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

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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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OMNIBUS LAW OPPORTUNITIES AND CHALLENGES IN THE INDONESIAN LEGISLATION SYSTEM

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ABSTRACT

Omnibus Law can be interpreted as a law (Act) created to target a major issue that might be able to revoke or change several laws at once so that it becomes simpler. The problem in this paper is how are the opportunities and challenges of the omnibus law in the Indonesian legal system? Opportunities for omnibus law in the Indonesian legislative system in Indonesia are open, bearing in mind that the formation of the omnibus law technique has previously been done even though it is not exactly the same, which relates to Accessing Financial Information for the Interest of Taxation into Law. Besides the opportunities, there are at least 6 (six) major challenges for the adoption of omnibus law in Indonesia, namely: (i) complex Indonesian regulatory issues; (ii) each law whose provisions are changed by the omnibus law has a philosophical basis; (iii) the principle of supremacy of the constitution sets limits on the authority to regulate each type of legislation and regulations; (iv) legal uncertainty due to the dominance of sectional egos among state administrators; (v) the parameters determine when a material must be with omnibus law and when with ordinary law; and (vi) public participation in the formation of laws has been guaranteed at all stages of formation. A number of requirements must be met if the omnibus law is adopted in the legal system in Indonesia, namely the fulfillment of the principles of openness and public participation since the drafting stage, when discussions in the DPR must be done transparently, carefully and unhurriedly, then the substance must be ensured not to be ensured beyond the constitution and continue to accommodate the philosophical aspects of various amended laws

Keywords: *omnibus law, opportunities, challenges.*

INTRODUCTION

Political law is defined as the basic policy of state administrators in the field of law that will, is and has been in force, which is sourced from the values prevailing in society to achieve the goals of the country aspired. (Frenki, 2011; Wahyono, 1984) The objectives of politics National law is as a tool or means and steps that can be used by the government to create a desired national legal system and with the national legal

system it will realize the ideals of the greater Indonesian nation⁶⁷.

At the empirical level, Moh. Mahfud MD uses legal politics as an approach in understanding the relationship between law and politics, as well as defining legal politics as the direction of legal policy made officially by the state regarding the law that will be enacted or will not be enacted to achieve the country's goals. Law is placed as a tool to achieve the goals of the country so that the making of new laws or revocation of old laws by the state must be used as a step to achieve the goals of the state⁶⁸. According to Pablo Holmes, politics and law must have a corresponding correlation but not as an instrument to support the will of the executive or government in power⁶⁹.

Towards general understanding, Omnibus Law can be interpreted as a Law (Act) created to target a major issue that might revoke or amend several Laws at once so that it becomes simpler. From the government side, they claim there are at least three benefits from implementing Omnibus Law. First, it eliminates overlaps between laws and regulations; Second, the efficiency of the process of change / revocation of laws and regulations. Third, it eliminates sectional egos contained in various laws and regulations⁷⁰.

By the end of 2019 the omnibus law quickly became a discourse not only in the legal academics but also in the government and business world. During the Plenary Session of the People's Consultative Assembly (MPR) in the context of the inauguration of the President and Vice President for the period 2019–2024 on October 20, 2019 one of the speeches delivered by President Joko Widodo was a plan to invite the House of Representatives (DPR) to issue a Law (Law) (Act) which also revised several laws, even dozens of laws referred to as omnibus law⁷¹. The omnibus law referred to in the President's speech is the Employment Creation Act and the Micro Small and Medium Enterprises (MSME) Empowerment Act. The aim of making the omnibus law according to the President is to overcome all forms of regulatory constraints that are being experienced by Indonesia so that regulations must be simplified, cut and reduced in number.

What was conveyed by President Joko Widodo about the simplification of regulations has often been said during the first period of his term from 2014 to 2019. Recorded in March 2016 when giving direction at the Government Work Meeting the President stated that there were 2 priority things that the focus wanted to do in the next five years namely deregulation and acceleration of infrastructure development⁷². On that occasion, the President also highlighted the existence of 42 thousand regulations at the central level and 3 thousand regional regulations that could hamper development. Next in January 2017 the President launched the second phase of the law reform policy, one of which was the regulation arrangement⁷³. Through structuring

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67. Prasetyo, K. F. (2016). Politik hukum di bidang ekonomi dan pelembeagaan konsepsi welfare state di dalam Undang-Undang Dasar 1945. *Jurnal Konstitusi*, 9(3), 495–514.
 68. Mahfud Md, M. (2006). *Membangun Politik Hukum, Menegakkan Konstitusi*. Pustaka LP3ES. Jakarta.
 69. Holmes, P. (2014). The politics of law and the laws of politics: The political paradoxes of transnational constitutionalism. *Indiana Journal of Global Legal Studies*, 21(2), 553–583.
 70. <https://usd.ac.id/mahasiswa/bem/f113/SELAYANG%20PANDANG%20OMNIBUS%20LAW.pdf> oleh Kacamata Driyarkara diakses 14 Juni 2020
 71. Kompas.Com. "Naskah Lengkap Pidato Presiden Joko Widodo dalam Pelantikan Periode 2019-2024", <https://nasional.kompas.com/jeo/naskah-lengkap-pidato-presiden-joko-widodo-dalam-pelantikan-periode-2019-2024>, diakses 14 Juni 2020. Sidang Paripurna MPR dalam rangka pelantikan presiden dan wakil presiden adalah pelaksanaan ketentuan Pasal 9 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (UUD 1945) yang menyebutkan: *Sebelum memangku jabatannya, Presiden dan Wakil Presiden bersumpah menurut agama, atau berjanji dengan sungguh-sungguh di hadapan Majelis Permusyawaratan Rakyat atau Dewan Perwakilan Rakyat*
 72. Sekretariat Kabinet.Go.Id, "Buat Pemerintah Tidak Leluasa, Presiden Jokowi Minta Aturan-Aturan Disederhanakan", <https://setkab.go.id/buat-pemerintah-tidak-leluasa-presiden-jokowi-minta-aturan-aturan-disederhanakan/>, diakses 14 Juni 2020
 73. Hukumonline.Com, "Ini 3 Agenda Paket Reformasi Hukum Jilid II", <https://www.hukumonline.com/berita/baca/>

regulations the President emphasizes that the Government will evaluate a number of regulations that are out of sync and which can lead to multiple interpretations. This is important considering that multiple interpretations of regulations can have an impact on Indonesia's weak competitiveness in the global arena.

According to the direction of Indonesian President Joko Widodo, there will be 3 (three) laws that are made as a form of omnibus law namely taxation law, employment copyright law and MSME empowerment law. These three laws will replace various regulations that are very diverse and cross-sectional and several policies have been taken ranging from tightening new regulatory proposals, strengthening harmonization of draft regulations including Ministerial or Institutional Regulations, re-enacting draft regulations before enactment, conducting evaluations of enforcement of regulations and mediate in the event of disputes or conflicts between regulations⁷⁴.

However, until the end of the first period of President Joko Widodo's administration various regulatory arrangements have not yet achieved the expected results. The Center for Law and Policy Studies (PSHK) states that there are a number of homework that must be completed in the next period, starting with mounting regulations, overlapping substance, declining levels of public participation, to promises of institutional reforms to overcome regulatory arrangements that never materialize. PSHK research shows that from October 2014 to October 2018 there were a total of 8,945 regulations established at the national level including Laws, Government Regulations (PPs), Presidential Regulations (Perpres), and Ministerial Regulations (Permen) which, when averaged on average, 6 regulations were born each day in Indonesia⁷⁵.

Before the President's statement on October 20, 2019, the omnibus law had been mentioned several times by government officials and academics. The Minister of Agrarian and Spatial Planning, Head of the National Land Agency Sofyan Djalil, on 15 September 2019 put forward the idea that Indonesia should adopt the principle of omnibus bill or omnibus law in the preparation of regulation⁷⁶. With the omnibus law not having to revise laws one by one, Sofyan Djalil gave an example when there were proposals to improve regulations in the forestry sector, what must be revised was Law No. 41/1999 concerning Forestry. However, there are still obstacles in other regulations such as Law No. 32/2009 concerning Environmental Protection and Management (PPLH) or Law no. 5-1960 concerning Basic Rules Agr Basic Agrarian Affairs⁷⁷.

There is a plan to establish an omnibus law in Indonesia and various responses that accompany it, so an assessment of the omnibus law is needed to explore the basic concepts, benefits, weaknesses, opportunities and challenges of implementing the omnibus law in the Indonesian legal system. Through this

lt587e0fdb06ea8/ini-3-agenda-paket-reformasi-hukum-jilid-ii/, diakses 14 Juni 2020

74. Lihat Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 22 Tahun 2018 Tentang Pengharmonisasian Rancangan Peraturan Perundang-Undangan Yang Dibentuk Di Daerah Oleh Perancang Peraturan Perundang-Undangan; Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 23 Tahun 2018 Tentang Pengharmonisasian Rancangan Peraturan Menteri, Rancangan Peraturan Lembaga Pemerintah Nonkementerian, Atau Rancangan Peraturan Dari Lembaga Nonstruktural Oleh Perancang Peraturan Perundang-Undangan; Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 31 Tahun 2017 Tentang Perubahan Atas Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 16 Tahun 2015 Tentang Tata Cara Pengundangan Peraturan Perundang-Undangan Dalam Lembaran Negara Republik Indonesia, Tambahan Lembaran Negara Republik Indonesia, Berita Negara Republik Indonesia, Dan Tambahan Berita Negara Republik Indonesia; dan Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 2 Tahun 2019 Tentang Penyelesaian Disharmoni Peraturan Perundang-Undangan Melalui Mediasi
75. Hukumonline.Com, "Lima Langkah Penataan Regulasi untuk Pemerintahan Jokowi Jilid II", <https://www.hukumonline.com/berita/baca/lt5db95c405cce2/lima-langkah-penataan-regulasi-untuk-pemerintahan-jokowi-jilid-ii/>, diakses 14 Juni 2020.
76. Bisnis.Com, "UU Tumpang Tindih, Bappenas Usul Indonesia Adopsi Omnibus Law", <https://ekonomi.bisnis.com/read/20160915/99/584255/uu-tumpang-tindih-bappenas-usul-indonesia-adopsi-omnibus-law>, diakses 14 Juni 2020.
77. *ibid*

study, it is expected that a legal reform in the formation of laws and regulations can be carried out carefully and wisely, so as not to cause turmoil which will instead create legal uncertainty in its implementation. The formulations of the problems in this paper that will be answered are: What are the opportunities and challenges of the omnibus law in the Indonesian legal system?

Methods of Research

There are 2 (two) legal research approaches, there are normative approaches and sociological juridical approaches. The normative juridical approach to finding answers to problems and research objectives based on the framework of normative legal theory, which is used to examine data is the theories commonly known in doctrinal legal theory, such as legal norms, legal principles, legal understandings and legal understandings so⁷⁸, While the sociological juridical approach is characterized by finding answers to problems and research objectives by using empirical legal theory - sociological law⁷⁹. This writing uses a normative juridical research approach, with an approach to legislation and concepts, which also examines the study of documents, which uses various secondary data such as laws and regulations, court decisions and legal theory.

Research Result and Discussion

The Opportunities And Challenges Of The Omnibus Law In The Indonesian Legal System

1. Opportunities

The model of formation of a law using the omnibus law technique if examined in the history of Indonesian law has been carried out even though it is not exactly the same. Indonesia once had Law No. 5 of 1969 concerning Statements of various Presidential Decrees and Presidential Regulations as Laws Acts which, if seen as substantive, contain characteristics as omnibus law because in this one Law contains statements about the legal status of various legal products which substantially contain different regulatory subjects.

Law No. 5/1969 is basically a follow-up to the Provisions of the Provisional People's Consultative Assembly of the Republic of Indonesia Number XIX / MPRS / 1966 of 1966 Regarding Review of Legislative Products, Countries outside the MPRS Products Not Conforming to the 1945 Constitution. TAP MPRS XIX / 1966 contain a review of many laws and regulations, namely legislative products in the form of Presidential Decrees, Presidential Regulations, and in the form of Laws and Government Regulations in lieu of laws.

The substance of Law 5/1969 contains three clusters, namely, First, 2 Determination President the determination of the President and Presidential Regulations in Appendix I are stated as Law⁸⁰. Secondly, the 36 Determination of the Presidential Decree and Presidential Regulations in Appendix IIA and IIB are stated as Laws with the stipulation that the material for the Determination of the President and Presidential Regulations are accommodated or made material for the drafting of the new Law⁸¹. Third, 91 Presidential Determinations and Presidential Regulations referred to in Appendix IIIA and IIIB are devolved to further review and reorganize them to the Government to express them in statutory regulations or to be used as

78. Soerjono Soekanto, *Penelitian Hukum Normatif*, Jakarta: Raja Grafindo Persada, 2009, hlm. 56

79. Ibid.

80. Penpres 19 Tahun 1963 tentang Pembentukan Mahkamah Militer Luar Biasa, dan Penpres 27 Tahun 1965 tentang Pengeluaran Uang Rupiah Yang Baru Sebagai Alat Pembayaran Yang Sah Bagi Seluruh Wilayah Republik Indonesia Dan Penarikan Uang Rupiah Lama Dari Peredaran.

81. Lampiran IIA berisikan 22 Penpres dan 4 Perpres, Lampiran IIB berisikan 4 Penpres dan 6 Perpres.

material for legislation in accordance with their respective material respectively⁸².

The next example that the formation of legislation has used the omnibus law technique is the People's Consultative Assembly Decree of the Republic of Indonesia Number I / MPR / 2003 Concerning Review of the Material and Legal Status of the Provisions of the Provisional People's Consultative Assembly and the Decree of the People's Consultative Assembly of the Republic of Indonesia Number I / MPR / 2003 concerning Review of Material and Legal Status 2002. The birth of the MPR TAP I / 2003 was motivated by changes in the position, function, duties and authority of state institutions as a result of changes in the 1945 Constitution in 1999 - 2002 resulting in the need for a review of the material and legal status of the Provisions of the Provisional People's Consultative Assembly and the Stipulation of the People's Consultative Assembly Republic of Indonesia⁸³.

TAP MPR I / 2003 contain 6 clusters regarding the legal status of 139 TAP MPRS / MPR first, MPRS Stipulations and MPR Stipulations Revoked and declared invalid, there are 8 Stipulations. Second, MPRS provisions and MPR decrees which are declared to remain valid with provisions, there are 3 Provisions. Third, the provisions of the MPRS and the Decree of the MPR which were declared to remain in force until the formation of the government resulting from the 2004 elections, there were 8 provisions. Fourth, MPRS stipulations and MPR Decrees which were declared to remain in force until the formation of the Act, there were 11. Fifth, MPRS provisions and MPR Decrees which were declared still valid until the stipulation of the new Standing Orders by the MPR resulting from the 2004 elections, there were 5 Stipulations. Sixth, the MPRS Stipulation and the MPR Stipulation which are stated as not needing further legal actions, either because they are nal (einmalig), have been revoked, or have been completed, there are 104 Stipulations.

Then in 2017 a law was also formed, such as the omnibus law, namely Law Number 9 of 2017 concerning the Establishment of Government Regulations in lieu of Law Number 1 of 2017 concerning Access to Financial Information for the Interest of Taxation into Law. Perppu 1/2017, which has become a law, removes and states that it does not apply to the provisions of banking, insurance and capital market secrecy related to tax access previously regulated in Law 7/1992 concerning Banking, Law 8/1995 concerning Capital Markets, Law 32/1997 concerning Commodity Futures Trading, Law 21/2008 concerning Islamic Banking. The characteristics of the omnibus law technique are shown through the regulation in several articles in the Act whose material is cross-subject which contains changes to the provisions of several Laws and ending the existence of the closing provisions in Article 8 which revokes the provisions of several articles from 5 Laws.

The opportunity for permanent omnibus law in the Indonesian legislative system will depend very much on the success and benefits of the resulting omnibus law. This is because the occurrence of legal transplants is very dependent on the ideas and forces that exist in the law itself. The legal transplant by Frederick Schauer is defined as the process by which law and legal institutions are developed in one country and then adopted by another (the process by which laws and legal institutions developed in one country are then adopted by another)⁸⁴. Furthermore, according to Schauer to be able to spread the law across countries is very dependent on the ideas and forces that exist in the law itself rather than political and symbolic factors⁸⁵. Laws relating to individual rights, national identity and political structure will be less affected by

82. Lampiran IIIA berisikan 72 Penpres, Lampiran IIIB berisikan 5 Penpres dan 14 Perpres.

83. Konsideran menimbang huruf a dan huruf c TAP MPR I/2003

84. Frederick Schauer, *The Politics and Incentives of Legal Transplantation*, CID Working Paper Series 2000.44, Harvard University, Cambridge, MA, April 2000. p.1.

85. *Ibid*, p. 2

laws originating from outside the country than family economic, business, securities and commercial law⁸⁶.

2. Challenges

Opportunities for omnibus law are open in the Indonesian legal system, but these opportunities must be accompanied by the ability to respond to challenges that arise. There are at least 6 major challenges for the adoption of omnibus law in Indonesia, namely: First, the problem of complex Indonesian regulations is not just a matter of technique or method of drafting laws; Second, each Act whose provisions are changed by the omnibus law has a philosophical basis; Third, the principle of supremacy of the constitution has set limits on the authority to regulate each type of legislation; Fourth, legal uncertainty due to the dominance of sectional egos among state administrators; Fifth, the parameters determine when a material must be with omnibus law and when with ordinary laws; and Sixth, public participation in the formation of laws in Indonesia is guaranteed at all stages of formation⁸⁷.

PSHK in its research mentioned a number of fundamental problems related to Indonesian legislation, namely: first, the synchronization of legislative planning with development planning and policy; secondly, there is a tendency for laws and regulations to deviate from the material content that should be regulated so that it appears “hyper-regulation”; third, the effectiveness of the laws and regulations at the time of implementation; fourth, the absence of monitoring and evaluation procedures for laws and regulations; fifth, the absence of special institutions that handle all aspects of the legal system⁸⁸.

PSHK recommends a number of strategies to resolve a number of these problems, first, integration of the statutory planning system and development planning; second, controlling the process of forming laws and regulations through harmonization and tighter synchronization; third, optimization of legislation planning that is more measurable and relevant to needs; fourth, the institutionalization of monitoring and evaluation functions in the system of laws and regulations; fifth, the integration of functions in the legislation system through institutional structuring and system strengthening.

In its recommendation, PSHK did not mention the omnibus law technique as one of the strategies to solve the fundamental problems related to Indonesian law. This is because the omnibus law is an improvement effort that is carried out based on certain government commitments and not the system improvement so that there is a risk of an inconsistency in the improvement process⁸⁹.

Omnibus law is more inclined as a short-term solution to the problem, therefore the government needs to implement policies that ensure the process of improving the system of laws and regulations runs systematically and continuously where the omnibus law does not meet this requirement because it is not mentioned in the 1945 Constitution or Law 12-2011 so that its existence is only attached to government policies that can be discontinued if a change of government occurs. Omnibus law in the formation of laws and regulations in Indonesia has the challenge of how to continue to accommodate the philosophical foundation behind the birth of a law that only regulates one particular subject which is then amended with an omnibus law that contains many subjects.

The use of techniques such as the omnibus law was once practiced in the formation of laws and regulations in Indonesia, but the reluctance of the main parties concerned among the state administrators to follow it has brought its main difficulties instead creating legal uncertainty. Maria Farida Indrati gave

86. *Ibid*, p. 11

87. Pusat Studi Hukum dan Kebijakan (PSHK), *Kajian Reformasi Regulasi di Indonesia: Pokok Permasalahan dan Strategi Penanganannya*, (Yayasan Studi Hukum dan Kebijakan Indonesia (YSHK)), 2019. hlm.2.

88. *Ibid*, hlm. 3.

89. *Ibid*. hlm. 4

an example of how the formation of a law using the omnibus law technique would not necessarily provide legal certainty after its promulgation as happened in the regulation of the Regional Representative Council (DPRD) which previously existed in Law Number 17 of 2014 concerning MPR, DPR, DPD and DPRD then revoked by Law 23-2014 concerning Regional Government⁹⁰.

Bearing in mind the fact that the omnibus law does not necessarily result in legal certainty, Maria Farida Indrati stated that the omnibus law must be accompanied by a number of compliance requirements⁹¹. The argument is because so far the formation of laws and regulations. Indonesia has characteristics that are based on the tradition of civil law (continental Europe), attachment to the highest source of law, namely Pancasila and the 1945 Constitution, Article 1 paragraph (3) of the 1945 Constitution. Indonesia is a state of law, and Law P3⁹². Until now there are no clear parameters to determine what policy themes should be made with the omnibus law technique and which should be with the usual law.

Conclusion

There is a difference between the usual law techniques used in Indonesia and the omnibus law in terms of the substance that is regulated or loaded, the method of amending the law, and in Indonesia the concept of codification is known, in which the omnibus law and codification have different meanings. There are at least 4 benefits of the omnibus law legislation technique namely: (i) shortening the implementation of the legislation process; (ii) prevent deadlock in discussing the bill in Parliament; (iii) cost efficiency of the legislation process; and (iv) harmonization of arrangements will be maintained. Behind the benefits of the omnibus law technique, it turns out to contain weaknesses ranging from pragmatic and less democratic, limiting the space for participation so as to contradict deliberative democracy, reducing accuracy and caution in its preparation to potentially exceed the provisions in the constitution due to limited participation and lack of caution in discussing.

Opportunities for omnibus law in the Indonesian legislative system in Indonesia are open, bearing in mind that the formation of the omnibus law technique has previously been done even though it is not exactly the same, which relates to Accessing Financial Information for the Interest of Taxation into Law. Besides the opportunities, there are at least 6 (six) major challenges for the adoption of omnibus law in Indonesia, namely: (i) complex Indonesian regulatory issues; (ii) each law whose provisions are changed by the omnibus law has a philosophical basis; (iii) the principle of supremacy of the constitution sets limits on the authority to regulate each type of legislation and regulations; (iv) legal uncertainty due to the dominance of sectional egos among state administrators; (v) the parameters determine when a material must be with omnibus law and when with ordinary law; and (vi) public participation in the formation of laws has been guaranteed at all stages of formation. A number of requirements must be met if the omnibus law is adopted in the legal system in Indonesia, namely the fulfillment of the principles of openness and public participation since the drafting stage, when discussions in the DPR must be done transparently, carefully and unhurriedly, then the substance must be ensured not to be ensured beyond the constitution and continue to accommodate the philosophical aspects of various amended laws

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