



# The Omnibus Law Concept in the Job Creation Law and the Legal Consequences for Limited Liability Companies

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## Abstract

**Introduction:** The concept of Omnibus Law is intended as a means to resolve conflicting norms between laws and regulations so that inconsistencies do not occur.

**Purposes of the Research:** The study aimed to evaluate the concept of the Omnibus Law against the Job Creation Law (Undang-Undang Cipta Kerja) with a more specific focus on Limited Liability Company Regulations.

**Methods of the Research:** Normative legal research (doctrinal study) on policies with a Conceptual Approach and Legislation (normative-juridical).

**Results of the Research:** That many sectors of law grouped into the Omnibus Law, which was prone to causing inconsistencies, Lack of clarity in rules resulted in a lack of legal certainty, especially for Limited Liability Companies; the emergence of inconsistencies in the Job Creation Law against the UUPT due to a new concept regarding SMEs Limited Liability Companies or individual Limited Liability Companies which has legal consequences, the emergence of responsibility for piercing the corporate veil because there is only one shareholder; the absence of the role of a notary and an authentic deed of establishment; changed and dissolution of the RUPS SMEs Limited Liability Companies through an electronic statement letter will cause a lack of legal validity of the Limited Liability Company; absence of a minimum capital requirement could lead to vulnerabilities in providing third party payment guarantees; moreover, setting limits for the establishment of the founders of the SMEs company may only be once a year, creating the risk of branching creditors; and provide an opportunity of creating Limited Liability Companies to seek profits every year, based on a limited liability concept.

## 1. INTRODUCTION

The concept of Omnibus Law is seen as effective and efficient in remedial actions for norm conflicts that occur to realize a big goal from various regulatory aspects. The application of the Omnibus Law concept in Indonesia is the result of the dynamics of regulation and parliament in the constitutional system.<sup>1</sup> Where this concept is considered as an urgency to overcome the inconsistency problem of norms and overlapping laws and

<sup>1</sup> Dolfries J Neunony, "Urgensi Omnibus Law (Undang-Undang Cipta Kerja) Terhadap Hak Masyarakat Adat Di Wilayah Pesisir," *Balobe Law Journal* 1(2) (2021): 110–23, <https://doi.org/https://doi.org/10.47268/balobe.v1i2.653>.

regulations that have a direct impact on the administration of government.<sup>2</sup> Its presence is to overcome hyperregulation conditions, which cause conflicting norms towards synchronization and harmonization of laws and regulations.<sup>3</sup>

The concept of the Omnibus Law, which is explicitly paradigmatic was formed to advance the economic ecosystem, as the government's effort to maintain economic growth manifested in the Indonesia 2045 vision which aims to make Indonesia one of the 5 (five) world economic powers with high incomes.<sup>4</sup> The decline in global economic activity,<sup>5</sup> caused by the Covid-19 pandemic as the World Health Organization (WHO) explained that Covid-19 became a global pandemic because of its rapid spread, making it a major global topic. Apart from the Covid-19, the economic slowdown influenced by factors; Indonesia's low competitiveness based on the ease of doing business (EODB) index scheme, the slowdown in domestic economic development, and the wide disparate range of economic developments between regions.<sup>6</sup>

The number of excessive regulations (over-regulation), is due to the ideality of laws and regulations that are far from legal certainty which results in irregularities in the implementation of one law with another. This situation became the beginning of regulatory reform by the Government which formed a rule that refers to the model of the Omnibus Law through Law Number 11 of 2020 concerning Job Creation (Job Creation Law). Regulatory reform includes the legal system, which includes reforms to legal substance, structure, and legal culture.<sup>7</sup>

The regulation of laws and governance through the Omnibus Law on Job Creation expected to regulate the legal norms that have been promulgated in several laws and regulations. Even though Law Number 12 of 2011 concerning the Establishment of Legislation (as has been updated by Law Number 15 of 2019) does not recognize the term *Omnibus Law*. The concept of Omnibus Law is considered as a renewal in the national legislation process.<sup>8</sup> Which has various and non-special characteristics of content, so it is referred to as the basic rule or umbrella act. According to Apeldorn, the function of the main law or umbrella act is as a consolidation law on a large theme whose arrangements which divided into many laws and regulations with different level.<sup>9</sup> According to Webster, Omnibus Law as a legal product that revises several legal rules at once through an umbrella

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<sup>2</sup> Rio Christiawan, *Omnibus Law Teori Dan Penerapannya* (Jakarta: Sinar Grafika, 2021).

<sup>3</sup> Muhamad Azhar, "Omnibus Law Sebagai Solusi Hiper-Regulasi Menuju Sonkronisasi Peraturan Perundang-Undangan Di Indonesia," *Administrative Law & Governance Journal* 2(1) (2019): 174-80, <https://doi.org/https://doi.org/10.14710/alj.v2i1.170-178>.

<sup>4</sup> Agus Suntoro, "Implementasi Pencapaian Secara Progresif Dalam Omnibus Law Cipta Kerja (The Implementation of Progressive Realization at Omnibus Law)," *Jurnal HAM* 12(1) (2021): 1-10, <https://doi.org/http://dx.doi.org/10.30641/ham.2021.12.1-18>.

<sup>5</sup> Ririn Noviyanti Putri, "Indonesia Dalam Menghadapi Pandemi Covid-19," *Jurnal Ilmiah Universitas Batanghari Jambi* 20(2) (2020): 700-710, <https://doi.org/http://dx.doi.org/10.33087/jiubj.v20i2.1010>.

<sup>6</sup> Suntoro, "Implementasi Pencapaian Secara Progresif Dalam Omnibus Law Cipta Kerja (The Implementation of Progressive Realization at Omnibus Law)."

<sup>7</sup> Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan* (Jakarta: kencana, 2007).

<sup>8</sup> Diya Ul Akmal, "Dinamika Konsep Omnibus Law: Menegaskan Tujuan Hukum Dalam Konstruksi Legislasi Nasional," *Jurnal Hukum Mimbar Justitia* 7(1) (2021): 30-39.

<sup>9</sup> Van Apeldorn, *Pengantar Ilmu Hukum* (Jakarta: Pradnya Pamita, 1976).

rule, which functions as a tool to simplify legislation that has experienced complications (overlapping).<sup>10</sup>

The Omnibus Law on Job Creation in its application will become a criticism, and a normative law becomes rational like the long debates submitted by each of the defenders of modernity and postmodernity. Fundamentally, science is always changing and shifting, and it must prepare for this.<sup>11</sup> On November 25, 2021, the Constitutional Court (MK) partially granted a formal review request and declared the Job Creation Law conditionally unconstitutional through Constitutional Court Decision No. 91/PUU-XVIII of 2020, because its formation was contrary to the 1945 Constitution of the Republic of Indonesia and the Constitutional Court (MK) also ordered legislators to make improvements within a maximum period of 2 (two) years from the decision.<sup>12</sup>

After the Omnibus Law on Job Creation was ratified into the Job Creation Law, it has changed the content of Limited Liability Companies (Ltd) in the regulation of Law Number 40 of 2007 concerning Limited Liability Companies, which expands the legal entity of Individual Companies specifically for SMEs actors as stated in 109 Paragraph 1 Article (1) of the Job Creation Law. This provides an understanding that there is a new rule that ratifies SMEs with 1 (one) shareholder to establish a legal entity. According to Sylvia Putri and David Tan in their journal, the Job Creation Law does not provide a separate definition for individual companies. After the existence of a new legal entity, it is better if the definition of an individual company is also described clearly and firmly so as not to cause misinterpretation.<sup>13</sup>

The expansion of the legal entity under the Job Creation Law, gave birth to 2 (two) types of companies with 2 (two) different ways of establishing. The first is a Limited Liability Company, the procedure for establishing and announcing a company is in Article 7 UUPT and an individual company in the process of its establishment does not need to go through a notarial agreement and deed as regulated in Article 153A of the Job Creation Law and confirmed in Article 6 PP 8/2021. This change is considered to be a trigger for the emergence of a conflict of interest for a Limited Liability Company<sup>14</sup> because it has expanded the definition of a limited liability company and changed several rules regarding the establishment of a limited liability company.

According to the author, the expansion of a new legal entity in the Job Creation Law related to individual companies or SMEs companies will cause differences in the essence and provisions as stated in the Job Creation Law, it will lead to inconsistencies between the two rules. According to Esmi Warasih, the term inconsistency in laws and regulations refers to the existence of conflicting norms that guide people's behavior in laws and regulations.<sup>15</sup> This will lead to a conflict of norms which is interpreted as a conflict of substance which is the content of each of the laws and other regulations of a special nature (*lex specialis*),

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<sup>10</sup> Merriam Webster, "Dictionary of Merriam Webster," merriam-webster.com, 2022, <https://www.merriam-webster.com>.

<sup>11</sup> Rahardjo Satjipto, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 1991).

<sup>12</sup> Mahkamah Konstitusi Republik Indonesia, "MK: Inkonstitusional Bersyarat, UU Cipta Kerja Harus Diperbaiki Dalam Jangka Waktu Dua Tahu," mkri.id, 2021, <https://www.mkri.id/index.php?page=web.Berita&id=17816>.

<sup>13</sup> Sylvia Putri and David Tan, "Analisis Yuridis Perseroan Perorangan Ditinjau Dari Undang-Undang Cipta Kerja Dan Undang-Undang Perseroan Terbatas," *Unes Law Review* 4(3) (2022): 320–29.

<sup>14</sup> Putri and Tan.

<sup>15</sup> Esmi Warasih, *Pranata Hukum: Sebuah Telaah Sosiologis* (Semarang: Badan Penerbit Universitas Diponegoro, 2002).

especially for laws whose formulation and amendment involve cross-sectoral agencies. From a philosophical perspective, the conflict of norms must be resolved immediately because the conflict of norms will create legal uncertainty and result in a bias in a measure due to the absence of consistent guidelines.

Based on this discussion, this article examines the concept of the Omnibus Law which applied in the Job Creation Law and its legal consequences, especially regarding Limited Liability Companies, this concept is expected to resolve conflicts of norms between laws and regulations so that people are not trapped in conditions of legal conflict and conditions of legal inconsistency. After that the question will arise: What is the concept of the Omnibus Law in the Job Creation Law in Indonesia? and what are the consequences of the Omnibus Law on Job Creation on Limited Liability Companies?

## 2. METHOD

This research was normative legal research (doctrinal study) on policies with a conceptual approach and legislation (normative-judicial). The conceptual approach tries to provide an analytical point of view of problem-solving seen from the concepts and values contained in the normalization of a regulation or policy.<sup>16</sup> While the Legislative Approach carried out by reviewing every regulation related to the problems.<sup>17</sup> The analysis carried out on secondary data obtained from library research, consisted of primary legal materials in the form of mandatory sources such as laws and regulations.<sup>18</sup> Secondary legal materials consist of journals, books, and previous research results. The data analyzed and presented descriptively-qualitatively.

## 3. RESULTS AND DISCUSSION

### 3.1 The Omnibus Law Concept in the Job Creation Law Indonesia

The formation of the Omnibus Law in Indonesia, especially its formation in the post-reform era, is the number of laws that have been in force since the Dutch colonial period, and when Indonesia became independent, these rules were based on Article 2 of the Transitional Rules of the 1945 Constitution which was first declared valid, such as the Book Civil Code and Commercial Law. In a brief definition, Omnibus Law means one rule consisting of many contents, this is stated by Jardine Le Blanc.<sup>19</sup> According to Pietro Calage, literally means one bus with many loads.<sup>20</sup> It can be understood that the context of Omnibus Law in its emphasis or characteristics refers to the substance and content of laws that use the Omnibus Law model. Omnibus Law is only a designation of a rule with a model that contains several contents (laws).

Given the diverse nature of loads, the Omnibus Law referred to as the basic rule or umbrella rule. Considered as a reference as well as the basis for the birth of other laws and

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<sup>16</sup> Irwansyah and Ahsan Yunus, *Penelitian Hukum: Pilihan Metode Dan Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana, 2020).

<sup>17</sup> Peter Mahmud Marzuki, *Penelitian Hukum: Cetakan Ke-2* (Jakarta: Kencana, 2006).

<sup>18</sup> Sunaryati .C.F.G. Hartono, *Penelitian Hukum Di Indonesia Pada Akhir Abad Ke-2*, (Bandung: Alumni, 1994).

<sup>19</sup> Jardine Le Blanc, *Varioua Models Legislation, 1st Edition* (USA: Blackwell Publisher, 2012).

<sup>20</sup> Calage Pietro, *Constitution and Derivative Legislatio* (Canada: Publisher Hamilton, Ontario, 2000).

regulations under the law. Omnibus Law can be understood from 3 (three) aspects, as follows:<sup>21</sup>

- a) Philosophical Aspects; looking at the basic goals or ideals (*idee des recht*) of the formation of the Omnibus Law due to major events that cannot be resolved by special rules (*lex specialis*). This means that the Omnibus Law has the objective of consolidating between legal norms which are regulated separately in the laws and regulations to resolve conflicting norms between special rules (*lex specialis*) as well as conflicting norms involving court decisions.
- b) Sociological Aspects; understand the purpose of the Omnibus Law which provides legal protection to the community and harmonizes community behavior as a reaction to the enactment of legal norms.
- c) Juridical Aspects; the purpose of the Omnibus Law as a way of establishing consistent regulatory consistency and legal consequences in order to create legal certainty, is also useful as a form of remedial (improvement) of conflicting norms.

In his book, Rio Christiawan explains that the high conflict of norms with the many overlapping regulations in Indonesia has resulted in the birth of conflicting authorities of state officials. The Omnibus Law considered to be able to end the existing norm conflict because if it is resolved one by one the laws will take a long time. There are thousands of conflicting rules so it is almost impossible to resolve the conflict of norms one by one or through a Judicial Review. The formation of rules that refer to the Omnibus Law system expected to achieve big goals that contain various legal contents and revise some of these legal rules.<sup>22</sup>

The Omnibus Law was originally known by countries with Anglo Saxon systems such as the United States of America and Canada as the 'Omnibus Bill'. A country with an Anglo-Saxon system applies the principle of judge made law, which means that law is born from a court decision. This is also explained by Robert Kaiser that Common Law or Anglo-Saxon countries are always based on norms built from court decisions.<sup>23</sup> Courts in countries with Common Law or Anglo-Saxon legal systems adhere to the legal principle of *binding force of precedent, stare decises et queta non movere*, which means that the previous judge's decision in a similar case must be followed by the next judge in the same case. The problem is, when a case that is almost the same but has other aspects is decided by the same judge, it will certainly deviate from the principle of binding force of precedent, *stare decises et queta non movere* which is the main principle in the trial. This is a mistake in deciding a case that will have three consequences, namely causing injustice to the community itself, there will be a deviation from the principle of the binding force of precedent, *stare decises et queta non movere* and there will be a conflict of norms. According to Scarlet Paqino, conflicting norms in the Anglo-Saxon legal system are called legal complications, where each conflicting norm has legal consequences, each contradicting each other in its application.<sup>24</sup>

To overcome the conflict of norms due to conflicting court decisions, an Omnibus Bill was made which functions as a form of consolidation of norms, both norms born from courts and norms born from laws and regulations. In this case, the Omnibus Bill was not focused as a norm in terms of guiding people's behavior, but the Omnibus Bill focuses as a consolidated norm, in the sense of consolidation in the conflicting norms between court

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<sup>21</sup> Christiawan, *Omnibus Law Teori Dan Penerapannya*.

<sup>22</sup> Christiawan.

<sup>23</sup> Robert Kaiser, *Constitutional Law 1st Edition* (Kindley Publishing, 2013).

<sup>24</sup> Scarle Pasqino, *Handbook on Constitutional Law* (USA: West Publishing, St Paul Minnesota, 2000).

decisions and other court decisions (life norms), conflicting court decisions with statutory norms as well as conflicting norms arising from conflicting laws. According to Jim Rossi's description, the formation of the Omnibus Bill is a consolidative law.<sup>25</sup> Consolidation has the meaning of providing guidance to judges in deciding cases submitted to them so that they do not conflict with other decisions that have become a living norm or so that they do not conflict with statutory regulations, especially applicable laws and regulations. Therefore, it is necessary to understand that the regulated norm in the Omnibus Bill cannot be directly applied to the community. Norms in the Omnibus Bill system of Common Law or Anglo Saxon are referred to as dependent norms. That is, norms whose validity depends on other norms (court decisions or other legislation). The Omnibus Bill is also called a dependent norm because it can only bind other norms but does not have the binding power to regulate people's behavior so it can be understood why the Omnibus Bill is called an umbrella law, because its nature is not an applied norm.

While the legal system of Continental Europe is known by the adage that law is legislation and legislation is law, meaning that the only truth comes from statutory regulations. The principle in the judiciary in the Continental European legal system is the persuasive force of precedent, which means that the judge's decision in the previous case can be a reference for judges who decide cases after but are not binding to be followed by judges after. The main guideline for judges in countries with a Continental European legal system in deciding a case is the norm that comes from the laws and regulations. There are differences regarding the terminology of conflict of norms in the Anglo Saxon and Continental European legal systems, namely if in the Anglo-Saxon legal system, the conflict of norms has two dimensions, namely conflicts between decisions and conflicts involving legal norms. On the other hand, in the legal system of Continental Europe, what is meant by a conflict of norms is a conflict between laws and regulations, both between laws and regulations and the content of one legislation. The formation of legislation based on the Omnibus Law model functions as a substitute for codification rules and implementing rules (*lex specialis*) that conflict with each other and create inconsistencies which can be interpreted as a form of rearranging the norms previously regulated in codification-based legislation and *lex specialis* regulations.

Indonesia as a country that has a Continental European legal system, has a tiered legal system or what is called the *stufenbau theory* (tiered ladder theory) as proposed by Hans Nawiasky. The level or hierarchy of rules in Indonesia has been regulated in Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislations, but in this regulation the concept of Omnibus Law does not have a foundation.

The concept of Omnibus Law has never directly applied in Indonesia as a state system of law that adheres to *Civil Law* which prioritizes codification for its legal validity. This concept is usually applied by countries with Common Law or Anglo-Saxon legal systems, which prioritize precedent as a source of law so that codification is not the main thing and judges in making decisions do not use laws and regulations as the main benchmark.<sup>26</sup> Meanwhile, in Indonesia, laws and regulations are the main thing and judges in deciding cases must be based on statutory regulations.

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<sup>25</sup> Jim Ross, *Legal Policy* (London: Longman Publishing, 2011).

<sup>26</sup> Nyoman Nidia Sari Hayati, Sri Warjiyati, and Muwahid, "Analisis Yuridis Konsep Omnibus Law Dalam Harmonisasi Peraturan Perundang-Undangan Di Indonesia," *Jurnal Hukum Samudera Keadilan* 16(1) (2021): 1-13, <https://doi.org/https://doi.org/10.33059/jhsk.v16i1.2631>.

According to Eka Noer Kristiyanto, historically and philosophically choosing to use a comprehensive legal approach to formulate legislation through the Omnibus Law shows that policy makers in this country do not want to be held hostage by various regulations.<sup>27</sup> The use of the Omnibus Law concept has not yet regulated in Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislations, but the use of this concept is not prohibited, because this concept is appropriate to overcome regulatory problems, including disharmony, overlapping, inappropriate content, and sectoral egos from the forming institutions.

Meanwhile, Agil Oktaryal argues that the existence of the Omnibus Law also has shortcomings, first, the Omnibus law ignores the formal provisions of the formation of law. His fast-paced nature is worried that he will break through several stages of the formation of legislation, both planning, drafting, discussing, ratifying, and enacting legislation. This violation is contrary to the principle of the rule of law which requires that all government actions be based on law. Second, the Omnibus Law narrows openness and public participation in the formation of laws. In practice, in several countries, Omnibus Law was dominated by the government or the DPR, with the substance and time of its formation according to the agency. Usually, law is completed as quickly as possible, even at one decision. As a result, the space for public participation becomes small and even disappears. Whereas in a democratic country, openness and public participation are the priority. Third, the Omnibus Law can add to the regulatory burden if it fails to implement it.<sup>28</sup> Due to its nature which includes more than one aspect which is combined into one law, it is feared that the discussion of the law will not be comprehensive.

In addition, the application of the Omnibus Law concept will still affect the form of norms applied whether they are general or specific like ordinary laws, if they are special, then not all provisions are revoked but only contradictory. However, if this provision is general, it will be a problem if it is formed on the principle of *lex specialis derogat legi generalis* (specific rules override general provisions). Therefore, its existence must be regulated in the hierarchy of laws and regulations regarding its position.

This is also described by Ariyanto and Jonci Muhammad in their journal *The Concept of Omnibus Law Related to Normal Law Applicable in Indonesia*, that it is necessary to see how the content of legal norms in the law with the concept of Omnibus Law is whether it is general or special like ordinary law, if not all provisions are revoked but only contradictory ones. However, if the provision is general, it will be a problem if it conflicts with the principle of *lex specialist derogat legi generalis* (special rules that override general rules). Therefore, it must be regulated in a hierarchy of laws and regulations regarding its position so that the concept of the Omnibus Law is intended as a law made to target various objects into one big problem that may revoke or change several laws. Thus, the law with the Omnibus Law concept that was made is a new legal model or a new paradigm in the laws and regulations in Indonesia. Due to the new paradigm in the legislation in Indonesia, the law with the concept of Omnibus Law will change the system of legislation, because the

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<sup>27</sup> Eka Noer Kristiyanto, "Urgensi Omnibus Law Dalam Percepatan Reformasi Regulasi Dalam Perspektif Hukum Progresif," *Jurnal Penelitian Hukum De Jure* 20(2) (2020): 230-42.

<sup>28</sup> Agil Oktaryal, "Bahaya Omnibus Law Terhadap Demokrasi," *Tempo.co*, 2019, <https://kolom.tempo.co/read/1282810/bahaya-omnibus-law-terhadap-demokrasi>.

concepts and theories are different from the legal models and legal norms that apply in Indonesia.<sup>29</sup>

### 3.2 The Consequences of the Omnibus Law Concept of Job Creation on Limited Liability Companies

Legislation with the concept of Omnibus Law must be motivated by the big theme of the legislation to be drafted. According to Mark Schwartz, the meaning of consolidation with the Omnibus Law method is to consolidate all norms related to major topics which are the goals to be achieved by making laws and regulations using this method.<sup>30</sup> The big theme as the background and purpose of the establishment of the concept of legislation using the concept of Omnibus Law in Indonesia is Law Number 11 of 2020 concerning Job Creation. The big goal to be achieved through the Job Creation Law is the job creation. This means that the content in the Omnibus Law includes related legal sectors, while the sub-themes in the Omnibus Law on Job Creation in the anatomy of the legislation formed by this method are known as clusters. In the omnibus law legislation modeling, clusters are a collection of small, specific themes (*Lex Specialis*) related to the topic or purpose of the legislation.

The content of the existence of sub-themes (clusters) is a consolidation of various conflicting norms in the thematic field. Each Clusters is a regulatory content that functions in resolving overlapping (inconsistencies) and conflicting norms. The Omnibus Law model has synchronization and harmonization functions in each cluster so that the cluster can stand on its own. So that the big theme that is the goal of the legislation which contains all the subthemes (clusters) is said to be an umbrella law, for example Law Number 11 of 2020 concerning Job Creation which consists of 11 subthemes (clusters) which consist of cluster 1: Simplification Business Licensing, Cluster 2: Investment Requirements, Cluster 3: Employment, Cluster 4: Ease, Empowerment, and Protection of Micro, Small and Medium Enterprises (MSMEs), Cluster 5: Ease of Doing Business, Cluster 6: Research and Innovation Support, Cluster 7: Government Administration, Cluster 8: Imposition of Sanctions, Cluster 9: Land Acquisition, Cluster 10: Investments and Government Projects, and Cluster 11: Economic Zones.

In this discussion, the author will focus on discussing cluster 4 regarding the convenience, empowerment, and protection of Micro, Small, and Medium Enterprises (MSMEs) which in this cluster have become public attention because the changes have created a new concept for Limited Liability Companies (Ltd). The Limited Liability Company which has been contained in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), which several articles have been amended by the existence of the Job Creation Law which aims to provide a legal basis for the formation of individual legal entities dedicated to Micro and Small Enterprises (SMEs).

The Omnibus Law on Job Creation has amended article 1, article 7 paragraph 4, article 7 paragraph (7), article 32, and article 153 with the insertion of 10 new articles, article 153A-153J, this change introduces a new concept, namely an individual legal entity in the form of a Limited Liability Company. Based on these provisions, a Limited Liability Company for Micro and Small Business can be a legal entity that is only established by one person or an

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<sup>29</sup> Ariyanto and Jonci Muhammad, "The Concept Of Omnibus Law Related To Normal Law Applicable In Indonesia," *The 6th Proceeding International Conference And Call Paper Sultan Agung Islamic University* 1(1) (2020): 1-17.

<sup>30</sup> Mark Schwartz, *Economic Study on Regulation Impact* (Boston USA: Little Brown and Company Publisher, 2000).



individual company. The definition of an individual company based on Article 1 number 1 of the Company Law which has changed its meaning based on Article 109 number 1 of the Job Creation Law, follows as: "Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares or individual legal entities that meet the criteria for Micro and Small Enterprises as stipulated in the laws and regulations regarding Micro and Small Enterprises."

According to the article above, there has been an expansion of the definition of a Limited Liability Company (Ltd). Article 1 point 1 in the version of the Job Creation Law cites the same meaning as the Company Law, but by adding the provisions of ... or individual legal entities that meet the criteria for micro and small businesses as regulated in the laws and regulations regarding micro and small enterprises. The consequence of this sentence is the emergence of a new business entity which is categorized as a company, namely an individual company. Additionally, Article 109 point 5 of the Job Creation Law also changes the provisions of Article 153A paragraph (1) of the Company Law that stipulates that micro and small businesses can be established by one person through a statement of establishment, and will be further regulated by the government. This is reaffirmed in Article 2 paragraph (1) Regulation of the Minister of Law and Human Rights Number 21 of 2021 concerning Terms and Procedures for Registration of Establishment, Amendment, and Dissolution of Limited Liability Company Legal Entities (Permenkumham 21/2021) which explains the division of Ltd into a Company Capital Fellowships and Individual Company.

The current one-tier provision in Ltd will have an impact on the emergence of problems in the future, especially because it does not have a form of organ structure resulting in accountability applies to the doctrine of piercing the corporate veil because there is only one shareholder. The General Meeting of Shareholders (GMS) is only based on the wishes of the sole shareholder. Article 153C of the Job Creation Act also explains that "Changes in the statement of establishment of the Company for Micro and Small Businesses as referred to in Article 153A are determined by the GMS and notified electronically to the Minister." This shows that there is a change in the Individual Company established by the GMS and notified to the Ministry of Law and Human Rights. The use of the word "General Meeting of Shareholders (GMS)" in Article 153C is considered inappropriate in individual MSEs because there are no other shareholders other than the founders.<sup>31</sup>

The existence of provisions for registering a statement of establishment, amendment and dissolution of the Micro and Small Enterprises (SMEs) Limited Liability Company GMS only through the electronic preparation of a statement in Indonesian, does not guarantee the legality of the document and the identity of the founder. The legitimacy of the Ltd will be questioned and risky because it can have implications for illegal actions if the documents and identity of the founders are not true and appropriate. The legality of a company or business entity is the most important aspect, as the self-identity of the company or business entity. The role of a notary is very necessary to ensure that documents sent electronically to the government, if indeed sent by a legitimate party, are protected from abuse of power. Individual Ltd or Micro and Small Enterprises Ltd established without using physical documents only in the form of scan results, and the party signing the statement could not

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<sup>31</sup> Shinta Pangesti, "Penguatan Regulasi Perseroan Terbatas Perorangan Usaha Mikro Dan Kecil Dalam Mendukung Pemulihan Ekonomi Masa Pandemi Covid-19," *Jurnal Rechtsvinding* 10(1) (2021): 120-35.

confirm whether the document had been signed directly by the parties.<sup>32</sup> Notaries have an important role in the establishment of Ltd based on the authority granted by Law 30 of 2004 concerning Notary Positions as amended by Law 2 of 2014 concerning Amendments to Law 30 of 2004 concerning Notary Positions, namely making a deed of establishment and providing legal counseling in connection with the making of the deed. Even with the enactment of the Job Creation Law and its implementing regulations that are oriented towards providing convenience, protection, and empowerment arrangements for cooperatives and micro, small and medium enterprises.

Furthermore, in article 6 of Government Regulation Number 8 of 2021 concerning the Authorized Capital of Companies and the Registration, Establishment, Amendment and Dissolution of Companies that meet the criteria for micro and small businesses (PP 8/2021) regarding the authorized capital of individual companies, the minimum required capital is not regulated deposited into the company has the potential to create vulnerability to the inability to provide guarantees for payment capabilities to third parties because there is no capital guarantee that can be used as a means of paying off creditors' receivables. As well as the existence of rule 153E of the Job Creation Law which explains "related to the shareholders of Micro and Small Enterprises (SMEs) Ltd only individuals but the establishment is only for once a year". Setting the minimum limit for the establishment of SMEs company founders which may only be once a year, not the minimum establishment limit per person. This can have another negative effect, namely the risk of branching creditors, and provide the possibility for those with limited knowledge to continue to build new companies on a profit-seeking basis every year and rely on the limited liability nature of the Limited Liability Company.

There is an inconsistency of the Employment Creation Law against the Company Law, which contained in Article 109 paragraph (5) of the Job Creation Law jo. Article 153A to Article 153J. Changes in the definition of a limited liability company in Article 109 paragraph (1) jo. Article 1 number (1) of the Company Law regarding the definition of a limited liability company in the Job Creation Law divides a limited liability company into 2 (two) types, namely an ordinary limited liability company and a Micro and Small Enterprises (SMEs) Limited Liability Company. The provisions regarding Micro and Small Enterprises (SMEs) Limited Liability Companies as stated in the Job Creation Law are part of the Company Law, however, the Micro and Small Enterprises (SMEs) Limited Liability Company provisions contradict and are not in line with the limited liability company principles contained in the Limited Liability Company Law. According to Esmi Warasih, the term inconsistency in laws and regulations refers to the existence of conflicting norms that guide people's behavior in-laws and regulations. The inconsistency of laws and regulations refers to normative conflicts, also refers unclear rules (bias), and in the end, the laws and regulations cannot effectively guide people's behavior, harming their implementation so that they cannot achieve legal certainty.<sup>33</sup>

According to the concept of the Omnibus Law as described above, its applicability, where many sectors are grouped into clusters indeed a concern for the lack of consideration and maturity in the regulations. Supported with the opinion of Bayu Dwi Anggono that the Omnibus Law on Job Creation tends to be pragmatic and less democratic to limit public space in providing aspirations and input from the community, this causes inaccuracy and

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<sup>32</sup> Diyan Isnaeni, "Peran Notaris Dalam Pendirian PT Usaha Mikro Dan Kecil," *Jurnal Hukum Dan Kenotariatan* 5(2) (2021): 212–24, <https://doi.org/http://dx.doi.org/10.33474/hukeno.v5i2.11003>.

<sup>33</sup> Warasih, *Pranata Hukum: Sebuah Telaah Sosiologis*.

lack of caution in the formulation of each article norm because the affected rules will be sufficiently a lot revised and lack of basic attention in the preparation of norms through the constitution and the decisions of the Constitutional Court.<sup>34</sup>

#### 4. CONCLUSION

Based on the results of the analysis and descriptions related to the Omnibus Law concept in the Job Creation Law and the legal consequences for Limited Liability Companies, concluded several things as follows: first, The Omnibus Law concept is a consolidation of all norms related to major topics/themes which represent the goals to be achieved and includes all subthemes (clusters). The number of sectors containing laws that are grouped into clusters into one law is very vulnerable to causing inconsistencies, namely unclear rules (bias), and in the end, the laws and regulations cannot effectively guide people's behavior, have a negative impact on its implementation so that it cannot achieve legal certainty. Second, related to the legal consequences for Limited Liability Companies, the emergence of inconsistencies in the Employment Creation Law against the Company Law, there is a new concept regarding Micro and Small Enterprises (SMEs) Limited Liability Companies or individual limited companies that are vulnerable to piercing the corporate veil because there is only one shareholder. The absence of the role of a notary and an authentic deed for the establishment, amendment, and dissolution of the GMS of a Micro and Small Enterprises (SMEs) Limited Liability Company only through the making of a statement in Indonesian electronically will lead to a lack of legality of the Ltd The absence of a minimum capital requirement could lead to vulnerabilities in providing third party payment guarantees; moreover, setting limits for the establishment of the founders of the Micro and Small Enterprises (SMEs) company may only be once a year, creating the risk of branching creditors; and providing an opportunity to creating Limited Liability Companies to seek profits every year, based on a limited liability concept. Researcher suggest that with the decision of the Constitutional Court No. 91/PUU-XVIII of 2020, the Government must be very aware of the legislation through the Omnibus Law concept, namely the Job Creation Law which still has several vulnerable areas in the emergence of legal problems, one of which is in the regulation of Micro and Small Enterprises (SMEs) Limited Liability Company. There is a need for an in-depth study of the development of the Omnibus Law concept in other countries and the alignment of how the regulations are formed in Indonesia. Accuracy and prudence are also needed to carry out an Amendment, Revocation, or Enforcement of several provisions in each law, therefore their formulation must have democratic transparency.

#### REFERENCES

##### *Journal Article*

- Akmal, Diya Ul. "Dinamika Konsep Omnibus Law: Menegaskan Tujuan Hukum Dalam Konstruksi Legislasi Nasional." *Jurnal Hukum Mimbar Justitia* 7(1) (2021): 30-39.
- Anggono, Bayu Dwi. "Omnibus Law Sebagai Teknik Pembentukan Undang-Undang: Peluang Adopsi Dan Tantangannya Dalam Sistem Perundang-Undangan Indonesia." *Jurnal Recht Vinding: Media Pembinaan Hukum Nasional* 9(1) (2020): 1-11.

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<sup>34</sup> Bayu Dwi Anggono, "Omnibus Law Sebagai Teknik Pembentukan Undang-Undang: Peluang Adopsi Dan Tantangannya Dalam Sistem Perundang-Undangan Indonesia," *Jurnal Recht Vinding: Media Pembinaan Hukum Nasional* 9(1) (2020): 1-11.

- Ariyanto, and Jonci Muhammad. "The Concept Of Omnibus Law Related To Normal Law Applicable In Indonesia,." *The 6th Proceeding International Conference And Call Paper Sultan Agung Islamic University* 1(1) (2020): 1-17.
- Azhar, Muhamad. "Omnibus Law Sebagai Solusi Hiper-Regulasi Menuju Sonkronisasi Peraturan Per-Undang-Undangan Di Indonesia." *Administrative Law & Governance Journal* 2(1) (2019): 174-80. <https://doi.org/https://doi.org/10.14710/alj.v2i1.170-178>.
- Hayati, Nyoman Nidia Sari, Sri Warjiyati, and Muwahid. "Analisis Yuridis Konsep Omnibus Law Dalam Harmonisasi Peraturan Perundang-Undangan Di Indonesia." *Jurnal Hukum Samudera Keadilan* 16(1) (2021): 1-13. <https://doi.org/https://doi.org/10.33059/jhsk.v16i1.2631>.
- Isnaeni, Diyan. "Peran Notaris Dalam Pendirian PT Usaha Mikro Dan Kecil." *Jurnal Hukum Dan Kenotariatan* 5(2) (2021): 212-24. <https://doi.org/http://dx.doi.org/10.33474/hukeno.v5i2.11003>.
- Kristiyanto, Eka Noer. "Urgensi Omnibus Law Dalam Percepatan Reformasi Regulasi Dalam Perspektif Hukum Progresif." *Jurnal Penelitian Hukum De Jure* 20(2) (2020): 230-42.
- Neununy, Dolfries J. "Urgensi Omnibus Law (Undang-Undang Cipta Kerja) Terhadap Hak Masyarakat Adat Di Wilayah Pesisir,." *Balobe Law Journal* 1(2) (2021): 110-23. <https://doi.org/https://doi.org/10.47268/balobe.v1i2.653>.
- Pangesti, Shinta. "Penguatan Regulasi Perseroan Terbatas Perorangan Usaha Mikro Dan Kecil Dalam Mendukung Pemulihan Ekonomi Masa Pandemi Covid-19." *Jurnal Rechtsvinding* 10(1) (2021): 120-35.
- Putri, Ririn Noviyanti. "Indonesia Dalam Menghadapi Pandemi Covid-19." *Jurnal Ilmiah Universitas Batanghari Jambi* 20(2) (2020): 700-710. <https://doi.org/http://dx.doi.org/10.33087/jiubj.v20i2.1010>.
- Putri, Sylvia, and David Tan. "Analisis Yuridis Perseroan Perorangan Ditinjau Dari Undang-Undang Cipta Kerja Dan Undang-Undang Perseroan Terbatas." *Unes Law Review* 4(3) (2022): 320-29.
- Suntoro, Agus. "Implementasi Pencapaian Secara Progresif Dalam Omnibus Law Cipta Kerja (The Implementation of Progressive Realization at Omnibus Law)." *Jurnal HAM* 12(1) (2021): 1-10. <https://doi.org/http://dx.doi.org/10.30641/ham.2021.12.1-18>.

### Book

- Apeldorn, Van. *Pengantar Ilmu Hukum*. Jakarta: Pradnya Pamita, 1976.
- Arief, Barda Nawawi. *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*. Jakarta: kencana, 2007.
- Blanc, Jardine Le. *Various Models Legislation, 1st Edition*. USA: Blackwell Publisher, 2012.
- Christiawan, Rio. *Omnibus Law Teori Dan Penerapannya*. Jakarta: Sinar Grafika, 2021.
- Hartono, Sunaryati .C.F.G. *Penelitian Hukum Di Indonesia Pada Akhir Abad Ke-2,.* Bandung: Alumni, 1994.
- Irwansyah, and Ahsan Yunus. *Penelitian Hukum: Pilihan Metode Dan Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana, 2020.

- Kaiser, Robert. *Constitutional Law 1st Edition*. Kindley Publishing, 2013.
- Marzuki, Peter Mahmud. *Penelitian Hukum: Cetakan Ke-2*. Jakarta: Kencana, 2006.
- Pasqino, Scarle. *Handbook on Constitutional Law*. USA: West Publishing, St Paul Minnesota, 2000.
- Pietro, Calage. *Constitution and Derivative Legislatio*. Canada: Publisher Hamilton, Ontario, 2000.
- Ross, Jim. *Legal Policy*. London: Longman Publishing, 2011.
- Satjipto, Rahardjo. *Ilmu Hukum*. Bandung: Citra Aditya Bakti, 1991.
- Scwartz, Mark. *Economic Study on Regulation Impact*. Boston USA: Little Brown and Company Publisher, 2000.
- Warasih, Esmi. *Pranata Hukum: Sebuah Telaah Sosiologis*. Semarang: Badan Penerbit Universitas Diponegoro, 2002.

### ***Web Page and Order***

- Indonesia, Mahkamah Konstitusi Republik. "MK: Inkonstitusional Bersyarat, UU Cipta Kerja Harus Diperbaiki Dalam Jangka Waktu Dua Tahun." [mkri.id](https://www.mkri.id/), 2021. <https://www.mkri.id/index.php?page=web.Berita&id=17816>.
- Oktaryal, Agil. "Bahaya Omnibus Law Terhadap Demokrasi." [Tempo.co](https://kolom.tempo.co/read/1282810/bahaya-omnibus-law-terhadap-demokrasi), 2019. <https://kolom.tempo.co/read/1282810/bahaya-omnibus-law-terhadap-demokrasi>.
- Webster, Merriam. "Dictionary of Merriam Webster." [merriam-webster.com](https://www.merriam-webster.com), 2022. <https://www.merriam-webster.com>.