



Faculty of Law Unissula

THE 1ST PROCEEDING INTERNATIONAL CONFERENCE AND CALL PAPER

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

June 27 2020

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

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

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MANIFESTATION OF PANCASILA VALUES IN THE OMNIBUS LAW FOR JUSTICE

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ABSTRACT

The purpose of this research is to see and analyze the manifestation of the values of Pancasila to the application of the law which is the fundamental foundation of the Indonesian nation. The approach method used is juridical normative, namely research by examining library materials (secondary data) or library law research. The results of the research obtained show that the manifestation of Pancasila Values on the application of the Omnibus law must be in line with the view of justice in national law based on the basis of the state. Pancasila as the basis of the state or state philosophy has until now been maintained and is still considered important for the Indonesian state. Pancasila, which is the fundamental foundation of the Indonesian nation, must be realized because Pancasila, the philosophy of Indonesian life, is essentially a systematic value. Therefore, as a philosophical basis, the principles of Pancasila are an aspect of unity, hierarchy, and systematic

Keyword: *Justice; Omnibus Law; Pancasila Values;*

INTRODUCTION

The nation and state of Indonesia is a nation that was born “thanks to the grace of Allah the Almighty”, and this recognition is officially stated in the highest document of the Preamble of the 1945 Constitution, and God Almighty is included in Chapter XI on Religion Article 29 paragraph (1) of the Constitution of Indonesia.¹

The statement carries the understanding and recognition that the existence and origin of the Indonesian nation is due to the intervention and will of Allah Almighty, not produced by a society agreement from free individuals such as the concept of a liberal state. For the Indonesian people there is a close relationship between the state and religion that rests on the One Godhead which is the first principle of Pancasila, and thus the Indonesian nation has a noble legal instrument as the foundation of national and state life, namely Pancasila and the 1945 Constitution.

Pancasila as contained in the Preamble to the 1945 Constitution is the basis of the state. If it is linked to Article 1 of the 1945 Constitution of the Republic of Indonesia as a rule of law, it can realize the objectives of the Unitary State of the Republic of Indonesia if implemented based on Pancasila. The realization of one of the goals of the state is to advance the welfare of the people, or in other words, to realize the people’s

1. Sri Endah Wahyuningsih, Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai–Nilai Ketuhanan Yang Maha Esa, *Jurnal Pembaharuan Hukum*, Volume I No.1 Januari-April 2014

welfare, bringing implications for all development efforts in all areas of life carried out by the state.²

Regulatory problems in Indonesia can not only be resolved through harmonization, but need legal breakthroughs, one of which is through the concept of Omnibus Law. The concept of the Omnibus Law which is applied in several countries, such as the United States, Belgium, England, offers solutions to problems with the emergence of conflict and overlapping of norms / regulations. Environmental conditions with this rapid change cause social norms and sanctions to be looser and various foreign subcultures and cultures that conflict with each other. This in turn consumes energy, time, costs and the goals to be achieved are not on target. Plus the decrease in the level of public trust in legislative performance. For this reason, a legal breakthrough from the government is needed to solve regulatory problems.

The definition of the Omnibus Law starts from the word Omnibus. The word Omnibus comes from Latin and means for everything. In Bryan A. Garner's Black Law Dictionary Ninth Edition the omnibus is mentioned: *relating to or dealing with numerous object or item at once ; inculding many thing or having varius purposes*, which means relating to or dealing with various objects or items at once; include many things or have multiple purposes. When coupled with the word Law, it can be defined as law for all.³

The concept of omnibus law offers solutions to problems caused by too many and overlapping regulations. If the problem is solved in the normal 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 does not suit interests.⁴

In the hierarchy of laws and regulations in Indonesia as regulated in Law Number 12 of 2011 concerning the Formation of Legislation, the concept of Omnibus Law has not been included as one of the principles in the source of law. However, harmonization of laws and regulations in Indonesia is continuously carried out to minimize conflicts of laws and regulations. The Indonesian legal system that adheres to the Civil Law system is one of the reasons why the concept of Omnibus Law is unknown.

The substance of the Omnibus Law will be cross-sectoral in the field of law. This is clearly in contrast to the formation of a law in the Civil Law System which is firm and rigid whose substance is limited to the title of the law. The Omnibus Law is a format for the formation of laws that are comprehensive in nature by helping to regulate the material of other laws which are interrelated with the substance regulated by the Law which is amended or formed with the format for the formation of this Omnibus Law Law, the formation of one law. carried out by considering all the material provisions which are related directly or indirectly as regulated in various other laws simultaneously.⁵

Adapun tujuan penulisan penelitian ini adalah untuk mengetahui dan menganalisa Manifestasi Nilai-Nilai Pancasila terhadap penerapan omnibus law yang menjadi landasan fundamental bangsa Indonesia.

Research Methods

The approach method used is juridical normative, namely research by examining library materials

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2. Ninuk Triyanti, Re-Actualization of Pancasila Values On Law Establishment In The Economic Globalization Era, Jurnal Pembaharuan Hukum, Volume VI No.2 April-Agustus 2019, hlm.214-225
 3. Sekar Drupadi Muninggar, Dararida Fandra Mahira, Linda Suci Rahayu, Konseptualisasi Omnibus Law Sebagai Upaya Sinkronisasi Regulasi Pergaraman di Indonesia, Legislatif, Vol 3 No 2 Juni 2020, P.235-253
 4. Firman Freaddy Busroh, Konseptualisasi Omnibus Law dalam Menyelesaikan Permasalahan Regulasi Pertanahan, Arena Hukum, Volume 10, Nomor 2, Agustus 2017, P.241.
 5. Adhi Setyo Prabowo, Andhika Nugraha Triputra, Yoyok Junaidi, Politik Hukum Omnibus Law di Indonesia, Jurnal PAMATOR, Volume 13 No. 1, April 2020, P. 1-6

(secondary data) or library law research.⁶ The legal approach method is as a norm system building. The norm system in question is about the principles, norms, rules of legislation and doctrine. Normative juridical research examines the rule of law as a system building related to certain legal events. The type of data used in this research is secondary data which consists of primary legal materials, secondary legal materials, and tertiary law materials obtained from books, literature, papers, journals, laws and regulations, and other data sources. Secondary data collection was carried out using a literature approach method. The collection of legal materials is done by conventional search, collection and study of documents such as reading, viewing, listening, and information technology.

Result and Discussion

1. The manifestation of Pancasila values in the Omnibus law

The implementation of the Omnibus law concept in working copyright legislation is something that leads to the Anglo-Saxon tradition which is characterized by a common law system. If you look at the practice in several countries that have made omnibus laws, the omnibus law is manifested in a statutory regulation that can be equated in the context of Indonesian law as law.

That the omnibus law is usually established in law. This of course must be in line with Law Number 12 Year 2011 concerning the Formation of Legislative Regulations. The omnibus law has an equal position with other laws and is not a basic law. This omnibus law will later replace all or part of the provisions of the previous law.

In an effort to make the omnibus Law, clusters or groups of laws have emerged which are planned to be replaced by an omnibus Law. The clusters that will be merged in the omnibus Law consist of: (1) cluster structuring of authority; (2) investment requirements cluster; (3) risk-based activity cluster; (4) supporting cluster of investment ecosystem; (5) guidance and supervision cluster; (6) sanctions cluster.⁷

The statute clusters are intended to facilitate the preparation of omnibus laws in the future where three omnibus laws are planned to be completed this year. The 3 omnibus laws to be drafted are (1) the Draft Law on Job Creation; (2) Draft Taxation Law, and (3) Draft Law on Empowerment of Micro, Small and Medium Enterprises.

The Job Creation Bill will consist of 11 clusters, namely as follows: (1) Simplification of Land Licensing; (2) Investment Requirements; (3) Employment; (4) Convenience and Protection of MSMEs; (5) Ease of Doing Business; (6) Research and Innovation Support; (7) Government Administration; (8) Imposition of Sanctions; (9) Control of Land; (10) Ease of Government Projects, and (11) Special Economic Zones. The eleven clusters cover 74 laws wherein it will be identified which parts will hinder economic growth, MSMEs, and the entry of investment.⁸

The clusters in the omnibus law draft constitute the framework to be regulated in the omnibus law. The cluster in the omnibus law that will be established only shows an outline of the contents of the omnibus law. In drafting the omnibus law, it must refer to the provisions of the formation of laws and regulations as stipulated in Act Number 15 of 2019 concerning Amendments to Act Number 12 of 2011 concerning the Formation of Laws and Regulations in conjunction with Act Number 12 of 2011 concerning the Formation of

6. *Ediwarman, Monograf Metodologi Penelitian Hukum, genta Publishing, Yogyakarta, 2016, P.22*

7. *Adhi Setyo Prabowo, Andhika Nugraha Triputra, Yoyok Junaidi. Op.Cit, P.1-6*

8. *Ibid.*

Regulations Legislation.⁹

In the implementation of the omnibus law, it must be in accordance with the philosophy and view of life of the Indonesian nation, namely Pancasila. The values of Pancasila have a very important role in the life of the nation so that they really become the means of development and renewal of the society we hope for. Law can play a role as an object of development in order to realize the ideal law in accordance with the values that live in society. But also law can become the subject of development when the law has functioned in society as a driving force and safeguard for development and its results. This is where the important role of Pancasila is to be able to produce laws that are truly rooted in people's behavior.

In the course of Indonesia's national history, the problem of Pancasila as the state ideology and way of life has often experienced ups and downs of development, but this is not caused by the weakness of the values contained therein. But more leads to inconsistency in its application. All elements of the nation have never doubted the slightest truth of the values of Pancasila. History has proven that Pancasila as the basis of the state or as the state ideology is the most rational compromise and has historically been able to become a tool to unite the nation, when this nation is still in differences in primordial ties. Thus it can be said that Pancasila as the ideology of the state and the basis of the state is the noble value system of the Indonesian nation which is ultimate and definitive.¹⁰

In the application of omnibus law, the implementation of state life must refer to Pancasila. The basic values of Pancasila, namely:¹¹

1. Divine Value

The first precept is the principle of the One and Only Godhead, the Indonesian people declare their belief and devotion to the One God and therefore Indonesian people believe and believe in God Almighty in accordance with their respective religions and beliefs according to the basis of fair and human humanity. So that cooperation is created between adherents of different religions and beliefs towards the Trial of Religious Harmony, including internal religious harmony, harmony between religious communities, harmony between religious communities and the government..

2. Human values

The second precept is conformity with human nature. Only people who are aware that they are human beings will be able to treat others as creatures of God Almighty. With an attitude of mutual respect for every human being, there will be equality, equality of rights and human obligations without discriminating against ethnicity, religion, race and gender. Respect, mutual cooperation, tolerance, courtesy are some manifestations of upholding human values.

3. Value of Unity

Recognition of human values based on divinity is the initial capital for the creation of the unity of the Indonesian nation. An attitude that is able to place the interests of the Indonesian people above

9. *Ibid.*

10. Zuhriani, *Revitalisasi Pancasila Dalam Pembangunan Hukum Nasional Di Era Globalisasi, Pranata Hukum, Volume 7 Nomor 1 Januari 2012, hlm.51-66*

11. Farida Sekti Pahlevi, *Revitalisasi Pancasila Dalam Penegakan Hukum Yang Berkeadilan Di Indonesia, Justicia Islamica, Vol 13, No 2 (2016), hlm.21-44*

personal and group interests and develop Indonesia's unity of Bhineka Tunggal Ika.

4. Populist Value

Popular is the key word of the fourth precept. This means that the people have the highest position in the administration of the constitutional system of the Republic of Indonesia. The sovereignty of the state is in the hands of the people, so all decisions are prioritized by deliberation to reach consensus.

5. Value of Justice

The essence of the fifth principle is fair, that is, conformity to the essence of justice. The word fair can be interpreted as being impartial, giving what is not right, taking rights, being fair to oneself and others. The embodiment of social justice in social or social justice covers all Indonesian people. Justice in the social field mainly covers the fields of ideology, politics, law, economy, social, culture, defense and national security.

Pancasila as the foundation of the state philosophy as well as the philosophy of life of the Indonesian nation is essentially a systematic value. Therefore, as a philosophical basis, the principles of Pancasila are an aspect of unity, hierarchy, and systematic. This means that Pancasila is a philosophical system. Because it is a philosophical system, the five principles are inseparable and have their own meaning, and have a complete meaning. Pancasila as the philosophy of the nation and state of the Republic of Indonesia implies that in every aspect of the life of the nation, society and state must be based on the values of Divinity, Humanity, Unity, Democracy and Justice. Philosophical thinking about the state starts from the view that the state is a community of human life or social organization in legal life or legal society.¹²

2. Actualization of the Value of Justice in the Omnibus Law

Omnibus Law is a legal concept that focuses on simplifying the number of regulations due to its nature of revising and repealing many laws at once. However, the problem of regulation is a complete problem, not only because the number is too large, but there are also problems of disharmony, public participation, sectoral egos, and content that does not match the material content. Therefore, before the concept of omnibus law is actually applied in shaping regulations, first what needs to be put forward are the principles of participation, transparency and accountability. To ensure that these principles are implemented, Act no. 12 of 2011 concerning the Formation of Laws and Regulations needs to be revised again. Then, the application of the omnibus law should not only support the economy and facilitate the incorporation of laws and regulations, but must also consider the purpose of implementing the law, namely creating social justice.

The law serves as a guideline for everyone to behave considering society is a game with pre-made rules and in turn allows clarity about what can be expected from each action taken by each person.

The ultimate goal of law is to achieve social welfare and justice. Justice is the most basic human right. Upholding justice is an eternal and universal demand for every human being in the whole world, so upholding justice is one of the obligations of humans in carrying out the function of their caliphate. Justice will give birth to peace, so the purpose of law in the context of social life is to create social justice.¹³

In its function as protection of human interests, law has a purpose. The law has a goal to be achieved.

12. Muhammad Chairul Huda, Strengthening Pancasila As National Ideology To Implementate The Balancing Values To Improve Law's Application in Indonesia, *Jurnal Pembaharuan Hukum*, Volume V No. 1 April-Agustus 2018, hlm.1-12

13. Edi Setiadi and Kristian, *Sistem Peradilan Pidana Terpadu dan Sistem Penegakan Hukum Di Indonesia*, Cetakan Pertama, Kencana Prenada Media, Jakarta, 2017, P.7

The main purpose of law is to create an orderly society to create order and balance. By achieving order in society, it is hoped that human interests will be protected. In achieving this goal, the law has the duty to divide rights and obligations between individuals in society, share authority and regulate ways to solve legal problems and maintain legal certainty.¹⁴

In the history of the development of legal science, there are 3 (three) types of conventional schools about the purpose of law, namely: ¹⁵

- a. An ethical school that considers that in principle the purpose of the law is solely to achieve justice. One of the followers of this ethical school is Aristotle who divides justice into two types, namely :
 - 1) Distributive justice, namely justice that gives everyone a share according to their services. That is, this justice does not require that everyone receive the same amount or not the same, but rather a comparability based on one's achievements and services;
 - 2) Commutative justice, namely justice that gives everyone as much as possible, without considering individual services. That is, the law requires an equal amount of achievement or something without taking into account individual services.
- b. The utility stream considers that in principle the purpose of law is solely to create benefit or happiness for the community. This genre, among others, is embraced by Jeremy Bentham, James Mill, John Stuart Mill, and Soebekti. Jeremy Bentham argues that the goal of law is to ensure as much happiness as possible to as many people as possible. Likewise Soebekti stated that the purpose of law is to serve the purpose of the state, namely to bring prosperity and happiness to its people. That is, the purpose of the law should be to provide the widest possible benefit to the citizens of the community. This is the substance of ideal moral teachings or theoretical moral teachings. The law is seen solely to provide happiness for the community, and the implementation of the law should still refer to its benefits or uses for the community; Utilitarianism have a basic philosophical principle or very firm stance that any fair punishment for wrongdoers must look further consequences. This theory is actually a form of applied are limited of the basic principles of utilitarianism ethics which states that an action is morally justified only good consequences for many people as possible.¹⁶
- c. The dogmatic normative school considers that in principle law is solely for creating legal certainty. One of the adherents of this school is John Austin and van Kan, which originated from positivistic thinking that sees law as something autonomous or law in the form of written rules. That is, because law is autonomous, the purpose of law is solely for legal certainty in legalizing the certainty of a person's rights and obligations.

14. Ibid.

15. Ibid.

16. Andri Winjaya Laksana, Arpangi, Juridical Analysis Of Sanctions Trespasser Against Narcotic's Victim Based On Utilitarianism Justice Values, *Jurnal Pembaharuan Hukum*, Volume VI No.1 Januari-April 2019;

The three conventional streams of legal objectives described above are legal objectives in a broad sense. Gustav Radbruch put forward three basic values of legal objectives called the principle of priority. This theory states that the purpose of law is “first to prioritize justice, then benefit, and lastly for legal certainty”. Ideally, the three basic objectives of the law should be endeavored so that in every legal decision, whether made by a judge, by a prosecutor, by a lawyer or other legal apparatus. The three basic values of legal objectives are expected to be realized together, but if this is not possible, then justice must be prioritized first, then its usefulness, and finally legal certainty. Only by applying this priority principle can our laws stay in motion and avoid internal conflicts that can destroy them.¹⁷

Law as a system in principle can be predicted from accurate knowledge about the condition of the system now. System behavior is determined entirely by the smallest parts of the system.¹⁸ In the system theory put forward by this is Niklas Luhman (Juris-Sociologist, Germany), with his book entitled *Grundrechte Als Institution* (1965), introduced in the Netherlands by MC. Burken (Professor of Constitutional Law, Utrecht University) in his book titled *Bepreking Grondrechten* (1969). The core of the theory can be described as follows:¹⁹

- a. Law must be understood from the background of society in the broadest sense;
- b. Humans live in various relationships with one another and have expectations about each other’s behavior and reactions to them;
- c. The system exhibits a large number of forms, for example political, economic, legal, and the tenor of the law, all of these multiple roles exhibit a chaotic character, the function of the system here is to reduce complexity to make structures clearly visible in their framework, in that way life becomes ordered;
- d. In order for other systems, namely political, economic and social systems to function, law according to its normative legalistic character determines legal decisions that bind society;
- e. The law takes from society, namely accepting various inputs both demands and support and processing them into output in the form of decisions; thus complex expectations can be reduced to predictable or calculated legal rules. It can be concluded that according to “systems theory”, it is essentially the laws that drive the operation of other social systems.

The legal system (legal system) according to language is a legal entity composed of three elements, namely structure, substance, and legal culture. Thus, when talking about the “legal system”, these three elements are the focus of discussion.²⁰

- a. The structure is the entire law enforcement institution, along with its apparatus which includes the police and its police, the prosecutor’s office with its prosecutors, lawyers’ offices with their

17. O. Notohamidjojo, *Soal-Soal Pokok Filsafat Hukum*, Griya Media, Salatiga, 2011, P.33-34.

18. Otje Salman and Anton F. Susanto, *Teori Hukum*, Refika Aditama, Bandung, 2005, P. 47.

19. I Dewa Gede Atmadja dan I Nyoman Putu Budiarta, *Teori-Teori Hukum*, Setara Press, Malang, 2018, P. 139 dan 140.

20. Juhaya S. Praja, *Teori Hukum dan Aplikasinya*, Cetakan Kesatu, Pustaka Setia, Bandung, 2011, hlm. 54 dan 55.

- lawyers, and courts with their judges;
- b. The substance is the entire legal principles, legal norms and legal rules, both written and unwritten, including court decisions;
 - c. Legal culture is the habit, opinion, way of thinking and way of acting of law enforcers from citizens.

In analyzing the application of the omnibus law, some parties offer legal system reform. Therefore the solution that can be done is to coordinate between institutions for inventory and integration of omnibus law material, strengthening the role of the Parliament supporting system in discussions, and to streamline the discussion at the Parliament, it is necessary to have a simple discussion mechanism and the commitment of the Parliament and the Government to form the omnibus law accordingly. the provisions of the legislation.²¹

Omnibus law must be in line with the view of justice in national law rooted in the state. Pancasila as the basis of the state or state philosophy (*fiilosofische grondslag*) has been maintained until now and remains important for the Indonesian state. Axiologically, the Indonesian nation is a supporter of the values of Pancasila. The Indonesian nation that is godly, humane, united, human, and socially justice.²²

As a supporter of values, the Indonesian nation appreciates, recognizes, and accepts Pancasila as a value. Recognition, appreciation, and acceptance of Pancasila as something of value will appear to reflect the attitudes, behavior and actions of the Indonesian people. If this recognition, acceptance or appreciation is reflected in the attitudes, behavior and actions of humans and the Indonesian nation, in this case at the same time it is the bearer of the attitudes, behavior and actions of Indonesian people. Therefore Pancasila as the highest source of law is irrational and as rationality is the source of the national law of the Indonesian nation.

D. Conclusion

The manifestation of Pancasila Values towards the application of the Omnibus law must be in line with the view of justice in national law based on the basis of the state. Pancasila as the basis of the state or state philosophy has until now been maintained and is still considered important for the Indonesian state. Pancasila, which is the fundamental foundation of the Indonesian nation, must be realized because Pancasila, the philosophy of Indonesian life, is essentially a systematic value. Therefore, as a philosophical basis, the principles of Pancasila are an aspect of unity, hierarchy, and systematic.

21 Sulasi Rongiyati, Menata Regulasi Pemberdayaan UMKM Melalui Omnibus Law, Info Singkat, Vol. XI, No.23/I/Puslit/ Desember/2019, P.1-6

22 Ferry Irawan Febriansyah, 2016, *Keadilan Berdasarkan Pancasila (Dasar Filosofis dan Ideologis Bangsa)*, Cetakan Pertama, Deepublish, Yogyakarta;

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