



Legal Studies on Omnibus Law Issues in Indonesia

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ABSTRACT

The implementation of omnibus law in Indonesia, between what ideally happens and what actually happens. When the omnibus law is expected to be a powerful solution to the complexity of regulation in Indonesia, the reality is transformed into a new field of problems that reap many negative responses from various circles of society. Omnibus law which is interpreted by the government and parliament as a progressive breakthrough to overcome multisectoral problems is interpreted differently by some circles of society and academia as a flawed law, both in formal and material terms. Although the existence of omnibus law is not a new item in legal theory, its existence still sounds foreign in the constitutional dialectic of Indonesia. Therefore, the purpose of this paper is to explore the nature of omnibus law and its implementation in Indonesia.

INTRODUCTION

In each country of law legislation has a central and strategic role, since it is the basis of legality in the dialectic of everyday life. Legislation in terms of ideas and meaning is real that no one should deny it, this is what is then called the principle of legality in the rule of law. With legislation life is organized and regulated, justice and legal certainty are distributed, and crimes and offenses are dealt with.¹ in the context of the modern legal state, even the function of law is not only as a means of social control to maintain public order, but also as an instrument to achieve the goals of the state and move the change in society in the desired direction. This means that the law is the main means to bring public welfare and civility.

Indonesia as a country based on the law (rechtstaat), where everything that concerns the joints of the life of the nation, society, and state must be regulated by law. so at this point arises What is called legal superiorism. Law plays a strategic and central role because it becomes an instrument that determines the progress of a country in the era of globalization as it is today. The

state can progress because of the law, and so can be left behind because of the law. Then to build a strong state within the framework of rechtstaat, the existing law must be a law that is effective, working, and qualified, and not a law that is problematic juridically or sociologically. When the law in a country experiences acute problems such as hyper-regulated, multi-interpretation, overlap, inconsistency, and disharmony, the law only becomes a disruptive tool to the authority of a country.

This is what is currently felt by the Joko Widodo government where there is unrest about the hyper-regulated phenomenon that shackles Indonesian law. Based on data on the quantity of legislation, there are currently a total of 38,606 active regulations in force. Such conditions are then considered to hamper the pace of the economy and investment, as well as the impact on the slow response of the government in making a decision because it is too complicated arrangements.

As a progressive response to overcome the existing multisectoral problems, the government then issued the idea of regulatory reform through the concept of omnibus law as the main actor. The

term omnibus law itself first appeared when President Jokowi made a state speech at the inauguration of the president and Vice President of the Republic of Indonesia for the 2019-2024 period. In his speech, the president invited the members of DPR to jointly discuss and promulgate 2 major bills, namely the job creation bill (Ciptaker) and the UMKM empowerment bill with the omnibus law mechanism. Therefore, the idea of the omnibus law conception is actually idealized by the government as a breakthrough to bring a better constitutional climate, especially in the fields of economy, investment, and bureaucracy.

Still fresh in memory, on November 2, 2020 President Joko Widodo signed the Omnibus Law which was later recorded as law no. 11 of 2020 on job creation. This signing is a follow-up action after on October 5, 2020 the House of Representatives of the Republic of Indonesia (DPR RI) together with the government has passed the ciptaker omnibus law bill as the first step of the regulatory reform package rolled out by the government. That way the provisions contained in the Ciptaker law have been officially valid and binding since November 2, 2020.

However, the Ciptaker law, which in fact is one part of the omnibus law package, actually gets a lot of opposition in its implementation. Starting from the discussion stage, ratification, until the promulgation of this law did not escape the pros and cons. Even at the peak several times elements of the community had a wave of demonstrations even though they were during the Covid-19 pandemic. The idea of an ideal omnibus law that is planned is much different when it has entered the level of execution or the reality of its implementation. CIPTAKER law as an early experiment omnibus law is considered by various circles of society as a flawed regulation, both referring to the procedural due process of law and substantive due process of law which are both attributive requirements in the formation of a regulation in the state of law.

Even the rejection of the Omnibus law is not subjective which is only voiced by one, two groups of people. But almost all circles ranging from workers, students, to professors also voiced rejection that makes it objective. Based on the description above, the author is interested to discuss more in omnibus law from the problems and studies of hukuk . where will discuss omnibus law from the aspect of legal Science and the initial purpose of the government wants to apply it and law based on the reality of its current implementation.

METHOD

The research method used in writing this law is a normative juridical approach. Normative juridical approach is a study that uses secondary sources obtained through library materials. This normative legal research usually includes: research on legal principles, research on legal Systematics, research on vertical and horizontal synchronization levels, Comparative Law and legal history. The method of this approach is carried out by studying the legal norms in legislation.

RESULTS AND DISCUSSION

A. Application of Omnibus Law in other countries

Omnibus law has been widely implemented in other countries, especially those with common law systems. In the United States for example, one of the largest omnibus law laws ever made is the Transportation Equity Act for the 21st Century or commonly referred to as TEA-21.20 the law which contains 9 chapters and 9012 sections regulates the field of Transportation comprehensively ranging from federal Highway issues, Highway security, federal highway transit, motor Carrier security, and others concerning transportation and highways in the United States. With the introduction of TEA-21, transportation and road regulations have been codified into one regulation, so that they are not scattered into other regulations. Another example of omnibus law in the United States is the Omnibus Public Land Management Act of 2009. The substance of the act is to unite several provisions regarding the management of Public Land Management previously spread across several laws. There is also an Omnibus Spending Bill promulgated each year, which regulates the breakdown of state spending for the following year. In addition, this law also contains political issues such as electoral issues, border security, technological renewal, tips against Russian influence, to regulate state aid to Palestinians.

In Australia there is the Civil Law and Justice (Omnibus Amendments) Act 2015 whose material also incorporates several provisions relating to civil law and justice from several other statutory provisions. Not only codifying the provisions, this omnibus law also changes some provisions that are no longer appropriate and provides further clarity to improve legislative supervision. in the Philippines, the omnibus law has also been applied to regulate regulations in the field of investment by issuing the Omnibus Investment Code of 1987. Through this regulation, the regulation on investment will be

focused on one law. one of the contents of the provisions in the omnibus law, investors will be given incentives and basic rights to ensure the continuity of their business in the Philippines, this is done by the government to attract investment of-large in the Philippines. in Canada, too, the practice of omnibus law has been commonly used by parliament since 1888 with the aim of streamlining the legislative process by merging several laws and regulations into one specific regulation. Some examples of Omnibus laws in Canada are the Energy Security Act in 1982 and the Jobs, Growth and Long-term Prosperity Act in 2012.

Therefore, omnibus law is often used in the legislative process in other countries with at least 3 (three) reasons, namely: 1). Expedite the legislative process; 2. Save the state budget for the preparation and discussion of legislation; and 3). Facilitate efforts to harmonize legislation. On the other hand, omnibus law in practice abroad also has some disadvantages that can trigger rejection by elements of society. Generally this weakness arises when the omnibus law law regulates too many topics (multi & diverse subject)

Some of these weaknesses are

1. Too many subjects of omnibus law regulation make critical groups in Parliament limited in providing their aspirations.

2. Prone to stowaways or smuggling of certain articles that benefit certain groups too wide range of material and subject omnibus law at risk of bringing the practice of black riders (stowaways) who add articles are contradictory to the title and purpose of a draft law and not pro to the community.

3. Limited space to accommodate the aspirations of the public at large, as a result of limited time and opportunities for Parliament to review the omnibus law comprehensively led to limited public participation space to provide input on every issue in the omnibus law.

To avoid some of the above weaknesses, other countries that have long implemented the omnibus law method in the legislative process have prepared several special provisions. First, one subject at a Time act or one subject to one law. With this provision, an omnibus law will only focus on regulating one material and subject. Therefore, a law will later focus on one specific purpose that is described in the title of a draft law. In some states of the United States, even provisions that do not pertain to the title of the draft omnibus Act will be considered void or void. Second, the interrelated subject. This provision requires that each article in the omnibus law must be interrelated and

continuous with each other in order to achieve a certain goal. This provision is used by the countries of New Zealand, Canada, and Germany as a means of limiting the extent of omnibus material. Both provisions were made with the aim of preventing the possibility of the emergence of black riders (stowaways) who would smuggle negatively charged articles. In addition, this provision is also a limitation for Parliament to be able to focus on one specific material, so that it can study it in depth and be able to open wide spaces for public participation.

B. The existence of Omnibus Law in Indonesia

Although omnibus law is an old practice in the theory of legal science, but its existence in the Indonesian Constitutional system has only emerged recently. The term omnibus law began to be a conversation when the New Jokowi government in the second period was intensively spreading the policy agenda for the next 5 (five) years. And one of the main agendas is in terms of regulatory reform with the omnibus law as its main instrument. The application of omnibus law is focused as a solution concept to solve the problems of legislation in Indonesia, especially the number of regulations (hyper regulated) and overlapping regulations (overlapping). With the omnibus law is expected to be able to produce a domino effect / cumulative. Starting from the breakdown of regulatory issues, then from there will be more responsive regulations to make the government move to serve the community and attract foreign investors to invest in Indonesia, so that it will open jobs that can automatically improve the welfare of the community.

Background the emergence of omnibus law originated from the government's concern about the difficulty of procedures to be able to invest in Indonesia. This difficulty is reflected in several aspects, namely taxation, licensing, land acquisition, and other aspects related to ease of business and investment. based on data from the Ease of Doing Business 2020 report issued by the World Bank, Indonesia ranks 73 out of a total of 190 countries. Then in 2021 President Jokowi targets Indonesia to rise in position to be able to occupy the 50th position in terms of ease of investment.

To prove the government's claim that it is necessary to apply omnibus law to overcome existing regulatory problems, it is necessary to see first how the condition of legislation in Indonesia. In terms of population quantity of legislation in Indonesia there are currently 38,606 active legislation.

The number of regulations is certainly not a problem if the regulations have quality substance or material. However, if the existing legislation is not of quality, then quantity will only be a threat to quality. President Joko Widodo even realized that with such a number of regulations it would actually inhibit the rate of economic growth and make it difficult for the government to move. The president in his official facebook personal account once stated that the problem that entangles our country is the high level of existing regulations, ranging from regulations at the central level to the lowest level, namely the regions.

According to Thomas Hobbes in M. Nur Sholikin, states that unnecessary laws are not good laws, but just traps for money (the quantity of laws or regulations that are many and unnecessary is not a good law, but only a trap for the budget). From there it can be seen that there has indeed been a change in the situation towards the needs rather than the law itself. If the context speaks of the post-reform situation, it may be true that it requires the formation and regulation of massive and rigid laws, because of the connection at that time we needed legal instruments to build a democratic civilization. However, if the context is modern times like now, maybe the paradigm is not appropriate, because what we are facing and pursuing is the acceleration of economic growth, legal certainty, and the acceleration of services on all sides. Therefore, the formation of law must be oriented to the substance rather than to the procedural. It takes a law or regulation that the quantity is small but the quality is maximum (simply rules but perform strictly) so that it is effective and efficient in its application.

In addition, the quantity of regulations that are not qualified in fact have created a situation of increasing complexity of bureaucracy and licensing, which will ultimately disrupt the investment climate, development, and the course of government programs. For example, government programs that seek to attract as much investment as possible from foreign countries, at the level of practice, are actually blocked by bureaucratic wilds and difficult licensing. Regulations on permits and levies are a barrier to investment enhancement programs, as they create high-cost economic practices.

A similar opinion was also expressed by the Investment Coordinating Board (BKPM) of the Republic of Indonesia as contained in Hilma Meilani, where BKPM revealed that there are 5 (five) investment constraints in Indonesia, one of which is a regulatory issue. So the program to attract foreign investment also can not run optimally. Whereas

foreign direct investment is important to cover the current account deficit (CAD) in a country. Based on Bank Indonesia data, it revealed that Indonesia's current account balance in the second quarter of 2019 recorded a deficit of US\$ 8.4 billion or equivalent to 3.04% of Gross Domestic Product (GDP). The value actually continued to increase where in the third quarter of 2019 the deficit was 2.7% of GDP, then entering the 2020 period the CAD deficit only became 1.4% in the first quarter of 2020 and 1.5% in the second quarter of 2020. However, this deficit still needs to be an important record for the government.

In addition, investment in Indonesia can also have a positive impact on reducing the unemployment rate in Indonesia. With the incoming investment, it will automatically open the doors of businesses that require labor. Based on data from the Central Statistics Agency (BPS), as of August 2020 the number of open unemployment in Indonesia since August 2019 has increased by 1.84% (2.67 million people) to 7.07% (9.77 million people). This figure is expected to continue to increase considering the Covid-19 pandemic which is still not over and the number of Indonesians who do not or have not worked in the future will also be high.

From this it can be concluded that the actual policy of the government to implement the omnibus law can be said to be appropriate. This is based on the nature of the omnibus law which is a legal product that covers a variety of major issues at once, the substance of which is to revise and/or revoke other regulations to be a comprehensive new regulation. Therefore, seeing how the problems borne by Indonesian regulation and considering the government's desire to be able to implement rapid and appropriate regulatory reforms to improve government performance, omnibus law is a good conception to be implemented. With a note, that the application of this omnibus law must be adjusted first to the Indonesian legal system and carried out by cermat by maximizing the role of existing legal experts.

In addition, the selection of omnibus law as a regulatory reform policy is the right political choice because it is in line with the soul and characteristics of the Indonesian nation, as well as the ideological-philosophical basis of Pancasila which is a pure paradigm for Indonesian culture. This omnibus law election is a political choice in the activity of making concrete legal norms (basic policy) without having to ignore the position and existence of Indonesia in the midst of international relations. Thus, the law that is born is a law that is committed nationally,

think globally and act locally.³⁸ policy making laws (basic policy) that combines elements derived from foreign law with law derived from the original paradigmatic values of Indonesian culture and society must be done carefully and full of calculations, so that the laws that will be enacted in this country are not uprooted from the ideological-philosophical roots of the Indonesian state and nation.

The implementation of this omnibus law can also accelerate changes in the economic ecosystem whose spirit is in harmony with the existing order in law No. 12 of 2011 on the establishment of legislation as amended by law No. 15 of 2019 concerning amendments to Law Number 12 of 2011 concerning the establishment of legislation. Although the omnibus law method has not been regulated in this law, it does not mean that it should not be done while in its preparation using the provisions in the formation of regulations in Indonesia.

1. Early experiments on omnibus law in Indonesia

The Ciptaker law which was passed by the DPR RI together with the government on November 2, 2020 yesterday became the initial experiment in the implementation and preparation of the omnibus law concept in Indonesia. The Ciptaker law is one of two omnibus law Bill agendas included in the 2020 priority national legislation Program (Prolegnas) where there is still one more omnibus law bill that has not been passed, namely the bill on tax provisions for strengthening the economy. The two omnibus law bills are bills that come from the initiation of the government as the holder of executive power. According to the description of Airlangga Hartanto as the Coordinating Minister for the economy, in the CIPTAKER Act there are 11 (eleven) discussion clusters. The clusters are: 1). Simplification Of Licensing; 2). Investment Requirements; 3). Employment; 4). Ease, empowerment, and protection of MSMEs; 5). Ease Of Trying; 6). Research and innovation; 7. Government Administration; 8. Imposition Of Sanctions; 9). Land Acquisition; 10). Investment and government projects and; 11). Economic Area.

However, the CIPTAKER law, which in its final draft when promulgated consists of 15 chapters and 186 articles, actually gets a lot of opposition in its application. The practice of preparing omnibus law is considered far from the essence of omnibus law in legal Science and from the initial ideal intention of the government to implement this omnibus law. The Ciptaker law in its substance seems to prioritize mere economic logic so that investors are free to

invest in Indonesia and on the other hand ignore the principles of sustainable development and the rights of workers. If the purpose of the Ciptaker Omnibus law is in accordance with its initial provisions, namely to parse regulatory issues and facilitate investment to enter Indonesia with the aim of ultimately improving the welfare of the people and carried out logically and in accordance with existing regulatory mechanisms, it can still be justified. For example, simplifying convoluted licensing procedures, improving the quality of bureaucratic systems and ease of business.

In procedural due process of law or procedures for the formation of legislation, the CIPTAKER law can be considered formally flawed. According to constitutional law expert, Agus Riwanto said that the preparation of this law was not carried out according to the prevalence of technocratic regulation preparation, so it had the potential to be formally flawed.³⁹ regarding the rules of drafting legislation in Indonesia has actually been regulated rigidly in law No. 12 of 2011 jo Act No. 15 of 2019 on the establishment of legislation. Where based on Article 1 Paragraph (1) of the law on the formation of laws and regulations, it is confirmed that the process of preparing a regulation consists of the stages of planning, preparation, discussion, ratification, and promulgation. In the case of the preparation of the Ciptaker law, it is made not to follow the rules of technocratic preparation since the planning stage is very closed without involving the widest public participation, and the opposite is more accommodating ideas from entrepreneurs and political elites. In fact, the planning and preparation stages are an essential process, because the reality is that at this stage of planning and preparation, politically, it will be determined which direction the political purpose of the law of a regulation is.

Related to community participation in the process of making legislation has actually been confirmed and guaranteed by law, namely in Chapter XI Article 96 on community participation, in full this article reads:

(1) the public has the right to provide input orally and/or in writing in the formation of laws and regulations.

(2) input orally and / or in writing as referred to in Paragraph (1) can

done through:

a. public hearings;

b. working visit;

c. socialization; and / or

d. seminars, workshops, and / or discussions.

(3) the community as meant in Paragraph (1) is an individual or

group of persons who have an interest in the substance of the draft regulations

Legislation.

(4) to facilitate the public in providing input orally and / or

written as referred to in Paragraph (1), each draft legislation must be easily accessible by the public.

In the process of forming the Ciptaker law, it is still far from the mandate of Article 96 above, this can be seen from the beginning to the end of the process in making it which is considered non-participatory. In the initial process of drafting the draft law prepared by the government, it appears that there is an issue of uncertainty related to access to academic papers (NA) and access to updates to the draft bill. Article 96 paragraph (4) which already mandates for each bill must be easily accessible by the public but the practice there is uncertainty because of the many institutions that publish rules in each institution through the legal documentation and Information Network (JDIH). This resulted in the public having to work extra hard to find the current version of the draft rules. Even though there are currently hundreds of JDIH managed by ministries or government agencies, all of which are not necessarily always updated on time.

When the Ciptaker law has reached the legislative level, where the publication of NA and draft laws are sometimes not updated. In relation to the transparency of the discussion process, there are also irregularities. Although there is a parliamentary media channel that broadcasts the discussion process, the broadcast is limited where not all discussion meetings are broadcast on Parliamentary TV. Then the matter of the final draft of the act is also up to the time the draft has been submitted by the DPR to the president for ratification but is still not accessible to the public. Of course, all this process has deviated the first article 96 paragraph (4) of the law on the establishment of legislation.

Another fundamental point that is considered contrary to Article 96 is public participation at the level of substantive discussion of the law. The government as the initiator who wants the Ciptaker law to be completed within 100 days certainly makes this law minimal to be able to accommodate the aspirations of the widest community, especially related parties. Not to mention the Omnibus Law law includes more than one substance and material (multi & diverse subject) which when referring to the experience of other countries this triggers the emergence of three weaknesses, namely the limited

space for Parliament to discuss it comprehensively, prone to black riders who smuggle articles, and limited space for public participation. And it turns out the reality is true, according to Said Iqbal as president of the Confederation of Indonesian Trade Unions (KSPI) said that the workers are not maximally involved in the process of forming the CIPTAKER law.⁴⁰ whereas in the process of planning and drafting legislation, it is actually necessary to have the broadest participation of people from various backgrounds of interest, especially community groups that will be the main legal subjects in the regulation. In terms of the CIPTAKER Act, the parties that should be heard and accommodated their interests are labor workers and other interest leaders.

According To Henry D. Hutagaol argued that the community as the party affected by the implementation of this law is indeed not obliged to participate in discussing the entire academic paper or law. However, at least the public should be able to test academic papers and draft laws that have an impact on them so that they can provide adequate input. instead of providing input, access to academic papers and draft laws until the time the Ciptaker law was passed by the DPR and delegated to the president has not been given transparently. Strangely enough, at the time of the break between the ratification of the Act into a law that is usually used to make changes to grammar, typographical errors, and numbering, but in this pause Ciptaker Act actually also changes the substance and can eliminate article. From what was originally 905 pages then changed to 1,305, a few hours later it was reduced again to 812 pages⁴², and at the end when it was promulgated to 1,187 pages.

This condition, if viewed from the perspective of legislative intent, the government and DPR indeed seem to be running a certain business. From the preparation of the Ciptaker law, it can be seen that it is far different from the nature of the omnibus law and the initial intention of the government to implement this conception in Indonesia. Of course, if this ciptaker law is designated in accordance with what is idealized and the drafting process is in accordance with what has been mandated by the law on the establishment of legislation, where public participation must be included to the maximum, then the Ciptaker law will not get much opposition and will instead be supported by the community as a progressive regulatory reform process.

CONCLUSION

The implementation of omnibus law in Indonesia is focused as a solution concept to solve the problems of legislation, especially the number of regulations and regulatory overlaps. From there, it is expected to be able to bring a better constitutional climate, especially in the fields of economy, investment, and bureaucracy. However, the CIPTAKER law actually gets a lot of opposition in its implementation. The practice of preparing omnibus law is considered far from the essence of omnibus law in legal Science and from the initial ideal intention of the government to implement this omnibus law. The drafting process is considered far deviating from the provisions of law no. 12 year 2011 on the establishment of legislation, especially Article 96 where the process of drafting the Ciptaker law is minimal public participation and is considered very closed. Therefore, the omnibus law can have a positive impact on Indonesia, which wants to carry out regulatory reforms to improve performance in several fields in a faster time. This positive impact is noted if the application of omnibus law is carried out in accordance with the constitutional pattern and the provisions of law formation in force in Indonesia, and still upholds the principle of sustainability (sustainable development) and the principle of social justice for all Indonesian people. In addition, would it be better if the formation of omnibus law only focuses on one specific material and purpose, so that Parliament has enough time to discuss it comprehensively and the wider community also has a lot of time to give their aspirations.

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