

In Indonesia, Hope For The Omnibus Law Method As A Solution To Hyper Regulation

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Abstract

This study aims to describe the expectations of the Omnibus Law Method as a solution to regulatory problems in Indonesia. The research method used is a normative juridical approach with statutory and conceptual approaches. Analytical tools based on the SWOT framework are used to examine primary, secondary, and tertiary sources of law. Due to the overwhelming volume of federal and state laws, the government has chosen to implement sweeping "omnibus" legislation. It's true that rules may be streamlined using the Omnibus approach. One of the goals is the organization of rules, which cannot be achieved if the Formation of Legislation using the Omnibus Law approach is not executed correctly. The success and advantages of the enacted Omnibus Law will determine the future of the method's acceptance in Indonesia's legal system. The regulatory framework is inseparable from the legal underpinnings, apparatus, culture, infrastructure, information technology, and funding that sustain it. The concepts of transparency, caution, and promoting public engagement are essential in Indonesia for applying the Omnibus Law.

I. Introduction

As a country, Indonesia's government is partially based on the civil law system. When it comes to the notion of a "rule of law state," it is not too dissimilar from both the European system, which follows the civil law system and the "Rechtsstaat" concept, and the American system, which follows the common law system and the "rule of law" concept. Indonesia is a constitutional state, which has characteristics such as more formalized written law and legal certainty as its main essence.

The formation of statutory regulations certainly goes through several stages where the process is regulated in the preparation of the formation of statutory regulations. Several series of formation processes consist of the initial stage, namely planning; the next stage is preparation; discussion activities are also included; the next stage is approval or determination; and the last stage is promulgation.

Several steps in the creation process are in line with Indonesian law as outlined in Law Number 12 of 2011, which was most recently revised by Law Number 13 of 2022 about the Second Amendment to Law Number 12 of 2011 on the Formation of Legislation. Even though all types of regulations do not go through the same procedure at each stage of the process, However, each type of legislation has different values, but each has a specific function (Fadli, 2012)¹. As a rule of law country, Indonesia clearly prioritizes the rule of law, which means seeking law according to its place or making efforts to uphold and place law in the highest position. As a result, the development of law in the country is critical for the realization of the nation's ideals, particularly to improve general welfare ².

According Ilham the basic foundation, which is the basic norm of national and state life, namely Pancasila law³.By upholding the values of fairness, economic growth, democratic governance, and respect for individual rights, we are working to fortify the Republic of Indonesia as a unified nation, celebrate its rich cultural variety, and keep our country safe for future generations.

The execution of national legal policy rests on this basis. This is due to the fact that, over time, national development policies will be executed in accordance with the directions set by legal politics. Which policies emerged from theories proposing state intervention through government, the DPR, and other state institutions? Lawmaking, regulation, and development all benefit from state intervention through the state's legal tools.⁴

Legislation is the starting point for encouraging the implementation of national legal policies. In the constitutional system, laws and regulations become the legal basis for the implementation of activities involving the state. The existence of law in the country has a strategic and important place, both in terms of the supremacy of law, the hierarchy of legal norms, and in terms of legal functions in general⁵. Bagir Manan stated that the existence of laws and regulations as a foothold in state

¹ Fadli. (2012). Pembentukan Undang-Undang Yang Mengikuti Perkembangan Masyarakat. *Jurnal Legislasi Indonesia*, 15(01), 49.

² Ilham. (2012). Politik HukumPerundang-Undangan Dalam Upaya Meningkatkan Kualitas Produk Legislasi. *Jurnal Rechts Vinding*, 1(03), 344.

³ *Ibid*

⁴ *Ibid*

⁵ Atok, A. (2015). *Konsep Pembentukan Peraturan Perundang-Undangan*. Malang: Setara Press.

administration and legislative activities plays a very important and strategic role⁶. Legislation is a rule of law in a country that can be easily identified, found, and traced, and the structure and system of statutory regulations are clearer so that they can be studied and tested both formally and substantively, as well as the formation and development can be planned. This character is, of course, critical for a developing country, including the development of a new legal system that meets the needs and development of society.

In Indonesia itself, legislation or the process of forming legislation during Joko Widodo's presidency set aside some household chores at the start of his term. starting with the increasing number of overlapping rules and regulations, decreasing community participation, and ending with promises of institutional reforms to overcome regulatory mechanisms that have not been implemented⁷.

Around 10,180 decisions were made under the Jokowi administration in November 2019, according to the Indonesian Center for Legal and Political Research (PSHK). There are 131 laws, 526 decrees, 839 presidential decrees, and 8,684 ministerial decrees included in the details. According to available statistics, there were a total of 35,901 rules enacted between 2000 and 2017, the majority of which (14.2%) were issued at the regional level, followed by (11.8%) at the ministerial level. The third category includes as many as 3,163 rules pertaining to non-ministerial entities and their regulation. Because of this, the amount may not reflect the standards' quality.

This can be seen in the many laws and regulations that emerge from standard evaluation procedures in the judiciary⁸. The situation becomes even more complicated when legal and regulatory data are found to be inconsistent from one data controller to another. The situation is further complicated when legal and regulatory data are found to be inconsistent between data controllers⁹.

In addition, the arrangement of local laws and regulations that are not systematic makes development and investment stagnant, inefficient, and ineffective. The central government revoked 3,143 regulations in 2016, where these regulations

⁶ Bagir Manan. (1992). *Dasar-Dasar Perundang-Undangan Indonesia*. Jakarta: Ind-Hill.

⁷ Mardatila, A. (30 Oktober 2019). Lima Langkah Penataan Regulasi Untuk Pemerintahan Jokowi Jilid II. (Hukum Online). diakses <https://www.hukumonline.com/berita/a/lima-langkah-penataan-regulasi-untuk-pemerintahan-jokowi-jilid-ii-lt5db95c405cce2>.

⁸ Chandranegara, (2019). Bentuk-Bentuk Perampangan dan Harmonisasi Regulasi. *Jurnal Hukum Ius Quia Iustum*, 26(3), 435.

⁹ Setiadi, W. (2022). *Simplifikasi Regulasi Melalui Pendekatan Omnibus Law: Suatu Keniscayaan* (Orasi Ilmiah). Jakarta: Universitas Pembangunan Nasional.

were regional regulations at both the provincial and district/city levels that were considered to have generated investment in the regions¹⁰.

Legislation is an integral part or subsystem of the state legal system¹¹. If the laws and regulations do not have linkages and harmony, it will result in overlapping, so that the objectives of the legislation are not achieved (Nugroho, 2009). So to tolerate this problem, President Joko Widodo proposed the draft Omnibus Law as an alternative solution to problems of non-synchronization and overlap, which have an impact on the irrelevance between regulations so that it hinders program planning to accelerate development and improve people's welfare¹².

The draft idea of the Omnibus Law is a new legal paradigm in Indonesia, proposed by President Joko Widodo as a system development program in the field of law. President Joko Widodo's reason for wanting to introduce the concept of the Omnibus Law is because there are thousands of regulations circulating in various institutions that impede development. In order to be effective, it is necessary to create a legal umbrella with a law, which in this case uses the "omnibus law" method.

The draft Omnibus Law in the Indonesian legal community is still relatively new, and what kind of law will be made? In forming the draft Omnibus Law, it has raised pros and cons among the public and even different views from legal experts¹³. With the enactment of Law 13 of 2022, one of the contents of which regulates the Omnibus Law method for the formation of laws and regulations in Indonesia, the question arises as to whether the Omnibus Law can be a solution to the problem of the many regulations in Indonesia.

2. Research Method

This study uses normative juridical research to examine library law materials, both primary and secondary, and tertiary legal materials, to analyze and answer problems that are the focus or object of research. According Soekanto states that normative juridical research includes legal research on the principles of legal principles, legal order, vertical and horizontal synchronization, comparative law, and legal history¹⁴. The research methodology employed is legislation, which

¹⁰ Irawan, A. (4 Oktober 2022). Omnibus Law dan Obesitas Peraturan Perundang-Undangan. (Media Indonesia). diakses <https://mediaindonesia.com/read/detail/272650-omnibus-law-dan-obesitas-peraturan-perundangan>.

¹¹ *Ibid*, page 2

¹² *Ibid*, page 3

¹³ Sodikin. (2020). Paradigma Undang-Undang Dengan Konsep Omnibus Law Berkaitan Dengan Norma Hukum Yang Berlaku Di Indonesia. *Jurnal Rechts Vinding*, 9(1), 145.

¹⁴ Soekanto, S. (1986). *Pengantar Penelitian Hukum*, Jakarta: UI Press.

examines laws and regulations as well as regulations associated with current regulatory issues, and a conceptual approach, which can provide interesting objects and characters from both a practical and a knowledge standpoint¹⁵. The legal materials used are primary, secondary, and tertiary legal materials with analysis techniques using the SWOT method, namely, strategic planning techniques that are useful for evaluating strengths and weaknesses, opportunities, and threats in a study.

3. Results and Discussion

The Process of Forming Legislation in Indonesia

It is known that the State of Indonesia adheres to the Continental European or Civil Law legal system, whose system is quoted as originating from the Dutch state, which once colonized and established a regulatory system in this country. The uniqueness of this legal system is that there is a codification system, such as judges having no attachment to the president, and the judicial system is inquisitorial, or a judicial institution, as in the settlement of a case through a decision under the control of a judge. In addition, the hallmark of this legal system is the division between civil law and public law. The characteristics of codification are enforced with the aim of forming legal uniformity nationally amidst the diversity of existing laws¹⁶.

The rule of law theory has become an ideology adhered to in the governance system in Indonesia. The concept of "rule of law" is inseparable from the civil law system and the concept of "rule of law," which led to the Anglo-Saxons. Indonesia, as a rule of law country that is more inclined towards the civil law system, has the characteristics of a law that is formalized in written form through laws based on legal certainty as its main component¹⁷. Even though Indonesia adopted a legal system from the Netherlands, the culture in Indonesia is very different from the culture in Holland. As a result, the development of law in the archipelago must be tailored to the customs conditions in their home country. This means that the system has not yet been strongly indicated in the character of the people themselves, which is different from other countries that recognize

¹⁵ Ibrahim, J. (2007). *Teori dan Metodologi Penelitian Hukum*. Malang: Bayumedia Publishing.

¹⁶ Qamar, N. (2010). *Perbandingan Hukum dan Peradilan Civil Law System dan Common Law System*. Makassar: Refleksi.

¹⁷ Fadli. (2012). Pembentukan Undang-Undang Yang Mengikuti Perkembangan Masyarakat. *Jurnal Legislasi Indonesia*, 15(01), 49.

that this custom was enforced by the Dutch, British, and Japanese colonial governments¹⁸.

The emphasis that Indonesia is a state based on law is contained in Article 1(3) of the Constitution of the Republic of Indonesia (1945 Constitution), which emphasizes that Indonesian government and state administration activities are based on regulatory and constitutional mechanisms to regulate society¹⁹.

According to Bagir Manan²⁰, The term "laws and regulations" refers to a body of written rules enacted by legitimate governmental entities or authorities in line with established protocols. Planning, writing, debating, validating or enacting, and enacting are all parts of the legislative procedure.²¹

The process through which laws and regulations are drafted is itself governed by established rules. Article 1, paragraph 1 of Legislation No. 12 of 2011 on the Formation of Legislation defines "Formation of a Law" as the process of ratifying a law, which encompasses the phases of preparing for, creating, debating, launching, deciding upon, and finally enacting a law. A law is a statute or rule that has been approved by the President and enacted by the House of Representatives. Bayu Dwi Anggono claims that the fundamental purpose of legislation is to establish social order through the establishment of rules that everyone must follow. In Sri Haringsih's view, the first step in assembling these legal provisions pertaining to incorporation is to identify the sort of legal provisions established.

Bayu Dwi Anggono explained that in determining the type of legislation to be formed, several reasons can be identified as follows²²:

- a. Every legal regulation must have a clear legal basis;
- b. Not all legal regulations can be used as a legal basis; only regulations that have the same or higher priority
- c. Only applicable regulations can be used as a legal basis;
- d. An order that can be canceled cannot be used as a legal basis;
- e. Each type of legislation has a certain content that differs between the different types of legislation.

¹⁸ Ramadhan, C. (2018). Konvergensi Civil Law dan Common Law di Indonesia dalam Penemuan dan Pembentukan Hukum. *Jurnal Mimbar Hukum*, 30(2), 216.

¹⁹ Chandra, M. (2022). Tinjauan Yuridis Pembentukan Peraturan Perundang-undangan yang Sistematis, Harmonis dan Terpadu di Indonesia. *Jurnal Legislasi Indonesia*, 19(1), 5

²⁰ Bagir Manan. (1987). *Peranan Peraturan Perundang-Undangan Dalam Pembinaan Hukum Nasional*. Bandung: Armico.

²¹ Adhisatya & Firdaus. (2021). Penerapan Omnibus Law Dalam Sistem Peraturan Perundang-Undangan Indonesia. *Jurnal Res Publica*, 5(3), 285.

²² Putra, A. (2020). Penerapan Omnibus Law dalam Upaya Reformasi Regulasi. *Jurnal Legislasi Indonesia*, 17(1), 4.

Based on Articles 10 and 11 of Law Number 12 of 2011, the contents specifically regulate a number of types of legal provisions, namely²³:

- a. The Constitution of the Republic of Indonesia, in effect since 1945, includes the following provisions:
- b. Law-restricted Legislation b.
- c. Agreements with other countries that have been ratified;
- d. Implementation of Constitutional Court Opinions
- e. cater to societal requirements for law.

Meanwhile, legal provisions, such as executive orders (Eo) and presidential regulations (Perpres), contain content that must be enforced or required by law. What's more, the content of a presidential regulation can be utilized to enforce laws or rein in the power of the state. This follows from what is stated in Articles 12 and 13 of Law No. 12 of 2011.

Regarding Article 43 paragraph (3) of Law Number 15 of 2019, academic texts must be attached to the draft of a new law submitted by the DPR, President, or DPD. Paragraph 1 of Article 45 of the Law states that draft laws, both originating from the People's Legislative Assembly and the President, and draft laws submitted by the DPD to the DPR, are prepared based on the Prolegnas. The above provisions mean that new academic papers and draft laws are submitted at the same time in the meeting of the national legislature²⁴

Other laws, specifically regional regulations, govern the content and types of legislation. Based on Article 14 of Law Number 12 of 2011, the material content of provincial regulations and regional regulations of regency and city governments has content in the context of regulating regional government autonomy and affairs, as well as paying attention to special conditions of the regions or the development of higher laws and regulations. In an ideal world, the formulation of laws and regulations would be evaluated and developed based on their compatibility with the content material.

Every constitutional state is essentially influenced by two important factors, namely:

- a. The real element, because of its concrete nature, originates from the environment in which humans live as well as from traditions or characteristics produced by humans by using different species;

²³ *Ibid*, Page 6

²⁴ Alhakim, A. Analisis Pembentukan Undang-Undang Cipta Kerja Pada Tahapan Perencanaan dan Penyusunan berdasarkan Undang-Undang Pembentukan Peraturan Perundang-Undangan. *Jurnal UIB*, 1(1), 292.

- b. Because of its abstract nature, the diil element comes from the human itself in the form of reason, thoughts, and feelings²⁵.

These two elements can also be described as legal principles. The principle is essentially a general proposition that is formulated in general without proposing a concrete way to implement it and then put into action to become the appropriate guide for that action²⁶.

Laws and regulations should be founded on a variety of guiding principles, such as the concepts of legal clarity, equality before the law, and case-by-case enforcement. According to A Hamid S. Atamim, rules and laws may be split down into abstract concepts that serve certain purposes. Among them are the principles of suitable organs and institutions, conformity with the principles of Indonesian law, the necessity for regulation, application, proper content material, recognition, and a detailed material principle.²⁷

The purpose of law is to establish a system of rules and norms that promotes societal harmony and stability. All societal arrangements must be consistent with and not violate already in place laws. Justice in community is made possible by the rule of law, which serves to maintain a stable equilibrium between individuals' rights and responsibilities as members of society. Jeremy Bentham made the observation that a law is not a law unless it provides the greatest benefit to the largest number of people possible.²⁸

Expectations of the Omnibus Law as a Solution to Regulatory Problems in Indonesia

The draft government regulation, namely the Omnibus Law, is a new idea used in legislative practice in Indonesia. In addition, this method is known as the "sweeping law" because it can overthrow several legal principles in one regulation. which the system is predicted to be able to minimize risks that can harm the interests of the state and can keep up with technological and cultural developments²⁹.

The omnibus bill was originally proposed by Sofyan Djalil. He compared the notion of the Omnibus Law to the phrase "omnibus bill," which is frequently used in drafting rules in various nations that adhere to the common law system, one

²⁵ Abu Daud & Abu Bakar. (2013). *Asas-Asas Hukum Tata Negara*. Jakarta: Ghalia Indonesia.

²⁶ The Liang Gie. (2007). *Teori-Teori Keadilan*. Jakarta: Penerbit Super.

²⁷ Busroh, F. (2017). Konseptualitas Omnibus Law dalam Menyelesaikan Permasalahan Regulasi Pertanahan. *Jurnal Arena Hukum*, 10(2). 230.

²⁸ Ali, A. (2007) *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence)*. Jakarta: Kencana.

²⁹ Prabowo, A. (2020). Politik Hukum Omnibus Law. *Jurnal Pamator*, 13(1), 4.

of which being the United States of America. In this proposed government rule, the goal is to alter many regulations all at once by passing a new statute.³⁰

There has been much discussion regarding the term "omnibus law," which is a concept of a law (UU) designed to transfer some values so that they become simpler, which could revoke or change several laws at once³¹. In research conducted by Bayu Dwi Anggono on 239 laws during the 1999–2012 period, 14 laws were found whose substance was not the substance of the law³². The essence of the discussion process and the concept of forming a law from the government and the DPR can be evaluated to see if they are in accordance with the content material. Of course, this has the potential to occur in the formation of laws through the concept of the omnibus law. Although the value of the laws formed through this concept is to revise or repeal many laws.

The Ministry of Law and Human Rights, through its regional offices (kanwil), and the Ministry of Home Affairs, as the supervisor of regional administration, have overlapping but often competing responsibilities in the debate process during the creation of regional rules. The two groups came to the conclusion that they could set joint regional standards. For example, Ministry of Home Affairs Legislative Drafters sought the deletion of the Permenkumham in letter number 180/7182/SJ in response to Minister of Law and Human Rights Regulation No. 22 of 2018 about Harmonization of Draft Laws and Regulations Forme in the Regions.³³ In the formation of government regulations, it certainly requires formulations that are in accordance with the problem of delegating authority from higher regulations to lower regulations. Authority can be attributed to a certain person or group, or it can be delegated to another, both of which can lead to the creation of laws and regulations. The process by which a state institution or other government institution is given the power to make laws and regulations is called "attribution authority," and it can occur either when the power to do so already exists in the constitution or when it is made to exist by a new law.³⁴

³⁰ Dahwil, A. (2022). Undang-Undang Cipta Kerja Dalam Perspektif Pemikiran Philippe Nonet and Philip Selznick Mengenai Hukum Konservatif. *Jurnal Sol Justicia*, 3(2), 169.

³¹ Sukandar, C. (8 November 2022). Apa Itu Omnibus Law?. (Warta Ekonomi). diakses <https://wartaekonomi.co.id/read260634/apa-itu-omnibus-law>.

³² Anggon, B. (2019). *Kajian Reformasi Regulasi di Indonesia: Pokok Permasalahan dan Strategi Penanganannya*. Jakarta: PSHK.

³³ Sahbani, A. (2 November 2019). Permenkumham Harmonisasi Peraturan Dinilai Konflik dengan UU (Hukum Online) diakses <https://www.hukumonline.com/berita/a/permenkumham-harmonisasi-peraturan-dinilai-konflik-dengan-uu-lt5bdc39c5d3a98>.

³⁴ Indrati, M (2007). *Ilmu Perundang-Undangan Proses dan Teknik Pembentukannya*. Yogyakarta: Kanisius.

During the implementation of deliberations on laws, they always delegate authority directly to ministers or heads of institutions or regional governments to implement laws and regulate their implementation. There are a lot of rules that aren't always in sync with one another since ministers or heads of institutions or regional governments have attribution or delegation power from the law to apply the law and its implementing regulations.

Several different kinds of statutory rules issued by various state agencies and authorized individuals are defined in Article 8, paragraph 1 of Law 12 of 2011. It is consistent with Maria Farida Indratiti's theory that not all state institutions or officials have the authority to form regulations that are general in nature and apply externally as statutory regulations if one looks into this matter more deeply based on the functions and authorities of the institutions or officials formulated therein.³⁵

The President, as the highest authority in the country, will once again be responsible for carrying out the legislation as written in the proposed omnibus bill. The President's oversight of the NSPK will eliminate sectoral egos, coordinate the enforcement of authority and uniform laws, and strengthen authority. The president is in charge of making plans for carrying out the legislation and NSPK. An authority on constitutional law, Refly Harun, has deemed the omnibus bill instantly executable on the grounds that its formation of streamlined and harmonized regulation is extremely excellent. However, depending on work between ministries might waste quite a bit of time, therefore it's important to organize a specific team to examine which rules need harmonization, such as being partially or entirely deleted.³⁶

Unfortunately, the draft Omnibus Law only addresses one side of the problem – a glut of regulations – while ignoring the other side, which involves the continued existence of issues like incoherence, duplication, inappropriate content, and the inflated egos of various sectors within the institutions that are currently being formed. The development of law and the establishment of legal certainty in Indonesia depend critically on the harmonization of laws and regulations. Making a law with the concept of an omnibus law, however, will necessitate extensive research and the participation of numerous parties for the sake of transparency in its formation and the avoidance of problems and harm to numerous individuals.³⁷

³⁵ *Ibid*

³⁶ Fitryantica, A. (2019). Harmonisasi Peraturan Perundang-Undangan Indonesia Melalui Konsep Omnibus Law. *Jurnal Gema Keadilan*, 6(3), 303.

³⁷ Hayati, Warjiyati & Muwahid, Analisis Yuridis Konsep Omnibus Law Dalam Harmonisasi Peraturan Perundang- Undangan Di Indonesia. *Jurnal Hukum Samudera Keadilan*, 16(1), 1.

4. Conclusion (bold, 14 pt)

The idea of legislating is to make individuals' lives more difficult by expressing governmental policies via the establishment of legally binding norms. Planning, writing, debating, ratifying or stipulating, and promulgating are all steps in the process by which government rules are created. Law No. 12 of 2011 rigorously governed the drafting of these rules and regulations, and Law No. 13 of 2022 was the most recent amendment. disputes the constitutionality of Amendment Two to 2011's Law No. 12 on the General Assembly. The integration of the Omnibus Law Method in the formulation of statutory regulations is a key component of the second reform to the formation of statutory regulations. Non-aligned and overlapping regulations have an effect on regulatory disharmony, slow down the design of rapid growth programs, and prevent improvements in people's welfare, and can even prevent international investors from entering the Indonesian market. One of the government regulations in the development program in the area of law where many regulations circulated in several institutions slowing down development progress was the notion of creating an Omnibus Law, which was specifically stated by President Joko Widodo. A legal umbrella including laws with values indicative of an omnibus legislation is thus required to enhance its efficacy. In order to speed up the implementation of these laws, many see the omnibus bill as a great tool for creating simplified and unified policies, as opposed to relying on inter-ministerial collaboration. However, making this happen requires a special team in addition to analyzing what regulations need to be harmonized, partially removed, or completely removed. Many people believe that the Omnibus Law is a viable solution to the issue of excessive regulation. However, regulatory issues are not the only ones to be concerned about; there are many others, such as disharmony, overlap, improper content material, and the sectoral ego of the emerging organization. Making a legislation with the notion of an omnibus law, however, will need extensive research and the participation of many parties for the purpose of openness in its construction and the avoidance of issues and harm to a wide range of people.

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