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Disharmonization and Blurring of Laws and Regulations Related to Termination of Employment for Persons with Disabilities Omnibus Law Era

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Abstract

Legal regulations related to the termination of employment for persons with disabilities, since the enactment of the copyright law there has been disharmony and blurring of norms contained in the provisions of the employment cluster. From the existence of disharmony and obscurity, it is very detrimental to people with disabilities. This research needs to be done that aims to provide input based on academic studies to overcome the disharmony and blurring of norms that occur in copyright law. Using normative juridical research methods based on a statutory approach and a conceptual approach. From this research has been found and analyzed, that it is true that there has been disharmony and blurring of norms in chapter iv of the second section of employment of the copyright law that has been contrary to disability law and contrary to the basic law. The blurring of the norm found different phrases between the two articles in the same law, namely the copyright law on the labor section, which gives rise to the interpretation of different meanings.

Keywords
disharmonization; the blurring of norma; persons with disabilities

I. Introduction

Omnibus Law first appeared in Indonesia when President Jokowi delivered his speech at the inauguration of the President and Vice President on October 20, 2019, last year in Senayan, Central Jakarta. Not only making a speech, but President Jokowi has signed a presidential letter (surprise) related to the draft Omnibus Law to be discussed immediately at the plenary meeting of the House of Representatives (TimesIndonesia.com, n.d.).

Considering the year 2017, President Jokowi had complained about the many laws and regulations owned by the Indonesian state. A range of 42 thousand rules include Laws, Government Regulations, Presidential Regulations, Ministerial Regulations to Governors, Mayors, and Regents Regulations in the region. Of the 42 thousand, there's an overlapping can be said some regulations conflict with each other, the many of those regulations also make the government's rapid attitude slow in following global changes.(CNNIndonesia.com, n.d.)

Indonesia is indeed a country with many regulations whose numbers in 2017 have reached 42,000 (forty-two thousand) rules if these many regulations become a problem. So simplification of regulations through omnibus law is the right step because omnibus law is a law that focuses on simplifying the rule number because of its nature that revises and repeals many laws at once (Antoni Putra, 2020).

The concept of Omnibus Law is also known as Omnibus Bill, which is frequently used in countries that practice commons law systems such as the United States in the regulation-

making (Aminuddin Ilmar, 2020). The regulation in this concept is understood to be a process for making a new Law for annulment or repeal and even amending several laws at once. Through the Omnibus Law, an arrangement in the form of a Law is made to target one big issue that may be able to repeal or change a few laws at once to make them simpler.Ibid.

The lex wrapped using the concept of Omnibus Law in Indonesia is Law No. 11 of 2020 of labor inventive decree dated October 5, 2020, and signed by President Joko Widodo on November 2, 2020. The Lex, drafted by the Omnibus Law method before its 15 (fifteen) chapters and 185 (one hundred and eighty-five) chapters, but was changed to 15 (fifteen) chapters containing 175 (one hundred and seventy-four) chapters. Among the 3 (three) passed laws, the Law on Work Copyright labor chapter is the most criticized.

The article on employment drew a lot of criticism, one of them is because the Copyright Law on Employment is considered unfriendly to people with disabilities. A person who has memory, sensory, physical, or intellectual limitations since birth or by accident while working can be said to be a person with a disability, the mention of disability itself has been recognized by the international community. Understanding persons with disabilities based on Article 1 paragraph (1) of Law No. 8 of 2016 on Disability, is:

> *"Any person who experiences long-term physical, intellectual, mental and sensory limitations who interact with the environment may experience barriers and difficulties in participating fully and effectively with other citizens based on equal rights."*

The existence of people with disabilities who are still sidelined and considered one eye by some Indonesian's become one of the biggest obstacles for them to get a job. With their limitations, those with a disability must also face the injustice of 2020's no. 11 year's work invention, as it appears in Chapter IV The Second Section of Employment in Article 81, number 42 of No. 11 of 2020's statute of labor in which article 154 and 155 of Law No. 13 of 2003 contained a Claus. That is Article 154 A paragraph (1) letter m which states that the termination of employment can occur for reasons:

> *"The worker or laborer is prolonged illness or disability due to a work accident and cannot do his or her job after crossing the 12 (twelve) month."*

As the provisions of the article above, this according researchers has experienced a blur of norms. Where in Law No. 11 of 2020 on Copyright work in chapters and the same Section has been amended the sound of provisions in Article 153 paragraph (1) letter j and paragraph (2) of Law No. 13 of 2003 on Employment which essentially states that:

> *(1) "Employers are prohibited, making terminations to workers/workers on the grounds: in a permanent disability, sick from a work accident, or sick due to an employment relationship that according to the doctor's certificate whose healing period is uncertain."*
>
> *(2) "Termination of employment undertaken on the grounds referred to in paragraph (1) is null and void, and employers shall rehire the worker/worker concerned."*

As the above provisions contain the phrase "his healing timeframe is undetermined." this is different from what is stated in Article 154 A paragraph (1) letter m, which uses the phrase "cannot do its work after crossing the limit of 12 (twelve) months". So this reinforcement the researchers' argument that work works in the clusters of copyright works There has been a fuzziness of norms. Where one article says "time is uncertain," In another article in the same law says "a time limit of 12 (twelve) months."

In addition, the provisions of Article 172 on employment has been removed, which provides an opportunity for workers/workers can apply for termination of employment on which the terms read:

"Workers experiencing prolonged illness or disability due to work accidents and are unable to do their jobs after exceeding the 12 (twelve) month limit may apply for termination of employment."

The removal of the word "can propose" in the Copyright Law on Employment has implications for the transfer of authority to determine termination of employment or which will then be abbreviated as layoffs. The provision of layoffs that started in the hands of employees became in the hands of employers. Philosophically layoffs in the conception of industrial relations Pancasila is a very avoidable thing. The content of the Act provides injustice to workers/workers who become disabled due to accidents experienced while working finally then easily laid off.

Because the Work Copyright Law drew a lot of criticism from various circles in the community, the government issued a Draft Government Regulation on Law No. 11 of 2020 on Work Copyright. The Government Regulation has now been passed into PP Number 35 of 2021 on Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment. The Employment Copyright Act of the employment chapter includes the Law that has been issued by the Implementing Regulation, the contents in the PP contained a statement that workers/workers who can be terminated:

"Employers can terminate workers for reasons that workers/workers experience prolonged illness or disability due to work accidents and cannot do their jobs after crossing the 12 (twelve) month limit."

Then continue with the sentence:

"Workers can apply for termination of employment to employers because workers/workers experience prolonged illness or disability due to work accidents and are unable to do their work after crossing the 12 (twelve) month limit."

By adding, the phrase "can propose" in the Implementing Regulation does not bring any impact of change to workers/workers with disabilities due to work accidents. The addition of the word "can be proposed" is just so that the community becomes calm. The PP still makes workers/workers uncertain fate.

In addition, the insertion of Article 154A paragraph (1) letter m on Employment is also not harmonious with Law No.8 of 2016 concerning people with Disabilities. The article regulates people with disabilities have the right to work: not dismissed for reasons of disability (Article 11 letter d); the right to get the program back to work (Article 11 letter e); Fair, commensurate, and dignified work placement (Article 11 letter f); as well as the right to get opportunities in improving career levels and all normative rights attached to it (Article 11 letter g).

Not only the Law on people with disabilities, but the Work Copyright Law on Employment is also contrary to the Constitution of the Republic of Indonesia of 1945 on Human Rights. as stated in Article 28D paragraph (2): "Everyone has the right to work and be rewarded and treated fairly and properly in working relations" and contrary to Article 28I paragraph (2) "Everyone is free from discriminatory treatment" on any basis and entitled to protection against discriminatory treatment."

Thus, based on the above presentation, researchers to conduct an in-depth study of the disharmony and blurring of norms that occur in the Laws and Regulations regarding termination of employment for persons with disabilities in the omnibus law era. The purpose of this study was to provide input based on academic studies to overcome the disharmony and blurring of norms regarding job cuts to people with disabilities in the omnibus law era.

II. Research Methods

This research is normative juridical by applying the method of the statutory approach because it is studied, are various rules of law that are the focus and central theme of a study by looking at the law as a closed system that has comprehensive, all-inclusive, and systematic properties.(Jonaedi Efendi dan Johnny Ibrahim, 2018) As also stated by Peter Mahmud Marzuki that "The legal approach is carried out, by reviewing all laws and regulations related to the legal issues that are being addressed "(Peter Mahmud Marzuki, 2017).

In addition, the author also uses the conceptual approach method. The conceptual approach is a type of approach in legal research that provides a point of view of problem-solving analysis in legal research seen from aspects of legal concepts behind it based on the viewpoint and doctrines of the law that develop (Ani Purwati, 2020).

III. Discussion

3.1 Disharmonization of Laws and Regulations Related to Termination of Employment against Persons with Disabilities Omnibus Law Era

Disharmony can be said to mean disharmony, opposite, or conflict. So that the disharmony of laws and regulations is a misalignment between one regulation with another regulation. Disharmonic are often referred to as a conflict between legal norms, as Hans Kelsen, in his book "Allgemeine der Normen" defines a conflict of norms that in the original German text was as follows:

> *"Ein Konflikt zwischen zwei Normen liegt vor, wenn das, was die eine als gesollt setzt, mit dem, was die andere als gesollt setzt, unvereinbar ist, und daher die Befolgung oder Anwendung der einen Norm notwendiger oder moeglicherweise die Verletzung der anderen involviert."*(Irfani, 2020)

(Translation: Conflict between two norms occurs when what is ordered in the provisions of a norm with what is ordered in the provisions of the other is incompatible, so complying with or implementing one of those norms will inevitably or may cause violation of the other.)

The above definition explains that norm conflict occurs when in one regulatory object two norms contradict each other, so against the object of the arrangement can only be applied one norm only and resulting in other must be ruled out.

In this regard, there is also the term overlapping arrangements, which are conditions under which an arrangement is governed in two different rules. These overlapping conditions are essentially not a problem in their application if the settings do not conflict with each other. Nevertheless, overlapping arrangements wherever possible should be avoided. While such an arrangement is redundant because it does not change the appeal of the previous arrangement, an incorrect resetting of the matter can result in a difference in interpretation in its application.

As the presentation in the Early Work Copyright Law in the Employment cluster precisely, Article 81 number 42 of Law No. 11 of 2020 on Work Copyright which between Article 154 and Article 155 of Law No. 13 of 2003 on Employment inserted one Article, namely Article 154A paragraph (1) letter m which states that the termination of employment can occur for reasons:

> *"The worker or laborer is prolonged illness or disability due to a work accident and cannot do his or her job after crossing the 12 (twelve) month."*

Article 172 provisions on employment have been removed, which provides an opportunity for workers/workers can apply for termination of layoff, which in the provisions read:

"Workers experiencing prolonged illness or disability due to work accidents and are unable to do their jobs after exceeding the 12 (twelve) month limit may apply for termination of employment."

The removal of the word "can propose" in the Copyright Law on Employment has implications for the transfer of authority to determine termination of employment or which will then be abbreviated as layoffs. The provision of layoffs that started in the hands of employees became in the hands of employers. Philosophically layoffs in the conception of industrial relations Pancasila is a very avoidable thing. The content of the Act provides injustice to workers/workers who become disabled due to accidents experienced while working finally then easily laid off.

The insertion of Article 154A paragraph (1) letter m on Employment in Article 81 number 42 of the Copyright Law indicates disharmony with the Law on Persons with Disabilities. In its provisions, the articles of the Law on Persons with Disabilities regulate people with disabilities have the right to work: not dismissed for reasons of disability (Article 11 letter d); the right to get the program back to work (Article 11 letter e); Fair, commensurate, and dignified work placement (Article 11 letter f); as well as the right to get opportunities in improving career levels and all normative rights attached to it (Article 11 letter g).

Article 81 number 42 of the Copyright Law that amends the Employment Law with the addition of Article 154A paragraph (1) letter m is very disharmonious to the Law on Persons with Disabilities Article 11 letter d which essentially mentions *"persons of disability are not dismissed because of disability."* This is also actually Article 154A paragraph (1) letter m contrary to the provisions of Article 11 letter e, which states that *"persons with disabilities have the right to get the program back to work."* The provisions of the explanation regarding Article 11 letter e affirm that *"What is meant by "return to work program" is a series of procedures for handling cases of work accidents and occupational diseases through health services, rehabilitation, and training so that workers can return to work."*

From the provisions of the explanation of Article 11 letter e of the Law on Persons with Disabilities above, it can be said that the provision strongly reflects the value of fair justice for people with disabilities, where when there is a work accident or occupational illness that causes the person with disabilities to be given a 'back-to-work program' through health services, rehabilitation, and training so that workers can return to work.

Be conveyed by researchers, that the Law on Persons with Disabilities is a basic rule that can be referred to as a special rule to provide legal protection to people with disabilities. From its special nature, the Law on Persons with Disabilities is fundamentally the law of the law that contains the principle of lex specialis or special law. The specificity as mentioned by researchers is to provide legal protection and justice for people with disabilities.

In addition, the provisions of Article 81 number 42 of the Copyright Law that amends the Labor Law with the addition of Article 154A paragraph (1) letter m are also contrary or not harmonious with Article 28D paragraph (2) of the 1945 NRI Constitution, which reads: *"Everyone has the right to work and get fair and decent compensation and treatment in working relations"* and contrary to Article 28I paragraph (2) of the 1945 NRI Constitution, *"Everyone is free from discriminatory treatment on any basis and entitled to protection against that discriminatory treatment."*

Disharmony between the Copyright Law and the Constitution is a violation of the principles of the laws and regulations, which should be based on, dependent, and by the

mandate of the Constitution as the highest laws and regulations in the legal system of Indonesian statehood. Referring to and adhering to Hans Kelsen's theory known as Stufenbautheorie, Hans Kelsen argues that legal norms are tiered and multi-layered in a hierarchy of order, where a lower norm applies, is sourced, and based on a higher norm, so on the norm that cannot be traced further and is hypothetical and fictitious, It is the basic norm *(grundnorm)*.Sirajuddin, Zulkarnain dan Fatkhurohman, Legislative Drafting: Pelembagaan Metode Partisipatif Dalam Pembentukan Peraturan Perundang-Undangan (Malang: Setara Press, 2016).

From the opinion of Kelsen above can be interpreted that a legal norm that is positionally lower must refer, harmoniously, and based on legal norms whose position is above it or higher. So that lower legal norms should not contradict or deviate from higher legal norms. This also applies in the system of laws and regulations in Indonesia where all forms of laws and regulations must be sourced raced, based on the 1945 NRI Constitution, which is the highest legislation.

This is made clear in her view Maria Farida quoted by Tanto Lailam, that the 1945 Constitution consists of two groups of norms the opening and the torso (articles). The opening of the 1945 Constitution is interpreted as a fundamental norm *staatsfundamentalnorm* of the state, while the torso (articles) is interpreted as *staatsgrundgezts* or basic rules of the state (Tanto Lailam, 2014). About legal standing, it means talking about hierarchy or the level of legal norms. In Indonesia itself regarding the hierarchy of laws and regulations regulated in Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, precisely stipulated in Article 7 paragraph (1).

As the presentation and delivery of analysis based on legal materials, facts, and theories above, researchers can say that the Copyright Law, which is positionally under the Constitution should not be contradictory and must be in harmony and reflect the mandate of the Constitution. On the issue of disharmony of the Copyright Law according to, frugal researchers have deviated and violated the provisions about human rights that need to be protected as stipulated in the Constitution. Against the law according to Bemmelen is an act that is contrary to the proper accuracy in the association of people regarding other people or goods, and contrary to the obligations (Purba, 2019). Within the scope of the law, if someone commits a crime, then that person must comply with the positive legal procedures (Tumanggor, 2019).

The resolution of the disharmony of the laws and regulations as stated above can be resolved using existing legal principles and relevant to the problems that occur. To resolve conflicts or disputed norms, the principle of legal preference is used, which consists of 3 principles: *the principle lex superior, the principle lex specialist*, and *the posterior principle.*

First, the principle of *Lex Superiori Derogate Legi Inferiori*, which means a higher rule overrides the lower rule. Second, the *lex posteriori derogate legi priori* principle means the newer rules override the longer rules, which can then be further interpreted that if the rules are opposite equals, then the rules used are newer than the old rules it can be seen from what year the rules are in law. Then the last, principle *lex specialis derogate legi generalis* has the meaning that more specialized rules defeat general rules, this condition is used when rules of the same degree or hierarchy conflict with the norm, then the one used is a more specific rule than the general one (Virginia Usfunan, 2020).

From the three principles above, the problem of disharmony can be solved, by adhering to and adhering to the relevant principles to apply. The researcher can describe the following:

First, the disharmony between the Copyright Law and the Law on Persons with Disabilities can be applied to the principle of lex specialis derogate legi generalis, where the Law on Persons with Disabilities is a Special Law that discusses and protects people with disabilities. While the Copyright Law is a General Law because the Work Copyright Law

discusses many things and makes the Law a general law. So that on the issue, of disharmony according to researchers the provisions of Article 81 number 42 of the Work Copyright Law that changes the Employment Law with the addition of Article 154A paragraph (1) letter m needs to be ruled out because it is contrary to the provisions of Article 11 letter d up to letter g of the Law on Persons with Disabilities.

Second, the disharmony between the Copyright Law and the 1945 NRI Constitution can be applied to the Lex Superiori Derogate Legi Inferiori principle. Where the position of the norm of the 1945 NRI Constitution is higher than the Work Copyright Law, so the provisions of Article 81 number 42 of the Work Copyright Law that change the Employment Law with the addition of Article 154A paragraph (1) letter m need to be ruled out because the provisions are not sourced, referring, and based on the mandate of the Constitution. In the end, the Copyright Law has deviated and even violated the provisions regarding human rights as affirmed in the 1945 NRI Constitution.

3.2 Melting of Norms In The Employment Cluster Copyright Law Related to Termination of Employment Against Persons with Disabilities

The blurring of the researcher's norms interprets it as obscurity over a rule that gives rise to differences in interpretation of meaning. As both Abbas and Nugroho say that the blurring of norms is a state where norms already exist but do not have a clear meaning of the norm gives rise to more than one meaning that makes the norm vague or unclear.(Akbar Rakhmat Irhamulloh Abas dan & Nugroho, 2017) Indradewi, meanwhile, said that vague norms will result in the emergence of legal uncertainty over the arrangement of an article (Anak Agung Sagung Ngurah Indradewi, 2020).

As stated at the beginning, that in the Employment Cluster Work Copyright Law there has been a blur of norms contained in Chapter IV of The Second Part of Employment in Article 81 number 42 of Law No.11 of 2020 on Copyright work which between Article 154 and Article 155 of Law No. 13 of 2003 on Employment is inserted one Article, namely Article 154A paragraph (1) letter m which states that the termination of employment can occur for reasons:

> *"The worker or laborer is prolonged illness or disability due to a work accident and cannot do his or her job after crossing the 12 (twelve) month."*

Which is then on the other, hand in Law No. 11 of 2020 on Work Copyright in chapter and the same Section has been amended the sound of the provisions in Article 153 paragraph (1) letter j and paragraph (2) of Law No. 13 of 2003 on Employment which essentially states that:

> *(1)"Employers are prohibited, making terminations to workers/workers on the grounds: in a permanent disability, sick from a work accident, or sick due to an employment relationship that according to the doctor's certificate whose healing period is uncertain."*
>
> *(2) "Termination of employment undertaken on the grounds referred to in paragraph (1) is null and void, and employers shall rehire the worker/worker concerned."*

As the above provisions contain the phrase "his healing timeframe is undetermined." this is different from what is stated in Article 154 A paragraph (1) letter m, which uses the phrase "cannot do its work after crossing the limit of 12 (twelve) months". So this reinforcement the researchers' argument that works works in the clusters of copyright works There has been a fuzziness of norms. Where one article says "time is uncertain," In another article in the same law says "a time limit of 12 (twelve) months." This is about the arrangement of a worker/worker who can be terminated.

The researcher presents an analysis of the two articles above, that Article 153 paragraph (1) letter j means that a business person or employer should not terminate employment against his /her workers, because they are in a permanent disability, sick from a work accident, or sick due to work relationships that according to the doctor's certificate whose healing period has not been ascertained. This has provided a provision of legal protection for workers/workers who have disabilities. However, in the next Article 154 paragraph (1) letter m reads otherwise contrary to the provisions of Article 153 paragraph (1) letter j.

After the researchers closely observed, there has been no explanation regarding the two articles, so indifferent articles of the same law with the sole purpose of prohibiting termination of employment by being given a clause with the phrase time whose healing can not be ascertained. While another article allows employers to terminate employment against workers/workers who have experienced prolonged pain or disability due to work accidents and cannot do their work after crossing the 12 (twelve) month limit.

From the presentation of the blurring of norms in the Copyright Law on the Employment cluster. It does not reflect the establishment of good legislation making, as it is expressly stated in Article 5 letter f of law P3 which is "clarity of formulation" and has also deviated from the principles of the establishment of laws and regulations as stated in Article 6 paragraph (1) letter I of Law P3, which does not reflect the principle of order and legal certainty.

Lawrence M. Wriedman, a professor at Stanford University, said that to realize "legal certainty" must at least be supported by the following elements, namely: Legal substance, law enforcement, and legal culture. Legal substance means the content of the regulation, where the content of the regulation must be formed properly and correctly; law enforcement means law enforcement/ law enforcement, where law enforcement must act according to the law; Legal culture means legal culture, legal culture must also be good. So that when the three elements are walked together, then a legal certainty will be realized properly.

A rule is made and promulgated definitively because it governs clearly and logically. Clearly in the sense of not causing doubt (multi-interpretation) and logical so that it becomes a system of norms with other norms that do not clash or cause a conflict of norms. The conflict of norms arising from the uncertainty of rules can take the form of norma concentration, norm reduction, or norm distortion (Prayogo, 2016).

According to researchers on the existence of a blur of norms in the Copyright Law on the Employment cluster, it is necessary to conduct an in-depth review, and it is also necessary to conduct an alignment of meanings to avoid differences in interpretation of the meaning of an article to provide legal certainty. This argument departs from Prayogo's submission that a regulation made and promulgated must provide a clear and logical arrangement, where it is clear that it does not cause doubt (multi-interpretation). Which in practice, law enforcement, and the public do not experience confusion in interpreting an example article article Article 154A paragraph (1) letter f which sounds different from Article 153 paragraph (1) letter j as described and in the previous analysis.

IV. Conclusion

Disharmony and blurring of a norm contained in the Work Copyright Law in the Employment cluster can be concluded this stems from the addition of articles in the amendment of the Labor Law contained in Article 81 number 42 of the Work Copyright Law, namely Article 154A paragraph (1) letter m of the Labor Law. Where the disharmony of the Article has been contrary to Article 11 letter d up to letter g of the Law on Persons with Disabilities and also contrary to Article 28D and Article 28I of the 1945 NRI Constitution.
Then about the blurring of norms, there is a difference in clauses in Article 154A paragraph (1) letter m of the Labor Law with Article 153 paragraph (1) letter j and paragraph (2) of the Labor Law. Where there is a different phrase, and there are no explanations regarding the two articles, so indifferent articles of the same law with the sole purpose of prohibiting termination of employment by being given a clause with the phrase time whose healing can not be ascertained. While another article allows employers to terminate employment against workers/workers who have experienced prolonged pain or disability due to work accidents and cannot do their work after crossing the 12 (twelve) month limit.

From the disharmony and melting of norms in the Employment Cluster Copyright Law, researchers suggest for its efforts to resolve the disharmony of the Work Copyright Law with the Law on Persons with Disabilities and Disharmony between the Work Copyright Law and the 1945 NRI Constitution can be applied the relevant principles, namely the lex specialis derogate legi generalis principle and the principle of Lex Superiori Derogate Legi Inferiori. While regarding the blurring of norms in the Copyright Law, it is necessary to conduct an in-depth review and it is also necessary to conduct an alignment of meanings to avoid differences in the interpretation of the meaning of an article to provide legal certainty.

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