

**ANALYSIS AND EVALUATION OF LAW WITH THE SCOPE
OF MATERIALS IN THE FIELD OF OMNIBUS LAW ON JOB
CREATION RELATED TO SPATIAL PLANNING**

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ABSTRACT

Further arrangements in the Regional Regulation if not done carefully can cause new problems, the District and Municipal Governments can not simply be seen as subordinate products of the Provincial Regulation and should not be contrary to the Provincial Regulation. Therefore, the establishment of provincial regulation can not be done without regard to the interests of the District and the City. It is very good if in the establishment of the Provincial Regulation opened the opportunity for the District and the City to participate. The research method used is normative juridical. The results showed that based on the Job Creation Act there are several material content of the Spatial Planning Law and The Regulation of RTRWP Sumut that must be changed and even eliminated, among others regarding licensing directives. In addition, some provisions of the Job Creation Act can reduce and even eliminate legal certainty such as the possibility of regulation of certain content material through provincial regulations or governor regulations or types of legislation from the Central Government.

Keyword: Job Creation Law, Local Government, Provinve..

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INTRODUCTION

On November 2, 2020, Law No. 11 of 2020 on Job Creation (State Gazette of the Republic of Indonesia of 2020 No. 245, Supplement to Statute Book No. 6573) is hereinafter referred to as Omnibus Law on Job Creation or widely known as *Omnibus* Law. From the practice applied in various countries, it can be summarized the existence of 2 (two) patterns of application of *omnibus law* or *omnibus bill* in practice, namely:

One Act changes many laws at once by changing certain parts of the Act without causing it to be repealed at all. One Law integrates many laws into one new law by repealing all the old laws that are integrated by simultaneously changing some of the old law material as needed.¹

The Job Creation Act has amended as many as 81 (eighty-one) Laws. In connection with the changes in various laws and regulations, other types of legislation established under the Act must be amended as well, including local regulations, because the law underlying the establishment of the Regional Regulation has been amended. One of the Laws amended by the Omnibus Law on Job Creation Law is Law No. 26 of 2007

on Spatial Planning or Spatial Planning Law (State Gazette of the Republic of Indonesia of 2007 No. 68, Supplement to Statute Book No. 4725).

In addition, many of the content materials in the Omnibus Law on Job Creation Law must be further regulated in other laws and regulations or new regulations such as Government Regulations, Presidential Regulations, Ministerial Regulations, Agency/Institution Regulations, Regional Regulations, and other types of legislation. Until now the President has set no less than 51 regulations for the implementation of the Omnibus Law on Job Creation Law consisting of 47 Government Regulations (PP) and 4 Presidential Regulations (PerPres), among others Government Regulation No. 21 of 2021 on the Implementation of Spatial Planning.

Regarding spatial arrangement of North Sumatra Province has enacted The Regional Regulation of North Sumatra Province No. 2 of 2017 concerning Spatial Plan of North Sumatra Province year 2017-2037 (Perda RTRWP Sumut). In this Regulation it is stated unequivocally that the North Sumatra RTRWP Regulation was formed to implement the provisions of Article 23 paragraph (6) of Law No. 26 of 2007 on Spatial Planning. In connection with the enactment of the Job Creation Act some provisions in the Spatial

¹ Jimly Asshiddiqie, *Omnibus law dan penerapannya di Indonesia* (Jakarta: Konstitusi Press, 2020) p. 221.

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Planning Law have changed. Along with this change, it is necessary to be reviewed about the possibility of changes that must be made to the Regulation of RTRW Sumut.

Against the Job Creation Law work has been done a lot of research, among others conducted by Dirman Nurjaman. In the discussion and the results of research on the application of the principle of openness in the process of making the *Omnibus Law* the author came to the conclusion that, the process of making the *Omnibus Law* violates the principle of openness.² Whereas the nature of the formation of legislation as a description of the great purpose of the State of Indonesia is an impossible thing if it does not include the community (without community participation) in it. Community participation in the formation of legislation is a must.³ Therefore, in the formation of legislation based on the *Omnibus Law* on Job Creation must be done openly by involving the public.

Then according to Ria Maya Sari, in terms of spatial planning, the *Omnibus Law* on Job Creation encourages the acceleration and expansion of investment and economic growth without

considering aspects of sustainable development and ignoring the importance of human safety and sustainability of ecological functions.⁴ After the *Omnibus Law* on Job Creation Law is enacted, it is expected that the implementation of this Law takes into account the importance of human safety and the sustainability of ecological functions including in the formation of various laws and regulations as further regulation of the *Omnibus Law* on Job Creation.

The quality of regulation has long been an issue and problem in the implementation of service and government activities. Since the time of the New Order, the government has always deregulated, especially when facing problems in economic growth. When facing an economic crisis, deregulation seems to be *panacea*.⁵ From the explanation presented by the Government and the House of Representatives of the Republic of Indonesia (DPR) and other parties can be said the establishment of this Job Creation Act is also in the framework of deregulation to overcome various problems, especially the economy.

² Dirman Nurjaman, "Penerapan Asas Keterbukaan Dalam Proses Pembup. an Undang-Undang Omnibus Law" (2021) 2:2 *Khazanah Multidisiplin* 57–69 p. 68.

³ Eka NAM Sihombing, *Pembentukan Peraturan Daerah Partisipatif*, (Malang: Inteligendia Media, 2018) p. 85.

⁴ Ria Maya Sari, "Potensi Perampasan Wilayah Masyarakp. Hukum Adp. dalam Undang-undang Nomor 11 Tahun 2020 tentang Cipta Kerja" (2021) *Mulawarman Law Review* 1–14 p. 6.

⁵ Agus Dwiyanto, *Teori Administrasi Publik dan Penerapannya di Indonesia*, kedua ed (Yogyakarta: ajah Mada University Press, 2021) p. 286.

The establishment of the Job Creation Act relates also to the dysfunction of the law. Legal dysfunction is a situation in which the role of the law is not exercised or cannot run to regulate the behavior of citizens and the government.⁶ Before the enactment of the Omnibus Law on Job Creation Law there were many laws and regulations that were enacted but did not go well. The community, especially businesses and the Government, do not implement the legislation properly and properly.

In addition to the rules that establish laws for people, legal entities, and government organs, there are rules that determine how a regulation should be created, established, and applicable. These are the rules of the constitutional law which are partly contained in the Constitution.⁷ The content material of the Omnibus Law on Job Creation Law includes also the rules on the establishment of other laws and regulations as a complement to the provisions in the Constitution, especially in terms of content material that must be further regulated in other laws and

regulations, both the Law and other types of legislation.

The enactment of the Omnibus Law on Job Creation requires the establishment of new laws and regulations and changes in existing laws and regulations that not only concern one type of legislation but various laws and regulations including Regional Regulations, namely Provincial Regulations, District Regulations, and Municipal Regulations.

Further arrangements in the Regional Regulation if not done carefully can cause new problems, the hierarchical relationship between the Provincial Regulation and the District and Municipal Regulation can also be questioned because the District and Municipal Regulation was born from the principle of autonomy in which Article 18 paragraph (2) of the 1945 Constitution determines the attribution of authority to self-regulate it, not just to the provincial region, but also to districts and cities. Therefore, district and municipal governments cannot simply be seen as subordinate products of the Provincial Regulation and should not be contrary to the Provincial Regulation.⁸ Therefore, the establishment of provincial regulation can not be done without regard to the interests of the District

⁶ Budiono Kusumohamidjojo, *TEORI HUKUM Dilema antara Hukum dan Kekuasaan* (Bandung: Yrama Widya, 2016) p. 120.

⁷ IC van der Vlies, *Buku Pegangan Perancang Perp.uran Perundang-undangan* (Jakarta: Direktorat Jenderal Perp.uran Perundang-undangan Departemen Hukum dan Hak Asasi Manusia RI, 2005) p. 26.

⁸ Jimly Asshiddiqie, *Teori Hierarki Norma Hukum* (Jakarta: Konstitusi Press, 2020) p. 176.

and the City. It is very good if in the establishment of the Provincial Regulation opened the opportunity for the District and the City to participate.

METHOD

Marzuki in Eka NAM Sihombing (2019) states that the normative juridical legal research method is a method that uses an approach that is based on the main legal material by examining theories, concepts of legal principles, norms, rules of legislation, court decision, agreement. The nature of the research used in this paper is prescriptive, adhering to the characteristics of legal science as an applied science, the prescriptions given in legal research activities must be able and possible to be applied (Marzuki, 2011). Therefore what is produced by legal research, even if it is not a new legal principle or a new theory, is at least a new argument.⁹

DISCUSSION

Law On Work Creation And Spatial Planning

In Article 17 of Law No. 11 of 2020 on Omnibus Law on Job Creation mentioned that some provisions in Law No. 26 of 2007 on Spatial Planning were changed. Given the various limitations, it is

not possible to discuss the whole change at once in one occasion. Therefore, on this occasion will only be analyzed and evaluated Article 23 because it is directly related to the Regional Regulation of North Sumatra Province No. 2 of 2017 on Spatial Plan of North Sumatra Province year 2017-2037 (Perda RTRWP Sumut).

Law No. 26 of 2007 on Spatial Planning	Amendments through Law No. 11 of 2020 on Job Creation Work	Note
Article 23	Article 23	
(1) The provincial spatial plan contains: a. objectives, policies, and strategies for spatial planning of provincial areas; b. provincial spatial structure plan which includes urban systems within its territory related to rural areas within its service areas and provincial infrastructure network systems; c. plan of provincial spatial patterns that include protected areas and cultivation areas that	(1) The provincial spatial plan contains: a. objectives, policies, and strategies for spatial planning of provincial areas; b. provincial spatial structure plan which includes urban systems within its territory related to rural areas within its service areas and provincial infrastructure network systems; c. plan of provincial spatial patterns that include	remain remain remain

⁹ Eka N.A.M Sihombing, Eksistensi Paralegal dalam Pemberian Bantuan Hukum bagi Masyarakat Miskin (The Existence of Paralegals in Providing Legal Aid to the Poor), *Jurnal Ilmiah Penegakan Hukum*, Vol. 6, No. 1, June(2019).

<p>have strategic value of the province;</p> <p>d. determination of provincial strategic areas;</p> <p>e. direction of utilization of provincial area space containing indications of the main program of the five-yearly medium term; and</p> <p>f. direction of control of the utilization of provincial space containing indications of provincial system zoning regulations, <i>licensing</i> directives, incentive and disincentive directives, as well as sanctions directives.</p>	<p>protected areas and cultivation areas that have strategic value of the province;</p> <p>d. direction of utilization of provincial area space containing indications of the main program of the five-yearly medium term; and</p> <p>e. utilization control directives owed provincial territory containing indications of provincial system zoning directives, conformity directives of Space Utilization Activities, incentive and disincentive directives, and sanctions directives.</p>			<p>d.Changed: The establishment of strategic areas of the province is eliminated</p> <p>f.change, permission directive eliminated</p>	<p>b. plans; preparation of regional medium-term development plans;</p> <p>c. utilization of space and control of space utilization within the province;</p> <p>d. realizing the integration, interconnect edness, and balance of development between districts / cities, as well as harmony between sectors;</p> <p>e. location and function of space for investment;</p> <p>f. spatial arrangement of strategic areas of the province; and</p> <p>g. spatial arrangement of districts / cities.</p>	<p>b. plans; preparation of regional medium-term development plans;</p> <p>c. utilization of space and control of space utilization within the province;</p> <p>d. the realization of cohesion, interconnect edness, and balance of development between districts / cities, as well as harmony between sectors;</p> <p>e. location and function of space for investment; and</p> <p>f. spatial arrangement of districts / cities.</p>	<p>remain</p> <p>remain</p> <p>remain</p> <p>remain</p> <p>f.amended/omitted on the spatial arrangement of the province's strategic area</p>
				(3)	The period of provincial spatial plan is 20 (twenty) years.	(3) The period of spatial plan of the provincial area is 20 (twenty) years.	Fixed 20 years
				(4)	The provincial spatial plan as referred to in paragraph (1) is reviewed 1 (one) time in 5 (five) years.	(4) The provincial spatial plan is reviewed 1 (one) time in every 5 (five) year period.	Fixed 5 years
(2) The provincial spatial plan becomes a guideline for:	(2) The provincial spatial plan becomes a guideline for:						
<p>a. preparation of regional long-term development</p>	<p>a. preparation of regional long-term development</p>	<p>remain</p>	<p>(5)</p>	<p>In certain strategic environmental conditions related to <i>large-scale</i></p>	<p>(5) Review of provincial spatial plan can be done more than 1</p>	<p>o Provinces are converted into</p>	

<p><i>natural disasters stipulated by legislation and/or changes in the territorial boundaries of countries and/or provincial territories stipulated by law, the provincial spatial plan is reviewed more than 1 (one) time in 5 (five) years.</i></p>	<p>(one) time in a period of 5 (five) years in case of strategic environmental changes in the form of:</p> <p>a. natural disasters stipulated by laws and regulations;</p> <p>b. changes in the territorial boundaries of the state established by law;</p> <p>c. changes in regional boundaries stipulated by the Law; and</p> <p>d. changes in national policy that are strategic.</p>	<p>regions</p> <p>o Strategic national policy changes</p>	<p>the Central Government.</p> <p>(9) In the event that the provincial spatial plan as referred to in paragraph (8) has not been determined by the Governor, the provincial spatial plan shall be determined by the central government no later than 4 (four) months from the date of approval of the substance from the Central Government.</p> <p>Can the Governor's regulation be replaced with other types of legislation from the Central Government Regulations, Presidential Regulations, Ministerial Regulations, or...?</p>
<p>(6) The spatial plan of the provincial territory is stipulated by provincial regulations.</p>	<p>(6) The spatial plan of the provincial territory is stipulated by the Provincial Regulation.</p>	<p>remain</p>	<p>From the table above it can be known that Article 26 paragraph (1) letter f regarding the licensing directive is omitted. In the Regulation of RTRWP Sumut on licensing directives stipulated in Article 83 which reads as follows:</p> <ol style="list-style-type: none"> 1. Licensing directive is a reference for authorized officials in granting space utilization permits in accordance with the spatial structure plan and space patterns as stipulated in this regional regulation. 2. Space utilization permits are granted by authorized officials in accordance with their authority and the provisions of laws and regulations. 3. The granting of space utilization permits is
	<p>(7) Provincial Regulation as referred to in paragraph (6) shall be determined no later than 2 (two) months from the date of approval of the substance from the Central Government.</p>	<p>Two months</p>	
	<p>(8) In the event that the Provincial Regulation as referred to in paragraph (7) has not been established, the Governor shall stipulate a provincial spatial plan no later than 3 (three) months from the date of approval of the substance from</p>	<p>Can local regulations be replaced with Governor's Regulation?</p>	

carried out according to procedures or mechanisms in accordance with the provisions of the laws and regulations.

4. The granting of space utilization permits that have a big and important impact is coordinated by the Governor through the BKPRD of North Sumatra Province.
5. Further provisions on licensing by the Local Government are governed by legislation.
6. The granting of permits for the utilization of forest area space is regulated by laws and regulations.

It seems that the legislators of Cipta Kerja Law have argued that licensing is a detrimental thing. Whereas theoretically the permit (*vergunning*) includes a favorable decision.¹⁰ In addition, through government permission bind its role in activities carried out by the person or party concerned.¹¹ In general, the purpose and function of licensing is to control rather than government activities in certain matters where the provisions contain guidelines that

¹⁰ Djenal Hoesen Koesoemahp.madja, *Pokok-Pokok Hukum Tp.a Usaha Negara Jilid 1* (Bandung: Citra Aditya Bakti, 1990) p. 96.

¹¹ Y Sri Pudyp.moko, *Perizinan Problem dan Upaya Pembenahan* (Jakarta: Gramedia Widiasarana Indonesia, 2009) p. 7.

must be implemented by both interested and authorized officials.¹² Thus the person or legal entity will actually be more comfortable doing activities if they have permission.

Problems around licensing that have occurred according to not the reason to eliminate licensing at all. Percaloan can be eliminated if the Government as a licensee is strictly certified and conveys the requirements of the permit clearly so that it is easily understood and practiced by persons or legal entities including foreign persons and legal entities. More legal dysfunction is not caused by the material content of the wrong legislation but the implementers. Therefore, solving the problem of legal dysfunction should be done by improving the fairies practice of the implementers, not even eliminating content material such as permits that are actually very beneficial to all parties.

Another provision that needs attention is Article 23 paragraph (8) which states that in the case of provincial regulation as referred to in paragraph (7) has not been determined, the Governor stipulates the provincial spatial plan no later than 3 (three) months from the approval of the substance from the Central Government. In terms of hierarchy of legislation, the hierarchy of legislation that can be established

¹² Adrian Sutedi, *Hukum Perizzinan dalam Sektor Palayanan Publik* (Jakarta: Sinar Grafika) p. 200.

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by the Governor is lower than the Provincial Regulation. In addition, the content material of the Provincial Regulation is different from the Governor's Regulation.

If analogous then the regulation to the region has the same position as the government regulation, not the presidential regulation. Where, government regulation is a regulation to implement the law, while the regulation of the head of the region is a regulation to implement local regulations. So without delegation from local regulations, no regional head regulation can be established.¹³ Thus, it should not be possible for the Governor's Regulation to replace the Provincial Regulation because the establishment of the Governor's Regulation must be based on the Provincial Regulation.

Then Article 23 paragraph (9) which states that in the case of the provincial spatial plan as referred to in paragraph (8) has not been determined by the Governor, the provincial spatial plan is determined by the central government no later than 4 (four) months from the approval of the substance of the Central Government. In this case there seems to be doubts of the

¹³ Ali Marwan Hsb, "Kedudukan dan Mposisi Mup.an Perp.urban Kepala Daerah" in *Paradigma Hukum Ketp.anegaraan Indonesia Dalam Rangka Hari Ulang Tahun Ke-90 ProfDrM Solly Lubis,SH* (Medan: Enam Media, 2020) p. 1082.

Central Government's ability to the region. This kind of thing should not need to be included in the legislation because it will cause legal uncertainty.

As Maria Farida Indrati S¹⁴ that there are various types of laws and regulations in the Republic of Indonesia that are arranged in a hierarchical arrangement resulting in also differences in the function and material content of the various types of legislation. Therefore, if the Central Government finds that there are areas that have not been able to form a Regional Regulation then the Central Government should help so that the area is able to make regional regulations as in the economy source. However, the aid is in no way in the form of taking over the arrangements that should be regulated in the Local Regulations by regulating themselves. If it is to be regulated by the Central Government, what kind of legislation will be used, This kind of thing can reduce and even eliminate legal certainty.

Further arrangements in the Regional Regulation if not done carefully can cause new problems, the District and Municipal Governments can not simply be seen as subordinate products of the Provincial Regulation and should not be contrary to the Provincial Regulation. Therefore, the

¹⁴ Maria Farida Indrati S, *Ilmu Perundang-undangan I* (Yogyakarta: Kanisius) p. 215.

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establishment of provincial regulation can not be done without regard to the interests of the District and the City.

CONCLUSION

Based on the description that has been submitted can be known that based on the Job Creation Act there are several material content of the Law on Spatial Planning and Regulation RTRWP Sumut that must be changed and even eliminated, among others regarding licensing directives. In addition, some provisions of the Omnibus Law on Job Creation Law can reduce and even eliminate legal certainty such as the possibility of regulation of certain content material through provincial regulations or governor regulations or types of legislation from the Central Government. In the formation of the legislation of the implementation of the Job Creation Act work must be done more openly by providing a wide opportunity to the public to participate. The communities referred to here include the Provincial, District, and Municipal Governments when the Central Government forms a statutory regulation, especially if the content material is related to local legislation so that adjustments can be made immediately by the Region if needed.

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