

Omnibus Law on Job Creation: State Capture?

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ABSTRACT

The study aims to analyze whether there is a state capture in making the Job Creation Law. Since the Job Creation Law was raised, many parties have criticized the existence of the Law because in the making of the Job Creation Law it is believed that it is more beneficial to employers, giving rise to an indication of state capture in its making. The research method used is a form of normative research with a statutory approach. The result shows that there is a state capture carried out by the authorities and employers in the making of the Job Creation Law. About 262 or 45.5 percent of the 575 House of Representatives members are affiliated with the company and therefore the regulations to be made more favorable for employers or investors while the welfare of workers is at stake. The rushed legislative process causes the values and aspirations of the people to be unable to be proportionally aggregated and accommodated, and this is certainly contrary to the principle of participation and the principle of openness as stipulated in the provisions of laws and regulations.

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1. Introduction

The Government has just passed a law that uses the concept of the Omnibus Law, namely the Job Creation Law. This law was prepared by the Government to be used as a scheme in an effort to build the Indonesian economy so that it is able to attract investors to invest in Indonesia. The Government considers the need for a Job Creation Law because of the high unemployment rate in Indonesia, which reaches 7 million people, so that it is expected to be able to create new jobs.¹

Since the Job Creation Law was formed, many parties have criticized the existence of the Law. This criticism came from various groups, both from labor unions as the affected party when the Job Creation Law was passed, as well as other parties such as students and academics. Another criticism came from the student movement and

¹ Kurniawan, F. (2020). Problematika Pembentukan RUU Cipta Kerja dengan Konsep Omnibus Law pada Klaster Ketenagakerjaan Pasal 89 Angka 5 tentang Pemberian Pesangon kepada Pekerja yang di PHK. *Jurnal Panorama Hukum*, 5(1), 63. doi: <https://doi.org/10.21067/jph.v5i1.4437>

elements of society who considered that the Job Creation Law would cause many social problems because many laborers' rights would be taken away.² Moreover, the drafting of the Job Creation Law is flawed in procedure because the process of drafting the Job Creation Law injures the rights of public participation. Since the discussion of the National Legislation Program until the drafting by the Coordinating Ministry for Economic Affairs of the Republic of Indonesia, the academic paper and the draft law are not accessible to the public. In fact, Jokowi targets the Job Creation Law to be completed in discussion with the House of Representatives within 100 working days. Moreover, the absence of strong opposition is evidenced in various statements that the House of Representatives will accommodate all Government interests in the omnibus law. This violates Article 89 to 96 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations which obliges the Government to easily open access to all draft laws and regulations for the public.³

The criminal law of corruption in Indonesia in particular and in several other countries appears to be dysfunctional. Whereas according to Barda Nawawi Arief, seen from the policy of criminal law, the target of criminal law is not only evil acts of the community but also acts (in terms of authority/power) of the authorities/law enforcement officials.⁴ More than that, the phenomenon of economic corruption and political corruption is related to the behavior of power, in the sense that the political policy factor in which the law and law enforcement institutions are no longer functioning or have lost their integrity.

Corruption is still a serious problem in Indonesia because corruption has spread in all fields and sectors of public life in a broad, systematic, and organized manner. Corruption is already a violation of the social and economic rights of the community.⁵

Corruption is the cause of the economic crisis, damaging the legal system and obstructing the running of a clean and democratic Government. In other words, corruption has shaken the joints of the life of the Nation and the State. Therefore, corruption can no longer be classified as an ordinary crime but is already an extraordinary crime.⁶

The high level of corruption in a country can lead to a high-cost economy which can hinder economic growth through obstacles that occur in investment.⁷ So to expedite and provide assurance for investment activities in Indonesia, the problem of corruption should be resolved. However, in the formation of the Job Creation Law which is felt to

² Latifah, M. (2020). *Perumusan Sanksi Pidana dalam RUU tentang Cipta Kerja*. Available online from: https://berkas.dpr.go.id/puslit/files/info_singkat/Info%20Singkat-XII-6-II-P3DI-Maret-2020-222.pdf. [Accessed on October 14, 2020]

³ WALHI. (2020). *Omnibus Law RUU Cilaka: Aturan Berwatak Kolonial*. Available online from: <https://www.walhi.or.id/omnibus-law-ruu-cilaka-aturan-berwatak-kolonial>. [Accessed on October 14, 2020]

⁴ Arief, B.N. (2001). *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*. Bandung: PT. Citra Aditya Bakti, p. 5

⁵ Nasution, R.D. (2013). *Korupsi dan Pelanggaran Hak Ekonomi, Sosial, dan Budaya di Indonesia*. *Jurnal Aristo*, 1(2), 2. doi: <http://dx.doi.org/10.24269/ars.v1i2.23>

⁶ Kaseger, R.B. (2017). *Perbuatan Merugikan Keuangan Negara Berdasarkan Undang-Undang Pemberantasan Tindak Pidana Korupsi*. *Lex Crimen*, 6(6), 14. URL: <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/16949>

⁷ Hariyani, H.F. (2016). *Analisis Faktor-faktor yang Mempengaruhi Korupsi di Kawasan Asia Pasifik*. *Jurnal Ekonomi dan Kebijakan Pembangunan*, 5(2), 33. URL: <http://repository.ipb.ac.id/handle/123456789/82576>

be more profitable for employers and investors, there is an indication of state capture in the formation of the Job Creation Law.⁸

Based on this background, an issue that is important to be analyzed is whether there is a state capture in the formation of the Job Creation Law?

2. Method

This paper used a form of normative research.⁹ This study examined state capture in the formation of the Job Creation Law with the concept of the omnibus law and the concept of corporate responsibility in the Job Creation Law. The approach used was the statutory approach and conceptual approach. The statutory approach was used to review the laws and regulations¹⁰ related to the Job Creation Law and criminal acts of corruption. Meanwhile, the conceptual approach was used to examine the views and doctrines related to corruption and state capture. The legal materials used in this study were primary and secondary legal materials. Primary legal materials were laws and decisions. Secondary legal materials included research results and scientific articles related to corruption and state capture. Legal material search techniques used document study techniques, and study analysis used qualitative analysis.

3. Analysis and Results

3.1. State Capture in the Formation of the Job Creation Law

1. Concept of Corruption Crime

a. Definition of Corruption Crime

The term corruption comes from the Latin word *corruptio*. In English it is corruption or corrupt, in French it is called corruption, and in Dutch it is *coruptie*. It seems that it was from the Dutch language that the word corruption was born in Indonesian.¹¹ Corrupt means rotten, bad; likes to accept bribes (using his power for his own benefit and so on).¹²

In the international world, the definition of corruption based on the Black Law Dictionary is an act that is carried out with the intention of obtaining several benefits that are contrary to official duties and other truths. An act of something legal or someone's belief violates the law and is full of error using a number of advantages for himself or others which is contrary to the duties and other truths.¹³

Corruption crime literally comes from the words Crime and Corruption. Meanwhile, juridical-formally the definition of corruption is contained in Chapter II concerning corruption, the provisions of Article 2 to Article 20, Chapter III concerning other crimes

⁸ Tempo. (2020). *Pengusaha Kuasai Parlemen*, Available online from <https://majalah.tempo.co/read/nasional/158519/pengusaha-kuasai-parlemen>. [Accessed on October 14, 2020]

⁹ Ibrahim, J. (2012). *Teori dan Metode Penelitian Hukum Normatif*. Malang: Bayumedia, h. 57

¹⁰ Marzuki, P.M. (2008). *Penelitian hukum*. Jakarta: Kencana, p. 93

¹¹ Hamzah, A. (1991). *Korupsi di Indonesia dan Pemecahannya*. Jakarta: Gramedia Pustaka Utama, p. 7.

¹² Poerwadarminta, W.J.S. (1982). *Kamus Umum Bahasa Indonesia*. Jakarta: PN Balai Pustaka, p. 524.

¹³ Surachmin & Cahaya, S. (2011). *Strategi & Teknik Korupsi*. Jakarta: Sinar Grafika, p. 10

related to corruption in accordance with the provisions of articles 21 to 24 of Law on Corruption Eradication Commission.¹⁴

b. Types of Corruption Crime

There are many types and deeds or deviant behavior in the scope of corruption. In Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Corruption Eradication, there are at least 8 (eight) groups of corruption offenses, namely:

- 1) Group of offenses that can cause losses to the state finances or the country's economy;
- 2) Group of bribery offense (active or passive);
- 3) Group of embezzlement offenses in office;
- 4) Group of extortion offenses in office;
- 5) Group of Falsification offenses;
- 6) Group of offenses related to chartering, suppliers, and partners;
- 7) Group of ratification offense;
- 8) Group of offenses that hinder and obstruct the handling of a corruption case

According to the United Nations Convention Against Corruption (UNCAC) 2003, which was ratified by Indonesia through Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003), the scope of corruption is actually wider, namely:

- 1) bribery of national public;
- 2) bribery of foreign public officials and officials of public international organizations;
- 3) embezzlement, misappropriation or another diversion of property by a public official;
- 4) trading in influence;
- 5) abuse of functions;
- 6) illicit enrichment;
- 7) bribery in the private sector;
- 8) embezzlement of property in the private sector.

Then Muladi quoted the World Bank as saying that corruption is an abuse of public power for private gains, with the following forms:

- 1) Political Corruption (Grand Corruption) that occurs at a high level (rulers, politicians, decision-makers) where they have the authority to formulate, form, and implement laws on behalf of the people by manipulating political institutions, procedural rules, and distorting Government institutions, with the aim of increasing wealth and power;

¹⁴ Mulyadi, L. (2008). *Bunga Rampai Hukum Pidana: Perspektif, Teoritis, dan Praktik*. Bandung: Alumni, p. 186

- 2) Bureaucratic Corruption (Petty Corruption), which usually occurs in public administration such as in public service places;
- 3) Electoral Corruption, with the aim of winning a competition, such as in elections, regional elections, court decisions, Government positions, and so on;
- 4) Private or Individual Corruption, limited corruption, occurs as a result of collusion or conspiracy between individuals or close friends;
- 5) Collective or Aggregated Corruption, in which corruption is enjoyed by several people in a group such as in an organization or institution;
- 6) Active and Passive Corruption in the form of giving and receiving bribes (bribery) to do or not do something on the basis of their duties and obligations;
- 7) Corporate Corruption, whether in the form of a corporate crime that is formed to accommodate the results of corruption or corruption for a corporation in which a person or several people who have an important position in a company commit corruption to seek profit for the company.¹⁵

According to Amien Rais' analysis, there are four types of corruption that must be watched out for and judged to be rampant in Indonesia, namely:

- 1) First, extortive corruption. This corruption refers to a situation where a person is forced to bribe in order to get something or get protection for his rights and needs. For example, a businessman is forced to pay bribes to certain officials in order to obtain a business license, protection against the bribes business, which can range from thousands to billions of rupiahs.
- 2) Second, manipulative corruption. This type of corruption refers to a person's dirty efforts to influence policymaking or Government decisions in order to obtain the highest profit. For example, a person or group of conglomerates gives money to regents, governors, ministers, and so on so that the regulations that are made can benefit them. That then the regulations that come out will harm the people at large is certainly not the corruptor's business.
- 3) Third, nepotistic corruption. This type of corruption refers to the preferential treatment given to children, nephews, or close relatives of officials in each echelon. With preferential treatment, the children, son-in-law, nieces, and wife of the official can reap the maximum profit. Nepotistic corruption generally operates in violation of existing rules of the game. However, these violations cannot be stopped because behind this nepotistic corruption stands an official who usually feels immune from the law.
- 4) Fourth, subversive corruption. This corruption takes the form of theft of state assets by state officials. By misusing their authority and power, they can break into the country's wealth that should have been saved. This corruption is subversive or destructive to the state because the state has been harmed massively and in the long run can endanger the existence of the state.¹⁶

¹⁵ Waluyo, B. (2014). Optimalisasi Pemberantasan Korupsi di Indonesia. *Jurnal Yuridis*, 1(2), 172-173. doi: <http://dx.doi.org/10.35586/.v1i2.149>

¹⁶ Sanusi, H.M.A. (2009). Relasi antar Korupsi dan Kekuasaan. *Jurnal Konstitusi*, 6(2), 87. URL: https://mkri.id/public/content/infoumum/ejurnal/pdf/ejurnal_Volume%206%20Nomor%202,%20Juli%202009.pdf

Shah & Schacter argues, corruption includes three broad types of categories: (a) grand corruption, when a number of officials commit theft or abuse of public resources on a large scale; (b) state capture or regulatory capture, namely reciprocal collusion carried out by the Government and private agents for personal gain; and (c) bureaucratic corruption or petty corruption, namely the involvement of lower-level public officials in abusing their position to get bribes or small profits.¹⁷

Corruption at the level of grand corruption and state capture is corruption that is carried out deliberately, planned, on a large scale, and involves many parties from upstream to downstream. This type of corruption is usually carried out by a group of political elites or senior government officials who make policies or regulations to benefit them and certain groups by enabling them to misuse large amounts of income and public facilities and get bribes from national and transnational companies. Meanwhile, state capture or regulatory capture is corruption that is carried out by utilizing existing facilities, regulations, or resources without having to plan from the upstream. Meanwhile, bureaucratic corruption is corruption at the lowest level of government. This is usually done by civil servants who are implementing government policies. Such corruption usually occurs at the point of exchange between civil servants and citizens or to whom they provide direct public services. For example, this could occur at the immigration service, police, hospital, tax office, school, or licensing authority.¹⁸

2. State Capture in the Formation of the Job Creation Law

There are different approaches to defining political corruption. In the classic concept, the term political corruption is interpreted as a problematic relationship between the sources of power and the moral rights of the authorities.¹⁹ Nearly two centuries ago, Lord Acton (John Emerich Edward Dalberg Acton), in his letter to Bishop Mandell Creighton, wrote an expression connecting corruption and power, namely: "Power tends to corrupt, and absolute power corrupts absolutely". In line with Lord Acton, Prof. Miriam Budiardjo agreed with Lord Acton's dictum and stated that "people who have power tend to abuse it. People who have the power of absolute will definitely abuse it".²⁰

However, the political war on power analyzed by Lord Acton based on the inspiration of the thoughts of Machiavelli, Montesquieu, and Rousseau shows that political corruption is characterized as a moral problem between powers. Machiavelli states that political corruption is a process in which the good of citizens is ignored and even damaged. He claimed that even the best individuals could be bribed by petty ambition and greed because humans are never satisfied. On the same note, Rousseau recognized the capacity for human arrogance when arguing that political corruption is an inevitable result of power struggles. Baron de Montesquieu stated that political

¹⁷ Setiyono, B. (2017). Memahami Korupsi di Daerah Pasca Desentralisasi: Belajar dari Empat Studi Kasus. *Politika*, 8(11), 32. doi: <https://doi.org/10.14710/politika.8.1.2017.27-62>

¹⁸ *Ibid*, p. 33

¹⁹ Adelina, F. (2019). Bentuk-bentuk Korupsi Politik. *Jurnal Legislasi Indonesia*, 16(1), 62. URL: <https://e-jurnal.peraturan.go.id/index.php/jli/article/view/256>

²⁰ Alam, S. (2017). Tinjauan Yuridis atas Tindak Pidana Korupsi dalam Praktek di Indonesia. *Jurnal Hukum Replik*, 5(2), 158. URL: <https://www.researchgate.net/deref/http%3A%2F%2Fdx.doi.org%2F10.31000%2Fjhr.v5i2.924>

corruption is a dysfunctional process towards the political command of goodness (monarchy) because when it is corrupted, it turns into a crime (injustice).²¹

The correlation between corruption and power was revealed by an expert in criminal law who is also an expert in eradicating corruption, Prof. Dr. Romli Atmasasmita, SH, LL.M, that "Corruption in Indonesia is already a flu virus that has spread throughout the government, so since the 1980s its eradication measures are still halting until now. Corruption is also related to power because with that power, the authorities can abuse their power for personal, family, and crony interests. Corruption always starts and develops in the public sector with clear evidence that with this power, the authorities can suppress or extort justice seekers or those who need services from the government."²²

Corruption occurs in various sectors, as well as executive, legislative, and judicial powers as well as the private sector.²³ Political power achieved by corruption will result in governments and community leaders who are not legitimate in the eyes of the public. If this is the case, then the people will not believe in the Government and these leaders, as a result, they will not obey and submit to their authority. Such a situation will lead to socio-political instability and social integration due to conflicts between the leaders and the people. In fact, in many cases, this has resulted in a dishonorable fall in government power, as happened in Indonesia.²⁴

The process of creating a product of statutory regulations at least passes 3 (three) interrelated corridors; administrative corridors, academic corridors, and political corridors. Administrative corridors require compliance with all provisions governing the process of forming laws and regulations; academic corridor requires a draft regulation to be accountable academically; Political corridors are not only related to political institutions, but in substance, the draft regulation must be able to absorb and be in line with public aspirations. Therefore, the rise of statutory regulation is the result of a process that is not simple, it can even be said to be complex because there are many related factors and actors that must receive attention in the process. State capture focuses on illicit, illegitimate, and non-transparent forms of influence from interest groups to legislators.²⁵

C.F. Strong, in his book "Modern Political Constitution" explains that in the welfare state, the role of the executive plays an important role, even if it has quite broad powers, if it is detailed it includes:²⁶

- 1) Executive Power
- 2) Administrative Power

²¹ Adelina, F. *Op.cit*, p. 63

²² Sasmita, R.A. (2004). *Sekitar Masalah Korupsi: Aspek Nasional dan Aspek Internasional*. Bandung: Mandar Maju, p.1

²³ Waluyo, B. *Op.cit*, p. 169

²⁴ Setiadi, W. (2018). Korupsi di Indonesia (Penyebab, Bahaya, Hambatan, dan Upaya Pemberantasan, serta Regulasi). *Jurnal Legislasi Indonesia*, 15 (3), 251. URL: <http://e-jurnal.peraturan.go.id/index.php/jli/issue/view/19>

²⁵ Purawan, A.A. (2014). Korupsi Legalisasi dalam Proses Pembentukan Perundang-undangan (Legislative Corruption in Law Making Process). *Rechtswinding*, 3(3), 352. doi: <http://dx.doi.org/10.33331/rechtswinding.v3i3.30>

²⁶ Wijayanti, S.N. & Satriawan, I. (2009). *Hukum Tata Negara*. Yogyakarta: Fakultas Hukum, Universitas Muhammadiyah Yogyakarta, p. 92

- 3) Legislative Power
- 4) Judicial Power
- 5) Diplomatic Power

So much power is owned by the Government or the Executive, it is necessary to limit power through a control mechanism that is exercised by the representatives of the people who sit in the legislative body.

One of the functions of the House of Representatives has the Legislation function, which reinforces the position of the House of Representatives of the Republic of Indonesia as a legislative institution that exercises power to form laws.²⁷ Legislative corruption is a form of corruption by trading authority in compiling a regulatory norm. The Corruption Eradication Commission (KPK), for example, in a study on corruption in the House of Representatives, indicated that corruption in the House of Representatives does not only occur in the budget and oversight functions but also occurred in the legislative function. This fact is surprising because so far, the locus of corruption has occurred more frequently in the budget function. This condition must be watched out for so that there are no contraband articles that will benefit some people or groups and lead to corruption. There are efforts from certain parties so that legal products are suitable for certain interests. As a result, corruptly designed legal products lead to ongoing corruption due to the loss of state revenue.²⁸

In a study of corruption in ex-communist countries in Eastern Europe and Central Asia, the World Bank divides the types of corruption into two: administrative corruption and state capture.²⁹ Administrative corruption includes deliberate actions to obstruct the implementation of policies, decisions, or provisions of applicable laws for personal gain, while state capture refers to actions of individuals, groups or corporations in both the public and private sectors to influence the formation of legislation and government decisions or policies for the benefit of that individual, group, or corporation. Administrative corruption occurs in the context of implementing policies, decisions, or statutory provisions, while state capture occurs in the formulation of policies, decisions or statutory provisions.

Joel Hellman and Daniel Kaufmann said that in transition economies, corruption has taken on a new image—that of so-called oligarchs manipulating policy formation and even shaping the emerging rules of the game to their own, very substantial advantage. We refer to this behavior as state capture. Though this form of grand corruption is increasingly being recognized as the most pernicious and intractable problem in the political economy of reform, few systematic efforts have been made to distinguish its causes and consequences from those of other forms of corruption. Moreover, there

²⁷ Sekretariat Jenderal Dana Badan Keahlian Dewan Perwakilan Rakyat Republik Indonesia. (2016). *Rencana Strategis Dewan Perwakilan Rakyat Republik Indonesia 2015-2019*. Available online from: <http://www.dpr.go.id/publikasi/Renstra%20DPR.pdf>. [Accessed on October 10, 2020]

²⁸ Geotimes. (2020). *Omnibus Law dan Ancaman Korupsi Legalisasi*. Available online from: <https://geotimes.co.id/opini/omnibus-law-dan-ancaman-korupsi-legislasi/>. [Accessed on October 12, 2020]

²⁹ World Bank. (2000). *Anticorruption in Transition: A Contribution to the Policy Debate*. Washington DC: World Bank, p .xv-xvii

have not been any attempts to measure this specific type of corruption and to compare it across countries.³⁰

The corruption that occurs in the formation of laws and regulations can be included in the definition of state capture. In state capture, there are two actors at play: interest groups and legislators. The interest group has a mission to push the laws and regulations that are designed to lead to monopolistic forms of behavior so that they can generate maximum profits and maintain their market power. On the other hand, legislators expect money or the prospect of other personal benefits from these interest groups in return for "services" performed. Compared to administrative corruption, legislative corruption has a bigger destructive effect because it can have an impact on regulatory distortions that cause negative externalities to society as a whole.³¹

State capture focuses on illicit, illegitimate and non-transparent forms of influence. The aim is to include or secure the interests of individuals, groups, or corporations in the legislation that is being drafted through the granting of relaxation, exclusivity, or convenience from the government. For this reason, business actors who have access to power always try to influence policy makers in the government and parliament so that they can support the interests of business actors by giving rewards to related officials.

International Transparency defines state capture as a situation where individuals who have power, institutions, companies, or groups inside or outside a country use corruption to shape the policies of a country, its legal environment and its economy to benefit their personal interests. According to them, state capture is one form of corruption that can most penetrate all lines of public institutions such as the legislative, executive, juridical, and regulatory agencies both at the federal and local levels. State capture can also arise from the similarity of interests between certain business actors and political elites through family, friendship, and interrelated ownership of economic assets.³²

State capture refers to "a situation where powerful individuals, institutions, companies or groups within or outside a country use corruption to shape a nation's policies, legal environment and economy to benefit their own private interests". It is one of the most pervasive forms of corruption. Public institutions such as the legislature, the executive, the judiciary and regulatory agencies both at the federal and local levels are subject to capture. As such, state capture can broadly be understood as the disproportionate and unregulated influence of interest groups or decision-making processes, where special interest groups manage to bend state laws, policies and regulations through practices such as illicit contributions paid by private interests to political parties and for election campaigns, parliamentary vote-buying, buying of presidential decrees or court decisions, as well as through illegitimate lobbying and revolving door appointments.³³

³⁰ Hellman, J & Kaufmann, D. (2001). *Confronting the Challenge of State Capture in Transition Economies*. IMF (Finance & Development). Available online from: <https://www.imf.org/external/pubs/ft/fandd/2001/09/hellman.htm> [Accessed on November 25, 2020]

³¹ Purawan, A.A. *Op.cit*, p. 351.

³² Ramiza, H. (2020). Korupsi State Capture sebagai Crime Against Humanity. *Media Iuris*, 3(2), 193. doi: <http://dx.doi.org/10.20473/mi.v3i2.20891>

³³ Martini, M. (2014). *State Capture: An Overview*. Available online from: https://www.transparency.org/files/content/corruptionqas/State_capture_an_overview_2014.pdf [Accessed on November 25, 2020]

State capture was also defined by Vesna Pesic as any group or social strata, external to the state that seizes decisive influence over state institutions and policies for its own interests and against the public good. Tenten Masduki, one of the major players in combating corruption in Indonesia also has a similar view the state capture is a policy made to the advantage of entrepreneurs.³⁴

Although, according to the general understanding of corruption and state capture are the same thing, there is a difference between the two. Corruption is generally intended to change the implementation of existing and applicable laws, regulations, or policies, while state capture refers to corrupt acts committed in an attempt to influence how laws, regulations, and policies are formed.³⁵

Solveig Richter explains that there are four main features of state capture. First, individuals or business entities that have the intention to "capture" a state institution or people in power will target officials who have the power to form laws, regulations, or policy decisions, not targeting bureaucracy in the administrative field in charge to implement the existing and applicable laws and regulations.³⁶

The second is that state capture is a network-based corruption that develops in social and political networks through clientelism and patronage. Such networks are based on informal rules between members established on the basis of domination of authority or reciprocity and loyalty, which further pave the way for the involvement of private, state or non-state, and other interest groups in the formation of regulations, some of which may not participate in the corrupt behavior.³⁷

The third is that unlike corruption, whose main motive is personal gain in committing corrupt behavior, the main purpose above the personal gain of state capture actors is to gain access to power or to maintain the power they have. Even in countries where state capture is deeply entrenched, intimidation and even violence can be found. The last is that the uses of formal institutions camouflage to represent their interests. Participation from various interest groups and civil society, as well as the involvement of the media and political parties are important in a democracy, but the media and political parties can, consciously or unconsciously, act as an extension of private parties or individuals in power.³⁸

Conspiracy between the authorities and employers does indeed provide opportunities for corruptive behavior to occur. This conspiracy is clearly evil cooperation because it is detrimental to state finances. The relationship between bureaucrats and corporations is commonly referred to as an affair, which is an abnormal relationship of two things that are not the same because corporate logic is the logic of profit, while bureaucratic logic is the logic of the interests of the public service. When the bureaucracy and corporations have an abnormal relationship, the logic of serving the public service is often defeated from the orientation of personal gain. This perspective then strengthens a thesis that the ruler (bureaucrat) and the employers (corporate) must be two forces

³⁴ Sitorus, L.E. (2011). State Capture: Is it a Crime? How The World Perceived it. *Indonesia Law Review*, 1(2), 45-46. <https://media.neliti.com/media/publications/163010-EN-state-capture-is-it-a-crime-how-the-worl.pdf>

³⁵ Ramiza, H. *Loc.cit.*

³⁶ Dassah, M.O. (2018). Theoretical Analysis of State capture and Its Manifestation as a Governance Problem in South Africa. *The Journal for Transdisciplinary Research in Southern Africa*, 14(1), 4. doi: <https://doi.org/10.4102/td.v14i1.473>

³⁷ *Ibid*, p. 4

³⁸ *Ibid*, p. 5

that must be separated. The union of the two forces makes it easy for the state to be controlled by bureaucratic forces with a corporate style that is not for the benefit of the state but for the formation of political power.

The classical theory of the Marxists shows a strong tendency for corrupt behavior to easily occur for rulers who are controlled by employers, especially when the rulers are employers at the same time. The basic human instincts are usually easily seduced by material symbols, including the instinct of the ruler. That is why power in various forms of government is always limited so as not to become absolute and uncontrollable.³⁹

Corruption and power are like two sides of a coin. Corruption always accompanies the journey of power and vice versa, power is the entrance for corruption. Investigations by organizations concerned with natural resource issues, the Auriga Nusantara Foundation and Tempo, found that 262 people or 45.5 percent of the 575 House of Representatives members are affiliated with companies with various positions, either as commissioners, directors, and others in the top manager of company decision-making.⁴⁰ Their names are recorded in 1,016 limited liability companies operating in various sectors. The three biggest political parties that place their politicians from the businessman element are the Gerindra, PDIP, and Golkar. Apart from Senayan, the shadow of oligarchic power has entered the main executive circle. Three elements dominate Onward Indonesia Cabinet, namely entrepreneurs/businessmen, political parties, and the military.⁴¹ Based on this description, in the formation of the Job Creation Law, there is a state capture carried out by the authorities and entrepreneurs. State capture is where economic and political power can manipulate public policy as if it were present for the benefit of many people. But actually, behind of it, it is for the benefit of oneself and group. The wheels of government that regulate the livelihoods of the people are not controlled by formal state institutions but by shadow institutions or the informal state, which of course make it difficult to be held accountable.⁴²

The convenience of investing claims can provide solutions to economic problems which John Kenneth calls the "innocent fraud" system.⁴³ The modern capitalistic economy has ensnared people with big images and dreams of achieving high growth, but what has happened is a massive ecological and humane waste. Instead of creating solutional legal products, the existing still favor elitist interests.⁴⁴

In terms of employment, there are at least five things that are deemed by the Job Creation Law to be detrimental to workers, including those related to minimum wages,

³⁹ Santoso, L. et al. (2014). Korupsi dan Mentalitas: Kendala Kultural dalam Pemberantasan Korupsi di Indonesia. *Masyarakat, Kebudayaan, dan Politik*, 27(4), 179. URL: <https://www.researchgate.net/deref/http%3A%2F%2Fdx.doi.org%2F10.20473%2Fmkip.V27I42.014.159-172>

⁴⁰ Tempo., *Loc.cit*

⁴¹ Jerry, B. et al. (2020). *Tinjauan Lingkungan Hidup 2020: Menabur Investasi, Menuai Krisis Multidimensi*. Jakarta: Wahana Lingkungan Hidup Indonesia (WALHI), p. 28

⁴² Ibid, p. 30

⁴³ Magdoff, F. & Foster, J.B. (2018). *Lingkungan Hidup dan Kapitalisme: Sebuah Pengantar*. Jakarta: Marjin Kiri, p.2

⁴⁴ Keraf, A.S. (2010). *Filsafat Lingkungan Hidup: Alam Sebagai Sebuah Sistem Kehidupan*. Yogyakarta: Kanisius, p. 152

reduced severance pay, removal of special permits or leave, unclear outsourcing, and the potential workers to be contracted indefinitely.⁴⁵

a. Minimum wage

The government's plan to regulate the hourly wage system will automatically eliminate the minimum wage system. This will set a bad precedent even though there are statements that say workers with at least 40 hours of work a week will get wages as usual. However, workers with working hours of less than 40 hours will receive wages that are below the minimum. Such a plan is only a trick of the government. Because it is possible that in practice employers will find it very easy to reduce working hours, so that workers no longer work 40 hours. In fact, in the rules contained in Law Number 13 of 2003 concerning Manpower, it is considered sufficient to be in favor of workers by stating that no worker should receive wages below the minimum wage.

b. Reduced severance pay

In Law no. 13 of 2003 concerning Manpower which regulates the amount of severance pay for a maximum of 9 months and can be multiplied by 2 for certain types of termination of employment (PHK). The total can get 18 months of wages, omitted. Moreover, there are also awards for a maximum service period of 10 months of wages and compensation for at least 15 percent of the total severance pay and/or tenure awards. This provision is omitted in the Job Creation Law and replaced with 19 times of the wage and 6 times of the JKP (loss of job security or commonly known as unemployment insurance) so that it becomes 25 times.

c. Removal of special permits or leave

In Law number 13 of 2003 concerning manpower in Article 81 Paragraph (1), and (2), namely: "Female workers/laborers who feel pain during their menstrual period and tell the entrepreneur about this are not obliged to come to work on the first and second day of menstruation, the provisions referred to in the work agreement, company regulations, or collective working agreement". However, Article 93 of the Omnibus Law on Job Creation eliminates the rights of female workers to get wages when they do not do their work during menstruation on the first and second days. In fact, this article has even lowered the quality of protection for the rights of female workers.

d. Unclear Outsourcing

One aspect of the detrimental provisions is the aspect of termination of employment. At this time, Law Number 13 of 2003 concerning Manpower applies which requires employers to obtain a stipulation from the Industrial Relations Court if negotiations between employers and workers do not result in the common ground regarding the termination of the employment relationship. Such designation is not required if the worker is still on probation, resigns of their own accord, reaches retirement age, or dies. If passed, the Job Creation Bill allows employers to terminate employment based on an agreement with the worker, except for certain reasons. The scope of these reasons is wider than the scope of the exceptions to the stipulation stipulated in the Manpower Act, where the employer will be allowed to unilaterally terminate the employment relationship if the company fails due to coercive circumstances or is

⁴⁵ Suara.com. (2020). 5 Isi Omnibus Law Cipta Kerja yang Dianggap Merugikan Pekerja. Available online from: <https://www.suara.com/news/2020/08/14/135509/5-isi-omnibus-law-cipta-kerja-yang-dianggap-merugikan-pekerja> [Accessed on March 16, 2021].

declared bankrupt by the Commercial Court. The law can also harm Indonesian workers in terms of providing work for a certain period of time.⁴⁶

e. Potential workers to be contracted indefinitely

The Job Creation Law exempts contract work in all types of work. In fact, it is possible for workers to be contracted for life. This is because the work contract/ work agreement is only based on an agreement between the employer and the laborer. In fact, the previous contract work is only allowed for work that is once completed or temporary and not for work that is permanent. The contract period can only be done for a maximum of two years and can only be extended once for a maximum of one year. In addition, the Job Creation Law eliminates the article that says that a work agreement is made not in writing for the sake of becoming a permanent worker. Article 59 of Law Number 13 of 2003 is also deleted. In fact, the article stipulates the terms of contract work and time limits so that they are not easily dismissed and prevent workers from continued exploitation. With the disappearance of this article, it is certain that there will be no more permanent employees being appointed. Another impact is that the severance pay is automatically lost because the contract workers do not need to be given severance pay if fired by the company.

Moreover, there is still some content contained in the Job Creation Law that has the potential to add to the cluster of new problems, such as the potential for environmental damage and degradation - ecological disasters and man-made disasters are getting higher, education orientation shifts towards business commodities (investment), weakening law enforcement and various other derivative problems are inherent in the Job Creation Bill. Content that is very complex and broad will certainly create symptoms of a new law that is plural, multidimensional, and multi-sector.⁴⁷

In drafting a law, it should refer to the formal principles used as guidelines in the formation of statutory regulations, namely Law Number 12 of 2011 concerning the Establishment of Laws and Regulations as amended by Law Number 15 of 2019. However, In the drafting of the Job Creation Law, the development of the draft discussion of the Job Creation Law was not accessible to the public. In addition, the meetings to discuss the Job Creation Law were often closed.⁴⁸

The legislative process which tends to be closed and rushed causes the values and aspirations of the people to be unable to be proportionally aggregated and accommodated. Such a legislative pattern is certainly contrary to the principle of participation and the principle of openness as stipulated in the provisions of laws and regulations. The participatory principle is formally regulated clearly in Article 96 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations as amended by Law Number 15 of 2019 which states that:

⁴⁶ Hukumonline.com. (2020). *RUU Cipta Kerja untuk Kepentingan Siapa?* Available online from: <https://www.hukumonline.com/berita/baca/lt5e4fdfbb4ff5a/ruu-cipta-kerja-untuk-kepentingan-siapa/>. [Accessed on March 12, 2021]

⁴⁷ Rafiqi, I.D. (2020). *Alternatif Model Pembentukan Hukum Berbasis Paradigma Profetik (Kritik terhadap RUU (Omnibus Law) Cipta Kerja dan Sebuah Tawaran Solusi)*. Proceedings of *Seminar Nasional Dinamika Omnibus Law di Era New Normal: Peluang serta Tantangan bagi Profesi Hukum*, Malang: 22-23 March, 2020. p.105.

⁴⁸ Pusat Kajian Anti Korupsi (PUKAT) Fakultas Hukum Universitas Gadjah Mada. *RILIS: Catatan PUKAT UGM terhadap RUU Cipta Kerja*. Available online from: <https://pukatkorupsi.ugm.ac.id/?p=4695>. [Accessed on March 10, 2021].

"People have the right to give input orally and/or written in the Making Rules through public hearings, working visits, socialization, and/or seminars, workshops and/or discussions. To facilitate the public to provide input verbally and/or written, any Draft of Regulations should be easily accessible by the public. "

Public participation in the legislative process can be carried out when the principle of openness is also realized because the two principles have a very close knot. In the Elucidation of Article 5, letter G explains the principle of openness which implies:

"What is meant by" principle of openness "is that in the Making Rules starting from planning, preparation, discussion, ratification or stipulation, and promulgation is transparent and open. Thus, all levels of society have the widest opportunity possible to provide input in the Making Rules. "

The legislative pattern in the Job Creation Bill, which has many irregularities, actually strengthens the image that the law is indeed a tool of power. Law as a tool of power has a negative connotation plays a role in manipulating, changing, and shaping in a dishonest way. In fact, normalization as Michel Foucault puts it is the product of a series of performances at play: "The legal system is an important public arena through which the state attempt-through manipulation of symbols, image, and ideas—to legitimize a social order that most people find alienating and inhumane."⁴⁹

Law Number 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption Crimes only regulates orders, prohibitions, and criminal sanctions against criminal acts of corruption are limited to perpetrators who have enriched themselves or other people or corporations. Quoting Barda Nawawi, efforts to enforce the law on the problem of political corruption crimes need to be carried out continuously from generation to generation in accordance with the development of society.⁵⁰ Furthermore, Barda Nawawi added that it needs to be done with an integrated approach, not merely a repressive approach, but also a causative and preventive approach, as well as a policy approach to social, economic, political, cultural, and moral values that provide opportunities to close gaps or limit space of political corruption existence.⁵¹

4. Conclusion

One of the functions of the House of Representatives has the Legislation function. Corruption in the House of Representatives does not only occur in the budget and oversight functions but also occurs in the legislative function. This fact is surprising because so far, the locus of corruption has occurred more frequently in the budget function. About 262 people or 45.5 percent of the 575 House of Representatives members are affiliated with the companies. Their names are recorded in 1,016 limited liability companies operating in various sectors. Based on this description, in the formation or establishment of the Job Creation Law, there was a state capture carried out by the authorities and entrepreneurs. As a result, the Job Creation Law adds to new problems, namely the reduction of labor welfare, the potential for environmental

⁴⁹ Ibid, p. 108

⁵⁰ Arief, B.N. (2015). *Pembangunan Sistem Hukum Nasional (Indonesia)*. Semarang: Penerbit Pustaka Magister Hukum, p. 2-3

⁵¹ Arief, B.N. (2007). *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. Jakarta: Kencana Prenada Media Group, p. 130-131

damage and degradation - ecological disasters and man-made disasters are getting higher, the shift in educational orientation that leads to business commodities (investment), weakening law enforcement and various other derivative problems become an image attached to the Job Creation Law. Furthermore, the legislative process which tends to be closed and hasty causes the values and aspirations of the people to be unable to be proportionally aggregated and accommodated. As a result, in the name of inventory, the law was then formed only to fulfil certainty values in order to serve investment purposes only.

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