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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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THE CONCEPT OF OMNIBUS LAW RELATED TO NORMAL LAW APPLICABLE IN INDONESIA

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ABSTRACT

*All laws and regulations including laws in Indonesia must be in accordance with the concept of the hierarchy of laws and regulations as explained in Law Number 12 of 2011 concerning the Formation of Laws and Regulations which are concepts and paradigms in the formation of laws and regulations. The presence of the omnibus law concept which is a new paradigm of law in Indonesia has been put forward by President Joko Widodo as a development program in the field of law during his period. The reason President Joko Widodo wanted the concept of the omnibus law was because thousands of regulations scattered in various institutions had hampered development. How is the concept of omnibus law related to legal norms in force in Indonesia? Based on the description above, it is necessary to see how the contents of the legal norms in the law with the concept of the omnibus law, namely whether they are general or specific as ordinary laws, if they are specific, not all provisions are revoked but only those that are contradictory. However, if the provisions are general it will become a problem if it is clashed with the principle of *lex specialist derogat legi generalis* (special rules that rule out general rules). Therefore, it must be arranged in a hierarchy of statutory regulations regarding its position so that the concept of the omnibus law is intended as a law that is made to target various objects into one big issue that might be able to repeal or change several laws at once. Thus the law with the concept of the omnibus law made is a new legal model or a new paradigm in legislation in Indonesia. Because of a new paradigm in the laws and regulations in Indonesia, the law with the concept of the omnibus law will change the system of laws and regulations, because the concepts and theories are different from the legal models and legal norms that have prevailed in Indonesia.*

Keywords : *omnibus law, legal norms*

INTRODUCTION

The law made, of course, contains norms or legal norms which are a benchmark or guideline for behavior. The rule of law can also be interpreted as a benchmark or measure or guideline for attitude in life,

and if it is reviewed in terms of its nature, then the rule is the formulation of a view (oordeel) regarding behavior or attitude¹⁰⁵. Therefore, the rule of law is a provision that contains the obligation for people to, in certain social situations, commit certain acts or prohibit certain acts because justice demands that they can, which can be legally enforced¹⁰⁶. Thus, the rule of law or legal norm is a provision or rule created by an authorized institution with a binding and coercive nature.

In addition to the required legal norms, another important requirement to be considered a good law is that the law must be based on the principle of benefits. According to Jeremy Bentham, maximizing happiness and minimizing pains¹⁰⁷. The existence of the principle of benefits means that the law (laws) must be known to everyone, consistent, clear, simple and strictly enforced implementation¹⁰⁸. Thus, the making of these laws aims to protect the interests of the community and also to realize order in social life.

In Indonesia through the national legal system which is a valid law with all its elements that support one another in order to anticipate and overcome problems that arise in social, national and state life based on the Pancasila and the 1945 Constitution of the Republic of Indonesia. that, through the Indonesian legal norms system, the prevailing legal norms are in a multi-tiered and multi-level system as well as in groups, where a norm is always applicable, sourced and based on higher norms and norms that are even higher, and so on until it reaches a basic norm of the state (staatsfundamentalnorm) of the Republic of Indonesia namely Pancasila¹⁰⁹.

As a consequence of the order (hierarchy) of legislation, so that each type of law must be considered material content or legal norms that will be outlined in the law. Each type of law has material content or legal norms that are based on the laws and regulations above in this case the 1945 Constitution. Forming a law certainly requires a good plan to determine the direction in which the law was formed. Forming a law must be carried out based on the principle of establishing a law which covers the clarity of objectives, institutions or officials and the appropriateness of types, hierarchies and material contents that can be implemented and utilized and the results for clarity of the formulation in the articles. Likewise, the formation of laws in Indonesia which are formed by various different institutions, each of which has a function and at the same time different content according to its level, so that the composition, function and material content of the laws and regulations always form a functional relationship between one rule with another¹¹⁰.

All laws and regulations including laws in Indonesia must be in accordance with the concept of the hierarchy of laws and regulations as explained in Law Number 12 of 2011 concerning the Formation of Laws and Regulations which are concepts and paradigms in the formation of laws and regulations. The presence of the omnibus law concept which is a new paradigm of law in Indonesia has been put forward by President Joko Widodo as a development program in the field of law during his period. The reason President Joko Widodo wanted the concept of the omnibus law was because thousands of regulations scattered in various institutions had hampered development. Therefore, to streamline it, it is necessary to make a legal

105. Purnadi Purbacaraka dan Soerjono Soekanto, *Perihal Kaidah Hukum*, (Bandung: Alumni, 1989), p. 8

106. B. Arief Shidarta, "Pembentukan Hukum di Indonesia", Paper presented at the Working Meeting of the DPR RI Special Committee Draft Law on Formation of Legislation, Meeting with Public Opinion with Experts, Wednesday, January 26, 2011, p. 1 as quoted again by Bayu Dwi Anggono, *Perkembangan Pembentukan Undang-undang di Indonesia*, (Jakarta: Konstitusi Press, 2014), p. 1.

107. Jeremy Bentham, *Teori Perundang-undangan, Prinsip-prinsip Hukum Perdata dan Hukum Pidana* (The Theory of Legislation), translated by Nurhadi, MA, (Bandung: Nusamedia, 2010), p. 17.

108. *Ibid.*

109. Maria Farida Indrati, *Ilmu Perundang-undangan, Dasar-Dasar dan Pembentukannya*, (Yogyakarta: Kanisius, 1998), p. 39

110. See Law Number 21 Year 2001 Concerning Special Autonomy in Papua

umbrella with laws characterized by omnibus law. The concept of the Omnibus law in the world of law in Indonesia is still new and in the form of what kind of law will be made.

Omnibus Law as the main vehicle for regulatory regulation emerged when the Omnibus Law method, which was previously not well known in Indonesia, a country with a Continental European legal system, was used in the drafting of the Law (Draft Bill) which became the Priority National Legislation Program in 2020. There two Bills in the 2020 Priority National Legislation Program that use the Omnibus Law method, namely: the Draft Law on Employment (Omnibus Law) proposed by the Government and the Draft Bill on Tax Provisions and Facilities for Strengthening the Economy (Omnibus Law) proposed by the Government¹¹¹. Regulatory reform policy through the implementation of the Omnibus Law in Indonesia is certainly not a rash thing done by the government. Many considerations made by the government why choosing the Omnibus Law method in implementing regulatory reforms that are urgent to do. According to Patrick, if drawn in the Indonesian context is that the omnibus law becomes problematic because it is very difficult to arrange, limits opportunities for debate and oversight, complicates the consultation process, and its implementation is also more difficult and increasingly adds to the complexity of a law itself¹¹².

The concept of the omnibus law differs from the existing legal concept or model, such as the Basic Laws, Organic Laws, Umbrella Laws, codification or legal unification, and also the compilation of laws. The process of forming laws also requires a long time and also the important legal norms contained will not cause problems. The meaning and nature of the law in the concept of the omnibus law is different from the nature and concept of legal norms in existing laws

The Problem

How is the concept of omnibus law related to legal norms in force in Indonesia?

Methods of Research

The research method used is descriptive research with the research approach used is normative descriptive research or it can also be said normative juridical research. According to Philipus M. Hadjon, normative juridical research or normative legal research is research aimed at finding and formulating legal arguments through analysis of the subject matter¹¹³. In the normative legal approach, the law is conceptualized as what is written in the law (law in book) or the law is conceptualized as a rule or norm which is a benchmark for proper human behavior¹¹⁴. According to Lili Rasjidi: “that the original legal research method is a normative legal research method¹¹⁵.” Normative legal research can be used to explain, strengthen, test or reject a theory from existing research. Therefore, “legal research (normatively), namely research on the rule of law itself”, in the formation of legislation characterized by the concept of the omnibus law¹¹⁶. So also from the point of view of its application, this research is a problem focused research, that is the problem

111. DPR, “Program Legislasi Nasional Prioritas Tahun 2020-2024”, <http://www.dpr.go.id/uu/prolegnas>, accessed June 22, 2020

112. <http://kanal24.co.id/read/patrick-keyzer-omnibus-law-menambah-kompleksitas-hukum-indonesia>. downloaded, Monday, June 22, 2020

113. Philipus M. Hadjon dan Tatiek Sri djamiati, *Argumentasi Hukum* (Yogyakarta: Gadjah Mada University press, 2005), p. 3

114. Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Raja Grafindo Persada, 2006), p. 118.

115. Lili Rasjidi dan Liza Sonia Rasjidi, *Monograf: Filsafat Ilmu, Metode Penelitian, Dan Karya Tulis Ilmiah Hukum*, (Bandung, 2009)

116. Kuntana Magnar, *Hubungan Dewan Perwakilan Rakyat (DPR) Dengan Presiden Setelah Perubahan Undang- Undang Dasar (UUD) 1945: Pencarian Bentuk dan Isi*, Disertasi, Universitas Padjadjaran (Bandung, 2006), p. 42.

under study is based on theory or seen the relationship between theory and practice¹¹⁷. The problem in this case is to analyze legally the problem of legal norms in the formation of laws according to the perspective of the omnibus law in Indonesia, which means what and how the concept of the law in the perspective of the omnibus law in Indonesia. Data sources come from laws and regulations, articles, books and websites.

Research Result and Discussion

The implementation of the omnibus law concept in these laws and regulations is more directed to the Anglo-Saxon tradition which is characterized by the Common Law system. Some countries such as America, Canada, and Ireland, he said, have used the omnibus law or omnibus bill approach. This concept is often used by the United States in making regulations. The regulation in this concept was to create a new law to amend several laws at once¹¹⁸. In 1888, the practice of omnibus law first appeared in the United States. The term used is the omnibus bill. The reason is a private agreement related to the separation of two railroad tracks in America. In 1967 the design of this method became popular.

At that time the Minister of Law of the United States, Pierre Trudeau introduced the Criminal Law Amendment Bill. Its contents change criminal law laws and cover many issues.²⁰ In fact, the Omnibus Law is a practice of drafting laws and regulations, which is mostly carried out in countries that adopt a common law system (anglo saxon) such as America, Canada, the United Kingdom, the Philippines and the other. However, this does not rule out the possibility in a country that adopts a civil law (continental) system. Vietnam is a civil law country that successfully implemented the omnibus law in 2016. The results of the study show that it is possible for Vietnam to implement Omnibus Law considering that there are no laws and regulations that prohibit it. In addition, the overlapping of regulations and the length of legislative procedures to amend a regulation were taken into consideration when the Omnibus Law was adopted in Vietnam.

The Omnibus Law that was successfully formed by Vietnam included Law Amending and Supplementing a Number of Articles of the Law on Value Added Tax, the Law on Excise Tax and the Law on Tax Administration, this Law amended, added and revoked several articles contained in the Tax Value Added Law, the Tax Excise Tax Act and the Tax Administration Act. There is also, the Law Amending and Supplementing a Number of Articles of the Law on Taxes that amend, add and revoke some of the articles in the Business Entity Income Tax Act, the Tax Value Added Law, the Tax Royalty Act, the Law Excise Tax Act, and Tax Administration Act, and Export Tax Act.

At the implementation level, the need for implementing Omnibus Law in Indonesia is very urgent because the omnibus law seems to be able to answer the problem of overlapping laws and regulations in Indonesia. According to the government's opinion there are three benefits of implementing the Omnibus Law. First, it eliminates overlaps between laws and regulations. Second, the efficiency of the process of amending or revoking laws and regulations. Third, it eliminates sectoral egos contained in various laws and regulations¹¹⁹. The Omnibus law concept can be used in Indonesia for uniforming central and regional policies in supporting the investment climate. Various efforts to encourage increased investment were carried out by the government, but in the midst of the Fourth Industrial Revolution era, various policies that have been taken by the government to improve the investment climate have not given investors an interest

117. Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normative -Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 1994), p. 5.

118. <https://www.wartaekonomi.co.id/read260634/apa-itu-omnibus-law>, (downloaded, Monday, June 22, 2020).

119. <https://economy.okezone.com/read/2020/01/22/320/2156470/omnibus-law-itu-apa-ini-jawabannya>, (downloaded, Monday, June 22, 2020).

in investing in Indonesia.

One of the causes of investor reluctance to invest in Indonesia is the difficulty of doing business in Indonesia¹²⁰. The last effort made by the government is to increase the ease of doing business in Indonesia with the President's steps to issue Presidential Regulation (Perpres) No. 91 of 2017 concerning the Acceleration of Business Implementation¹²¹. Simplification in terms of business licensing is the main substance in the issuance of Perpres Number 91 of 2017¹²², which then results in a policy breakthrough in the form of Government Regulation Number 24 of 2018 concerning Electronic Integrated Business Licensing Services — hereinafter referred to as Online Single Submission (OSS)¹²³. However, the reality shows that the issuance of Government Regulation Number 24 of 2018, with the simplification of the OSS business process, there are still many obstacles, besides not showing significant outcomes and are still far from expectations.

The drafting of the law with the concept or method of the omnibus law, by regulating many things and various legal objects, then requires a lot of rules or legal norms contained, so that the norms or legal norms will be made into a new draft law. The draft law with the concept of the omnibus law should require a long process of time, because it must follow the process of making laws and regulations as stipulated in Law Number 12 of 2011 concerning Formation of Legislation as amended by Law Number 15 of the Year 2019. Formation of the law with the concept or method of the omnibus law which is now being drafted by the government together with the DPR whose draft has now entered the DPR only requires a few months to become a bill. In accordance with Article 20 of Law Number 12 of 2011 concerning Formation of Regulations and Regulations as amended by Law Number 15 of 2019 namely, paragraph (1) Prolegnas Preparation is carried out by the Parliament and the Government, (2) Prolegnas is determined for the medium term and annual basis based on the priority scale of the establishment of the Draft Law, (3) Formulation and stipulation of medium level Prolegnas is carried out at the beginning of the membership period of the DPR as Prolegnas for a period of 5 (five) years, (4) Medium-term Prolegnas can be evaluated at the end of each year together with the preparation and stipulation of annual priority Prolegnas, (5) Preparation and determination of annual priority Prolegnas as the implementation of medium-term Prolegnas is carried out every year before the stipulation of the Draft Law on the State Revenue and Expenditure Budget.

According to Jimly Asshiddiqie, a general principle that needs to be considered by drafters of the law, is an outline of the policy that will be outlined in the law through a comprehensive and comprehensive outline building; the product of the law must be as clear and useful as possible (as clear and useful as possible); pay attention to the interests of the party to be regulated or who will implement the law (the person or subject who will administer the law); refer to the needs or meet the goals that have been formulated (functional); efficient or avoid cross referencing (cross reference)¹²⁴. In the formation of laws and regulations there must be preparation for academic preparation through academic texts, because academic texts are the results of research or legal studies and other research results on a particular problem that can be scientifically justified regarding the regulation of the problem in a Draft Law, Provincial Regional Regulations, or Regency or City

120. Tempo, "Sulitnya Berinvestasi di Indonesia", <http://www.kolom.tempo.co/read/1143060/sulitnya-berinvestasi-di-indonesia> (accessed June 20, 2020).

121. Indonesia, Peraturan Presiden Nomor 91 Tahun 2017 tentang Percepatan Pelaksanaan Berusaha. Lembaran Negara Republik Indonesia Tahun 2017 Nomor 2010.

122. *ibid*

123. Indonesia, Peraturan Pemerintah Nomor 24 Tahun 2018 tentang Pelayanan Perizinan Berusaha Terintegrasi Secara Elektronik. Lembaran Negara Republik Indonesia Tahun 2018 Nomor 90, Tambahan Lembaran Negara Republik Indonesia Nomor 6215.

124. Jimly Asshiddiqie, *Perihal Undang-Undang*, (Jakarta, Rajawali Pers, 2010), p. 235.

Regional Regulations as a solution to the problems and legal needs of the community¹²⁵.

The current model of Indonesian law is the basic law, organic law, umbrella law and codification or legal unification and legal compilation. If the omnibus law in question is a law created to bring together a large issue or accommodate various aspects of law that may be able to revoke or change several laws at once so that it becomes simpler, then there is a difference with the legal model known in Indonesia. For example, for example, the principal laws referred to here are laws that are the principal or principle in regulating something (still requires implementing regulations). One example is the Basic Agrarian Law which was officially named as Law Number 5 of 1960 concerning Basic Regulations on Basic Agrarian Law. The Basic Agrarian Law is the law governing the basics and provisions for the control, ownership, use and utilization of national agrarian resources in Indonesia. The scope of the law regulates the basic principles and provisions, land, water and space rights as well as land registration, criminal provisions and transitional provisions. The legal norms contained in the main law (the Basic Agrarian Law) regulate agrarian administrative matters, and other more specific legal norms are further regulated by other laws, so that they still require further regulatory norms both through the law and Other regulations with the concept of the omnibus law can lead to the umbrella law (Umbrella Act) because it regulates thoroughly and then has power over other rules. When viewed from the origin of the two models the Act indeed originated in the Anglo Saxon legal system, but tries to find out more in detail about the Umbrella Act (Umbrella Act) in question. The umbrella law is similar or almost the same as the main law, but the main law originates from the Continental European legal system while the umbrella law originates from the Anglo Saxon legal system. The term of the Umbrella Law is expected to be or as a backrest and a touchstone that can cover other Laws that are technically related to the Law.

Laws using the omnibus law method differ from the concepts of codification and legal unification in Indonesia. Codification is a legal accounting in a set of laws in the same material. This codification originates from the civil law system adopted by Continental European countries which was then brought to Indonesia. Furthermore, the codification which characterizes the civil law system was a legal system inspired by Roman law by being written in a collection, codified, and not made by a judge.⁴¹ Codification is a form of law made in writing, which the author (legislative) provides a special form of jurisdiction that contains the formulation of principles made in writing as an operating standard for the provisions in the codification (exclusive operation / exclusive verwerking)¹²⁶.

Problems with the theory of legislation known in Law Number 12 of 2011 concerning Formation of Laws and Regulations as amended by Law Number 15 of 2019. The status of the law with the concept of the omnibus law must be given legitimacy in Law Number 12 of 2011 concerning Formation of Regulations and Regulations as amended by Law Number 15 of 2019. This is, if it does not receive legitimacy according to Law Number 12 of 2011 concerning Formation of Regulations as amended by Law Number 15 of the Year 2019, then the law with the concept of the omnibus law contradicts Law Number 12 of 2011 concerning the Formation of Regulations and Regulations as amended by Law Number 15 of 2019.

Conclusion

Based on the description above, it is necessary to see how the contents of the legal norms in the law with the concept of the omnibus law, namely whether they are general or specific as ordinary laws,

125. Pasal 1 angka 11 Undang-undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan Sebagaimana diubah dengan Undang-undang Nomor 15 Tahun 2019

126. Tim Pengajar Hukum Pidana UI, Position Paper (RKUHP Kodifikasi atau Kompilasi), (Jakarta: Bidang Studi Hukum Pidana UI, 2014), p. 4.

if they are specific, not all provisions are revoked but only those that are contradictory. However, if the provisions are general it will become a problem if it is clashed with the principle of *lex specialist derogat legi generalis* (special rules that rule out general rules). Therefore, it must be arranged in a hierarchy of statutory regulations regarding its position so that the concept of the omnibus law is intended as a law that is made to target various objects into one big issue that might be able to repeal or change several laws at once. Thus the law with the concept of the omnibus law made is a new legal model or a new paradigm in legislation in Indonesia. Because of a new paradigm in the laws and regulations in Indonesia, the law with the concept of the omnibus law will change the system of laws and regulations, because the concepts and theories are different from the legal models and legal norms that have prevailed in Indonesia.

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