

THE ROLE OF LAW FOR SMALL MEDIUM ENTERPRISES (SME's) PROTECTIONS FACES THE CHALLENGES OF REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP (RCEP) IN INDONESIA

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ABSTRACT

During the current uncertain world economy, the *Regional Comprehensive Economic Partnership* (RCEP) was born. RCEP is the largest trade agreement in the world outside the World Trade Organization (WTO) from the perspective of its world coverage for the total Gross Domestic Product (GDP), foreign direct investment (FDI) population, and trade. However, this agreement also raises new challenges, especially for each country that has joined the RCEP Agreement, in preparing legal provisions for welcoming this RCEP. The recklessness in preparing legal foundations in trade and investment sectors can raise some new problems. This paper will discuss whether any impacts from the RCEP implementation? And specifically, how Indonesia's legal instrument readiness to protect their national interests, especially for the Small Medium Enterprises, faces the challenges that come up from RCEP? The method used in this paper will be descriptive. To obtain an overview of the situation and circumstances of the RCEP, by presenting the data obtained as it is, and through various analyses to draw several conclusions. From the discussion, we can conclude that RCEP positively impacts developing supply chains that have been disturbed due to the Covid-19 pandemic and the China-US decoupling. Secondly, RCEP has an enormous momentum in making a giant leap towards legal transformation in the economic sector, particularly for Indonesia. Thus far, in facing this RCEP challenge, Indonesia already has a new legal instrument enacted on October 5th, 2020. This law is known as the Job Creation Law or the *Indonesia Omnibus Law*. It has provided a significant shove for changes to the formation of the laws as a whole in the Indonesian economic sector, including the Small Medium Enterprises protection.

Keywords: RCEP, SME's, Indonesia Job Creation Law, Indonesia Omnibus Law

A. Introduction

According to international trade theory, countries accept Free Trade

Agreements (FTA) because of the benefits that the countries involved in this trade

derive from comparative advantage.¹ A nation will specialize in producing a product if it has a comparative advantage. With this kind of specialization, the world can develop total world output with the same resources. At the same time, economic efficiency will continue to increase. The result, theoretically,² an FTA can guarantee that the countries involved in this agreement will benefit from the results of the formation of trade creation and trade diversion.

The latest trend of FTAs shows that many countries in the world have been involved in various trade agreements and investment agreements, both bilateral and regional agreements. That is because they realized that trade and encouraging foreign capital were ways to develop their national economy and fulfill its needs. However, the turmoil that has occurred in the world recently, such as the impact from the tension between the two largest economic giants globally, between America and China, affects the world economic map. And also *covid-19* pandemic which beat hard to the whole world economy since 2020. It caused the countries' economic conditions to be even more hit and affected the lower level, making them think of various ways to get out of their economic downturn.

For getting out of the economic downturn, the countries should take

some strategic steps to increase trade cooperation between countries, especially for stimulating the development of the small middle enterprises. Other strategies are how to encourage foreign capital to enter, also how to improve the export potential and import substitution, increase foreign capital earnings and be able to save it, with the hope to the cooperation can jointly rise from the impact of the global economic downturn caused by various current issues and in particular the *covid-19* pandemic. Increasing the financial income of countries by finding a way or solution to simplify the trade process from upstream to downstream and attract foreign investment is the main objective why such cooperation is needed. The hope is to help each other to accelerate the economic growth of the affected countries so that they all together will soon recover.

Amid the current uncertain world economy, the *Regional Comprehensive Economic Partnership* (RCEP) was born, a comprehensive Asian regional economic partnership initiated by Indonesia when it assumed the leadership of ASEAN in 2011. This cooperation aims to consolidate five free trade agreements (FTA) which ASEAN already has with its six trading partners. The countries declared the negotiations on November 11th, 2020, with 15 countries that agreed,

1 Amalia Adininggar Widyasanti, *PERDAGANGAN BEBAS REGIONAL DAN DAYA SAING EKSPOR: KASUS INDONESIA (Regional Free Trade and Export Competitiveness: The Case of Indonesia)*, Buletin Ekonomi Moneter dan Perbankan; Juli 2010, p. 6

2 *Ibid.*

consisting of 10 ASEAN countries and 5 ASEAN partners, namely China, Japan, South Korea, Australia, and New Zealand, and signed by the fifteen countries on November 15th, 2020.

The RCEP will become the largest trade agreement in the world, outside the World Trade Organization (WTO). Based on data, it shows from world coverage for the total Gross Domestic Product (GDP) (30.2 percent); foreign direct investment (FDI) (29.8 percent); population (29.6 percent); and trade (27.4 percent) which is slightly below the EU-27 which was recorded at 29.8 percent.³ Furthermore, the Peterson Institute for International Economics has forecasted that RCEP will add almost US\$200 billion to the global economy and an average of 0.2 percent per year to the GDP of its members, therefore creating employment and improving the standards of living of

member countries.⁴

Agus Suparmanto revealed why Indonesia needs a Regional Comprehensive Economic Partnership (RCEP) trade agreement at the virtual press conference. The reasons are:⁵

1. Indonesia needs RCEP to deal with uncertain international trade dynamics; this is closely related to the weakening of trust in the WTO (World Trade Organization) and the multilateral system, which has shifted many countries to regional and bilateral agreements.
2. To anticipate the impact of the trade war between the United States and China. According to him, countries with direct trade relations with the US and China are beginning to shift dependence from the two countries to compete in other regions. It

3 CNN Indonesia, *Mengenal RCEP dan Untungnya Buat Indonesia (Get to know RCEP and the Benefit for Indonesia)*, <https://www.cnnindonesia.com/ekonomi/20201116073151-92-570136/mengenal-rcep-dan-untungnya-buat-indonesia>, Accessed December 14th, 2020

4 Ministry of Finance and Economy, Brunei Darussalam The RCEP Agreement, <http://www.asean2021.bn/Theme/news/news-21.02.21.aspx>, Accessed March 15th, 2021

5 Agus Suparmanto is the Indonesia Minister of Trade. The original statements of the Indonesia Minister of Trade are:

1. *Indonesia membutuhkan RCEP untuk menghadapi dinamika perdagangan internasional yang tidak pasti, hal ini erat kaitannya dengan melemahnya kepercayaan terhadap WTO (Organisasi Perdagangan Dunia) beserta sistem multilateral, telah mengalihkan banyak negara kepada kesepakatan-kesepakatan regional dan terutama bilateral.*
2. *Untuk mengantisipasi dampak dari perang dagang antara Amerika Serikat dan China. Menurutnya, negara-negara yang punya hubungan dagang langsung dengan AS dan China mulai mengalihkan ketergantungan dari dua negara tersebut untuk bersaing di kawasan lain. Hal tersebut juga tak lepas dari antisipasi pada kebijakan proteksi AS terhadap neraca perdagangannya. Bahkan, ini menjadi tren baru yang dicontoh negara lain dan akan berdampak pada perdagangan internasional ke depan.*
3. *Sebagai langkah mitigasi dampak dari pandemi virus corona (SARS-CoV-2) yang menekan perdagangan dunia yang sebelumnya sudah kurang kondusif. Hal ini membuat ekonomi dunia membutuhkan tahap pemulihan yang tidak bisa dilakukan sendiri dan dengan proses yang cepat.*

CNN Indonesia, *Alasan RI Butuh RCEP, Tak Percaya WTO hingga Perang Dagang*, <https://www.cnnindonesia.com/ekonomi/20201115160739-92-570018/alasan-ri-butuh-rcep-tak-percaya-wto-hingga-perang-dagang>, Accessed December 14th, 2020

also cannot be separated from the anticipation of the US protection policy on its trade balance. It is a new trend that other countries are emulating and will impact international trade in the future.

3. To mitigate the coronavirus pandemic (SARS-CoV-2) impact, which suppressed world trade that was previously less conducive. It makes the world economy need a recovery stage collaboratively and fast.

Indeed, these fifteen countries have their agenda of interests, like China, where participation in the RCEP is an extraordinary step. In various media, it has been stated that RCEP is the first multilateral free trade agreement China has ever participated in, as it typically prefers to negotiate bilateral free trade agreements. RCEP holds great significance for China. Once implemented, RCEP will create the largest trade bloc in Asia with the expectation to amount to US\$12.4 trillion in trade. Besides that, the RCEP will also open opportunities for China to involve and increase business expansion.⁶ China already has bilateral trade deals with many RCEP members and still hopes for a trilateral pact with Japan and South

Korea. The conclusion of the RCEP agreement is expected to strengthen economic relations between all three countries with ASEAN nations. It could lead to further bilateral arrangements among all members, particularly China.⁷ Likewise with Australia, by joining in RCEP, Australia hopes they can get their main benefits, they are:⁸

- A new single set of rules and procedures for accessing preferential tariffs in any of the 15 RCEP markets
- There is a new scope for trade in services throughout the region, including cross telecommunications, professional and financial services.
- Improved mechanisms for tackling non-tariff barriers, including in areas such as customs procedures, quarantine, and technical standards.
- Greater investment certainty for businesses.
- Rules on e-commerce to make it easier for businesses to trade online.
- A standard set of rules on intellectual property.
- Agreed rules of origin that will increase the competitiveness of Australian inputs into regional production chains.

However, this agreement also

6 Dorcas Wong, *RCEP FTA Signed What Can Foreign Investors In China Expect?*, November 17th, 2020: China Briefing, <https://www.china-briefing.com/news/rcep-fta-signed-what-can-foreign-investors-in-china-expect/>, Accessed December 15th, 2020.

7 Johnston, Eric, *What Does RCEP Mean For Japan And Its Asian Neighbors?* <https://www.japantimes.co.jp/news/2020/11/15/national/politics-diplomacy/rcep-japan-asia-trade/>, Accessed December 15th, 2020.

8 Prime Minister of Australia, *Regional Trade Deal to Boost Export Opportunities for Aussie Farmers and Businesses*, November 15th, 2020: Australia, <https://www.pm.gov.au/media/regional-trade-deal-boost-export-opportunities-aussie-farmers-and-businesses>, Accessed December 15th, 2020.

raises new challenges, especially for each country that has joined the RCEP Agreement, in preparing legal provisions for welcoming this RCEP. The recklessness in preparing legal foundations in trade and investment sectors can raise some new RCEP members' problems. Many doubts arose from various circles regarding the influx of imported goods, which will be eroding domestic products, the same thing that India worried about, so it resigned from this RCEP. In addition, there are concerns that RCEP will only benefit certain parties and hinder the economic growth of countries that are not ready.

These facts are interesting to be discussed deeper; reflecting on these, the author will try to analyze and describe more about the readiness of one of the RCEP members, in particular, to discuss further Indonesia's readiness. The form of enthusiasm here is specifically regarding legal instruments considered as formal to secure all forms of concern. Based on that, the scope of discussion in this paper will only specifically discuss:

1. Are there any impacts on the RCEP implementation?
2. How do Indonesian legal instrument protect their national interests in facing the challenges arising from RCEP, especially for the SME's?

B. Research Method

A method as a tool to help, answer, and find the truth symbolically,

methodological, and consistent, then held the analysis and construction of the data that has been collected and processed following the purpose of research. The method used in this paper will be descriptive. It is a research method to gain an overview of the situation and circumstances of the RCEP, by way of exposure data obtained as it is, then through the various analyses compiled some conclusions. Meanwhile, the study was conducted using a normative juridical approach. Literature and scientific papers related to the object of research and sociological juridical approach, namely the study, were also born of the condition and the facts on the regulations, especially the regulations related to Indonesia SME's trading and investment area.

It is essential to use internal logic research in analyzing RCEP and the role of law in the SME's sector to develop only descriptions or criteria in evaluating correct arguments about the law, particularly the regulations for SME's protections. Furthermore, this connection analysis should use deductive logic to conclude general matters into individual cases. The research should use the analysis methods because the understanding of RCEP itself is pretty new. There has not been much scientific law discussion regarding itself and its relation to transforming economic Law in Indonesia through the Indonesian Job Creation Law new conception.

C. The RCEP and the Consequence for Indonesia

1. What Is RCEP?

The Regional Comprehensive Economic Partnership (RCEP) is a significant trade pact proposed by ASEAN to increase trade between its member countries plus free trade agreement (FTA) partners. It was considered as the largest trade cooperation in the world because it involves 15 countries (10 ASEAN member countries plus Australia, New Zealand, South Korea, Japan, and China) which cover 30% of the world economy, 30% of the world population, and no less than 2.2 billion potential customers. Top officials from 15 nations inked the RCEP nearly a decade in the making on the final day of the 37th ASEAN Summit hosted virtually by Vietnam this year. The completion of negotiations is a strong message affirming China, Eastern Asia, and ASEAN's role in supporting the multilateral trade system. In addition, this agreement will contribute to developing supply chains that have been disrupted by the Covid-19 pandemic and the China-US decoupling, as well as supporting the regional and world economic recovery.

The objective of RCEP is to establish a modern, comprehensive, high-quality, and mutually beneficial economic partnership that will facilitate the expansion of regional trade and

investment and contribute to global economic growth and development. Accordingly, it will bring about the market and employment opportunities to businesses and people in the region. Furthermore, the RCEP Agreement will work alongside and support an open, inclusive, and rules-based multilateral trading system. This RCEP agreement also has four key features:⁹

1) Modern. The RCEP agreement is an agreement not made just for today but is also an agreement for tomorrow. It updates the existing ASEAN Plus One FTAs (ASEAN's FTAs with the five dialogue partners). It considers changing and emerging trade realities, including the age of electronic commerce, the potential of micro, small and medium enterprises, the deepening regional value chain, and the complexity of the market competition. The RCEP Agreement will complement the World Trade Organization (WTO), building on the WTO Agreement in areas where the Parties have agreed to update or go beyond its provisions.

2) Comprehensive. The RCEP agreement is extended in terms of both coverage and depth of commitments. On its scope, the RCEP Agreement comprises 20 Chapters and includes many areas

⁹ Summary of the RCEP Agreement, <https://asean.org/storage/2020/11/Summary-of-the-RCEP-Agreement.pdf>, Accessed December 13th, 2020, p. 1-3

that were not previously covered in the ASEAN Plus One FTAs. The RCEP agreement has specific provisions covering trade in goods, including rules of origin; customs procedures and trade facilitation; sanitary and phytosanitary measures; standards, technical regulations, and conformity assessment procedures; and trade remedies. It also covers trade in services, including specific provisions on financial services; telecommunication services, professional services, and the temporary movement of natural persons. In addition, there are chapters on investment, intellectual property; electronic commerce; competition; small and medium enterprises (SMEs); economic and technical cooperation, government procurement, and legal and institutional areas, including dispute settlement. In terms of market access, the RCEP Agreement achieves liberalization in trade in goods and services and has extended coverage to investment.

3) High-Quality. The RCEP Agreement contains provisions beyond the existing ASEAN Plus One FTAs while recognizing the individual and diverse levels of development and economic needs of the RCEP Parties. The RCEP agreement addresses the issues required to support the Parties' global and regional supply chain engagement. It complements

market access commitments with trade and investment, enabling rules that are business-facilitating while at the same time preserving legitimate public policy objectives. The RCEP Agreement strives to boost competition in a way that drives productivity, which is sustainable, responsible, and constructive. In addition, the RCEP Agreement has the added value of bringing together a single rulebook to help facilitate the development and expansion of regional supply chains among Parties.

4) Mutually beneficial. The RCEP Agreement brings together countries with diverse levels of development. Thus, the RCEP Parties have recognized that its success will be determined by its ability to bring benefits mutually. The RCEP agreement is designed to achieve this objective in several ways, including through appropriate forms of flexibility and provisions for special and differential treatment, especially for Cambodia, Lao PDR, Myanmar, and Viet Nam, as appropriate, and additional flexibility for the least developed Parties. In addition, the RCEP Agreement includes technical cooperation and capacity building that will be made available to support the implementation of commitments made under the RCEP Agreement and for the Parties to maximize the benefits accruing from there. Finally,

the RCEP Agreement also includes provisions that will ensure that economies with different levels of development, businesses of differing sizes, and the broader stakeholders can all benefit from the agreement.

An RCEP description above shows that the signing of this agreement is expected to benefit its member countries. However, apart from the expected benefits, it is inevitable that this agreement can also have some impacts, bringing positive consequences or negative ones. Many experts provide opinions or analysis on this RCEP, such as the few comments during a webinar held on November 10th, 2020. Economic experts, business owners, civil society organizations, and parliamentarians expressed their concerns about it.

*Rashmi Banga*¹⁰ said FTAs like RCEP might further restrict the policy and fiscal space of developing countries. In her analysis based on SMART methodology, assuming tariffs are removed on all products between RCEP countries, she finds that imports post RCEP will rise

more than their exports for most ASEAN countries. Therefore, developing countries are more vulnerable and are expected to be hit harder, and will take more time to recover.¹¹ She also expressed her fear of RCEP, especially the impact on ASEAN countries: "ASEAN countries can only benefit from RCEP if they can use the potential on Regional Value Chains which should link with the Global Value Chains. But mostly in regional cooperation, such as RCEP, most ASEAN Countries will lose preferential access. That access will go to more efficient producers and exporters, but how many countries in ASEAN can compete with China?"¹²

*Kate Lappin*¹³ also has a statement about her expression for RCEP and the impacts. She said that FTAs such as RCEP would increase the pressure on governments to privatize, as public services need to be traded and compete on the market. Another negative impact will rise on equality, including corrosive effects on gender equality. She also said that with the pandemic issue, the rules have shown their effect on the

10 Rashmi Banga is a senior economist in the Unit of Economic Cooperation and Integration among Developing Countries (ECIDC), Division of Globalisation and Development Strategies (GDS), UNCTAD. She is former Adviser and Head, Trade Competitiveness in Commonwealth Secretariat, where the Section provided policy support to more than 30 countries in building trade competitiveness including countries like Belize, Botswana, Grenada, India, Jamaica, Kenya, Lesotho, Pakistan, Nigeria, and Sri Lanka, St Kitts and Nevis, among others. She has worked as a Senior Economist in DFID-funded UNCTAD's project which provided support to the Ministry of Commerce, India in its trade negotiations and helped link the poor to international markets. She was an Associate Professor of Economics in Jawaharlal Nehru University, India and has taught for nineteen years.

11 These statements were conveyed in the webinar forum in *Chiangmai*, Thailand, November 11th, 2020 with the theme "*RCEP Will Impact The Future of Developing Countries*", [https://igj.or.id/wp-content/uploads/2020/11/Press Release RCEP Will Impact The Future of Developing Countries.pdf](https://igj.or.id/wp-content/uploads/2020/11/Press%20Release%20RCEP%20Will%20Impact%20The%20Future%20of%20Developing%20Countries.pdf). Accessed December 15th, 2020

12 *Ibid.*

13 *Kate Lappin* is regional coordinator of the Asia Pacific Forum on Women, Law and Development, a network of 220 women's rights organizations and movements across the Asia-Pacific region.

Government's ability to respond to a crisis. Countries had to resort to multiple measures that can be construed as breaches of the trade rules in RCEP and other free trade agreements.

She argued that signing on RCEP will bind the hands of governments in taking measures in the public interest in crises to come, be it health or environmental. Further, she said that free trade rules shift the weight of who has power in the economy away from workers and in the hands of MNCs and narrow economic interests. In fact, by constraining the policy space of future governments, deals like this are restricting the potential for future poor-worker governments to alter the rules of the economy.

From the businessman side, there was *Ian Syarif*, owner of PT Sipata Moda Indonesia, a local textile company, said that free trade agreements like RCEP would bypass diversified trade opportunities and benefit the organized country like China with the sole focus on industrial efficiency. RCEP will also increase possible transshipment activities where goods will be shipped to other RCEP participating countries with zero tariffs and eventually re-exported to Indonesia, bypassing the trade remedies that the Government has imposed.¹⁴ *Barry*

Coates, Trade for All Advisory Board, from New Zealand, expressed concern that free trade agreements are signed in secrecy. He stressed that the idea that an international agreement will be signed without prior scrutiny is unacceptable without assessing its impact.¹⁵

In contrast to the practitioners' concerns, Deputy Foreign Minister Mahendra Siregar said RCEP would have many positive impacts on Indonesia in addition to increasing exports. According to Mahendra, RCEP will increase investment by more than 20% and Gross Domestic Product in the next ten years. In addition, 60 million SMEs will be positively affected by this trade cooperation. He said that "RCEP is a vehicle to increase Indonesia's role and contribution and presence in world trade and investment. In parallel, the Government has also passed the Job Creation Law. This law is an essential element in improving the homework that has been faced so far related to investment."¹⁶

From all of these practitioners' opinions will generally underline the readiness of ASEAN countries, especially for Indonesia, in facing the other five RCEP partners, particularly China, which is one of the most influential and dominant countries in economic terms.

14 Press Release of the IGJ Forum in Chiangmai, Thailand, 2020, https://igj.or.id/wp-content/uploads/2020/11/Press_Release_RCEP_Will_Impact_The_Future_of_Developing_Countries.pdf. Accessed December 14th, 2020.

15 *Ibid.*

16 Lamgiat Siringoringo, *RCEP Bakalan Meningkatkan Ekspor Indonesia Hingga 11% Dalam Lima Tahun*, <https://nasional.kontan.co.id/news/rcep-bakalan-meningkatkan-ekspor-indonesia-hingga-11-dalam-lima-tahun>, Accessed June 12th, 2021

Thus, it is expected that the 15 countries can place themselves fairly and equally according to their portions, in line with the main principle to help each other and encourage the economic growth of each member.

2. Domestic Law Improvement as a Solution to the Negative Impacts of RCEP in Indonesia

The RCEP pros and cons provide new homework for every country, especially for developing countries; Indonesia is one of them. Its implications for the member countries can be pointed up more clearly in the explanation above. Considering the importance of this agreement, Indonesia in particular also realizes that responding to the impact of this RCEP agreement requires some strategic steps, with the intention that it does not cause new problems for Indonesia itself. The adverse effects of a decision are a consequence that must be accepted. Remarkably, in this case, the existing anxieties must be reduced to a measurable and controllable impact. The best control instrument is to form strategic and targeted laws. Even though these laws are deemed unable to fulfill the sense of justice of all the stakeholders, it is hoped that they can create an order with the intention that they can be the answer to any problems that may and arise in the future in protecting Indonesia's interests.

In an advanced legal system, with the creation and development of professionally and logically designed laws, there is no doubt that legal products can influence, even change, the joints of people's lives.¹⁷ The faster the law responds to the reform voice / legal change in society, the greater the law's role in changing that society. On the other hand, the slower the law responds to voices of reform in the community, the smaller the function and role of law in changing culture because society has changed.

In line with this thought, the Indonesian Government is currently trying not to be slow in responding to the voice of reform in society but instead trying to accelerate it. The expectation that the role played by law in that society will also increase. It is particularly so in reading the changes in the international world, where the Indonesian Government is very aware that if it cannot see or read world changes, it will be difficult for Indonesia to develop. It will continue to throw away more opportunities for cooperation that benefit Indonesia with the international world. Meanwhile, to advance development, the participation of international cooperation is an absolute must for every nation. It is where the role of law in a country should be.

From that explanation, we can see two aspects of the legal change in society:

17 Munir Fuady, *Sosiologi Hukum Kontemporer "Interaksi Hukum, Kekuasaan, dan Masyarakat"* (Sociology of Contemporary Law "The Interaction of Law, Power and Society"), Jakarta: Kencana, 2011, p. 61.

first, laws that tend to be changed and laws that tend to be conservative. For example, family law or laws regarding individual property are everywhere conventional and rarely changed. On the other hand, many areas of business law, state administration, etc., are laws that tend to change according to the wishes and developments in society.¹⁸ Specifically, regarding the RCEP Agreement, it can be concluded that it is part of business law that can frequently change because it is closely related to economic policy. The Indonesian Government must prepare itself and accelerate the response to the voice of reform / legal change.

RCEP, initiated in 2011 and then finally completed by the signing in 2020, has a long process in the discussion; almost nine years, this agreement is in operation. In that period, there were also many changes and developments in the international world, which also affected the world economy, directly or indirectly impacting Indonesia. As an example, in 2019, 33 Chinese companies decided to invest overseas. However, none of the 33 companies visited Indonesia. Twenty-three chose Vietnam, and the other ten went to Malaysia, Thailand, and Cambodia. Nobody went to Indonesia;

besides that, in 2017, 73 Japanese companies decided to relocate. But again, Vietnam is one of the main goals. A total of 43 companies chose to invest in Vietnam. Meanwhile, 11 companies went to Thailand and the Philippines. Only 10 Japanese companies invested in Indonesia. *Jokowi*¹⁹ said the Government needed to be careful in overcoming this problem. According to him, Vietnam is the leading destination for foreign investors cannot be separated from a more concise regulation.²⁰

Learning from this, the Indonesian Government finally accelerated the establishment of a Job Creation Law which was finally completed on October 5th, 2020, exactly one month before RCEP was signed on November 15th, 2020. The approval of the Job Creation Law by the Indonesian Parliament was responded to with a large-scale demonstration-more significant in several regions in Indonesia, some of which lead to chaos. The base of this demonstration was mainly related to the changes in the articles of labor. The Job Creation Law originates from a bill proposed by *Jokowi* in April 2020. This law is also often referred to as the omnibus Law on Job Creation. Before the establishment

18 *Ibid.*

19 *Ir. H. Joko Widodo* is the 7th elected president of Indonesia, who has served since 2014. He continues his second term as president after winning the 2019 presidential election. *Jokowi* is the first president who is not from the political or military elite. His business career began as a wood crafts entrepreneur who then went into politics in 2005. *Jokowi* has served as mayor of Solo for 7 years and was DKI Jakarta Governor for 2 years.

20 *Ihsanuddin, Presiden Jokowi Kecwa Calon Investor Banyak Lari ke Negara Tetangga (President Jokowi is Disappointed That Many Potential Investors Run to Neighboring Countries)*, <https://nasional.kompas.com/read/2019/09/04/16425441/>, accessed Desember 20th, 2020.

of the Job Creation Law, the omnibus law was relatively unfamiliar to Indonesians. The Job Creation Law is the first omnibus law in Indonesian law. The Omnibus Law became known to the public for the first time since it was mentioned in *Jokowi's* inauguration speech in his second term in October 2019.²¹

Why does it state that the Job Creation Law is named the omnibus law? In terminology, omnibus comes from Latin, which means for everything. In a legal context, the omnibus law is a law that can cover all or one law that regulates many things.²² Omnibus Law is a law whose substance is to revise and/or repeal any laws. This concept developed in common law countries with *Anglo-Saxon* legal systems such as the United States, Belgium, England, and Canada. The omnibus law concept offers solutions to problems caused by over-regulation and overlapping regulations. If the problem is solved in the usual way, it will take a long time and cost a lot. Not to mention that the process of designing and forming laws and regulations often creates deadlocks or is not following interests.²³ Omnibus Law allows the parliament to amend several laws at once.

One of the countries in the world that adopted the omnibus law concept was Serbia in 2002 to regulate the autonomous status of *Vojvodina* Province. The law formed under this concept covers the jurisdiction of the *Vojvodina* Provincial government regarding culture, education, language, media, health, sanitation, health insurance, pensions, social protection, tourism, mining, agriculture, and sports.²⁴ Apart from Serbia, the concept of omnibus law has also been adopted by other countries such as Argentina, Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, The Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, and United Kingdom.²⁵ In Southeast Asia, Vietnam and the Philippines are two countries that have already practiced the omnibus law. Vietnam has been prosperous in attracting a lot of investment after the Government provided various facilities for investors in multiple sectors, such as incentives, tax exemptions, and permits.

21 Muhammad Idris, *Mengapa UU Cipta Kerja Disebut Omnibus Law? (Why is the Job Creation Law Called the Omnibus Law?)* <https://money.kompas.com/read/2020/10/17/073311026>, Accessed December 20th, 2020.

22 *Ibid.*

23 Firman Freaddy Busroh, *Konseptualisasi Omnibus Law dalam Menyelesaikan Permasalahan Regulasi Pertanahan (Conceptualization of the Omnibus Law in Solving Land Regulation Problems)*, ARENA HUKUM Volume 10, No. 2, Agustus 2017, p. 241.

24 *Ibid.*

25 *Ibid.* p. 142.

These conveniences were provided after the issuance of the omnibus law.²⁶

Job Creation Law is finally established considering many opportunities that have been wasted due to the overlapping regulations, especially in the economic sector in Indonesia. The question will be, why the Job Creation Law is considered a solution for Indonesia to complete some homework in the financial industry? It is because the Job Creation Law covers at least 11 clusters that are considered problematic and hindering in Indonesia up to now, i.e.:²⁷

- The simplification of land permits
- Investment criteria
- Employment
- The ease and the protection of SMEs
- The ease to start a business
- The support to do research and innovation
- Governmental administration
- Sanction-imposing
- Land-controlling
- The ease of governmental projects
- Special Economic Zone

Additionally, these six sectors regarding taxation are covered:²⁸

- Investment funding
- Territorial system
- Individual taxpayer
- Taxpayer compliance
- Business climate fairness

- Facilities

Thus, this law has streamlined regulations in terms of numbers and simplified them to be more targeted. With the existence of eleven clusters and six sectors that have been described, the Indonesian Government has subsequently issued the related implementing regulations, which is expected to have an immediate impact on the efforts to the national economic recovery as well as become a momentum for the awakening of the Indonesian nation. A total of forty-five Government Regulations and four Presidential Regulations were enacted:

- 1) Government Regulation Number 5 of 2021 concerning Implementation of Risk-Based Business Licensing
- 2) Government Regulation Number 6 of 2021 concerning the Implementation of Business Licensing in the Regions
- 3) Government Regulation Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises
- 4) Government Regulation Number 8 of 2021 concerning Authorized Capital of Companies and Registration of Establishment, Amendment, and Disbursement of Companies that Meet the Criteria for Micro and Small Businesses

26 *Op.cit.*

27 Tata Soesatya, *Break The News: Omnibus Law Passed*, <https://engliven.com/2020/10/13/omnibus-law-passed/>, Accessed December 20th, 2020

28 *Ibid.*

- 5) Government Regulation Number 9 of 2021 concerning Tax Treatment to Support Ease of Doing Business
- 6) Government Regulation Number 10 of 2021 concerning Regional Taxes and Regional Levies in the Framework of Supporting Ease of Doing Business and Regional Services
- 7) Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises
- 8) Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning Implementation of Housing and Settlement Areas
- 9) Government Regulation Number 13 of 2021 concerning Implementation of Flats
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- 13) Government Regulation Number 17 of 2021 concerning the Fourth Amendment to Government Regulation Number 15 of 2005 concerning Toll Roads
- 14) Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration
- 15) Government Regulation Number 19 of 2021 concerning Implementation of Land Acquisition for Development for Public Interest
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- 17) Government Regulation Number 21 of 2021 concerning the Implementation of Spatial Planning
- 18) Government Regulation Number 22 of 2021 concerning Implementation of Environmental Protection and Management
- 19) Government Regulation Number 23 of 2021 concerning Forestry Implementation
- 20) Government Regulation Number 24 of 2021 concerning Procedures for Imposing Administrative Sanctions and Procedures for Non-Tax State Revenues Derived from Administrative Fines in the Forestry Sector
- 21) Government Regulation Number 25 of 2021 concerning the Implementation of the Sector of Energy and Mineral Resources
- 22) Government Regulation Number 26 of 2021 concerning the Implementation of the Agricultural Sector
- 23) Government Regulation Number 27 of 2021 concerning the Implementation of the Marine and Fisheries Sector

- 24) Government Regulation Number 28 of 2021 concerning the Implementation of the Industrial Sector
- 25) Government Regulation Number 29 of 2021 concerning the Implementation of the Trade Sector
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- 38) Government Regulation Number 42 of 2021 concerning the Ease of National Strategic Projects
- 39) Government Regulation Number 43 of 2021 concerning Settlement of Inconsistencies in Spatial Planning, Forest Areas, Permits, and / or Land Rights
- 40) Government Regulation Number 44 of 2021 concerning Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition
- 41) Government Regulation Number 45 of 2021 concerning the Implementation of Geospatial Information
- 42) Government Regulation Number 46 of 2021 concerning Post, Telecommunication, and Broadcasting
- 43) Government Regulation Number 47 of 2021 concerning the Implementation of Hospitalization
- 44) Government Regulation Number 48 of 2021 concerning Third Amendment to Government Regulation Number 31 of 2013 concerning Implementation Regulations of Law Number 6 of 2011 concerning Immigration.

45) Government Regulation Number 49 of 2021 concerning Taxation Treatment of Transactions Involving Investment Management Institutions and/or Entities They Own

3. Presidential Regulation

- 1) Presidential Regulation Number 9 of 2021 concerning the Agency for the Acceleration of Housing Management
- 2) Presidential Regulation Number 10 of 2021 concerning the Investment Business Field
- 3) Presidential Regulation Number 11 of 2021 concerning Cooperation between the Central Government and State-Owned Enterprises in Providing Basic Geospatial Information
- 4) Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods / Services

The Job Creation law is expected to be the entry point to change practices that hinder investment in Indonesia and its readiness to protect its people interests, and significantly reduce the negative impacts of joining in RCEP Agreement for domestic SMEs. It is also expected to encourage foreign investors to invest in Indonesia and create more job opportunities which are decreasing, particularly during the *Covid-19* pandemic.

Thus, the Job Creation Law or the Indonesian Omnibus Law, is a big step

for Indonesia to make changes and improvements to domestic law. This is to prepare for all the possibilities that arise from implementing any cooperation that involves Indonesia in the international world in general, and RCEP in particular, or in other words, this law is expected to be Indonesia's initial core in strengthening its national interests.

The Job Creation Law was a major transformative step for Indonesia; after a long period of slow-moving in creating systematic and integrated rules. It turns out to change the mindset of law formation that puts forward dynamic and strategic efforts in the same direction of people's lives. In addition, the existence of the Job Creation Law provides an impetus for cultural change in forming a legal provision which initially required a long time and consideration in creating a requirement. However, with the formation of this law, the efforts to cut bureaucracy are visible. That people adapt more swiftly, and their interests are easily accommodated and protected.

This significant step will provide culture shock for experts and researchers, especially the law-maker team in Indonesia, that the law not fall behind in reading the development of society. However, legal provisions in the making shall map out the changes in society. It requires the continuity of government policies in shaping and directing the development of a nation. With a clear path of state leadership, the results

enjoyed by the people can be reflected in the form of laws made on a transparent and sustainable basis in an appropriate period.

The descriptions above illustrate that RCEP is significant momentum in making a giant leap towards legal transformation in the economic sector for all member countries, especially for the developing countries who want to obtain more economic advantages from this agreement. For Indonesia, RCEP has provided a significant shove for changes to overall formation of the laws in the financial sector.

Although not ideal and will continue to be improved, this step provides more real hope for business actors and potential investors who intend to invest in Indonesia after several decades. There is no legal umbrella that can facilitate and provide legal certainty in securing economic activities for domestic and foreign business actors in Indonesia. The untidy and overlapping regulations each year in both central and regional became homework for the Indonesian Government before the Job Creation Law appeared and made it very inconvenient for economic actors working in Indonesia. And RCEP has given momentum to the importance of legal transformation in the financial sector in Indonesia so that it can optimally compete with other member countries to get the maximum benefits from these trade opportunities arising from this agreement. At the same time,

continue to prioritize the principle of prudence and protect domestic interests.

However, it should be noted that to increase business opportunities and grow SMEs, the job creation law alone is not enough. However, concrete work is still needed to realize and stimulate SMEs to grow and compete in the global market. In terms of regulations, the Government needs to pay special continuous attention to protect SMEs' from complicated bureaucratic practices at all levels. And another task of the Government is also to provide entrepreneurship training and sustainable market to support SMEs products to maintain the production and innovation. It will guide Indonesian SMEs ' products to develop and able to compete in the global market.

At the end of the discussion on RCEP and legal transformation in the economic sector in Indonesia as the implication of the agreement itself, it proves that the world economy is part of a busy life that should not be separated from dynamic business law. By realizing this, in the future, the regulations in the economic sector can grow and develop to balance the dynamics of society, which is the main engine driving the nation's economy. With the lively economic happening, the Indonesian Government must prepare itself and always accelerate the response to the voice of reform / legal change in the financial sector since the economy is one of the most critical milestones for its progress.

D. Conclusion

From the discussion above, it can be concluded that:

1. RCEP can bring both positive and negative impacts. The positive impact will benefit all members if they work together in building a strong relationship; that this agreement will contribute to evolving supply chains that have been disturbed and support the regional and world economic recovery. The purpose of RCEP itself is to create a modern, comprehensive, high-quality, and mutually beneficial economic partnership that will facilitate the expansion of regional trade and investment and contribute to global economic growth and development. Accordingly, it will bring about the market and employment opportunities to businesses and people in the region. On the other hand, negative impacts can also occur if members are not careful in carrying out strategic steps, namely:
 - a. For most ASEAN countries, imports post RCEP will rise more than their exports leading to a worsening of their trade balance concerning RCEP members. Developing countries are more susceptible and are expected to be hit harder and will take more time to recuperate.²⁹
 - b. Passing on RCEP will bind the hands of governments in taking measures in

the public interest in catastrophes to come, be it health or environmental. Further, free trade rules shift the weight of who has control in the economy left from employees and in the hands of MNCs and narrow economic interests. In fact, by confining the policy space of future governments, deals like this deny the potential for future poor-worker governments to alter the financial rules.

- c. RCEP will bypass expanded trade opportunities and benefit the organized country like China that has the sole focus on industrial efficiency. RCEP will also increase probable transshipment activities where goods will be dispatched to other RCEP member participating countries with zero tariffs and eventually re-exported to other member countries, bypassing the trade remedies that the Government has imposed.
 - d. The idea an international agreement will be engaged without prior analysis, without an assessment of its impact, is unacceptable.
2. Thus far, in facing the challenges of RCEP, Indonesia already has a new legal instrument which was recently enacted on October 5th, 2020. This law is known as the Job Creation Law or the Indonesia Omnibus Law, with forty-five Government Regulations and four Presidential Regulations

29 <https://www.bilaterals.org/?rcep-will-impact-the-future-of&lang=en>, accessed November 2nd, 2021

as the implementation regulations. This law is considered a reference for Indonesia in facing issues that are feared to arise during the implementation of RCEP in Indonesia. The Job Creation Law covers at least 11 clusters considered problematic and hindering in Indonesia up to now, and additionally, six sectors regarding taxation are also covered. This law has streamlined regulations in terms of numbers and simplified them to be more targeted. Thus, the Job Creation Law or the Indonesian Omnibus Law, is a big step for Indonesia in changing and improving domestic law. Also to prepare for all the possibilities arising from the implementation of every cooperation that Indonesia in the international world in general, and RCEP in particular, or in other words, this law is expected to be Indonesia's initial asset in strengthening its national interests. RCEP is significant momentum in making a giant leap towards legal transformation in the economic sector, particularly for Indonesia; RCEP has provided a mighty shove for changes to the law-making in the financial industry. Although it is not ideal and will continue to be improved, this step provides legal certainty in securing economic activities for domestic and foreign business in Indonesia.

E. Suggestion

Some suggestions from the discussion above will be as follows:

1. Facing the RCEP, all member countries must be able to play an active role and strive to promote the spirit of togetherness as the ASEAN group has always carried out to this day, even though there are competitions that produce turmoil. Still, everything can always be resolved with a spirit of togetherness. Strategic steps that can be taken are increasing trade cooperation between countries, encouraging the entry of foreign capital, increasing the export potential and import substitution, increasing and saving the foreign capital earnings. Increasing the nations' financial income by finding a way or solution to simplify the trade process from upstream to downstream and attract foreign investment is the main objective of why this cooperation is needed. The main goal is to help each other to accelerate the economic growth of the affected countries so that together they will all soon recover. This goal will be achieved when altogether work side by side and help each other with the same spirit and vision for the future.
2. Especially for Indonesia, considering at the importance of RCEP and its possible impacts in the future, the Government of Indonesia should

be optimistic in trying to accelerate the response to the voice of reform / legal change in society, with the expectation that the role played by law in that society will also increase. Even though Indonesia already has the Job Creation Law or *Indonesia Omnibus Law*, there are still a lot of homework to do to achieve the goal of joining RCEP. Other steps are needed, namely to create supporting regulations for the Job Creation Law, to fully enforce the law that has been made, and to strictly apply the sanctions against its misappropriation. It also monitors the Job Creation Law and its derivative regulations from the center to the regions. Such efforts will make Indonesia to be more prepared to achieve the goals of joining the RCEP.

3. Learning from the existence of Job Creation Law, Indonesia must improve its performance in reforming law in various sectors based on the continuity of government policies in shaping and directing the development of a nation. With a clear path of state leadership, the results enjoyed by the people can be reflected in the form of laws made based on a transparent and sustainable basis in an appropriate period. So that the law is no longer blamed for being late in developing, when the direction of political policy is not sustainable and firmly directed firmly.

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