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Omnibus Law on Job Creation and Resilience Prospects of Indonesian Migrant Workers

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Abstract
The Omnibus Law on Job Creation has repealed two regulations and amended at least 80 (eighty) other laws since it was officially promulgated on November 2, 2020. Four laws are particularly affected in the labor cluster, including regulations pertaining to Migrant Workers, which have not been widely explained. The purpose of this paper is to explain the dynamics of Indonesian Migrant Workers (IMW) regulatory policy as well as several issues in the omnibus law on Job Creation. To further analyze and describe the Omnibus law's implications for IMW resilience. This research, as a policy study, makes use of secondary data in the form of statutory regulation and literature. The data were analyzed using conceptual and normative approaches, and the results were presented in a descriptive-qualitative format. According to the findings, IMW's regulatory policies included international policies emphasizing the recognition of migrant workers' rights. Meanwhile, at the national level, IMW protection policies are governed by a specific law that has evolved over time to be more accommodating to their needs. The presence of the Omnibus law, however, has changed and loosened the licensing provisions in the law for Indonesian Migrant Worker Placement Companies (P3MI), which has an impact on IMW's vulnerability. As a result, rather than being progressive, the omnibus law on Job Creation reduces the prospect of resilience for Indonesian migrant workers.

Keywords: Omnibus Law, Migrant Workers, Worker's Right, Protection, Resilience

1. Introduction

The right to work is usually guaranteed in the state constitution as one of the constitutional rights in modern welfare states (Devi, Maswood, Reddy, 2002). Article 27 paragraph (2) of the Republic of Indonesia's 1945 Constitution explicitly states that "every citizen has the right to work and a decent living for humanity." This provision requires the government's mandate and active role in creating job opportunities for everyone in accordance with humane standards and with the greatest possible effort (Arinanto, 2009).

Even though it has been recognized as a fundamental right, the difficulty of finding jobs remains a major issue that is intertwined with the rising unemployment rate. For example, in August 2020, the workforce increased by 2.36 million people to 138.22 million. However,the number of people working fell by 310,000 to 128.45 million,

with another 9.77 million becoming unemployed (Central Bureau of Statistics, 2020). Economic difficulties (poverty) continue to be the primary reason for Indonesians choosing to work as migrant workers abroad (Sumardiani, 2014). As Skeldon points out, migration is frequently viewed as a means of escaping poverty: "there are no locally available opportunities that cause people to migrate to survive" (Skeldon, 2006).

Indonesia continues to be the country in Asia that sends the most Migrant Workers (Nuraeny, 2015). According to data from the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI), approximately 148,285 IMWs were sent to various placement countries in the first semester of 2017. Meanwhile, the Central Statistics Agency reported 276,553 IMW shipments in 2019, with three main destination countries, namely East Asia (57%), Southeast Asia (38%), and the Middle East (3%) as well as Europe and others (2%) (Aswindo, Hanita, & Simon 2021). According to World Bank data, remittances from Indonesian Migrant Workers (IMW) reached 8.9 billion US dollars, or Rp. 118 trillion, in 2016. This condition is equivalent to one percent of Indonesia's total GDP (Hanifah, 2020).

Apart from the positive aspects of contributing to the country's foreign exchange and solving the problem of unemployment, the large number of IMW abroad also has a negative impact, such as the issue of law and human rights violations. In practice, the recruitment and placement process for IMW is usually carried out using a variety of legal and illegal methods. Illegal actions, for example, have a higher potential for causing problems, including crimes such as people smuggling or human trafficking (Arfa, 2016). Various reports and complaints received by the BNP2TKI Crisis Center during 2017 alone include IMW requesting to be sent home (311 cases), unpaid income (271 cases), cancellation of departure (205 cases), overstayed permits (193 cases), dismissals/layoffs (193 cases), health problems (186 cases), loss of contact (129 cases), non-conformity with the work agreed upon (110 cases), and others (695 cases) (Sulaiman, Sugito, & Sabiq, 2016). Based on a number of facts on the ground, it is clear that IMW is extremely vulnerable to harassment and exploitation.

However, the government cannot rely solely on IMW to boost the country's economic growth. The government is also attempting to stimulate the domestic economy by making it easier for businesses to do business and attracting foreign investment. One of its objectives is to provide new job opportunities in the community. On this basis, the omnibus law was drafted, which resulted in a fairly ambitious economic policy package (Prabowo, Triputra, Junaidi, & Purwoleksono, 2020). Simply put, omnibus law is a bill that enacts or amends multiple statutes (Dodek, 2016). This provision has revoked two regulations and amended at least 80 (eighty) other laws since it was officially promulgated on November 2, 2020, through Law Number 11 of 2020 On Job Creation (JC omnibus law). There are four laws that are affected specifically in the employment cluster, including the arrangements for Migrant Workers.

The omnibus law has never been without controversy since it was discussed in the legislative plenary session. This policy is still reaping the benefits and drawbacks of the community. Previously, a number of parties represented, including the Confederation of All Indonesian Trade Unions (KSBSI) and Migrant Care, had petitioned the Constitutional Court for judicial review of a number of articles in the JC omnibus law. One of the highlights is the regulation's substance, which is thought to weaken the position and protection of IMW. In this paper, we discuss the dynamics of IMW regulatory policies, as well as several issues in the omnibus law on Job Creation and its implications for IMW resilience.

2. Method

By using a conceptual and statutory approach, this study was categorized as doctrinal legal research (Ramadani, Hamzah, & Mangerengi, 2021). The conceptual approach attempts to provide an analytical perspective on problem solving based on the concepts and values contained in the normalization of a regulation or policy. While the statutory approach is carried out by reviewing every regulation related to the issues at hand (Ramadani & Mamonto, 2019). The analysis is based on secondary data obtained through library research, which includes primary legal materials such as constitutions, laws, and regulations, as well as persuasive sources such as conventions and international agreements. Journals, books, and previous research findings are examples of

secondary legal materials. The data is then analyzed and presented in a descriptive-qualitative manner, based on the interpretation of ongoing issues as well as the consequences and trends that emerge.

3. Results

3.1 The Dynamics of Indonesian Migrant Workers Regulatory Policies

Migrant workers are legal individuals who migrate from one country to another for economic reasons (Taran, 2001). While some countries generally welcome the arrival of professionals from other countries, the majority of migrant workers from the lower classes often face a very different situation. They usually do dirty, dangerous, and difficult jobs (so-called " 3-D") (Arfa, 2016). Migrant workers in this category, particularly those who enter the country illegally, face poor working and living conditions, with standards far lower than those of their original nationals and in their country of origin (Dupper, 2007). As a result, the global issue that always arises in relation to migrant workers is their protection and equality as part of human rights.

At the international level, the policy toward migrant workers stems from the initiative of the United Nations (UN) and the International Labor Organization (ILO), which advocate a human rights-based approach to migration management based on the principle of progressive inclusion. The essence of this concept is that migrants should be integrated into the host country, and it is the responsibility of local governments to provide them with the same rights as local citizens (Farahat, (2009)). Since its founding in 1919, the ILO has prioritized the protection of workers having to work outside their home country, also known as migrant workers.24 This is reflected in two conventions designed specifically for migrant workers: Convention 97, Migration for Employment (Revised), (1949), which was adopted to deal with postwar European labor migration, and Convention 143, Migrant Workers (Supplemental Provisions) (1975) (Fudge, 2014). Conventions 97 and 143 require migrant workers to be treated equally with nationals in a variety of areas, including wages, working hours, holidays, internships and training, trade union membership, and social security (ILO, 2006).

Migrant workers' and their families' rights have also been incorporated into the International Convention on the Rights of All Migrant Workers and Members of Their Families. On September 22, 2004, Indonesia signed this convention, which was ratified in Law Number 06 of 2012 concerning the Protection of the Rights of Migrant Workers and their Family Members. In this regulation, each IMW and its family are granted a set of rights that must be fulfilled with the state's active participation. This Convention regulates a number of critical issues, including: 1) standardization of the protection of civil rights, political rights, economic rights, and social and cultural rights of all IMWs and their families; 2) recognition of IMWs' contribution to the advancement of community welfare; 3) a set of standards for IMW protection and the responsibilities of the parties involved; 4) prevention and the abolition of the exploitation of migrant workers and their families (Rizki, 2020).

However, the majority of IMW destination countries, including Malaysia, Singapore, Taiwan, China, and the United States, have not ratified this convention (Dewi, 2018). This convention had been ratified by 54 countries as of May 16, 2019. This convention, however, has not been signed by any industrialized country with immigrant populations in the Western world, including Switzerland (Rizki, 2020). This demonstrates that countries' resistance to recognizing the rights of migrant workers remains strong. As a result, many parties recognize that the protection and recognition of migrant workers' rights cannot be left entirely to voluntary states based on international rules. Before its citizens work outside the jurisdiction of their home country, the government of the home country must provide preventive or preventive protection.

At the national policy level, the Republic of Indonesia's 1945 Constitution emphasized that every citizen has the right to work, to earn an equal income, and to be treated fairly in relationships and in the workplace. This constitutional affirmation also confirms the recognition of the right to work and the right to work as a constitutional right of citizens. To be properly guaranteed, the elaboration of workers' rights is further regulated in Manpower Law No. 13 of 2003. (Labor Law). The Manpower Law remains general in nature, and its substance is more concerned with regulating the problems of domestic workers. Based on this, the government enacted Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers (PPPIMW Law). In this regulation, the

term IMW is operationally referred to as Indonesian Migrant Workers, which includes any Indonesian citizen who has met the requirements to work in another country under a remunerated employment agreement for a set period of time. In general, the PPPIMW Law was drafted with the goal of protecting IMW from the time they leave for work abroad until they return home.

Many parties, however, believe that the PPPIMW Law still has a number of issues, both at the regulatory and implementation levels. Migrant Care for example, provides 18 critical notes on the importance of changing Law Number 39 of 2004. The proposed change is towards the protection paradigm. Among other things, the scope of migrant workers, gender justice, labor security, migrant workers' rights, the role of PPPIMW, pre-departure training, supervision of various related parties, institutional work agreements, and placement fees are all discussed (Widiyahseno, Rudianto & Widaningrum, 2018). Furthermore, the provisions on delegation of authority to the regions are regarded as less firm, so that in practice, local governments frequently overstep their bounds in managing IMW (Nola, 2017). Administratively, the rules governing documents and the management process are deemed too lengthy and complicated. Other analysts believe that the policies in the PPPIMW Law, known as the Implementing Private IMWB Placement Act, are more favorable to a private delivery company for IMW. This trend can be seen in the construction of several provisions in the PPPIMW Law that are full of PPPIMW's role beyond the role of the government, beginning with pre, term, and post placement of IMW. In fact, PPTKIS is profit-driven and frequently disregards the interests of migrant workers.

The law enforcement side of the PPPIMW Law is also regarded as very weak, with sentences imposed frequently lacking in holisticity and failing to deter violators. There are no specific provisions, for example, regarding the mechanism for handling IMW cases, which has implications for the government's weak diplomacy with placement countries (Haida, 2020). The Indonesian Overseas Workers Union (SPILN) has also filed a lawsuit under Article 85 paragraph 1 of the PPPIMW Law, claiming that existing agencies have not been effective in assisting IMWs.38 The Indonesian Migrant Workers Union (SBMI), like SPILN, believes that the institutions established by the PPPIMW Law have failed to protect IMWs. According to Arpangi, the PPPIMW Law's weakness originated from its preparation, which is solely motivated by the desire to send IMW abroad (Arpangi, 2016). This is also acknowledged by Mihradi and Siregar, who observe that the PPPIMW Law legislation process is still dominated by a capitalistic economic approach that positions IMW as a commodity, with minimal protection and empowerment (Mihradi, & Siregar, 2018).

In 2017, the Indonesia's Legislative (DPR-RI) formally passed the IMW Protection Bill, which replaced the PPPIMW Law in Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers (UU PPIMW). The term TKI (indonesia’s labour) has been changed to Indonesian Migrant Workers (IMW). IMW is defined in Article 1 number (2) as “any Indonesian citizen who will, is currently, or has done work for a wage outside the territory of the Republic of Indonesia.” The main difference between the PPIMW Law and the previous policy is a more comprehensive arrangement in terms of IMW recruitment and placement, including aspects of protection and supervision. This Law also governs the imposition of administrative sanctions, such as written warnings, temporary cessation of part or all business activities, and permit revocation. Even criminal penalties are possible (Hamid, 2019).

The presence of a number of provisions in the PPIMW Law that specifically regulate aspects of IMW Rights Protection, such as Social Security, the obligations and roles of Central and local authorities, and the One-Stop Integrated Service for IMW Placement and Protection, demonstrates progress in the PPIMW Law. Local governments are also required to play an active role in assisting and protecting IMWs from recruitment to return to their home countries. This is reflected in the requirement to establish a one-stop service for IMW in all districts and cities. Another novel aspect introduced by the PPIMW Law is the issue of social security for IMW. IMW's social security is transferred from private insurance to the Social Security Administering Body (BPJS) under Article 29 paragraph (1) of the PPIMW Law. As a result, the government is given a larger role than the private sector in fulfilling the rights and protection of IMWs under this policy.

3.2 Concerning the Omnibus Law on Job Creation and its Issues

The discussion on omnibus law in Indonesia actually occurred recently, on October 20, 2019, when President Jokowi Dodo appealed to the DPR to jointly develop a model law with the name omnibus law that could change many regulations at once (Anggono, 2020). On the one hand, the decision to use the omnibus law method is understandable given Indonesia's current hyper-regulation problems, or regulatory obesity (Arief, & Ramadani, 2021). The omnibus law concept, which is capable of condensing dozens of regulations into a single law, can serve as a shortcut for synchronizing policies and streamlining regulations in Indonesia (Setiadi, 2020). On the other hand, it would be unjust to look at omnibus legislation solely from a positive perspective, ignoring any flaws or systemic implications that may arise. As a result, this section will discuss a number of flaws or problems in the conceptualization and implementation of omnibus legislation in Indonesia.

According to Gunter, the term omnibus comes from Latin and means "for everything." It is defined in the legal context as “a single document that contains a combination of various discussions based on a number of specific indicators” (Arief, & Ramadani, 2021). While the Black's Law Dictionary defines the term omnibus as: “*relating to or dealing with numerous objects or items at once; including many things or having various purposes*” (Garner, (2009). Then, O'Brien and Bosc define omnibus law as a regulation/law that seeks to revise, withdraw/remove, or make applicable a number of provisions in multiple laws (O’Brien, 2009).

The omnibus law method's conceptual issues can be divided into two categories. For starters, "efficiency breeds oversimplification." According to Adam M. Dodek, drafting an omnibus law is quite efficient because it allows a package of changes to several laws to be contained in a single regulation. He also adds that if the amended law still concerns "the same subject," it will be able to accommodate all parliamentary considerations in discussing the subject at the same time. However, if the criteria for "same subject" are not clear or very broad, possibly even between laws that are not related at all, it will cause problems from a democratic standpoint (Dodek, 2016). This type of case, for example, occurred in the omnibus bill, which sparked controversy and heated debate in the Canadian parliament; this method is also not widely used in the United Kingdom and Australia, and is even prohibited in New Zealand.

In contrast to the Codification concept, which collects a number of regulations into a simple law book and arranges them logically and systematically, The provisions gathered in the omnibus law cover a wide range of topics, many of which are incompatible with one another. Maria Farida Indrati, an Indonesian legislation expert, also provides a number of critical notes on the use of omnibus law. First, all regulations must be based on the principle of establishing good legislation (*beginselen van behoorlijke regelgeving*) and have a philosophical, juridical, and sociological basis, which of course differ. Second, many of the laws that are deleted, amended, or added to the omnibus law contain different substances and govern different subjects (addresses) (Indrati, 2020). Sumarjono is justified in questioning whether, as a result of such simplification, the philosophical, sociological, and legal foundations of each law that has been replaced/revoked can be ignored (Sumardjono, 2020). This is understandable given that changes to the Omnibus Law on Job Creation affect not only labor regulations, but also laws governing the environment, spatial planning, forestry, government administration, land use, and so on. Efforts to unify these various laws become extremely complicated, and if enforced haphazardly and in haste, there is a high risk of eliminating the specificity of each law in the name of simplification. In other words, simplifying multiple interests for the sake of a single interest. The Commonwealth Court of Pennsylvania's response to this issue is as follows:

> “Bills, popularly called omnibus bills, became a crying evil, not only from the confusion and distraction of the legislative mind by the jumbling together of incongruous subjects, but still more by the facility they afforded to corrupt combinations of minorities with different interests to force the passage of bills with provisions which could never succeed if they stood on their separate merits (Massicotte, 2013).

The second issue is that the omnibus law's implementation excludes several statutory principles. In statutory theory, the provisions of the omnibus law will override the principle of Lex specialis derogate legi generalis (specific law precedes generic law). This contradicts a common principle, because the provisions of the omnibus law, which are lex generalis, have the power to repeal and change dozens of sectoral laws, which are lex specialis. According to Darmawan, the concept of omnibus law in question will cause problems because it lacks legal

legitimacy under Law Number 12 of 2011 on the Establishment of Legislation (Darmawan, 2020). Article 5 of the law also recognizes the principle of the formation of good laws and regulations. The principle of openness is one of the regulated principles that legislators must follow. This principle is interpreted as transparency and openness in the process of drafting laws and regulations, so that the community can monitor and communicate their aspirations with flexibility and openness.

The application of the principle of openness is inextricably linked to the principle of accountability in government administration. However, it appears that this will be difficult to achieve if the regulations are created using the omnibus law technique. According to Louis Massicotte, the reason is quite simple: "*When a bill deals with topics as varied as fisheries, unemployment insurance and environment, it is unlikely to be examined properly if the whole bill goes to the Standing Committee on Finance*" (Massicotte, 2013). The omnibus law's complexity, both in terms of the substance of the debate and the number of articles, makes it nearly impossible to monitor this policy optimally and thoroughly. Especially if the government uses time efficiency to justify hastening the legislative process. This appears to have occurred in the case of Indonesia's omnibus job creation law.

The omnibus law was assumed to be formally flawed because it was still in the planning and drafting stages (Kartika, 2020). The reason for this is that the draft bill and academic text, both of which are required by the National Legislation and Priority Bill, were not found. Furthermore, the government is seen as attempting to conceal public access to submit suggestions and responses. This is in contrast to the principles of participation and disclosure of public information enshrined in Law No. 14 of 2008 concerning Public Information Disclosure (PID Law) and Law No. 12 of 2011 concerning Legislation Establishment, as amended by Law No. 15 of 2019. Worse, three different draft versions of the Omnibus law bill were circulated during the plenary session until it was approved. The first version, a 905-page draft, circulated at the time this bill was signed into law; the second version was expanded to 1035 pages; and the final version was reduced to 812 pages. When this was confirmed, the government reasoned that the number of pages had changed due to a change in the writing font used. Regardless of the truth, with such a large number of pages and diverse content, it is difficult for the general public and even members of parliament to go through each article one by one. As a result, the possibility of'smuggled' articles entering the country will be increased.

The teaching team at Universitas Gadjah Mada's Faculty of Law said the same thing. The team stated in the Policy Paper document related to the omnibus law on job creation that one of the problems in the omnibus law on job creation formation stage was the neglect of the element of public participation. The holding of 64 meetings, which the government claims involved public participation, is still regarded as far from the ideal participatory idea in the construction of 1,200 provisions that have a significant impact on dozens of laws. Thus, violations of the omnibus law CK legislation process occurred in at least three ways: first, the discussion is rushed; second, it does not meet the principle of openness; and third, it does not include public participation (Eddyono, 2020). Whereas Article 18 of Law No. 12 of 2011 requires the preparation of laws to take into account the community's aspirations and legal needs.

3.3 Omnibus Law Impact to Migrant Workers' Resilience

The Omnibus Law on Job Creation affects 80 laws, including Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers (PPIMW Law). Previously, the IMW issue was left out of the academic text of the Job Creation Bill's discussion and analysis. Following the ratification of the omnibus law, there are a number of provisions in Law Number 11 of 2020, or the omnibus law on Job Creation, that amend and delete regulations relating to migrant workers, as shown in the table below:

Table 1: Changes to the PPIMW Law in the Omnibus Law on Job Creation

Changed terms	Substance of Change
Article 1 number 9 and 16	P3MI is defined in the PPIMW Law as a company in the form of a corporate legal entity (PT) that has obtained written permission from the Minister to provide IMW placement services. The word "Minister" is replaced with "Central Government" in the omnibus law on job creation.

	In the PPIMW Law, the definition of P3MI is intended as a company in the form of a corporate legal entity (PT) that has obtained written permission from the Minister to carry out IMW placement services. In the omnibus law on job creation, the word "Minister" is replaced with "Central Government."
Article 51	According to paragraph (1) of the PPIMW Law, companies that wish to become P3MI, as defined in Article 49 letter b, must obtain written permission from the Minister in the form of SIP3MI. This SIP3MI is non- transferable, and it is governed by a Ministerial Regulation. The SIP3MI regulations are removed from the omnibus law provisions and replaced with "business licenses" issued by the central government.
Article 53	The substance of this article governs P3MI's establishment of branch offices. The said branch office must be registered with the Provincial Government under the PPIMW Law, and the procedure for its establishment is further regulated by a Ministerial Regulation. According to the Omnibus Law, in addition to being registered with the Provincial Government, P3MI branch offices must also comply with business licenses governed by the Central Government.
Article 57	Article 57 of the PPIMW Law governs the SIP3MI permit, which is submitted definitively for a period of 5 (five) years and can be extended every 5 (five) years. In addition to meeting the requirements stipulated in Article 54 paragraph (1), the extension of SIP3MI in paragraph (l) can be submitted to P3MI by meeting a number of minimum requirements such as: having provided periodic reports to the Minister, carrying out at least 75 percent of the planned placements, and still having facilities and infrastructure that are in accordance with Article 54 paragraph (1). However, because the SIP3MI provisions were changed to business licenses, the SIP3MI provisions regulated in Article 54 of the PPIMW Law were automatically removed.
Article 89A	This article is only found in the provisions of the omnibus job creation law. In essence, it requires that, following the passage of the Job Creation Law, the definition of SIP3MI in the PPIMW Law adhere to the rules governing Business Licensing.

Based on the information provided above, it appears that a major change occurred in the transition of the licensing concept for P3MI, which was initially granted in the form of the Indonesian Migrant Worker Placement Company Permit (SIP3MI) as a ministerial permit, to a general business license stipulated by the central government. In fact, the two concepts are normatively distinct. SIP3MI is a written permit granted by the Minister of Manpower to Indonesian companies that will become P3MI. While the concept of Business Licensing is based on a risk analysis that takes into account aspects of health, safety, the environment, and resources.

When viewed through the perspective of IMW protection, it is clear that this is a setback that has the potential to expose IMW to vulnerability. The government has granted such broad leeway by repealing the SIP3MI provisions and then substituting them in the Business Licensing model. According to the new policy, P3MI is no longer required to meet the PPIMW Law's minimum requirements, such as a minimum set-up capital of Rp. 5 billion (five billion rupiah) and an obligation to deposit (deposit) of Rp.

1.5 billion (one billion five hundred million rupiah) as a guarantee to carry out the company's obligations and responsibilities in IMW Protection. In fact, the minimum asset and deposit requirements are designed to ensure the fate of IMW sent and placed by P3MI. This is reflected in the fact that all risks encountered or pertaining to IMW are a result of P3MI's services and placements (Wahyudi, 2020).

Attempts to repeal this clause of the PPIMW Law have been made in the past. One of them is a judicial review petition to the Constitutional Court (MK) proposed by Saiful Mahmud, General Chair of the Organization of Indonesian Migrant Workers Placement Companies (ASPATAKI). The existence of Article 54 paragraph (1)

letters a and b of the PPIMW Law regarding deposits that must have been deposited by P3MI irritates the Petitioner. He believes that a fund of five billion rupiah is insufficiently economical and affordable for many businessmen, including P3MI (www.mkri.id, 2019). The Court later rejected this appeal in its entirety. In general, the judges of the Constitutional Court considered the regulations related to the Permit of the Indonesian Migrant Workers Placement Company (SIP3MI) to be a form of guaranteeing the capacity and credibility of P3MI when making their decision. Furthermore, the Court's Judge believes that this requirement is intended to prevent the formation of P3MI companies that are not serious about providing services to IMW. In general, the various conditions outlined in the PPIMW Law are intended to provide not only legal certainty, but also certainty in doing business. As a result, it will have implications for the certainty of legal protection for both P3MI, partners, IMW itself, and the government that can work together to ensure IMW's resilience.

Thus, the omnibus law policy that eliminates licensing rules through SIP3MI is the same as returning the IMW regulatory regime to the time of Law No. 37 of 2004 (PPPIMW Law), which is full of purely commercial interests and causes problems for IMWs. In response to the omnibus law policy, the Chairman of the Indonesian Migrant Workers Union (SBMI) alluded to the bad experience of Law No. 39 of 2004 (PPPIMW Law), which allows Implementing Companies Recruiting Seafarers (P4) to recruit crew members (ABK) without completing the terms and conditions of the business license Implementing Private TKI Placement (PPTKIS) (www.sbmi.id, 2020). On the one hand, the new provisions in the omnibus law on job creation make it easier for employers to obtain permits, but they must pay for it at the expense of the protection aspect for IMW, which has been initiated with great difficulty.

According to the ILO, Indonesia can place a significant number of IMWs abroad, but legal protection for IMWs is still very limited (Pramodhawardani, 2009). According to Vita Dewi's research at CLDS FH UII, no less than 18 percent of the population in Indonesia's 33 provinces was a victim of human trafficking (Thontowi, 2019). The identification of the results of the Supreme Audit Agency's (BPK) examination in 2010 also concluded that IMW's problems were generally caused by partial, incomplete, and opaque policies protecting IMW's human rights. From the pre-placement, placement, to post-placement period, various violations are common. This is the primary reason why the public is advocating for the revision of the PPPIMW Law into the PPIMW Law, which emphasizes the government's role in IMW protection and supervision while tightening the rules for granting permits to private companies. It is not without reason that P3MI's licensing is strictly regulated, including the requirement to deposit a relatively large capital. Even today, there are many bogus placement agencies that illegally send and place IMW. Changes to a number of IMW provisions in the Omnibus Law actually indicate that the government has lost sight of the importance of ensuring IMW resilience. Instead of loosening policies that are already adequate and clearly necessary, the government should concentrate on improving the PPIMW Law's implementation. Because, despite the fact that the substance of the PPIMW Law is quite good, a number of cases of violations continue to occur, albeit at a lower intensity than during the previous policy period. As per the discoveries of a media review conducted by the Migrant Workers Network (JBM), there has been an increase in cases with a presentation rate of 61 percent when compared to data from 2019, especially in cases of deportation and repatriation of IMW. The Indonesian Migrant Workers Union (SBMI) also noted IMW's increased vulnerability in 2019 in the form of persecution, violence, and sexual harassment, deviations from work agreements, forced labor (exploitation), human trafficking, and forced death due to criminalization (Migrant Workers Network, 2020). One of the reasons that cases of violations continue to occur is the absence of derivative rules in the PPIMW Law, which has been in effect for nearly three years. Instead of improving migration governance by hastening the ratification of PPIMW Law derivative regulations, the government has ratified the Job Creation Law omnibus, which actually makes IMWs more vulnerable.

4. Conclusion

When considering the issue of work and the right to work, it is not only necessary to consider economic factors. There are ideas about civil society, human rights, political freedom, and equality that accompany the life of a modern democratic society in employment issues. This has been largely reflected in international migrant worker regulation policy, as well as the IMW regulatory policy in the law relating to the protection of Indonesian Migrant Workers. It's just that the presence of the Job Creation Omnibus law demonstrates an effort to formulate a single-

perspective employment policy by focusing solely on easy investment. In the name of uniformity of interests in one big agenda of the omnibus law, the government has changed the fundamental and strategic provisions in the PPIMW Law. What are the concerns of many parties, as well as the fundamental flaw in the concept of omnibus law? This clearly contradicts the ideals of improving the welfare of the workforce, including IMW. In terms of IMW legal protection, the government should try to maximize legal guarantees and protection by upholding human rights and providing legal certainty to the public so that they can exercise their constitutional rights at work. The presence of the omnibus law, on the other hand, weakens licensing regulations and increases the risk of vulnerability for IMW. As a result, there is a degressive phenomenon for the future resilience of IMW.

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References

Anggono, B. D. (2020). Omnibus Law Sebagai Teknik Pembentukan Undang-Undang: Peluang Adopsi Dan Tantangannya Dalam Sistem Perundang-Undangan Indonesia. *Jurnal RechtsVinding*, 9(1). https://rechtsvinding.bphn.go.id/artikel/2.%20Bayu%20Dwi%20Anggono.pdf

Arfa, D. (2016). Perdagangan dan Penyeludupan Pekerja Migran Indonesia di Malaysia. *Jurnal Antropologi: Isu-isu Sosial Budaya*, 18(1), 1-11.

Arief, A., & Ramadani, R. (2021). Omnibus Law Cipta Kerja dan Implikasinya Terhadap Konsep Dasar Perseroan Terbatas. *Al-Adalah: Jurnal Hukum dan Politik Islam*, *6*(2), 106-120. http://dx.doi.org/10.35673/ajmpi.v6i2.1550

Arinanto, S. (2009). Dimensi-Dimensi HAM Mengurai Hak Ekonomi. Sosial Dan Budaya. Jakarta: Rajawali Pers.

Arpangi, A. (2016). Pelindungan Hukum Terhadap Tenaga Kerja Indonesia Di Luar Negeri. *Jurnal Pembaharuan Hukum*, 3(1), 149-156. http://dx.doi.org/10.26532/jph.v3i1.1354

Aswindo, M., Hanita, M., & Simon, A. J. (2021). Kerentanan Dan Ketahanan Pekerja Migran Indonesia Di Malaysia Pada Masa Pandemic COVID-19. *Jurnal Kajian Lemhannas RI*, 9(1), 442-452. https://prosiding.lemhannas.go.id/index.php/jkl/article/view/201

Badan Pusat Statistik. (2020). Berita Resmi Statistik: Keadaan Ketanagakerjaan Indonesia Agustus 2020. https://www.bps.go.id/brs.html

Darmawan, A. (2020). Politik Hukum Omnibus Law dalam Konteks Pembangunan Ekonomi Indonesia. *Indonesian Journal of Law and Policy Studies*, 1(1), 13-24. http://dx.doi.org/10.31000/ijlp.v1i1.2655

Devi, V., Maswood, S., & Reddy, B. (2002). Right To Work As Fundamental Right: Illusion Or Reality?, *Journal of the Indian Law Institute*, 44(2), 269-272. https://www.jstor.org/stable/43951812

Dewi, D. A. P. S. (2018). Harmonisasi Peraturan Perundang-undangan Tentang Ketenagakerjaan Indonesia Pascaratifikasi Konvensi Internasional Pekerja Migran Tahun 1990. Reformasi, 8(1), 57-64. https://doi.org/10.33366/rfr.v8i1.1073

Dodek, A. M. (2016). Omnibus bills: Constitutional constraints and legislative liberations. *Ottawa L. Rev*., 48, 1.

Dupper, O. (2007). Migrant workers and the right to social security: An international perspective. *Stellenbosch Law Review*, 18(2), 219-254. https://hdl.handle.net/10520/EJC54629

Eddyono, W. S. (ed). (2020). Kertas Kebijakan Catatan Kritis Terhadap Uu No 11 Tahun 2020 Tentang Cipta Kerja, Fakultas Hukum Universitas Gadjah Mada. https://rispub.law.ugm.ac.id/2020/11/06/kertas-kebijakan-catatan-kritis-terhadap-uu-no-11-tahun-2020-tentang-cipta-kerja/

Farahat, A. (2009). 'We want you! But...'Recruiting Migrants and Encouraging Transnational Migration Through Progressive Inclusion. *European Law Journal*, 15(6), 700-718. https://doi.org/10.1111/j.1468-0386.2009.00486.x

Fudge, J. (2014). Making claims for migrant workers: human rights and citizenship. *Citizenship Studies*, 18(1), 29-45. https://doi.org/10.1080/13621025.2014.865894

Fukuda-Parr, S., Lawson-Remer, T., & Randolph, S. (2015). *Fulfilling social and economic rights*. Oxford University Press.

Haida, R. (2020). Analisis Yuridis Terhadap Perlindungan Hak Tenaga Kerja Indonesia Berdasarkan Undang-Undang Nomor 39 Tahun 2004 Tentang Penempatan Dan Perlindungan Tenaga Kerja IndonesiA (Doctoral dissertation, Universitas Islam Kalimantan MAB). http://eprints.uniska-bjm.ac.id/2477/

Hamid, A. (2019). Diskursus Perlindungan Hukum Bagi Tenaga Kerja Indonesia Dalam Penempatan Di Malaysia. *Arena Hukum*, *12*(1), 153-171. https://doi.org/10.21776/ub.arenahukum.2019.01201.8

Hanifah, I. (2020). Peran Dan Tanggung Jawab Negara Dalam Perlindungan Hukum Tenaga Kerja Indonesia Yang Bermasalah Di Luar Negeri. *DE LEGA LATA: Jurnal Ilmu Hukum*, 5(1), 10-23. http://dx.doi.org/10.30596%2Fdll.v5i1.3303

International Labour Organization. 2006. ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration. Geneva: International Labour Office, https://www.ilo.org/global/topics/labour-migration/publications/WCMS_178672/lang--en/index.htm

Kartika, S. D. (2020). Politik Hukum RUU Cipta Kerja. Info Singkat, , 12(4), 1-6.

Maria Farida Indrati, "Omnibus Law", UU Sapu Jagat?, Harian Kompas, 4 Januari 2020. https://www.kompas.id/baca/opini/2020/01/04/omnibus-law-uu-sapu-jagat

Maria SW. Sumardjono, "Mendorong Investasi Dalam Disharmoni Pengaturan Sumber Daya Alam (SDA) di Indonesia", Presentation at the seminar, Responding to Omnibus Law: Pros and Cons of the Job Creation Bill, organized by the Djokosoetono Research Center and State Administrative Law Studies, University of Indonesia, Depok 6 February 2020.

Massicotte, L. (2013). Omnibus bills in theory and practice. *Canadian parliamentary review*, 36(1), 13-17. http://www.revparl.ca/36/1/36n1_13e_Massicotte.pdf

Mihradi, R. M., & Siregar, F. M. (2018). Dinamika Problematika Sosial Perlindungan Buruh Migran Indonesia Pasca Reformasi Dan Relevansinya Dengan Tantangan Wirausaha Di Era Masyarakat Ekonomi Asean (Mea). *Jurnal Kawistara*, 7(2), 179- 186. https://doi.org/10.22146/kawistara.23657

Nola, L. F. (2017). Upaya Pelindungan Hukum Secara Terpadu Bagi Tenaga Kerja Indonesia (Tki)(Integrated Legal Protection For Migrant Workers). *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 7(1), 35-52. http://dx.doi.org/10.22212/jnh.v7i1.949

Nuraeny, H. (2015). Pengiriman Tenaga Kerja Migran Sebagai Salah Satu Bentuk Perbudakan Modern dari Tindak Pidana Perdagangan Orang. *Jurnal Hukum dan Peradilan*, 4(3), 501-518. http://dx.doi.org/10.25216/jhp.4.3.2015.501-518

O'Brien, A. Marc Bosc, eds. 2009. House of Commons Procedure and Practice.

Prabowo, A. S., Triputra, A. N., Junaidi, Y., & Purwoleksono, D. E. (2020). Politik Hukum Omnibus Law di Indonesia. *Pamator Journal*, 13(1), 1-6. https://doi.org/10.21107/pamator.v13i1.6923

Ramadani, R., & Mamonto, M. A. W. W. (2019). Legalitas Sanksi Pidana Pencabutan Hak Politik Bagi Terpidana Korupsi: Perspektif Hak Asasi Manusia. *PETITUM*, *7*(2 Oktober), 63-71. https://doi.org/10.36090/jh.v7i2%20Oktober.649

Ramadani, R., Hamzah, Y. A., & Mangerengi, A. A. (2021). Indonesia's Legal Policy During COVID-19 Pandemic: Between The Right to Education and Public Health. *JILS (Journal of Indonesian Legal Studies)*, *6*(1). https://doi.org/10.15294/jils.v6i1.43555

Rizki, K. (2020). Implementasi Konvensi Internasional Tentang Perlindungan Hak Pekerja Asing dan Anggota Keluarganya: Studi Kasus Penjaminan Hak Pekerja Migran Indonesia Di Singapura. *RESIPROKAL: Jurnal Riset Sosiologi Progresif Aktual*, 2(1), 13-38. https://doi.org/10.29303/resiprokal.v2i1.23

Setiadi, W. (2020). Simplifikasi Regulasi dengan Menggunakan Metode Pendekatan Omnibus Law. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 9(1), 39. http://dx.doi.org/10.33331/rechtsvinding.v9i1.408

Skeldon, R. (2006). Migration And Poverty, Scientific Series "International Migration of Population: Russia and the Contemporary World," 18. 47. https://d1wqtxts1xzle7.cloudfront.net/60897126/vol_18_eng-with-cover-page-v2.pdf?

Sumardiani, F. (2014). Peran serikat buruh migran Indonesia dalam melindungi hak tenaga kerja Indonesia di luar negeri. *Pandecta: Jurnal Penelitian Ilmu Hukum (Research Law Journal)*, 9(2), 257-272. https://doi.org/10.15294/pandecta.v9i2.3579

Taran, P. A. (2001). Human rights of migrants: challenges of the new decade. *International Migration*, 38(6), 7-51. https://doi.org/10.1111/1468-2435.00141

Thontowi, J. (2019). Proxy War, Kejahatan Lintas Negara dan Pengaruhnya Terhadap Ketahanan Nasional Perspektif Hukum International. *Prosiding Senaspolhi*, 1(1). https://publikasiilmiah.unwahas.ac.id/index.php/SENASPOLHI/article/view/2976

Yuniarto, P. R. (2016). Dari Pekerja ke Wirausaha: Migrasi Internasional, Dinamika Tenaga Kerja, dan Pembentukan Bisnis Migran Indonesia di Taiwan. *Jurnal Kajian Wilayah*, 3(1), 73-102. https://doi.org/10.14203/jkw.v3i1.312

Widiyahseno, B., Rudianto, R., & Widaningrum, I. (2018). Paradigma Baru Model Pelindungan Pekerja Migran Indonesia (PMI) dalam Perspektif Undang-undang No 18 Tahun 2017. *Sosio Informa*, *4*(3). https://doi.org/10.33007/inf.v4i3.1578