THE TESTING CONCEPT OF OMNIBUS LAW IN LEGAL THEORY
AS A TOOL OF SOCIAL ENGINEERING

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Abstract
In the regulation of Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, it is stated that the Government of Indonesia through the Central Government has made various efforts to create and expand employment opportunities. However, it needs to be traced and examined, is the government's interest really related to the interests of the community or is it only based on the interests of the ruling elite? This needs to be tested, can the law with all its tools change the social situation of the community towards the government's goals—reducing the number of unemployed, accommodating new workers, encouraging the development of cooperatives and MSMEs—namely improving the economy and welfare of the community or vice versa. This research is intended to find out whether the government's interests are related to the interests of the community or not. This research is studied using a socio-legal approach.
Keywords: Omnibus, Law, Theory, Social, Engineering.

A. Introduction
You may have heard of the concept of law as a means or tool of social engineering. This concept was “developed”¹ by Roscoe Pound. The theory of law as a tool of social engineering

¹ According to Professor of the Faculty of Law at Hasanuddin University, Musakkir, Roscoe Pound was not the one who “first” introduced the concept of “law as a tool of social engineering”. Musakkir himself prefers to use the term “developing the concept”. Musakkir. “Putusan Hakim yang Diskriminatif dalam Perkara Pidana; Suatu Tinjauan Sosiologi Hukum dan Psikologi Hukum.” Rangkang Education, (2013): 26 & 43.
was born along with the emergence of many theories in Europe that tended to be abstract.² Pound criticised the dreamy legal concepts wrapped in "logical-analytical" and "technical-juridical".³

Law as a tool of social engineering is popular because it seeks to change the state of the social world that is crowded with competing needs and interests.⁴ The overcrowded situation with all the needs and interests of individuals competing with each other has become a problem in several countries, including Indonesia.

The ubiquitous competition in the economy, the increasingly functional access to jobs, and the exploration of natural resources by only a few have created various problems in Indonesia. This is also the reason why the Central Government enacted the "regulation for all" areas of life that Indonesia is capable of covering.⁵ The "omnibus law" came to be known as the "regulation for all".

In the regulation of Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, it is stipulated that the Government of Indonesia through the Central Government has made various efforts to create and expand employment opportunities.⁶ The Central Government wants to reduce the number of unemployed people and accommodate new workers.⁷ The Central Government also wants to encourage the development of Cooperatives and Micro, Small and Medium Enterprises (UMKM) with the aim of improving the national economy that can improve people’s welfare.⁸

So far, there has actually been an increase in the number of workers desired by the Indonesian Government, it’s just not that significant. It is explained in the regulation that the number of labour force in February 2022 was 144.01 million people, only an increase of around 4.20 million people when compared to February 2021.⁹ In addition, the current working population is 135.61 million people, of which 81.33 million (59.97%) people have worked in the informal aspect. The Corona Virus Disease 2019 (COVID-19) pandemic affected 11.53 million people (5.53%) of the working-age population, of which 0.96 million people were unemployed. While those who are not in the labour force are calculated at 0.55 million people, and not working as many as 0.58 million people, and the working population who experienced a reduction in working hours of 9.44 million people.

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In addition to labour force issues, it is also necessary to increase wages in line with economic growth and increase worker productivity. The Central Government through the Presidential Regulation seeks to regulate the expansion of social security and assistance programs which is a commitment to improve competitiveness and strengthen the quality of human resources through accelerating the reduction of poverty and income inequality. Thus, through the support of social security and assistance, the regulation is expected to provide comprehensive benefits that are not only received by workers, but also felt by workers’ families in the future.

However, it needs to be traced and examined, whether the interests contained in Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, are the interests of the government that are truly related to the interests of society or only based on the interests of the ruling elite alone? This needs to be tested, can the law with all its tools change the social situation of the community towards the government’s goals—reducing the number of unemployed, accommodating new workers, encouraging the development of cooperatives and MSMEs—namely improving the economy and welfare of the community or vice versa. This research is intended to find out whether the government's interests are related to the interests of society or not.

The method is an interdisciplinary approach in law or commonly referred to as socio-legal studies. Socio-legal studies are legal studies using the approach of legal sciences and social sciences, concepts and theories based on an interdisciplinary approach or from various disciplines that are combined simultaneously.

B. The Omnibus Law Concept: Is it in accordance with Legal Theory as a Social Engineering Tool or Government Coercion Engineering Social Conditions?

In Indonesia, the idea of law as a tool of social engineering was introduced by Mochtar Kusumaatmadja, as a reaction to his interest in empirical disciplines. For Kusumaatmadja, law as a tool of social engineering aims to accommodate changes in society.

The essence of legal theory as a tool of social engineering basically focuses on organizing the interests that exist in society, which for Roscoe Pound, these interests must be organized in such a way as to achieve a proportional balance. The benefit of this theory is to minimise all forms of social conflict and economic waste in order to achieve maximum satisfaction in fulfilling needs. The interests Pound refers to are those protected by law, such as public interests, social interests, and individual interests.

Public interest is the protection of the state as a juridical body that safeguards social interests. Then, social interest is the protection of public security, social institutions, public morals, social resources, social progress, and individual life (self-expression, opportunities and

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17 Ibid.
living conditions). And, individual interests are the protection of the person (physical, freedom of will, honour, privacy, and beliefs and opinions), including domestic relations (parents, children, spouse), as well as various substantial interests (property, contracts and agreements, profits, employment, relationships with others).

Observing so far the regulations related to Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, the Central Government can argue that there are interests that do need to be protected by law, let’s say regarding the three concepts of interests that have been proposed previously by Pound. Regarding this, we can find the reasons why the government enacted this law.

The government’s public interest is to ensure the resilience of the national economy amidst the global economic crisis. The government’s social interests will be dragged down by the flow of public interests, such as the threat of increasingly competitive job competition. Unskilled social resources will only become a burden on the state in the midst of job competition that increasingly demands expertise. And, it is predictable that this will have an economic impact on individual interests, such as being paid to work but below the minimum standard. Basically, Pound’s categories of interests are not only useful for legislation, but also for practice by linking the principles and values of interests.

Many important changes in developed societies begin with a change in the law, particularly a change in legislation. Although it must also be recognised that such legal changes are usually triggered by changes in the local or international community. And, it cannot be denied that changes in society are not valid until they are legalised by law, especially for the development of actions, events, modes, and relations that are closely related to the wider community or the state. However, it needs to be traced and examined, are the interests contained in Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, indeed related to the interests of the community or are they only based on the interests of the ruling elite?

In this regard, it is worth quoting Soetandyo who wrote his opinion on Roscoe Pound when refuting the discourses of C. Langdell’s teachings. According to him, "Pound rose to put forward the opinion that there is actually a functional relationship between law and society." The social changes that occur in society and the functional relationship between law and society occur due to the functions of law at work. Podgorecki gives five functions of law in society, which are as follows:

1) Integration function, how the law has mutual expectations from society;
2) Verification function, how the law selects patterns of human behaviour in order to achieve social goals;
3) The reduction function, how the law selects different human attitudes in a complex society, so that it fits the needs of society;

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18 Ibid.
21 Roscoe Pound must be recognised as a new force of thought that tried to re-conceptualise how law and legal functions should be understood. Pound was the first legal scientist who dared to advocate that the legal science of social knowledge be utilised for the advancement of updated and constructed theories in legal science. Wignjosoebroto, Soetandyo. "Hukum, Paradigma, Metode dan Dinamika Musalalihya," ELSAM & HuMA, (2002): 71.
4) Motivational function, how the law regulates so that humans can choose behaviour that is in accordance with the values in society; and
5) Educational function, how the law not only punishes and motivates people, but also educates and socializes them.

Of the five functions, one function can be analyses that has been running in the process of the draft law becoming a work copyright law. In the function of integration, government dissemination becomes a measure to know whether this first function is running well or not. The most basic question that should be asked is "is there any involvement of public participation in the drafting of this law?". Is this work copyright matter part of the public interest or not?

Regarding this function, the law certainly expects input from the community. From various reference searches found, there has been the involvement of public participation in the drafting of copyright laws, even to the stage of making changes to the law. Even the changes to the regulation have included the omnibus method in law drafting by clarifying the scope of meaningful participation.

The function of law as a means of changing society, apart from what Milovanovic stated, can also be seen from the changing mindset of society or the formation of a new mindset in society. The relationship between social change and the legal sector is an interaction relationship, in the sense that there is an influence of social change on changes in the legal sector, and vice versa, legal changes also affect social change. Legal changes that can affect social change are in line with one of the functions of law, namely the function of law as a means of social change or a means of social engineering. Social change including legal change in it can change a view or attitude of life of a society caused by the following stimulants:

1) Evolutive changes in societal norms;
2) Impromptu needs of the society due to special circumstances or emergencies, especially with regard to the distribution of resources and standards of fairness;
3) The initiative of a small group of visionary citizens, which in turn influences the general way of life or outlook of the society;
4) There is a technical injustice in the law that calls for a change in the law;
5) There are inconsistencies in the body of law that also request changes to the content of the law; and
6) The development of science and technology that gives rise to new formations of certain fields of law.

Friedmann’s six points can reinforce Milovanovic’s five normative legal functions. The government may be able to use Milovanovic's legal functions as reference material, but the government will likely be mentally challenged by Friedmann’s stimulants. Such as the fifth point with inconsistencies in the body of law that require changes to the content of the law. We all know that the forerunner of the Job Creation Law is a Government Regulation in Lieu of Law or commonly abbreviated as Perppu. For urgent reasons this Perppu on Job Creation was made.

But not long ago, we know that the continuity of the Perppu on Job Creation which became the Job Creation Law was challenged to the Constitutional Court. The Constitutional Court judges even confirmed in their verdict that the Job Creation Law is formally flawed and conditionally unconstitutional. The Constitutional Court judges stated that the establishment of the Job Creation Law is contrary to the Constitution of the Republic of Indonesia 1945 and does not have conditional binding legal force as long as no improvements are made within two years of the decision being pronounced. This means that lawmakers are asked to correct during the period decided by the Constitutional Court.

There are several things that the government really needs to pay attention to, namely the community’s perception of the law and the part that gets the most respect from the community, namely that there are conditions that must underlie a legal system so that it can be used as a tool to change society.29 These conditions have been outlined by Soekanto,30 such as for example that the law must be clear to citizens and known by citizens whose interests are regulated by the law, or the law must be understood by the public, and also must be considered by the government is the absence of regulations that conflict with each other. Regarding this regulatory conflict, are you sure that the more than one thousand pages of the Law on Job Creation will not conflict with existing laws so far or those that will be published afterwards?

Any desired or planned social change is always under the control and supervision of the pioneer of the change.31 Therefore, ways to influence society with systems that are planned and organised in advance are called social engineering or social planning.32 Soemitro revealed two key factors to social change in society. Firstly, the rulers must be willing to make changes, and secondly, these changes can only occur if there is no disagreement between the political rulers and the economic control group, including the economically strong.33 But what Soemitro suggests, must be in line with the literacy of the people to understand and comply with the law.

Is the approval of Law No. 6 of 2023 automatically accepted by the community and serves as the government’s social engineering tool for the problems faced by the community? In fact, several media releases attest to the rejection of this law. In fact, rejection after rejection was present throughout March to October 2023. The rejection came not only from laborers, but also from farmers, students, and civil society. We summarize the sources in the following table:

<table>
<thead>
<tr>
<th>No.</th>
<th>Time and Location</th>
<th>Mass Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>March 30, 2023. Located at the Lampung Provincial Parliament Building34</td>
<td>Combined student elements</td>
</tr>
<tr>
<td>2</td>
<td>April 6, 2023. Located at the DPR/MPR Building, Jakarta35</td>
<td>Combined student elements</td>
</tr>
<tr>
<td>3</td>
<td>May 1, 2023. Located at the Office of the Nahdlatul Ulama (NU) Central Leadership Council, Jakarta36</td>
<td>Konfederasi Sarikat Buruh Muslimin Indonesia (K-Sarbumusi) Nahdlatul Ulama</td>
</tr>
</tbody>
</table>

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The existence of rejection, such as the events summarized from March to October 2023, proves that the government has failed to engineer the social change it wants. What is the cause of the government's failure, resulting in such massive rejection in recent months? In essence, changes in social conditions are not always exactly the same as desired by either the government, the community or the community groups or community organizations that encourage such changes.

Various possibilities can occur, as well as what has happened to the enactment of the Job Creation Law so far. Munir Fuady explained that there are four conditions, social engineering is accepted through a legal policy because it is influenced by the following circumstances:\(^\text{43}\)

1) a position where the law actually changes as desired by society (full compliance);
2) a legal position that sharpens the perception of change in society;
3) a legal position that only ratifies changes that have actually occurred in society; and
4) a legal position that changes but not as desired by society.

The first position is a condition where the community determines the policies that will be taken by the government. This position strengthens the role of society towards the government. In a democracy, this position is most favored by the people. This teaching is also the basis for

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\(^{42}\) BBC, “MK tolak lima gugatan serikat buruh dan kukuukan UU Cipta Kerja - Apa yang digugat dan mengapa regulasi ini terus ditentang?”, (2023). Link [https://www.bbc.com/indonesia/articles/cn0q33n9p1q0](https://www.bbc.com/indonesia/articles/cn0q33n9p1q0).

the adherents of the Sociological Jurisprudence study. According to the exponents of this study, a good law is a law that is in accordance with the living law in society.44

The second position is a condition where the law is present to legitimize the actions or desires of society. Unlike the first position, which makes the government only follow the actions or desires of the community. In this second position, the government is present with its legal instruments together with the community to carry out a material strengthening of the social changes that are desired together.

The third position is a condition where the law is present only as a government product that must be accepted by the community for the social changes that do occur. The slight difference between the second and third positions can only be observed in terms of material strengthening and cooperation between the government and society. In this third position, material strengthening and cooperation between the government and the community cannot be done, because there are circumstances that force them to do so. This can happen due to natural conditions or other external conditions that force them to agree to the act of ratification.

The fourth position is a condition where the government determines a policy that will be taken and applied to the community. This position is the opposite of the first position. This position strengthens the government's control over society. In an autocratic state, this position is most favored by the ruler. This teaching is also the basis for the adherents of Legal Positivism.

John Austin, one of the most influential figures in this school, put four main elements to say "what" and "how" the law is. The four elements are the existence of a ruler (sovereignty), there is an order (command), obeying the order (duty), and there are sanctions for disobedience (sanction).45

Observing the rejection events that occurred throughout 2023 yesterday, with the imposition of the Job Creation Law to be enforced immediately, proves that the current condition (if simulated) we are in a state with the fourth position. This means that society is in a state of subordination to the government. This condition explains the strong power relations of the dominant party, namely the government. The imposition of conditions on the community with actions taken by the government so far is an affront to the principle of popular sovereignty. The reaction of the community who took action to refuse is a response to the legal awareness of the community as a form of the principle of popular sovereignty. In fact, the government's actions so far have actually ignored the main ideas in the 1945 Constitution.

According to M. Koesnoe, the law that comes from the people and contains populist characteristics is one of the main ideas in the 1945 Constitution.46 The government's disregard for this point of view means a violation of the constitution. And, on that basis, the government is no longer implementing the concept of a state of law (rechtstaat), but rather the actions of a state of power (machtstaat).

We also need to suspect the economic reason that legitimizes the passing of the Job Creation Law as a ploy by the government to take away people's rights. This has always been the way it works, and has always been the case. Didn't imperialism happen because of the legitimization of violence in the name of economics, which we later recognized as mercantilism? Pierre Bourdieu has also warned in his paper that economic coercion is often dressed up with juridical reasons.47

We can observe the form of government coercion from its actions not only at the legislative stage from the submission stage, socialization, ratification, revision, until it turns into a government regulation in lieu of law, even at the judicial stage the law is problematic according to some constitutional judges. Thus, juridical legitimization in the name of the economy through the Job Creation Law is an effort that is forced on society.

C. Conclusion
Legal changes that can affect social change are in line with one of the functions of law, namely the function of law as a means of social change or a means of community engineering. The existence of inconsistencies in the body of the Job Creation Law then requested changes to the content of the law. We know that the continuity of the Perppu on Job Creation which became the Job Creation Law was challenged to the Constitutional Court. The Constitutional Court even affirmed in its decision that the Job Creation Law is formally flawed and conditionally unconstitutional. If the Job Creation Law is able to get out of the inconsistencies in the body of the Job Creation Law, then social change can occur in society. The objectives of the creation of this law will certainly be achieved. It is necessary to consider how the law can work in society, the first thing that the government needs to know is to make the law acceptable to the community. second, the law can function. both, if it is not fulfilled then do not expect the law to change the community.

D. Suggestion
It is necessary to consider how the law can work in society. the first thing that the government needs to know is to make the law acceptable to the community. second, the law can function. both, if it is not fulfilled then do not expect the law to change the community.

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