

Establishment of Omnibus Law in Solving Investment Issues in Indonesia

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Abstract

This study aimed to better understand the concept of Omnibus Law in the legislation and evaluate its use in responding to investment needs in Indonesia. The method in this research was normative legal research with secondary data through data analysis. This study showed that the Omnibus Law was not an appropriate approach to the formation of legislation in responding to investment needs in Indonesia. Based on the existing data, the investment climate in Indonesia is quite high and running well and even in a better situation when compared to other Asian countries. The Omnibus Law on Job Creation will raise a new problem instead, such as the absence of legal certainty for investment and the priority of the investment types. From the aspect of industrial relations, the Omnibus Law will result in disharmony in industrial relations between employers and workers, and it even potentially reduces guarantees for workers' human rights. Ironically, the fulfillment of workers' human rights has become an important benchmark for investors in developed countries to invest in developing countries, such as Indonesia. Therefore, the Indonesian government should strengthen the Corruption Eradication Commission and ensure a better investment climate by guaranteeing human rights to all workers and by reducing the ratio between investments (ICOR).

Keywords: investment; employment; omnibus law; job creation law

1. Introduction

The hashtags #CancelOmnibusLaw and #DPRRIkhiyanatirakyat echoed among the public in response to the completion of the Omnibus Law discussion at level I by the Legislative Body (Baleg) of the DPR RI, because the Omnibus Law on the Job Creation Bill has officially been ratified as a Draft Law by the House of Representatives of the Republic of Indonesia through a Plenary Meeting on Monday, October 5, 2020. The ratification of the Omnibus Law on the Job Creation Bill was attended by government representatives, including Coordinating Minister for the Economy Airlangga Hartarto, Minister of Finance Sri Mulyani, and Minister of Law and Human Rights Yasonna Laoly showed that the government also fully supported the passage of this controversial law. Previously, the government had completed the discussion of more than seven thousand DIM (Problem Inventory List) of the Job Creation Act, which was carried out together with the Legislation Body (Baleg) of the DPR RI. (CNN Indonesia, 2020)

The Omnibus Law has attracted a lot of attention from various elements of society, especially legal experts, politics, and other related parties who were threatened by the

existence of this legislation. However, it has been a long-standing plan from the Indonesian government due to the overlapping and ineffective regulations in investment. There are around 42.000 regulations in the form of laws, Government Regulations, (Fitryantica, 2019, p. 9) Presidential Regulations, Ministerial Regulations, as well as Governor, Mayor and Regent Regulations in various regions in Indonesia suspected as the cause of the government's slowness in making decisions, especially those related to foreign investment. Consequently, the Omnibus Law is expected to be the way out to address those issues. (Rizki, 2019)

Regardless of the discourse, the Omnibus Law on Job Creation is considered to lean on executive domination and potentially change the practice of forming laws and regulations. Despite that, legal experts propose a number of certain advantages, such as resolving conflicts between laws and regulations. (Darmawan, 2020)

This research was to provide solutions to the application of the Omnibus Law concept practiced by Common Law countries such as the United States and Great Britain, as compared to Indonesia as a Civil Law country. In addition, this research might contribute to harmonizing the Omnibus Law in the constitutional system of the Republic of Indonesia, as mandated by the 1945 Constitution.

2. Discussion and Analysis

2.1. Principles of Indonesia as a Welfare State under the 1945 Constitution

Indonesia has principles as a welfare state, meaning that Indonesia must have various kinds of innovative ideas and ensure economic policies. The welfare state principle is the basis for the position and function of the government or *bestuursfunctie* as the rationale for carrying out a good supervision process on the implementation of state power, especially state executive institutions, to avoid abusing power. Articles on welfare in Indonesia are contained in the 1945 Constitution of the Republic of Indonesia (UUD 1945). (Marilang, 2012, p. 40) When compared with the constitutions of other countries with similar welfare goals, such as Norway, Japan, and America, Indonesia in the 1945 Constitution has 14 articles related to welfare, although not all articles have the power to form a prosperous society. (Elviandri, 2019, p. 35) One of the innovations and policies carried out by the Indonesian government in improving the economy is by issuing the Omnibus Law of the Job Creation Act and is expected to realize the welfare state to attract the interest of foreign investors.

The Unitary State of the Republic of Indonesia (NKRI) adheres to the ideology of the Welfare State, as emphasized by the Pioneers of Independence and the founding fathers of the Unitary State of the Republic of Indonesia (NKRI) that the democratic state established as the "Welfare State." First Vice President of the Republic of Indonesia, Mohammad Hatta, used the term "Government State" in defining the welfare state for the Republic of Indonesia. (Yamin, 1945) The principle of the Welfare State in the 1945 Constitution of the Republic of Indonesia can be found in detail in several articles, especially those relating to socio-economic aspects. (Yamin, 1945)

Due to the emphasis in the 1945 Constitution of the Republic of Indonesia, according to legal experts, the Indonesian constitution can be called an economic constitution or a social constitution similar to Russia, Bulgaria, Czechoslovakia, Albania, Italy, Belarus, Iran, Syria, and Hungary. Furthermore, according to several legal experts, the style of content regulated in the 1945 Constitution is influenced by the concept of socialist countries.

Based on the theory of economic analysis of law, the quality of law in a country will be judged by the extent of its efficiency. Thus, the goals, duties, and obligations of the welfare

state are humongous. (Krever, 2013, p. 37) Referring to the economic interpretation of the constitution, the welfare state based on the 1945 Constitution of the Republic of Indonesia is divided into four main pillars. First, the universal social security system acts as the backbone of the state welfare program. Second, the development of productive resources is to fulfill the basic rights of citizens, especially health and education. It is also used as a support for efficiency and can prevent the escalation of social security costs, as well as facilitate workers with the necessary skills to enter the labor market, create jobs widely as a starting point for development, and restructure the economy in the context of redistribution of productive assets and tools. Third, high, inclusive, equitable, and equity-oriented economic growth is through the redistribution of assets and means of production, as well as joint control of production through cooperatives and all state-controlled strategic sectors that affect the lives of many people. Fourth, bureaucratic reform and strengthening fiscal capacity is to create a solid and responsive government as an agent of development and a provider of public goods and services leading to the management of natural resources and strategic sectors for the needs of the people, and has an urgency for the state, as a supporter of the welfare state to uphold social justice for all Indonesian people. (Wibisono, 2016)

The most crucial thing in a welfare state is how the state can increase the level of welfare for its citizens, and anything can be done for this purpose. The state must also be able to maximize the potential, both domestic and foreign potentials, and increase economic value in certain aspects in order to provide convenience for foreign investors to invest their capital to increase the Indonesian economy. Therefore, in a state of law, one of the most important things to pay attention to is the legal policy. (Elviandri, 2019, p. 40)

2.2. Omnibus Law and Investment Issues in Indonesia

Bhima Yudhistira, an economist from the Institute for Development of Economics and Finance (Indef), emphasized that the Omnibus Law will not help increase Indonesia's competitiveness and investment. He argued that two problems must be anticipated from the Omnibus Law of the Job Creation Act, which will not have much impact on improving the quality of Indonesia's investment. The first problem is the process of changing hundreds of articles which will create legal uncertainty for investors. This, of course, makes many investors reluctant to invest in Indonesia. Also, the second problem is the action against the Omnibus Law of the Job Creation Act by workers in Indonesia, which can damage industrial relations between companies and workers at the micro-level (*bipartit*) because of the threat of a strike from workers reduce productivity and harm investors and companies. (Rosana, 2020a) Because, according to Article 1 of Law Number 12 of 2011 concerning the Process of Making Laws, the formation of laws and regulations must go through several stages, namely: planning, drafting, discussing, ratifying, and enacting.

Consequently, the investment will not go directly to Indonesia because many other variables will certainly be considered by investors, such as the seriousness of the government in eradicating corruption, the effectiveness of fiscal and non-fiscal incentives, the costly raw materials, and logistics. Along with the revocation of workers' rights in the Omnibus Law of the Job Creation Act, it is possible for investors' perceptions, especially developed countries, to be negative towards the investment climate in Indonesia.

Besides, corrupt practices are one of the main reasons why investors are disinterested in investing and do business in Indonesia, apart from infrastructure, bureaucracy, taxes, and labor factors. (Jayani, 2019) The high level of corruption in Indonesia caused the unfavorable investment climate, thus unable to attract Foreign Direct Investment (FDI) and domestic investment, resulting in a slowdown in the multiplier effect process in the economy. Consequently, low economic growth resulted in a halt in poverty alleviation programs.

If the government wants to continue to reap the benefits through foreign investment, it must firmly provide legal protection and certainty, especially to foreign investors who wish to invest in Indonesia, since the track record of investors in a country also become a parameter for other foreign investors. Investors in developed countries place a high priority on fair labor practice and decent work, which prioritizes the fulfillment of labor rights considered to be very contrary to the principles of developed countries in economy and civilization.(Nurfaizah, 2020)

2.2.1. The Economy and Investment Problems in Indonesia

Difficulties in investing in Indonesia impact the low competitiveness of the Indonesian state against neighboring and surrounding countries. Consequently, the Indonesian government, under the leadership of President Joko Widodo, believes that there should be a breakthrough in reforming regulatory issues in Indonesia by adopting a regulatory arrangement through the Omnibus Law. This is, of course, quite different from the method used by Indonesia to amend the Law since the change in the regulatory arrangement through the Omnibus Law will include 80 laws. One Law that changes various provisions regulated in various Laws will be the core of the Omnibus Law.(Biersbach, 2017) The Unitary State of the Republic of Indonesia has very fundamental laws and regulations regarding aspects of the regulation of the economic system as confirmed in Article 33 Paragraph 4 of the 1945 Constitution of the Republic of Indonesia affirms that:

“The national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity.”

Article 33 Paragraph 4 of the 1945 Constitution of the Republic of Indonesia mandates the state to regulate the economy by embodying several other relevant legal provisions. Aspects that are fundamental elements of the Indonesian economy have been regulated in the 1945 Constitution and must be fulfilled in order to realize the prosperity of the people in the aspects of economic life as a manifestation of the national goals.(Elviandri, 2019, p. 40)

In order to realize the nation's economy, it is necessary to have synergy between the government and investors. The government certainly has a huge role as an economic regulator to ease investors in investing in improving the level of the economy and positively impacting people's lives. For the synergy between the government and investors to work well in investing in Indonesia, several laws and regulations in the economic sector are needed to implement the mandate of the 1945 Constitution of the Republic of Indonesia.(Swasono, 2008, p. 3)

One of the laws related to the economy in Indonesia is Law Number 25 of 2007 concerning Investment (UU PM). The enactment of this Investment Law is a form of legal certainty and a basis for investors who wish to invest in Indonesia. The Investment Law does not only apply to Indonesian investors but also applies to foreign investors who wish to invest. The purpose of the enactment of this Investment Law is in the context of realizing national economic development that is just and based on the prosperity of the people. The realization of the economy in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia experienced several obstacles, which resulted in a mismatch of the nation's ideals. One of these problems stems from the implementation of investment law in Indonesia. The existence of investment regulations, which overlap with other regulations, impacts complicated investment licensing and will reduce the interest of foreign investors to invest in Indonesia. When the Omnibus Law method is implemented in the investment sector, a more straightforward rule will apply and, of course, will revoke other investment regulations that burden investment in Indonesia.

In addition, the issue of legal certainty is an obstacle to investment entry. Legal uncertainty is part of the problem that causes an unfavorable investment climate. A conducive climate will certainly greatly affect the investment climate in Indonesia. For this reason, three important aspects need to be considered, namely, aspects of legal substance, aspects of the legal apparatus, and aspects of legal culture that must reflect legal certainty. The establishment of the Omnibus Law on the Job Creation Act aims to avoid creating debate or controversy among the public, so it needs to be maximized, primarily based on the formation of laws and regulations, both in terms of legal aspects, theoretically and dogmatically. (RAS & Suroso, 2020, p. 25) Law No. 12 of 2011 concerning the Establishment of Legislations explained that the main source of law in Indonesia is Pancasila.

Therefore, even though the Omnibus Law on the Job Creation Law was made to facilitate more lax investment licensing, it must follow the provisions of the Pancasila ideology. This Pancasila ideology is the theoretical, sociological, and philosophical aspect of the Indonesian nation. When forming laws and regulations, the most important thing is to ensure that the rights of the community are fully guaranteed without abiding by certain interests. (A'la & Supriyad, 2020, p. 25) Various methods of establishing similar laws and regulations that have been implemented in Indonesia are quite a lot, including the Regulatory Impact Assessment (RIA), Opportunity, Capacity, Communication, Interest, Process, and Ideology (ROCCIPI).

In the formation of law, there is a norm in the legislation produced through removing or changing a norm and reorganizing it through other laws. However, considering that the use of the Omnibus Law legislation method is not yet common in Indonesia, research on Regulatory Reform Policy through the implementation of the Omnibus Law in Indonesia is significant before the Omnibus Law can be implemented in Indonesia. (A'la & Supriyad, 2020, p. 20)

2.2.2. Indonesia's Global Investment Climate

The Indonesian government claims that, through the Omnibus Law, the Job Creation Act can increase investment in Indonesia to create jobs that will absorb labor and reduce unemployment. In fact, the amount of investment in Indonesia continues to grow and is almost the same as in India. The level of investment in Indonesia is even higher than in Brazil, China, South Africa, Thailand, and Malaysia. Only Vietnam has higher investment growth than Indonesia, as seen in Figure 1 below:

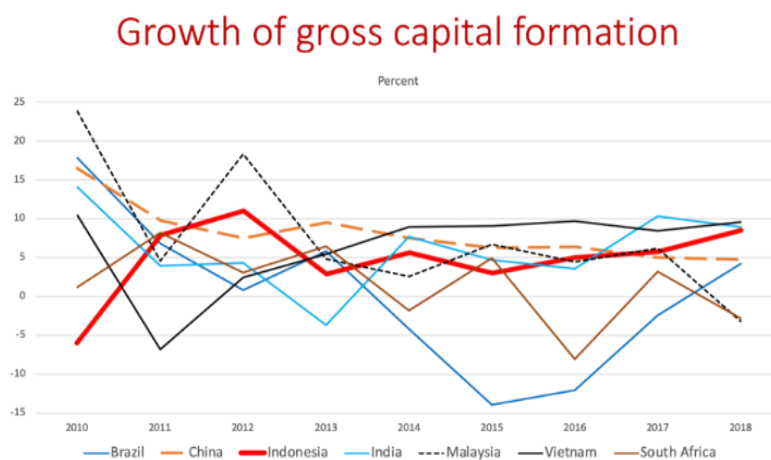


Figure 1. Gross Capital Formation Growth. (Growth of Gross Capital Formation, 2018)

The national economic expert, Faisal Basri, emphasized that the Government of Indonesia should not have to impose the Omnibus Law on the Job Creation Act in order to increase

investment entering the country. According to Faisal Basri, the government is currently in a strong position to reform and improve the bureaucracy to attract foreign investors and business people to Indonesia. It is evident from the data released by the World Bank in recent years regarding the improvement in the Ease of Doing Business (EODB) ranking in Indonesia.

Faisal Basri said that the government only needs to improve a few things related to the implementation of the policies that were previously issued. Faisal Basri also claimed that with the reform of the new policy, the revolutionary process of the business pattern would bring Indonesia into the top 30 countries that have EODB. This is because high investment growth will make the share of investment in GDP continue to increase, even much better than the average lower-middle-income country and the upper-middle-income group of countries. In the ASEAN region, the winner is Indonesia, and no other country is higher than Indonesia, as seen from Figure 2 below:

Share of investment in GDP in Indonesia is higher than the lower and upper middle income countries

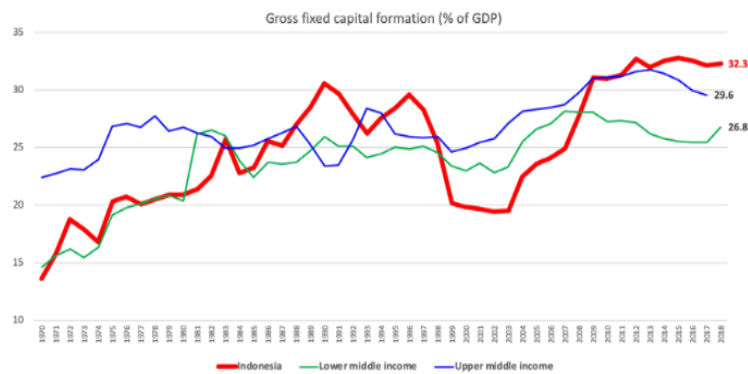


Figure 2. Share of Investment in GDP in Indonesia Compared to Other Countries. (*Growth of Gross Capital Formation, 2018*)

Compared to Indonesia, China quickly realizes the increase in investment in their country is too high. Still, the production capacity of goods and services is not balanced with the consumption of local people. China spurred public consumption at home to absorb and use domestic production more and at the same time reduce dependence on the value of exports of foreign goods. The Chinese government no longer wants to hire domestic workers at low wages. China realizes that the welfare of the people is more important than just getting big profits, as seen from Figure 3 as follows:

The share of investment in GDP in Indonesia is higher than all ASEAN countries and India

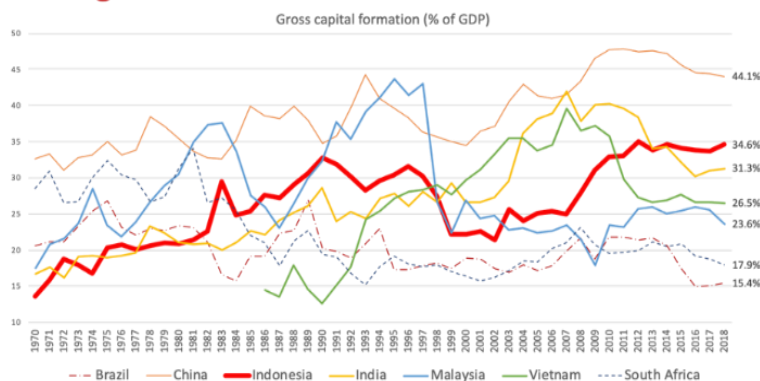


Figure 3. The Share of Investment in GDP in Indonesia Compared to ASEAN Countries and India. (*Growth of Gross Capital Formation, 2018*)

Despite the record-high investment share in Indonesia's GDP, the implementation of investment agreements was very much hampered due to over-complicated policies leading to the creation of the Omnibus Law on Job Creation. President Joko Widodo is looking for a shortcut or breakthrough by proposing the Laws. However, the wrong foundation in Omnibus Law leads to a weak legal basis. (Basri, 2020) The early issues potentially lead to many new mistakes when left unchecked without any solutions. It is even more fatal when some view that the existence and actions of the Corruption Eradication Commission (KPK) as one of the causes that hinder investment in Indonesia. Accordingly, the KPK has been weakened and no longer has the power to eradicate corruption, especially in the form of policies. The government should have strengthened the function of the KPK in eradicating corruption problems in Indonesia instead of weakening or revising the KPK Law.

Consequently, the thing that most discourages investors is corruption and inefficient bureaucracy. On the other hand, labor issues are considered significant because they are in the eleventh position, (Basri, 2020) as seen in Figure 4 below:



Figure 4. The Most Problematic Factors for Business in Indonesia. (*Growth of Gross Capital Formation, 2018*)

Many indicators explain that investment in Indonesia can be categorized as good. For example, perspective of Japanese manufacturing companies, Indonesia is ranked fifth as the most promising country for investment. Nevertheless, Indonesia has experienced a decline in its position, from the top position in 2013 to the fifth position in 2019. However, this is very promising for Indonesia since the fifth position is not only in the Asian region alone but world-wide. The data can be seen in Figure 5 below:

First time climbing to the top in 2013, Indonesia beat China in Japanese FDI, but then fell to 5th in 2017-18

Promising countries for overseas business operation by Japanese Manufacturing companies over the medium term (next 3 years or so)

Rank	1997	2003	2005	2006	2007	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 st	CHN	CHN	CHN	CHN	CHN	CHN	CHN	CHN	IND	IND	IND	IND	CHN	CHN	IND
2 nd	USA	THA	IND	IND	IND	IND	IND	IND	IND	IND	IND	CHN	IND	IND	CHN
3 rd	IND	USA	THA	VNM	VNM	VNM	THA	IND	THA	CHN	CHN	IND	VNM	THA	VNM
4 th	THA	VNM	VNM	THA	THA	THA	VNM	THA	CHN	THA	THA	VNM	THA	VNM	THA
5 th	IND	IND	USA	USA	RUS	BRA	IND	VNM	VNM	VNM	VNM	THA	IND	IND	IND
6 th	VNM	IND	RUS	RUS	USA	IND	BRA	BRA	BRA	MEX	MEX	MEX	USA	USA	USA
7 th	PHL	KOR	KOR	BRA	BRA	RUS	RUS	MEX	MEX	BRA	USA	USA	MEX	MEX	PHL
8 th	MYS	TWN	IND	KOR	IND	USA	USA	RUS	MMR	USA	PHL	PHL	PHL	PHL	MEX
9 th	BRA	MYS	BRA	IND	KOR	KOR	MYS	MMR	RUS	RUS	BRA	MMR	MMR	MMR	MMR
10 th	TWN	RUS	TWN	TWN	TWN	MYS	TWN	USA	USA	MMR	MMR	BRA	BRA & KOR	MYS	MYS

Figure 5. First time climbing to the top in 2013, Indonesia beat China in Japanese FDI, but then fell to 5th in 2017-18. (Kasuga & Fujii, 2020)

A survey conducted by one of the leading media based in London, The Economist, showed that almost half of the survey respondents plan to increase their company investment in the Asian region, including Indonesia. In the Asian region, Indonesia is in the third position, only losing to China and India, who occupy the first and second positions as seen in Figure 6 below:

China, India, and Indonesia are the most desirable countries to increase investment in 2019



Figure 6. China, India, and Indonesia are the Most Desirable Countries to Increase Investment in 2019. (The Economist, 2019)

The latest annual publication by the United Nations Conference on Trade and Development, the World Investment Report 2020, proves Indonesia's reputation is increasingly prominent because Indonesia is in the world's top-20 position for Foreign Direct Investment. For the ASEAN region, only Indonesia and Singapore are in the top-20 positions in the world. In fact, Indonesia can be categorized as a country that is "overpriced" to foreign investors. What is even more remarkable is that so far, Indonesia has never depended on foreign investment, as seen in Figure 7 below:

Indonesia is in the top 20 host economies for FDI

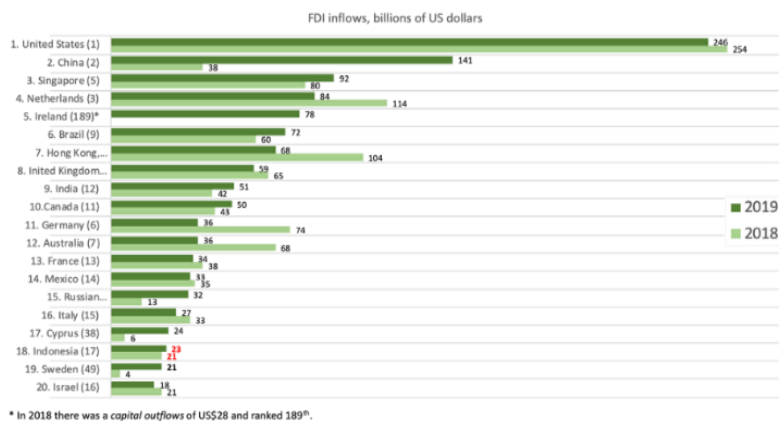


Figure 7. Indonesia is in the Top 20 Host Economies for FDI. (World Investment Report 2020, 2020)

Actually, if Indonesia needs foreign investors, Indonesia does not need to use the "atomic bomb" of the Omnibus Law on the Job Creation Act. Indonesia only needs to relax its main restrictions in the form of equity restrictions. Figure 8 explains the types of equity restrictions:

Type of FDI restriction

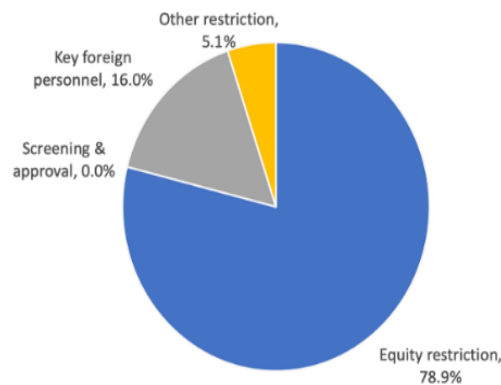


Figure 8. Types of FDI Restrictions. (OECD, 2021)

Recently, President Joko Widodo complained about Indonesia's economic growth being stuck at 5%. Despite that, the government under the leadership of President Joko Widodo thinks that it has done many things to increase Indonesia's economic growth, such as carrying out massive infrastructure development, the lowest inflation in history, the poverty rate, which has been successfully suppressed to only one digit and had never happened since Indonesia's independence. Also, the inequality rate has fallen below 0.4 as measured by the Gini Ratio, which states that inequality in Indonesia is relatively low compared to President Susilo Bambang Yudhoyono above 0.4 (medium inequality). (Basri, 2020)

However, if the Indonesian government under the leadership of President Joko Widodo wants to achieve economic growth of 7% to absorb more workers in the future, the Omnibus Law on the Job Creation Act is not necessarily appropriate. The Indonesian government should focus more on the rampant corruption, especially in the center of power and all forms of waste, by reducing the Incremental Capital Output Ratio (ICOR) or the ratio between investments last year with the growth of output (GDP) in Indonesia with 4.7. As a result, it

may help the economic growth to reach 7% and be able to absorb more workers as projected by the Indonesian government.(Basri, 2020) Accordingly, one of the things that slow down Indonesia's economic growth is corruption, which until now has not been completely resolved. In President Joko Widodo's era, the Incremental Capital Output Ratio (ICOR) reached 6.5, while during the New Order period until the era of President Susilo Bambang Yudhoyono, it only reached 4.3. Consequently, during his reign, President Joko Widodo has performed quite well.

2.3. Investment Climate in Indonesia in Perspective of Global Labor Standards

2.3.1. World Labor Standards based on the World Labor Organization

Indonesia is a member of the International Labor Organization (ILO), working closely since June 12, 1950, to promote decent work for everyone. The ILO has tried to promote the empowerment and protection of workers at various levels of policymakers, namely between the government and trade unions, domestic workers, including civil society organizations located in Indonesia or in other countries.(Juwana, 2013) In order to achieve its investment objectives, Indonesia needs to maintain decent worker rights in the global economy, international level instruments are needed that can serve as guidelines for countries in the world. The world community is responding to this challenge, among others, by developing international legal instruments on trade, finance, environment, human rights, and employment.(Shabrani, 2020)

The International Labor Organization (ILO) contributes to the international labor law framework by elaborating and promoting international labor standards to ensure that economic growth and development go hand in hand with the creation of decent work. International labor standards are first and foremost about human development as human beings. In the Declaration of Philadelphia (1944),(Constitution, 2015) the international community recognized that "labor is not a commodity," which can be negotiated for the highest profit or lowest price.

As we all know, that a job is a part of everyone's daily life and is very important for the dignity, well-being and development of a person as a human being. Economic development must include the creation of jobs and working conditions in which people can work freely, safely, and with dignity. In short, economic development can not be done for itself but to improve the standard of human life. International labor standards are created to ensure that they remain focused on improving the lives and dignity of men and women.

Decent jobs can further trigger human aspirations in relation to work. This brings together access to productive and well-paid work, safety at work and social protection for families, better prospects for personal development and social integration, freedom for individuals to express their claims, to organize and participate in decisions that affect their life and equal opportunity and treatment for all men and women. Decent work is not just a goal but a way to achieve the specific targets of the new international program for sustainable development.

The General Assembly of the United Nations (UN) in September 2015 explained that the ILO cooperation aims to implement a decent work agenda at the national level, which can help constituents make this concept a reality for workers. Decent work has four strategic objectives, namely, promoting and realizing the principles, standards, and fundamental rights at work, increasing employment opportunities with decent wages for men and women, and expanding the scope and effectiveness of social protection for workers, and also strengthens social dialogue or *tripartism*.(Shabrani, 2020)

In formulating policies and making programs, the ILO uses a principle of *tripartism* or dialogue and cooperation between the government, business owners, and of course, workers

who are members of the standard formulation in dealing with any problems related to workers. International labor standards are formed and processed in a tripartite structure. They relate to the goals of the UN's grand agenda, calling for the promotion of sustainable inclusive economic growth, full and productive employment, and decent work for all.

2.3.2 Omnibus Law and Global Labor Standards

After the ratification of the Omnibus Law on the Job Creation Act, the Indonesian government also issued Derivative Rules from the Omnibus Law on the Job Creation Act in the form of 45 Government Regulations and 4 Presidential Regulations. Those regulations are to encourage the use of the Omnibus Law of the Job Creation Act as published on the website of the Ministry of State Secretariat of the Republic of Indonesia through the Legal Documentation and Information Network system on Sunday, February 21, 2021. (*Produk Hukum*, 2021) The following is a list of the aforementioned Regulations derived from the Job Creation Act:

Government Regulations

1. Government Regulation Number 5 of 2021 concerning Implementation of Risk-Based Business Licensing;
2. Government Regulation Number 6 of 2021 concerning the Implementation of Business Licensing in the Regions;
3. Government Regulation Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises;
4. Government Regulation Number 8 of 2021 concerning Company's Authorized Capital, Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses;
5. Government Regulation no. 9 of 2021 concerning Tax Treatment to Support the Ease of Doing Business;
6. Government Regulation Number 10 of 2021 concerning Regional Taxes and Levies in the Framework of Supporting Ease of Business and Regional Services;
7. Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises;
8. Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning Implementation of Housing and Settlement Areas;
9. Government Regulation Number 13 of 2021 concerning the Implementation of Flats;
10. Government Regulation Number 14 of 2021 concerning Amendments to Government Regulation Number 22 of 2020 concerning Implementing Regulations of Law Number 2 of 2017 concerning Construction Services;
11. Government Regulation Number 15 of 2021 concerning Implementing Regulations of Law Number 6 of 2017 concerning Architects;
12. Government Regulation Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings;
13. Government Regulation Number 17 of 2021 concerning Fourth Amendment to Government Regulation Number 15 of 2005 concerning Toll Roads;
14. Government Regulation no. 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration;

15. Government Regulation Number 19 of 2021 concerning Implementation of Land Procurement for Development in the Public Interest;
16. Government Regulation Number 20 of 2021 concerning Control of Abandoned Areas and Lands;
17. Government Regulation Number 21 of 2021 concerning the Implementation of Spatial Planning;
18. Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management;
19. Government Regulation Number 23 of 2021 concerning the Implementation of Forestry;
20. Government Regulation Number 24 of 2021 concerning Procedures for Imposing Administrative Sanctions and Procedures for Non-Tax State Revenues Derived from Administrative Fines in the Forestry Sector;
21. Government Regulation Number 25 of 2021 concerning Implementation of the Energy and Mineral Resources Sector;
22. Government Regulation Number 26 of 2021 concerning Implementation of the Agricultural Sector;
23. Government Regulation Number 27 of 2021 concerning the Implementation of the Marine and Fisheries Sector;
24. Government Regulation Number 28 of 2021 concerning the Implementation of the Industrial Sector;
25. Government Regulation Number 29 of 2021 concerning the Implementation of the Trade Sector;
26. Government Regulation Number 30 of 2021 concerning the Implementation of the Road Traffic and Transportation Sector;
27. Government Regulation Number 31 of 2021 concerning the Implementation of the Shipping Sector;
28. Government Regulation Number 32 of 2021 concerning the Implementation of the Aviation Sector;
29. Government Regulation Number 33 of 2021 concerning the Implementation of the Railway Sector;
30. Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers;
31. Government Regulation Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment;
32. Government Regulation Number 36 of 2021 concerning Wages;
33. Government Regulation Number 37 of 2021 concerning the Implementation of the Job Loss Guarantee Program;
34. Government Regulation no. 38 of 2021 concerning the Escrow Account for Umrah Travel Expenses;
35. Government Regulation Number 39 of 2021 concerning the Implementation of the Halal Product Assurance Sector;

36. Government Regulation Number 40 of 2021 concerning the Implementation of Special Economic Zones;
37. Government Regulation Number 41 of 2021 concerning the Implementation of Free Trade Areas and Free Ports;
38. Government Regulation Number 42 of 2021 concerning Ease of National Strategic Projects;
39. Government Regulation Number 43 of 2021 concerning Settlement of Inconsistencies in Spatial Planning, Forest Areas, Permits, and/or Land Rights;
40. Government Regulation Number 44 of 2021 concerning the Implementation of Prohibition of Monopolistic Practices and Unfair Business Competition;
41. Government Regulation no. 45 of 2021 concerning the Implementation of Geospatial Information;
42. Government Regulation no. 46 of 2021 concerning Post, Telecommunications, and Broadcasting;
43. Government Regulation Number 47 of 2021 concerning the Implementation of the Hospital Sector;
44. Government Regulation Number 48 of 2021 concerning the Third Amendment to Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law Number 6 of 2011 concerning Immigration;
45. Government Regulation Number 49 of 2021 concerning Tax Treatment of Transactions Involving Investment Management Institutions and/or Entities Owned by It.

Presidential Regulations

1. Presidential Regulation Number 9 of 2021 concerning the Agency for the Acceleration of Housing Implementation;
2. Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector;
3. Presidential Regulation Number 11 of 2021 concerning Cooperation between the Central Government and State-Owned Enterprises in the Implementation of Basic Geospatial Information;
4. Presidential Regulation Number 12 of 2021 concerning Government Procurement of Goods/Services on Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services. (*Produk Hukum*, 2021)

From the Derivative Rules above, there are at least a few things that, according to the many sources, raise controversial issues, which of course are an inseparable part of the investment regulation system in Indonesia, among others:

2.3.2.1. Uncertainty for Investors

The changes to hundreds of articles made by the Indonesian government bring uncertainty for investors. As a result, it may discourage many foreign investors. The Omnibus Law on the Job Creation Act which has been promulgated with all its derivative rules, will change hundreds of articles, so it takes thousands of technical regulations, from government regulations, ministerial regulations to regional regulations. The changes of several rules in the midst of an economic recession create uncertainty for investors. Accordingly, investors need legal certainty when investing. (Rosana, 2020a)

Foreign investment will be difficult in Indonesia without a clear arrangement. The legal apparatus also has a major role in creating a conducive climate for investing by enforcing the applicable laws and regulations and not making it difficult for investors to run their businesses. Such is the uncertainty that occurs in oil and gas (oil and gas) investment because, in the Omnibus Law of the Job Creation Act, the government changes the upstream oil and gas licensing scheme from what was previously a cooperation contract to now a business license. (Rosana, 2020b)

Article 5 Paragraph 1 of the Omnibus Law of the Job Creation Act states that oil and gas business activities will be carried out based on business permits from the central government. Whereas, according to the previous regulation, Article 6 of Law Number 22 of 2001 concerning Oil and Gas states that upstream oil and gas business activities are carried out through cooperation contracts. Law Number 22 of 2001 concerning Oil and Natural Gas is currently still in effect and has the potential to conflict with the contents of the Omnibus Law of the Job Creation Act since the Job Creation Act does not regulate which institution is authorized to grant permits. (Rosana, 2020b)

In Law Number 22 of 2001 concerning Oil and Gas, investment cooperation contract permits are granted by the Oil and Gas Special Task Force (SKK) on behalf of the government as the holder of the power of attorney, and the contract permits use a contract agreement scheme consisting of cost recovery or gross split. (Rosana, 2020b) Meanwhile, in the Omnibus Law of the Job Creation Law, issues regarding institutions in granting investment cooperation contract permits are not included. It certainly makes investors experience an uncertainty about investing in Indonesia.

2.3.2.2. Reduced Labor Rights

Referring to the controversial articles both in the Omnibus Law of the Job Creation Act or its Derivative Regulations, there are at least four main employment problems:

- 1) The company has the right to terminate the employment relationship of its workers (labor) without providing full severance pay. This is stated in Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements (PKWT), Outsourcing, Working Time, Employment Relations and Time Rest, and Termination of Work Relations (PHK). Of course, this is a setback for the welfare of the workers (labor), which the state should guarantee with strong laws and regulations, but the facts say otherwise.
- 2) The Government Regulation Number 35 of 2021 concerning PKWT regulates the period or completion of a certain work for five years, stipulating the maximum time limit for the contract. PKWT based on the period as referred to in Article 5 paragraph (1) can be made for a maximum of 5 (five) years. Furthermore, paragraph (2) stipulates that the employer can extend the PKWT for a period according to the agreement between the entrepreneur and the worker if the contract expires and the work carried out has not been completed. However, the overall term is not more than five years. This regulation is different from the previous regulation contained in Article 59 Paragraph (4) of Law Number 13 of 2003 concerning Manpower which explains that PKWT can be held for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of 1 (one) year. (Article 59 Paragraph (4) of Law No. 13 of 2003 Concerning Workforce, 2003) Of course, the new provision regarding PKWT has the potential to provide power and flexibility for companies to be able to maintain the status of contract workers indefinitely.
- 3) Article 15 of Government Regulation Number 36 of 2021 states that there is a new category of wages based on time units, namely hourly wages, in contrast to the previous rules, namely, daily wages and monthly wages contained in Government Regulation Number

78 of 2015 concerning Wages, which is a derivative rule of Law Number 13 of 2003 concerning Manpower.

- 4) Article 26 Paragraph (1) of Government Regulation Number 35 of 2021 states that Overtime Work can only be done for a maximum of 4 (four) hours in 1 (one) day and 18 (eighteen) hours in 1 (one) week. This is different from the previous regulation contained in Law Number 13 of 2003 concerning Manpower in Article 78 Paragraph (1), which states that overtime work can only be done for a maximum of 3 (three) hours in 1 (one) day and 14 (fourteen) hours in 1 (one) week. (Article 78 Paragraph (1) Law No. 13 of 2003 Concerning Workforce, 2003)

2.3.2.3. Company and Employee Industrial Relations

Industrial Relations is a pattern of relationships formed between actors in producing goods, services, and or both, consisting of elements of workers, business owners, and the government, which is based on the values and basic laws of a nation. Industrial relations between companies and workers are essentially aimed at providing legal protection to workers in order to realize the welfare of the company, the welfare of workers, and the welfare of the entire community. The principle of industrial relations applied in Indonesia is the principle of industrial relations Pancasila. This principle requires that various problems in the employment sector must be resolved through the Pancasila industrial relations principle. The Pancasila Industrial Relations is a system of relations formed between the actors of the process of producing goods and services such as workers, companies, and the government based on values which are a manifestation of the overall precepts of Pancasila and the 1945 Constitution. (Bambang, 2013, p. 17)

The main purpose of this industrial relations system is to maintain or increase sustainability and maintain existing jobs, or in the long term, it aims to increase the per capita income of the Indonesian people. In Indonesia, specifically for the industrial relations system, it is regulated in Article 102 and 103 of Law Number 13 of 2003 concerning Manpower. In the industrial relations of companies and workers, there is a labor standard both nationally and internationally. However, the Indonesian government considers that international labor standards are considered complex, and therefore can hinder economic development in Indonesia. (Ismail & Zainuddin, 2018, p. 20)

However, many studies show that compliance with international labor standards can improve productivity and economic performance in the country itself. The beneficial effect of this labor standard has not gone unnoticed by investors, especially foreign investors. (Ismail & Zainuddin, 2018) Many studies have shown that foreign investors will place the quality of labor, political & social stability above low labor costs. At the same time, there is almost no evidence that countries that do not respect labor standards are more competitive in the global economy.

International labor standards not only respond to changes in the world of work for the protection of workers but also take into account the needs of companies that will be sustainable for the future. In industrial relations, one of the requirements to realize harmonious industrial relations in the investment sector requires good working conditions, as the main condition for the realization of Pancasila industrial relations and based on the 1945 Constitution, which is contained in labor legislation and terms of employment.

1. Labor Legislation

Labor Legislation is a rule regarding the rights and obligations for workers/laborers and employers or company leaders contained in the legislation, which is imperative,

mandatory, and minimally macro, which means binding all companies without considering the place of business type, nature of the legal entity, and so on from the company with minimal standards. However, the company can apply better standards than those regulated in the laws and regulations by being regulated internally by the company. (Zulkarnaen, 2016, p. 32)

2. Term of Employment

The terms of employment are micro-conditional, or the regulation of rights and obligations between workers/laborers and employers that have not been regulated in laws and regulations. The standards regulated only apply to companies personally in accordance with conditions. Micro can be defined as something that is regulated only for the company personally, conditionally in the sense that the arrangement is adjusted to the conditions or capabilities of the company concerned, and the forms of these work conditions are work agreements, company regulations, and cooperation agreements. In contrast, the types of working conditions in question include food allowance, transportation, production achievement bonuses, housing, cooperatives, workers/laborers being allowed to own company shares, workers' cooperatives, recreation, and others. (Zulkarnaen, 2016)

In the Omnibus Law of the Job Creation Act, it will be very difficult to create harmonious industrial relations between companies and workers, and there will be a lot of industrial relations disputes between companies and workers because many labor regulations only benefit the company and harm the workers, such as from termination of employment (PHK) which does not provide full severance pay to new arrangements regarding types of wages. (Kurniawan, 2020, p. 37) It is these disputes that are always avoided by investors and make it difficult to create a harmonious industrial relationship between companies and workers, the more or more frequent industrial relations disputes between companies and workers will make investors think twice about investing in Indonesia because it will greatly affect the level of productivity of the company.

Meanwhile, prior to the existence of the Omnibus Law on the Job Creation Act, there were already many industrial relations problems between companies and workers, especially in terms of termination of employment (PHK), because the layoffs that companies often carried out were not in accordance with Law Number 13 of 2003 concerning Employment as a basic rule. As a fundamental, Law No. 13 of 2003 concerning Manpower may apply despite the contradicting work agreements. (Fatimah, 2015, p. 33)

3. Conclusions

Based on the description in the previous chapter, the analysis resulted in the following:

- a. The Omnibus Law is not an appropriate approach to the formation of laws and regulations in responding to investment needs in Indonesia. Based on obtained data, the investment climate in Indonesia is quite high and running well and even better than other Asian countries, especially in Southeast Asia.
- b. Along with the issuance of the Omnibus Law, the Job Creation Act will create new problems instead, such as the absence of legal certainty for investment and the priority of the type of investment.
- c. From the aspect of industrial relations, there are many detrimental articles for workers. The Omnibus Law of the Job Creation Act will result in disharmony in industrial relations between the employer and the workers. Many are also concerned that the Laws may result in reduced guarantees of workers' human rights. On the contrary, the fulfillment of

workers' human rights has become an essential benchmark for investors in developed countries to invest in developing countries, such as Indonesia.

References

- A'la, M. A., & Supriyad, A. P. (2020). Omnibus Law Sebagai Reformasi Hukum Investasi di Indonesia Berdasarkan Asas Hirarki Peraturan Perundang-Undangan. *Al-Huquq: Journal of Indonesian Islamic Economic Law*, 2(2).
- Article 59 Paragraph (4) of Law No. 13 of 2003 concerning Workforce, (2003).
- Article 78 Paragraph (1) Law No. 13 of 2003 concerning Workforce, Pub. L. No. 13 of 2003 (2003).
- Bambang, R. J. (2013). *Hukum Ketenagakerjaan*. Pustaka Setia.
- Basri, F. (2020). *Memahami Omnibus Law Cipta Kerja*. Omnibus Law, Political Economy, Politics, Politik. <https://faisalbasri.com/2020/10/13/memahami-omnibus-law-cipta-kerja/>
- Bierscbach, B. (2017). *Everything You Need to Know About Omnibus Bills, and Why They are So Popular at The Minnesota Legislature*. <http://www.minnpost.com/politics-policy/2017/03/everything-you-need-know-about-omnibus-bills-and-why-theyre-so-popular-minne>
- CNN Indonesia. (2020). *DPR Resmi Sahkan Omnibus Law Ciptaker*. <https://www.cnnindonesia.com/nasional/20201005153821-32-554557/dpr-resmi-sahkan-omnibus-law-ciptake>
- Constitution, I. (2015). *Declaration of Philadelphia (1944), Pernyataan bahwa pekerja bukanlah komoditas yang dapat diperjual belikan*. ILO Constitution.
- Darmawan, C. (2020). *Omnibus Law Untuk Siapa?* Media Indonesia. <https://mediaindonesia.com/read/detail/296862-omnibus-law-untuk-siapa>
- Elviandri. (2019). Quo Vadis Negara Kesejahteraan: Meneguhkan Ideologi Welfare State Negara Hukum Kesejahteraan Indonesia. *Jurnal Mimbar Hukum*, 31(2).
- Fatimah, Y. N. (2015). Penyelesaian Perselisihan Hubungan Industrial di Pengadilan Hubungan Industrial dalam Pemenuhan Hak Pekerja/Buruh Yang di Putus Hubungan Kerja. *Jurnal Pandecta*, 10(2).
- Fitryantica, A. (2019). Harmonisasi Peraturan Perundang-Undangan Indonesia Melalui Konsep Omnibus Law. *Jurnal Gema Keadilan*, 6(3).
- Growth of Gross Capital Formation*. (2018). World Bank.
- Ismail, N., & Zainuddin, M. (2018). Hukum dan Fenomena Ketenagakerjaan. *Jurnal Pekerjaan Sosial*, 1(3).
- Jayani, D. H. (2019). *Korupsi, Penghambat Utama Investasi di Indonesia*.
- Juwana, H. (2013). Konvensi Pekerja Migran: Perlukah Indonesia Meratifikasi? *Jurnal Hukum*

Internasional, 1(1).

- Kasuga, T., & Fujii, R. (2020). *Survey Report on Overseas Business by Japanese Manufacturing Companies*. Various Issues. https://www.jbic.go.jp/en/information/reference/reference-2021/contents/202105_spot.pdf
- Krever, T. (2013). Quantifying Law: Legal Indicator Projects and the Reproduction of Neoliberal Common Sense. *Third World Quarterly*, 14(1).
- Kurniawan, F. (2020). Problematika Pembentukan RUU Cipta Kerja dengan Konsep Omnibus Law pada Klaster Ketenagakerjaan Pasal 89 Angka 45 tentang Pemberian Pesangon Kepada Pekerja Yang Di PHK. *Jurnal Panorama Hukum*, 5(1).
- Marilang. (2012). Ideologi Welfare State Konstitusi: Hak Menguasai Negara Atas Barang Tambang. *Jurnal Konstitusi*, 9(2).
- Nurfaizah, S. (2020). *Ekonom: UU Cipta Kerja Tak Akan Banyak Tarik Investasi ke RI, Ada 3 Poin Masalah*.
- OECD. (2021). *FDI Regulatory Restrictiveness Index*.
- Produk Hukum*. (2021). Jaringan Dokumentasi Dan Informasi Hukum, Kementerian Sekretariat Negara Republik Indonesia. <https://jdih.setneg.go.id/Terbaru>
- RAS, H., & Suroso, J. T. (2020). Kepastian Hukum Dalam Hukum Investasi Di Indonesia Melalui Omnibus Law. *Jurnal Ilmiah MEA (Manajemen, Ekonomi, Dan Akuntansi)*, 4(1).
- Rizki, M. J. (2019). *5 Catatan Menyederhanakan Izin Investasi Melalui Omnibus Law*. /Www.Hukumonline.Com.
- Rosana, F. C. (2020a). *Omnibus Law Dianggap Tak Pengaruhi Minat Modal Asing Masuk ke RI*. Bisnis.Tempo.Co.
- Rosana, F. C. (2020b). *UU Cipta Kerja Dinilai Timbulkan Ketidakpastian bagi Investor Migas, Kenapa?* Bisnis.Tempo.Co. <https://bisnis.tempo.co/read/1394797/uu-cipta-kerja-dinilai-timbulkan-ketidakpastian-bagi-investor-migas-kenapa>
- Shabrani, A. M. (2020). *Analisis Peran International Labour Organization (ILO) dalam Memperkuat Milestone Komitmen Politik dan Perubahan Kebijakan terhadap Perlindungan Buruh Migran Indonesia*. Universitas Pertamina. <https://library.universitaspertamina.ac.id/xmlui/handle/123456789/998>
- Swasono, S. E. (2008). *Tentang Demokrasi Ekonomi*. Bappenas.
- The Economist. (2019). *Asia Business Outlook Survey 2019*. <https://www.economist.com/search?q=asia+bussines+outlook+survey+2019>
- Wibisono, Y. (2016). *Indonesia dan Negara Kesejahteraan*. Wwww.Republika.Co.Id. <http://www.republika.co.id/berita/koran/pareto/16/08/15/obxy868-indonesia-dan-negarakesjahteraan>

- World Investment Report 2020*. (2020). United Nations Conference on Trade and Development (UNCTAD). https://unctad.org/system/files/official-document/wir2020_overview_en.pdf
- Yamin, M. (1945). *Naskah Persiapan UUD 1945: Risalah Sidang BPUPKI/PPKI*.
- Zulkarnaen, A. H. (2016). Masalah Rawan Dalam Hubungan Industrial Dan Konsep Negara Kesejahteraan Indonesia. *Jurnal Mimbar Justitia*, 2(2).