authorized publishers, whether in the form of laws, jurisprudence, agreements, including those obtained in electronic form through internet media. The analysis was carried out using the legal method of interpretation of the data and information obtained, with reference to the principles and norms prevailing in society. This research is descriptive analytic. The data collection method used in this case is a study conducted on documents, with the aim of collecting data. The data analysis method was carried out in a qualitative juridical manner, first through research on legal principles that were placed as a benchmark for behavior. Research made on principles requires philosophical study and consists of idealized elements of law. Second, research conducted on the legal system with reference to legal events, and associated with the characteristics of the legislation. Third, research with vertical degrees and horizontal synchronization, meanwhile, is made to reveal the extent to which certain laws are harmonious, by making an inventory related to regulations. Fourth, Comparative Law is made by reviewing the elements, especially the legal structure, substance and legal culture. (Yanti Pujiyanti, 2020).

## RESULTS AND DISCUSSION

### 1) What is the policy system for regional regulations after the implementation of the omnibus law in Indonesia

Contradictions to the implementation of omnibus law are not only in Indonesia but also in America, which of course affects the policy of establishing unorthodoxy in law formation. According to Abe R. Gluck and his colleagues, the development of the practice of forming laws today in the United States has undergone changes. Which is different from an old habit which is considered

orthodoxy in the face of new developments which they call unorthodox or unorthodox in the formation of omnibus rulemaking laws and the implementation of legislation (Omnibus Implementation) (Abe R. Gulck, 2016).

Of course, the practice statutory regulations shows that there is a need for the times, where standard law-making procedures are obtained by a legacy from the past, one the serious problems faced is the change in the formation of laws in a hierarchical manner that is not in accordance with the provisions higher law as in Indonesia.

The practice of implementing Law Number 11 of 2021 concerning job creation or omnibus law In Indonesia, it contains many weaknesses that harm the democratic process and the rule of law, especially with regard to the principle due process law making. The negative impacts this omnibus bill practice are:

- a. The process of discussions in the parliamentary forum in a technical sense has decreased in quality and degree trust;
- b. The quality of public participation is declining;
- c. The quality of substantive debates in parliamentary forums on every policy issue related to the public interest the people has also greatly decreased;
- d. Debates in the public sphere through public discourses have become unfocused and focused, even though the role of free media and political forums and academics is very important as a medium of socialization and education for the wider community.

All of these are factors that can determine the democratic process to develop from just a formalistic and procedural democracy to a substantive democracy with higher quality and integrity (Jimly Asshiddiqie, 2020). This is felt by the provisions Law Number 9 of 2015 The second amendment to law number 23 of 2014 concerning regional government which of course has the potential to castrate the existence regional autonomy, even though we know that the choice of a unitary state with an autonomous and decentralized system requires a central government that Led by the President as head of state as well as head of government to be consistently willing share power with regional government units led by regional heads who are directly elected by the people. On the other hand, local governments are also required to be independent and able to innovate as a consequence of the flexibility in the administration of local government.

For example, in the provisions of the article, which has definitely caused a polemic in article 251 of omnibus law, that provincial regulations to district or city regulations as well as regional head regulations from provinces to districts and cities can be annulled if they conflict with higher laws and regulations. Regulations at the regional level can be revoked and declared invalid through a presidential regulation. If the local government still insists on enforcing regulations that have been canceled through a presidential regulation by the president, the local government may be subject to administrative sanctions and sanctions for delaying the evaluation of the draft regulation. The administrative sanction in question is the non-payment of the financial rights of the regional head and DPRD members for three months.

Historically, a similar clause has been contained in the regional government law in the same article, namely article 251. In the past, provincial regulations and governor regulations that conflicted with higher statutory provisions could be revoked directly by the minister of home affairs. If there is a district or city regulation to head regulation that contradicts a higher regulation, the local governor as the representative of the central government has the right to cancel the regional regulation. These provisions were eventually annulled by two decisions of the Constitutional Court (MK), namely Decision No. 137/PUUXIII/2015 and Decision No. 66/PUU-XIV/2016.

In addition, the policy of determining regional level legislation in post-omnibus law in regional government which was originally a region was given the freedom to regulate the licensing authority at the regional level, but in this omnibus law the licensing authority is withdrawn through the center. Through the job creation law, the government amended article 350 of the regional government law and the amendment states that business licensing services must use an electronic licensing system managed by the central government.

The regional head is only given the authority to develop a support system for the implementation of the business licensing system in accordance with the standards set by the central government. There are even threats of sanctions to local governments who are reluctant to implement these provisions. It is important to note that the retribution that local governments receive from licensing services is one of the largest contributors to PAD. So that if the licensing authority is taken over by the center, the regions will be very disadvantaged.

Of course, it becomes a question whether the regional government will carry out its maximum supervisory function, if the licensing authority is no longer given to it. A simple example such as a building permit (IMB), in addition to contributing the largest PAD, of course also requires supervision from the local government. Several other provisions, of course, with the provisions of law number 11 of 2021 concerning job creation or this omnibus law have taken away the sanctity and sacredness of the crown of the regional government system which originally applied the philosophical concept of regional regulatory authority to regulate their households in accordance with their respective provisions and authorities. The output is that there is a lot of overlapping of pre-determined powers and policies.

## 2) **How is the complexity of the work of regional government law after the implementation of the omnibus law in Indonesia**

Law in general is defined as the overall arrangement or method of living together, the whole of the behavior that applies in a common life, of the behavior that applies in a common life, which can be enforced by means of a sanction. However, until now there has not been an adequate legal understanding in reality. This is because the law has so much complexity in terms of form, function and purpose, as expressed by several legal experts who provide that the description of law and the field of human life that can make it impossible for people to make a comprehensive legal definition to achieve justice.

The essence of justice itself lies in the assessment of a treatment or action. Various legal objectives to be realized in society through the law made, while at the same time causing the duties and functions of the law to be more diverse, broadly speaking, these goals include the achievement of an orderly society and peace, realizing justice, and to bring prosperity and

happiness or prosperity, the view of the law that functions to achieve justice must be stated in written rules or laws, the birth of the law can be expected to be able to solve legal problems that are so complex. (Sudikno, 1986).

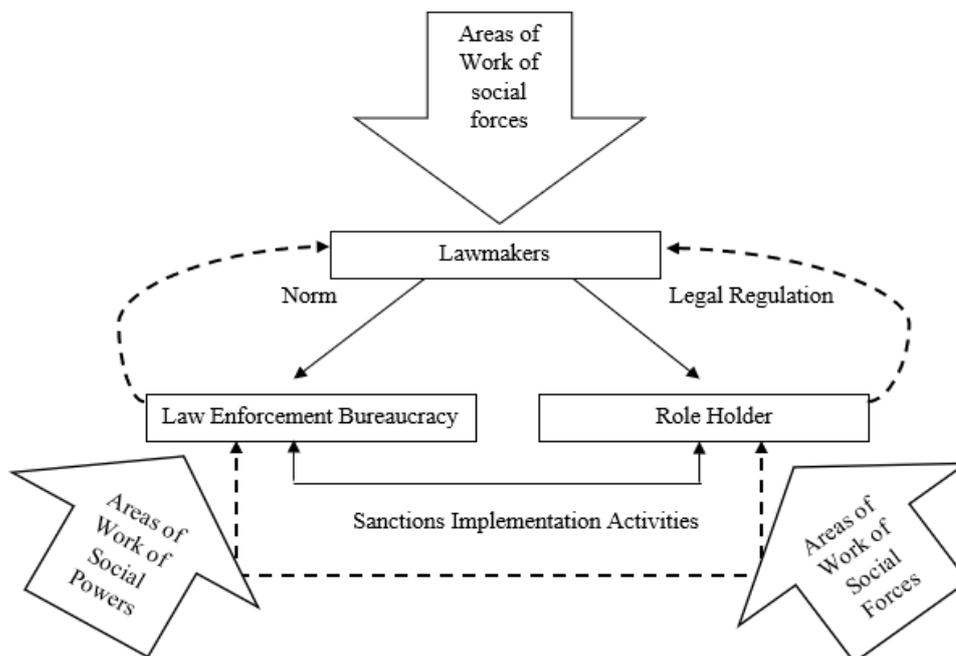
After the implementation of law number 11 of 2021 concerning Job Creation or the omnibus law in Indonesia, of course, there are pros and cons, this is considered a lot to be contrary to the situation or omnibus implementation, the constitutional court decision No. 91/PUU-XVIII/2020 which has decided conditionally unconstitutional which means Articles requested for review are unconstitutional if the conditions set by the constitutional court are not met. Thus, the article requested for review at the time the decision was read out was unconstitutional and would become constitutional if the conditions as stipulated by the Constitutional Court were met by the Constitutional Court's decision. (Hukum Online, 2022).

With the conditional unconstitutional decision decided by the constitutional court, it becomes evidence that affects the complexity of the workings of the legal system related to laws both vertically and horizontally which affects the consolidation of the implementation of the implementation of the law as a tool or complement to the omnibus law of government operational policies and development is still not a major concern, of course, indirectly, many institutions are given the responsibility to implement such a long and thick law to regulate the linkages that have been instructed.

The influence of this constitutional court decision also has an impact on the operation of the law after the birth of law number 11 of 2021 concerning Job Creation or the omnibus law. The existence of major and fundamental social changes is always followed by adjustments in terms of legal life. However, if the law is completely lacking or even unable to respond to the social changes that occur, then it is a sign that it still maintains itself as a closed institution. If this continues, it will be difficult for the law to be expected to organize a larger and more complex social life. According to northop as quoted by boedenheimer, that law cannot be properly understood if it is separated from social norms as living law can be interpreted as a law that controls life itself, even though it cannot be included with written regulations (Edge Bodenheimer, 1962).

Robert B. Seidman stated that any action to be taken by policy makers and the application of the law is always within the scope of the complexities of social, cultural, legal, economic and political units and so on. All social forces always work together in every effort to function the applicable regulations, apply sanctions, as well as in the supervision and implementation of the law in line with the line of instruction which of course aims to maintain stability in the complex operation of the law with legal provisions. applicable.

There is the influence of social forces in the work of law to deal with the complexity of the work of the law after the stipulation of laws and regulations that are related to each other, therefore Seidman describes it in the flow and chart below:



Source B. Siedman  
Figure Model of the Working of Law (Seidman, 1971)

The model of the framework and concept according to siedman above can be explained that the influence and factors as well as social forces occur starting from the stages of making laws, implementing them and reaching their expected roles. Of course, the application of the law has not reached its maximum, indicating that the law is a social process which by itself is an independent variable (autonomous) or not at the same time.

Social forces have started working in the law-making stage. Social forces for the application of lawmakers continue to try to enter and influence every legalization process in an effective and efficient manner, while the regulations issued do produce the desired results, will but the effect is also very dependent on social forces to be able to complete it, therefore legal products can see the act of issuing formal regulations.

Likewise, the influence of social legal forces can be felt in the application of laws, there are basic values that must be realized and need to get very serious attention from law enforcement, namely, the values of justice, legal certainty, and expediency. Especially the value of the community's needs in a certain way, so that the law really has the most real role for the community (Seidman, 1971).

This development needs to be realized that law is indeed a part of social life and thus will never be in a vacuum. If legal institutions and institutions remain closed from other branches of science, efforts will also be made to organize social life. towards a better and humane direction, even though social components are very important in structuring legal institutions and institutions, they receive very serious attention for legal workers.

The importance of law to regulate and provide values of community discipline can be stated in the joints of the rule of law which contains ideas, ideas and assumptions for survival, but if the law itself cannot provide and place its portion both in the juridical and social order then the rule of law This will clearly affect the activities of the law, both at the national level or even at the legal level located in the region (Esmi Warasih, 2016).

Second concept was put forward by Hans Kelsen which stated that the legal regulations promulgated by the competent authorities in a modern state have twofold aspects. Legal regulations aimed at a member of the community that show how he should behave, are also aimed at the judge so that if in the opinion of the judge, sanctions should be given to that member of the community (if there is a violation or legal deviation) (Robert B. Seidman, in Kadek Cahya Susila Wibawa, 2006).

The application of the law in reciprocity which is based on the pattern of the rule of law itself certainly contains expectations that should be carried out by legal subjects as role holders. However, the operation of the legal system that can be stated in the law is not always determined by the presence of the regulation itself but needs to be seen from the point of view of the success of the regulations that have been implemented, therefore it is necessary to maintain a harmonious legal relationship itself so that if that goal is achieved then there will be no complexity of working law in a society and legal institutions that are related between the law of higher and lower status.

Of course, the scheme implemented by siedeman will also affect the complexity of the work of local government law after the issuance of the job copyright law or omnibus law which emphasizes legal turmoil leading to the absence of stability, legal vacuum, and limited authority, of course, this will lead to several complex types of legal arrangements, laws, as well as authority within the local or central government.

## CONCLUSION

The issuance of law number 11 of the year concerning job creation or the 2021 omnibus law is indeed based on the concept of the Risk Based Approach (RBA), Through this conception the government changes several provisions that apply to both central and regional level provisions. Problems arise when the implementation of this law In fact, it violates several other relevant regulatory provisions, one of which is law number 9 of 2015 second amendment to law number 23 of 2015 concerning regional government with the concept that authority is given as wide as possible to regions based on their respective authorities, but with the stipulation of a new law. In this omnibus law, all regional government authorities and policies are withdrawn to the center so that the concept of regional government cannot be reconsidered and creates the sacredness of regional government that has faded.

After the stipulation of law number 11 of 2021 concerning job creation or the omnibus law in its implementation, there have been pros and cons from several sectors faced, of course this has an effect on the working system of the law, one of which is the complexity of the omnibus law's influence on the regional government system where all the authority and policies of local government are withdrawn to the center so that this has formed a pattern of working local government laws that are so complex and cannot be balanced. Therefore, the government must pay more attention to the synchronization and harmonization of related regulations to prevent an imbalance in the work of the law, especially in regional governments.

## BIBLIOGRAPHY

### BOOK SOURCES:

- Asshiddiqie Jimly. (2020). *Omnibus law and its application in Indonesia*, Constitution Press, Jakarta.
- Abe R. Gulck. (2016). *Unorthodox Lawmaking*, Barkley law school (Boat hall) Yale Law School.
- BPHN. (2022). *Academic Paper of the Bill on the Relations between Central and Regional Government Authorities*. Jakarta.
- Share manan.. (2001). *Welcoming the Dawn of Regional Autonomy*. Yogyakarta: PSH FH UII Yogyakarta.
- Esmi Warasih. (2016). *Legal Institutions A Sociological Study*, Semarang Masters Library, Semarang.
- Edger Bodenheimer. (1962). *Jurisprudence The Philosophy And Method Of The Law*, Cambridge, Massachusetts.
- Fauzan, Muhammad. (2006). *Regional Government Law Study on Financial Relations between the Center and the Regions*. Yogyakarta: UII Press.
- Hanif, Nurcholis. (2007). *Theory and Practice of Regional Government and Autonomy*. Jakarta: Gramedia Widiasarana Indonesia.
- Kertapraja, E. Koswara. (2002). *Regional Autonomy for Democracy and People's Independence*. Jakarta: Paramuda Cipta Temple.
- Sudikno Mertokusumo. (1986). *familiar with law, an introduction*, Yogyakarta, liberti.
- Simorangkir, Bonar. (2000). *Autonomy or Federalism Its Impact on the Economy*. Jakarta: Pustaka Sinar Harapan in collaboration with Suara Updates Daily.
- Jeddawi, Murtir. (2008). *Regional Autonomy Policy Implementation: Analysis of Authorities, Institutions, Personnel Management, and Regional Regulations*. Yogyakarta: Total Media.
- William B. Chamblis & Robert B. Seidman. (1971). *Law And Development, A General Model*.
- William J Chamblis and Robert Seidman. (2016). *Law, Power and Order, Quoted from Siti Malikhatun Badriyah, Law Discovery System in Prismatic Society*, First Edition. Jakarta: Sinar Graphic.

### JOURNAL SOURCES:

- Yani Pujiwati, Supraba Sekarwati, Maret Priyanta, Yulinda Adharani, Siti Sarah Afifah. (2020). *The Implication of Land Acquisition for the Supply Chain Development Management of National Strategic Project towards Sustainable Agricultural/Farming Land: The Case Study of the Development Project of Jakarta-Bandung Rapid Train*, International Journal of Supply Chain Management IJSCM Scopus, Vol. 9, No. 6, December (pp. 210-211). ExcelingTech Pub, UK.
- Adithya Tri Firmansyah, Ema Sarila Sinaga, Fenia Aurully Aisyah. (2020). *The Loss of Democracy and Regional Autonomy Through the Corporatocracy Ruu Omnibus Law*. Widya Yuridika Jurnal Hukum, Volume 3 Nomor 2 Desember. (pp.135). licensed under a Creative Commons Attribution 4.0 International License, Universty Widyagama Malang. Indonesia.

**REGULATION SOURCES:**

Undang-Undang Dasar 1945

Undang-Undang Nomor 11 Tahun 2021 Tentang Cipta Kerja Atau Omnibus Law

Undang-Undang Nomor 9 Tahun 2015 Perubahan Kedua Nomor 23 Tahun 2014 Tentang Sistem Pemerintahan Daerah

Saeful Kholik  
College Student Doctor Of Philosophy  
Faculty Of Law Padjadjaran University  
Jl. Dipatiukur Bandung No. 35 Indonesia  
Email: saefulkholik21@gmail.com