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Jokowi's Omnibus Law: Cure for Indonesia's Headache?

By Richard Borsuk

SYNOPSIS

Opposition in Indonesia to a newly-passed law aimed at helping attract investment is a new headache for President Joko Widodo amid his battle to contain COVID-19. The law could help lift the economy, but results won't be quick.

COMMENTARY

PRESIDENT JOKO Widodo wanted a quick fix to Indonesia's problems attracting foreign investment, and Parliament has given him the tool he wanted – but the leader now has a new headache on top of the giant one from COVID-19, and efforts to lure investors are unlikely to produce results anytime soon.

On 5 October 2020, Parliament quickly approved a thick bill entitled "*Cipta Kerja* (Job Creation)" aimed at slashing red tape and making it easier for investors to create employment for millions of jobless Indonesians. Based on the title, it would seem the new law would be welcomed – but the reaction has been the opposite.

Resistance to Omnibus Bill

The law "tramples" on workers and will benefit only capitalists and conglomerates, complained the chairman of the largest Islamic organisation Nahdlatul Ulama (NU) – whose past leader of its Syurah (Supreme Council) is now Widodo's vice-president. Amnesty International's Jakarta representative blasted the legislation as a "catastrophe" for human rights and labour.

Social media was filled with attacks on planned changes in labour and environmental policies. Governors of some Indonesian provinces called on Jokowi, as the president is more widely known, to revoke the law.

And there was negative reaction in the streets, with protests in dozens of cities for three days last week, some of them turning violent. Crowds included students unhappy with Jokowi and some people reportedly hired to make trouble by individuals with political agendas. Still, there were thousands of workers who showed their disapproval of the legislation known as the “omnibus” bill.

Opposition to his initiative to win over investors is the latest in a series of setbacks for Jokowi this year. COVID-19 has thrust millions back into poverty and the country into its first recession since the Asian Financial Crisis more than 20 years ago. The need to jack up state spending to help the poor has meant construction of a proposed Indonesian capital in East Kalimantan – what Jokowi sees as a legacy project -- cannot start this year.

The ambitious omnibus bill, in one go, amends 79 existing laws that contain overlapping or contradictory policies. Proponents of the bill hail it as a necessary effort to reduce cumbersome licensing requirements and paperwork in highly-bureaucratic Indonesia. A World Bank economist has said the bill would have the potential to “turbo-charge” Indonesia’s economic recovery from COVID-19.

While businesspeople generally welcome the law – and had the most input on its proposals – there has been strong resistance from civil society groups, who said they weren’t able to give inputs, to proposed changes in labour and environment laws. Attention on those areas may have obscured how much ground the law seeks to cover.

The independent Centre for Indonesian Policy Studies (CIPS) applauded changes in food and agriculture policies, including removing a 30% cap on foreigners’ stakes in plantation, horticulture and livestock businesses.

Jokowi: ‘We Have a Problem’

But a week after the bill was approved, it remained embarrassingly uncertain what the final version said, as it wasn’t available and multiple drafts were circulating. The official reason for the delay: typographical errors were getting cleaned up.

Under Indonesian rules, a bill passed by Parliament will automatically become law in 30 days even if the president doesn’t sign it. NU said it will ask the Constitutional Court to reject the law, though it’s not clear what grounds the group will cite -- and analysts doubt the court will rule the legislation is unconstitutional.

The bill stemmed from Jokowi realising last year how badly Indonesia was faring in attracting manufacturers shifting production to Southeast Asia from China because of US import tariffs. The World Bank said that of 33 relocations, 23 went to Vietnam and none to Indonesia. “We have a problem,” Jokowi lamented.

He thought an omnibus bill would reduce what he called “regulatory obesity”: Also, he was sure of getting it through Parliament, having support from nearly 75% of its members. (He didn’t have a majority in the first term).

Jokowi wanted Parliament, which received the massive original draft in February, to act within 100 days. But then came COVID-19, and some stumbles by his government,

which many saw as slow and ineffective in combatting it. In April, Parliament began deliberating the omnibus bill, and since September it expedited handling.

Rigid Labour Market

After the legislation was passed, Jokowi didn't say anything publicly for four days – during which anti-bill activity proliferated. When he did speak, the president said opponents were “misinformed” and many “hoaxes” misled people. He challenged opponents to go the Constitutional Court to try to block it.

One major focus of opposition is change to a 2003 labour law that was pushed by then-President Megawati Sukarnoputri, who was about to be in the first direct presidential vote (which she lost). That law gave workers maximum severance pay of 32 months' wages, one of the world's highest levels.

Business groups have long pushed to reduce that level. Capital Economics, a consultancy, says one reason Indonesia has struggled to develop the labour-intensive manufacturing base that has underpinned success elsewhere in Asia is a “rigid labour market which makes it difficult to hire and fire workers”.

A draft of the new law reduces the maximum to 25 months, with the employer paying 19 and the government covering six months under a new unemployment insurance scheme.

Opponents of changes in labour law contend the government could have detached the section from the bill and taken it up later, after COVID-19 has been contained and the economic situation isn't so grim. They also question how the unemployment insurance is going to work, with the government currently cash-strapped.

Answer to Jokowi's Troubles?

The answers to that and other questions about the law are supposed to come in the “implementing regulations” for legislation. Think-tank CIPS sounded a cautionary note on such regulations. “Indonesia is notorious for the slow or failed implementation of new laws,” it said. “Enforcing this new law across 34 provinces will be no easy feat.”

Jokowi said the implementing regulations will be completed within three months – which would be surprisingly fast for Indonesian bureaucracy. The chief economics minister, Airlangga Hartarto, has said Jokowi wants it done in one month. “That's impossible,” says Yanuar Nugroho, deputy chief of staff to Jokowi in his first term.

The wait for those regulations and the fact there are almost no visitors to Indonesia at present, due to COVID-19, mean it could be a long time before a bid to increase foreign investment produces results.

A key will be implementation of the law, as investors in Indonesia need – and often don't have – legal certainty (*kepastian hukum*). The situation will remain fluid and attention will now be on Jokowi and the decisions he will make about the law.

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