

Structural Reform for the Development of Legislation Regulations through the Omnibus Law Method to Accelerate Investment

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Abstract: Structural Reform in the development of the national legal system is a comprehensive concept of reform through various changes in the legal sub-system. Legal updates covering the entire legal sub-system using the Omnibus Law Method in changing laws and regulations. The policy of formal law reform at least contributes to the shift in national law reform. The focus of this legal policy study is firstly how to model the scope of regulation in the Drafting of Law No. 11/2020 on Job Creation, secondly how to legal certainty in the ease of doing business, especially in the Regions. This paper aims to analyze and contribute to the basis and reference for structural reform of legal policy in the preparation of laws and regulations through the omnibus law method. This research is a non-doctrinal approach or socio-legal research method with a qualitative method, the specifications of the research use analytical descriptive, the main data types in this research are field data and supported by library data, the data analysis method uses juridical-qualitative. The results of the research and discussion in this study are in accordance with the problems that are the focus of the research, the following things were found: First, the model and scope of regulation in Law Number 11 of 2020 concerning Job Creation is a regulation based on regulating the ease of doing business, developing an investment ecosystem and increase in job creation, Second. The process of developing legal certainty in implementation in the regions in the context of ease of doing business is a legal certainty that is delegative which is currently in the process of completing the provision of delegative legal certainty.

Keywords: Structural Reform, Delegative Legal Certainty.

A. Introduction

Globalization as an intensification of awareness of the world as a unified whole has accelerated since the last few decades. The Indonesian nation, which is now faced with an era of disruption and increasingly complex challenges, requires new ways of working that are faster and more efficient. One of them is regarding the legal system that must be more responsive to challenges and in line with the times. The government is currently trying to develop a responsive legal system by synchronizing various laws through a single law called the omnibus law. With the omnibus law, various provisions in the existing law will be trimmed, simplified, and harmonized. The synchronization of a more adaptive and responsive Legal System that the government is currently pushing through the use of the Omnibus Law Method is a process of realigning legislation and governance in Indonesia, which is no longer a new thing. The return can use the omnibus law transplant method and the consolidation law that is in the order of the statutory science method, with the hope that the use of these methods can reorganize the legal norms that have been promulgated in several laws and regulations.

Reform is not just making renewal/changes, but it also means "improvement of better quality", because "to reform" means "to make better", "become better", "change for the better", or "return to a former". good state".¹ In essence, it is a substantial system unit, according to Lawrence Friedman, it is still worthy of scrutiny. That is, that in the life of the nation and state there is always a close relationship between "legal culture, legal change and the origins and effectiveness or Jaw". Also, that "law is not a strong independent force, so that the influence of legal culture is of great importance in understanding the impact of law"

Legal reform and regulation arrangement more deeply based on the national legal system, then regulatory reform or regulatory arrangement cannot be separated from the framework of Law Number 12 of 2011 concerning the Establishment of Legislation as amended by Law Number 15 of 2019 concerning Amendment to Law Number 12 of 2011 concerning the Establishment of Legislation. The process of formulating legislation in the national legal system will encounter delays in legal reform and regulatory structuring if reforms are made to each legislation in a single process. In contrast to the view of the progressive legal approach, which reads the law not in the text arena, but reads the law more deeply with a legal interpretation that is not formal legalistic, but through a progressive legal reading approach, the legal meaning of the alignment of the omnibus law method can be interpreted as long as the making of laws and regulations is obedient to the rules. hierarchy and

¹Arief, Barda Nawawi, 2007, Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan, Kencana, Jakarta, hlm 27.

fulfill the principles of the formation of laws and regulations, it can accelerate legal reform and regulatory arrangement by not making partial changes but structural changes from several laws contained in one legislation.

Glen S. Krutz, Hitching provides an overview of the implementation of this omnibus law in the preparation of regulations, has been practiced since 1970, more clearly explained as follows: "Omnibus legislation has "proliferated" since the 1970s". although in Indonesia the application of the omnibus law method in the process of making laws and regulations has only been applied specifically in legislative techniques whose scope is to change several norms that are in the laws that have been promulgated with one law. It is this understanding that makes the author feel interested in studying the position of the omnibus law method in the formation of legislation as an alternative to legal reform.

Legal adoption through the transplantation of the common law legal system into the civil law legal system adopted by Indonesia has been adapted to the national legal system, in order to minimize the impact and suitability of the interaction (process of aligning the common law legal system to civil law and the national legal system) of national law. The application of the omnibus law method in the national legal system has an impact on accelerating legal reforms that overlap, are not harmonious, and are not in accordance with civilization and the times.

Government regulations can have both positive and negative impacts on the process of innovation and competitiveness. The pressure point of regulatory reform is carried out to provide a positive influence or impact on innovation and competitiveness. Regulatory reform is expected to help ensure that laws and regulations in all areas of activity are fully responsive to changing economic, social and technological conditions that surround them. The regulatory process takes into account the impact of regulations relating to innovation as well as the implications of technological change for the rationale and design of regulations. Regulations and regulatory reforms can affect technology and can affect the innovation process. Regulation directly affects the innovation process, while technical innovation and changes have a significant impact on regulation. Success can be achieved through regulatory reform efforts by taking into account the relationship between regulation and innovation. Economic regulation is intended to increase market efficiency in delivering goods and services that affect the innovation process. Social regulation protects the environment and the safety and health of the wider community by design can encourage or hinder innovation. Administrative regulation regulates the practical functioning of society and the private sector provides some of the basic conditions for technological progress.

The renewal of the national legal system through structural reforms in the preparation of laws and regulations has a positive impact if the development of delegative legal certainty from Law Number 11 of 2020 concerning Job Creation is adopted in its implementing regulations in central agencies and is also adopted in Regional Regulations, however, In extreme cases, the application of legal sources can also be carried out in terms of using a progressive approach with the application of hierarchical understanding of laws and regulations, a regulation can be directly implemented. The current dynamics developments reflect that they have not been fully affected by the structural reforms of Law Number 11 of 2020 concerning Job Creation, for example, the implementation of risk-based business licensing for local governments which is only based on differences in nomenclature and the imposition of regional taxes and levies.²

B. Problem

The focus of the problem of this research is first, how is the model of the scope of regulation in the Drafting of Law Number 11 of 2020 concerning Job Creation, secondly how is legal certainty in the ease of doing business, especially in the Regions.

C. Purpose

This paper aims to analyze and contribute to the basis and reference for a progressive law-based paradigm shift in the practice of establishing laws and regulations aimed at reforming the legal policy structure for the preparation of laws and regulations through the omnibus law method.

D. Research Methodology

1. Research Approach

This study uses socio-legal (socio-legal research) with a Mix Method approach with the hope that the use of this approach can examine both the normative and legal sociology aspects related to the progressive law-based paradigm shift in the practice of establishing legislation. Socio-legal research that departs from the

²Robert C, Bogdan and Sari Knop Biklen, 1998, *Qualitative Research in education; An Intrroduction to theory and Methods*, Allyn and Bacon Boston, p.3.

constructivism paradigm is a process that never stops to find truth values. This research no longer divides the fields of science, both social and legal, but socio-legal research as an integrated social activity. This research no longer sees law as an autonomous, objective, neutral, impartial, and generalizable reality. This research aims to continuously build or reconstruct laws that can elevate human dignity. The qualitative model was chosen, in addition to the information needed is descriptive, namely information in the form of a description of the concept in a document and stories from informants, also wants to obtain information from within (empirical perspective).

2. Data Collection Method

The data collection methods applied in this study are grouped into two parts depending on the two objects to be studied, namely:

- a. For data on legal documents, the data collection method used is library research to obtain theories that support the analysis of the proposed problems as well as positive law in the form of laws and regulations related to the suitability of the national legal system in the formation of laws and regulations.
- b. For data on the progressive law-based paradigm shift in the practice of establishing legislation, obtained from field studies (field research). The method of collecting data through the field is by observation, namely observing the locations to be studied and then conducting interviews with informants who are considered competent who have been determined by purposive sampling in accordance with the interests and needs of analysis as primary data sources, namely, to support data secondary data obtained from library research, field research can be carried out, namely to retrieve field data located at the Coordinating Ministry for Economic Affairs. Primary data obtained through the stages:
 - (1) Interviews were conducted in the form of in-depth interviews with selected key informants to obtain in-depth information about the data obtained through literature study. Through indepth interviews with informants can reveal the meaning and other symbolic expressions that further clarify the problems in the focus of research.
 - (2) Observation (observation) passive participation is done to obtain data that cannot be obtained from interviews, such as situations, attitudes or activities. Observations are carried out from the most general to the most specific.

From the description above, it can be said that the instrument used in this study was the researcher himself. Besides researchers, to find the required data with guaranteed validity, a list of questions was also used to guide researchers in digging up data through in-depth interviews with the informants being studied as the instrument used.

c. Sampling Technique

Sampling was determined by random sampling technique. This sampling technique is used to determine a sample that moves continuously during a progressive law-based paradigm shift in the practice of establishing laws and regulations. With the sampling method as mentioned above, the quantitative assessment uses an interaction approach.

d. Data Analysis Techniques

Analysis of the data used in this study is a qualitative analysis method. According to Bogdan and Biklen as quoted by Lexy J. Moleong, qualitative data analysis is carried out through organizing data, sorting it into manageable units, synthesizing, searching and finding patterns, finding what is important and what is learned, and deciding what to do. which will be passed on to others.³

E. Discussion

1. Scope of Regulation Model in Law Number 11 of 2020 concerning Job Creation

The scope of Law Number 11 of 2020 concerning Job Creation includes simplification of risk-based licensing including basic licensing, creating convenience and protection for MSEs including cooperatives, as well as re-arrangement so that investment and Government projects are the source of job creation. The direction of the regulation is carried out by revoking and/or changing the articles in a number of laws and establishing new norms. Simplification of Business Licensing through the application of risk-based Business Licensing is a standard method based on the level of risk of a business activity in determining the type of Business Licensing

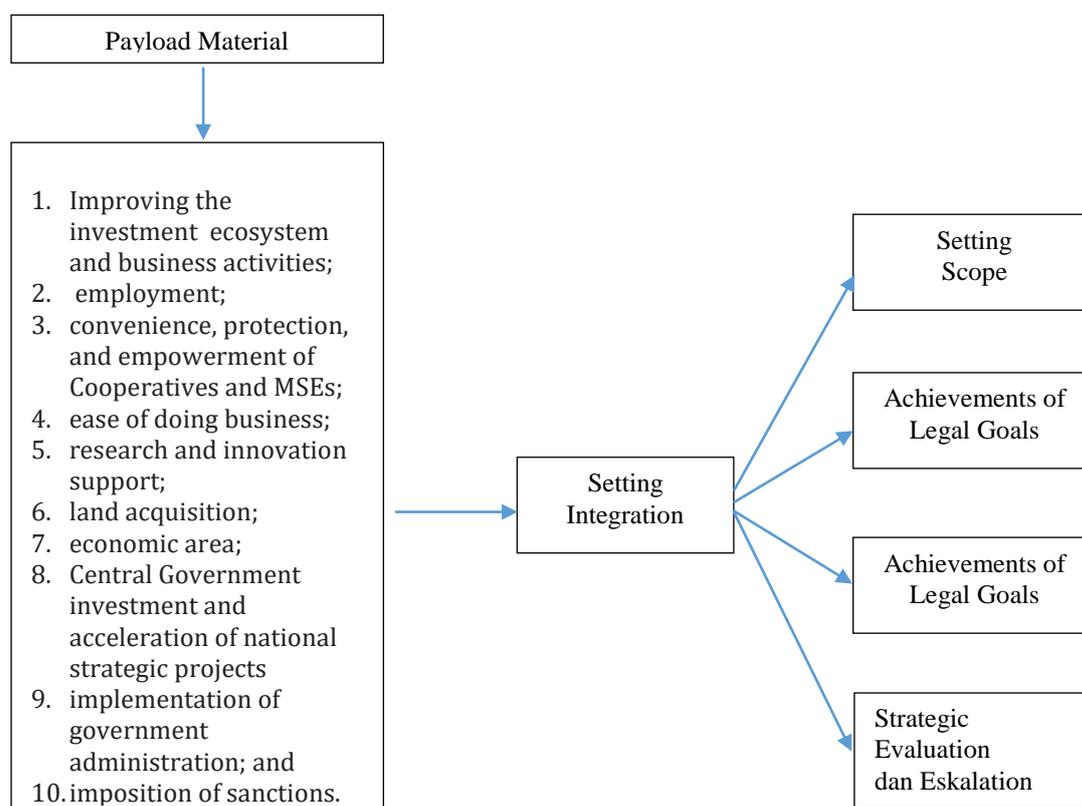
³Robert C, Bogdan and Sari Knop Biklen, 1998, *Qualitative Research in education; An Intrroduction to theory and Methods*, Allyn and Bacon Boston, p.5.

and the quality/frequency of supervision. Business Licensing and supervision are instruments of the Central Government and Regional Governments in controlling a business activity. The application of a risk-based approach requires a change in mindset (change management and adjustment of work procedures for the implementation of business process re-engineering) and requires a re-design of the Business Licensing business process in the electronic Business Licensing system. Through the application of this concept the implementation of the issuance of Business Licensing can be more effective and simpler because not all business activities are required to have a license, in addition, through the application of this concept, supervision activities become more structured both in terms of the period and substance that must be supervised.⁴

To support the implementation of strategic job creation policies and their arrangements, it is necessary to amend and improve various related laws. Changes to the law cannot be carried out through conventional methods by changing laws one by one as has been done so far, this method is certainly very ineffective and efficient and takes a long time.

Through the conception of the description of the scope of the regulation of Law Number 11 of 2020 concerning Job Creation in general, it can be described in a schematic as follows:

Figure 1
Scope of Reach Schematization
Law Number 11 of 2020 concerning Job Creation



Through the description of the conception, at least there is a direction from the regulation of the technical reach of the settings in Law Number 11 of 2020 concerning Job Creation which can explain in general to describe the complexity of the arrangements built in the preparation of Law Number 11 of 2020 concerning Job Creation through the use of Omnibus Law Method.⁵

⁴Lawrence M. Friedman, "Legal Culture And Social Development", Law And Society Review. Th IV (1969) No. I.

⁵Ahmad UlilAedi, Sakti Lazuardi, Ditta Chandra Putri, ArsitekturPenerapan Omnibus Law MelaluiTransplantasi Hukum Nasional PembentukanUndang-Undang, JurnalIlmiahKebijakan Hukum, Volume 14, Nomor 1, Maret 2020.

2. Legal certainty in the ease of doing business in the region.

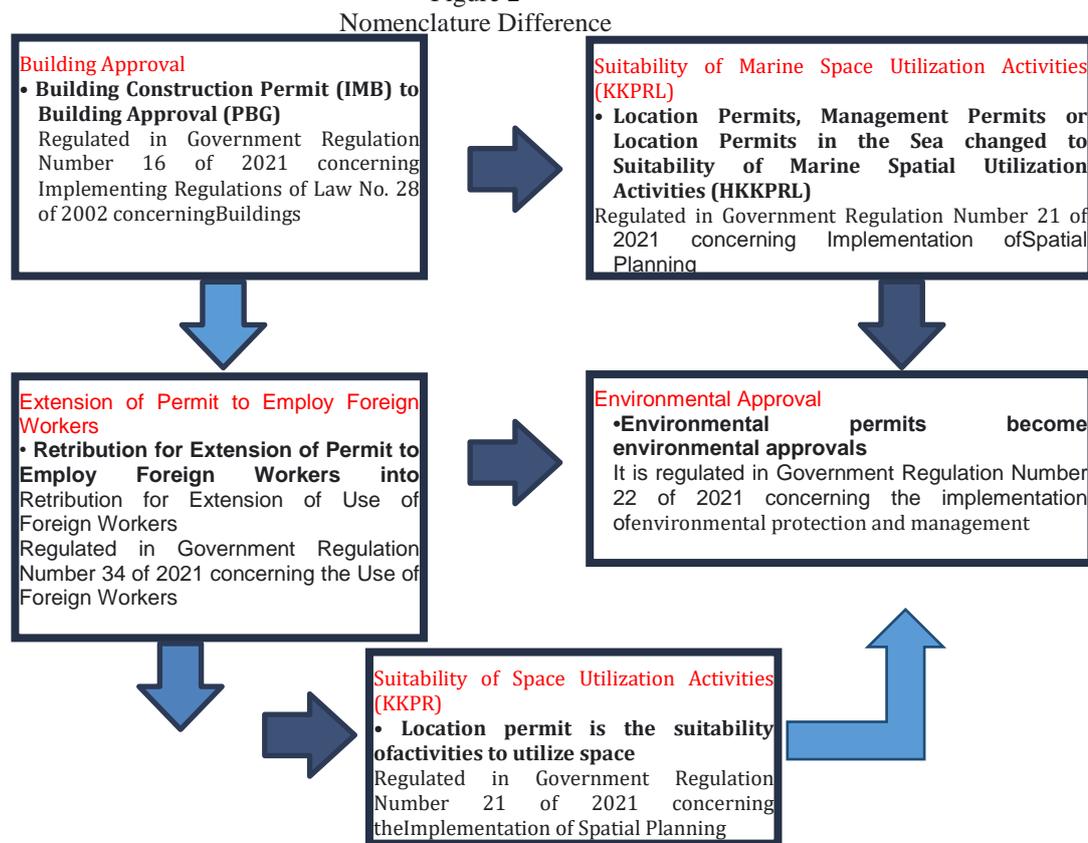
In terms of making changes to legislation with the preparation of the regulatory sector, the regulatory reform process will be slow in providing legal certainty in doing business. So the application of the omnibus law method is seen as an alternative model with the process of forming legislation to make a regulation or a law consisting of many subjects or basic materials for certain purposes in order to deviate from a regulatory norm. In a legal regulation, there are legal principles that form the basis for its formation. SatjiptoRahardjo said that legal principles can be interpreted as the "heart" of legal regulations, so to understand a legal regulation it is necessary to have a legal principle. In other words, Karl Larenz in his book *Methodenlehre der Rechtswissenschaft* said that legal principles are ethical legal standards that provide direction for the formation of law. ethical view of society.

Formation of the rule of law, the main principle is built in order to create a clarity on the rule of law, this principle is legal certainty. The idea of the principle of legal certainty was originally introduced by Gustav Radbruch in his book entitled "einführung in die rechtswissenschaften". Radbruch wrote that in the law there are 3 (three) basic values, namely justice (*Gerechtigkeit*), expediency (*zweckmassigkeit*), legal compliance (*rechtssicherheit*).

Regarding the principle of legal certainty, in fact the existence of this principle is interpreted as a condition where the law is certain because of the concrete power of the law in question. The existence of the principle of legal certainty is a form of protection for judicial (justice seekers) against arbitrary actions, which means that someone will get something that is expected in certain circumstances. Law Number 12 of 2011 concerning the Establishment of Legislations as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislations regulates the hierarchy of enforceability of levels of legislation. With the enactment of Law Number 11 of 2020 concerning Job Creation and its implementing regulations regarding Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing, it is a process of providing legal certainty for parties affected by this arrangement. Regardless of the completion and unfinished delegative levels of regulation at the central and regional levels.

As a concrete law that is currently happening, that there are obstacles and obstacles in the meaning of the implementation of facilities together through the implementation of Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing and differences with the arrangements in Regional Regulations at the Provincial Government and Regency/City Regional Government levels. the difference in nomenclature, to show in detail can be seen through the image below.

Figure 2



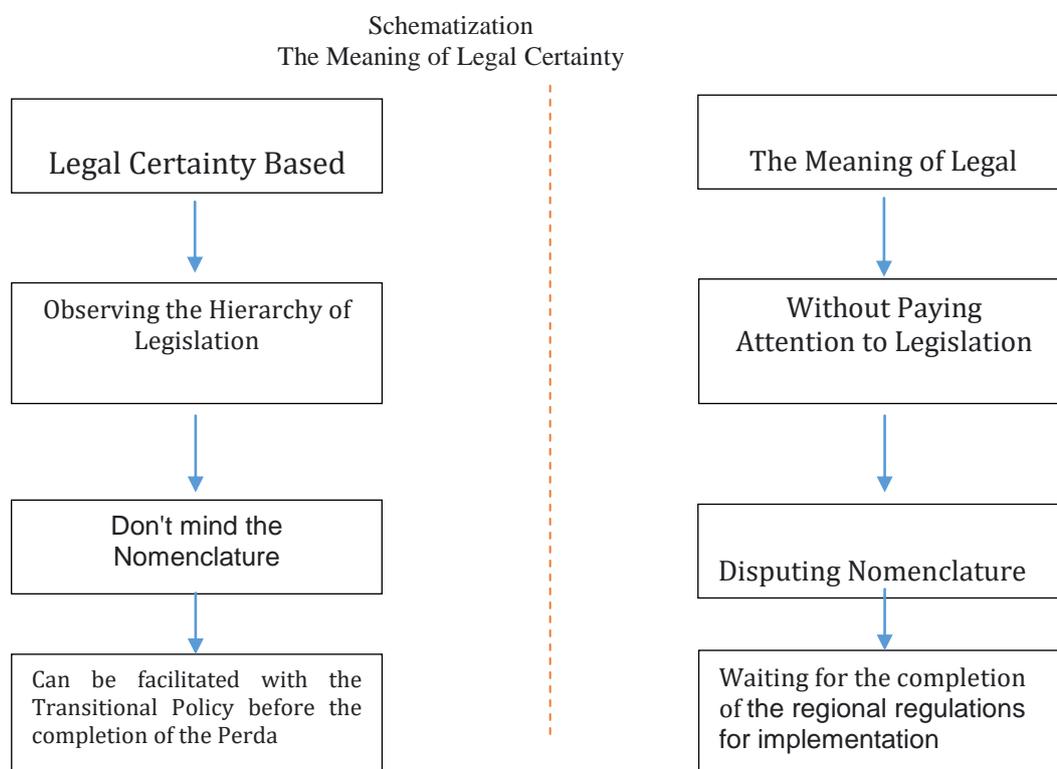
The meaning of government administration related to differences in nomenclature in these regulations is currently found to be hampered by the process of issuing Business Identification Numbers in Risk-Based Licensing, which assumes some regions that these obstacles are through differences in nomenclature which have an impact on the non-implementation of legal certainty in the regulation of Law Number 11 of 2020 concerning Job Creation.

Preferably a progressive meaning is needed by government administrators with an approach to the legal substance of Law Number 12 of 2011 concerning the Establishment of Legislations as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation -Invitations that regulate the hierarchy of laws and regulations by considering that there are differences in nomenclature as obstacles to the process of granting business permits is an inappropriate spirit, as if Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 5 of 2020 concerning Business-Based Licensing The risk of not having legal certainty regarding the enforcement of regional regulations.⁶

⁶<https://www.presidentri.go.id/siaran-pers/presiden-dorong-sinkronisasi-sistem-hukum-agar-lebih-adaptif-dan-responsif/diakses-pada-tanggal-1-februari-2020>, BPMI Setpres. Dengan tema “Presiden Dorong Sinkronisasi Sistem Hukum agar Lebih Adaptif dan Responsif” yang disampaikan pada acara Penyampaian Laporan Tahunan Mahkamah Konstitusi Tahun 2019 di Mahkamah Konstitusi, Medan Merdeka Barat, Jakarta Pusat, pada Selasa, 28 Januari 2020.

The process of meaning can be described through schematization as follows:

Figure 3



The process of interpreting legal certainty over the hierarchy of laws and regulations as regulated in Law Number 12 of 2011 concerning the Establishment of Legislations as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Regulations Legislation on the enactment of Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 5 of 2020 concerning Risk-Based Business Licensing, should be interpreted progressively with an approach to the transition process of regulation as long as it conflicts with the regulations above, the nomenclature and technical collection Regional taxes and regional levies at the provincial government level and district/city regional governments are subject to regulations that are above the Regional Regulations but do not maintain the validity of regional regulations. n have a positive impact through the acceleration of the granting of business licenses.

F. Closing

As the conclusion of this legal policy review. The author can conclude the results of the discussion as follows:

1. The construction model for the scope of the enactment of Law Number 11 of 2020 concerning Job Creation uses a regulatory policy integration approach that is mandated from several materials that amend, add, and insert new regulations in several laws and regulations, this can be concluded from the scope The arrangements include improving the investment ecosystem and business activities, employment, convenience, protection, and empowerment of Cooperatives and MSEs, ease of doing business, research and innovation support, land acquisition, economic zones, Central Government investment and acceleration of national strategic projects, implementation of government administration. and the imposition of sanctions constitutes the entire mandate of the regulation construction of Law Number 11 of 2020 concerning Job Creation.
2. With regard to legal certainty for ease of doing business in the Regions, both at the Provincial and Regency/City levels as a consistency of constructive government administrative actions, the meaning of legal certainty is from Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing is interpreted as a hierarchy of laws and regulations that do not need to be contradicted with regional regulations that have not been finalized for adjustment to these regulations.

References

Books:

- [1]. Barda Nawawi, Arief, 2007, Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan, Kencana, Jakarta.
- [2]. Adji Samekto, FX, 2008, Justice Not For All : Kritik Terhadap Hukum Modern dalam Perspektif Studi Hukum Kritis, Gents Press, Yogyakarta.
- [3]. Glen S. Krutz, Hitching a Ride: Omnibus Legislating in the U.S. Congress 12 (2001); see also Sinclair, Unorthodox Lawmaking (4th ed.), supra note 27.
- [4]. Mertokusumo, Sudikno, 1993, Bab-Bab Tentang Penemuan Hukum, Citra Aditya Bakti: Bandung.
- [5]. Rahadjo, Satjipto, Pendidikan Hukum sebagai Pendidikan Manusia, Genta Publishing.
- [6]. Robert C. Bogdan and Sari Knop Biklen, 1998, Qualitative Research in education; An Introduction to theory and Methods, Allyn and Bacon Boston.
- [7]. Lawrence M. Friedman, "Legal Culture And Social Development", Law And Society Review. Th IV (1969) No. I

Other Sources:

- [8]. Ahmad Ulil Aedi, Sakti Lazuardi, Ditta Chandra Putri, Arsitektur Penerapan Omnibus Law Melalui Transplantasi Hukum Nasional Pembentukan Undang-Undang, Jurnal Ilmiah Kebijakan Hukum, Volume 14, Nomor 1, Maret 2020.
- [9]. <https://www.presidentri.go.id/siaran-pers/presiden-dorong-sinkronisasi-sistem-hukum-agar-lebih-adaptif-dan-responsif/> diakses pada tanggal 1 Februari 2020, BPMI Setpres. Dengan tema "Presiden Dorong Sinkronisasi Sistem Hukum agar Lebih Adaptif dan Responsif" yang disampaikan pada acara Penyampaian Laporan Tahunan Mahkamah Konstitusi Tahun 2019 di Mahkamah Konstitusi, Medan Merdeka Barat, Jakarta Pusat, pada Selasa, 28 Januari 2020.