

## Omnibus Law and Changes Regarding Specific Time Work Agreements (PKWT) in the Job Creation Act

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### Abstract

*Omnibus law is a law in which it discusses and contains more than one discussion theme or topic. The omnibus law became the attention of the Indonesian people after the enactment of Law no. 11 of 2020 concerning Job Creation. Even before the law was passed, it had been rejected by the community. This is because people think the law will harm the small people, one of which is PKWT employees and will actually benefit the elite. Then what is the actual status of the omnibus law in Indonesia, considering that the technique has not been regulated in Law no. 12 of 2011 concerning the Establishment of Legislation which was changed to Law no. 15 of 2019. And what is the status of PKWT after the omnibus law regarding the work copyright law. In this study, the author uses a normative juridical research method. The results obtained in this study can be concluded that the application of omnibus law in Indonesia may be applied, but it would be better if before the enactment of the omnibus law, the legal basis was first made, considering that our country is a state of law. The omnibus law is also not the only way out in solving regulatory problems in Indonesia. This is because Indonesia's problems are not only about overlapping regulations, but there are many things that are not sufficiently resolved through the omnibus law. Then regarding PKWT there are five important points that must be considered with the existence of the Job Creation Act, namely the employee's tenure, contract extension, probationary period, compensation money and the form of a written agreement.*

### Keywords

omnibus law; PKWT;  
employment copyright act



## I. Introduction

*Omnibus law* first came to the attention of the Indonesian people when President Joko Widodo gave a speech after he was sworn in as president of the Republic of Indonesia for the 2019-2024 period. The establishment of *omnibus law* aims to simplify complicated and lengthy regulations by making a statutory regulation that contains many of the problems contained in the previous law. Indonesia has long had problems related to quality and the number of regulations. In 2014-2018 it was recorded that 8,945 regulations were issued, consisting of 107 laws, 765 Presidential regulations, 452 government regulations and 7621 ministerial regulations. One of the factors that hinders the success of government programs, one of which is the overlapping of regulations or regulations. So that the government is thinking of using and utilizing the *omnibus law* to reduce the overlap.

However, with the establishment of *omnibus law*, there are pros and cons in the community. As we have seen, there have been many rejections by the community by holding demonstrations which are dominated by students. One of the reasons for the rejection is because the *omnibus law* that was promoted in the preparation of Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja), is considered to be in favor of the

entrepreneur class community and not taking sides and harming the lower class community. In addition, it is also due to the fact that the process in drafting the Job Creation Law is very fast and is considered closed. So in this case the House of Representatives or the DPR is considered to have violated the principle of openness in drafting laws.

One of the concerns is regarding the amendment to Law Number 13 of 2003 concerning Manpower, some of which have been amended in the Job Creation Law. Then what is the actual status of the workers, especially in this case the workers who use a certain time work agreement. So on this occasion, the author will formulate a problem, namely what is the position or status of omnibus law in Indonesia? and what is the status of PKWT after the omnibus law regarding the work copyright law? In this study, the author uses a normative juridical research method.

## **II. Research Method**

In order to find and analyze a problem to be studied, certain methods are used according to research needs. The research method used in writing this article is normative juridical. Based on this method, this research was conducted by reviewing and analyzing the laws and regulations that are relevant to the problem being discussed, in this case the Job Creation Act. The data in this study came from literature studies in the form of books, journal articles, magazines, regulations, and other reliable sources of literature. The data obtained were processed by methods of description, prescription and systematization. Then the data were analyzed descriptively qualitatively.

## **III. Results and Discussion**

### **3.1 Status of Omnibus Law in Indonesia**

Omnibus law is a law that contains many things, but not necessarily what is contained in the form of interrelated subjects, issues or programs, more simply can be interpreted as one a law that seeks to change several statutory provisions through a single bill. It can simply be concluded that when we are going to submit a bill to parliament that will include many other amendments to the law, the number is unspecified, it can be in the seventies, hundreds or maybe even thousands. In other words, omnibus law is a law-making technique that allows one law containing changes or even replacements of many laws to be submitted at once to parliament in one formation starting from planning once, drafting it once and discussing it once. Then the ratification will be carried out, then the promulgation so that in this case the process is considered to be more complicated or faster. Because if we have to change many laws through one law each, then the process will be too long and take quite a long time.

In the context of the legal system in Indonesia, it is different, because Indonesia has so far made one law that contains one issue or one theme of discussion. As an example of the forestry law, the law will focus on discussing forestry, an environmental protection law that focuses on discussing the environment. This is different from the omnibus law. Then from a technical point of view, Indonesia has never encountered and used this kind of technique. Indonesia usually when it wants to change the law, it will propose changes to the law, if you want to revoke the law, the revocation of the law you want to revoke will be filed.

Then there are many misunderstandings about omnibus law as a form of codifying a regulation. Omnibus law is not a form of codification of law, because in codification it discusses and contains the same theme or material, such as the Criminal Code and the Civil Code. Meanwhile, the omnibus law does not discuss the same subject and object, so it can be said that the omnibus law is not a codification.

The position of omnibus law in the Indonesian legal system is also a question. This is due to the technique of drafting laws. Where one of the stages of drafting a regulation is planning and then preparation. We can clearly see these stages in Article 64 of Law no. 12 of 2011 concerning the Establishment of Legislation which was changed to Law no. 15 of 2019. In the article it is stated that the technique of drafting laws refers to attachment 2, from the attachment it can be seen that if you want to change a law, the title of the amendment to the law must be clear, namely the change in law, then if you want it to be revoked, the title must also explain the revocation. If we look at the omnibus law which is entitled the Job Creation Act, where the title is a new title that has never existed before. However, the law contains changes, which should be given the title of the change law instead of using a new title. In general, this technique is already known internationally but in Indonesia itself it has not been adopted in Appendix 2 of Law No. 12 of 2011 concerning the Formation of Legislation which was changed to Law no. 15 of 2019. So in this case, the government should first change or add an explanation of the omnibus law in the laws and regulations in Indonesia so that it can become the basis and legal basis considering that Indonesia is a state of law.

In making laws, using both the omnibus law technique and the techniques in general that we have adopted, basically the law must be formed ideally to fulfill the objectives of its formation. There are two important functions attached to the law, namely internal and external functions. In the internal function, the law is part of the legal subsystem as a whole. The point is that the law has a function to create something, which at first has not become a law, then it also functions as a legal reform where if there are old regulations and need to be changed, they must go through the law to integrate the development of life in society. Development is a systematic and continuous effort made to realize something that is aspired (Shah *et al*, 2020). Then in the most important external function, this function is associated with the place of application or often referred to as a social function. External functions include change functions, stabilization functions, and convenience functions. For example, when a policy emerges in order to change people's behavior, then this becomes an effective means of directing community change.

The power to form laws in order to achieve good functions, this can have an impact on good change, democratic stabilization and this facility will be very beneficial for the community. So to make it happen, it is necessary to fulfill a number of requirements called the principles of establishing good laws and regulations. There are a number of requirements in order to realize a good law. The first is to be orderly in the formation of laws and regulations. Orderly formation has two parts, namely orderly procedure and orderly substance. In an orderly procedure for the formation of a law, it will go through the stages of planning, drafting, discussing, and then ratifying. After arriving at the promulgation, attention must be paid to the quorum, the running of the trial, as well as the availability of documents needed in the trial, and other matters that have been regulated in Law no. 12 of 2011 concerning the Establishment of Legislation which was changed to Law no. 15 of 2019 as well as presidential regulations and regulations for the DPR, MPR and DPD. The second is orderly substance, which focuses on the contents of the regulation, which must be in accordance with Pancasila, the constitution, the constitution, and other laws and must not conflict with court decisions, decisions of the constitutional court.

In the formation of an ideal law, one of which requires procedures and public participation, because the constitution explains that sovereignty is in the hands of the people and is carried out according to the constitution. So the notion of people's sovereignty is that when the government will formulate a regulation, the public or the community should also be given the opportunity to determine whether it may be regulated or not. So that it is regulated in the law, namely the existence of an obligation called public participation, the guarantee of the space aims to provide information to legislators whether the community really wants such a law, secondly to increase the number of people who will accept the law later on invited. Simply put, if the community is involved in the formation of the law from the start, then the community will definitely feel involved in the formation of the law. The last is to democratize decision making. Everything in decision-making must be democratized, one of which is through the opening of participation spaces, which has also been guaranteed by the constitution.

We must admit that the omnibus law also has a positive impact. One of them is to shorten the registration process. We can imagine when we are going to amend 79 laws, if in the usual way we have to go through the Prolegnas to amend 79 laws, have to compile academic texts of 79 laws, have to draft changes to 79 laws, and so on. This means that it can be quite expensive, the regulatory costs are quite expensive, it takes quite a long time, even though the changes may only be 3, 4 or 5 articles. Then the omnibus law can also prevent deadlock in the discussion of draft laws, because a lot of material is discussed, so deadlock in the discussion of laws will be avoided. Next is the harmonization of arrangements will be maintained, this is because it is discussed at the same time between one provision to another.

But on the other hand, if you are not careful in implementing the omnibus law, it will have a negative impact as well. This is due to pragmatic and less democratic elements. In compiling each of the laws in the omnibus law, generally it has a philosophical foundation. However, by using omnibus law, this philosophical foundation will be marginalized and replaced by policies that will be taken in forming omnibus law. In addition, it can also reduce the space for participation. If previously the drafting of a law involved relevant stakeholders, for example in the drafting of a law on the environment, stakeholders related to the environment would be invited and involved in drafting the law. However, in omnibus law, due to discussing many legal issues and issues at one time, it can result in the representation of these stakeholders. And because discussing tens or even hundreds of laws, it can also have an impact on the accuracy and prudence in drafting these laws. Because there are so many and usually because of policies that were pushed from the start, constitutional values can sometimes be missed, because of the focus on the goals that were set from the start when forming the law. So in my opinion, the implementation of omnibus law in Indonesia may be applied, but omnibus law is also not the only way out in solving regulatory problems in Indonesia. This is because Indonesia's problems are not only about overlapping regulations, but there are many things that are not sufficiently resolved through the omnibus law.

Since the beginning of the 2019 presidential election, the solution that was initiated by the government was to form a special institution to deal with overlapping regulations, namely the establishment of a National Legislation Center or National Legislation Agency. Then the idea of omnibus law emerged, which if seen from its history, the formation of an omnibus law is not the main solution to handling regulatory problems in Indonesia. In the drafting of the omnibus law, because it is a sensitive issue, the team that composes the omnibus law should only be the government, all of which are held by the president and his staff. Even if there is involvement of other parties, it is just an attempt to get an opinion.

There is an impression that there is an element of privatization that composes this omnibus law, because the head of the omnibus law task force team is held not by a government representative but by a representative of certain community groups. This of course eventually led to public speculation, where they took a different view of this conflict of interest. The law should be neutral, have a position in the middle of policy, accommodate the aspirations of all groups. However, when the head of the task force is held by a non-government, let alone represents a certain group, of course this is related to public trust.

Article 88 of Law no. 12 of 2011 concerning the Establishment of Legislation which was changed to Law no. 15 of 2019 mandates the dissemination of academic manuscripts and draft laws. There is no need to wait until the DPR, since at the prolegnas stage, the draft or manuscript can already be disseminated. Unfortunately, the job creation bill was submitted when it was in the DPR in February and has been discussed since October. Referring to the constitution and Law no. 12 of 2011 concerning the Establishment of Legislation which was changed to Law no. 15 of 2019 including the attachment regarding the preparation technique, if for example the omnibus law technique is not yet known, then those who object can submit a judicial review to the Constitutional Court which is known as the right of formal trial. The plaintiff can state in his argument for example that the omnibus law technique is not yet known in the Indonesian legal system or Law Number 12 of 2011 concerning the Establishment of Legislation which was changed to Law no. 15 of 2019. Later, the Constitutional Court will assess whether this technique must be changed first or whether it can be accepted as a habit that grows in practice.

Previously, Indonesia had a law in which the closing provisions revoked several other legal provisions, for example, the Regional Government Law no. 23 of 2014. The law revokes several provisions of other laws, but the title is a new law. In addition, Law Number 5 of 1969 concerning the Statement of Various Presidential Decrees and Presidential Regulations as Laws. This law is a law that states the status of various Presidential Decrees and Presidential Decrees. Then TAP No. I/MPR/2003 concerning the Review of the Material and Legal Status of the MPRS and MPR RI Decrees from 1960 to 2002. The latest law is Law no. 9 of 2017 concerning Stipulation of Government Regulation No. 1 of 2017 concerning Access to Financial Information for Tax Purposes Becomes a Law, which states removing several provisions from the law, be it banking laws, capital market laws, commodity futures trading laws, and banking laws sharia. However, the technique uses the title of the new law. So it is the MK's authority to judge whether such a thing violates the procedure or whether it can be considered as a habit that does not conflict with the basic law.

### **3.2 Specific Time Employment Agreements in the Employment Copyright Act the Employment Copyright**

The act, especially for employment clusters, has a significant impact on the status of company employees, especially contract employees or employees whose work relationship is based on a certain time working agreement PKWT. Because some provisions that are still general are not definitive and not yet implemented, this work copyright law also promises that the provisions of this work copyright law will be further regulated in government regulations. So that some issues regarding contract employees are still not technically final, they still need further regulation in government regulations that will be made later. how is the status of contract employees in the labor law law number 13 of 2003 affected by the work copyright law, what about the nature of the work that should not be permanent, how is it extended, what are the consequences if this PKWT work contract is not made written, what about the probationary period? Is it allowed to have a probationary

period in the PKWT, and what about the new rules at the company? Regarding the obligation to pay compensation to employees when their work contracts have expired.

One of the articles contained in the labor law is Article 56 of Law Number 13 of 2003. Previously in the employment law Article 56 there were only two paragraphs, where in the first paragraph divided the work agreement into PKWT for contract employees and pkwtt for permanent employees. Likewise, the second paragraph is still the same as the previous provision where the PKWT which is the basis is a certain period of time and the completion of certain jobs. So that the focus in a PKWT is the time period, namely the time period must be determined and must be limited. In the work copyright law, Article 56 has changed, if previously it contained only two paragraphs, but in the work copyright law, 2 more paragraphs were added. So Article 56 contains 4 paragraphs. The first and second paragraphs contain the same content as in the labor law, however in the third and fourth paragraphs there are new provisions which are quite significant and have recently become public discussions. In paragraph 3, it is determined that a certain period of time or the completion of certain work in the PKWT is determined based on a work agreement. Article 3 seems to explain that in the PKWT, the determination of the employee's tenure is left to a mutual agreement between the company and the employee, which is stated in the work agreement. This is of course different from the previous employment law before the enactment of the work copyright law, where the term or period of service of contract employees or PKWT employees, although they have similarities, that is, they are agreed upon by the company and employees, but are limited by law until there is a the maximum amount.

In Article 59 paragraph 1 letter b of the previous manpower law it was determined that PKWT could only be done for work that is not permanent, the type and nature or activity of the work is completed once or temporarily, and the duration is a maximum of 3 years. Whereas in Article 59 paragraph 4, for PKWT which is basically a certain period of time, the maximum period of work is 2 years. So based on the two Articles, the maximum number of contract employees is limited to, this definitive limitation in the work copyright law no longer exists. Actually, the work copyright law still regulates the time period, but it is not firm and not final. For example, in the amendment of Article 59 paragraph 1 letter b of the work copyright law, the article is amended and the time period for the amendment is not stated explicitly. The work copyright law only explains that PKWT is made for work whose completion is not expected to take too long. The term not too long here is not clearly defined. Likewise in Article 59 paragraph 4 there is a change as well as the time period is no longer stated in a limited manner, namely for 2 years for PKWT which is basically a certain period. The amendment to the work copyright law only states that the time period will be further regulated in a government regulation in the law. So that it is still not final, and there is still homework, namely the making of implementing regulations or government regulations, especially for determining the type of work and the maximum time limit. Regarding what the implementing rules are like, whether the maximum time is greater or less than the previous regulations in the labor law or this time period is not determined at all and is actually left hanging based on a free agreement between the company and the employee, and also like what government regulations will regulate later, so this still depends on government regulations that will be issued later.

The previous labor law in Article 59 paragraph 4 and paragraph 6 also regulates contract extension and renewal. A contract extension means that the contract is about to expire, but is extended before the contract expires. This extension is in accordance with the applicable law for PKWT which is basically a certain period of time and for PKWT which is basically the completion of certain work which generally has a maximum period of 3



years. This can be renewed, meaning that when the contract is up, the contract has ended, it can be renewed again by making a new contract, a new PKWT. So the contract must end first, if the contract extension is carried out before the contract expires. Both contract extensions and renewals in the previous labor law have limitations, namely Article 59 of the labor law. Previously, a contract extension could only be extended once with a maximum extension duration of 1 year and if an extension has been made, it cannot be extended again. So that the company only has the option of appointing the employee to be a permanent employee, if it still needs his staff.

Likewise with the renewal of the contract in Article 59, it is determined that the PKWT can be renewed when the time period has expired and the renewal limit is only allowed once, with a maximum duration of 2 years. So that both extension and renewal can only be done once. If you have made one extension or one renewal and if the company still wants to employ the employee, then the only way is to appoint the employee as a permanent employee of the company, based on a PKWTT or an indefinite work agreement. Article 59 of the work copyright law includes articles that are amended in the work copyright law. The article regarding the maximum number of extensions and renewals of this contract including the duration of the extension or amendment has been deleted and no longer exists. So the legal consequence is that there is no limitation on the number of times a PKWT for contract employees can be extended or renewed. According to the previous labor law there was a maximum limit of 1 time, but in this work copyright law there is no longer a one-time limit.

Changes to these provisions which later became a debate in the community. Because the current condition is based on the copyright law, a contract employee or PKWT of his employment relationship can be contracted for an unlimited period of time and there is no limit to the extension, namely the number of times the contract can be extended. However, keep in mind that this rule is not final, because Article 59 paragraph of the work copyright law stipulates that the working period and its extension will be further regulated in a government regulation. So that the limit regarding the working period and its extension will still be regulated again by government regulation. What are the rules, how long is the maximum duration of a PKWT working period, is there still a limit on the maximum number of extensions, and in the end still have to wait for the issuance of a government regulation as an implementing regulation.

Next is the probationary period for contract employees or PKWT employees. This has been regulated in Article 58 of the labor law and is one of the articles that is amended in the work copyright law. However, in principle, the provisions of the two, between the previous labor law and the work copyright law, have almost the same provisions. Whereas in the PKWT it is not permitted to have a probationary period and if it is forced, where this probationary period is still applied or is included in the PKWT, the probationary period is null and void by law. The trial period is considered non-existent and is not valid. However, in the editorial of Article 58, the work copyright law is added to the provision that the required probationary period is still counted as working period. For example in PKWT it is determined that the probation period is 3 months and the work contract period is 12 months, so in this case the probationary period is null and void and the 3 month probation period is considered as a contract employee. So the total working period of the employee is 15 months.

An additional provision in the PKWT concept is the insertion of Article 61 A between Article 61 and Article 62. According to Article 61 A, if the PKWT ends, the company is obliged to provide compensation to employees. The compensation is similar to severance pay for permanent employees. In the event of layoffs, the concept of obligation

to pay compensation by the company to its employees is a new provision, which previously was not stated in the labor law or was not regulated. So previously, if the PKWT period ended, there was no compensation whatsoever. However, now with the inclusion of Article 61 A in the work copyright law, contract employees whose tenure ends are entitled to compensation money from the company. The end of this work period occurs because the term of the work agreement has expired or certain work has been completed. So this termination is not due to reasons other than those provisions, such as when the employee dies or the termination is due to a court decision. How the compensation money is calculated and the method of payment has not been determined and regulated in full and in detail. Further provisions regarding this compensation money will be regulated in a government regulation.

Finally, there is the issue of compensation. The article on compensation is regulated in Article 62 of the manpower law. The article is an article that has not been changed. So the original Article 62 of this manpower law is still in effect and its provisions are maintained unchanged. Article 62 stipulates that if one of the parties, both the company and the employee, terminates the employment relationship before the end of the period in the PKWT, then the party terminating the employment relationship is obliged to pay compensation to the other party, in the amount of the employee's wages until the expiration of the agreement work. So if the company terminates the PKWT agreement unilaterally before the period in the PKWT agreement ends, the company is obliged to pay compensation to its employees. Vice versa, if the employee resigns before the end of the agreement or contract, the employee is obliged to pay compensation to the company. The concept of compensation for the unilateral termination of the PKWT is still valid and has not undergone any changes in the work copyright law.

Regarding the form of PKWT, both in the previous labor law and the cooperative copyright law, it is necessary to make a written agreement from a PKWT. This provision is regulated in Article 57. But what if the PKWT is not made in writing or the agreement is only made orally? The previous manpower law has directly answered, namely in paragraph 2 Article 57, that a PKWT that is not made in writing then the agreement is declared a permanent employee, not a contract employee. The provisions of Article 57 paragraph 2 of the manpower law change into Article 57 of the work copyright law, the consequences of which explicitly stipulate that an unwritten PKWT is declared a PKWTT no longer exists.

#### **IV. Conclusion**

The application of omnibus law in Indonesia may be applied, but it would be better if before the enactment of the omnibus law, the legal basis was first made, considering that our country is a state of law. The omnibus law is also not the only way out in solving regulatory problems in Indonesia. This is because Indonesia's problems are not only about overlapping regulations, but there are many things that are not sufficiently resolved through the omnibus law. Then regarding PKWT there are five important points that must be considered with the existence of the Job Creation Act, namely the employee's tenure, contract extension, probationary period, compensation money and the form of a written agreement.



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