

# Omnibus Law Reformulation in the Establishment of Regulations

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The existence of hyperegulation from both the central and local governments has had serious implications for the State process. Indonesia, as a rule of law, and through hyperegulation, will have a serious impact on the creation of instability in the national progress. The President of the Republic of Indonesia responded to this by drafting an idea to submit to the House of Representatives in the process of forming legislation, namely, by submitting three draft omnibus laws in the 2020 National Legislation Program. This was polemic in the society, considering that the concept of omnibus law is a new idea in Indonesia. The following questions are raised: to what extent are the consequences of omnibus law? What are the positive implications of this, which will later be generated by the omnibus law bill? These questions shall be examined in a normative juridical research approach.

**Keywords:** *Reformulation, Omnibus law, Laws and regulations.*

## Background

As a rule of law, the form of statutory regulations have a central role as a literature review in arranging the State for the welfare of society. The role of law is increasingly important because the effort to minimise the power system becomes the bargaining point for good and correct governance. Indonesia, as a rule of law, emphasises in the provisions of the 1945 Constitution of the Republic of Indonesia and affirms that the principle of a rule of law makes laws and regulations the main guidelines and ideals in realising a welfare state. Therefore, the role of laws and regulations is very important.

Haji Ahmad Syarifudin Natabaya (H.A.S Natabaya) (Mukhlis Taib, 2017) also said that the advantages of statutory regulations, as part of written law, can create legal certainty, are easy to recognise, and are easy to make and replace when they are no longer needed or are no longer suitable. However, on the other hand, experiencing weaknesses in laws and regulations has a rigid nature. Some of the recommendations above on the weakness of

statutory regulations become a major problem in asserting that statutory regulations are identical as a direction in making a State, a welfare state. However, with the existence of these weaknesses, of course, all of these things are not able to encourage the objectives of the law, which places law as a means or means of achieving goals.

The way to overcome the shortage of laws and regulations is to increase the role of judges. Judges are not merely ‘mouths’ of laws, but are those who consider the pros and cons, and the benefits and harms of a statutory law, so that the law is implemented fairly and provides the greatest possible benefit for the life of the community. For this reason, judges must interpret, make analogies, refine the law (*rechtsverwijning*), or *argumentum a contrario* (Mukhlis Taib, 2017).

Supposedly the principle of drafting regulations must place the role of the State as a norm (*nomenordening*), namely a State order (*staatsorde*). The State is an orderly system. Law is also an orderly system. Hence, state order is the same concept as law order. A legal system is a hierarchical system of legal rules. The validity of the legal rules of the lower level group depends or is determined by the rules belonging to the higher-level group (Mukhlis Taib, 2017). The biggest problem currently not being carried out by the Government in drafting regulations is often neglecting the goal of encouraging the creation of an orderly state law oriented to the public health system. As stated by the State Secretary, the number of regulations in Indonesia is hyperegulated. Indonesia has 42,000 regulations or regulations at the Ministerial, institutional and local government levels. This condition causes Indonesia to experience regulatory obesity (*Wartakotalive*). This is a fundamental problem in the identification process as a form of rule of law, namely, the industrialisation of laws and regulations in Indonesia.

One of the solutions issued by the Government is the policy of drafting the omnibus law bill. The omnibus law bill is an important item of legal certainty in the Government's view. Several of the national legislation program policies implemented in 2020 relating to the omnibus law bill, which are to be proposed, include the Bill on Amendments to Law Number 36 of 2009 concerning Health/the Bill on National Health (omnibus law), the Bill on Job Creation (omnibus law), and the Bill on Mother City of the State (omnibus law).

## Method

The approach method used is socio-legal research. A socio-legal research study is a study that ‘combines’ doctrinal legal studies with social studies. In the socio-legal research study, a textual study was carried out on articles in legal regulations. Furthermore, a sharp analysis is carried out to determine whether the rules in society can bring about justice, stability of life, and welfare in society. For this reason, social research is carried out, which is based on a paradigm for accuracy and truth gain. In his writing, Fx.Adji Samekto said that the research

paradigm method used as described above is known as a non-doctrinal legal approach and research in the social law realm. The social research can then conclude whether the legal rules can provide justice or not. The main function in research using a social-legal approach is to consider the qualifications of the legal values, which can be seen from the suitability of the omnibus law policy direction in the formation of legislation products.

In using the socio-legal research approach method above, the research data source used is from secondary data sources. Secondary data collection methods, carried out by research data collection techniques related to matters or variables in recording, whether in the form of images, sounds, writing, book transcripts, newspapers, magazines, inscriptions, minutes, meetings, agendas, and so on. This method is used to obtain data in the form of documents, namely the archives needed for research (Suharsimi Arikunto, 1998).

The analytical method used was to perform qualitative analysis techniques. In general, qualitative analysis tends to be more about carrying out the three streams of activities that occur simultaneously: data reduction, data presentation, and drawing conclusions or clarifications. In this data reduction, there is a process of selecting, simplifying, abstracting, and transforming crude data that emerges from written records in the field. This data reduction is a form of analysis used in order to sharpen, classify, direct, remove unnecessary data, and organise data, so that later conclusions can be drawn appropriately and be verified (Silalahi, 2006).

## **Libraries**

### ***Omnibus Law***

The definition of the omnibus law starts from the word ‘omnibus’. The term, ‘omnibus’, comes from Latin and means ‘for everything’. There is an understanding that an omnibus is a form of regulation relating to or handling many objects or items at once; has many things or has multiple purposes, which means relating or dealing with various objects or goods at once; include a lot of things or have multiple purposes. When combined with the word Law, it can be interpreted as law for all (Agnes Fitryantica, 2019). Based on these provisions, omnibus law, as seen from a legal perspective, entails that all rules are collected into one of various kinds of rules or norms, so that the value of the regulation can guarantee the usefulness aspects of the legislation. The aim of omnibus law is, of course, directing the aspect of providing more legal benefits.

In the concept of drafting regulations, Philippe Nonet and Philip Selznick describe the development of the legal order as follows (Phillippe Nonet and Philip Selznick, 1978). Firstly, ‘repressive legal order’, is instances where law is seen as a servant of repressive power and an order from the sovereign. The characteristics of a repressive legal order include political power by having direct access to legal institutions, so that the practical legal system is identical to the State, and the law is subordinated to the *raison d’etat*. Secondly, the ‘autonomous legal order’, namely, the law, is seen as an independent institution capable of

controlling repression and protecting its own integrity. This legal order consists of the government of the Rule of Law, the sub-ordination of official decisions on law, legal integrity, and within that framework, the legal institutions and independent thinking have clear boundaries. The characteristics of the 'autonomous legal order' include a separate law from politics, which implies free judicial authority and separation of legislative and judicial functions. Thirdly, the 'responsive legal order', wherein law is seen as a facilitator of responses or a means of responding to social needs and aspirations. This view implies two things. First, the law must be functional, pragmatic, purposeful, and rational. Second, the goals set the standard for criticism of what is working. This means that the goal serves as a critique norm, and thus, controls administrative discretion and softens the risk of institutional surrender. In this type, the expression aspect of law is more prominent than in the other two types, and substantive justice is also concerned with procedural justice (Ahmad Redi, 2018). This is in line with research that states that the omnibus law is a law whose substance revises and/or revokes many laws. This concept is developed in common law countries with anglo saxon legal systems, such as the United States, Belgium, England, and Canada. The concept of the omnibus law offers problem -olving caused by too many regulations (over regulation) and overlapping (Antoni Putra, 2020). The concept of omnibus law also departs from the existence of one of the factors that hinders the improvement of the investment climate in Indonesia, due to regulatory problems (Firman Freaddy Busroh, 2017).

### ***Laws and Regulations***

Legislation, as part of written law, contains binding norms that apply in general, which govern the elaboration of basic laws in the life of society, the nation, and the state. Legislation constitutes a legalised norm identity. The regulatory legality is the legality of community norms that are transformed in the form of statutory regulations, and in accordance with the mandate of Law Number 11 of 2011 concerning the formation of statutory regulations.

Based on the description above, it can be concluded that the legislation is a positive law made, stipulated or established by an authorised official or office environment or based on certain legislation, and is in a written form containing prevailing or general binding behaviour, and has a format or certain forms through certain mechanisms or procedures stipulated in the legislation. Therefore, the study of the legislation covers all forms of legislation, both those made at the central level of state government, and at the regional level (Mukhlis Taib, 2017).

If you read the explanation above, the formation of the invitation regulation is not only the work of a tailor, who only sews a few pieces of cloth to make clothes or a cook, who then mixes the ingredients so that they produce food. More than the analogy of a tailor, and cook, the designer of the law acts as an architect, doctor, philosopher, and even a psychic. He works

to design, explore the essence, and also predict the future based on facts and data (Ahmad Redi, 2018).

Furthermore, legislation, which is a translation of the Dutch term, ‘wettelijk regeling’, literally means wet (law), and telijk (appropriate/based). Consequently, the meaning is according/based on law and is defined as a rule in the form of a written law containing legal norms. That is, binding in general, and is formed and stipulated by the competent state institution/official through procedures for establishing definite, standard, and standardised laws and regulations. The meaning of legislation is different from the meaning of statutory regulations. The fundamental difference is that legislation is understood narrowly to be limited to laws only, whereas statutory regulations are broadly understood to be a number of rules that are not limited to laws. For example, government regulations in lieu of laws, regulations government, presidential regulations, and regional regulations. Thus, statutory regulations are written regulations that contain legally binding norms and are formed or stipulated by a state institution or authorised official through a standardised and strict procedure. According to Bagir Manan, as quoted by Maria Farida Indrati Soeprapto (1998), the meaning of legislation is: firstly, any written decision issued by an authorised official or office environment that contains rules of behaviour that are general in nature or binding; secondly, are conduct rules, which contain provisions regarding rights, obligations, functions, status or an order; thirdly, are constitute regulations that have general-abstract characteristics, meaning they do not regulate or are not aimed at objects, events or symptoms of certain concreteness; fourthly, by taking an understanding in the Dutch literature, legislation is commonly referred to as general binding regulations which include among others: laws and regulations that bind the general supra national, statutory regulations, council regulations, ministerial regulations, city council regulations, provincial council regulations (Ahmad Redi, 2018).

## **Discussion**

### ***Omnibus law Formulation in the Formation of Legislative Regulations***

The way to overcome the shortage of laws and regulations is to increase the role of the judges. The judges are not merely the ‘mouths’ of laws, but are those who consider the pros and cons, and the benefits and harms of a statutory law, so that the law is implemented fairly and provides the greatest possible benefit for the life of the community. For this reason, judges must interpret, make analogies, refine the law (rechtsverwijning), or argumentum a contrario (Mukhlis Taib, 2017). This is, of course, in realising the principles of justice and legal certainty.

In the above perspective, it can be interpreted that the laws and regulations should ideally be able to provide real benefits. This is in line with the omnibus law concept, which is currently being anticipated for application. The heaviest problem that Indonesians have faced to date in

the national legislation process is the overlapping of regulations. This is the main problem in the legal regulations in Indonesia.

In fact, one of the efforts to overcome the many laws and regulations that are overlapping and out of sync with one another, is to carry out the planning process for the formation of laws. national legislative program has an important role in developing the national law. In addition to the planning instrument for the formation of law by setting priorities for the draft law to be discussed by the People's Representative Council with the Government (as a planning instrument), the National Legislation Program also functions as a portrait of national legal politics or the content of national law to achieve the goals of Pancasila, and the 1945 Constitution.

Prolegnas contains a program for the formation of laws with the title of draft laws, regulated materials, and their relation to other statutory regulations, and constituting information regarding the conception of the draft law, which includes the background and objectives of the drafting, the targets to be realised, and the range and direction of regulation. The regulated material has been carried out through assessment and harmonisation, which is then set forth in an academic paper.

The preparation of the Prolegnas is carried out by the DPR, and the Government is coordinated by the DPR through the DPR's apparatus, which specifically handles the field of legislation. Prolegnas is set for the medium term and annual basis based upon the priority scale for the formation of the bill. The preparation and determination of the mid-term Prolegnas shall be carried out at the beginning of the DPR's membership period, as Prolegnas lasts for a period of five years. The mid-term Prolegnas can be evaluated at the end of each year, along with the preparation and determination of annual priority Prolegnas. The preparation and determination of annual priority Prolegnas, as the implementation of the mid-term Prolegnas, is carried out annually prior to the enactment of the draft law on the State Revenue and Expenditure Budget.

The preparation of the Prolegnas within the DPR is coordinated by the DPR apparatus, which specifically handles the field of legislation. The compilation is carried out by considering the proposals from factions, commissions, members of the DPR, DPD, and/or the public. Meanwhile, the preparation of Prolegnas within the Government is coordinated by the Minister who holds government affairs in the legal sector. Furthermore, the preparation by the DPR, and the provisions regarding the procedures for the preparation of the Prolegnas are regulated by a DPR regulation. Meanwhile, the provisions regarding the procedures for the preparation of Prolegnas within the Government are regulated by a Presidential Regulation.

Prolegnas is set for the medium term and annual basis, which is based on the priority scale for the formation of the bill. The medium-term Prolegnas is a Prolegnas with a term of five years for one term of DPR membership. The preparation of the mid-term Prolegnas is carried out at

the beginning of the DPR membership term. The annual priority Prolegnas is the implementation of the medium-term Prolegnas, which is conducted annually. The preparation and discussion of the annual priority Prolegnas for the first year is carried out simultaneously with the preparation and discussion of the mid-term Prolegnas. The preparation of the annual priority Prolegnas is carried out prior to the enactment of the Draft Law on the State Revenue and Expenditure Budget.

Every draft law must be accompanied by an academic draft. The preparation of the Academic Draft Laws originating from the Government is carried out by the Initiator in coordination with the Minister. As for compiling the Academic Draft Laws originating from the DPR, the Members, Commissions, Joint Commissions or the Legislative body can ask for assistance from the Legislation Support System or other competent parties (Mukhlis Taib, 2017). The omnibus law idea tries to solve such a problem. The hope that regulations do not overlap is one of the wishes implemented by omnibus law. Of course, this hope is in line with the principle that regulations are to make people happy, not to make it difficult for them.

In addition, the main problem in statutory regulations is that the hyperegulation of both the central, and local governments has had serious implications in the State process. Indonesia, as a rule of law, and through hyperegulation, will have a serious impact on the creation of instability in the national progress.

In this case, what is expected in omnibus law is the compilation of all rules that are collected into one of the various kinds of rules or norms, so that the value of the regulation can guarantee the usefulness aspects of the legislation. The aim of omnibus law is to direct the aspect of providing more legal benefits. This idea was later embodied in creating employment opportunities. The principle of prioritised benefit is then an aspect that accompanies the omnibus law idea to be formulated in the form of good and appropriate legislation. The omnibus law is not just a collection of regulations that will override other regulations, but its formulation is to ensure justice, certainty, and especially, guarantee legal benefits.

### ***Omnibus law Reformulation in the Formation of Legislative Regulations***

In the case of omnibus law formulation, what is worth concern is that if the research or study is not carried out in depth, then according to Hikmahanto Juwana, a statutory regulation has the potential to not be implemented, considering that one of the laws and regulations is a commodity, which usually does not pay attention to the issue of law enforcement (Ahmad Redi, 2018). As the implication for omnibus law, it is given that omnibus law is a regulation which is a combination of norms, so that if it is applied, it will invalidate the same law that governed the previous law. This indicates that the preparation of omnibus law needs to be done carefully and should not be rushed.

Another thing to note is the concept of omnibus law as a form of objectivity to legal regulations. Omnibus law is positioned as an idea to make facilities in various main development sectors, but here it can be understood as a means, where omnibus law must guide. Such principles then need to be emphasised on the aspect that the laws or regulations made must reflect an existing awareness in the society. This aspect of awareness will then become acceptable in society regarding legal issues.

Sudikno Mertokusumo stated that legal awareness is a view that lives in society regarding 'what law is'. This view is not a rational consideration or a product of reasoning, but a development and is influenced by various factors, such as religious, economic, political, educational, and others. Legal awareness means awareness of what should be done or not done, especially for other people. Sudikno Mertokusumo as quoted by Andi Nuzul (2016) emphasized that "because legal awareness is in every human being, it is in the human interest to uphold, implement the law, so that their rights are protected and those who violate the law must be subject to sanctions". Thus, public legal awareness is an important aspect in the formulation of legal norms. According to Lemaire, "legal awareness and law has a very close relationship". In fact, Krabbe posited that legal awareness is the source of all laws (Andi Nuzul, 2016). The efforts to reformulate by adjusting legal awareness will certainly reduce the burden, where the adjustment of the Law on the formation of laws and regulations related to the implementation of the concept of the omnibus law in Indonesia is a hierarchical order of laws and regulations in Indonesia, as regulated in Law Number 12 of 2011 concerning the formation of statutory regulations, which has not included the concept of omnibus law as a principle in legal sources or as a methodological framework for revising statutory regulations (Agnes Fitryantica, 2019).

Therefore, from here, the concept of omnibus law should then be able to adapt to the real interests in the society. Omnibus law indirectly becomes the embodiment of the law that is accepted and expected by the community, as a form of public compliance with the Government.

## **Conclusion**

The laws and regulations should ideally be able to provide real benefits. This is in line with the omnibus law concept, which is currently being anticipated to be applied. The heaviest problem that we have faced to date in the national legislation process is the overlapping regulations. This is the main problem in our legal regulations in Indonesia. In this case, what is expected in omnibus law is the compilation of all the rules that are collected into one of the various kinds of rules or norms, so that the value of the regulation can guarantee the usefulness aspects of the legislation. The purpose of omnibus law is to direct the aspect of providing more legal benefits. This idea was later embodied in job creation. In addition, the main problem in statutory regulations is that the hyperregulation of both the central, and local

governments has had serious implications in the State process. Indonesia, as a rule of law, and through hyperegulation, will have a serious impact on the creation of instability in the national progress. In the case of omnibus law formulation, what should be worried about is if the research or assessment is not carried out in depth. This is because omnibus law is a regulation which is a combination of norms, so that if it is applied, it will invalidate the same law that governed the previous law. This indicates that the preparation of omnibus law needs to be done carefully and must not be rushed. Another thing to note, is the concept of omnibus law as a form of objectivity to legal regulations. Omnibus law is positioned as an idea to make facilities in various main development sectors, but here it can be understood as a means, and omnibus law must be guided. Such principles then need to be emphasised on the aspect that the laws or regulations made must reflect an existing awareness in the society. This aspect of awareness will then become an acceptance in the society regarding legal issues.

### **Closing**

Constitutionally, the formation of omnibus law can certainly be said to be legitimate, but the process of forming omnibus law certainly requires caution and must not be undertaken hastily. The preparation of omnibus laws is careful and unhurried by considering the various interests that exist in the formation of the omnibus law. On the other hand, the most important element in the process of drafting the omnibus law, is that it must be able to adapt and reflect an existing awareness in society, so that there is no observation of omnibus law which will legalise it into a legal product. If these two aspects are applied, the idea of harmonisation and synchronisation through the conceptions contained in omnibus law can be applied as expected.



## References

- Agnes Fitryantica, Harmonisasi Peraturan Perundang-Undangan Indonesia melalui Konsep Omnibus Law, *Jurnal Gema Keadilan* (ISSN: 0852-011) Volume 6, Edisi III, Oktober - November 2019
- Ahmad Redi, 2018, *Hukum Pembentukan Peraturan Perundang-Undangan*, Sinar Grafika, Jakarta
- Andi Nuzul, 2016, *Membangun Tata Hukum Nasional Perspektif Masyarakat Pluralis*, Trussmedia Grafika, Yogyakarta
- Antoni Putra, Penerapan Omnibus Law Dalam Upaya Reformasi Regulasi, *Jurnal Legislasi Indonesia*, Vol 17 No. 1 - Maret 2020 : 1-10
- Artikel ini telah tayang di [Wartakotalive](http://Wartakotalive) dengan judul *Punya 42 Ribu Peraturan, Indonesia Alami Obesitas Regulasi*, diunduh pada tanggal 22 Februari 2020 <https://wartakota.tribunnews.com/2018/11/28/punya-42-ribu-peraturan-indonesia-alami-obesitas-regulasi>
- Firman Freaddy Busroh, *Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan*, *Arena Hukum*, Vol 10, No 2 (2017), pp. 227-250
- Fx.Adji Samekto, *Menempatkan Paradigma Penelitian Dalam Pendekatan Hukum Non-Doktrinal dan Penelitian Dalam Ranah Sosio-Legal*, Pedoman Bagi Mahasiswa S3 Ilmu Hukum UNDIP.
- Mukhlis Taib, 2017, *Dinamika Perundang-undangan di Indonesia*, PT Refika Aditama, Bandung
- Silalahi, 2006, *Metode Penelitian Sosial*, Unpar Press, Bandung
- Suharsimi Arikunto, 1998, *Prosedur Penelitian, Suatu Pendekatan Praktek*, Rineka Cipta, Jakarta