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## Omnibus Law Study on Law Changes in Indonesia in the Perspective of Legal Transplant

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### Abstract

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The idea of Omnibus Law which was initiated by President Joko Widodo was found to be pros and cons from various experts. The model for the formation of laws using the Omnibus Law technique, if examined in the history of Indonesian legislation, has been carried out, although not exactly the same. Indonesia once had Law Number 5 of 1969 concerning statements of various Presidential stipulations and Presidential Regulations as Laws. If you look at its substance, this Law has the characteristics of an Omnibus Law because in one Law it contains statements about the legal status of various legal products that substantially contain different regulatory subjects. This research is classified as a legal research literature review (Juridical Normative), which is related to research to find out whether Omnibus Law can be applied in Indonesia, considering that Indonesia adheres to the Civil Law legal system, while the Omnibus Law is actually applied in countries that adhere to the Anglo Saxon legal system. The researcher found that in general the process of forming legislation with the concept of Omnibus Law is not clearly regulated in Law Number 12 of 2011, but there is not a single article in Law Number 12 of 2011 that forbids the use of the Omnibus Law concept being applied in Indonesia. The concept of Omnibus Law was created as a new legal model (new paradigm) in the laws and regulations in Indonesia, so the Law made with the concept of Omnibus Law will change the legal system, because the concepts and theories are different from the legal norms that have been applies in Indonesia. while the Omnibus Law is actually applied in countries that adhere to the Anglo Saxon legal system. The researcher found that in general the process of forming legislation with the concept of Omnibus Law is not clearly regulated in Law Number 12 of 2011, but there is not a single article in Law Number 12 of 2011 that forbids the use of the Omnibus Law concept being applied in Indonesia.

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## PRELIMINARY

Since Indonesia's independence, Indonesia has gone through various government regimes, from the old order government, the new order to the reform order. Changes from time to time, accompanied by changes in the President and government cabinets clearly resulted in the birth of many laws and regulations in accordance with the context of problems

and challenges at the time. that. During more than 75 years of independence, the increasing number of regulatory products has then caused its own problems, such as disharmony and overlapping regulations. As a result, there are also many conflicts of policy or authority between one ministry/institution and another ministry/institution, as well as between the central government and local governments.

Unfortunately, this disharmony and overlapping regulations not only make the government not move swiftly and responsively to the problems and challenges that arise, furthermore, it also has an impact on delaying the implementation of development programs and worsening the investment climate in Indonesia. Considering the production of regulations, starting from the level of legislation throughout Indonesia's independence, it has accumulated and gave rise to the phenomenon of “hyper regulation”, as we can see in the Law on Limited Liability Companies, the Law on State Finances and the Law on State-Owned Enterprises, and the Corruption Law. If every government administrator intends to innovate or make a breakthrough, it is certain that there will be a conflict with statutory regulations. Meanwhile, if the revision of laws and regulations is to be carried out conventionally, it is easy to predict that it will take a very long time to harmonize and synchronize the many existing regulations. At the same time, the challenges of the digital community ecosystem era are in front of our eyes. Indonesia should not be entangled in formal procedures for long. A policy breakthrough in the process of drafting the law must be born soon. Based on this urgency, the only way to simplify and at the same time uniform regulations quickly is through the Omnibus Law Method.<sup>1</sup>

There are several advantages of applying the Omnibus Law method in resolving regulatory disputes in Indonesia, including: Overcoming conflicts over laws and regulations, both vertically and horizontally, quickly, effectively and efficiently. Uniform government policies both at the central and regional levels to support the investment climate, cut licensing arrangements to be more integrated, efficient and effective, able to break the convoluted bureaucratic chain. Improved coordination relations between related agencies because it has

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<sup>1</sup> <https://Nasional.Tempo.co/read/1310811/Pengamat=Hukummany-countries-tired-of-using-Omnibus-Law/full&view=ok>. (January 21, 2021).

been regulated in an integrated omnibus regulation policy, guarantees legal certainty and legal protection for policy makers.<sup>2</sup>

Can this Omnibus Law Method be applied in Indonesia, which adheres to the Civil Law system? Constitutional law expert, Jimmy Z Usfunan, argues that basically there is a problem of conflict between government administrators, when they want to innovate or policies that then clash with statutory regulations. So the Omnibus Law Method is one way out that the government can take. However, the Omnibus Law must be carried out at the level of the law. Although Indonesia adheres to the Civil Law system, Jimmy believes that this concept can be implemented by the Indonesian government in two ways: First, the issue of criminalizing state officials. So far, according to Jimmy, many government officials are afraid to use discretion in making policies regarding the use of the budget because if they are proven to be losing money.<sup>3</sup>

The problem between the Government Administration Law and the Anti-Corruption Law is that there is a conflict, because in the Anti-Corruption Law there are no elements that indicate malicious intent or *Mens rea*. Therefore, law enforcement officials always look at it from a positivist perspective only to be hit, while the government administration law allows discretion.<sup>4</sup>

According to Jimmy, if the government wants to use the Omnibus Law to solve this problem, a new law can be made with the concept of the Omnibus Law. So far, discretion and corruption continue to cause problems for policy makers, but not all discretion contains corruption. The new law can confirm the *mensrea* or malicious intent of the discretion makers. The Omnibus Law is a protector for regional officials who want to innovate and create for economic progress and investment.<sup>5</sup>

However, Jimmy reminded that if a new law has been formed to harmonize these two rules, then the new law should not be misused to protect the interests of corruptors and not in accordance with the spirit of a harmonized law, for example eradicating corruption from the Anti-Corruption Law. .

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<sup>2</sup> Maria Farida Indrati. Responding to Omnibus Law as a universal sweeping law The percentage at the seminar addressing the Omnibus Law Pros and cons of the bill on job creation, organized by the Djokosoetono Research Center and the field of State administrative law studies at the University of Indonesia. Depok, February 6, 2020.

<sup>3</sup> Jimmy Z usfunan, Hukum Online.Com, 2017. <https://www.legalonline.com/news/read/lt5a28e1bb91cc6/organize-law-with-omnibus-law-by--jimmy-z-usfunan/>. (17 January 2021).

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

Second, the Omnibus law can be used in Indonesia for uniformity of central and regional policies in supporting the investment climate. In this regard, Omnibus can be a short way as a solution to conflicting laws and regulations, both vertically and horizontally.<sup>6</sup>

In addition, Jimmy said that although Omnibus Law was possible in Indonesia, he reminded that the Omnibus Law should not create problems in respecting regional autonomy which emphasizes the will of the regions to regulate their regions. Because with the Omnibus Law, automatically regional level regulations must also comply with the new rules of the Omnibus Law concept of ease of investment.<sup>7</sup>

The Preamble and the Articles of the 1945 Constitution are the source of the entire Indonesian national legal politics. The affirmation of both as sources of national legal politics is based on two (2) reasons<sup>8</sup>. First, the preamble and the articles of the 1945 Constitution contain the objectives, basis, legal ideals, and basic norms of the Indonesian state which must be the goals and foundations of Indonesian legal politics. Second, the preamble and the articles of the 1945 Constitution contain distinctive values derived from the views and culture of Indonesia which have been handed down by their ancestors for centuries. These distinctive values distinguish the Indonesian legal system from other legal systems so that the term Pancasila state law appears which, when associated with the literature on the combination of more than one choice of social values, is referred to as a prismatic value choice, which is why in a legal context it can be referred to as law. prismatic.

This prismatic concept is taken from Riggs<sup>9</sup> when he identified a combination of choices or the middle ground of the social value of the community and the social value of the patenbayan as proposed by Hoogvelt. There are two social values that live and affect the citizens of society, namely the social value of the community which emphasizes the common interest and the social value of patembayan which emphasizes individual interests and freedoms.<sup>10</sup> Fred W Riggs then proposes a prismatic social value that puts the two groups of social values as the basis for building laws whose descriptions can be adapted to the stages of social, economic, and community development in question.<sup>11</sup> The opinion that the Omnibus

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Moh.Mahfud MD, Building Legal Politics, Upholding the Constitution, 23.

<sup>9</sup> Fred W. Riggs, Administration in Developing Countries: The Theory of Prismatic Society (Boston: Houghton Mifflin Company, 1964).

<sup>10</sup> Ankie M. Hoogvelt, Sociology of a Developing Society, (Jakarta: Rajawali Press, 1985), 87-91.

<sup>11</sup> Fred W. Riggs, op.cit. 176.

Law is in conflict with the National legal system is quite reasonable, because the concept adopted by Presidential Regulation Number 91 of 2017 concerning the acceleration of business implementation is a policy commonly used in making regulations in the United States and countries that adhere to the Common Law system. On the other hand, in Indonesia, the rule-making refers to the Civil Law system which is widely practiced in continental countries.<sup>12</sup>

Likewise, the popular concept applied in Anglo Saxon countries is not known in the procedures for making laws and regulations in Indonesia, as regulated in Law Number 12 of 2011 concerning the formation of laws and regulations as amended by Law No. Law Number 15 of 2019. As a result, the integrated business licensing policy based on the Omnibus Law is vulnerable to judicial review.<sup>13</sup>

However, legally, the application of the Omnibus Law concept is still relevant and can be applied in Indonesia for various reasons. First, the policy is in line with several principles for the formation of laws and regulations, both theoretically and normatively, as stipulated in Law Number 12 of 2011 concerning the Establishment of Legislations. For example, the principle of legal certainty which mandates the content of laws and regulations must be able to realize legal certainty and provide legal protection for investors in investing. This principle is in line with the licensing policy based on Presidential Regulation Number 91 of 2017 because it can overcome, at least minimize the complexity that is often experienced by local and foreign investors in investing in the regions and at the center,<sup>14</sup>

In the sense of the substance of Presidential Decree No. 91 of 2017 makes the licensing process easier, transparent, accountable and extra fast, because the licensing process is supervised and escorted by task forces in stages, namely the National task force, the task force of the ministry/provincial institution, district/city, unit leading sector tasks and supporting task forces.

Lastly, the juridical basis which mandates legal certainty in investing. In other words, the application of the Omnibus Law concept has several advantages in overcoming regulatory disputes in Indonesia and investment climate problems. Because the concept unites central and regional government policies, cuts the bureaucratic chain and resolves conflicts over laws

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<sup>12</sup> BPK regulations.go.id.home.details

<sup>13</sup> op.cit

<sup>14</sup> Op.Cit

and regulations so that in turn the licensing process becomes more integrated, fast, efficient and effective.<sup>15</sup>

Likewise, there has been an increase in coordination between related agencies, as well as guarantees of legal certainty and legal protection for policy makers. In addition, Indonesia has also issued policies with concepts such as the Omnibus Law, for example, the MPR RI Decree No. I/MPR/2003 concerning the review of the material and legal status of the Provisional MPR Decree and the 1960 MPR RI Decree which regulates what MPR TAP is stated. applies and does not apply.<sup>16</sup> Another example is the incorporation of some of the contents of the law regulated in the 1945 Constitution, such as Law Number 23 of 2014 concerning regional governments which had the impact of repealing Law Number 5 of 1962 concerning regional companies, and Law Number 32 2004 concerning local government, Law No. 28 of 2009 concerning regional taxes and levies. Lastly, Government Regulation in Lieu of Law (PERPPU) Number 1 of 2017 concerning access to information for the purposes of Taxation (Automatic Exchange of Information / AEOL), because it can be said that substantively and functionally the Omnibus Law concept is already commonly practiced in Indonesia.<sup>17</sup>

Regarding the Omnibus Law idea initiated by President Joko Widodo, there were pros and cons from various legal experts, including those who agreed with the Omnibus law, namely the University of Indonesia Academician, Ima Mayasari. Through his opinion on November 28, 2018 with the title "Initiating the Omnibus Law", stated at this time Indonesia needs a breakthrough, namely the need for an Omnibus Law.<sup>18</sup> Although Indonesia adheres to the Civil Law legal system, while Omnibus Law was born from the tradition of the Common Law legal system, but in the world of digital ecosystem and global governance, there is nothing wrong with Indonesia breaking through this boundary space.<sup>19</sup> Ima also gave examples of countries that have adopted the Omnibus Law, such as the United States which in 2009 introduced The Omnibus Public land management Act of 2009, then the Philippines has

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<sup>15</sup> Presidential Decree 19 of 1963 concerning the establishment of the Extraordinary Military Court, and Presidential Decree 27 of 1965 concerning the issuance of new rupiah notes as legal tender for the entire territory of the Republic of Indonesia and the withdrawal of old rupiah notes from circulation.

<sup>16</sup> Attachment IIA contains 22 Presidential Decrees and 4 Presidential Regulations, Attachment IIB contains 4 Presidential Decrees and 6 Presidential Regulations.

<sup>17</sup> Omnibus Law and its Application in Indonesia-Jimly Assiddiqi, 17.

<sup>18</sup> Ima Mayasari, "Initiating the Omnibus Law", <https://coil.com/dr.ima-mayasari-m-h/initiating-omnibus-law-1542018891459839175>, accessed 20 January 2020.

<sup>19</sup> Ibid.

started to reform the law in the investment context by issuing The Omnibus Law Investment Code.<sup>20</sup>

Amad Redi, a lecturer at the Faculty of Law at Tarumanegara University, Ahmad Redi, said that at least nine other countries have applied the Omnibus Law method throughout history. For example, UK, Australia, Germany, Turkey, Philippines, Cambodia, Vietnam, Malaysia, and Singapore.<sup>21</sup> Some of what he mentioned were Indonesia's neighbors in Southeast Asia. According to him, one of the advantages of the Omnibus Law method is the practicality of correcting many problematic regulations "increasing the speed in drafting problematic laws that are currently in effect". Redi assessed that the Omnibus Law approach could also be a solution to overlapping regulations in Indonesia, both in horizontal and vertical hierarchical relationships. However, he admits that the drafting of the Omnibus Law is expensive and not simple because the substance must be multi-sectoral and prepared for super power "to resolve conflicts in laws and regulations quickly, effectively and efficiently".<sup>22</sup>

Among the Legal Experts who are against the Omnibus Law, among others, are, Abdul Fiekar Hadjar, an expert on constitutional law, Abdul Fiekar Hadjar, said that the omnibus law on job creation will only waste time if there is no significant change in the system.<sup>23</sup> Fiekar explained that the current problem is in the coordination and supervision of the existing system, therefore if there is no significant change in the system, then the Omnibus Law will only be a compilation of rules and this is a waste of time and money.

Hariadi Kartodiharjo. Bogor Agricultural University's forest policy professor, Hariadi Kartodiharjo, assessed that the government's argument regarding the slow entry of investment into Indonesia by revoking or removing a number of articles that hindered investment was inappropriate.<sup>24</sup> He considered that the Omnibus Law failed to pay attention to institutional and bureaucratic problems. "The problem is that the government's authority is not being exercised. This is a matter of institutions and bureaucracy, not the whole problem of the articles in the law that are considered to hinder investment."<sup>25</sup> Regarding the problem of

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<sup>20</sup> Ibid.

<sup>21</sup> Agus Sahbani, "Plus Minus Omnibuslaw in the Eyes Expert, 31 January, 2020, <https://www.legalonline.com/news/read/lt5e3325327d597/plus-minus-omnibus-law-in-the-eyes-expert>.

<sup>22</sup> Ibid.

<sup>23</sup> Ratih Waseso, Kontan.co.id, 21 January, 2020, <https://national.kontan.co.id/news/pakar-Hukum-sebut-omnibus-law-only-wasting-time-dan-cost>.

<sup>24</sup> Law Online.Com, Op.cit.

<sup>25</sup> Ibid.

overlapping land and forest use, Hariadi assessed that this issue would not be resolved through the Omnibus Law. In addition, the acceleration of the licensing process and forestry through the establishment of the Omnibus Law is not synergized with the handling of agrarian conflicts that occur in the area. Likewise, there has been a fairly high resistance from the workers when the Omnibus Law will be launched, which at the discussion stage does not involve and also did not accommodate the interests of workers, resulting in demonstrations everywhere. This Omnibus Law was criticized because the discussion was considered rushed by the Government and was not even discussed in President Joko Widodo's campaign.

Based on the description on the background above, the author is interested in researching, so the author intends to raise and write this research with the title, "A study of the omnibus law on changes to the law in Indonesia in the perspective of legal transplantation".

#### **CHANGES TO LAW WITH OMNIBUS LAW METHOD WITH CIVIL LAW LAW SYSTEM IN LEGAL TRANSPLANTIVE PERSPECTIVE.**

The model for the formation of laws using the Omnibus Law technique, if examined in the history of Indonesian legislation, has been carried out even though it is not exactly the same. Indonesia once had Law Number 5 of 1969 concerning statements of various Presidential stipulations and Presidential Regulations as Laws. If you look at its substance, this Law has the characteristics of an Omnibus Law because in one Law it contains statements about the legal status of various legal products that substantially contain different regulatory subjects.

Law Number 5 of 1969 is basically a follow-up to the provision of the Provisional People's Consultative Assembly of the Republic of Indonesia Number XIX/MPRS/1966 of 1966 concerning Borrowing back legislative products from the State outside the MPRS products that are not in accordance with the 1945 Constitution. This TAP MPRS XIX/1966 contains borrowings of many laws and regulations, namely legislative products in the form of presidential decrees, presidential regulations, as well as in the form of laws and government regulations in lieu of law (PERPPU).



Another example of the formation of legislation using the Omnibus Law technique is the MPR Decree Number 1/MPR/2003 concerning the review of the material and legal status of the MPRS decree and the MPR RI Decree from 1960 to 2002.<sup>26</sup>

The opportunity for the permanent adoption of the Omnibus Law technique in the legal system in Indonesia is very dependent on the success and benefits of the resulting Omnibus Law, this is because the occurrence of Legal Transplants is very dependent on the ideas and strengths that exist in the law itself. Legal transplant by Federick Schaver is defined as the process by which laws and legal institutions are developed in one country, then adopted by another (The Process by which Laws and Legal institutions developed in one country are then adopted by another).<sup>27</sup>

Conceptually, Omnibus Law is a term applied in countries that have a common law legal system such as the United States. Meanwhile, the Indonesian state itself adheres to the Civil Law system, so the term Omnibus Law itself is a method of replacing/or revoking provisions in one statutory regulation or rearranging certain provisions in several special laws.

One of the goals of the government in rolling out the Omnibus Law is to encourage the growth of investment in Indonesia, with the hope that the inflow of investment will create new jobs to reduce unemployment as well as equitable distribution of public welfare. This policy is also to pursue Indonesia's 2045 vision to become the top 5 world economic powers, including the 2040 target to become a high-income country.

Efforts to increase investment through simplification of investment through simplification of regulations and licensing, if not implemented in conjunction with the harmonization of sectoral laws, it is tantamount to increasing the potential for conflict and injustice in the control and utilization of Natural Resources (SDA) for community groups outside the corporation.

However, the Omnibus Law continues to be criticized by various groups, ranging from workers, academics, to professors from various universities, both from the formal and material aspects in the policy of drafting the Job Creation Bill. Various perspectives were expressed ranging from reasons for political stability and security, market efficiency, macroeconomic stability, infrastructure, labor and financial markets.

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<sup>26</sup> Presidential Decree 19 of 1963 concerning the establishment of an extraordinary Military Court and Presidential Decree 27 of 1965 concerning the issuance of the new Rupiah as legal tender for the entire territory of the Republic of Indonesia.

<sup>27</sup> Frederick Schaver, The Politics and incentive of legal transplantation, CID Working Paper Series 2000, 1.

Especially from the formal side, the Omnibus Law is required to be transparent and pay attention to input from related parties, besides that it is not in a hurry and considers the effective period of enactment of a statutory regulation. Regarding the procedure for the formation of laws and regulations, so that changes to the Omnibus Law must refer to the Act. However, Omnibus Law itself is a habit that developed in the common law legal tradition, while Indonesia adheres to Civil Law. The government is of the view that the Omnibus Law can also be applied in Indonesia by relying on attachment to the highest legal source Pancasila and the 1945 Constitution.

The government which conceptualized the Omnibus Law in the form of the Job Creation Law, the discussion has taken into account the principles of openness, prudence and public participation, wider socialization, especially for officials and other related parties, legal experts from legislation, and academics will be involved in the discussion, in the discussion process also various national legal principles, such as the principle of consistency with Pancasila and the 1945 Constitution, constitutionalism, planned and integrated legal development, openness, liberalization, deregulation of protection, preservation and development including the principle of unity and integrity, nationality, partnership, non-government discrimination will be a major consideration in this process.

Thus, taking into account the Vision and Mission as well as the purposes and objectives of the Omnibus Law for the nation and state, there is actually no reason to reject the existence of this Law, regardless of whether Indonesia is a country with a Civil Law legal system, as long as all the guidelines for the formation of laws and regulations are made. If the invitation is followed and obeyed, then the Omnibus Law on the Job Creation Law needs to be supported by all circles and elements of society.

The Minister of Agrarian and Spatial Planning / Head of the National Land Agency Sofyan Djalil once raised the concept of the Omnibus Law.<sup>28</sup> This concept is also known as Omnibus Law which is often used in countries that follow the Common Law system such as the United States in making regulations. The regulation in this concept is to make one new law to amend several laws at once.

This statement arises because of overlapping regulations, especially regarding investment. Sofyan gave an example, when there is a proposal to improve regulations in the forestry sector, the thing that must be revised is Law No. 41/1999 on forestry. However, there

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<sup>28</sup> Law Online.com 17 February 2017.

are still obstacles in other regulations, such as Law No. 32/2009 on Environmental Protection and Management (PPLH) or Law No. 5/1960 on Basic Agrarian Regulations.

If seen, the use of the Omnibus Law concept seems to be able to answer the problem of overlapping laws and regulations in Indonesia. The problem is whether the Omnibus Law concept can be applied in Indonesia, which adheres to the Civil Law system?

Constitutional law expert, Jimny Z Usfunan, argues that basically there is a conflict problem between government administrators, when they want to innovate or policies which then clash with the laws and regulations.<sup>29</sup> So the concept of Omnibus Law is one way out that may be taken by the Government, but Omnibus Law must be carried out at the level of the Act.

Although Indonesia adheres to the Civil Law system, Jimny believes that this concept can be used by the Indonesian government to overcome two things. First, the issue of criminalizing state officials so far, he said, many government officials are afraid to use discretion in making policies related to the use of the budget because if they are proven to be losing money, they can be charged with the Corruption Crime Act (TPIKOR).

The problem is that there is a conflict between the Government Administration Law and the TPIKOR Law. Because in the Anti-Corruption Law there are no elements that indicate the existence of evil intentions or Mens Rea. Therefore, law enforcement officers always look at it from a positive point of view, only when this act is committed and there is a loss to the state, it will be affected, while the Government Administration Law allows discretion, said Jimny.<sup>30</sup> According to him, if the government wants to use the Omnibus Law to solve this problem, a new law can be made with the concept of the Omnibus Law.

So far, between discretion and corruption, it continues to cause problems for policy makers, but not all discretion always contains corruption. The new law could define Mens Rea or the malicious intent of discretionary makers. The Omnibus Law is a protector for regional officials who want to innovate and create for economic progress and investment.<sup>31</sup>

However, Jimny reminded that if a new law has been formed to harmonize these two rules, then the new law should not be misused to protect the interests of corruptors and not in

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<sup>29</sup>Jimny Z Usfunan, Hukum Online.com, 2017. <https://www.Hukumonline.com-Organizing-Laws-with-Omnibus-Law-by-Jimny-z-Usfunan>.

<sup>30</sup> Online Law, Friday 17 February 2017.

<sup>31</sup> Ibid.

accordance with the spirit of a harmonized law. For example, the eradication of corruption from the Anti-Corruption Law.<sup>32</sup>

Second, the Omnibus Law can be used in Indonesia for uniformity of central and regional policies in supporting the investment climate. In this regard, continued Jimmy, the Omnibus Law can be a short way as a solution to conflicting laws and regulations, both vertically and horizontally.<sup>33</sup>

However, said Jimmy, the problem that will arise is the position of the legislation resulting from the Omnibus Law. In theory, the legislation in Indonesia, the position of the Law from the Omnibus Law concept can lead as an umbrella law because it regulates thoroughly and then has the power against other rules. however, Indonesia does not adhere to the Umbrella Law because the position of all laws is the same. It's just a problem, in theory the legislation regarding its position, so that its position must be given legitimacy in Law Number 12 of 2011 concerning the formation of laws and regulations, Jimmy said.<sup>34</sup>

What if there is no revision of Law Number 12 of 2011? According to Jimmy, it must be seen how the contents of the provisions in the umbrella law are, whether they are general in nature or detailed like ordinary laws. If it is general in nature, then not all provisions are revoked but only those that contradict, but if the provisions are detailed it will be a problem if they are clashed with the principle of *Lex Specialis derogat Lex generalis* (special rules override general rules, therefore, must be regulated in the legal hierarchy invitation for his position.

And it needs to be understood that there is a strong desire from the center to increase investment, but after all there are certain investments that cannot be accepted by the regions because they are considered to be able to diminish the cultural value of the local community so that they need to be managed carefully, added Jimmy. Indonesia, he warned, do not let the Omnibus Law raise problems in respecting regional autonomy which emphasizes the will of the regions to regulate their regions. Due to the existence of the Omnibus Law, automatically regional level regulations also comply with the new rules of the Omnibus Law concept.

The concept of the Omnibus Law is a new concept used in the Indonesian legal system, this system is usually referred to as the Law on Sweeping the Universe, because it is

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<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

able to replace several legal norms in one regulation.<sup>35</sup> In addition, this concept is also used as a mission to cut down some norms that are considered incompatible with the times and are detrimental to the interests of the state.

In the Job Creation Bill, there are 11 clusters, one of which regulates employment, this cluster includes 3 laws that were merged into one namely Law Number 13 of 2003 concerning employment, Law Number 40 of 2004 concerning the social security system, and Law No. -Law Number 24 of 2011 concerning the Social Security Administration. In this employment cluster, the government seeks to harmonize the three (3) laws so that they are in line so as to be able to provide a space for investors to see the regulations that have been perfected without worrying about overlapping regulations and causing losses for investors themselves.

In the process of drafting this bill, there were many public opinions that did not agree with the existence of this bill. These opinions are due to the fact that the work deadline is only 100 days by President Jokowi and also does not involve many parties in its manufacture. However, there is one thing that is very important and becomes the main problem in the preparation of this bill. The problem is the existence of severance pay cuts to workers who have been terminated by the company.<sup>36</sup>

In this context, why are so many workers and the public who reject the existence of this Job Creation Bill. The essence of the problem lies in Article 89 paragraph 45 of the Job Creation Bill. Which replaces the provisions of Article 156 of Law Number 13 of 2003 concerning Manpower which mentions several provisions for calculating severance pay which have been changed in paragraph (1) of Article 156 of Law Number 13 of 2003 which is replaced by the Editor "In the event of termination of employment, the employer is obliged to pay severance pay. and/or service award money". Then in paragraph (3) of Article 15 the changes made to letters g and h are replaced with the provisions of letter g which reads "a period of service of 21 (twenty one) years or more, 8 (eight) months of wages, the change is an effort to abolish the calculation of the award money for the service period as it has been regulated that the service period of 24 years or more will get 10 months of wages received. The concept of Omnibus Law is more familiarly used by countries with the Anglo Saxon

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<sup>35</sup> The Omnibus Law on Job Creation for the level of economic growth. Bureau of Law Public Relations and Cooperation of the Ministry of Law and Human Rights, <https://www.kemerkumham.go.id/berita/RUU-Omnibus-Law-Cipta-Kerha> April 30, 2020.

<sup>36</sup> Adi Setyo Prabowo, "Omnibus Law Politics of Law", *Journal of Pamator* 13, no.1 (2020): 4.

legal system, Common Law. Several countries such as America, Canada, Ireland and Suriname have used the Omnibus Law approach in their legislation.<sup>37</sup>

Research related to the possibility of applying the Omnibus law approach in Vietnam. The results of the study indicate that it is possible to apply the Omnibus approach considering that there are no regulations prohibiting it. In addition, the existence of overlapping regulations and lengthy legislative procedures to amend an article, are considerations for the adoption of the Omnibus Law in Vietnam.<sup>38</sup> By looking at the implementation of the Omnibus Law in Vietnam, the government is considering using the concept in order to grow the economy in Indonesia.

According to the author, in Law Number 12 of 2011 concerning the formation of laws and regulations, it is not explicitly explained about the procedures for the formation of laws and regulations with the concept of the Omnibus Law. This is because Omnibus Law within the scope of the State that uses the Civil Law legal system is still very rarely using the Omnibus Law concept in the process of forming legislation, although there are several countries that have used it. Basically Omnibus Law is a concept that is not actually related to the applicable legal system, but the substance of Omnibus Law makes this concept very appropriate to be used as a solution in making laws and regulations.

So far, the hierarchy of laws in Indonesia contained in Law Number 12 of 2011 Article 7 is as follows:<sup>39</sup>

1. 1945 Constitution
2. Decree of the People's Consultative Assembly
3. Laws/Government Regulations in Lieu of Laws
4. Government regulations
5. Presidential decree
6. Provincial Regulations
7. City District Regulations

Seeing the existence of this hierarchy, the author considers that the order of the formation of laws and regulations in Indonesia should be changed and the concept of

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<sup>37</sup>Tracing the origins of the Omnibus Law concept <https://www.Hukumonline.com/berita/baca/lt5e2c4de971a/menelusuri-asal-usul-kon-Omnibus-Law>. accessed on 02 April 2020.

<sup>38</sup>Ahmad Teguh Wahyudin, "Concept of Omnibus Law Implementation in the statutory system", This paper can be accessed at <https://www.academia.edu/41537217/MakalahOmnibusLaw>. accessed on March 31, 2020.

<sup>39</sup> Law Number 12 of 2011 concerning the Establishment of Legislation.

Omnibus Law should be included so that the government and the DPR have other options so that they are able to better harmonize legislation.

Even though it is very common to the ears of the Indonesian people, the concept of Omnibus Law has actually been used in 2 laws in Indonesia, but it is not taken seriously by the public. These laws are as follows:

1. PERPPU Number 1 of 2017 concerning access to financial information for the benefit of Taxation in conjunction with Law Number 9 of 2017, which revokes:<sup>40</sup>
  - a. Article 35 paragraph (2) and Article 35 A of the Law on General Provisions and Tax Procedures.
  - b. Article 40 and Article 41 of the Banking Law.
  - c. Article 47 of the Capital Market Law.
  - d. Article 17, Article 27 and Article 55 of the Commodity Futures Trading Law
  - e. Article 41 and Article 42 of the Sharia Banking Law.
2. Law Number 23 of 2014 concerning Regional Government, which revokes:
  - a. Law Number 5 of 1962 concerning Regional Companies.
  - b. Article 157, Article 158 paragraph (2) to paragraph (9) and Article 159 of the Law on Regional Taxes and Levies.

## **APPLICATION OF OMNIBUS LAW IN THE NATIONAL LAW SYSTEM**

Globalization in the economic sector brings a change in the legal paradigm because every change in the legal paradigm inevitably brings changes in law and legal practice.<sup>41</sup> This is because globalization has provided the entry of various kinds of foreign legal institutions that adhere to the Common Law legal system into the Indonesian legal system that adheres to the Civil Law legal system.

These changes indirectly lead to legal conflicts caused by differences in the legal system. Differences in the legal system, where the Indonesian legal system has its own structure, substance and culture that is different from the common law legal system. So that it requires changes and legal reforms in the transplanted of the Common Law system to the

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<sup>40</sup> Suwandi Arham, "Omnibus Law in the Perspective of Indonesian Law", *Petitum* 7, no.2 (2019), [https://vit-e-journal.id/J\\_Petitum/article/view/652](https://vit-e-journal.id/J_Petitum/article/view/652). accessed on 17 April 2020.

<sup>41</sup> Gunawan Wijaya, *Transplant Trust in the Civil Code, KUHD, and the Moda Market Law* (Jakarta: PT. Raja Grafindo Persada, 2008), 21.

application of the omnibus law method in Indonesia which adheres to the civil law legal system.

Legal transplanted as a national legal development policy is a political choice that is in accordance with the soul and spirit of Indonesian law, the soul and personality of the Indonesian nation, the ideological-philosophical basis of Pancasila which is the original paradigmatic value of Indonesian culture and society, is a political choice in the activity of making legal norms. concrete (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.<sup>42</sup> The policy of making laws (basic policy) that combines elements originating from foreign law with laws originating from the original paradigmatic values of Indonesian culture and society must be carried out carefully and calculatingly, so that the laws that will be enforced in this country are not revoked from the law. ideological-philosophical roots of the Indonesian state and nation.

There is a relationship between ideology and the behavior of judges, where psychology to be in a 'comfort zone' and safe with decisions that tend to represent the normativism legal school of thought, actually plays a role in weakening the imagination of law enforcement for efforts to advance respect for human rights. If asked to talk about ideology and constitution, various values of unity, diversity, tolerance, and so on will appear. If we talk about the legal system, for example, the values of the Pancasila legal system will emerge, which believe in social justice, restorative justice, the electization of values in society into national law and so on.

The application of the Omnibus Law method is not without consideration, the simplification of regulations focused on the Advanced Indonesia Cabinet is in line with the basic idea that "the application of the Omnibus Law can accelerate changes in the economic ecosystem", the stages in Law Number 12 of 2011 concerning the Establishment of Legislation as has been amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation, when read through a progressive interpretation approach, the reading of the alignment of the Omnibus Law method

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<sup>42</sup> Evaristus Hartoko W. "Good Corporate Governance In Indonesia Griffin's View", *International And Comporative Law* 3, no.1, (2002): 3.



with the Law on the formation of legislation is interpreted as a method of preparation, while still using the legal rules for the formation of laws.

The link between the application of the omnibus law architectural model building in the national legal system through literacy that has been carried out by the government, its application is also carried out through a logical ratio study of making a law using the omnibus law method with a substantive comparative approach,<sup>43</sup> constructive and transgressive, in Indonesia and other countries. The process of implementing Omnibus Law in the national legal system for the formation of laws and regulations also pays attention to the principles of the formation of laws and regulations, on the other hand, the architectural design of the Indonesian omnibus law building also pays attention to other principles in accordance with the relevant field of legislation. Thus the approach of the Indonesian Omnibus Law method, applies the method by placing a model for the formation of laws and regulations. In accelerating the revitalization of the regulatory climate related to the investment climate and improving the economy through the Omnibus law, the Draft Law on Job Creation and the Draft Law on Taxation to strengthen the economy,

Establishment of draft laws and regulations in the national legal system, both the Job Creation Bill and the Taxation Law Draft for strengthening the economy, the establishment of laws and regulations whose substance regulates several existing provisions and are spread in legal products that have been promulgated in the form of a law as a simplification of the formation of laws, the Government deems it necessary to use the omnibus law method, which is a method to change several equal statutory provisions by taking into account the principles and procedures for the formation of statutory regulations.<sup>44</sup> As an illustration of the architectural model of the application of omnibus law in the national legal system,

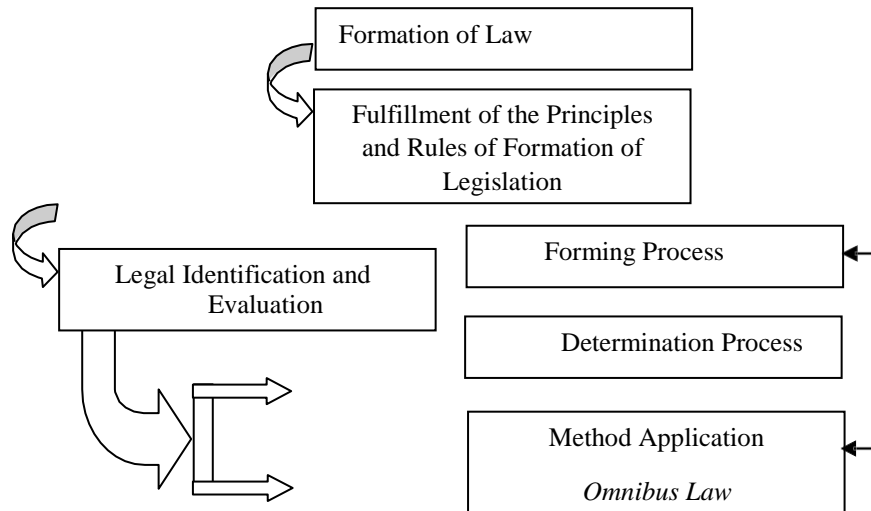
The author provides an overview to make it easier to understand the basis for the construction of Indonesia's omnibus law architecture as follows:

### **Omnibus Law Implementation Model Formation of Legislation**

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<sup>43</sup> *William & Mary Law Review* 57, Issue 6 Article 3.

<sup>44</sup> To speed up legal reform, all aspects need to be simplified, Jimly Assidique delivered in the FGD on September 29 2017.

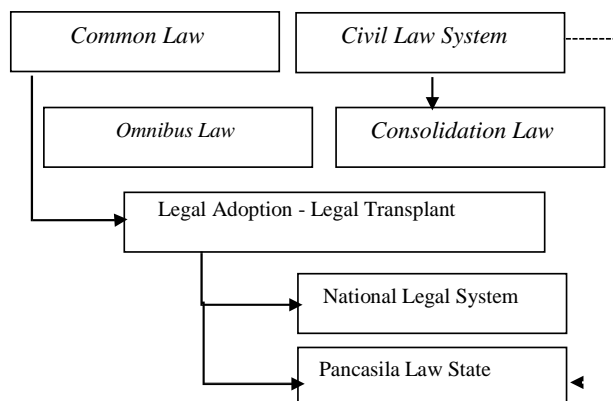


Source: processed by the author, from the implementation of the Omnibus Law, the Job Creation Bill and the Taxation Bill for Economic Strengthening

The description of the construction basis of the Indonesian omnibus law architecture, is interpreted by the author as a process in the formation of legislation in the national legal system with the Omnibus Law method approach. Through the description of the architectural model of the application of the Omnibus Law method, legal adoption through the transplantation of the common law legal system into the Indonesian legal system that adheres to the Civil Law legal system has been adapted to the national legal system, to minimize the impact and suitability of interactions (the process of aligning the Common Law legal system to the Civil Law and the national legal system) national law.

The application of the Omnibus Law method in the national legal system, can be seen from the architectural design description that the author describes to make it easier to understand the process of adopting the law and transplanting the law into the national legal system as follows.

### Omnibus law Application Architecture In the Legal System



Source: processed by the author, through a legal reconstruction approach.

The application of the omnibus law method in the national legal system has an impact on accelerating legal reforms that overlap, are not harmonious, and are not in accordance with civilization and the times. Through the architectural description of the application of omnibus law, we can see that, its application to the national legal system has gone through a law adoption and alignment approach (first with the theory of legal dualism, the second theory of legal transplantation). is no longer something new to be discussed, but it becomes interesting if the pattern and its usefulness is widespread in society, in fact legal transplantation in Indonesia has been going on for a long time from the Dutch East Indies period until the independence period and until now continues to carry out system transplants by making adjustments. into national law.

The problem of structuring regulations in Indonesia, will take time and require no small amount of money if the process of restructuring legislation using the method of amending a law, in the new tradition in the common law system, omnibus law is able to provide answers with the pattern of drafting legislation which are substantive, constructive and transgressive, and a broad coverage of the content of how many existing laws apply.

The option to formalize the omnibus law in the content of Law Number 12 of 2011 concerning the Establishment of Legislation as has been amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation, is an option when the legal transplant process is in the form of a legal text, is an autonomous choice it can be formalized in the form of a written rule, but by formalizing it in a written regulation, indirectly the benefit of law through an interpretative approach to the legal text itself is not free and absolute. .

Modern law applied in Indonesia (and also in many other countries) has a basic pattern that is rooted in European law. Many of the system concepts and procedures are taken from there. By understanding the social, historical context of European law, of course, we will be wiser and more alert about how we will treat it.

The legal system transplant approach is related to the omnibus law method that will be applied in the national legal system to make amendments. Using the omnibus law is deemed not necessary to be formalized in written rules, but the omnibus law method can be

directly applied by aligning it with the regulations for the formation of legislation through its working relationship law.

The problem of such a system implies that the legal problems we face are very complex. On the one hand, law is seen as a value system which is entirely under the umbrella of a basic norm called the *grundnorm* or basic norm.<sup>45</sup> Law moves between two different worlds, both the world of values and the everyday world (social reality). As a result, tensions often occur when the law is applied. When the law which is full of values is to be realized, then it must deal with various factors that influence it from the social environment.

Transplantation of Omnibus Law into National Law Omnibus law which is applied in the National Law system, while maintaining the legal institutions that form laws and regulations, as referred to in Law Number 12 of 2011 concerning the Establishment of Legislations as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation. The omnibus law applied in the national legal system includes legal material in the form of rules and norms which are patterns of community behavior based on the national legal system based on Pancasila. The omnibus law, which is applied in the national legal system, reflects the unity of legal phenomena, on the view of legal values and behavior in society based on legal evaluation.

Law No. 12 of 2011 does not recognize the term Omnibus Law. However, the provisions of the Omnibus Law as a law should be subject to the regulation of Law No. 12 of 2011 both related to the position and material content. The method of drafting the Omnibus Law Bill still refers to Law No. 12 of 2011 concerning the formation of legislation because Law No. 15 of 2019 which is a change from Law No. 12 of 2011 does not revise the procedure for drafting legislation.

Therefore, the Law resulting from the Omnibus Law must be given legitimacy in Law No. 12 of 2011 which means that Law No. 12 of 2011 must be revised. If it is not revised, according to Jimmy Z Usfunan, it must be seen how the contents of the provisions in the umbrella law are, whether they are general in nature or detailed like ordinary laws. If it is general in nature, then not all provisions are revoked but only those that contradict. But if the provisions are general, it will be a problem if they are clashed with the principle of *lex*

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<sup>45</sup> Esmi Warasih Pujirahayu, *Legal Institution A Sociological Study*, (Semarang: Diponegoro University Publishing Agency, 2011), 69-70.

specialis derogat legi generalis (special rules override general rules). Therefore, it must be regulated in the hierarchy of legislation regarding its position.<sup>46</sup>

So, when the government forces the Omnibus Law Bill to be implemented, there will be a legal development paradigm that is not in line with the mandate of the Constitution and violates the theory of legislation. Because when viewed from these provisions, the Omnibus Law as a law remains domiciled under the Constitution, but is higher than other types of statutory regulations. Meanwhile, the content material that must be regulated by law consists of:

1. Further regulation regarding the provisions of the 1945 Constitution of the Republic of Indonesia;
2. Order of a law to be regulated by law;
3. Ratification of certain international agreements;
4. Follow up on the decision of the Constitutional Court; and/or
5. Fulfillment of legal needs in society.

## CONCLUSION

Broadly speaking, the process of forming legislation with the concept of Omnibus Law is not clearly regulated in Law Number 12 of 2011, but there is not a single article in Law Number 12 of 2011 that forbids the use of the Omnibus Law concept being applied in Indonesia.

The concept of Omnibus Law was created as a new legal model (new paradigm) in the laws and regulations in Indonesia, then the Law made with the concept of Omnibus Law will change the legal system, because the concepts and theories are different from the legal norms that have been applies in Indonesia.

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<sup>46</sup>[https://www Hukumonline.com/berita/baca/lt58a6fc84b8ec3/menimbang-Konsep-omnibus-law-bila-applied-di-Indonesia](https://www.Hukumonline.com/berita/baca/lt58a6fc84b8ec3/menimbang-Konsep-omnibus-law-bila-applied-di-Indonesia)).

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