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## The Relevance Of Omnibus Law To The Harmonization Of Legislation In Indonesia

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### Abstract

The problem of overlapping laws and regulations in Indonesia has become a classic unresolved issue. The emergence of the Omnibus Law as a new method of drafting legislation in Indonesia is expected to be able to resolve these problems. However, the Constitutional Court (MK) has decided that the Job Creation Act which has been drafted using the Omnibus Law method is conditionally unconstitutional. This study aims to examine in depth the relevance of the Omnibus Law method to the harmonization of legislation in Indonesia and its relation to the Constitutional Court's decision on conditionally unconstitutional. The research method used in this research is normative juridical using secondary data. Based on the results of the study, it is known that the relevance of the Omnibus Law method to the harmonization of laws and regulations in Indonesia is the Omnibus Law method, which offers regulatory reforms that overlap each other even though Law No. 15 of 2019 has not included this concept but harmonization of laws and regulations needs to be done. to resolve conflicting laws and regulations. This method is expected to be able to solve the problems of effective and efficient laws and regulations. It is also necessary to provide a legal basis regarding the Omnibus Law so that these regulations run well and do not cause problems in law enforcement in Indonesia.

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## INTRODUCTION

Legislative regulations are all rules issued by authorized institutions based on the methods and procedures determined by law.<sup>1</sup> Legislation is hierarchical in nature so that it means that special rules must comply with general rules or the rules below must comply with the rules above.<sup>2</sup> In addition to not being in conflict with the rules above, a law must not conflict with statutory regulations of equal degree, for example, one law may not conflict with other laws.<sup>3</sup>

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<sup>1</sup> Masnur Tiurmaida Malau, 'Aspek Hukum Peraturan Dan Kebijakan Pemerintah Indonesia Menghadapi Liberalisasi Ekonomi Regional: Masyarakat Ekonomi ASEAN 2015', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 3.2 (2014), 163–182.

<sup>2</sup> Phipipus M Hadjon, *Hukum Tata Negara Dan Hukum Administrasi Sebagai Instrumen Hukum Untuk Mewujudkan Good Governance* (Surabaya, 2008).

<sup>3</sup> Vincent Suriadinata, 'Penyusunan Undang-Undang Di Bidang Investasi: Kajian Pembentukan Omnibus Law Di Indonesia', *Refleksi Hukum*, 4.1 (2019), 115–134.

So that the laws and regulations must be in accordance or in this study called harmonious, both vertically and horizontally.

Indonesia as a legal state based on Pancasila which has the aim of realizing a safe, peaceful, secure, and orderly state life.<sup>4</sup> The law guarantees every citizen in achieving a harmony, balance and harmony to create a safe and prosperous society. The logical consequence of the predicate of the rule of law in the Indonesian state, means that every act or action of a person, both individually and in groups, the people and the government must be based on the provisions of the applicable laws and regulations.<sup>5</sup> Indonesia as a state of law is a country whose laws and regulations provide a sense of certainty, justice and benefit according to legal objectives.<sup>6</sup> Legislation is the result of the agreement of the Indonesian people represented by their representatives, namely the Government (legislative and executive) where the Government observes the nation and state to regulate it, the existence of a statutory regulation must also be obeyed by all nations residing in a country. Legislation in various forms and levels must be interrelated, aligned, and not overlapping so as to form an effective legal system that moves dynamically as well as comprehensively in realizing the goal of the Indonesian rule of law, which is to protect every Indonesian people and all of Indonesia's bloodshed.

Regulations "laws are created basically to achieve legal goals, namely justice, certainty, and expediency. Inconsistency and overlapping in laws and regulations. Harmonious (interrelated, aligned and non-overlapping) laws are needed to realize the aspired legal goals. Politics in Indonesia, which has been changing since President Soekarno's leadership until now is in the second period of the Jokowi era leadership, has caused many regulations to be made and because of these political changes, there are also many regulations that make it difficult for those who carry them out. Political changes that result in disharmony of laws and regulations have an impact on legal uncertainty and legislation becomes ineffective and inefficient.

In Indonesia, there are several laws and regulations that substantially contradict each other. For example, the law that regulates the age limit for a person. The Civil Code determines the limit for a person to be declared an adult, namely when he is 21 years old or already married as

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<sup>4</sup> Dani. Pinasang, 'Falsafah Pancasila Sebagai Norma Dasar (Grundnorm) Dalam Rangka Pengembangan Sistem Hukum Nasional', *Jurnal Hukum UNSRAT*, 20.3 (2017), 1–10.

<sup>5</sup> Christian Siregar, 'Pancasila, Keadilan Sosial, Dan Persatuan Indonesia', *Jurnal Humaniora*, 5.1 (2014), 107–112 <<https://doi.org/https://doi.org/10.21512/humaniora.v5i1.2988>>.

<sup>6</sup> Ni'matul Huda, 'Kedudukan Peraturan Daerah Dalam Hierarki Peraturan Perundang-Undangan', *Jurnal Hukum Ius Quia IusTum*, 13.1 (2006), 23–37 <<https://doi.org/https://doi.org/10.20885/iustum.vol13.iss2>>.

specified in Article 330 of the Civil Code. Meanwhile, Law Number 30 of 2004 concerning the Position of a Notary (UU JN) and Law Number 1 of 1974 concerning Marriage (UU P), determines the adult age limit for a person, which is at least 18 years old or married, as stipulated in Article 39 paragraph 1 of UU JN in conjunction with UU P. This example shows that in Indonesia there are still conflicts in the content of the provisions of one law with other laws, namely horizontal conflicts of laws and regulations.

An example of a vertical conflict of laws and regulations is the number of regional regulations related to licensing, regional economic growth, bureaucracy and ease of doing business, cancelled because they are not in line with the spirit of national development, namely accelerating central and regional economic growth by facilitating business licensing and cutting bureaucracy both at the centre and in the regions. Based on this example, it can be said that the laws and regulations in Indonesia overlap and contradict each other both vertically and horizontally. Indonesia needs the regulation of laws and regulations in achieving the interests and welfare of the community.

The problem of overlapping and conflicting laws and regulations in Indonesia has been handled by the Government by using the Omnibus Law drafting method. This method is not only intended to harmonize laws and regulations but also for economic purposes. The method of drafting laws and regulations called the Omnibus Law, which will solve problems related to complicated and lengthy regulations that are expected to have implications for Indonesia's progress, especially in the economic sector.<sup>7</sup> Improving a statutory regulation will go through a very long process and also cost a lot of money. The large number of laws and regulations that need to be addressed requires a faster, more efficient and targeted breakthrough. The Omnibus Law method is considered capable of solving the problem of overlapping laws and regulations in Indonesia. However, it should be noted that one of the laws that have been prepared by the Government using the Omnibus Law method is Law no. 11 of 2020 concerning Job Creation, hereinafter referred to as the Job Creation Law. Where the job creation law has been submitted for a judicial review (JR), namely the examination of the law against the basic constitution. The

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<sup>7</sup> Rini Sulistiawati, 'Pengaruh Investasi Terhadap Pertumbuhan Ekonomi Dan Penyerapan Tenaga Kerja Serta Kesejahteraan Masyarakat Di Provinsi Di Indonesia', *Jurnal Ekonomi Bisnis Dan Kewirausahaan*, 3.1 (2012), 29–50.

Constitutional Court (MK) decided that the Job Creation Act was constitutionally conditional, and was given 2 (two) years to correct it.

Based on the description above, the problem of overlapping laws and regulations in Indonesia has been managed by the Government by using the Omnibus Law method in drafting laws so that they are in harmony with each other. However, with the decision of the JR MK which ruled that the Job Creation Act was unconstitutional, it was doubtful that the Omnibus Law method had relevance to the harmonization of laws and regulations in Indonesia. Based on the description of the problems that the authors have put forward in the introduction, the authors formulate the problems as follows; What is the concept of the Omnibus Law method? What is the problem with disharmony of laws and regulations in Indonesia? How is the relevance of the Omnibus Law method to the harmonization of laws and regulations in Indonesia?

The purpose of this study is to understand the Omnibus Law method, then this study aims to determine the disharmony of laws and regulations in Indonesia and to determine the relevance of the Omnibus Law method with the harmonization of laws and regulations in Indonesia. The method of research used in this study is a type of normative juridical research.<sup>8</sup> Normative juridical research is a research method by basing its analysis on the applicable laws and regulations. So the research approach method used is the statutory approach.<sup>9</sup> The data source of this research is secondary data in the form of legislation related to the Omnibus Law method and other literature related to research problems. The secondary data was obtained through literature study.

## **UNDERSTAND THE CONCEPT OF THE OMNIBUS LAW METHOD**

Omnibus is not a term derived from Indonesian, the word "Omnibus comes from the Latin word *omnis* which means all, if it is associated with the legal concept in the Black Law Dictionary, Omnibus Law means many objects or goods at once; many things or have multiple purposes. Likewise in Gluck and Connel, interpreting Omnibus Law as "combining several

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<sup>8</sup> Depri Liber Sonata, 'Metode Penelitian Hukum Normatif Dan Empiris Karakteristik Khas Dari Metode Meneliti Hukum', *Fiat Justisia Jurnal Ilmu Hukum*, 8.1 (2014), 15–35 <<https://doi.org/https://doi.org/10.51749/jphi.v2i1.14>>.

<sup>9</sup> Kornelius Benuf and Muhamad Azhar, 'Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer', *Gema Keadilan*, 7.1 (2020), 20–33 <<https://doi.org/https://doi.org/10.14710/gk.7.1.20-33>>.

measures into one or combining various subjects into one law", furthermore the notion of Omnibus Law can be understood as a statutory regulation or regulation "made to target the main issues that can repeal or change several laws at once simple."<sup>10</sup> The Omnibus Law is a comprehensive and comprehensive rule, not tied to one regime by making regulations "new laws to amend several laws at once. Omnibus Law is known as the omnibus bill which is often used in countries that follow the Common Law system such as the United States, Canada, and Australia. There needs to be a suitable position given to Omnibus Law so that it can run in Indonesia which basically adheres to the Civil Law system.

The term Omnibus Law has become a new trend for legislators in Indonesia, as well as a new experience for drafting laws and other regulations. Historically, Omnibus law was adopted from the legal traditions of countries that adhere to the Common Law system, which was later adopted by other law systems with European Continental styles such as Indonesia. This model adopts the method between legal systems becoming commonplace these days due to globalization. Common Law countries such as America, Canada, and Ireland, for example, have used the Omnibus Law method in drafting various laws.<sup>11</sup> The Omnibus Law method has the advantage of being able to resolve conflicting laws and regulations quickly, effectively, and efficiently. In addition, the Omnibus Law method can make the harmonization of government policies, both at the central and regional levels, to support the investment climate. Finally, the application of the Omnibus Law method can make licensing management more integrated, efficient, and effective because it is able to break the bureaucratic chain that is too long, so that the coordination relationship between relevant agencies has been regulated in an integrated policy and will create legal certainty and legal protection for policy makers. or for legislators.<sup>12</sup>

However, in addition to the advantages, there are also disadvantages to the Omnibus Law method, including the fact that one law drawn up using the Omnibus Law method involves many things, so it takes a long time to discuss it and also involves many parties who must be

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<sup>10</sup> Ricca Anggraeni and Cipta Indra Lestari Rachman, 'Omnibus Law in Indonesia: Is That the Right Strategy?', in *International Conference on Law, Economics and Health* (Advances in Economics, Business and Management Research, 2020), pp. 180–182.

<sup>11</sup> Fahmi Ramadhan Firdaus Bayu Dwi Anggono, 'Omnibus Law in Indonesia: A Comparison to the United States and Ireland', *Lentera Hukum*, 7.3 (2020), 319–36 <<https://doi.org/https://doi.org/10.19184/ejrh.v7i3.19895>>.

<sup>12</sup> Firman Freaddy Busroh, 'Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan', *Arena Hukum*, 10.2 (2017), 227–250 <<https://doi.org/https://doi.org/10.21776/ub.arenahukum.2017.01002.4>>.

involved in drafting the law.<sup>13</sup> Based on this description, it can be understood that the Omnibus Law method was initially applied in countries that adhere to the Canon Law legal system, but in its development the Omnibus Law method is also applied by countries that adhere to the Civil Law legal system, such as Indonesia. The Omnibus Law method is one of the methods of drafting laws and regulations that combines many regulatory materials and is prepared with one purpose, for example Law no. 1 of 2020 concerning Job Creation, hereinafter referred to as the Job Creation Act, which was drafted with the aim of facilitating business activities by cutting lengthy bureaucracy, making it more efficient. In addition, the establishment of the Job Creation Law is to realize the goal of establishing the Indonesian State Government and realizing a prosperous, just and prosperous Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The Omnibus Law method is very necessary, considering the many positive impacts that will be obtained with the Job Creation Act.

However, along the way, it was discovered that the a quo Job Creation Law, which incidentally was drafted using the Omnibus Law method, which in the a quo Job Creation Act stipulates 11 (eleven) clusters of them; "Licensing and Sector Business Activities, Cooperatives and MSMEs and Village Owned Enterprises (BUMDes), Investment, Employment, Fiscal Facilities, Spatial Planning, Land and Land Rights, Environment, Construction and Housing, Economic Zones, and Goods and Services Clusters Government", a judicial review has been proposed, namely the study of a law against the 1945 Constitution of the Republic of Indonesia, and the Constitutional Court (MK) has decided that the a quo Job Creation Law is conditional, meaning that if it is not corrected within 2 (two) years then Unconstitutional Job Creation Act.

## **DISHARMONIZATION OF LEGISLATION IN INDONESIA**

In principle, laws and regulations should be in harmony with each other. Either between a higher regulation and a lower regulation or between one regulation, for example a law and another law, must also be in harmony, this alignment is also known as the harmonization of laws and regulations in Indonesia..<sup>14</sup> Harmonization of laws and regulations will be created if legislators carry out their duties properly without any intervention from any

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<sup>13</sup> AL Sentot Sudarwanto and Dona Budi Kharisma, 'Omnibus Law Dan Izin Lingkungan Dalam Konteks Pembangunan Berkelanjutan', *Jurnal Rectsvinding*, 9.1 (2020), 109–23.

<sup>14</sup> Kornelius Benuf, 'Harmonisasi Hukum: Pemilu Serentak Dan Ketenagakerjaan, Analisis Yuridis Terhadap Kematian KPPS Tahun 2019', *Gema Keadilan*, 6.2 (2020), 196–216.

party or power. Disharmonization of laws and regulations is a misalignment between laws and regulations both vertically and horizontally.

Disharmonization of laws and regulations is the opposite of harmonization of laws and regulations, namely harmony between one statutory regulation and other laws and regulations. The disharmony of statutory regulations can result in the law not being able to function as social control and legal uncertainty.” Disharmonization of laws and regulations can occur due to the large number of laws and regulations so that legislators find it difficult and even unable to harmonize with each other.<sup>15</sup>

Indonesia is classified as a young country in terms of managing and implementing state life, this is because the country of Indonesia has been colonized by the Dutch and Japanese for a long time. The colonial state made the legal system of the Indonesian state also influenced by the legal system adopted by the colonial state, especially the Netherlands. Many legal products inherited from the Netherlands are still applied in Indonesia, both in the form of laws and other legislation. In this regard, the Indonesian state, in fact, is still facing problems regarding its laws and regulations. The laws and regulations in Indonesia overlap each other, even though this will make it difficult for indigenous and non-native people. They basically cannot be separated from the name of the law, besides that Indonesia is a state of law, where everything in Indonesia is regulated by law. Legal regulations that make it difficult for legal users will have a very significant impact on the survival of the state, government, and society.<sup>16</sup>

Irrelevant statutory regulations must be addressed immediately to realize legal goals, even state goals. Without an improvement in national law in the form of harmonization of laws and regulations in Indonesia, the goals of the Indonesian state will be difficult to achieve. In a country that upholds the law, it has legal objectives, among others, order, tranquility, peace, prosperity, and happiness in the order of social life. Hans Kelsen said that the formation of the law is the initial series of law enforcement which is very important to pay attention to,<sup>17</sup> by that

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<sup>15</sup> Dedi Sugiyanto, ‘Nalisis Yuridis Pasal 5 Ayat 2 Undang-Undang Republik Indonesia Nomor 14 Tahun 2002 Tentang Pengadilan Pajak Ditinjau Dari Pasal 24 Ayat 1 Dan Ayat 2 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945’, *Al-Adl : Jurnal Hukum*, 13.1 (2021), 116–34 <<https://doi.org/http://dx.doi.org/10.31602/al-adl.v13i1.4248>>.

<sup>16</sup> Agnes Fitriyantica, ‘Harmonisasi Peraturan Perundang-Undangan Indonesia Melalui Konsep Omnibus Law’, *Gema Keadilan*, 6.3 (2019), 300–316 <<https://doi.org/https://doi.org/10.14710/gk.6.3.300-316>>. Hlm. 302.

<sup>17</sup> Hans Kelsen, *Pure Theory of Law, Terjemahan Oleh Raisul Muttaqien, Teori Hukum Murni: Dasar-Dasar Ilmu Hukum Normatif* (Bandung: Nusa Media, 2014). Hlm. 41.

means, the formation of laws and regulations is the main thing for the state, especially the state of Indonesia, and is a condition for developing national law in Indonesia.

Data from the Ministry of Law and Human Rights, the state of Indonesia has 42,688 laws and regulations ranging from regulations at the central level such as laws, to regional levels such as Regional Regulations (Perda). Seeing the large number of laws and regulations in Indonesia, it is no exaggeration to state that the Indonesian state has experienced regulatory obesity which will have a negative impact on every sector. This regulatory obesity in Indonesia has prompted President Joko Widodo to say that the Omnibus Law will be issued for the main reason, namely constraints in the economic sector. The inhibition of economic growth in Indonesia does not rule out the possibility of obesity from the laws and regulations in Indonesia. With that many laws, it will take a long time to harmonize the laws and regulations. With that, legal goals that impact on state goals will take longer to achieve.

## **THE RELEVANCE OF THE OMNIBUS LAW TO THE HARMONIZATION OF LEGISLATION IN INDONESIA**

The Omnibus Law is one way out in the problem of conflict between government administrators, but it must be done at the level of the law. Although “Indonesia adheres to a civil law system, the Omnibus Law method can be used to overcome two things. The first is the issue of criminalizing state officials, because so far many government officials are afraid to use discretion in making policies regarding the use of the budget because if they are proven to be in losses they will be charged with the Anti-Corruption Law. The problem is that there is a conflict between the Government Administration Law and the Anti-Corruption Law, because in the Anti-Corruption Law there are no elements that indicate malicious intent or mens rea, therefore law enforcement officers always look from a positivist perspective only for actions when these actions are carried out and there are losses to the state. so there is entanglement, while in the Administration Law there is discretion. Second, it can be used for uniformity of central and regional policies in supporting the investment climate.

Indonesia, which adheres to a civil law system, has not yet regulated the UU resulting from the Omnibus Law. Indonesia does not regulate the Umbrella Law (Omnibus Law) because the laws in Indonesia are the same. Indonesia needs to enact Law No. 15 of 2019 concerning the formation of laws and regulations to provide the position of Omnibus Law in Indonesia. "To realize the harmonization of laws and regulations, there are several steps, including: The



need to identify and analyze the problem of legal disharmony and look for the causes/roots of the problem.

Problems regarding the disharmony of laws and regulations in Indonesia will cause uncertainty in law enforcement in Indonesia. This can be seen clearly if there is an act or legal action of a person, in one law it is declared a criminal act, while in another law the act is an administrative violation.<sup>18</sup> Based on this description, it can be seen that disharmony of laws and regulations will cause problems in law enforcement in Indonesia. Conducting “legal discovery efforts through legal methods through legal interpretation to build legal construction. Perform legal reasoning on the results of the interpretation and construction of laws that have been built in order to meet the elements of logic. Develop rational, structured, measurable and clear legal arguments accompanied by a good understanding of the legal system so as not to cause new legal problems.

There are several advantages of applying the concept of Omnibus Law in resolving regulatory disputes in Indonesia, including: Addressing conflicting laws and regulations quickly, effectively and efficiently. Uniform government policies both at the “central and regional levels to support the investment climate. Licensing management is more integrated, efficient and effective. Able to break the bureaucratic chain that lingers. Improved coordination relations between related agencies because it has been regulated in an integrated omnibus regulation policy. There is a guarantee of legal certainty and legal protection for policy makers. However, in the implementation of the Omnibus Law, contributions from all lines are needed so that it can run effectively and efficiently.

## CONCLUSION

Regulatory problems that have been piling up need to require a legal breakthrough through the Omnibus Law method, which offers improvements to overlapping regulations even though Law No. 15 of 2019 has not included this concept but harmonization of laws and regulations needs to be done to resolve conflicting laws and regulations . This method is expected to be able to solve the problems of effective and efficient laws and regulations. It is also necessary to provide a legal basis related to the Omnibus Law so that these regulations run well and do not cause problems in law enforcement in Indonesia.

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<sup>18</sup> Tanto Lailam, ‘Konstruksi Pertentangan Norma Hukum Dalam Skema Pengujian Undang-Undang’, *Jurnal Konstitusi*, 11.1 (2014), 18–42.

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