
| RESEARCH ARTICLE

Analysis of Changes on Regulations of Limited Liability Companies in Law Number 11 of 2020: Cybernetics Theory in Legal Politics

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| ABSTRACT

This article discusses the legal politics of changing regulations regarding Limited Liability Company (LTD) after the inauguration of Law Number 11 of 2020 concerning Job Creation. The analytical tool used is the theory of cybernetics, which was coined by Talcott Parsons, that society is a system that consists of several sub-systems (economic, political, social, and cultural). This normative legal research uses an approach to legislation, analysis, and comparison and slightly inserts social phenomena caused by the birth of this Job Creation Law. The result was that before and after the promulgation of the Job Creation Law, there were many rejections from all levels of society. However, the government insists on continuing to enact this law. From the analysis point of cybernetics theory, it is stated that the legal politics used by the government today tends to lead to the economic sub-system, so this sub-system affects the political sub-system, where this sub-system encourages the enactment of this law to be implemented immediately. Apart from this, it turns out that changes in regulations regarding LTD have had an impact both in the form of convenience for the community to run their business and in accordance with the concept of ease of doing business as adopted by the United Nations countries.

| KEYWORDS

Job Creation Law, Limited Liability Company, Legal Politics

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1. Introduction

Law Number 11 of 2020 (Job Creation Law) is a law that is quite controversial in Indonesia (Idris, 2020a). The reason is that before the law was passed, there had been many demonstrations throughout the country. Students, workers, farmers, fishermen, and the general public agree and are united in rejecting the Job Creation Law. They have the perception that in its drafting, the Job Creation Law was formally flawed and did not deserve to be ratified. Apart from that, several articles alleged to harm workers, exploit nature and roll out a red carpet for the oligarchy (Tst/Wis, 2020).

The government responded that the existence of the Job Creation Law would increase the number of new jobs, and this was believed by the government to be a solution to overcoming the problem of poverty. The government also has an economic growth target of 6%; therefore, it needs business expansion with an investment of IDR 4,800 trillion, with a percentage of every 1% of economic growth requiring an investment of IDR 800 trillion (Iqbal, 2021).

The government also targets to create a conducive investment climate, increase economic growth, and create more than 3 million jobs every year. So that the problem of unemployment which has always been a polemic, can be reduced because the existence of these jobs can absorb more workers, and worker productivity is also expected to increase.

Since a very large investment is needed to boost economic growth, the government, with all its efforts, especially in the field of regulation, tries to revise, change and repeal procedural regulations and even overlap between one regulation and another. The process of obtaining a business permit is quite difficult and procedural, as well as contradictory regulations which have always been an obstacle for business actors in starting their business. Therefore, to increase interest in investment and economic growth, a new legal breakthrough is needed through the Omnibus Law or the Job Creation Law, which includes several changes to regulations, including the Law on LTD.

Referring to Article 1 paragraph 1 of Law Number 40 of 2007 concerning Limited Liability Companies (LTD Law), it is stated that "Limited Companies are legal entities consisting of capital partnerships, established based on agreements, and conducting business activities with authorized capital which is entirely divided into shares as well as fulfilling the requirements stipulated in the law." Ahmad Yani and Gunawan Widjaja revealed that the Limited Liability Company comes from two words, namely "company", which means a collection of capital consisting of shares or shares, and "limited" which means the responsibility of shareholders is limited to how much capital is paid up (Setiawan, 2012). Holders of holding shares are called "persero", while companies that issue holdings are called "companies" (Hartarto, 2021).

As a business entity that is a legal entity with the concept of capital partnership, at least an LTD is established by a minimum of two shareholders who bind themselves in an agreement made before a Notary to make the Deed of Establishment of LTD as well as contain the Articles of Association of LTD (Indrapradja, 2018). However, this concept has undergone an expansion in meaning after the enactment of the Job Creation Law, one of which has changed and added several provisions regarding LTD, to be precise, in Article 109 of Law Number 11 of 2020.

The government looks increasingly optimistic about advancing the national economy. In April 2021, the government promulgated implementing regulations for the Job Creation Law through Government Regulations and Presidential Regulations. This is in line with the importance of structuring regulations in Indonesia so that they do not overlap. The government hopes that by using the Omnibus Law method, Indonesia's positive law can become an accelerator for the development of national law, one of which is by rearranging regulations in the company sector by making several changes regarding Limited Liability Companies as stipulated in the Limited Liability Company Law.

R. Ali Ridho revealed the important elements that must be fulfilled by a company that is a legal entity, that is, the separation of assets by investors, having certain goals, having certain interests, and having a good organizational system (Santosa, 2019). Of the four elements, the first element is the most important. This is because a company can be called a Limited Liability Company due to limitations on the responsibilities of its shareholders. In short, shareholders are responsible only for the capital they have, not to involve their assets. It is the element that distinguishes a Limited Liability Company as a company with a legal entity from other forms of business entities that are not incorporated (Erman Rajagukguk, 2011).

As already stated in article 1, paragraph 1 of the Company Law that an LTD is a capital partnership consisting of at least 2 people as capital providers. However, after the promulgation of the Job Creation Law, indirectly, the provisions regarding LTD contained in it underwent significant changes. One of them is by introducing a new concept in company law by presenting an individual legal entity in the form of an individual company specifically for Micro and Small Enterprises (MSMEs) activists. This is intended so that MSMEs can easily develop their business by forming a business entity with the legal status of a Limited Liability Company (Aziz & Febrianingsih, 2020).

The establishment of an LTD with one person resulted in not fulfilling the elements in the basic concept of establishing an LTD, which is the existence of an "alliance" that involves a minimum of two people, and the existence of an "agreement" that also involves two people. This change has implications for the basic concept of establishing an LTD as a partnership business entity or capital association to become a business with institutional associations (Kasih, 2022).

Based on this introduction, it is very important and certainly interesting to discuss the legal politics of Law Number 11 of 2020, especially Article 109 concerning Limited Liability Companies, which has significantly changed the regulatory landscape regarding LTD. Furthermore, it will be analyzed using Talcott Parson's cybernetic theory approach, which considers that society is a system consisting of several sub-systems that influence each other reciprocally and are interrelated. So that in this article will raise two main problem formulations, these are; what the legal politics of the Job Creation Law, especially regarding changes to regulations regarding LTD is and how the analysis of Talcott Parson's Cybernetics Theory in response to changes in regulations on LTD in the Job Creation Law is.

2. Research Method

This writing uses a type of normative research in a qualitative context, where this research discusses and analyzes a rule of law, principles, and legal doctrines. The approaches used are statutory, analytical approaches, and comparative approaches. The statutory approach is to examine all legal products that are relevant to the issues discussed. The analytical approach is to analyze the changes related to the post-promulgation of Law Number 11 of 2020 concerning Job Creation. The comparative approach is to compare the regulations related to LTD in the Job Creation Law with the regulations in the previous LTD Law.

3. Discussion

Etymologically, the Omnibus Law is a collection of several rules arranged in one law (Idris, 2020). In Latin, the word "Omnia" or "Omnia" means "everything" (entirely, everything), all kinds (every kind of) (Bagir Manan, 2021). Meanwhile, in the Black's Law Dictionary, the word omnibus means:

"For all; containing two or more independent matters applied most commonly to a legislative bill which comprises more than one general subject" (Henry Campbell Black, 1990).

The government claims that with this Omnibus Law technique, around 79 laws consisting of more than 1200 articles can be revised at once with only one Job Creation Law which regulates multi-sectors. Of the 79 laws and thousands of articles, they were simplified using the Omnibus Law technique to become 174 articles consisting of 11 clusters, which include (Kementerian Bidang Perekonomian Republik Indonesia, 2020):

- a. Licensing Simplification
- b. Investment Requirements
- c. Employment
- d. The land acquisition
- e. Ease of doing business
- f. Research and Innovation Support
- g. Government administration
- h. Imposition of Sanctions
- i. Convenience, Empowerment, and Protection of Small and Medium Enterprises
- j. Investment and Government Projects
- k. Economic Area

As already mentioned, the Job Creation Law changes add to and revoke the provisions of 79 laws. Changes, additions, and revocation of the law become material for the contents of the Job Creation Law. President Jokowi, in an event, revealed that it would take at least 50 years to revise, amend, or repeal a law (Humas, 2020). Therefore, the existence of the Omnibus Law aims to simplify several regulations, including those relating to LTD. In substance, the law concerning LTD in the Omnibus Law is mentioned in article 109. Four articles have been amended, namely articles 1, 7, 32, and 153, and there are 10 additional articles between articles 153 and article 154 (articles 153 A – 153 J).

The existence of these changes has significantly changed the legal regulations for LTD in Indonesia, especially those regulated in Law Number 40 of 2007 concerning Limited Liability Companies (LTD Law). Provisions regarding LTD in the Job Creation Law are regulated in Chapter IV concerning Ease of Doing Business and Part Four concerning Limited Liability Companies Article 109.

Some of these changes are as follows: First, when establishing an LTD, which originally had to meet the requirements stipulated in the Law, the Job Creation Law contains additional criteria for micro and small businesses, which are further regulated in the Regulation of Government Number 7 of 2021 concerning Small, and Medium Enterprises (MSMES). It is stated in article 1, paragraph 1 of Law Number 7 of 2021 that Micro Enterprises are productive businesses owned by individuals and/or individual business entities that meet the criteria for Micro Enterprises as stipulated in this Law.

Second, in article 7, paragraph 5, the arrangements for shareholders are clarified by the existence of two points which say that if there are fewer than 2 shareholders, then there are 6 months from the establishment of the LTD, and the relevant shareholder must transfer part of the shares to another person or issue new shares.

Then in article 7, paragraph 7 regarding the conditions for a company that must be founded by 2 or more people does not apply to:

- a. Company whose shares are owned by the state as a whole;

- b. Company manages stock exchanges, clearing and guarantee institutions, depository and settlement institutions, and other institutions in accordance with the Law on Capital Markets; or
- c. Company meets the MSME criteria.

Third, the removal of the benchmark of authorized capital. Previously in Law Number 40 of 2007, the establishment of a LTD was required to include an authorized capital of IDR 50,000,000. This provision was revoked by Government Regulation Number 29 of 2016 concerning Changes in the Authorized Capital of Limited Liability Companies. Law Number 11 of 2020 emphasizes this provision. Article 3, paragraph 2 Government Regulation Number 8 of 2021 states that a company is required to have authorized capital, but the amount is determined based on the decision of the company founder.

Fourth, the establishment of LTD can be done without going through agreements and notarial deeds. This is regulated in article 153 A, which reads: (1) a company that meets the MSME criteria can be founded by one person; (2) The establishment of a LTD for MSMEs, as referred to in paragraph (1) is carried out based on a statement of the establishment made in Indonesian; and (3) Further provisions regarding the establishment of companies for MSMEs will be regulated through Government Regulation.

Legal Politics of Law Number 11 of 2020 (Article 109 concerning LTD)

The term political law, according to Mahfud MD, is a choice for the government to enact or not to enforce, even revoke, a law that is essentially intended to achieve the goals of the state as mandated in the 1945 Constitution (Mahfud MD, 2020). Sadjipto Raharjo, in his book entitled "Legal Science", also revealed the definition of legal politics, that legal politics is the activity of choosing and the method used by the government to achieve social, legal goals in society (Sadjipto Raharjo, 1991). These objectives are contained in fundamental questions those are:

- a. What goals were achieved?
- b. Using what method to achieve this goal?
- c. When will it be implemented?" and
- d. Is a standard and mature pattern able to help achieve this goal?

Broadly speaking, the study of legal politics covers at least three aspects, namely: 1) state policy in determining law as an official line in the framework of achieving goals; 2) social, political, and cultural background for the birth of a legal product; 3) patterns of law enforcement in reality (Mahfud MD, 2020).

Mahfud also revealed that there had been alternating political changes. In line with this, the character of legal products has also changed. During a democratic political configuration, the character of the legal product issued is responsive; conversely, if the political configuration appears authoritarian, the legal product has an orthodox character (Mahfud MD, 2020). This causality relationship applies to public laws relating to *gezagsverhouding* (related to general election law, local government law, and agrarian law) (Syahriza Alkohir Anggoro, 2019), but if it is not related to *gezagsverhouding*, then it can run without being significantly influenced by political changes.

If you look at the considerations, the background to the birth of the Job Creation Law has a very strong economic nuance. It states that to realize the goal of a just and prosperous Indonesian state government, all efforts are needed, especially the fulfillment of citizens' rights to work and a decent living. Therefore, the government has high hopes for this Job Creation Law so that it can absorb as many Indonesian workers as possible.

In addition, the existence of the Job Creation Law is needed to support various regulatory aspects related to convenience, protection, and empowerment of MSMEs, Cooperatives and creating an environmentally friendly investment climate. The government said that to realize this big goal, one way is to realize synchronization in guaranteeing the acceleration of work created so that, in this case, a new legal breakthrough is needed that can accommodate and resolve various overlapping issues between laws into a unified law comprehensively (Omnibus Law).

In the Omnibus Law (Job Creation Law), the process of establishing a LTD is made easier, especially for MSMEs, which can be founded by one person. This is followed by the considerations mentioned, namely Article 27, paragraph 2, and Article 28, paragraphs 1 and 2, which in essence, state that every citizen has the right to work, a decent life, security, protection, fair legal certainty, and equal treatment before the law, and fair and proper treatment in employment relations.

Prof. Suteki revealed that in the formation of a Law according to Law Number 12 of 2011 on the Formation of Laws and Regulations, we do not recognize the Formation of a Law on an Omnibus scale (Suteki, 2021). He said that if the purpose of the Omnibus Law

was to improve the economy, then referring to Article 33 of the 1945 Constitution, cooperatives should develop, not capitalism. If indeed Capitalism is developing, then as much as possible, Capitalism, especially the companies, apply the principles contained in Cooperatives. He provides an alternative called ESOP (Employee Stock Ownership Program) or joint stock ownership program by the company to its employees (laborers). So in this program, companies cannot fire their employees unilaterally because employees have stock shares in their company or co-own the company.

However, a different opinion was expressed by Constitutional Court Judge Prof. Arief in his decision number 91/PUU-XVIII/2020 concerning the *Judicial Review* of Law Number 11 of 2020. He said that in sentencing, we should not be trapped in a legalistic and linear tradition. Such a tradition is very difficult to keep up with the times. Arief revealed this was because several of the issues raised by the applicant in the Judicial Review of the Job Creation Law were regarding the format of the regulations that used the Omnibus technique, and the formation of the Job Creation Law was contrary to the principle of forming statutory regulations. Therefore, he has a different opinion (Dissenting Opinion) in assessing the Job Creation Law.

Arief added that a legal approach that is linear legalistic is very difficult and always lags in responding to dynamically developing legal issues. He based his opinion on his teacher Prof. Satjipto Raharjo, by using a new approach, "out of the box", which is very relevant to anticipate changes in problems in the law. He considered this approach to contain the spirit of breaking away from conventional legalistic and linear legal traditions.

In addition, he also bases his opinion on one of the *principles of fiqh*, which states, "The original law of everything is permissible until there is a rule indicating that it is haram". Even though this principle is not necessarily in accordance with the problems above, if one observes its philosophical value, this rule can at least be used as a basis for assessing the method of forming a law using the Omnibus Law technique (Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020 Tentang UU Nomor 11 Tahun 2020, 2021). Moreover, the preparation of laws and regulations using the Omnibus technique has been practised in drafting several laws, including:

- a. Law Number 13 of 2003 concerning Manpower Article 192 repealed 15 laws and regulations and declared them inapplicable.
- b. Law Number 20 of 2009 concerning Titles, Service Marks, and Honors Article 43 repealed 17 laws and declared them inapplicable.
- c. Law Number 7 of 2017 concerning General Elections Article 571 repealed 3 laws and declared them inapplicable. This law has combined Law no. 42 of 2008 concerning the Election of the President and Vice President, Law no. 8 of 2012 concerning General Elections for Members of the DPR, DPD, and DPRD, and Law no. 15 of 2011 concerning Election Organizers.

Cybernetic Theory Analysis of Political Law on the Job Creation Law

The theory of cybernetics is a theory put forward by Talcott Parsons (1902 – 1979) that people's lives are an interrelated system. Parsons considers that society is a unified system that consists of several sub-systems that are interrelated and influence one another. Some of these sub-systems are:

- a. Economic sub-system; This sub-system functions to adjust or adapt (adaptation) systematically to all processes in people's lives.
- b. Political sub-system; This sub-system encourages the public to respect legal rules and values to achieve goals.
- c. Social sub-system; This sub-system functions as an integration, namely by creating a harmonious relationship between the legal process and the social system in society.
- d. Culture sub-system; This sub-system maintains (latency) patterns of tradition, personality or behavior, and values that develop in society.

The cybernetic relationship between the several sub-systems takes place through a process from a sub-system that has a high level of information to a sub-system that has low information. Conversely, processes also occur from sub-systems with low information, which in this case are assumed by sub-systems with higher energy levels (Bernard L. Tanya, 2010). So some sub-systems tend to have a high information level but low energy and sub-systems tend to have a low information level but a high energy level.

This theory uses a functional approach to viewing life in society. Society, whether simple or the most modern society, certainly has a system that regulates relations with one another. This is the same as the four sub-systems that have been mentioned that Parson

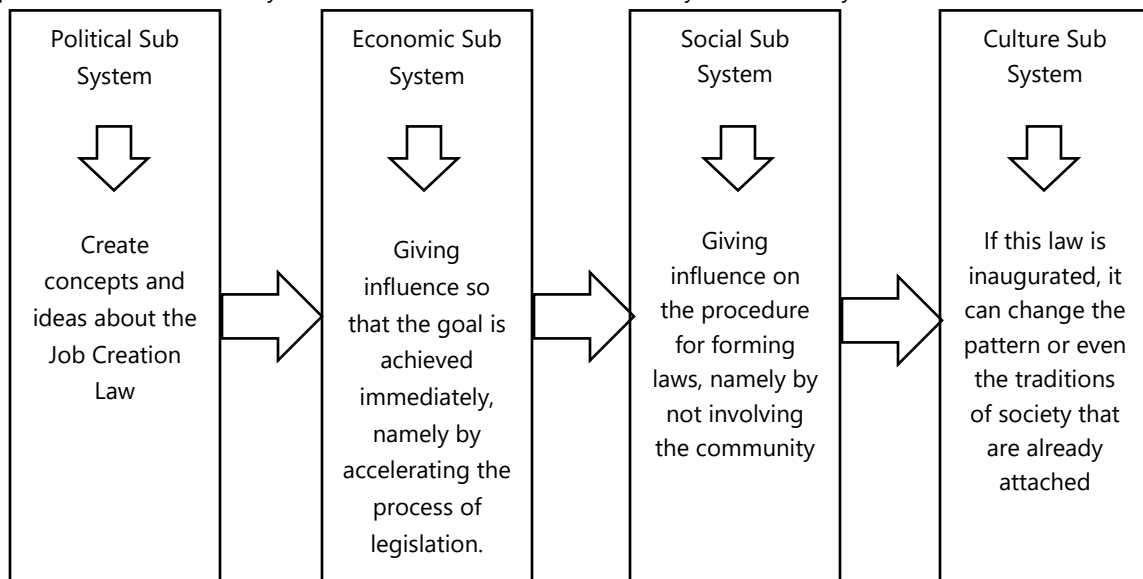
tries to form a framework for analyzing the initial stages or an initial assumption of the movements generated by society. All actions that have been taken by the community can be linked to the four sub-systems (Aan Aswari, 2016).

Parson further stated that law can enter any sub-system. Cultural sub-systems, for example, the law, can enter and then maintain patterns or values that develop in society. Apart from that, as a social sub-system, the law can carry out the integration in regulating individual activities to meet their needs and can prevent the emergence of conflicts that can hinder social interaction and community productivity (Ronny Hanitijo Soemantri, 1989).

The economic sub-system is the sub-system that is closest to the organic-physical environment; therefore, the laws in this sub-system can adapt to the bio-physical environment of human life. The community cannot defend their lives due to changes in their environment if the law does not enter into this sub-system. This economic activity can change all the resources around humans so that people can use them for survival (Ibnu elmi a. S. Pelu, 2021)

During its formation, the Job Creation Law received various rejections because it did not involve the community in its formation. If studied using cybernetics theory, which views society as a system with several sub-systems that influence each other (Economic, Political, Social, and Cultural), then, in this case, the economic sub-system is the most dominating. The influence of the economic sub-system, which has high energy in the process of making a law, has resulted in the process of forming the Job Creation Law through the Omnibus law in Indonesia being very fast. So the first sub-system (economy) influences the second sub-system (politics), which has the primary goal function (Satria, 2020). The pattern of influence between sub-systems, as mentioned, can be seen as follows:

This has an impact on the cultural sub-system, which is the most inherent sub-system in society, to be intervened due to the thick



economic sub-system, which puts more emphasis on the preparation of this Job Creation Law. Several indicators have been found in the regulatory narrative, namely the delegation of authority for making an AMDAL (Environmental Impact Analysis) from the local government to the central government, even though it has been known that regional governments should know more about the condition of their territory than the central government.

In general, the existence of the Job Creation Law is that the economic sub-system tends to be dominant so that it can affect several other sub-systems. But on the other hand, if the focus is more specifically on changing regulations regarding LTD, then this change will have an impact on other sub-systems so that they support each other. As with the economic sub-system, this change affects the way that society can be economically strong; that is, by making it easier to set up a LTD, it is hoped that the community will be able to also change its processes to achieve these goals. The social sub-system integrates that people's actions can be in accordance with legal principles. Furthermore, the cultural sub-system, through this change, can certainly influence the values and behavior of the community in realizing its goals.

The ease of setting up a LTD, which only one person can now set up, is an indicator that the government wants the community to be economically strong. Apart from that, as stated in article 3 of the Job Creation Law, the removal of the standard authorized capital which was previously regulated in the Company Law, namely IDR 500,000,000, is also a convenience for the community so that they can have a business that is a legal entity like an MSME-based LTD.

If you look closely, indeed, the drafting of the Job Creation Law was solely to improve aspects of ease of doing business. Some of the provisions that are the object of change are indicators in the World Bank's Ease of Doing Business (EODB) criteria which are used as a reference by investors in the world. The EODB criteria include (Nirmala, 2018):

- a. Starting a business venture
- b. Ease of business licensing.
- c. Ease of access to information.
- d. Ease of electrical installation.
- e. Ease of export-import
- f. Ease of paying taxes.
- g. Protection for minority investors.
- h. Settlement of bankruptcy cases.
- i. Property registration.
- j. Contract enforcement

4. Conclusion

In The Job, Creation Law is one law that has generated many pros and cons in the community. They consider that the establishment of this law is formally flawed because it does not involve the community in its drafting. In addition, the existence of this law is only a government program to perpetuate the oligarchic nature. The government then dismissed this by explaining that currently, Indonesia needs regulations that can accommodate several procedural regulations and overlap with each other to boost economic growth. Therefore, a new legal breakthrough is needed through the Omnibus Law or the Job Creation Law in which there are several regulatory changes, including the Law on LTD.

Referring to the regulation on LTD in Law Number 40 of 2007, LTD is a capital partnership consisting of at least 2 people as capital providers. However, after the promulgation of the Job Creation Law, there are several regulations on LTD that have also changed, such as; LTD can be established by only one person, there is no benchmark for the amount of authorized capital, and the establishment of an LTD can be carried out without a notary deed agreement.

In terms of legal politics, Prof. Suteki said that "the omnibus" concept is not recognized in Law Number 12 of 2011 on the Formation of Laws and Regulations. However, a different opinion was expressed by Prof. Arif that in legalism, we should not be trapped in legalistic and linear traditions that are difficult to keep up with the times. He offered a new approach "out of the box," which is very relevant to anticipate changes in the law.

It is important to note that how much the law will benefit the community can be seen through cybernetics theory. Based on this theory, the legal politics of drafting the Job Creation Law is more likely to be concerned with economic aspects, so they affect other aspects such as politics, society, and culture. Furthermore, when examined closely, the drafting of the Job Creation Law is solely to improve the ease of doing business. These concepts follow the indicators in the World Bank's Ease of Doing Business (EODB) criteria which are considered as a reference by investors around the world.

5. Suggestion

In the future, it is hoped that the government will be able to accommodate all community interests, including by involving them in the law-making process. This needs to be done so that in the future, there is no perception that the government only tends to be concerned with its own business (oligarchy). In the future, it is hoped that the government will be able to accommodate all community interests, including by involving them in the law-making process. This needs to be done so that in the future, there is no perception that the government only tends to be concerned with its own business (oligarchy). Although the purpose of the law is good, if the process is bad, then it is useless. Process and purpose must be equally good.

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