

# CHAPTER I

## INTRODUCTION

### 1.1 Background

The Republic of Indonesia's founding fathers concur on the obedience of one utterly lawful country, by in accordance with its own people to become dutifully corresponding the concrete jungle of law (rule of law). Undermining the scheme of direct democratic "maturity", the representation and accountability are dual requisites to each individual as the affirmation. Detailing back to the democratic gains ever since the fall of authoritarian regime in 1998, the political system is in attempt to bring political stability. Under Indonesia's democracy these past decades it has always been intertwining within the reactions to define what is true and pure democracy government has yet demonstrating giving the fact that Indonesia has been struggling with follies of democracy toward the homogenized regime<sup>1</sup>.

In short definition, democracy has always been defined as "from people and for people". The indications for a vibrant democracy closely binding for a vivid shift in economic welfare which however negatively contribute for the unequal distribution of land and natural resources within a massive gap with the wealthy bourgeois and narrow to lower income class. Thus, quoting by The Jakarta Post<sup>2</sup>:

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<sup>1</sup> THE TRANSITION TO DEMOCRACY IN INDONESIA: SOME OUTSTANDING PROBLEMS by Ikrar Nusa Bakthi. 2020

<sup>2</sup> The Jakarta Post. (n.d.). *Democracy in Indonesia moving from stagnation to regression*. The Jakarta Post. Retrieved June 12, 2022.

“An effective way to achieve democracy should be by cutting off affiliates with local candidates to political parties that are mostly backed up by businesspeople underlining by the motivation to gain big mocked up of profits.” This statement however is the underlining reason for mass declines and outrages from the public when President Jokowi first validated Omnibus Law’s presence that so called being in forced to favor more on the singularity of capitalistic economy. Thereafter over the past regimes Indonesia has been recognized with democracy regressions and its follies in their democratic journey due to the lack for sensibility in equal welfare as the treacherous problems have been longing ever since the fall of Soeharto’s era. Moreover, in the thick of global pandemic strikes, prior and given the current period, the beginning of Omnibus Law has been considered as disintegrating “democracy of the people” which its bills are closely affixed with: The Job Creations, Taxation, and particularly Ibu Kota Nusantara or namely the new relocated Indonesia’s capital city which is the distinctive highlight for this research as again, Omnibus Law tends to focus more on upper and foreign direct investments that harshly translates to: Only the rich are getting richer and poor hence becomes poorer.

To the extent of raising the question whether the appearance for Omnibus Law has yet to fathom: Is it all worth for the birth for Ibu Kota Nusantara to even exist? Critics and heating debate have not yet ceasing between the dissent, as Indonesia is continuously paving its way in establishing Nusantara by building up

their bilateral, multilateral networking with neighboring countries, stronger securities in foreign policy that includes fiscal and non-fiscal policy, and most importantly how certain Indonesia is with foreign direct investment (FDI) as one of the biggest aspects and the key role in this research. FDI plays a significant role in Omnibus Law hence Ibu Kota Nusantara as biggest absorptions of income let alone the richest category of locals would not enough to fulfill the project, the bigger the source the better ergo foreign direct investment is given the credence to be of the biggest sourcing as the subject appears to be effective to provide a substantial contribution to the developmental by which through assets, modern technological, and managerial skills in trustworthy to improve the economic growth<sup>3</sup>.

Investing environments are severing imminently in both economically and politically due to uncertainty, constant amendments, meddling among central government and regions, lastly the unification in between cultural heritages and civil law are somehow transcending to obstacles in proceeding the stake. Since the early years of Jokowi's second administration in office, Omnibus Law has become the pivot and new hope in embellishing the future outsourcing of the bureaucracy as the law depicts the totality of its provisions.

Historically, the word for Omnibus in philology is derived from Latin, grammatical for the meaning "to everyone". Omnibus Law holds the definition for a bill consisting of a number of related but separate parts that seeks to amend

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<sup>3</sup> Effendi, N., & Soemantri F. M. (2003). Foreign direct investment and regional economic growth in Indonesia: A panel data study. Working paper in economics and development studies.

and/or repeal one or several existing acts in order to enact based upon House of Commons, Glossary of Parliamentary Procedure. In July 2019 when elections were competing tight, President Jokowi presented his visions of reforming the bureaucracy, investment realization, the development and growth of human capital including infrastructure progression with the most efficient way of using the state budget.

The fact that the country is still adhere to the rule of formal law (*rechtsstaat*) through the principle of law legality and ended up being a failure adjustment to people's commonwealth due to the reason this particular terminology is most suitable in narrow areas with restricted legality (*wetmatig*). By undermining the regulatory through channeling Omnibus Law to present days was then discussed by government within the aim to rearrange sorts of regulations in Indonesia since harmonization is deemed for not being capable enough to solve and tangle the complexity regulations here, therefore the attempt of establishing Omnibus Law is another key point area to diminish strict regulations that are overly focus on people's daily aspects that might leads to tyranny. Thus, if forming the laws is too slow-paced in accordance with developments and society, then it is most certain state will most likely have new troubles in responding these new developments. As already being mentioned before that the state of Indonesia adheres to the concept of formal law which emphasize freedom, equality, and autonomy of each individual within the framework of at least four important elements that must have: protection to human rights, power sharing, government based on law and state administrative court.

Although the decision-making process of one to another regulated is overlapping within each other that could be potentially resulting difficulties to aim the purpose of equity and prosperity. To the extent of shifting stretch in the evolvement of technologies and digital media, the formal and conservative procedures in any aspects of laws may fade away. Therefore, based on the current situation, the only way that could be done is to simplify at a brisk within the scheme of the existence in Omnibus Law which grounds as methods or known to be compilations of laws substances and configurations that was intended to prevent from collapsed and the mass of overlapping regulations as written in above.

Environmentally, the lack of supports in gaining capital investments and the delayed constructive infrastructures are yet still being resolved due to the sudden adaptations and rapid changes with the recent form of statutes. In the early year of 2020, President Joko Widodo orated in his speech regarding the objectifying the indispensable of bureaucracy's simplification and classic investments on aiming the purpose of either employments and creatin vacancies as committed without the hesitation of cutting down long and monotonous procedures. The President indicated to carry on the cultivation towards Indonesia's 2045 vision<sup>4</sup> which enacts for the five greatest countries in global economy with the realization of invigorating investments. The drafting stage of

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<sup>4</sup> Negara, D. J. K. (n.d.). Indonesia maju 2045: Kenyataan Atau fatamorgana. Retrieved June 16, 2022, from <https://www.djkn.kemenkeu.go.id/artikel/baca/13781/Indonesia-Maju-2045-Kenyataan-atau-Fatamorgana.html>

the bill to the ratification stage, it is undeniable that there will be the remaining controversies. Staged demonstrations against the ratification bill with harmful thoughts that might affect communities. After being promulgated by the DPR and the Government, the government should conduct public outreach before the Law is passed.

Such as holding seminars, inviting direct dialogue from several parties such as academics, experts, to workers and all people involved in it. With a lack of public outreach, it will increase the public's deep suspicion, so that there is a gap which is one of the causes of chaos in people who hold demonstrations. The process of forming the Job Creation Bill until the ratification stage, of course, there will be factors that are considered for the formation of the Job Creation Omnibus Law as a means of structuring regulations in Indonesia. And there will also be weaknesses and strengths in the omnibus law method which is used as a means of structuring labor regulations in Indonesia. Apart from the untidy mess of overlapped laws itself, there are certain issues which to be considered as rudimentary such as: the unsynchronized planning of laws and regulations, both at the central and regional levels with the tendency for the propositions and regulations which deviate from the original contents and purpose. By the disobedience and deviation that often times happen thus “hyperregulation” then raises the question whether the importance and effectiveness in implementing justice. The situation is made worse by the absence of procedures in monitoring by legislated institutions and evaluation of laws<sup>5</sup>.

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<sup>5</sup> <https://e-jurnal.peraturan.go.id/index.php/jli/article/viewFile/602/pdf>

The principal land rights/titles and every inch of aspects are covered by the Regulations of a) Land Management Rights (Hak Penggunaan Lahan/HPL), b) Cultivation Rights (Hak Guna Usaha/HGU); Building Rights (Hak Guna Bangunan/HGB); Use Rights (Hak Pemakaian)/HP, c) Apartment Unit Freehold (Hak Milik atas Satuan Rumah/HMSRS), d) HGB, HP, HPL for the space above and below land, e) land registration. The existence of Omnibus Law is highly expected specifically in bringing ease and sparking hopes in foreign direct investments and global financial markets within the trade's liberalization through the process of Indonesia's Negative Investment List (Daftar Negatif Investasi) starting from Presidential Regulation No. 44/2016, there are 83 business fields that are open to foreigners to establish international cooperative relationships<sup>6</sup>.

Regarding the ownership of foreign capital investment in ASEAN-China Free Trade (ACFTA) which Indonesian government's role is obliged to provide the protection and legal certainty in regard to investors within the framework of the fair and equitable treatment principle since the political and legal arguments imposed by the omnibus law is possible to lead to the perspective of international cooperation relations in the flow of manufacturing development investment. In order to avoid the lack of protectionism in investment barrier imposed in one country which this becomes the policy direction and the main standard in

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<sup>6</sup> Mahfudzi, N. (2020, October 16). Omnibus law INDONESIA dalam Perspektif Hubungan internasional. Retrieved April 25, 2021, from <https://kumparan.com/deyitech-factory/omnibus-law-indonesia-dalam-perspektif-hubungan-internasional-1uOHyKawkXK/full>

investment law. This cohesively points to two corresponding factors<sup>7</sup>: First, many ASEAN member countries are actually able to take advantage of ACFTA to increase the rate of Chinese investment in trade and manufacturing in ASEAN. Second, legal certainty and transparency which is one of the elements of the fair and equitable treatment principle that makes the investment rate of China-other ASEAN member countries, such as Malaysia, Thailand, Singapore, and Vietnam.

However, this would still move Indonesia further from the euphoria. The bills of Omnibus Law have flown somewhat under the radar. Though it has proven to display the state and cooperation apparatus will do whatever it might causes to strive for the accumulation in capitalizing beyond its directorial borders. For Indonesia, this denotes attracting foreign capital whatever costs it might be risking. Comes to no surprises as global capitalist elites are all down to the establishment of Omnibus Law. This chapter of event however is known for “The Jokowi Chapter” just before a month the president mentioned the bills before his presidential speech. To a larger extent, we are able to distinguish “things need to be fix” as accordingly to multi-national companies, those are “fluctuate labor market inefficiencies” with insufficiently open economy, in addition to forced corporations to Vietnam.

As well as launching military-police (*milipol*) to smoothen the operations of omnibus law from dissents in order to succeed by providing legal justification. Raises the wonderings of what these get to do with the new megaprojects of

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<sup>7</sup>(Resha Roshana Putri, An-An Chandrawulan, Prita Amalia, 2018) "*Peringkat Arus Investasi 4 Indonesia dalam Kerangka ASEAN-CHINA Free Trade Agreement (Perbandingan dengan Siangapura, Malaysia, Thailand dan Vietnam) Ditinjau dari Prinsip Fair and Equitable Treatment.*"

relocated capital city, by involving *milipol* to an extent of concessions in Nusantara which receives preferential 162 land concessions for mining, forests, palm plantations and coal power plants that will be regulated under Omnibus Law on Capital City as the biggest attraction for foreign investors.

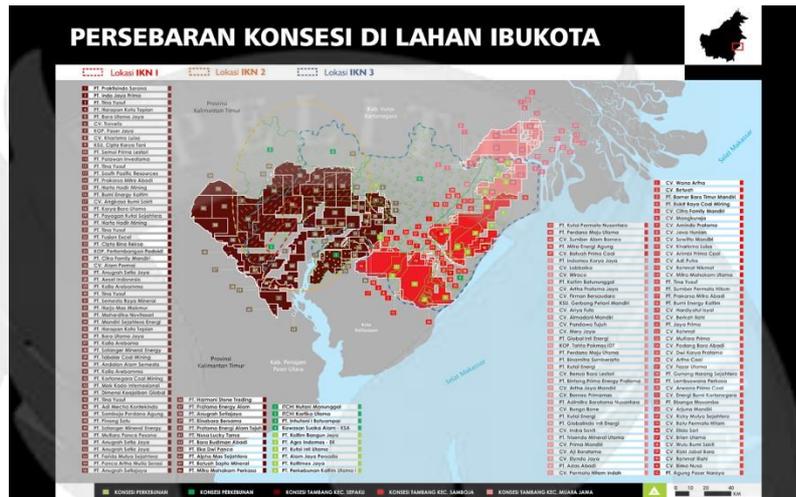


Figure 1.1 Concessions land's map in East Borneo

Accumulating on how big the estimation for the project is, some government critics have professed the new capital city project is becoming to the “New Beijing”. The biggest attribute for Omnibus Law is Ibu Kota Nusantara itself as centralizing power in order to neoliberal reform to stipulate foreign investments. China’s involvement in its construction to the close ties between Indonesia’s government and President Xi Jinping’s<sup>8</sup>. Questions have also being raised regarding the construction of the Indonesian Industrial Park (KIPI), a planned green industrial area in Bulungan, Northern Kalimantan which reportedly most

<sup>8</sup> Rakhmat, M. Z., & Purnama, Y. (2022, February 11). *The China Factor in Indonesia's new capital city plan*. – The Diplomat. Retrieved June 29, 2022, from <https://thediplomat.com/2022/02/the-china-factor-in-indonesias-new-capital-city-plan/>

funded investments are brought by China along second with United Arab Emirates are reportedly to be the main exponent in boosting the developing project of KIPPI and is ultimately projected to attract US \$13 billion in investment. While the argument of Nusantara will however become the “New Beijing” appears to be excruciatingly beyond its illustration, it is undeniable that China’s growing economic influence is highly vulnerable for Indonesia in the new development capital.

## **1.2 Research Questions**

As detailed and centralistic discussion above, reckoning the influence of the newly established act of laws in order to boost real estate market which this takes place to discretely involves the foreign direct investment (FDI) plays a big role. Around the research questions in this research are following below:

1. What are the implementations of Omnibus Law to attract foreign investors to future capital city of Nusantara (IKN)?
2. Will future capital city of Nusantara (IKN) have spill-over effects towards economic welfare in Indonesia?

## **1.3 Research Objectives**

This thesis should be able to outreach the objectives in the following:

1. To analyze in recognizing the importance for establishments of IKN with Omnibus Law as the regulations.
2. To highlight whether the existence of Omnibus Law and Ibu Kota Nusantara will be able alleviating in open opportunities for multilateral

relations by investing in Indonesia through investment instruments and attributes in order to distribute welfare developments and bring prosperity.

#### **1.4 Research Significance**

By the time this thesis will be published, with hopes in bringing the expected insightful outcomes on data facts and beneficial which concludes the Omnibus Law has been fitted into considerations and not as assumingly worse would've thought it might be. But at the point the contexts of the law itself willing to contribute as much as it is to face adversities and transform Indonesia into better performa to compete on de facto.

#### **1.5 Structure of Writings**

The first chapter of this thesis is written to become the foundation and opening explanation of forming the study. Research questions are answered throughout the chapters, as well as the purpose and significance of the research in this thesis.

The second chapter of this thesis is divided to three parts for the better understanding: Literature reviews, theory, and concepts. The literature reviews are the foundation for unraveling the basis on analyzing the investment element for IKN as an attribute with opening arms to welcome foreign investments as to answer the first research question and the advantages of Omnibus Law in easing businesses from its establishment. This in relation to the upcoming concepts for national interest, foreign direct investments, and multilateralism with the scope of neo-liberalism theory.

The third chapter is methodology which defines for the method to explain this study of research. This includes the research method, data collection technique and data analysis technique in order to gather information and discussions.

The fourth chapter is the fundamental highlight of the research and thesis. This chapter reveals all the data which had been collected in the systematic manner and in accordance with theories and concepts to answer by addressing the research questions of this thesis.

The fifth chapter concludes for the research and written policy recommendations in the summary of all data and analysis. This chapter will explain and highlight the notion and also the recommendation for the future research in order to analyze the issue for upcoming promising prospects in IKN and open investments.

