



## INVESTMENT REGULATORY REFORM IN INDONESIA (An Effort to Increase the Competitiveness Climate of Investment)

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### ABSTRACT

The purpose of this research is to find answers to the problem of the existence of many statutory regulations related to investment (obesity, hyper-regulation), which are believed to be not conducive to creating competitiveness and ease of doing business in Indonesia so the government makes a policy of simplifying these various regulations into one regulation, namely the Omnibus law on the Job Creation Law. The main problem of this research is: Are the policies of the Indonesian government to improve the competitive climate and legal certainty for investing in Indonesia, in accordance with statutory provisions? This problem is divided into several sub-sub-subjects: Current investment regulation problems; Obesity, Hyper regulation, and Regulatory Reform related to Investment; Controversy and legitimacy of the Omnibus Law in the National legal system, Suing the partiality and the negative impact of the Omnibus Law on Job Creation. The research method is a juridical-normative approach, with secondary data in the form of statutory regulations, literature, journals, and the internet. Data collection techniques used is a literature study. Data analysis technique is a qualitative descriptive analysis. The results of the study showed various investment statutory regulations in Indonesia cause obesity, hyper-regulation, which can reduce investment attractiveness. To overcome this issues, the government has taken legal breakthroughs with the omnibus law system on the Job Creation Law, to be able to trigger convenience while at the same time guaranteeing legal certainty, as well as improving the investment competitiveness climate in Indonesia.

**Keywords:** Investment Problems, Obesity, Hyper Regulation, Job Creation Reform, Omnibus Law

### 1. INTRODUCTION

The existence of various statutory regulations related to investment have given rise to the excesses of current investment regulations in Indonesia (hyper-regulation), which is believed to be no longer conducive and effective, and has even become an obstacle, a barrier to creating competitiveness and ease of doing business in Indonesia compared to other Southeast Asian countries. Several indicators in the ease of doing business (EoDB) are used as a guide in investing in a country. The higher an EoDB index, the greater the opportunity for the country to attract investors. The Ease of Doing Business (EoDB) indicator is a measure for reforming investment-related regulations, which can be measured from the start of a business to the end of a business that goes according to plan, and according to the agreed contract. One of the work programs of President/Vice President Jokowi-Maruf Amin is to develop effective legislation to open job vacancies and other business climates, as well as reform investment conditions in Indonesia. According to statistics from the Investment Coordinating Board (BKPM), investment in the first three months of 2019 increased by around 5.3 percent to Rp. 195.1 trillion. This achievement represents the investment implementation for the 2014-2019 period, due to developments in the first quarter of 2018.<sup>1</sup> The government is stimulating investment in Indonesia while at the same time harmonizing obesity, and various statutory regulations governing investment, through the implementation of the Omnibus Law. Foreign investors who wish to invest, in general, first pay attention to the statutory regulations, the political situation, as well as the financial capacity of the country where the

<sup>1</sup> Nur, K., Juwita, J., & Atmojo, K. (2022), Perlindungan Hukum Investor Terhadap wilyah Izin Usaha Pertambangan Pada PT. Surya Lintas Gemilang, Jurnal Pro Hukum: Jurnal Penelitian Bidang Hukum Universitas Gresik, volume 11 Nomor 3, 131-142. Retrieved from <https://journal.unigres.ac.id/index.php/jurnalProHukum/article/view/2134>.

investment is to be made.<sup>2</sup>

Based on data on the ease of doing business (EoDB) for 2020, the legal provisions for the business world, in a total of 190 countries, the State of Indonesia, has dropped its level to 73rd, not better than neighboring countries, Malaysia is ranked 15th, followed by Thailand ranked 27th and Vietnam ranked 69th.<sup>3</sup> Ease of Doing Business/EoDB is one of at least 159 global performance indicators (GPIs) that have grown rapidly in the last two decades. This index is used in assessing how a country provides ease of doing business for all business actors with a number of indicators. From 2001 to 2020, the ease of doing business rating serves as a guide and benchmark for any investor looking to invest in a jurisdiction. Ease of Doing Business (EoDB) has been considered to represent an assessment of the ability of state entities to guarantee easy access to markets, protection of property rights, and regulatory certainty of the business sector. In September 2021, the World Bank delivered an official statement that it was temporarily suspending its ease of doing business index report. The agency decided this was due to irregularities in the 2018 and 2020 Doing Business Report data after an internal report in June 2020. In Indonesia itself, Ease of Doing Business/EoDB indicators routinely appears in various government planning documents. In addition, there are various commitments and verbal instructions issued by government officials to improve Indonesia's EoDB Ease of Doing Business/EoDB rating. For a country like Indonesia that has already integrated the Ease of Doing Business/EoDB index into planning and bureaucratic systems, the loss of this index makes a significant void at the level of strategic planning and ongoing programs on the ground can instantly become irrelevant.<sup>4</sup>

Article 33 paragraph (4) of the 1945 Constitution indicates that in the implementation of national development, it is necessary to involve both domestic and foreign capital. For this reason, it is deemed necessary to prepare rules and regulations that protect investors who wish to invest in Indonesia.<sup>5</sup> To address the problems mentioned above, the government has made a breakthrough policy step by simplifying these various regulations into one regulation, namely the Omnibus law on the Job Creation Law. Reforming various statutory regulations related to investment, including: investment licensing as stated in 72 statutory regulations, with the omnibus law system. Law No. 11 of 2020 concerning Job Creation, which has been amended most recently by Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to become a Law, has reformed the licensing of business premises, Building Permit, environmental preservation as an investment requirement that has a wide range. The certainty of Indonesia's land law is considered by some to be not good, said the Chairman of the Indonesian Advocates Association.<sup>6</sup> Consistent law enforcement is believed to be able to provide security and comfort for investors, especially foreign capital.<sup>7</sup> This condition is very necessary, as an effort to improve the climate of competitiveness and guarantee legal certainty for investment.<sup>8</sup>

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- 2 I Nengah Swardana, et.al, "Perlindungan Hukum Terhadap Investo Berdasarkan Prinsip Keterbukaan Oleh Emiten di Pasar Modal", *Jurnal Analogi Hukum*, Volume 2, Nomor 2, Tahun 2020, CC-BY-SA 4.0 License, 182-186.
  - 3 Statista, *Ease of Doing Business in Indonesia from 2013 to 2020*, statista.com, Published by Statista Research Departement, May 24, 2023; BKPM (Badan Koordinasi Penanaman Modal), 2020, *Kemudahan Berbisnis*, Investindonesia.go.id
  - 4 Prastiti, Hilda Swandani (2021), *Membedah Parameter Berusaha Dalam Upaya Meningkatkan Kemudahan Berinvestasi di Indonesia (Studi Komparasi Indonesia dan Vietnam)*, *Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia, Dharmasiswa*, Volume 1, Nomor 3 (September 2021), 1259-1274, article 13: <https://scholarhub.ui.ac.id/dharmasiswa/vol1/iss3/13>
  - 5 Hernawati, R. A. S., & Suroso, J. T. (2020). *Kepastian Hukum Dalam Hukum Investasi Di Indonesia Melalui Omnibus Law*. *Jurnal Ilmiah MEA (Manajemen)*, 4(1), 392–408. <http://journal.stiemb.ac.id/index.php/mea/article/view/557>.
  - 6 Andi Desmon, *Kedudukan Omnibus Law Dalam Sistem Pembentukan Peraturan Perundang-Undangan*, *Journal Hukum Krtha Bhayangkara*, volume 15 Nomor 2, Tahun Desember 2021, 309-318. DOI: <https://doi.org/10.31599/krtha.v15i2.826>.
  - 7 Agung Sudjati Winata, "Perlindungan Investor Asing Dalam Kegiatan Penanaman Modal Asing dan Implikasinya Terhadap Negara", *AJUDIKASI: Jurnal Ilmu Hukum*, Volume 2, Nomor : 2. Desember 2018, 127-136
  - 8 Anita Kamilah, *Jaminan Kepastian Hukum Berinvestasi Melalui Pendekatan Konsep Lawrence M. Friedmann Dalam Menghadapi ASEAN Economic Community (AEC)*, *Jurnal Res Justitia: Jurnal Ilmu Hukum, Program Studi Hukum Fakultas Hukum Universitas Bina Bangsa*, Volume 1 Nomor 1 Januari 2021: DOI Issue: 10.46306/rj.v1i1, 14-25.

Indonesia as a country based on a continental European legal system, civil law legal system Civil Code, is contrary to the omnibus law legal system which adheres to the tradition of the common law legal system. However, for the sake of forming statutory regulations that are anticipatory of the rapid development of information technology, it is deemed necessary to make a breakthrough in the field of law development. For example the Philippines carried out regulatory reforms in the field of investment, creating The Omnibus Investment Code. Vietnam also applies it. The law development technique with the omnibus law system is regulatory reform. Due to the development of business law as a result of the development of economic institutions in its activities, it also gave birth to new legal institutions that regulate the economy, especially investment in Indonesia. Based on Law Number 11 of 2020 concerning Job Creation, it guarantees ease of doing business and investing in Indonesia, which reforms, simplifies, and contains amendments to a number of 79 laws and 1,203 articles. This law contains 15 chapters and 186 articles. It consists of 3 (three) clusters, namely: Job Creation, Taxation, and Community Empowerment, and several sub-clusters. This new provision is expected to be a legal breakthrough step to raise Indonesia's ranking in terms of ease of doing business, which is still far from the rankings of Singapore (2nd), Malaysia (12th), Thailand (21st), and Vietnam (70th).

The question is whether the stipulation of the Omnibus Law on the Job Creation Law has resolved the investment regulatory issues. It seems that this is not the case, because since the initial discussion of this Law up to the adoption of it into Law Number 11 of 2020, it has been filled with rejection and opposition from various sections of society and even filing a lawsuit for annulment to the Constitutional Court. In accordance with the conditions mentioned above, the main problem of this research is: Are the policies of the Indonesian government to improve the competitive climate and legal certainty for investing in Indonesia, in accordance with statutory regulations? This problem is divided into several sub-sub-subjects: Current investment regulation problems; Obesity, Hyper regulation, and Regulatory Reform related to Investment; Controversy and Legitimacy of the Omnibus Law in the National Legal System, Suing the partiality and negative impact of the Omnibus Law on Job Creation.

As a state of the art of this research, there are several recent studies related to this issue, namely Legal Research on Legal Politics of Increasing Investment and Its Impact on Micro, Small, and Medium Enterprises, which examines and analyzes how the influence of legal politics in the development of investment in Indonesia and impact on micro, small and medium enterprises. So far, regulations on foreign investment in Indonesia have been a political product that provides equal treatment to investment from any country and provides many facilities for foreign investors. This is certainly contrary to Article 33 of the 1945 Constitution. In addition, legal research has been carried out regarding a Comparative Analysis of Foreign Investment Laws between Indonesia and Vietnam (Review of Law No. 25 of 2007 concerning Investment compared to Vietnam Law No. 67/2014/QH13 On Investment), examines and analyzes the legal provisions related to investment in Vietnam, which are more supportive for foreign investment than the legal provisions in Indonesia. Furthermore, legal research that explores the Traces of Foreign Interests In the Investment Law in Indonesia, where the dominance of foreign capital in the development of the Indonesian economy, as a developing country, plays a very important role in supporting the increase in the country's economic stability, which further strengthens the dominance of foreign investors in the Indonesian economy. This is evidence of foreign interests seeking as much profit as possible and increasingly dominating the Indonesian economy. The footprint of foreign interests in Indonesia is getting stronger due to the opening of space for investors, where there are no restrictions on foreign control in Indonesia.

Related to the research mentioned above, this research will enrich and complement legal research data on investment in Indonesia, and at the same time as a novelty of this research. One of the problems experienced by the Indonesian nation in terms of investment is the problem of the many regulations related to disharmony of statutory regulations which result in, among others: The emergence of legal uncertainty, The implementation of statutory regulations becomes ineffective and inefficient The occurrence of different interpretations of statutory regulations, the law as a guideline for society and government does not function as it should. So the process of forming good statutory regulations will affect law enforcement. Ease of doing business is something that attracts foreign investment to invest in Indonesia. Therefore, the main problem in this research is: whether the reform of investment law regulations through the formation of the Omnibus Law, Law No. 11 of 2020 concerning Job Creation, as a legal breakthrough step that has been carried out by the Indonesian government to create competitiveness and legal certainty in investing in Indonesia, has complied

with the principles and rules of forming statutory regulations in Indonesia, namely: Law Number 12 of 2011 in conjunction with Law Number 15 of 2019 in conjunction with Law Number 13 of 2022 concerning Second Amendment UU. No.12 of 2011.?

Starting from the foregoing, the author deems it necessary to carry out legal research according to the topic mentioned above, with sub-discussions: Current investment regulation problems; Obesity, Hyper regulation, and Regulatory Reform related to Investment; Omnibus Law Controversy and Legitimacy in the National Legal System, Suing the partiality and negative impact of the Omnibus Law on Job Creation.

## 2. RESEARCH METHOD

The approach method used in conducting this research is the juridical-normative research method.<sup>9</sup> Research materials consist of Primary legal materials, namely statutory regulations,<sup>10</sup> which are related to the subject matter of the research;<sup>11</sup> Secondary legal materials, namely book literature, research results, journals, scientific magazines, as well as mass media, both print and electronic, internet (online);<sup>12</sup> Tertiary legal materials: legal dictionaries and encyclopedias.<sup>13</sup> Data collection method: library research.<sup>14</sup> The data analysis technique used is a qualitative analysis.<sup>15</sup>

## 3. FINDINGS AND DISCUSSION

### 3.1 Current Investment Regulation Problems

Regulatory problems related to investment that are currently being experienced include, among other things, the legal climate for investment which has a fairly high competitiveness, is a sign, a benchmark that is quite important and determines the success of a country's economic development.<sup>16</sup> The relationship between investment and economic development has a good effect on improving the investment competitiveness climate in the economic development process of a nation. The climate of investment competitiveness influences the development of a country's income. Thus, the more attractive the climate for investment competitiveness, the more investment activities should be invested in a country which of course will also increase its income. The competitive investment climate is very competitive, capable of increasing the production capacity of an industry with a reliable supply of investment. Every investment will contribute no small amount to the development of the nation's economy because investment is the first step in production activities. With such a position, investment is an important step in the development of the company.

The climate of investment statutory regulations that are competitive will be able to increase the level of economic development which shows a rampant economic downturn. To that end, the government will create a global competitive investment climate, by carrying out main activities including improving investment law provisions, simplifying service procedures, and so on. Indicators and rankings compiled on the basis of Ease of Doing Business (EoDB) are benchmarks for every country and investors in investing in a country. So the government is trying to encourage an increase in ratings, by implementing regulatory efficiency, which is a breakthrough to eliminate various obstructing regulations. So that the long and convoluted licensing procedures and times that have occurred so far can be trimmed and made easier by simplifying licensing. Ease of doing

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9 Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI-Press, 1986, 52, Lihat Pula C.F.G. Sunaryati Hartono, *Penelitian Hukum di Indonesia pada Akhir Abad Ke-20*, Bandung : Alumni, 1994, 134 dan Lihat Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif*, Jakarta: Rajawali, 1986, 14-15.

10 Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2006, 35

11 Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta: Ghalia Indonesia, 1990, 11-12,

12 Bagir manan, *Penelitian di Bidang Hukum*, *Jurnal Hukum Puslitbangkum Nomor 1-1999*, Pusat Penelitian Perkembangan Hukum, Lembaga Penelitian Univ. Padjadjaran Bandung: 1999, 3-6

13 Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta: Ghalia Indonesia, 1990, 11-12,

14 Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia Publishing, 2006, 57

15 Ariesto Hadi Sutopo, Adrianus Arief, *Terampil Mengolah Data Kualitatif*, Penerbit: Kencana, 2019, Prenandamedia Group, Jakarta 13220, 16-18.

16 Agung Sudjati Winata, "Perlindungan Investor Asing Dalam Kegiatan Penanaman Modal Asing dan Implikasinya Terhadap Negara", *AJUDIKASI: Jurnal Ilmu Hukum*, Volume 2, Nomor : 2. Desember2018, 127-136

business is not only given to medium and large business actors but also to MSME entrepreneurs. Regulatory efficiency is also expected to reduce transaction costs.

The provisions on legal protection for investors are intended to provide legal protection for investors, in carrying out their business in the Republic of Indonesia. Types of investment activities determine prohibitions or restrictions on Indonesian citizens (WNI) and foreign citizens (WNA).<sup>17</sup> For example the requirement for 100 percent foreign ownership, 100% open business fields, or the provision of maximum legal restrictions for foreign companies.<sup>18</sup> Compared to countries in the ASEAN region, namely: Vietnam, the legal provisions of its statutory regulations, have a vision and mission to always create a highly competitive investment climate, accepts foreign investment in specific fields, in accordance with WTO commitments. Several business law provisions still limit the percentage of foreign capital. For example the field of advertising business requires foreign capital companies to establish joint ventures with their national companies.<sup>19</sup> The use of skilled workers by foreign nationals is obliged to transform (technology transfer) their fields of knowledge and expertise through education and job training, to improve company performance; prioritizing the workforce of local citizens; settlement of labor disputes through the courts.<sup>20</sup> Under the provisions of Undang-Undang Vietnam Vietnam Law Number 67/2014/QH13 concerning foreign investment, there are no provisions governing employment. This is precisely regulated by Vietnam Law no. 10/2012/QH13 Concerning Labor Code, which among other things regulates local workers to be employed by foreign investors, who must be at least fifteen years old. Work permits for foreign nationals working in Vietnam, exempt from legal provisions, are very limited, and only given to: investors; company management, directors of international organizations, and so forth.<sup>21</sup>

### 3.2 Hyper Regulation and Investment Regulatory Reform

The history of the dynamics of changing the regime of the Republic of Indonesia from time to time was also followed by additions and changes in various laws and regulations that were in accordance with the conditions of the problems of the time, giving rise to obesity, hyper-regulation, disharmony and overlapping of various regulations. The disharmony and overlapping of these regulations resulted in delays in the implementation of development and worsened the investment climate. The legislation gives rise to “obesity, hyper-regulation”. The actions of government officials often lead to conflicts with other laws and regulations. To speed up the settlement, a policy breakthrough is needed in the process of drafting laws, namely simplifying and at the same time harmonizing the regulations referred to through a system for forming statutory regulations, the Omnibus Law.

With the promulgation of **Law Number 11 of 2020 concerning Job Creation, which promulgated on: 02 November 2020, LN.2020/No.245, TLN No.6573, has revoked:** Law No. 3 of 1982 concerning Compulsory Company Registration; Staatsblad of 1926 Number 226 juncto Staatsblad of 1940 Number 450 concerning Disturbance Law (Hinderordonnantie). Mengubah This law also amends: Law no. 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining; Law no. 8 of 2019 concerning Implementation of Hajj and Umrah Pilgrimage; Law no. 22 of 2019 concerning Sustainable Agricultural Cultivation Systems; Law no. 17 of 2019 concerning Water Resources; Law no. 11 of 2019 concerning National System of Science and Technology; Law no. 6 of 2017 concerning Architects; Law no. 2

17 I Gusti Ayu, Andara Yadnya Sangaswary, et.al, “Perlindungan Hukum Terhadap Investor Dalam Transaksi Jual-Beli Saham Melalui Perusahaan Sekuritas Ilegal Berbasis Online”, *Jurnal Konstruksi Hukum*, ISSN: 2746-5055, DOI: <https://doi.org/10.22225/jkh.3.1.4410-147-152>. Volume 3, Nomor 1, Januari 2022, 147-152.

18 Agung Sudjati Winata, “Perlindungan Investor Asing Dalam Kegiatan Penanaman Modal Asing dan Implikasinya Terhadap Negara”, *AJUDIKASI: Jurnal Ilmu Hukum*, Volume 2, Nomor : 2. Desember 2018, 127-136

19 Vu Thanh, H., & Thi, P. (2019). Changes in Vietnam - China Trade in the Context of China's Economic Slowdown: Some Analysis and Implications. *VNU Journal of Science: Economics and Business*, 35(2). <https://doi.org/10.25073/2588-1108/vnueab.4229>.

20 Suardhana, C. V. (2019). Perlindungan Hukum Terhadap Penanaman Modal Asing pada Sektor Perkebunan di Indonesia. *Jurnal Hukum Prasada*, 6(1), 1–14. <https://ejournal.warmadewa.ac.id/index.php/prasada/article/view/1007>

21 Dinh, T., Vo, D., Vo, A., & Cong Nguyen, T. (2019). *Foreign Direct Investment and Economic Growth in the Short Run and Long Run: Empirical Evidence from Developing Countries*. *Journal of Risk and Financial Management*, 12, 176. <https://doi.org/10.3390/jrfm12040176>

of 2017 concerning Construction Services; Law no. 18 of 2017 concerning Protection of Indonesian Migrant Workers; Law no. 7 of 2016 concerning Protection and Empowerment of Fishermen, Fish Cultivators and Farmers; Salt; Law no. 20 of 2016 concerning Marks and Geographical Indications; Law no. 13 of 2016 concerning Patents; Law no. 7 of 2014 concerning Trade; Law no. 6 of 2014 concerning Villages; Law no. 41 of 2014 concerning Amendments to Law Number 18 of 2009 concerning Animal Husbandry and Health; Law no. 39 of 2014 concerning Plantations; Law no. 33 of 2014 concerning Guarantee of Halal Products; Law no. 32 of 2014 concerning Maritime Affairs; Law no. 30 of 2014 concerning Government Administration; Law no. 3 of 2014 concerning Industry; Law no. 23 of 2014 concerning Regional Government; Law no. 21 of 2014 concerning Geothermal; Law no. 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Zone and Small Islands;

Law no. 19 of 2013 concerning Protection and Empowerment of Farmers; Law no. 18 of 2013 concerning Prevention and Eradication of Forest Destruction; Law no. 2 of 2012 concerning Land Acquisition for Development for Public Interests; Law no. 18 of 2012 concerning Food; Law no. 16 of 2012 concerning Defense Industry; Law no. 6 of 2011 concerning Immigration; Law no. 4 of 2011 concerning Geospatial Information; Law no. 24 of 2011 concerning Social Security Administering Bodies; Law no. 20 of 2011 concerning Flats; Law no. 1 of 2011 concerning Housing and Residential Areas; Law no. 13 of 2010 concerning Horticulture; Law no. 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries; Law no. 44 of 2009 concerning Hospitals; Law no. 41 of 2009 concerning Protection of Sustainable Food Agricultural Land; Law no. 4 of 2009 concerning Mineral and Coal Mining; Law no. 39 of 2009 concerning Special Economic Zones; Law no. 38 of 2009 concerning POS; Law no. 36 of 2009 concerning Health; Law no. 35 of 2009 concerning Narcotics; Law no. 33 of 2009 concerning Film; Law no. 32 of 2009 concerning Environmental Protection and Management; Law no. 30 of 2009 concerning Electricity; Law no. 28 of 2009 concerning Regional Taxes and Regional Levies;

Law no. 22 of 2009 concerning Road Traffic and Transportation; Law no. 18 of 2009 concerning Animal Husbandry and Health; Law no. 10 of 2009 concerning Tourism; Law no. 1 of 2009 concerning Aviation; Law no. 21 of 2008 concerning Islamic Banking; Law no. 20 of 2008 concerning Micro, Small and Medium Enterprises; Law no. 17 of 2008 concerning Shipping; Law no. 40 of 2007 concerning Limited Liability Companies; Law no. 27 of 2007 concerning Management of Coastal Zone and Small Islands; Law no. 26 of 2007 concerning Spatial Planning; Law no. 25 of 2007 concerning Investment; Law no. 23 of 2007 concerning Railways; Law no. 40 of 2004 concerning National Social Security System; Law no. 38 of 2004 concerning Roads; Law no. 31 of 2004 concerning Fisheries; Law no. 19 of 2004 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2004 concerning Amendment to Law Number 41 of 1999 concerning Forestry to Become a Law; Law no. 19 of 2003 concerning State Owned Enterprises; Law no. 13 of 2003 concerning Manpower; Law no. 32 of 2002 concerning Broadcasting; Law no. 28 of 2002 concerning Buildings; Law no. 2 of 2002 concerning Indonesian National Police; Law no. 22 of 2001 concerning Oil and Gas; Law no. 37 of 2000 concerning Stipulation of Government Regulation in lieu of Law Number 2 of 2000 concerning Sabang Free Trade Area and Free Port to Become Law; Law no. 36 of 2000 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2000 concerning Free Trade Areas and Free Ports to Become Laws; Law no. 29 of 2000 concerning Plant Variety Protection; Law no. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition; Law no. 41 of 1999 concerning Forestry; Law no. 36 of 1999 concerning Telecommunications; Law no. 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking; Law no. 5 of 1997 concerning Psychotropics; Law no. 10 of 1997 concerning Nuclear Forces; Law no. 7 of 1992 concerning Banking; Law no. 25 of 1992 concerning Cooperatives; Law no. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods; Law no. 7 of 1983 concerning Income Tax; Law no. 6 of 1983 concerning General Provisions and Tax Procedures; and Law no. 2 of 1981 concerning Legal Metrology.

According to the opinion of experts on the omnibus, as stated among others by a Swedish language expert, Tore Janson,<sup>22</sup> who stated that: omnibus comes from Latin (“for all”). In the sense of constitutional law, the omnibus law is a package of laws containing various sectoral regulations. New Zealand, since 2016

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22 Tore Janson, “A Natural History of Latin.” Swedia Publishing, 2018, 78.

used it for the Trans-Pacific Partnership. The Serbian state used it when resolving the issue of Vojvodina's autonomous status in 2002. The Canadian state also used it to reform the Criminal Code regulation (1968), and the Republic of Ireland, used it to reform the second regulation. The Constitution of 1941.

The United States of America (USA) has worn it 4 times since the 19th century. The first time was the Compromise of 1850, where five separate laws were made into 1 package, passed by the USA congress in September 1850. A USA historian, S John C. Waugh, confirmed that: The Treaty changed America's territory to be wider than 1,753. 588 square miles turns into 2,944,337 square miles, 68% extending from the east coast to the west. Henry Clay Sr. stated that: the idea of the Omnibus Act was a compromise step. Illinois senator Stephen Douglas also had the same idea, to reform clauses in the Act's initial omnibus proposal package, for submission to Congress. In Bryan A Garner's Ninth Edition Black Law Dictionary it is stated: "omnibus": related to various affairs at once, with different goals. The concept of the Omnibus Law is a comprehensive and comprehensive regulation and is not subject to one particular regulatory regime. Changing or deleting, revoking a law and regulation, or reforming various regulations in one thematic, cross-sectoral, universal sweep law. It can also be said as the law of all for all. Menkopolkukham, Mahfud MD,<sup>23</sup> made an analogy, the existing law (*Ius constitutum*) is a law that is spread out. Therefore, we need a media that is able to embrace all laws. The purpose and objective of preparing the Omnibus Law on Law No.11 of 2020 concerning Job Creation which has been amended most recently by Law Number 6 of 2023 concerning Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to become a Law, is to facilitating legal provisions and creating more conducive climate conditions for the employment ecosystem. Better protection and job creation guarantees and improved conditions already existed.<sup>24</sup>

Creating a conducive business climate for investors, so that in the end it will become a lever for economic growth, and legal certainty and stimulate the interest of foreigners to work in Indonesia. It is believed that this can transfer the skills and knowledge of human resources, and create justice for local and foreign entrepreneurs. Law No. 11 of 2020 concerning Job Creation, including repairing, changing, replacing and perfecting and creating: Investment Ecosystems and Business Activities; Ease, Protection, and Empowerment of MSMEs and Cooperatives; Ease of Doing Business; Research and Innovation Support; Land Procurement; Economic Zone; Central Government Investment and Ease of National Strategic Projects; Implementation of Government Administration to Support Job Creation; Legal sanctions; Other Provisions; Transitional Provisions; Closing. Since the emergence of the current Omnibus Law, it has brought quite a complicated problem to the USA. In the ASEAN country, Vietnam has also reformed investment regulations, which began in 1986, by making foreign investment laws, namely allowing foreign investors to enter. Baker & McKenzie stated that in 2016 in their report: by reforming the administrative bureaucracy and providing facilities for foreign investors, the flow of foreign investment and manufacturing in Southeast Asia, shifted to Vietnam. All kinds of goods and services companies are moving towards Vietnam. Related to this matter, the government of the Republic of Indonesia conducted a series of foreign economic diplomacy. This effort was made to enhance economic diplomacy to expand access to foreign markets and create a climate for investment competitiveness in Indonesia.<sup>25</sup> Foreign investment comes to Indonesia to support the domestic economy and prosper all Indonesian people.<sup>26</sup>

It is very important to realize that the legal system adopted by the Vietnamese state is a Civil Law

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- 23 Menteri Koordinator Bidang Politik, Hukum, dan Keamanan, Mahfud MD dan Pakar hukum tata negara, Yusril Ihza Mahendra, "Mahfud akan Bentuk Tim Tampung Masalah UU Ciptaker", Andri Saubani, 05/11/2020, © Republika/ Putra M. Akbar Menko Polhukam, Mahfud MD. REPUBLIKA.CO.ID, JAKARTA, Fakta Angka UU Cipta Kerja- (Infografis Republika.co.id):<https://www.msn.com/id-id/berita/nasional/mahfud-akan-bentuk-tim-tampung-masalah-uu-ciptaker/ar-BB1aIx9Y>
  - 24 Margiansyah, D. (2020). Revisiting Indonesia's Economic Diplomacy in the Age Of Disruption: Towards Digital Economy and Innovation Diplomacy. *JAS (Journal of ASEA Studies)*, 8 (1),15–39. <https://doi.org/10.21512/jas.v8i1.6433> Marzuki, P. M. (2010). Penelitian Hukum. Kencana Prenada.
  - 25 Winata, A. S. (2018). Perlindungan Investor Asing Dalam Kegiatan Penanaman Modal Asing Dan Implikasinya Terhadap Negara. *Ajudikasi: Jurnal Ilmu Hukum*, Nomor 2, volume (2), 127. <https://doi.org/10.30656/ajudikasi.v2i2.902>
  - 26 Delanova, M. O. (2020). Analisis Kebijakan Diplomasi Ekonomi Indonesia Terhadap Pasar Non Tradisional. *Jurnal Dinamika Global*, Volume 4, Nomor 02, 382–402. <https://doi.org/10.36859/jdg.v4i02.140>.

System which is influenced by the French, German, and Japanese civil law systems, the 2015 Civil Code, precedents can be used in civil matters in cases where analogous law cannot be applied (Article 6.2 Civil Code, 2015). The People's Supreme Court (The Supreme People's Court) has issued Resolution No. 03/2015 / NQ-HĐTP on the process for electing, issuing, and adopting presidents. The National Assembly is the highest legislative authority in Vietnam and its members are elected in democratic elections Foreign investors can invest in Vietnam in a number of ways, including establishing a new company, acquiring or investing in an existing company, establishing a branch or representative office, or using contractual arrangements.<sup>27</sup>

### 3.3 Omnibus Law Controversy and Legitimacy in the National Legal System

Independence is something that must be upheld in the formation of law with the omnibus law system, and its existence is not related to the order of statutory regulations, whether at the same level or similar. Legislators (legal drafters) do not have to pay attention to the existence of content material contained in other statutory regulations. The formulation of norms is adjusted to the legal system and politics that apply in the country concerned. Reformulating, abolishing, or revoking part or all of other regulations, is fully freed up to the legal drafter. Formation of statutory regulations using the omnibus system is generally needed to overcome the problem of obesity, and hyper-regulation of various statutory regulations. Overlapping, disharmony, fatness, or dissonance are the main issues that must be ended. In terms of the science of legislation, the omnibus law legal system is contradictory to the paradigm for the formation of statutory regulations. Of course, this is contrary to the principles of the formation of legislation. Referring to Law Number 12 of 2011 in conjunction with Law Number 15 of 2019 in conjunction with Law Number 13 of 2022 regarding concerning the Second Amendment, concerning Procedures for Forming Legislation, there is no concept of an omnibus law. Law No. 11 of 2020 concerning Job Creation, the sequence is equivalent to the law. The systems for forming statutory regulations that are often used in Indonesia include Regulatory Impact Assessment (RIA) and Rule, Opportunity, Capacity, Communication, Interest, Process, Ideology (ROCCIPI).<sup>28</sup>

The formation of the rule of law with the omnibus law system has, in fact, colliding with adherence to legal principles that were previously arranged hierarchically. This can be understood from the theory of legal levels by Hans Nawiasky. The legal norms of a country are always layered and tiered. Lower norms apply sourced from and based on higher norms, higher norms apply sourced from and based on higher norms until higher norms are called Basic Norms. The tiered arrangement of statutory regulations is one of the important principles in the process and technique of drafting statutory regulations. Even though Indonesia adheres to a civil law system (Civil Code), this concept can be used by the Indonesian government to address the problem of obesity, and hyper-regulation. However, the issue that will arise is regarding the legal standing as a result of this omnibus law. In theory, the legislation in Indonesia, the legal position of the omnibus law concept has not been regulated. If you look at the legal system in Indonesia, the law resulting from the omnibus law concept can lead to a legal umbrella because it regulates thoroughly and then has power over other regulations. However, Indonesia does not adhere to the Umbrella Law because the position of all laws is the same. This is a problem in theory with statutory regulations regarding its position so its position must be given legitimacy in Law Number 12 of 2011 concerning the Formation of Legislation. Has the revision of Law No. 12 of 2011 become Law No. 15 of 2019 in conjunction with Law No. 13 of 2022 concerning the Second Amendment Undang-Undang Nomor 12 Tahun 2011, which includes the omnibus law legal system, have the legal issues with the Job Creation Law been resolved? It should be understood that there is a strong desire from the center to increase investment, but there are certain investments that are not acceptable to the regions because they are considered to reduce the cultural value of the local community. Natural resource policy as well as the economy, will be a very in-depth consideration to study, because the government wants to open investment links abroad, both in terms of the benefits the country can fight for and in terms of employment benefits can have policies, so that the economy in Indonesia is in line with the policy.

After the Government issued a Government Regulation in Lieu of Law (Perpu), various groups of people

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27 Deprez, S. (2018). The strategic vision behind Vietnam's international trade integration. *Journal of Current Southeast Asian Affairs*, 37 (2), 3–38. <https://doi.org/10.1177/186810341803700201>

28 Romi Yudianto, Kepala Kantor Wilayah Kemenkumham NTB, Podcast Opera Bahan Adopsi Metode RIA dan Teori ROCCIPI Dalam Penyusunan Naskah Akademik, [ntb.kemenkumham.go.id](http://ntb.kemenkumham.go.id), 06 September 2022.



submitted requests for formal and material review of the Perppu to the Constitutional Court (MK), including Petition Number 5/PUU-XIX/2023; Number 6/PUU-XIX/2023, regarding the subjectivity of the President issuing a Perpu must be based on objective circumstances. This Perpu does not meet the requirements because the Government uses Law No.11/2020 (Job Creation Law) to carry out urgent needs in resolving legal issues, and so far there has been no legal vacuum; Law Number 11/2020 contradicts the 1945 Constitution, academic texts and drafts are not transparent, open, easily accessible to the public; the procedure for establishing the law is not based on a definite method and method; there was a change in the writing of several substances after the joint approval of the DPR and the President and contrary to the principles of the formation of statutory regulations, in accordance with Law no.12 of 2011 in conjunction with Law no.15 of 2019 in conjunction with Law Number 13 of 2022 concerning Second Amendment Undang-Undang Nomor 12 tahun 2011. Issuance of Perpu 2/2022 does not fulfill the mandate and orders of Decision Number 91/PUU-XVIII/2020 and Decision Number 139/PUU-VII/2009. So that it creates uncertainty about a just law and the process of forming it is contrary to Article 22 paragraph (1) of the 1945 Constitution, and does not meet the requirements of a coercive force based on objective circumstances. Article 55 of Perpu 2/2022 eliminates constitutional rights, and Law 13/2003 on Manpower, is still valid.

In the Common Law legal system, the Omnibus Law is called an omnibus bill, a statute containing many different matters, created to compel the executive to accept all minor provisions that are unrelated or to veto major provisions; set all issues related to a particular subject. Glen S Krutz defines the draft omnibus as part of the main law, which covers three or more main topic policy areas. The weakness of the Omnibus Law method, in Indonesia a number of academics and law practitioners criticize the use of the omnibus law. Professor of Legislation and former constitutional judge, Maria Farida Indrati, questioned and asked that the use of the Job Creation Law not be rushed. The omnibus law method makes parliament powerless and makes it difficult to hold the government accountable, it is difficult to balance research with government research. Radical impression because it changed and simplified many articles and many laws. Impressed by harassment and skepticism about whether it can indeed be approved.

The existence and implementation of the omnibus law in Indonesia have given rise to controversy due to the fact that as many as 82 laws and 1,100 overlapping articles have been harmonized which hinders investment. With the hope of being able to encourage investment, investment growth is also considered not too bad, and the perception of foreign investors towards Indonesia continues to improve. The omnibus law can be a solution to overcoming convoluted bureaucracy that hinders investment. If a company makes an acquisition, it must check national regulations to regional regulations, resulting in inefficient business processes and creating investment uncertainty and convoluted laws must be turned into the norm. According to the Coordinating Minister for the Economy, Airlangga Hartarto, the existence of the omnibus law Law no.11 of 2020 concerning Job Creation, various types of businesses now no longer require permits with the omnibus law. Facilitate individual entrepreneurs to form a public company. It is hoped that this will stimulate the business climate, because it can make companies with maximum capital, without minimum limits, able to encourage Investment in the Property Sector. In comparison, the main form of foreign direct investment in Vietnam can be a joint venture company can be a limited liability company, or a joint stock company.

Omnibus Law on Law Number 11 of 2020, requires the government to facilitate licensing for Micro, Small, and Medium Enterprises only with a Capital Identification Number, KTP; restructuring business licenses not based on licensing principles, but business risks; various types of business no longer require permits, except for types of business that are considered dangerous and pose security, health, and environmental risks. Other types of business, only use general standards and supervision. Entrepreneurs are exempt from criminal law, to drive investor confidence, including in the property sector. The Ministry of Finance will re-arrange tax and interest sanctions to improve taxation. It is hoped that foreign investors will start looking to invest in Indonesia. Simplification of licensing, investment requirements, employment, convenience, empowerment, and protection of Micro, Small, and Medium Enterprises (MSMEs), as well as ease of doing business. In the tourism sector, this Omnibus Law can help MSMEs to obtain permits and bring in investment capital from partners who are still constrained by bureaucracy, which is very liberal because many assets are owned by the private sector and are able to shift the role of MSMEs. It also makes it easier for Investors with Environmental Permits/AMDAL for large companies and MSMEs, ensuring that EIA regulations are a principle in Law Number 32

of 2009 concerning Environmental Protection and Management. Head of the Investment Coordinating Board, the government wants to reform the process for obtaining environmental permits by large investors, as well as MSMEs.

### **3.4 Suing the Partiality and Negative Impacts of the Omnibus Law on Job Creation.**

The Omnibus Law on Job Creation also has a negative impact on the ease of ownership of houses and land for foreign citizens. Articles 136–137 of Law Number 11 of 2020 which have been amended most recently by Law Number 6 of 2023 concerning Stipulation of Government Regulations in lieu of Law Number 2 of 2022 concerning Job Creation to become Laws, states among other things that: property rights of flat units can be given to foreign citizens, foreign legal entities, or representatives. Foreign countries and international institutions that reside or have representatives in Indonesia are transferred and guaranteed by being burdened with mortgage rights. With the extraordinary potential of Indonesia's natural resources, it is believed that foreigners will be eager to own them. In the case of Indonesia, it should think about the negative impact on national sovereignty, it must side with the Indonesian people themselves, because there are still many who need homes. According to the author's understanding, to analyze the problems of this research, the Integrative theory of Romli Atmasasmita<sup>29</sup> can be used, which reconstructs the thoughts of Mochtar Kusumaatmadja and Satjipto Rahardjo by producing a new theory, namely the reconstruction of the Development Law Theory of Mochtar Kusumaatmadja and the Progressive Law Theory of Satjipto Rahardjo. The relevance and importance of law in the life of Indonesian people reflect that law as a system that regulates people's lives cannot be separated from the culture and character of the people, the geographical location of the environment, and the people's outlook on life. The function and role of law are as a means of unifying and strengthening society and the bureaucracy in dealing with the developments and dynamics of life, both within the Unitary State of the Republic of Indonesia and within the scope of international developments. The law does not only consider normative aspects, but also social, economic, political, and security aspects.

The negative impact of this omnibus law policy on the Job Creation Law is that in the future, the Indonesian government will increasingly face foreign corporations in international arbitration institutions such as The International Center for Settlement of Investment Disputes. The vast majority of arbitration lawsuits are filed by foreign companies. The reason is, they are disadvantaged by the existence of new regulations or policies taken by the government. In addition, the agreement also regulates protection from acts of nationalization. In the judicial settlement of disputes, the position of the state and corporations is equal.<sup>30</sup> This has also had the impact of increasing investment business activities which are very competitive, and require transparency and legal certainty for dispute resolution which is an integral part of national and international goods and services business transactions. Traffic trade in goods and services is believed to be more intense. Indonesia must carry out the MEA agreement, and be prepared to face possible risks, including legal risks. Previously, there had been an agreement on the ASEAN Free Trade Area, the liberalization of trade barriers, and the ASEAN Comprehensive Investment Agreement, to overcome barriers to trade in goods and services and investment.<sup>31</sup>

The effects of economic liberalization and globalization have also been followed by the phenomenon of the emergence of business law disputes. Investment business disputes between countries, especially countries that have big challenges in the economy, namely the United States, Britain, Germany, China, and Brazil. Asia-Pacific Forum for International Arbitration (AFIA) by Singapore representative, Dulac Elodie, 2nd Annual Symposium For Arbitrators and Mediators. Responding to the situation in the globalization era which has increasingly opened the flow of disputes between countries, which require special attention, which is more complicated due to differences in jurisdiction and culture, collecting evidence from several countries. Francesca Depalois, an alternative dispute resolution expert from Italy, considers that the settlement is more

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29 Romli Atmasasmita, *Hukum Kejahatan Bisnis, Teori dan Praktek di Era Globalisasi*, Penerbit: Prenanda Media Group, 2014, 249-259.

30 Hernawati, R. A. S., & Suroso, J. T. (2020). *Kepastian Hukum Dalam Hukum Investasi Di Indonesia Melalui Omnibus Law*. *Jurnal Ilmiah MEA (Manajemen)*, 4(1), 392–408. <http://journal.stiemb.ac.id/index.php/mea/article/view/557>

31 Simanjuntak, Ricardo, "Dispute Settlement Mechanism Under the ASEAN Legal Frameworks: a collective Commitment Creating the Rules-Based ASEAN Economic Community," Penerbit: KontanPublishing, Jakarta: Tanpa Tahun, 165-166.

effectively resolved through mediation or arbitration, requires the ability to work in a variety of cultures. In accordance with the New York Convention of 1958, the obligations of the parties are reciprocal.<sup>32</sup> The Pattern of Investment Dispute Settlement can be done through Litigation.<sup>33</sup> Settlement of investment disputes between the government and domestic investors.<sup>34</sup> Disputes between the government and foreign investors and settlement through arbitration must be agreed upon by the parties (Law No. 30 of 1999).

#### 4. CLOSING

Statutory regulations related to investment in Indonesia are found in various regulations, which result in obesity and hyper-regulation, which are feared to reduce the investment competitiveness climate. To overcome these legal problems, the government has taken legal breakthroughs by carrying out regulatory reform, effectiveness, and simplification, in order to trigger, make it easier for investors to invest their capital, as well as raise the ranking of ease of doing business in Indonesia; ease of doing business, Protection and Empowerment of MSMEs and Cooperatives; investment regulation reform; simplification and harmonization of regulations and permits; quality investment achievement. For this reason, the government should, in implementing the provisions of the Omnibus Law on Job Creation, immediately harmonize and synchronize the Omnibus Law on Job Creation with other relevant statutory regulations, both vertically and horizontally. So that the government's aims and objectives are to facilitate licensing to invest in Indonesia, through reform of investment law regulations in the perspective of guaranteed investment legal certainty, as an effort to improve the climate of competitiveness and guarantee investment legal certainty, it is expected to attract investment and immediately make Indonesia the main destination for foreign investment, to encourage national economic growth.

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