



Stagnation Criminal Law Enforcement Post Determination Change Omnibus Law Act

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ABSTRACT

The purpose of this study is to investigate the application of criminal law following the determination of changes to the omnibus law and the influence such changes have on legal certainty. The study method that is being utilized is known as normative legal research, and it involves approaching the topic from legislative perspectives, conceptual perspectives, and case perspectives. According to the findings of the study, the process of criminal law enforcement has slowed down significantly in several areas where the omnibus law has made changes. This is true not only for cases that have recently taken place, but also for cases that are still in the stages of investigation and prosecution, which has led to a number of criminal cases not being resolved in court. This is due to the fact that the Omnibus Law has removed several criminal provisions from the previous law, including changing criminal sanctions to administrative sanctions. Furthermore, the Constitutional Court's decision on the Omnibus Law has never provided clarity on its application, which has caused criminal



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law enforcement to become stagnant. The word "stagnation" is synonymous with "bottleneck," "congestion," and "deadlock." After the stipulation of revisions to the Omnibus Law, there was a lull in the activity of criminal law enforcement, which resulted in the absence of legal certainty.

Study This purpose is to recite information regarding the enforcement law criminal post determination change omnibus laws and their impact on the certainty law. The method of research that is employed is called normative study of the law, and it involves approaching legislation, approaching concepts, and approaching cases. The findings of the research indicate that case follow criminal on some changed sector _ with omnibus law laws experience stagnation in implementation enforcement law crime, both in new cases _ happened, either case criminal on stage investigation and prosecution resulting in no _ he continued enforcement law criminal to stage trial. In addition, new cases _ happened, either case criminal on stage investigation and prosecution resulting in no _ he continued enforcement law criminal to stage trial. it is due to the fact that The Omnibus Law deleted a number of criminal provisions from the Constitution before it went into effect, one of which was to change the criminal penalty into a penalty administration. However, the post-decision Court Constitution did not visit to give clarity regarding the Omnibus Law's enforceability, which led to enforcement law criminal experience stagnation. Stagnation is characterized by bottlenecks, deadlocks, and more bottlenecks. The process of changing the criminal post determination statute came to a standstill as a result. The Omnibus Law has produced outcomes that result in there being no realized certainty law.

1. Introduction

President Joko Widodo proposes an omnibus law to solve the issue of complex permits and duplicative regulations that impede investment. The law enacted as a result of provision making regulation legislation is the Omnibus law (Prabowo et al., 2020) In Indonesia, the Omnibus Law is regarded as the appropriate response to the problem of multiple rules overlapping one another (Arham et al., 2019) birth Constitution Number 11 of 2020 about Create Work (next written UU CK), which was subsequently proclaimed Unconstitutional Conditional by the Court Constitution on November 25, 2021 by Decision Number 91/PUU-XVIII/2020. birth Constitution Number 11 of 2020 concerning Create Work (next written UU CK). In the ruling, the MK was directed to do the repair within a time frame of no more than two years from the day the judgement was pronounced. If the repair was not completed during the grace period, then Law No. 11 of 2020 Concerning Create Work was declared unconstitutional in a manner that is permanent. MK contends that in the process of developing Law No. 11 of 2020 concerned Create Work No fulfill provision based on The 1945 Constitution of the Republic of Indonesia, so that stated handicapped formal in Decision Number 91/PUU-XVIII/2020, disabled people should be given formal consideration. Despite this, on December 30, 2022, the government will announce that it will publish Regulation Government Replacement Constitution Number 2 of 2022 Concerning Create Work (the second written PERPPU CK), citing the worldwide threat as the justification.

Article 22 paragraph 1 of the Constitution of the Republic of Indonesia from 1945 confirms that the President in setting Perppu must be based on p about the urgency that compels. Since the interpretation of " p about a compelling crunch " was carried out based on subjectivity, the DPR is responsible for determining whether the president's decision will result in a crunch force that is correct or will result in a crunch force that is correct.

Based on MK formulation in Decision Number 138 /PUU-VII/2009 has parameters related to " forced urgency " in the form of three conditions, namely, first, existence circumstances that is need urge For finish problem law in a manner fast based on Law; second, the law is needed the Not yet There is so that happen emptiness law; third, emptiness law the No can overcome with method make Constitution in a manner procedure n; and fourth, existence circumstances that is need urge For finish problem law (Subiyanto et al., 2014).

Stagnation The Omnibus Law (Furthermore the Omnibus Law was written) in fact No only at the level of formation process and position gray post stated unconstitutional conditional on the decision of the Constitutional Court. In the enforcement area law , in particular enforcement law criminal become accompanying part _ affected on stagnation of the Omnibus Law. On the aspect enforcement law criminal , exists replacement a number of the previous article arrange penalty criminal become penalty administration . Changes the ideally must can ensure effectiveness enforcement law and eradicate threats to experienced various sectors depenalization with objective give clear boundaries _ between penalty criminal with administrative and prioritizing means any other law criminal as approach ultimate remedy , however in fact , post determination changes to the Omnibus Law actually implicated to enforcement law crime (Duwira Hadi Santosa, 2021) .

Stagnation The Omnibus Law, which was also written, was declared unlawful only at the level of the formation process and the position gray post, and this was contingent on the decision of the Constitutional Court. In the sphere of law enforcement, and in particular law enforcement regarding criminal matters, the accompanying section of the Omnibus Law has become damaged by its stagnation. On the subject of the enforcement of criminal legislation, there is a need to replace a number of the preceding article's arrangements for the criminal penalty with administration of the criminal penalty. Changes should ideally be able to ensure the effectiveness of law enforcement and eliminate threats to various sectors of depenalization, with the goal of providing clear boundaries between criminal penalties and administrative procedures and prioritizing means over any other laws that violate criminal procedure as the ultimate remedy. In practice, however, post-decision changes to the Omnibus Law actually implicate law enforcement in the violation of criminal procedure(Andini et al., 2022) One of them as happened in East Kalimantan.

Lack of enforcement process law criminal so that annihilation application punishment criminal to action type of fuel stockpile revealed pertalite _ Polresta Samarinda early in September 2022, capturing notice of the general public. Because the criminals engaged in illegal activity by stockpiling pertalite up to 17 tons without permission, the only penalty that was imposed was administrative in nature; criminal punishment was not taken into account. it _ because according to party the police, notwithstanding the hoarders the No own permission, sanction only administration in accordance Constitution Create Work, Article 53 and 55 activities downstream that's without permission besides from subsidized fuel is violation administration, so they Still make an effort For coordinate return is There is another law or another article that could be imposed(Asep Saifi Arifin, 2022) These kinds of predicaments and circumstances do not only occur in the oil and gas industry, but that industry as well is one that was affected by the omnibus law's revisions. Stagnation and discontent among the public, in regard to the implementation of enforcement law, has made it more hazy and obscure as to which rules apply, despite the fact that there is clarity regarding a variety of regulations in law criminal that are particularly relevant to fundamental principles, such as the principle of legality, which demands that there exists clarity regarding enforceability law, clarity regarding formula law, and form law. Additionally, the application of this law is stringent due to the characteristics of law criminal who have peculiarities related to applic As a result of the history behind that, the purpose of this post is to For the purpose of reciting how the reality of the enforcement

law criminal post determination has changed the Omnibus Law, as well as how the implication to practice enforcement law criminal.

2. Method

this writing use method study normative law (Irwansyah , 2020) , namely a process for find rule laws , principles law , theory or draft proper law _ For resolve the legal problems encountered . (Peter Mahmud Marzuki, 2006) Collection techniques material law through studies library , collected material _ second analyzed and described in a manner descriptive qualitative . In study This used approach legislation (*statuta approach*) among others Constitution Number 11 of 2020 concerning Create Work , Act Number 32 of 2009 concerning Protection and Management Environment Life as well as related primary, secondary , and tertiary materials with topic research , approach cases (*case approach*) that occurred in the East Kalimantan region, and approaches conceptual (*conceptual approach*) to decipher reality stagnation enforcement law criminal post change determination of the omnibus law and its impact uncertainty generated law . _

3. Results and Discussion

Enforcement law in Language English called with law enforcement. According to *Black's Law Dictionary* , *law enforcement* interpreted as *the act of putting something such as a law into effect; the execution of law; the carrying out of a mandate or command*. (Henry Campbell Black, 1990) kindly Simple , Muladi state that enforcement law (*law enforcement*) is business For enforce norms law and at the same time behind values _ _ _ norm the . With so did the enforcers law must understand true spirit of law (legal spirit) that underlies regulation mandatory law _ erect and deep matter This will related with various the dynamics that occur in the manufacturing process legislation (*law making process*). (Muladi , 2002)

In Indonesia, destination law is For form something formation of a protective Indonesian state all Indonesian people and all spilled blood Indonesia and for advance well-being general , educate life nation as well as follow carry out based world order independence , peace immortality and justice social . (Ansori , nd) To make it happen objective it , then needed rule supporting law _ realization mark constitution , however rule such law _ Lots If done effort harmonization and harmonization need no time _ short . Amount regulation moment this is already too many and each other No harmonious , as well overlapping each other or *over regulated* need method certain with do simplification regulation with omnibus law approach . Besides For harmonize obesity regulation , is also expected can give certainty law . In the fields investment for example , certainty law is very supportive creation climate healthy business . _ Factor This needed in period a long time , because the more big amount invested investment , then _ will the more tall demands to level certainty law by investors, either in aspect philosophical , sociological nor aspect juridical . (Utomo 2020)Omnibus law which is a drafting model usual regulations _ used in countries with system *common law* was eventually also implemented in Indonesia with birth of UU CK. (*REGULATION SIMPLIFICATION USING THE OMNIBUS LAW APPROACH* , nd)

Enforcement law in context law criminal held through system Justice the execution of the punishment consists from at least 4 (four) components , ie Police , Prosecutors , Courts , and Corrections . Fourth component the has arranged in Constitution Number 8 of 1981 concerning Criminal Procedure Code (KUHP). If linked with the omnibus law, then penalty criminal in UU CK not is cluster separately (Malik Tanjung et al., 2020) , however spread over all cluster . Penalty crime in the CK Law is regulated as *administration strafrecht* or law criminal administration .

Criminal law administration is law criminal special external have _ three nature and character namely ; 1) sanctions criminal as *ultimate remedies* It means ultimate means _ used For enforce law If institution law other No Again function , 2) sanctions criminal or

threat criminal in Constitution Create Work should characteristic alternative It means between criminal prison or fine or criminal others , and 3) sanctions administration This is *substitute* from penalty criminal as consequence logical from properties and characteristics *ultimate remedies* . (Firdaus & Leviza, 2020) With criminal as ultimate remedies , specifically in the environmental sector , among others deletion permission effort , got weaken function government in carry out guarantee will protection environment . Impact from pollution very dangerous environment for life creature life as well as comfort environment in the future come . On the other hand , Indonesia is a country that has riches abundant nature _ source power . (Fahriati et al., 2021) Riches nature There is on the surface earth and within stomach earth Already should selective in utilization source Power natural or environment . (Firdaus & Leviza, 2020) Although thus , enforcement law criminal environment life Still considered Enough weak (Azam Hawari et al., 2020)

With weakening function government appear constant danger _ threaten sustainability environment from time to time remember with exists deletion permission business so government No own strong legality _ For stop business it is due No exists permission effort . Management prolonged environment _ with method implementation No suitably impact the ecosystem _ from something environment disturbed sustainability because _ pollution and destruction environment . (Luhukay , 2021) In protection and management environment related life _ with pollution environment life in The Omnibus Law exists a number of amended and simplified terms _ in UUPPLH namely : Article 40 UUPPLH related with permission environment stating : “(1) Permit environment is condition For obtain permission business and/ or activities , (2) In matter permission environment revoked , permit business and/ or activity cancelled ; (3) Deep matter business and/ or activity experience change , responsible business and/ or activity must renew permission environment ”, meanwhile in the provisions of the Omnibus Law Article 40 is abolished , so in a manner No direct control to environment life in something business or activities become lost . So that potentially in cancellation to agreement environment No in a manner as well as immediately cancel license _ trying . Agreement environment can rated not urgent anymore for perpetrator effort , p the will cause threat Serious for environment . (Duwira Hadi Santosa, 2021) Enforcement law criminal post stipulated changes to the Omnibus Law show stagnation . Based on data compiled by the Network Mine Advocacy (JATAM) recorded nine categories case throughout in 2022. (JATAM East Kalimantan, 2022)

Table 1
Cases and Developments _

No.	Case	Amount	Development
1.	Pollution and Destruction Environment	5	Halted and still worked on For reported back . because The first article imposed on the 3 PT No apply Again after presence Constitution Create work .
2.	Land Confiscation	4	Due to alteration Article 43 in the Heat Act Earth by Act Create Work , regarding holder Licensing Try utilization direct or holder Licensing Try related hot earth moment do settlement right on land open space for " coercion " . get agreement public For release his rights . Case This stalled No Can followed up .

3.	Criminalization To Inhabitant	2	Stopped at the moment party reporting _ Police , because there is emptiness based law _ Article 43 in the Copyright Law Work allow For can done opening right on land with room coercion For can agreement public For release his rights .
4.	Illegal Mining	10	investigator Still complete file case For interest prosecution and trial . Criminal to businessman removed , however criminal public maintained . Article 162 of the Minerba Law (Article 39 in the Omnibus Law), and Article 73 of the Heat Law Earth (Article 41 in the Omnibus Law).
5.	Child Dies in Mine Pit	2	Still on stage prosecution Because Not yet There is Right article _ For can catch the perpetrators opening hole mine the .
6.	Threaten Safety and Coastal Communities	7	Still on stage reporting police force . Based on Report Police LP/A/009/II/2022/SPKT on 23 February 2022. And not yet followed up until moment this .
7.	Company negligence in Apply Protocol Safety Work	6	Already on P21, but Not yet done follow-up until moment this .
8.	Damage Facility Public	1	Already on P21, but Not yet done follow-up until moment this .
9.	Corruption and Abuse Authority	1	Already at P21, it is in the progress stage .
Total		38	

Source : JATAM East Kalimantan Year 2022

Based on data from table above , cases that occur _ throughout 2022 comprises _ on pollution and destruction environment , deprivation land , criminalization to citizen , mine illegal case _ child died in the hole mine , threat safety public coast and fishermen , negligent company in apply protocol health work , spoil facility public , as well corruption and abuse authority . Of the 38 cases , case dominated by action criminal mine illegal . Enhancement case throughout 2022 compared to the related 2021 deprivation ground . Happened in Berau , East Kutai and West Kutai and resulted enough loss _ big . In fact more of 85% (*Report-Omnibus Law, Book of Oligarchy Law* , nd) Not yet can completed through enforcement law criminal . Something similar also happened in early September 2022 , ie case solar stockpiling in the Kelurahan Intersection Sand , District Palaran . Reported from Kaltimpost.com Polresta Samarinda has set One suspect from four crime scenes, however until moment This has not yet been followed up with reason investigator experience doubt on base the law used , ie Article 40 juncto Article 5 UU CK as change Constitution Number 22 of 2001 concerning Oil and Gas , which though has present The Constitutional Court's decision on the CK Law so that investigator No follow up with which regulations . (Asef Saifi Arifin, 2022)

Case others in the environmental sector . Director General Environmental Law Enforcement Life and Forestry (Gakkum) Ministry of Environment Life and Forestry (KLHK), Ratio Ridho state that KLHK is committed For finish mine illegal in East Kalimantan, however of 94 cases That new around 22 cases mine illegal already _

processed to Court . stagnant That happen because regulation specifically in imposition penalty punishment to be imposed to investors _ from activity mine illegal the Not yet own certainty post UU CK so cases the Not yet can processed more further and only Can imposed by the offender material just . (M Mutawale, 2022) In provision criminal procedural law , such circumstances _ That potentially bring consequence form must issued defendant from prisoner with reason by law , if previously done detention and have through the period of investigation and its extension , meanwhile case No bestowed to Attorney .

changing CK Law about 80 laws , sure a number of among them arrange various form provision criminal . In directory decision Supreme Court with keywords " copyright _ work " there are 727 decisions , author find more of 60 judgments criminal in range year 2022. Various decision related criminal law CK with sector oil and gas , forestry , environment live , and various deed criminal other . With exists decisions of the Constitutional Court and Perppu , then the enforcement process law For realize punishment experience inquisitiveness For still done or precisely suspended due to the CK Law itself delete deed criminal from Constitution before (decriminalization), created follow criminal new (criminalization), and also change provision criminal following sanctions (depenalization). If linked with change penalty criminal (depenalization) with MK decision as well Perppu CK, then stagnation on prosecution based on the Act Create Work or Constitution before , as well in follow criminalized crime , whether _ stated free Because No Again become deed criminal or still convicted add to the long list enforcement law experienced criminal _ stagnation in its implementation .

3.1 Implications of Determining Changes to the Omnibus Law for Law Enforcement

For a long time seekers justice / society crave enforcement fair law . _ Enforcement law is something obligation that is carried out by the internal state protect citizens , because enforcement law is enforce values truth and justice . Countermeasures _ crime with law criminal in essence is part from business enforcement law criminal . (Andini et al., 2022) Enforcement law criminal embodied through something policy law which is part from political law national . (Gusta Andini, 2021) This is it involve various element within the country, start from maker laws , officials enforcer law , until citizen . (Vivi Ariyanti, 2019)

Based on findings writer about reality stagnation enforcement law criminal post determination changes to the Omnibus Law that have implications to enforcement law crime , there are five records important related with enforcement law criminal in fact No give certainty law , namely , *First* , no fulfil criteria as law criminal administration Because part big penalty criminal inside _ Constitution *aquo* formulated in a manner cumulation so UU CK is not in accordance with properties and characteristics law criminal administration . *Second* , there is overlap overlapping settings in a number cluster related penalty administration and sanctions criminal . Based on matter it , then there is exception If something deed carried out by the ruling society forest or live around it only imposed penalty administration , however turned out to be on condition underneath arrange that can imposed penalty criminal . obscurity That potentially give rise to multiple interpretations in enforcement law . *Third* , weight lightness threat criminal depends from impact something deed , alas in UU CK increasingly danger the resulting impact , then the more light the punishment . this _ can seen from arrangements in Article 70 of the CK Law on page 37, related with use land . If use land without permission threat the crime is prisons and fines , that means that the penalty characteristic accumulation , but in Article 70 paragraph (3) of the same Law , it is also regulated that use resulting land _ death , then threat the crime is criminal prison or fine . word or show alternative penalty criminal , though consequence dead is the most dangerous and detrimental consequences , however precisely threat the crime more light If compared to by deed use land without permission . *Fourth* , UU CK has unite not enough over 80 Acts where each law sectoral That have threat criminal alone , it should when made in One Act , then to same impact _ threat the

crime should own similarities , however it turns out the formation of the CK Law did not do synchronization to threat existing crime _ in 79 laws the .

Happening disparity criminal which is exists injustice and uncertainty in enforcement law criminal . Mistake That there is in management environment life consequence dead , threat the crime is maximum 1 year prison , but in the fields fishery if resulted dead threat the crime is maximum 6 years prison . So, you're welcome consequence dead in context environment life maximum 1 year prison , however in context Constitution fisheries , he said reach 6 years prison . *Fifth* , affirmation that existing deficiencies _ the will arranged in Regulation Government or Regulation President , but on the other hand , sanctions criminal No can arranged in Regulation Government , no can also be arranged in Regulation President because that can load threat criminal That only at the statutory level or at the level of Regional Regulation with certain limitations Where regulation area No allowed load provision prison . this _ show there is violation to principle *no punish without representative* (Willis & Hoyle, 2022) meaning _ that inclusion threat criminal only can with agreement the people , that is only can held at the statutory level with DPR approval , or in choice other contained at the Regional Regulation level , with agreement Governor or Regent or Mayor with Threat Limits that are not can go beyond law . Although Perppu CK has issued by the Government on 30 December 2022 with objective do synchronization whole threat existing crime _ in the CK Act, but Perppu the No can finish problem stagnation enforcement law implicated crime _ to certainty law that has there . Uncertainty law still _ The same in PERPPU CK because presence No fail fill in emptiness law , however precisely create blur law with turn on back UU CK without repair in a manner comprehensive .

Principle certainty law is one _ principle law according to Gustav Radbruch including to in mark base law . Principle this in essence expect and oblige law made in a manner Certain in written form . _ Existence principle This become important Because will ensure clarity from something product law existing positive . _ Meaning important from principle it also has something similarity (*similarity*) with idea major in construction _ _ reasoning positivism law , that is clarity (*certainty*). According to satjipto Rahardjo , in something regulation law , contained principles law that becomes base its shaper . That principle law can interpreted as heart regulation law , so For understand something regulation law needed exists principle law . because _ principle law contain demands ethical , then principle law can said as bridge between regulation law with ambition social and outlook ethical society . (Rahmadi Indra Tektona, 2022) Certainty law is also relevant tight with principle legality , especially essence principle legality in law Indonesian criminal as well its application to enforcement law criminal environment . (Suherman , 2020)

Regardless of the pros and cons establishment of omnibus law, law should capable follow development of the times, capable answer changing times with all base in it , as well capable serve interest public with rely on aspect morality from source Power man enforcer law That alone , capable reveal screen and rummage various failure Modern law is based on philosophy positiveistic , legalistic and linear For answer various problem law . (Satjipto Rahardjo, 2006)

4. Conclusion

Happen stagnation enforcement law criminal to case follow criminal on some changed sector _ with the Omnibus Law. Stagnation enforcement law criminal happen on on new case _ happened , either stage investigation and prosecution . it _ because the Omnibus Law has decriminalize provision criminal from Constitution before , incl do depenalization to provision penalty criminal become penalty administration , meanwhile obscurity about actual application of the Omnibus Law has cause stagnation enforcement law and open potency gap abuse authority in enforcement law criminal . Stagnation in enforcement law criminal results in no realization certainty law .

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