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Omnibus Law Opportunities And Challenges Towards
Entrepreneurs And Labor : Comparative Review

June 27 2020

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*" Omnibus Law Opportunities And Challenges Towards
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*" Omnibus Law Opportunities And Challenges Towards Entrepreneurs And Labor
: Comparative Review"*

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|------------------|--|
| Pengarah | : Prof.Dr.H. Gunarto, S.H., S.E.Akt., M.Hum. |
| Penanggung Jawab | : Dr. Hj. Anis Mashdurohatun, S.H., M.Hum. |
| Ketua | : Dr. Hj. Sri Endah Wahyuningsih, S.H.,M.Hum |
| Sekretaris | : Nailul Mukorrobin, S.Psi |
| Bendahara | : Erna Sunarti,S.Pd.,M.Hum |
| Seksi Acara | : Muhammad Ngazis, S.H., M.H. Marcela Dinda, S.Kom Shinta Puspita, SE. |
| Seksi Konsumsi | : Bambang Irawan Siti Pardiyah Riswanto |
| Kesekretariatan | : Slamet Ariyanto,S.T. Agus Prayoga |
| Reviewer | : Prof. Dr. Eko Soponyono,SH.,M.Hum. Prof. Dr. Hj. I Gusti Ayu KRH, SH.,MM. |

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Editor :

M. Ngazis, SH.,MH
Erna Sunarti, S.Pd.,M.Hum.
Nailul Mukorobin, S.Psi.

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Jl. Raya Kaligawe KM. 4 PO. Box. 1054/SM

Semarang 50112 – Indonesia

Phone: +6224 6583584 (8 Saluran) psw. 569

Fax. + 6224 6592735

Email : pdih.fh@unissula.ac.id

www.pdih.unissula.ac.id / www.apic.unissula.ac.id

KATA PENGANTAR

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URGENCY OF THE OMNIBUS LAW BILL

Andi Lala¹

^{1,2}, Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

¹andidoshukum@gmail.com

Sudiharto²

^{1,2}, Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

²sudihartos@gmail.com

ABSTRACT

Countries that uphold the law must be based on law that is steady, strong and provides a sense of justice. The law is indeed made by the state not merely as a social engineering tool, but more than that to uphold justice and protect human dignity. Not a few human rights are entrusted to the law to be protected or protected, because without legal protection, there will be many violations of law. Law interpreted as a legal system has a very important position as the basis for government action. The application of the Omnibus law is also not new, in the United States, which is characterized by the Anglo-Saxon legal system, the Omnibus law has often been used as a cross-sectoral law. This makes the ratification of the Omnibus law by the DPR can directly amend several laws at once. That is, Omnibus law is a method or concept of making regulations, which combines several rules, the substance of which is different arrangement into one rule in one legal umbrella. The problem in writing this paper is how is the urgency of the Omnibus law bill? The application of the omnibus law can be done immediately because it is very good to form leaner rules and harmonization as long as the material (substance) regulated in the Omnibus Law is contrary to the Pancasila and the Constitution. Therefore in the process of course the concept of the Omnibus Law must still refer to the conditions in the formation of a statutory regulation. The principle of transparency is communicated with those who will be directly and indirectly affected, as well as the existence of moral ethics in the formation of the Laws and Regulations themselves. Because the omnibus law bill is not only aimed at harmonizing and ending overlapping regulations that have occurred so far, the omnibus law scheme will also be able to boost improvements in regulatory quality in Indonesia so that it is expected to create a pro-investment climate and ease of business licenses.

Keywords: *urgency, omnibuslaw.*

INTRODUCTION

Literally, the definition of omnibus law is the law for all. This term comes from the Latin word *omnis* which means 'for all' or 'many'. Bryan A. Garner in the Black Law Dictionary Ninth Edition states: "Omnibus: relating to or dealing with numerous objects or items at once: including many things or having various purposes". This means that the omnibus law deals with or deals with various objects or things at once and has a variety of purposes. So, this regulatory scheme that has been known since 1840, is a

comprehensive and comprehensive rule, not bound by one regulatory regime¹.

This term was mentioned by President Joko Widodo in his first speech after being appointed president for the second time in October 2019. The President said that the omnibus law would simplify the regulatory constraints that are often convoluted and long. The government also believes that the omnibus law will improve Indonesia's investment ecosystem and competitiveness so that it can strengthen the national economy. Secretary of the Coordinating Ministry for Economic Affairs Susiwiwono said, there are at least 3 (three) benefits from the application of Omnibus law, which are as follows:

1. Eliminating overlaps between laws and regulations.
2. Efficiency of the change / revocation process of legislation.
3. Eliminating the sectoral ego contained in various laws and regulations².

The application of the Omnibus law is also not new, in the United States, which is characterized by the Anglo-Saxon legal system, the Omnibus law has often been used as a cross-sectoral law. This makes the ratification of the Omnibus law by the DPR can directly amend several laws at once. That is, Omnibus law is a method or concept of making regulations, which combines several rules, the substance of which is different arrangement into one rule in one legal umbrella.

If we look at the use of the concept of the Omnibus law, it seems that it can answer the problem of overlapping laws and regulations in Indonesia. Referring to data released by the Indonesian Center for Law and Policy Studies (PSHK) on July 16, 2019, recorded throughout the span of 2014 to October 2018 alone, 8,945 regulations have been published. Of these, the details consist of 107 laws, 452 government regulations, 765 presidential regulations, and 7,621 ministerial regulations³. With this number of regulations in Indonesia, this has an impact, namely the obstruction of government programs so far to the public such as various access to public services, including related facilities and ease of doing business.

A study by the National Development Planning Agency (Bappenas) in 2018 shows that overlapping regulations and institutional sectoral egos are the biggest obstacles to slowing economic growth. This overlapping regulation is suspected to be one of the factors inhibiting the entry of foreign investment into Indonesia. In addition, policy or authority conflicts between one ministry / institution and other ministries / institutions, and also between the central government and regional governments have made the government unable to move swiftly and responsively to face the problems and challenges that arise, and hampered the implementation of development programs and the worsening investment climate in Indonesia.

At the same time, the challenges of the ecosystem era of the digital society are facing us. Indonesia must not linger with formal procedures. A policy breakthrough in the process of drafting the law must be born soon. Then the omnibus law becomes a short way as a solution to the conflicting laws and regulations, both vertically and horizontally. The Omnibus law, which will be made by the Government of Indonesia, consists of two big laws, namely the Taxation Law, the Employment Creation Law, and the UMKM Empowerment Act. The Omnibus law is planned to harmonize 82 laws and 1,194 articles.

From the description above, the problem is: What is the urgency of the omnibus law bill in Indonesia?

Methods of Research

1 <https://www.online-pajak.com/omnibus-law> accessed on June 6, 2020.

2 *bid.*

3 <https://indonesia.go.id/narasi/indonesia-dalam-angka/ekonomi/omnibus-law-solusi-dan-terobosan-hukum> accessed on June 6, 2020.

The method of approach in this study uses the type of normative juridical research. Normative juridical research is research focused on examining the application of rules or norms in positive law. This type of research is a type of qualitative descriptive research, because in this study describes the situation that occurs at the moment systematically and factually with the aim to describe and resolve the problem under study, the urgency of the omnibus law bill in Indonesia.

Primary data obtained by researchers refers to data or facts and legal cases obtained directly through library studies relating to research objects and practices that can be seen and related to research objects.

The data analysis method used is normative qualitative, namely the decomposition of data analysis which starts with the information obtained to achieve clarity of the problem to be discussed is urgency of the omnibus law bill in Indonesia.

Research Result and Discussion

Urgency Of The Omnibus Law Bill In Indonesia

Indonesia is a state of law as stated in the Indonesian Constitution stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, namely the State of Indonesia is a state of law (Rechtsstaats) not a state of power (Machtsstaat). In a country that upholds the law, it has legal objectives, among others, order, peace, peace, prosperity and happiness in the governance of social life⁴.

Countries that uphold the law must be based on law that is steady, strong and provides a sense of justice. The law is indeed made by the state not merely as a social engineering tool, but more than that to uphold justice and protect human dignity. Not a few human rights are entrusted to the law to be protected or protected, because without legal protection, there will be many violations of law. Law interpreted as a legal system has a very important position as the basis for government action⁵.

If a country has positioned itself as a state of law (rechtsstaat), then the consequence of the product is the regulation that becomes the rule of the game in the middle of people's lives, where the content of the norm in it will mention the prohibition, order, compliance, and sanctions that are binding. The law contains the norms of protecting people's interests such as justice, freedom of choice, fair treatment, humane treatment, the right to obtain welfare and decent work, including those containing law enforcement. If the organizer of power implements the tasks outlined by this law, it means to carry out the ideal goals inherent in the rule of law, such as protecting and protecting human life, that the legal expectations have been fulfilled⁶.

The constitution has an important position in the administration of the rule of law. According to Aristotle, the constitution is the arrangement of positions in a country and determines what is meant by governmental bodies and the end of each society. The constitution is the rules and the state authorities must regulate according to these rules⁷. Aristotle's opinion is basically a constitution is the legal basis of all laws rather than the ruler, so that the constitution is the basic foundation of a country. The problem is that the enforcement of the constitution in Indonesia is known to have a convoluted process and takes a very long time because of the many existing regulations and some that are conflicting. The high number of regulations makes the pace of government decision making slow.

As a legal product, regulations or laws are defined as written regulations that contain generally

4 Firman Freaddy Busroh. (2016). *Teknik Perundang-undangan: Suatu Pengantar*. Jakarta: Cintya Press, p. 17.

5 Sorjono Soekanto. (1979). *Sosiologi Hukum dalam Masyarakat*. Jakarta: Rajawali, p. 43.

6 Rosecoe Pond. (1996). *An Inttroduction to the Philosophy of Law. Terjemahan*. Jakarta: Bhatara Niaga Media, p. 56.

7 Azhary. (1995). *Hukum Indonesia Analisis Yuridis Normatif tentang Unsur-Unsurnya*. Jakarta: Universitas Indonesia Press, p. 21.

binding legal norms and are formed or stipulated in statutory regulations. But the image of the ideality of the law is still far from reality. Instead of providing the essence of legal certainty for the community, Indonesian laws and regulations often provide legal uncertainty, the effects of which overlap many regulations either at the same hierarchy level or with the rules below. Overlapping of rules and legal ambiguity in various laws have become a problem that has impeded investment. Therefore, according to President Joko Widodo, the omnibus law is considered to be the solution to solve the problem⁸.

As previously mentioned about the definition of the omnibus law, it can be further concluded that the Omnibus law is a method or concept of making regulations that combines several rules with different regulatory substance, into a large regulation that functions as a kind of “umbrella law” (umbrella law) act) And when regulations such as the legal umbrella are promulgated, the consequence will be to revoke certain rules in which the norm or substance is also not impossible to be declared invalid, either in part or in whole⁹.

Moreover, because at this time Indonesia is plagued by a plague of the Covid-19 virus pandemic, the President said that to respond to changes in the world that are not taken into account like the emergence of this pandemic, the omnibus law must be decided quickly¹⁰. The Deputy Chairman of the Republic of Indonesia DPR in the field of Korinbang Rachmat Gobel also explained that the urgency to continue the Omnibus Law Bill actually focused on the structural economic changes that will be faced by Indonesia in the future due to this pandemic. According to him, Indonesia’s economic resilience currently shows conditions in a very heavy scenario. For this reason, a breakthrough is needed that what is being done by the government must have a final policy that can be a total recovery after the Covid-19 pandemic¹¹.

In a discussion, Djisman gave the view that the acceleration of development during the Covid-19 pandemic could be done through the realization of the omnibus law which was the core of the new economic policy. Indonesia lost time due to this pandemic by closing business, closing physical schools, closing physical worship, losing output, losing work (employment), returning migrants (migrant workers), decreasing consumption, decreasing exports, slowing investment, and having huge uncertainty about what to come (great uncertainty about what is to come). Therefore we need to accelerate the new economic landscape. Some of these policies include sharpening competition in international trade, foreign investment, technology company markets, the human talent market (Asia as an epicenter of growth). In addition, pursuing a very loose macro policy includes very low interest rates, large increases in social protection programs, rescue companies and financial services, massive increases in government debt. CORE Indonesia’s Executive Director Hendri Saparini added to the omnibus law discussion cluster, covering simplification of licensing, investment requirements, employment, facilities, empowerment, and protection of MSMEs, ease of doing business, research and innovation support, government administration, imposition of sanctions, land acquisition, investment and projects the government, as well as the economic region, seem to adequately represent the fundamentals of structural transformation¹².

Seeing the situation that has been described, constitutional law expert Refly Harun said the application of the omnibus law could be done immediately because it was very good to form leaner rules and harmonization after the pandemic ended. Because the omnibus law bill is not only aimed at harmonizing and

8. <https://www.cnnindonesia.com/ekonomi/20171024125609-92-250596/jokowi-sebut-42-ribu-aturan-hambat-ri-ikuti-perubahan-global> accessed on June 5, 2020.

9. Bagir Manan. (1997). *Beberapa Masalah Hukum Tata Negara Indonesia*. Bandung: Alumni, p 144.

10. <https://mediaindonesia.com/read/detail/288127-presiden-tekankan-urgensi-omnibus-law> accessed on June 5, 2020.

11. <https://www.medcom.id/ekonomi/makro/xkEY2E3k-pembahasan-ruu-omnibus-law-harus-dilanjutkan> accessed on June 5, 2020.

12. *Ibid.*

ending overlapping regulations that have occurred so far, the omnibus law scheme will also be able to boost improvements in regulatory quality in Indonesia so that it is expected to create a pro-investment climate and ease of business licenses. The problem is, it takes a special team to analyze what regulations need to be harmonized, partially or completely removed because relying on inter-ministerial work can take a long time.

As for Indonesia actually has several times applied the concept of Omnibus Law, this can be seen in Perpu Number 1 of 2017 concerning Access to Financial Information for Tax Interest in conjunction with Law Number 9 of 2017. Law Number 23 of 2014 concerning Regional Government. Then the Omnibus Law was established at the level of the MPR Decree of the Republic of Indonesia, namely RI Decree Number I / MPR / 2003 concerning Review of Material and Legal Status of the Decree of the MPRS and the Decree of the Republic of Indonesia from 1960 to 2002¹³.

In forming a statutory regulation, of course, requires a foundation that serves as a guideline in the establishment practice. Good legislation is a statutory regulation that has a basis or foundation called Grundnorm. Grundnorm is the foundation for the formation of law that has justice, certainty and usefulness of course. In Pancasila Democracy, Pancasila is a Grundnorm for the Indonesian people. Pancasila is the source of all sources of law in Indonesia. Therefore, if the formation of laws and regulations in Indonesia is not in accordance with Pancasila, then the laws and regulations do not have a strong basis to be enacted, and thus, these laws and regulations do not meet the concept in the formation of existing laws and regulations.

The concept of forming laws and regulations is a plan or plan in shaping the law. The law is essentially a product of the assessment of mind rooted in the human conscience of justice regarding human behavior and human life situations. Justice is an abstract value that needs to be realized in the form of legal norms as a means to realize these values in social life. The realization of the values of legal norms in society is formed through the legislation. The laws and regulations that are formed must fulfill a sense of justice¹⁴. According to Sajipto Rahardjo, in the process of drafting the law, he must pay attention to the role of the legal principle, the aim is that the practice does not far deviate from what is aspired. The legal system, including laws and regulations that are built without legal principles, will only form a pile of laws. The principle of law provides the direction needed. In the future, problems and regulated fields will certainly increase. So when the law or law is developed, the principle of law provides guidance in how and in what direction the system will be developed¹⁵.

If we look at Law No.12 of 2011 concerning the Formation of Regulations and Regulations there are principles in the formation of laws and regulations. These principles include the principle of clear objectives, the principle of the need for regulation, the principle of organs / institutions and the appropriate content material, the principle of recognition, the principle of equal treatment in law, the principle of legal certainty, the principle of implementing law according to individual circumstances. A Hamid S Attamimi tends to divide the principles of the formation of appropriate laws and regulations into formal principles with the details of the principle of clear objectives, the principle of the need for regulation, the principle of organs / institutions that are appropriate, the principles of the appropriate content material, the principle can be implemented, and the principle can be recognized, and the material principle with the details of the principle in accordance with the ideals of Indonesian law, the principle in accordance with the country's Basic Law, the principle in accordance with the principles of the State based on the law, and the principle in

13 Agnes Fitriyantica. (2019). *Harmonisasi Peraturan Perundang-Undangan Indonesia Melalui Konsep Omnibus Law*. Jurnal Gema Keadilan (ISSN: 0852-011) Vol. 6, Edisi III, p. 305.

14 <https://www.kompasiana.com/hamdannyy/5e853bf6d541df10a61681b3/memahami-omnibus-law-sebagai-suatu-konsep-dalam-pembentukan-peraturan-perundang-undangan> accessed on June 6, 2020.

15 Sajipto Rahardjo. (2006). *Sisi-Sisi Lain dari Hukum di Indonesia*. Jakarta: Kompas, p. 140.

accordance with the principles of government based on the constitutional system¹⁶.

The legal norms of any country are always multi-layered and tiered. The norms below apply are sourced and are based on higher norms, higher norms are valid sourced and are based on even higher norms up to a highest norm called Basic Norms¹⁷. The hierarchy of laws and regulations becomes one of the important principles in the process and technical formulation of laws and regulations. The types and hierarchy of laws and regulations consist of:

1. The 1945 Constitution of the Republic of Indonesia.
2. Decree of the People's Consultative Assembly
3. Government Act / Regulation in Lieu of Law
4. Government Regulations
5. Presidential Regulation
6. Provincial Regulations
7. Regency / City Regional Regulations¹⁸.

In theory legislation in Indonesia, the position of the Law from the concept of the omnibus law has not been regulated. If you look at the legal system in Indonesia, the Law resulting from the concept of the omnibus law can be referred to as the Umbrella Law because it regulates thoroughly and then has power over other rules. However, Indonesia does not adhere to the Umbrella Law because the position of all the Laws is the same so that in theory the legislation must be given legitimacy in Law No. 12 of 2011 concerning the Formation of Legislation.

But if it is not possible to make changes to Law No. 12 of 2011, it must look at the contents of the provisions in the omnibus law, whether it is general or detailed like ordinary law. If it is general, not all provisions are revoked but only those that are contradictory. But if the provisions are general, it will be a problem if clashed with the principle of *lex specialist derogat legi generalis* (special rules override general rules, because with the existence of omnibus law, then automatically regional level regulations must also comply with new rules from the concept of the omnibus law. So if the omnibus law wants to be applied in the legal system in Indonesia, it is usually in the form of a law, because the substance of the law is a further regulation of the provisions of the 1945 Constitution of the Republic of Indonesia¹⁹.

In Article 8 paragraph 1 of Law 12 of 2011 various types of regulations were formulated which were considered as statutory regulations from various state institutions and authorized officials. If the formulation is reviewed based on the function and authority of the institution or official who formulated the legislation therein, it is known that not all state institutions or officials have the authority to form a general regulation and apply as a statutory regulation. The omnibus law concept will restore government authority and implementation of the law to the President as the holder of government power. The NSPK regulation by the President will reinforce the authority and synchronization of the implementation of authority and implementation of standardized laws and eliminate sectoral egos. Regulations for implementing the Law and the NSPK are determined by the President.

16 Firman Freaddy Busroh. (2017). *Konseptualitas Omnibur Law dalam Menyelesaikan Permasalahan Regulasi Pertanahan*. Jurnal Arena Hukum, Vol. 10, No. 2, p. 247.

17 Maria Farida Indrati. (2007). *Ilmu Perundang-Undangan Jenis, Fungsi, Materi Muatan*. Yogyakarta: Kanisius, p. 44.

18 UU Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan Pasal 7 Ayat 1.

19 Henry Donald Lbn. Toruan. (2017). *Pembentukan Regulasi Badan Usaha dengan Model Omnibus Law*. Jurnal Hukum to-ra, Vol. 3, No. 1, April 2017, p. 465.

In the end, the Omnibus Law is one of the brave breakthroughs of the Government of Indonesia to realize the Vision of Forward Indonesia in 2045. This needs to get mutual support so that it can become the strength of the Indonesian nation in facing various global economic geostrategic changes. The courage to make a big leap needs to be done in order to encourage economic growth so that it can continue to compete with other countries.

There are five steps that must be fulfilled by law makers if they are going to draft the Omnibus Law. Here are five steps that the government must take to ensure that the Omnibus Law can be effective and not misused.

- * First, the House of Representatives (DPR) together with the government must involve the public in every stage of its preparation. The broad scope of the Omnibus Law requires lawmakers to reach out and involve more relevant stakeholders.
- * Second, the Parliament and the government must be transparent in providing any information on the development of the Omnibus Law formulation process. This participation and transparency which is absolutely repaired reflects the legislative process which has caused recent controversies such as the formulation of the revision of the Corruption Eradication Commission Law and the Revision of the Criminal Code.
- * Third, the drafters must map the relevant regulations in detail.
- * Fourth, the composer must strictly harmonize both vertically with higher regulations and horizontally with equal rules.
- * Fifth, the compiler must preview before it is approved. This preview is prioritized to assess the impact that will arise from the Act to be passed²⁰.

Conclusion

Bryan A. Garner in the Black Law Dictionary Ninth Edition states: “Omnibus: relating to or dealing with numerous objects or items at once: including many things or having various purposes”. This means that the omnibus law deals with or deals with various objects or things at once and has a variety of purposes. Thus, the omnibus law bill scheme, which is a comprehensive and comprehensive rule, is not bound by only one regulatory regime.

The application of the omnibus law can be done immediately because it is very good to form leaner rules and harmonization as long as the material (substance) regulated in the Omnibus Law is contrary to the Pancasila and the Constitution. Therefore in the process of course the concept of the Omnibus Law must still refer to the conditions in the formation of a statutory regulation. The principle of transparency is communicated with those who will be directly and indirectly affected, as well as the existence of moral ethics in the formation of the Laws and Regulations themselves. Because the omnibus law bill is not only aimed at harmonizing and ending overlapping regulations that have occurred so far, the omnibus law scheme will also be able to boost improvements in regulatory quality in Indonesia so that it is expected to create a pro-investment climate and ease of business licenses.

Suggestion

1. Provide recommendations to the Government and Parliament to: Arrange omnibus law transparently and involve all stakeholders (including affected and / or interested communities) in the drafting process,

20. Agnes Fitryantica. *Ibid*, p. 313.

- both at the government and DPR levels, and open to all opinions expressed.
2. Review rational choices related to the elimination of MDAL and LP3H in Indonesia.
 3. Maintaining the threat of criminal sanctions for administrative violations (including permit violations) due to: a. Business actors who have received administrative sanctions do not obey or repeat their actions again; b. There are actions which if carried out without permission will pose a huge danger to the environment and cannot be recovered (irreversible damage); so more severe sanctions (criminal sanctions) are needed to ensure the deterrent effect and uphold justice. Maintain, even strengthen, rules related to community involvement to be in line with the principles of sustainable development. Thus the policy encourages the acceleration of investment and development chosen to be more inclusive and gain support from the community (legitimate).

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