



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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International Conference And Call Paper

*" 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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## KATA PENGANTAR

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*Assalamu'alaikum Wr. Wb.*

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# OMNIBUS LAW BETWEEN JUSTICE AND BENEFITS

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## ABSTRACT

*President Joko Widodo wants to cut regulations in various sectors specifically in the economic and investment sectors through the omnibus law approach (repealing many laws and regulations with one law). However, whether the simplification of regulations in all sectors must and must be done through the omnibus law approach and it is also natural to ask omnibus law for whom. This is due to the many regulations that have been cut, so there are also many risks that will be faced in the future, both from the environmental sector, workers' welfare, so that this will lead to mass layoffs in many companies. In the description of writing, the problem is how is the Omnibus Law review viewed in terms of justice and expediency? The existence of the omnibus law is believed to provide justice and a number of benefits. The concept of the omnibus law can be used by the Indonesian government to overcome two things; First, the problem of the criminalization of state officials. During this time, many government officials are afraid to use discretion in making policies related to the use of the budget, because if proven to suffer losses, they can be charged with corruption. Second, the omnibus law can be used in Indonesia to harmonize central and regional policies in supporting the investment climate. In this regard, the omnibus law can be a concise solution to conflicting laws and regulations, both vertically and horizontally.*

**Keywords :** *omnibus law, justice, expediency.*

## Introduction

The concept of the omnibus law re-surfaced after President Joko Widodo in his first victory speech launched the concept in order to increase the value of investment and the domestic economy which is still stubborn and is considered low compared to other countries. An index from the world bank that measures this capability shows that Indonesian regulations from 1996 to 2017 are always below zero. Even in the Southeast Asia region only kept the fifth position with a score of -0.11, lagging far behind Singapore's best friend which has a score of 2.12 in the first rank.

Based on research data from the Indonesian Center for Law and Policy Studies (PSHK) in the first period of president Joko Widodo's Indonesia alone has been flooded with Regulations with 10,180 regulations, with details of 131 Laws. 526 Government Regulations, 839 Presidential Regulations and 8,684

## Ministerial Regulations.

Seeing these facts, it is not surprising that President Joko Widodo wants to cut regulations in various sectors, especially in the economic and investment sectors through the omnibus law approach (revoking many laws and regulations with one law). But should the simplification of regulations in all sectors must and must be done through the omnibus law approach? And it's also very natural if we ask omnibus law for whom? Due to the number of regulations being cut down, there are also many risks that will be faced in the future, both from the environmental sector, workers' welfare, to the fear that this will lead to mass layoffs in many companies.

Actually the concept of the omnibus law in the Indonesian legal system is not new, Indonesia once applied a concept that was almost similar to the concept of the omnibus law when forming the Ketetapan MPR Number I / MPR / 2003. However, the establishment of the MPR decree was not participatory and friendly to the realm of democracy and it also became a way of legislation to become a monopoly tool in the legislation sector.

## The Problem

How is the Omnibus Law review viewed in terms of justice and expediency?

## Methods of Research

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 study, because in this study describes the situation that occurs at present in a systematic and factual manner with the aim to explain and the solution of the problem under study is the omnibus law between justice and expediency.

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.

## Research Result and Discussion

### Definition of Omnibus Law

The definition of Omnibus Law starts from the word Omnibus. The word Omnibus comes from the Latin language and means for everything. In the Black Law Dictionary Ninth Edition Bryan A. Garner mentioned the omnibus: relating to or dealing with numerous objects or items at once; including many things or having various purposes, meaning that it is related to or dealing with various objects or items at once; including many things or having various goals. When coupled with the word Law, it can be defined as a law that has a variety of related objects / items or all related<sup>1</sup>.

Omnibus law is a law that is made to target major issues and may revoke or amend several laws, with this law intended to streamline regulations in terms of numbers, but also to simplify regulations to be more targeted. Ideally not just a simplification in terms of numbers, but also in terms of consistency and neat organization. So it can be called a procedure also to make it simpler and right on target. So according to the expert, it can be concluded that Omnibus law is a product of an Act that can revoke or amend several existing laws that can be spread out in several regulations, and then be streamlined in one Act to be more

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1 Bryan A. Garner, et. al. (Eds.). Black's Law Dictionary Ninth Edition. St. Paul: West Publishing Co., 2009.

targeted.

Jimmy Z Usfunan, in his opinion responding to the Omnibus law, stated that basically there was a conflict between government administrators, when they wanted to innovate or policy which then collided with laws and regulations. So the concept of the omnibus law becomes one of the solutions that might be taken by the government. However, omnibus law must be done at the level of the Act. So, according to the legal expert, the Omnibus law is a product of the Law which is a solution to the conflict between government administrators and the laws and regulations<sup>2</sup>.

According to Sofyan Djalil in the article [www.hukumonline.com](http://www.hukumonline.com) on February 16, 2017, who was then serving as Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency has proposed the concept of Omnibus Law in the procedure for managing or checking the status of land ownership. According to him the concept of the omnibus law is a step to issue a law that can improve so many laws that have been considered to overlap and hamper the process of ease of business (omnibus law). With the issuance of one Act to amend the many Laws, because with so many Acts it cannot be accelerated because many Acts still regulate and can contradict each other.

From the description of the legal experts opinions above, the main characteristics of the Omnibus Law can be drawn are (1) it consists of multiple sectors or consists of many sectors with the same theme; (2) consists of many articles, due to the many sectors covered; (3) independent or independent, without being bound or minimally bound by other regulations; and (4) negate / revoke parts and / or all other regulations.

In addition, it can also be known that the goals raised by the Omnibus Law ideas are (1) to resolve conflict of laws and regulations quickly, effectively and efficiently; (2) uniforming government policies at central and regional levels to support the investment climate; (3) that licensing management is more integrated, efficient and effective; (4) to break the long chain of administrative bureaucracy; (5) to improve the coordination relationship between related agencies because it has been regulated in an integrated omnibus regulation policy; and (6) as a guarantee of legal certainty and protection for policy makers<sup>3</sup>.

## **Omnibus Law Formation and Substance**

The complicated issue of regulation arises and causes the investment climate in Indonesia to move slowly compared to neighboring countries such as Singapore and Malaysia. In the regime, President Jokowi wants all regulations that impede the entry and operation of investments to be removed. Minister of Agrarian Affairs and Spatial Planning / BPN RI Sofyan Jalil brought up the idea of the concept of the Omnibus Law to resolve disputes over overlapping laws and regulations that hamper investment growth in Indonesia.

Looking at the legal system in Indonesia, the Law resulting from the Omnibus Law concept can be referred to as the Umbrella Law because it regulates thoroughly and then has power over other rules. But Indonesia will not adhere to the Umbrella Law because the position of all the Laws is the same. Problems that arise when examined from the perspective of the theory of legislation regarding their position, so that their position must be given legitimacy in Law Number 12 of 2011 concerning Formation of Legislation must be amended.

The process of establishing statutory regulations from theoretical studies related to the existence and validity of law in society is known as Legal Bills (*rechtsbeoefening*). This activity includes activities in forming, implementing, applying, finding, interpreting, studying and teaching law. Legal worship is

2 <https://www.hukumonline.com/berita/baca/lt58a6fc84b8ec3/menimbang-konsep-omnibus-law-bila-diterapkan-di-indonesia/>

3 Jimly Asshiddiqie. *Perihal Undang-Undang*. Depok: PT. Raja Grafindo Persada, 2017.

distinguished in Practical Legal Development and Theoretical Legal Development.

Practical Law Development is a human activity regarding the realization of the law in the reality of daily life in a concrete way. These activities include Legal Formation, Legal Discovery and Legal Aid. While the Theory of Legal Development is also called the Theoretical Reflection on law, namely as an activity of reason to gain intellectual mastery of law or a scientific understanding of law, that is methodically systematic - rational logical. Theoretical Law Development is divided into 3 (three) types based on the level of abstraction or based on the level of analysis, namely Legal Sciences, Legal Theory and Legal Philosophy<sup>4</sup>.

In principle, the government at the time of President Joko Widodo was encouraged to foster an investment climate with his Working cabinet program, so that all of his policies were directed to simplify and simplify investment licensing and requirements. With this concept, the concept of the Omnibus Law is expected to be a solution to the condition of the country's legislative system. So the substance of the Omnibus Law proposed by president Joko Widodo is as follows. (Results of the Seminar conducted by the Coordinating Ministry for the Economy on 30 October 2019 in Jakarta).

## 1. Simplification of Licensing

- a. Changing the conception of business activities from a license-based approach to a risk-based and standardized application (RBA)
- b. Business activities that do not pose a risk to health, safety, and the environment (including natural resources) do not require permission and only through registration and use of standards.
- c. Changes to basic permissions:
  - 1) Location Permit for business activities is not required with the use of RDTR Digital Maps (Detailed Spatial Planning)
  - 2) Application of standards for Environmental Permits and AMDAL only for high risk business activities (shorter and more concise time and procedure norms)
  - 3) Application of standards for building construction and assessment of building feasibility (IMB & SLF) and compliance are carried out by certified professionals
  - 4) Eliminating business licenses by applying RBA-based operational / commercial licenses
- d. Changes to sector licensing (business licenses and operational / commercial licenses)
  - 1) Sector activities are determined in terms of risk levels: low, medium and high based on the parameters of health, safety and environment.
  - 2) The higher the potential risk posed by certain business activities, the tighter the government controls and the more licenses needed or inspections carried out
  - 3) Sector risk groups:
    - (1) the low risk sector is only registered
    - (2) the medium risk sector uses standards
    - (3) the high risk sector must obtain a permit.

## 2. Ease of Investment Requirements

- a. Changing the conception of investment requirements from a negative list (DNI) to a positive list, namely by setting a list of priority business activities (priority list) and a list of other business

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4 Muhammad Bakri. *Pengantar Hukum Indonesia Jilid I: Sistem Hukum Indonesia Pada Era Reformasi*. Malang: UB Press, 2013.

activities that are encouraged to be developed (white list), thereby focusing on several business activities that need invite foreign capital

- b. List of business fields that are closed only for business activities that are based on national interests, international conventions, and propriety
  - c. Remove the provisions of investment requirements in the sector law and are sufficiently regulated in the Investment Act (need to change 13 sector laws governing investment requirements)
  - d. Changing the conception of PMA and PMDN differentiation and only regulating the terms and limits of share ownership by foreigners set by the President
3. Government Administration
- a. In the context of applying standards-based licensing and RBA requires a change and structuring of licensing authority that is currently spread between K / L and regions.
  - b. The President has the authority to exercise all governmental authority (c.q. licensing) including those delegated by law to the Minister / Head and / or the Governor and Regent / Mayor.
  - c. The implementation of law by the Minister / Head and Regional Government is the implementation of the authority of the President (delegation of the authority of the President) and thus the Minister / Head and Regional Regulation / Regional Regulation is the implementation of delegation of PP or Perpres and NSPK (Norms, Standards, Procedures and Criteria)
  - d. Stipulation of NSPK (Norms, Standards, Procedures and Criteria) by the President
  - e. The President has the authority to cancel the Regional Regulation by Presidential Regulation.
  - f. Sanctions related to licensing administration take the form of administrative sanctions and civil sanctions and eliminate criminal sanctions (following the Criminal Code provisions)
  - g. Law enforcement (criminal sanctions)
4. Convenience and incentives
- a. Provides ease in the process:
    - 1) Immigration: investment can be guaranteed as a Temporary Stay Permit (ITAS) / Permanent Stay Permit (ITAP) and the ease of obtaining visas for maintenance activities and investment interest visits
    - 2) Patents: Flexibility of obligations to make products or use patent processes in Indonesia
  - b. Changes in capital requirements for establishing a PT (removing a minimum capital of Rp. 50 million)
  - c. Simplification of type of Business Entity: removing CV, Civil Partnership, UD (Need to consider the position of the Firm).

### **Omnibus Law in terms of Justice and Utilization**

The advantage of legislation with the concept of the omnibus law lies in its multisectoral nature and the discussion time that can be faster than the formation of regulations in the usual. These strengths contain many dangers if forced to apply in a country that adheres to a democratic civil law such as Indonesia.

Concerns about the omnibus law that will damage and the danger to the natural order of democracy are based on three factors<sup>5</sup>. First, the omnibus law narrows openness and public participation in the formation

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5 Sadono, Bambang, 2019. *Penataan Sistem Ketatanegaraan*, Jakarta : Badan Pengkajian MPR RI.

of laws. In practice in some countries, the formation of the omnibus law is dominated by the government or parliament. Material and processing time also depend on the agency. Usually the law is tried to finish as soon as possible, even in just one decision-making opportunity. As a result, the space for public participation is small, even lost. Though the principle of openness and participation in making laws is the main spirit in a democratic country.

Second, the omnibus law has the potential to disregard formal provisions for the formation of laws. Its fast nature and reaching many sectors are feared that it will break through several stages in the formation of laws, both at the planning, drafting, discussion, ratification, and enactment levels. This violation is contrary to the principle of the rule of law that requires all government actions to be based on law.

Third, the omnibus law can add to the burden of regulation if it fails to apply. With its nature that includes more than one aspect that is combined into one law, the discussion of the omnibus law is feared to be incomplete. The discussion will focus on the omnibus law and forget about the law that will be revoked, which will present a more complex regulatory burden.

For example, what is the derivative impact of the law being revoked, the impact on the rules of its implementation, and the practical implications on the ground. Not to mention if the omnibus law fails to apply and makes the regulatory problem worse. The pretext of *lex posterior derogat legi priori* (the new law overriding the old law) is not enough because the regulation cannot be carried out with a one-principle approach.

In terms of expediency, with the omnibus law, it will be able to simplify the regulation of laws and regulations. Regulatory regulation which is indeed a problem in Indonesia, Bakornas noted there are 5000 regulations per law from the central to the regional level, but according to various elements of society assess the goal was not achieved because the goal is only directed at increasing investment, even though the end is opening up jobs for the community<sup>6</sup>.

Basically this omnibus law is one of the opportunities seen by the president where this could be an answer to the problems that exist in Indonesia. Because he is tackling convoluted policies, but in the eyes of the people, especially the affected people, actually judge by the loss of rules this even eliminates certainty that has been regulated in the previous law. In addition there are rules which he did not abolish, but he replaced conceptually, where this could have implications. Is it really balanced from the assumed benefits that it is proportional to the actual costs that could have been estimated if indeed this bill was implemented.

The existence of the omnibus law is believed to provide justice and a number of benefits. The concept of the omnibus law can be used by the Indonesian government to overcome two things. First, the problem of the criminalization of state officials. During this time, many government officials are afraid to use discretion in making policies related to the use of the budget, because if proven to suffer losses, they can be charged with corruption. Second, the omnibus law can be used in Indonesia to harmonize central and regional policies in supporting the investment climate. In this regard, the omnibus law can be a concise solution to conflicting laws and regulations, both vertically and horizontally.

There are five steps that must be fulfilled by legislators in the drafting of the Omnibus Law. The following are five steps that the government must take to ensure that the Omnibus Law can be effective and not misused and meet aspects of justice for all levels of Indonesian society.

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6 Busroh, Firman Freaddy, 2017. *Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan*, Jurnal ARENA HUKUM Vol. 10, No. 2, August 2017. Universitas Brawijaya, Malang.

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 are absolutely repaired in the mirror of the legislative process which 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 passed.

## **Conclusion**

Omnibus law is a new thing in the field of statutory regulations of the Republic of Indonesia, in addition to our country's legal system adopting the Civil Law system as well as the products of current government regulations are inherited from the old system. The existence of the omnibus law is believed to provide justice and a number of the benefits. The concept of the omnibus law can be used by the Indonesian government to overcome two things. First, the problem of the criminalization of state officials. During this time, many government officials are afraid to use discretion in making policies related to the use of the budget, because if proven to suffer losses, they can be charged with criminal acts of corruption. Second, the omnibus law can be used in Indonesia to harmonize central and regional policies in supporting the investment climate. In this regard, the omnibus law can be a concise solution to conflicting laws and regulations, both vertically and horizontally.

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