Relationship for The Establishment of Local Regulations in the Job Creation Law

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Abstract
The job creation law was born with the aim of opening the widest possible investment climate in Indonesia. But so far, investors still face obstacles in investing in the form of difficult regulations. This can be seen right from the disharmony and lack of coordination between local regulations and central government regulations. Based on this, the problem arises how is the relationship for the establishment of local regulations in the job creation law? The method used in this research is normative legal research with a qualitative approach method with a focus on regulations and related data to answer problems. It can be concluded that Article 174 of the job creation law adds rules regarding the relationship between the central and local governments, namely the authority of local governments as part of the presidential authority. Article 176 a quo also changes a number of local government authorities. For example, the licensing authority in Article 350 of Law 23/2014. In PP No 6/2021, Article 3 Implementation of Business Licensing in the Regions is carried out by the Central Government, Provincial Government, and City/Regency Government in accordance with their respective authorities based on the provisions of laws and regulations. From the licensing rules, it is not executive preview as a form of preventive supervision, but top-down control that dominates.

Keywords: Local Regulation; Relationship; The Job Creation Law.

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This has the potential to eliminate local content and conditions based on regional interests.

A. Introduction

In November 2020, President Joko Widodo officially ratified and promulgated Law Number 11 of 2020 concerning Job Creation. The Job Creation law, entitled Omnibus Law, is one of the government's progressive steps in the legal field.¹ This law was prepared by the Government to be used as a scheme in an effort to develop the Indonesian economy so that it is able to attract investors to invest in Indonesia.² Omnibus Law is a method or concept of making regulations that combines several rules with different regulatory substances into one big regulation.³ The Omnibus Law will be a driver or trigger to strengthen capabilities and also implement the legislative function of the House of Representatives in Indonesia as a state of law.⁴ This system is usually referred to as the universal sweep law because it is able to replace several legal norms in one regulation.⁵ With the omnibus law method, 1 (one) thematic law changes various provisions regulated in various other laws. Amend, revoke, and or make new provisions in 78 laws. To date, the government has issued 51 implementing regulations consisting of 47 government regulations and 4 presidential regulations. The Strategic Policy of the job creation law for; 1. Improving the investment ecosystem & business activities; 2. Protection & welfare of workers; 3. Ease, empowerment & protection of MSMEs; 4. Increased government investment & national strategic projects. It is hoped that a conducive investment climate will absorb more workers. Economic growth increases, unemployment decreases and worker productivity increases.

As the Vision of the Government of Indonesia under the leadership of President Joko Widodo-Ma'ruf Amien, for Indonesia Gold prepares Indonesia as a developed country in 2045. Education and human resource development must be a major concern for all developing countries if they want an optimal level of economic growth, which in turn will increase the country's competitiveness in order to achieve the goal of prospering all its people.⁶ Quality infrastructure and human resources are the first two stages for a country to become a developed country. "Right now, the foundation that is really needed is infrastructure, then the next big agenda is human resources," explained the President.⁷ There are five requirements for Indonesia Gold in 2045, according to the Minister of Finance Sri Mulyani; First, infrastructure, Second, quality human resources, Third, readiness to adopt technology. Fourth, adequate,  

¹ Muhammad Zubi, Marzuki, Ibm Affan, “Tinjauan Yuridis Perlindungan Hak-Hak Normatif Tenaga Kerja Setelah Berlakunya Undang-Undang Cipta Kerja (Omnibus Law)”, Jurnal Ilmiah METADATA, Volume 3 Nomor 3 September 2021 : 1171
³ Wicipto Setiadi, “Simplifikasi Regulasi Dengan Menggunakan Metode Pendekatan Omnibus Law”, Jurnal Rechts Vinding, Volume 9 Nomor 1, April 2020
⁵ Adhi Setyo Prabowo, Politik Hukum Omnibus Law. Jurnal Pamator, Volume 13 No. 1, April 2020, hlm4
comprehensive, and mature regional planning. Fifth, the Indonesian economy and financial sector must be sustainable, credible, advanced, and healthy.  

This law is claimed to be useful for improving the investment climate and realizing legal certainty. The consequence of the birth of the Job creation Law has an impact on the implementing regulations under it, namely the Regional Regulation. All regulations made by the local government to implement other regulations of a higher degree. In terms of the relationship between the central and regional governments. Both in terms of authority and finance. From the revocation, the changes to the laws that are summarized in the Job creation Law will produce many new regional regulations and regional regulations. The readiness of various parties in terms of substance of interest and harmonization of rules is an important note. Therefore, ideally, Perda materials generally contain, among others: 1. Matters relating to regional households and matters relating to local government organizations; 2. Matters related to duties and assistance (Mendebewind).

Thus Perda is a legal product of the local government. In the context of implementing regional autonomy, exercising rights and authorities. To organize and manage their own household affairs. At the same time, Perda is legal to support the Provincial Government as an autonomous region. Law 23/2014 concerning Regional Government and Law 33/2004 concerning Financial Balance between Governments. The two laws have been the government’s reference. The current consequence, must adjust to the existence of the Job creation law. Ministry of Home Affairs (Kemendagri) through the Directorate General of Regional Autonomy (Otda). Request all local governments to examine all local regulations and local regulations in force in their respective regions. In the letter numbered 188/1518/OTDA, dated 09-03-2021, it is stated that the stipulation of Law 11/2020 concerning Job creation has implications for the local regulations and local regulations that apply to each region. Thus, local regulations must be adjusted immediately. Making changes, revocations, or forming local regulations and/or local regulations in accordance with Law 11/2020 concerning Job creation. The DPRD is also asked to stipulate a regional regulation plan which is currently not included in the program for establishing regional regulations (propemperda). Each regional head also needs to add a local regulation plan to the regional head decisions that apply in their respective regions.

Adjustment of the Job creation Law and Regional Regulations and Regional Head Regulations requested by the Ministry of Home Affairs, becomes a homework in itself. Moreover, Regional Regulations are essentially regional legal products, which are formed through a democratic process through the representative institutions of the DPRD and the Governor or the Regent/Mayor. Therefore, local regulations are often referred to as local wet which are actually the same as laws, the only difference being the scope of their application. If the law applies nationally, then the regional regulation applies to the province or district where the regional regulation was formed. The implementation of regional autonomy, the formation of regional regulations is a necessity in the context of the existence of regional regulations that...
cannot be separated from the process of administering regional government. Various regional policies often have to be based on legal legality in the form of regional regulations. As a consequence of the scheme of the decentralization design, the regions have the authority to manage their own household affairs, according to the framework of regional autonomy. This authority also applies to the formation of regional regulations. However, it should be noted and understood together that the concept of an autonomous region is not the same as the concept of a state. C.W. Van Der Pot understands the concept of regional autonomy as running his own household (eigen housshouonding). Therefore, what are the problems of implementing the implementation of the Job creation Law, in terms of harmonization and synchronization with local regulations that can accommodate regional-based interests?

This methodology uses qualitative methods with a focus on understanding social phenomena in society. The technique or approach taken is by means of Data Collection Techniques with Documents, where here the author collects Laws, Literacy Books and Scientific Journals as data material to facilitate authors in conducting analysis. This research is applied by using normative legal research.

In this research, the authors explain the relationship between the formation of regional regulations and the Job Creation Law. Based on the objectives of the ratification of the Job Creation Law, one of which is to open up the widest possible investment in Indonesia, including at the regional level. However, in its implementation there is often disharmony between central regulations and regional regulations which causes delays in the implementation of the licensing process.

The novelty of this research will make a significant contribution to the central government and local governments in making local regulations. This is a consequence of derivative regulations that must be made by local governments to implement higher regulations, which are adjusted to the Job Creation Law. In accordance with the mandate of the Job Creation Law, local governments are also required to take on the role and function of attracting investors, especially in providing ease of licensing and doing business as well as creating jobs.

B. Discussion


1. Decentralization of the handover of affairs by the central government to autonomous regional governments based on the principle of autonomy. Financing by APBN.
2. Deconcentration of delegation of government affairs which are the authority of the central government to the Governor as a representative of the central government, to vertical agencies in certain areas, and/or to governors and regents/mayors in charge of general affairs. Financing by APBN. There is a Deconcentration Fund. Activities such as counseling, research etc.
3. Co-administration tasks, assignments from the central government to autonomous regions to carry out some government affairs. Which is the authority of the central government or provincial/municipal regions. To carry out as a government affair which is the authority of the province. Funding from the center comes from the state budget, usually for physical

13 Rudy, Hukum Pemerintahan Daerah Perspektif Konstitusional Indonesia, Bandarlampung: Indepth, 2012, hlm.31
activities. For example, infrastructure that adds to government assets. The activities are
dysical, for example land acquisition, buildings, equipment and machinery, roads etc.

The authority of the central government is exercised by the central government itself or
vertical organizations in the regions. There are also those which are centralized and handed
over to the regions of the seconded task force. In line with this, autonomy has another meaning
than sovereignty (souvereiniteit), where autonomy is an attribute of the state and not an attribute
of parts of the state such as Gemeente, Province and so on. These parts of the country can only
have rights that come from the state to be able to stand alone (zelfstandig) but still cannot be
considered independent (onafhankelijk)\(^{15}\), independent of or parallel to the state Clarification
of government affairs can be seen from Absolute, Concurrent and General in detail:

1. **Absolute.** Government Affairs which are fully under the authority of the central
government, the principle can be carried out alone, can be deconcentrated to vertical
agencies, cannot be assigned assistance to autonomous regions because there is no OPD
to implement, financed from the APBN.

2. **Concurrent.** Government Affairs which are divided between the central government and
regencies/municipalities and concurrent Government affairs which are handed over to the
regions become the basis for implementing regional autonomy, the Principle of Overall
Affairs which becomes the regional authority based on the principle of implementation.
Service affairs become the regional authority carried out based on the principle of
autonomy with the APBD budget. Regulate and manage the affairs that have been handed
over to the regions in accordance with the aspirations of the local community and regional
conditions within the framework of the Unitary State of the Republic of Indonesia.

3. **General.** Government Affairs under the authority of the President as head of the
Government. In principle, government affairs are the authority of the President as the
head of government whose implementation is carried out in the regions by governors,
regents/mayors in their regions and from the state budget. Implementation, in the regions
carried out by governors, regents and mayors assisted by vertical agencies. The Governor
is responsible to the President through the Minister of Home Affairs and the
Regent/Mayor is responsible to the Minister of Home Affairs through the Governor as
the representative of the Central Government.

Financial Relations between Central and Regional Governments (HKPD) in Law 23/2014.
To finance the administration of government affairs that are submitted and/or assigned to the
regions Article 279, to the regions includes: 1). Provision of regional receiving sources in the
form of regional taxes and regional retributions; 2). provision of funds sourced from the
financial balance between the finances of the central government and regional governments; 3).
Provision of funds for the implementation of special autonomy for certain regional governments
as stipulated in the law; and 4). Provision of loans and/or grants, emergency funds, and
incentives (fiscal). Financial relations in the administration of government affairs assigned to
the regions, accompanied by funding in accordance with the government assigned as the
implementation of co-administration tasks.

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\(^{15}\) Yuri Sulistyo, Antikowati, dan Rosita Indrayati, “Pengawasan Pemerintahan terhadap Produk Hukum Daerah (peraturan
daerah) Melalui Mekanisme Pembatalan Peraturan Daerah Berdasarkan Undang-Undang Nomor 32 Tahun 2004 tentang
Financial relationship between central and local government HKPD in Law 33/2004. It is intended that the financial balance between the government and the regions is a subsystem of state finances as a consequence of the division of tasks between the center and the regions or arises from the existence of a relationship between functions/affairs. The provision of state financial resources to regions in the context of decentralization is based on the assignment of tasks with due observance of fiscal stability. The financial balance between the center and the regions is a comprehensive system in the context of implementing the principles of decentralization, deconcentration and co-administration. Other income other than PAD, balancing funds and regional loans.

From the relationship of authority and financial relations, the government cannot be refused to make adjustments to the existence of the Job creation law. In this case, it can be seen in the Licensing field in the Job creation law. There were 700 articles, out of 52 laws governing licensing that were integrated with the aim of being integrated, efficient, and effective to make doing business easier. Simplification of the listed basic permits; 1. Location Permit 4 Law 51 Articles, 2. Environmental Permit 2 Law 36 Articles, 3. Building Permit 2 Law 48 Articles.

Simplify and integrate basic permits from a number of laws related to permits in groups into 3 basic permits, location, environmental and building permits. Of the 700 articles in the Job creation Law, they will serve as a reference for implementation in the Perda. In the hierarchy of laws and regulations, Perda is a product that is in direct contact with the community, so it has the potential for disharmony clashes and overlapping arrangements are very wide open. Especially in the right of authority between the Central and Regional Governments. For example, licensing issues are considered to be an obstacle to the investment
climate. Simplification of business licensing was made. One of them, the licensing process for business activities is changed from a permit-based to a risk-based one. Registration system with a joint identification number (NIB), all activities and actors meet certified professional standards and must have a permit.

The birth of regional regulations that are regulating in general cannot be separated from the design of regional autonomy. The concept of regional autonomy is always associated with the freedom and independence of the region to take care of its own household affairs. In the current condition, the local government must identify anything related to the Job creation law and its derivative legal products. So that a study of regional legal products will be carried out which will be amended, revoked, or a new regional regulation is formed. However, all should be based on the basic essence of the law to protect human rights. Therefore, the presence of law must also humanize humans, not otherwise limit and eliminate basic human values.

Taking into account the balance of philosophical and social values in the formation of regional regulations is important. Open access to participatory community involvement is required. To be seriously oriented to the interests of the local community. It is not only a tool for the legality of government actions and investment orientation, ignoring public services and welfare. Formally, positive law (regulation) is constructed in layers and layers, low regulations are sourced from and must not conflict with higher regulations. But materially substance must be serious not to neglect the purpose of the state's duty to prosper the people. Gustav Radbruch stated that the noble purpose of law is to achieve justice, benefit and legal certainty.

When using the Evidence Based Policy Making (EBPM) method which was first introduced in the UK in 1997 by Tony Blaire, the British Prime Minister. In the evidence based policy approach, what can be considered as evidence is what is scientifically conveyed to policy makers. A thing that is conveyed by the lay public, even though it has references, is often considered unscientific, because the lay public's position is often considered not as an expert.

The general process in self-policy making can be described in the following diagram:

**Picture 2. The Importance of Evidence Based Policy in Policy Making**

*Pentingnya Evidence Based Policy Making dalam Pembuatan Kebijakan*

Diagram showing the process of Evidence Based Policy Making:
- Penetapan Agenda
- Penarikan Kebijakan
- Mentoring dan Evaluasi
- Implementasi Kebijakan
- Pengambilan Keputusan


EBPM, a method used to determine, formulate, make decisions, implement policies and monitor. Where science is used by the public to make changes to public policy. Through the evidence base, from the various collections of evidence available for the future to provide information for policy decisions. Such evidence can be classified into four main types, namely:\(^{20}\)

1. Statistical and administrative data to describe the current state of an issue and explain historical trends.
2. Research-based evidence, to describe causal relationships, and also to explain the relationship between issues.
3. Evidence from communities and stakeholders, to provide an understanding of who assesses the policy and how they respond.
4. Evidence from evaluations, to explain past successes or in similar situations;

Based on the EBPM public policy method, it is associated with the application of regulations that will be made with authority. Especially with regard to governance. Overall to be a limitation in analyzing evidence as the current condition to predict future trends, as well as government authority.

The principle of legality is the basis in every state and government administration or in other words, every state and government administration must have legitimacy, namely the authority granted by law. Thus, the substance of the principle of legality is authority, namely the ability to carry out certain legal actions. According to H.D. Stout, authority is an understanding that comes from the law of government organizations, which can be explained as a whole set of rules regarding the acquisition and use of governmental powers by subjects of public law in public legal relations. According to F.P.C.L. Tonnaer, the government’s authority in this regard is considered as the ability to implement positive law and thus a legal relationship can be created between the government and citizens.\(^{21}\)

Regarding regional autonomy. According to Bagir Manan, an autonomy can be classified as limited autonomy if, first, regional household affairs are determined categorically and their development is regulated in certain ways, second, if the supervision and supervision system is carried out in such a way that the autonomous region loses its independence to determine independently of ways to regulate and manage their regional households, and Third, the system of financial relations between the center and the regions that raises things such as limited financial capacity of the original regions which will limit the space for regional autonomy. In contrast to the concept of broad autonomy, which usually departs from the principle that all government affairs are basically local household affairs, except those determined as affairs of the central government.\(^{22}\) Interesting Bagir Manan’s opinion as limited autonomy can be seen in the Job creation Law related to regional government, one of which is the issue of authority. In CHAPTER XI, Implementation of Government Administration to support the job creation Law, Part One, Article 174 adds one rule regarding the relationship between the central and regional governments. The authority of the regional government as part of the president’s authority, "With the enactment of this law, the authority of the minister, head of institution, or regional government that has been stipulated in the law to implement or form laws and regulations must be interpreted as the implementation of the President’s authority". Article 176 a quo also changes a number of local government authorities.

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Ideally according to F.P.C.L. Tonnaer can create a legal relationship between the government and citizens. In matters of authority regarding licensing in Article 350, Law 23/2014 Paragraph (1) states that local governments are obliged to provide licensing services in accordance with the provisions of laws and regulations. The Job creation Law adds the central government's authority in this matter, "Regional heads are required to provide Business Licensing services in accordance with the provisions of laws and regulations and norms, standards, procedures, and criteria set by the Central Government," under Article 350 paragraph (1) of the Regional Government Law. after being amended by the Job creation law. Then the Job creation Law also gives the central government extra authority in licensing matters. Allowing the takeover of licensing affairs if there is a regional government that does not implement it and does not heed two warnings.

In Article 250, Law 23/2014 concerning Regional Government which is amended through the Job creation Law. Regional regulations and local regulations are prohibited from contradicting the provisions of higher laws and regulations. It is mandated to coordinate with the ministry in charge of domestic government affairs. Involving experts and/or vertical agencies in the regions that carry out government affairs in the field of forming laws and regulations (Ministry of Law and Human Rights). If the Regional Government violates the provisions of Article 250, it is threatened with administrative sanctions, in the form of non-payment of financial rights to regional heads and DPRD members for 3 months. Specifically for regional regulations on taxes and levies, the sanctions imposed are delays until the withholding of the general allocation fund (DAU) and profit-sharing funds.

When referring to the implementation of the judicial review of the decision, the Constitutional Court's legal considerations in the decision no. 137/PUU-XIII/2015 and No. 56/PUU-XIV/2016 solely considers that the examination by the executive is not in line with the statutory regime and violates the concept of the rule of law. Therefore, the Constitutional Court's Decision No. 137/PUU-XIII/2015 and No. 56/PUU-XIV/2016 must be interpreted that the decision does not abolish the concept of central and regional supervision of regional regulations that can be implemented through preventive supervision. Because the Constitutional Court only annulled Article 251 which regulates repressive supervision. MK No. 56/PUU-XIV/2016 the review of Regional Regulations is carried out through Judicial Review at the Supreme Court and with the cancellation of Article 251, Law 23/2014 means that repressive supervision of Regional Regulations through executive review can no longer be carried out. The repressive supervision of regional regulations is carried out by a judicial institution, namely the Supreme Court. After the decision of the Constitutional Court No. 56/PUU-XIV/2016, is meant to only cancel Article 251 which regulates repressive supervision. Administrative supervision has two forms, namely repressive supervision and preventive supervision. In Law 23/2014 it is not strong enough to 'abort' the role of the central government to carry out supervision. So there should be an executive preview model as a form of preventive supervision. As a form of one way to overcome disharmony and non-synchronization of the established regulations.

23 Ibid....., Yuswanto dan M. Yasin Al Arif, hlm 726 dan 730
C. Conclusion

So far, there has been a clear division of authority including the standards and conditions set by the government. Prior to the creation of the Job creation law, the regional government’s authority to issue permits for certain business fields, the Standard Procedures and Criteria Norms (NSPK) were determined by the region based on higher laws and regulations, and regulated by the relevant regional government. With the Job creation law, the NSPK is determined by the central government. This means that the authority remains with the relevant local government in accordance with existing laws and regulations, but the NSPK is determined by the central government. Thus, the work of local governments is simplified as long as their implementation is in accordance with the NSPK. However, if the local government does not implement or implement but does not comply with the NSPK, then the central government takes over the permit within a certain limit. In this case, the Job creation Law emphasizes the role and function of local governments as part of the central government system. This is what the Job creation Law means by reorganizing regional authorities in line with the philosophy of the Job creation Law, namely to attract investment, provide ease of licensing and doing business, and create jobs.

Seeing the impact of the Job creation law which is a problem Ideally, coordination and harmonization, in order to realize laws and regulations that are more qualified and responsive are the main issues. Conflicts appear in the interests of the center and the regions in the Job creation law:24

1. The regulation of the central and regional relationship model in regional administration which tends to be centralized as stipulated in the Job creation law, has the potential to cause conflict or dispute between the government.
2. Changes in authority and division of affairs have implications for changes in the distribution of regional finances. Financial changes will follow the transfer of authority and additional affairs.
3. Decentralization is a way for a regime or state to bring about a system that better reflects democratic values, because some of the authority has been handed over to local (regional) governments to be actively involved in responding to matters closely related to people’s lives in the regions.

Affirmation of government affairs is the power of government which is the authority of the President whose implementation is carried out by state ministries and regional government administrators to protect, serve, empower, and prosper the community. Article 174 of the Citpaker Law adds one rule regarding the relationship between the central and regional governments. The authority of the regional government as part of the authority of the president. Article 176 a quo also changes a number of local government authorities. For example, the authority regarding licensing in Article 350, Law 23/2014.

In PP No 6/2021, Article 3 Implementation of Business Licensing in the Regions is carried out by the Central Government, Provincial Governments, and City Regency Regional Governments in accordance with their respective authorities based on the provisions of laws and regulations. It also appears that the regional authority is limited by Article 10. The Regional Government can develop a support system for the implementation of the OSS System (Online Single Submission) in accordance with the norms, standards, procedures, and criteria set by the Central Government. From the licensing rules, it’s not executive preview as a form of preventive supervision, but rather top-down control dominates. As without regard to the contents of the Constitutional Court's decision no. 56/PUU-XIV/2016, is only meant to cancel Article 251 of

24 Dr. Yuswanto,SH., MH., Bahan Kuliah Hukum Perimbangan Keuangan, Pertemuan ke VI. MIH Unila, 2021.
Law 23/2014 which regulates repressive supervision. This has the potential to eliminate local content and conditions based on regional interests.

The sign of a democratic political configuration is that the people's potential plays a maximum role in actively determining state policies. So that the government acts more as a "committee" that must carry out the will of the people and the people's representative body, political parties only function proportionally in determining state policies. Therefore, the mirror of democratic policies towards the welfare of society can be seen;

1. Active involvement of all stakeholders in policy formulation will increase the democratic level of a policy. so that public participation that is about to be decided, implemented, has social responsibility within the framework of achieving common goals.
2. Dialogic framework for policy formulation is supported by adequate scientific logic. So that dialogue in policy formulation does not become just a “debate stage.” The character of a public policy that is full of interests can be balanced with the existence of scientific evidence that supports its formulation.

Equality of economic, political, socio-cultural rights, to equal treatment before the law, can only be promoted effectively by creating equitable prosperity. Welfare will in turn promote socio-political stability, when all citizens are physically and mentally prosperous, and encourage community empowerment towards independence and dignity. Conflicts of interest between the center and the regions that tend to be centralized, in regulations after the issuance of the Job creation law, have the potential to cause conflicts or disputes between the government. Changes in authority and division of affairs have implications for changes in the distribution of regional finances. It is counterproductive to the concept of decentralization which reflects more on democratic values by actively engaging stakeholders in responding to matters closely related to people's lives in the regions.

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