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Omnibus Law Opportunities And Challenges Towards Entrepreneurs And Labor : Comparative Review

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*" Omnibus Law Opportunities And Challenges Towards
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*" Omnibus Law Opportunities And Challenges Towards Entrepreneurs And Labor
: Comparative Review"*

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Omnibus Law in Progressive Law Views in Indonesia

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Abstract

Omnibus law is a method or concept of making regulations that combines several rules with different regulatory substance, into a large regulation that functions as a legal umbrella (umbrella act). As for the phenomenon relating to laws and regulations that are now surfacing and reaping debates, when the government submits the Draft Bill on the Employment Copyright to the House of Representatives the debate on the matter arises not without reason, because the Draft Bill on the Employment Copyright it was formed by the government through Omnibus Law. Not only that, even of the 50 Draft Laws included in the 2020 National Legislation Program (Prolegnas), four of them are omnibus law which consists of a Bill on the National Capital, a Bill on Pharmaceuticals, a Bill on Copyright on Employment, and a Bill on Provisions and Tax Facilities for Strengthening the Economy. In the description of writing, the problem is how is Omnibus Law viewed from the view of progressive law in Indonesia? In the hierarchy / sequence of laws and regulations in Indonesia, the concept of Omnibus Law has not been included as a principle in legal sources, but the harmonization of laws and regulations in Indonesia is continuously carried out to minimize conflicts of laws and regulations. Professor Satjipto Rahardjo gave an example of legal means and a person who is a maverick to realize greater legal and social goals. Discretion in the police. In a condition where the police are given the authority not to apply the law that should be based on consideration of saving the situation. This often happens in traffic settings. In addition there is also deponing or overriding the ongoing legal process.

Keywords: *Omnibuslaw, progressive law, Indonesia*

Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly states that, "The State of Indonesia is a state of law." As a consequence of the mandate of the constitution, Indonesia wants to adhere to the concept of the rule of law in carrying out all aspects of state life.

Before we enter and conclude if Indonesia is a state of law, according to Yudi Latif, we must first distinguish between recht and wet. In Dutch rechts means law while wet is the law, and the term recht always refers to the law on which it adheres to a grundnorm or state fundamental norm.

The key word for rechtsstaat is the existence of a basic norm that underlies the creation of laws in the territory of the Unitary Republic of Indonesia, and of course we know the basic norm together is Pancasila. This was also reinforced by Soepomo's statement¹ which said that "by understanding the integral nature of law, where the state as the organizer of the justice of the whole people, ..., then we will be able to implement a unified and fair Indonesian State, as already contained in the Panca Dharma".² Then, Soepomo continued, "then the state can only be fair, if it carries out a sense of justice for the people and leads the people to noble ideals, according to the flow of the times".³

The realization of Soepomo's statement is clearly stated in the 1945 Constitution of the Republic of Indonesia Article 27, 31 and 32. In essence, the State adheres to a social justice system that is familial in nature, which is clarified in article 32 regarding the care of neglected children and the poor by the state. Next go back to article 31 which states that the economic system is composed by joint efforts based on the principle of kinship as well, which demands that natural resources be controlled by the state for the common interest as extended families. In the end, to formulate laws in each region, it should always be done with a system of consultation in accordance with the 4th principle of Pancasila.⁴

A part from what Soepomo had formulated normatively. The spirit of the judicial law in Indonesia must be at least in accordance with, first, law enforcement that breathes on divine values. Second, law enforcement in Indonesia is not only fair but also civilized. Third, Indonesian law enforcement underlies its decision on considerations that are concerned with national unity. Fourth, Indonesian law enforcement cannot be one-sided, but must go through dynamic and wise deliberations. Fifth, Indonesian law enforcement must be equitable in the overall spectrum (*vivendi mode*), not beneficial to either party.

What has been stated above shows that Indonesian law does not refer to a formal-positive truth. Indonesian law must also pay attention to the realities that live in society. Indonesian law is actually a law that as Holmes said that legal life ... has not been logic, it has been experience.

Law is a legal regulatory instrument in the rule of law. The main purpose of the law according to Mochtar Kusumaatmadja is the guarantee of order, justice, and certainty.⁵ Thus, law is a system that has characteristics and characteristics that become the driving force and regulator of people's lives. The law manifests in the form of laws and regulations, a set of written laws in various forms that govern all aspects of state and community life. According to Mahfud MD, laws and regulations are all laws in the broadest sense that are formed in a certain way by the authorized official and set forth in written form.⁶

As for the phenomenon regarding the laws and regulations that are now surfacing and drawing debate, when the government submits the Draft Bill on the Employment Copyright to the House of Representatives.⁷ The debate over this arose not without reason, because the Draft Bill on Employment Copyright was formed by the government through the Omnibus Law. Not only that, even of the 50 Draft Laws included in the

1 Penyusun batang tubuh Undang-Undang Dasar 1945 lulus cumlaude di Universitas Leiden, Belanda.

2 Yudi Latif. *Negara Paripurna*. (Jakarta : Kompas Gramedia, 2011) p.530. Yang dimaksud Panca Darma oleh Soepomo adalah lima pedoman hidup *Chuo Sangi In*.

3 *Ibid* p.53

4 Bakhrol Amal, *Paradigma Hukum (Suatu Pengantar Dalam Memahami Perilaku Manusia Terhadap Hukum)*. Desember 2013

5 Mochtar Kusumaatmadja, 2002. *Konsep-Konsep Pembangunan Hukum dalam Pembangunan*, Bandung: Alumni, p. 5-6.

6 Mahfud MD., 2009. *Konstitusi dan Hukum dalam Kontroversi Isu*, Jakarta: Rajawali Pers, p. 255.

7 CNBC Indonesia, <https://www.cnbcindonesia.com/news/20200212114420-4-137233/hari-ini-draft-omnibus-law-cilaka-diserahkan-ke-dpr>

2020 National Legislation Program (Prolegnas), four of them are omnibus law consisting of a Bill on the National Capital, a Bill on Pharmaceuticals, a Bill on Employment Creation, and a Bill on Provisions and Tax Facilities for Strengthening the Economy.⁸

The problem is How is the Omnibus Law viewed from a progressive view of law in Indonesia?

Methods of Research

The method of approach in this study uses the type of normative juridical research. Normative juridical research is research focused on examining the application of rules or norms in positive law. This type of research is a type of qualitative descriptive study, because in this study describes the situation that occurs at present in a systematic and factual manner with the aim to explain and resolution of the problem under study.

Primary data obtained by researchers refers to data or facts and legal cases obtained directly through literature studies relating to research objects and practices that can be seen and related to research objects.

The data analysis method used is qualitative normative, which is the decomposition of data analysis that starts with information obtained to achieve clarity of the problem to be discussed, namely the Omnibus Law in terms of the progressive view of law in Indonesia.

Research Result and Discussion

Omnibus Law Viewed From A Progressive View Of Law In Indonesia

The definition of Omnibus Law starts from the word Omnibus. The word Omnibus comes from the Latin language and means for everything. In the Black Law Dictionary Ninth Edition Bryan A. Garner mentioned the omnibus: relating to or dealing with numerous objects or items at once; including many things or having various purposes, meaning that it is related to or dealing with various objects or items at once; including many things or having various goals. When coupled with the word Law, it can be defined as a law that has a variety of related objects / items or all related.

Omnibus law is a law that is made to target major issues and may revoke or amend several laws, with this law intended to streamline regulations in terms of numbers, but also to simplify regulations to be more targeted. Ideally not just a simplification in terms of numbers, but also in terms of consistency and neat organization. So it can be called a procedure also to make it simpler and right on target. So according to the expert, it can be concluded that Omnibus law is a product of an Act that can revoke or amend several existing laws that can be spread out in several regulations, and then be streamlined in one Act to be more targeted.

In responding to the Omnibus law, it states that basically there are conflicting issues between government administrators, when they want to make innovations or policies which then collide with laws and regulations. So the concept of the omnibus law becomes one of the solutions that might be taken by the government. However, omnibus law must be done at the level of the Act. So, according to the legal expert, the Omnibus law is a product of the Law which is a solution to the conflict between government administrators and the laws and regulations.⁹

In addition, it can also be known that the goals raised by the Omnibus Law ideas are (1) to resolve conflict of laws and regulations quickly, effectively and efficiently; (2) uniforming government policies

8 CNN Indonesia, <https://www.cnnindonesia.com/nasional/20200122164312-32-467714/4-ruu-omnibus-law-dikebut-dpr>

9 <https://www.hukumonline.com/berita/baca/lt58a6fc84b8ec3/menimbang-konsep-omnibus-law-bila-diterapkan-di-indonesia/>

at central and regional levels to support the investment climate; (3) that licensing management is more integrated, efficient and effective; (4) to break the long chain of administrative bureaucracy; (5) to improve the coordination relationship between related agencies because it has been regulated in an integrated omnibus regulation policy; and (6) as a guarantee of legal certainty and protection for policy makers.

Omnibus Law in Progressive Law

Examining this Omnibus law can not only be viewed from the Legitimacy Aspect of Laws and Regulations. We can also approach the Omnibus Law Concept through Legal Theory, namely:¹⁰

1. Montesquieu's theory of law is types of law. According to him, all creatures including humans have their own laws. First, natural law which cannot be changed and contested. Second, religious law that comes from God. Third, the moral law of the philosopher where this law can be made and changed. Fourth, political law and civil law. Political law (political rights) relates to constitutional structures, the relationship between those who govern and those governed, and the combination of power, superiority, and power. Whereas civil law (rights) is a relationship of individual desires. Although both laws are aspects of the same society, each type is a product of a political state that is nuanced by the public and constitutional politics. Whereas civil law is a product of civil states with a non-political nuance.
2. Hans Kelsen's Theory or Stufenbau's Theory is a theory that states that the legal system is a ladder with a tiered rule where the lowest legal norms must hold to higher legal norms, and higher legal norms must hold to the most basic norms (grundnorm).

First, we examine this Omnibus Law through the Montesquieu Theory approach, Omnibus Law. This must be seen as constitutional policy or this policy on the political configuration of the Regime deliberately promoted by the government and the Parliament as an effort to smooth foreign investment. the individual rights of Indonesian people who have a close relationship with each process of forming the rules or laws themselves. Political rights (power) of the government must pay attention to individual rights that have been technically regulated through specific and specific laws, for example concerning labor, of course the application of this omnibus law cannot guarantee the constitutional relationship between labor and the payer, because when laying or merging certainly the basis for consideration of a Legal Entity must change lag

Secondly, we examine through the Hans Kelsen theory approach where the Omnibus Law must go through a systematic study so as not to conflict with the Republic of Indonesia's state constitution, Pancasila and the 1945 Constitution. Everything has been stated clearly in our country's Constitution about how our country is reflected in a rule which has been proclaimed by our founding father, expressed the ideals of the nation and hopes to become an independent country they have formulated through the Indonesian constitution. The concept of Harmonization of Legal Norms through the Omnibus Law by the government must at least find a hierarchical basis for content in our constitution so that the birth of the Omnibus Law planned by our government continues to maintain the spirit of the constitution, so far the writer has not found a phrase in the 1945 Constitution that can be the basis formulation of Omnibus Law.¹¹

Omnibus Law can indeed be a solution to overlapping regulations in Indonesia, but the preparation

10 Hamidi, J., Sugiharto, M. A., & Ihsan, M. (2013). *Membedah Teori-Teori Hukum Kontemporer*. Universitas Brawijaya Press. Nonet, dan P., & Selznick, P. (2008). *Hukum Responsif*. Cetakan II. Nusa Media. Bandung.

11 Lumbantoruan, H. D. (2017). *Pembentukan Regulasi Badan Usaha Dengan Model Omnibus Law*. *Jurnal Hukum to-ra*, 3(1), p.463-472

of Omnibus Law The cost is very expensive and not simple because the substance is multisectoral and its preparation requires great power including facing the turmoil of public criticism.¹²

It was Charles Rich who brought together the relationship between law and social welfare. The law, for Rich, is needed to see the problem clearly (to see issues clearly), to provide guidance (to guide them), and to strengthen the good intentions of social welfare (to strengthen their good intentions). He indeed at the time focused the linkages on the lawyers. Lawyers for him must understand welfare issues in order to protect rights. The essence of the law departs from the assumption that law is a means of protection (protected), the guarantor of justice (ensure the fairness), and a tool to reduce the suppression of individual independence.¹³

The relationship between law and humans is based on the intention to reduce human bad instincts that can interfere with other humans. The law brings hope in the goal of humans to be able to live side by side with one another, that is the starting point of social welfare. From an economic perspective, where a human being tends to want to have a large area and great economic power, the law limits it with ownership must also pay attention to social functions (*eigentum verpflichtet*). From a political perspective, humans all want to be an eternal king like the pharaoh, the law exists to equalize the position (equality before the law) and the rules of the presidential term (constitutional law). Therefore, the application of strict, honest and fair laws is a manifestation of an ideal towards social welfare.¹⁴

The development of the current law is in fact far from expectations in Rich's view. Fulfilling the law of expectations given to him is very out of tune. Inequality, injustice, oppression and rampant abuse. The problem is because the law is locked down in its written form. Standard rules make the transformation of legal actions can not be carried out properly. The law seems to only be a means to uphold the law even though it must override the enforcement of justice.

The need for justice, fulfillment of rights and ultimately social welfare must follow the response of how the system is run. Therefore a dynamic attitude is more necessary than just referring to the text alone. The mavericks¹⁵ who work in the law are very much yearned to realize the improvement in welfare. And the law carried out by the maverick will later be in the form of progressive law. Maverick does not need the texts to change to be able to act justly, maverick is only concerned with acting like what is called by Prof. Satjipto Rahardjo with acts of indifference. Modern textual fact is indeed unreliable and does not show partiality.

Professor Satjipto Rahardjo gave an example of legal means and a person who manifests greater legal and social goals. Discretion in the police. In a condition where the police are given the authority not to apply the law that should be based on consideration of saving the situation. This often happens in traffic settings. In addition there is also deponering or overriding the ongoing legal process. That right was given to the Attorney General based on considerations to save something bigger.¹⁶ Once again, the rules provided are often in conflict with the conditions that generally occur in society, therefore, maverick is needed in its implementation.

The concept of the Omnibus Law can be applied in Indonesia which adheres to the Civil Law

12 Busroh, F. F. (2017). *Konseptualisasi omnibus law dalam menyelesaikan permasalahan regulasi pertanahan*. *Arena Hukum*, 10(2), p.227-250.

13 Charles A Rich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, (New Heaven : The Yale Law Journal, 1965) p.1257

14 Bakhrul Amal, *Esensi Hukum*, Harian Umum Radar Cirebon, 25 Juni 2014

15 Orang/Organisasi yang bertindak tidak konvensional

16 Satjipto Rahardjo, *Penegakan Hukum Progresif*, (Jakarta : Kompas, 2010) p.140.

System, that the issue of conflict with government administrators, when they want to innovate or policy which then clashes with laws and regulations. So the concept of the Omnibus Law is one way out that might be taken by the government. But the Omnibus law must be done at the level of the Act. Although Indonesia adheres to the civil law system, this concept can be used by the government to overcome two things.¹⁷

First, the problem of the criminalization of state officials. During this time, he said, many governments are afraid to use discretion in making policies for the use of the budget because if it is proven to be a loss, it can be ensnared by the Corruption Law.¹⁸

Between the Government Administrative Law and the Anti-Corruption Law there is a conflict because in the Anti-Corruption Law there are no elements that indicate evil intentions or mens rea. Therefore, law enforcement officers always see from a positivist point of view only for acts when these acts are carried out and there are amaka losses there, while in the State Administrative Law it is permissible for discretion."¹⁹

This means that the government, using the Omnibus Law to overcome this problem, could have made a new law with the concept of the Omnibus Law. During this time, between discretion and corruption acts continue to cause problems for policy makers, but not all discretion always contains corruption. The new law could emphasize Mens rea or the evil intentions of the discretion takers. Regional officials who want to innovate and create for economic progress and investment.

Second, the Omnibus law can be used in Indonesia to harmonize central and regional policies in supporting the investment climate. Dealing with this, he continued, the Omnibus Law could be a short way as a solution to the conflicting legislation both vertically and horizontally.

By looking at the opinions of the experts above, the author is of the view that in fact the first thing that must be considered by our government in relation to the Omnibus Law is the impartiality of justice for the welfare of the Indonesian people, the state should no longer be easily used as a tool of power that is not of public interest, the omnibus law can be a means for the public or citizens who have been harmed by the actions of the state, and sanctions against the wrongdoers of the state Functioning of the omnibus law as a starting point which then returns it to the people as a determinant of the profit and loss of the rule (bargaining to mutual advantage).

Conclusion

Omnibus law is a product of the Act that can revoke or amend several existing laws that can be scattered in several regulations, then streamlined in one Act to better target the solution to a conflict between government administrators and regulations legislation with specific objectives to improve the investment climate and as a guarantee of legal certainty and legal protection for policy makers. In the hierarchy / sequence of laws and regulations in Indonesia, the concept of Omnibus Law has not been included as a principle in legal sources, but harmonization of laws and regulations in Indonesia is continuously carried out to minimize conflicts of laws and regulations. Professor Satjipto Rahardjo gave an example of legal means and a person who manifests greater legal and social goals. Discretion in the police. In a condition where the police are given the authority not to apply the law that should be based on consideration of saving

17 Suriadinata, V. (2019). Penyusunan Undang-Undang Di Bidang Investasi: Kajian Pembentukan Omnibus Law Di Indonesia. *Refleksi Hukum: Jurnal Ilmu Hukum*, 4(1), p.115-132.

18 Thalib, H., Ramadhan, A., & Djanggih, H. (2017). The Corruption Investigation In The Regional Police of Riau Islands, Indonesia. *Rechtsidee*, 4(1), p.71-86.

19 Barhamudin, B. (2019). Penyalahgunaan Kewenangan Pejabat Pemerintahan Dan Ruang Lingkupnya Menurut Undang-Undang Administrasi Pemerintahan. *Solusi*, 17(2), p.175-192.

the situation. This often happens in traffic settings. In addition there is also deponering or overriding the ongoing legal process. That right was given to the Attorney General based on considerations to save something bigger. Once again, the rules provided are often in conflict with the conditions that generally occur in society, therefore, maverick is needed in its implementation.

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