Omnibus Law Method and Fast-track Legislation Method: A Degradation to Social Justice Value?

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Abstract

This research is dedicated to the examination of the legislative processes known as Omnibus Law and fast-track legislation, with a specific focus on their alignment with the concept of social justice, as articulated in the fifth principle of Pancasila. The study employs a normative research approach, employing statutory analysis and documentary research techniques, utilizing legal documents such as Law Number 12 of 2011 regarding the Establishment of Laws, Law Number 11 of 2020 on Job Creation, and Law Number 3 of 2022 concerning State Capital as its primary sources. The analysis is conducted using qualitative methods, presenting data in a prescriptive manner. The findings of this study indicate that the Omnibus Law framework has been formally incorporated in the Second Amendment to Law Number 12 of 2011 regarding the Establishment of Laws. In contrast, the fast-track legislative process lacks established legal procedures and indicators for law formation, with its constitutional basis being found in the creation of Government Regulations in Lieu of Laws (Perppu). The legislative process is intrinsically linked to the concept of social justice, as its fundamental purpose is to safeguard human rights, in accordance with the principles of Pancasila and the 1945 Constitution.

1. Introduction

The contemporary landscape of legislative processes has witnessed rapid evolution, necessitating inevitable modifications in the approaches employed for their formation.¹ The swift pace of societal changes also demands that the House of Representatives (Dewan Perwakilan Rakyat/DPR) adapt its approach to the expedited formulation of laws.² However, this adaptation should not neglect the fundamental

² Miroslav Čellár, “Fast-Track Legislative Procedure During the COVID–19 Pandemic in Slovak
principles that underlie the creation of sound and effective legislation. During President Joko Widodo's tenure, a number of controversial laws emerged due to the relatively expedited nature of the legislative discussions. Two of the laws currently under discussion during this period were Law Number 11 of 2020 concerning Job Creation (Undang-Undang Cipta Kerja/UU CK) and Law Number 3 of 2022 concerning State Capital (Undang-Undang Ibu Kota Negara/UU IKN).

In 2020, the enactment of Law Number 11 of 2020, which is also known as the Job Creation Law (Undang-Undang Cipta Kerja/UU CK), followed the Omnibus Law system. The UU CK was introduced in response to the complexities of the regulatory framework, particularly in the realms of investment and environmental regulations. Hence, it was imperative to streamline and simplify the multitude of overlapping regulations in these areas. Nevertheless, the law sparked significant controversy due to claims of a lack of transparency in its public deliberation process involving constituents of the House of Representatives (DPR). This contentious process took place amidst the backdrop of the COVID-19 pandemic, which had a severe impact on the Indonesian economy. The expeditious enactment of the law was alleged to have bypassed a thorough deliberative process and, instead, appeared to be driven by political motives serving specific vested interests.

While the matter of the UU CK was still unresolved, two years later, the UU IKN was introduced. Once again, this legislation generated controversy due to its remarkably swift deliberation, which was completed in approximately 40 days, much faster than...
the UU CK which took 167 days. The rapid development of these two laws led to public concerns regarding their adherence to the stages outlined in Law Number 12 of 2011 concerning the Establishment of Laws (Undang-Undang tentang Pembentukan Peraturan Perundang-undangan/UU P3) based on principles of proper legislative procedure. Furthermore, the status of local governance under the new state capital authority body raised additional questions, as it appeared to be at odds with the principles of regional autonomy. The form of authority body of the new state capital even violated Articles 18 and 18B of the 1945 Constitution.

Several studies on the establishment of the law using the Omnibus Law and fast-track legislation method have been done before, one of which is by Bayu Dwi Anggono entitled *Omnibus Law as a Technique for Formation of Law: Opportunities for Adoption and Its Challenges in Indonesia’s Legislation System*. He revealed that Indonesia applied the Omnibus Law method which has the meaning of legal codification, even though its application was different from the countries with a Common Law system. Its advantages are the effectiveness of the budget in the formation of legislation, time efficiency, and harmonizing regulations. However, the drawbacks are restrictions on democratic space, lack of public participation, or even potential violations of the constitution.

Research related to fast-track legislation methods written by Ibnu Sina Chandranegara entitled *Adopting Fast-track legislation Procedure for Presidential Legislative Power*. In this article, a comparative analysis was undertaken to examine the use of fast-track legislation methods in the United States, the United Kingdom, France, New Zealand, Colombia, and Ecuador. The study's conclusion highlighted the importance of a proactive role for the President as the head of state in the legislative process, serving as a counterbalance to the legislative branch's power. Furthermore, it emphasized the need to restrict the application of the fast-track method to a select number of regulations, rather than making it applicable to all types of laws. From a legal perspective, it was emphasized that in Indonesia, the fast-track method is constitutionally limited to Government Regulations in Lieu of Laws (Peraturan Pemerintah Pengganti Undang-Undang/Perppu) and laws addressing emergency situations or compelling crises, as stipulated by the Constitution.

Research on the synchronization between the method of forming Omnibus Law

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and fast-track legislation was conducted by Iwan et al. entitled *The Omnibus Law on Job Creation and Pancasila as the Legal Ideology in Indonesia.*\(^{16}\) The article concluded that the formation of the Omnibus Law has no legal standing because it was inappropriate with the Constitution. Juridically, all types of laws and regulations in any form should be based on Pancasila and the 1945 Constitution, including the Omnibus Law. Because Pancasila was the ideology and life philosophy of the Indonesian people, it becomes an obligation in forming laws to make Pancasila the source of all sources of law.

The issue at hand revolves around whether the mechanisms for creating laws through the Omnibus Law method and fast-track method were adequately regulated within the existing legal framework. Furthermore, questions arise concerning whether these methods are in compliance with the principles of Pancasila, particularly its social justice value, and the mandates outlined in the 1945 Constitution. This study seeks to provide clarifications regarding the application of the Omnibus Law and fast-track legislation methods in the legislative process and to conduct an analysis of both methods with respect to their alignment with the social justice value as mandated by the 1945 Constitution and the fifth principle of Pancasila.

2. Method

This research was conducted using normative legal research methods or doctrinal research,\(^{17}\) through a statutory approach and documentary studies. The primary legal materials used in this study encompass fundamental legal documents, including Law Number 12 of 2011 concerning the Establishment of Laws (UU P3), which has been amended by Law Number 15 of 2019 and Law Number 13 of 2022, along with Law Number 11 of 2020 concerning Job Creation (UU CK), and Law Number 3 of 2022 concerning the State Capital (UU IKN). Secondary legal materials were gathered through documentary research and consist of Constitutional Court verdicts, relevant literature, and journal articles. Tertiary legal materials were also consulted, such as legal dictionaries like Black's Law Dictionary, to aid in the understanding of terminology related to the Omnibus Law method and fast-track legislation. The chosen methodology for this study is qualitative, which enables a detailed and objective exploration of legal facts and a thorough assessment of legislative matters.\(^{18}\) The research results are presented prescriptively to provide arguments related to the truth of these legal facts.\(^{19}\)

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3. Discussion and Analysis

3.1. Omnibus Law Method

The omnibus term came from a Latin word called omni which means all or every. It also means as a whole or encompassing all types, and -bus which represents public transportation that can carry many passengers. This word is usually paired with the word law or bill. According to Black’s Law Dictionary 11th edition, Omnibus bill means, In legislative practice, a bill including in one act various separate and distinct matters, and particularly one joining some different subjects in one measure in such a way as to compel the executive authority to accept provisions which he does not approve or else defeat the whole enactment. It can be concluded that Omnibus Law does not mean requiring the legislature to make this law from scratch, but they also can codify laws by adding new content material, changing old provisions, or revoking previous regulations. Thus, Omnibus Law is defined as a method or concept of forming laws by combining several regulations that have different substances into a ledger of legislation or a codified law, to harmonize and synchronize several multisectoral regulations.

The Omnibus Law method is predicted to be one of the revolutionary methods in the history of the law-making process in Indonesia. Omnibus Law is a method of forming laws adopted from countries with a Common Law system, not Civil Law as applied in Indonesia. Prof. Zainal Arifin Mochtar said that the establishment of the UU CK using the Omnibus Law method is an example of the current dictatorship of the Indonesian government. The legislature and the government should have prepared the regulations of the omnibus method before its establishment, not after it. If the legislature does this, it could be violating the 1945 Constitution. The main reason for the establishment of the Omnibus Law is because of unsynchronized regulations at both the central and regional levels, so it is necessary to regulate in a law that is codified, especially in the fields of investment, employment, environment, agrarian and spatial planning, also the

health sector. However, regarding the Omnibus Law method, which at the beginning of its formation had not been regulated in law, the method can be stated to be unconstitutional.

Normatively, a method of forming laws should first be discussed and outlined in an amendment to the UU P3, after which an Omnibus Law product is outlined according to the provisions of the UU P3. In 2019, there was an amendment to the UU P3 through Law Number 15 of 2019, but the law did not contain a single provision on the Omnibus Law method. This reason became the formal reason for a judicial review to Constitutional Court. Through Verdict Number 91/PUU-XVIII/2020, the Omnibus Law on Job Creation was declared conditionally unconstitutional, in other words, contrary to the Constitution, and formally flawed in its formation. Because of this verdict, it is consequently necessary to make changes or additions to the Omnibus Law method in the UU P3.

The introduction of provisions related to the Omnibus Law method occurred subsequent to the passage of Law Number 13 of 2022, which pertains to the Second Amendment of Law Number 12 of 2011 regarding the Establishment of Laws (UU P3). These modifications are outlined in the seventh section, specifically addressing the Planning of Laws employing the Omnibus Method. Article 64 of this legislation, as articulated in paragraph (1b), defines the omnibus method as a means of formulating laws:

a. containing new material;
b. changing material that has a connection and/or legal needs regulated in various laws of the same type and hierarchy; and/or
c. revoking laws of the same type and hierarchy, by combining them into one law to achieve certain objectives.

While the inclusion of the Omnibus Law method in the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws (UU P3) may have come at a later stage, it was prompted by a judicial review of the law granted by the Constitutional Court. This demonstrates that, at the very least, the House of Representatives (DPR) acknowledged and respected Verdict Number 91/PUU-XVIII/2020. The subsequent amendments made to UU P3 can be seen as a form of accountability for any shortcomings in the initial formation of the Omnibus Law.

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Omnibus Law was not solely concerned with the consolidation of multiple laws into one or the simplification of regulations; it also aimed to ensure that the legislative process itself adheres to the principles of justice, legal certainty, and the welfare of society. Naturally, the Omnibus Law is not prohibited in the law-making process, but procedurally it has to meet the conditions on the principles of forming good laws as stipulated in the 1945 Constitution. The formation of laws and principles according to Article 5 of UU P3 include:

- clarity of purpose;
- appropriate forming institutions or officials;
- compatibility between types, hierarchies, and material;
- implementable;
- usefulness and efficiency;
- clarity of formulation; and
- openness principle.

### 3.2. Fast-track Legislation Method

The creation of the Job Creation Law (UU CK) employed a combination of both methods simultaneously, incorporating the Omnibus Law approach along with the fast-track legislative method, the fast-track legislative method is a means of expeditiously, effectively, and efficiently crafting laws within a relatively brief timeframe. However, the fast-track legislation method, which is unfamiliar in Indonesia, was applied recently at the time of the ratification of the Omnibus Law on UU CK and UU IKN, in the 2019 – 2022 period of President Joko Widodo’s second term. Due to the economic conditions of the Indonesian nation, which is still recovering after the Covid-19 pandemic, the government has passed laws that have potentially injured the rights of its citizens.

DPR claims that the formation of laws in present has made significant progress when compared to the pre-reform era, moreover with the era of globalization that demands rapid changes in all aspects of human life, encourage state institutions to change the way they form laws, and even amend the constitution. Therefore, a special
method is necessary for forming laws through an effective and efficient mechanism that does not ignore the principles in the formation of laws.\textsuperscript{38} Both Omnibus Law and fast-track legislation methods are special because they have not been arranged in the constitution, nor UU P3 yet.

The establishment of laws should be discussed transparently and carefully so that they are in line with the will and needs of society.\textsuperscript{39} As constituents of the DPR, citizens have the right to know about the transparent legislative process, as well as their right to be heard as input and criticism of the entire legislative process.\textsuperscript{40} Examples of laws that adopt the fast-track legislation method include:

1. Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission;
2. Law Number 3 of 2020 concerning Amendment of Law Number 4 of 2009 concerning Mineral and Coal Mining;
3. Law Number 7 of 2020 concerning the Third Amendment of Law Number 24 Tahun 2003 concerning the Constitutional Court;
4. Law Number 11 of 2020 concerning Job Creation; and
5. Law Number 3 of 2022 concerning State Capital.

The fundamental issue about fast-track legislation, apart from not being regulated in the law yet, is that there is no specific standard on how or how long the law is made, and whether feasible or not according to the conditions if a law is formed through the fast-track method.\textsuperscript{41} National emergency conditions such as the Covid-19 pandemic can be used as a rational reason, even though the move to form laws on a fast-track method can be declared unconstitutional.\textsuperscript{42}

For instance, several countries, including the United Kingdom, the United States, Slovakia, and Colombia, have successfully implemented the fast-track legislative method and can serve as examples for potential adoption in Indonesia. In the United Kingdom, the criteria for a bill to be considered for the fast-track method are based on emergency situations, such as the prevention of terrorist activities, addressing economic crises, enhancing existing laws, implementing decisions of the Constitutional Court, budgetary adjustments, or maintaining peace within the Commonwealth nations,

\textsuperscript{41} Aryanto, Harijanti, and Susanto, “Menggagas Model Fast-Track Legislation Dalam Sistem Pembentukan Undang-Undang Di Indonesia.”
including Scotland, Wales, and Northern Ireland.\textsuperscript{43}

In the United States, the fast-track legislative method was employed by an institution known as the House Rules and Manual, which is a component of the House of Representatives. The criteria for the formation of bills using the fast-track method are typically rooted in objectives that are associated with specific time constraints.\textsuperscript{44}

In Slovakia, the fast-track procedure was executed under the authority of the president, who serves as the head of state. This was achieved by the president submitting a veto to the legislature on the grounds of national emergencies that pose a threat to the integrity of the state. The president would then present a draft of laws to the legislature, which would be collectively deliberated upon within a timeframe of no more than thirty days.\textsuperscript{45}

In Colombia, the fast-track legislation is governed by the constitution, specifically outlined in the transitional article of Legislative Act No. 1 of 2016. The fast-track mechanism is initiated through the executive branch, which can request the legislature to expedite the deliberation of a proposed law. However, this mechanism can only be employed once for a single law within a specified timeframe.\textsuperscript{46}

In Indonesia, the fast-track legislative procedure is normatively applied to the formation of Government Regulations in Lieu of Laws (Peraturan Pemerintah Pengganti Undang-Undang/Perppu), as articulated in Article 22, verse (1) of the 1945 Constitution. This implies that the conventional process of drafting laws is exclusively within the jurisdiction of the legislature, and it follows a sequence of stages as outlined in Law Number 12 of 2011 regarding the Establishment of Laws (UU P3). These stages encompass planning, drafting, discussion, ratification, and enactment. In the case of Perppu, the formation process is limited to the drafting of Perppu and its promulgation, as specified in Articles 52 and 82 of UU P3.

The Government Regulations In lieu of Laws (Peraturan Pemerintah Pengganti Undang-Undang/Perppu) are indeed considered hierarchically equal to regular laws, as per Article 7 of Law Number 12 of 2011 regarding the Establishment of Laws (UU P3). However, it's important to note that the Perppu doesn't inherently provide a legal basis for the fast-track legislative method. The issue arises from the normative incompatibility between the entities responsible for their formation. Perppu is formulated by the President, who holds the position of the head of government, while regular laws are created by the House of Representatives (DPR). Therefore, this method can be seen as conflicting with the principle of the appropriate forming institution or official, as outlined in UU P3.

Furthermore, the fast-track method lacks specific regulations governing its

\textsuperscript{43} Fitryantica and Hermawan, “Fast-Track Legislation Mechanism as an Alternative to the Formation of Legislation in Indonesia,” 426.

\textsuperscript{44} Chandranegara, “Pengadopsian Mekanisme Fast-Track Legislation Dalam Pengusulan Rancangan Undang-Undang Oleh Presiden,” 131.

\textsuperscript{45} Čellár, “Fast-Track Legislative Procedure During the COVID–19 Pandemic in Slovak Parliamentarism,” 333.

application, and this deficiency is another factor contributing to its normative incompatibility. In the case of the Job Creation Law (UU CK), which combined both the Omnibus Law and fast-track legislative methods, normatively, these methods cannot be applied simultaneously, as they represent distinct legislative approaches.47

3.3. Forming Laws and their Relation to Social Justice

The formation of laws could be associated with the social justice value because the legislative process will involve the people as the supreme sovereignty over the state. Article 1 paragraph (2) of the third amendment of the 1945 Constitution states that *Sovereignty is in the hands of the people and implemented based on the Constitution.* It can be concluded that social justice represents the will of the people as mandated in the fourth paragraph of the Preamble of the 1945 Constitution, as well as the fifth *Silā of Pancasila*48. The meaning of social justice has a deep philosophy, but it is difficult to define the exact standard of justice. Four perspectives on justice are often used as references in legal research. For example procedural, retributive, distributive, and restorative justice.

Procedural justice means that justice was determined based on the applicable written regulations, also defined as substantive justice49. Procedural justice gives people the same right to express opinions responsibly against a state decision or policy50. The principles of procedural justice can be paired with distributive justice as they relate to the protection of individual aspiration rights and social standing51.

Retributive justice is a kind of law enforcement that strictly punish criminal offenders or human rights, which means imposing sanctions on them to give a deterrent effect, whether committed individually or in groups52. Thus, if individuals or groups have been convicted of wrongdoing, violations, or deviant behavior, then a punishment that causes suffering to the offenders, in broad meanings could be physical, material, or

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47 Chandranegara, “Pengadopsian Mekanisme Fast-Track Legislation Dalam Pengusulan Rancangan Undang-Undang Oleh Presiden,” 137.
psychological which can be imposed as retaliation for the actions they have committed\textsuperscript{53}.

Distributive justice means that all human activities were judged by their deeds based on the responsibilities imposed on each of them\textsuperscript{54}. Distributive justice has six principles that build on the rights and obligations inherent in every human being:

1. Equality before the law regardless of racial or economic background;
2. Equal rights in receiving economic benefits, based on contribution, effort, and experience in work;
3. Income in balance with responsibility;
4. Congruence between rights and obligations, and care between members of society;
5. Principles of efficiency; and
6. Social and cultural rights based on morals and norms\textsuperscript{55}.

Restorative justice, the antithesis of retributive justice, is a theoretical framework as alternative law enforcement in handling criminal cases that aims to answer public disbelief of the functioning of the current criminal justice system\textsuperscript{56}. Restorative justice has a main goal as its name implies, restoration or changing the criminal justice system by returning it to the social system, or it can also be directed toward other goals, the compensation for victims of criminal acts\textsuperscript{57}. The practice of restorative justice in Indonesia can be found in the juvenile criminal justice system in Law Number 11 of 2012. Punishment is not the main goal of restorative justice, but rather to protect human rights or victims of criminal acts by imposing responsibility on the criminal offenders due to the actions that have been committed and harmed the victims of criminal acts\textsuperscript{58}.

Social justice itself has similar characteristics to distributive justice. Social justice identifies three main conditions for the realization of justice, Equality, Equity, and Need, with each principle having a different logic\textsuperscript{59}. The founding father of social justice, John Rawls has stated that \textit{Justice is the first virtue of social institutions, as truth is the system of


The Indonesian society recognizes the existence of the social justice value as stated in the fifth principle of Pancasila, Social justice for all Indonesian people. It was also stated in the 1945 Constitution, which means that social justice is something fundamental and inherent in every soul of the Indonesian nation. Social justice is the state’s philosophy of life as well as the purpose of the state, so the administration of the state based on law should have the ideals of realizing social justice.

Before its establishment, the UU CK and UU IKN should have fulfilled the philosophical, sociological, and juridical fundamentals. It was a basic standard when the DPR starts to submit a draft of the law. The philosophical basis means that the draft of the law should be oriented to Pancasila as the basis of the nation’s philosophy of life. The sociological basis means that the existence of laws should be appropriate to the needs of society and place them as the law subjects, while the juridical basis means that laws should be able to realize the rechtsidee, which means ideals of the nation based on the 1945 Constitution.

When the UU CK and UU IKN were formed, people had the right to be involved in the law-making process by the DPR as a representative institution of the people. They had their rights in the constitution as a written agreement with the state. The implementation of the 1945 Constitution as it should be provides the widest possible rights for the community in the drafting of laws as a manifestation of the value of social justice. However, the facts are that the DPR has not fully implemented this mandate. The formulation of the UU CK and UU IKN is legally flawed because it restricts public access to channel their aspirations. As for public participation, it is related to the fourth Sila of Pancasila confirmed that Sovereignty is led by wisdom in the deliberation of representatives.

The establishment of the UU CK and UU IKN, which seemed injudicious and ignored the public interest, made it a reasonable matter to be challenged in the Constitutional Court. The community felt the injustice of not being involved in its


formation. Realizing justice is not only about seeing what is written in the law. Constitutional Court judges should be able to see the facts that occur in society, whether the decision on judicial review is under the will of the people or not\(^66\). The formulation of the UU CK and UU IKN seems rigid and restrictive, although in practice there are opportunities for the judges to interpret, considering that every codification of legal norms was created with imperfect conditions\(^67\).

The implementation of social justice is not only about the public acceptance of the judge’s verdict or the laws proffered by the government, but also justice for the public to be involved in the law-making procedure. The law-making procedure is the formal basis for every government action, both in the context of guarding human rights and state administration\(^68\).

4. Conclusion

The adoption of the Omnibus Law and fast-track legislation methods in the legislative process in Indonesia has introduced a dynamic element. However, it is apparent that the regulatory framework for both of these methods should have been established much earlier, particularly within the Law Number 12 of 2011 regarding the Establishment of Laws (UU P3). It is worth noting that the omnibus method was drawn from countries with a Common Law system, necessitating the need for separate regulations. While the omnibus method has received legal standing through the Second Amendment to UU P3 in Law Number 13 of 2022, the fast-track legislation method remains unaddressed in UU P3. According to the 1945 Constitution, the fast-track legislation method is exclusively applicable to the creation of Government Regulations in Lieu of Laws (Perppu), despite their legal equivalence to regular laws. As a result, the fast-track method cannot be used in the formation of extensive laws like the Job Creation Law (UU CK) with the omnibus method and the State Capital Law (UU IKN). In other words, it is procedurally impossible to apply the Omnibus Law and fast-track legislation methods simultaneously in shaping these laws. The legislative process is inherently linked to the value of social justice, especially concerning the involvement of Indonesian society in expressing their aspirations to refine the law. From this perspective, it can be deduced that the omnibus method is procedurally valid, but the fast-track legislation method tends to disregard the interests of the community by primarily pursuing the interests of groups that exploit perceived emergencies. This lack of synchronization between the government and the community can undermine the mandates of Pancasila


and the constitution, which are built on the principles of upholding human rights.

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