

THE LEGAL CONCEPT OF OMNIBUS LAW: STUDYING ENVIRONMENTAL PERMITS FROM THE ASPECTS OF BENEFIT AND JUSTICE

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ABSTRACT

Omnibus law is a new thing in the field of laws and regulations of the Republic of Indonesia apart from the fact that the legal system of the Indonesian state adheres to the Civil Law system as well because the products of current government regulations are inherited from the old system. The existence of omnibus law is believed to provide justice and a number of benefits. The concept of omnibus law can be used by the Indonesian government to overcome two things. First, the problem is criminalizing state officials. 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 losing money, they can be charged with corruption. 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 law can be a short way as a solution to conflicting laws and regulations, both vertically and horizontally.

Keywords: Legal Concept, Omnibus Law, Environmental Permit, Benefit and Justice

INTRODUCTION

The concept of omnibus law came to the fore again after President Joko Widodo in his first victory speech launched the concept to increase the value of investment and the domestic economy, which is still stagnant and undervalued compared to other countries. The index from the world bank that measures this capability shows that Indonesian regulations from 1996 to 2017 have always been below zero. Even in the Southeast Asian region, it only took fifth place with a score of -0.11, far behind the friendly country Singapore, which had a score of 2.12 in first place.

Based on research data from the Center for the Study of Indonesian Law and Policy (PSHK) during the first term of President Joko Widodo alone, Indonesia was flooded with regulations with a number of 10,180 regulations, with details of 131 laws, 526 Government Regulations, 839 Presidential Regulations and 8,684 Ministerial Regulations.

Seeing these facts, it is not surprising that President Joko Widodo wants to cut regulations in various sectors, especially in the economic and investment fields through an omnibus law approach (removing many laws and regulations with one law). However, should the simplification of regulations in all sectors be carried out through an omnibus law approach? And it is also very reasonable if we ask the omnibus law for whom? Due to the many regulations that have been cut, there are also many risks that will be faced in the future, both from the environmental sector, workers' welfare, and it is feared that this will lead to mass layoffs in many companies.

Actually, the concept of omnibus law in the Indonesian legal system is not a new thing, Indonesia has applied a concept that is almost similar to the concept of omnibus law when forming the Decree of the People's Consultative Assembly Number I/MPR/2003. However, the decision making of the MPR is considered not participatory and friendly to the nature of democracy and this is also a way for legislation to become a monopoly tool in the legislation sector.

Controversial articles have emerged, including environmental issues. According to the community and activists who have been concerned with environmental issues, the Ciptaker Law is not environmentally friendly and does not guarantee the preservation of nature. The Job Creation Law abolishes, changes, and stipulates new rules related to business licensing as regulated in Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH). One of the issues that is in the spotlight is the provision of environmental impact analysis (*Amdal*).¹

PROBLEMS

How is the review of the Omnibus Law in environmental permits in terms of justice and benefit?

DISCUSSION

The definition of the Omnibus Law starts from the word Omnibus. The word Omnibus comes from Latin and means for everything. In Bryan A. Garner's Black Law Dictionary Ninth Edition it is stated that omnibus: relating to or dealing with numerous objects or items at once ; including many things or having various purposes, meaning related to or dealing with various objects or items at once; include many things or have multiple purposes. When coupled with the word Law, which can be defined as a law that is related to various objects / items or relevant matters².

The omnibus law is a law that is made to target big issues and may revoke or amend several laws, with this law intended to streamline regulations in terms of numbers, as well as to simplify regulations to make them more targeted. The ideal is not only simplification in terms of quantity, but also in terms of consistency and neatness of arrangement. So it can be called a procedure as well to make it simpler and on target. So according to the expert, it can be concluded that the Omnibus law is a product of the

¹ <https://leip.or.id/diskusi-publik-izin-lingkungan-hidup-uu-ciptaker/>, accessed on 15 January 2022 at 06.00 WIB.

² Bryan A. Garner, et. al. (Eds.). *Black's Law Dictionary Ninth Edition*. St. Paul: West Publishing Co., 2009.

law that can revoke or change several existing laws that are in effect which can be spread in several regulations, and then it is streamlined in one law to make it more targeted.

Another thing that is in line with the provisions of the Amdal, which also causes debate is the abolition of the article regarding the obligation for environmental permits. In the Copyright Act, environmental permits are not explicitly regulated. However, in order to obtain a business permit, the applicant must obtain a decision regarding environmental feasibility. The Environmental Permit in the PPLH Law has changed the nomenclature and its substance into environmental approval in the Ciptaker Law. Article 22 number 35 of the Copyright Law defines Environmental Approval as a Decision on Environmental Eligibility or a statement of Environmental Management Ability that has obtained approval from the Central government or Regional Government.

The changes in the *Ciptaker* Law that amend the provisions of the PPLH Law, especially regarding *Amdal* and environmental permits, are considered by a number of environmental activists as a weakness that threatens the preservation of nature, moreover the environmental impact analysis is only for high-risk projects, while the basis for determining low or high risk projects is not clear. The rules of the game so far. There are also concerns that this rule change has the potential to make it easy to issue "fake" *Amdal* because the process of issuing this *Amdal* is without public control. In fact, community participation is the "soul" in the issuance of the *Amdal*.

Jimmy Z Usfunan, in his opinion responding to the Omnibus law issue, stated 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. Therefore, the concept of omnibus law is one way out that might be taken by the government. However, omnibus law must be carried out at the level of the law. So, according to the legal expert, Omnibus law is a product of the law which is a solution to conflicts between government administrators and statutory regulations.³

According to Sofyan Djalil in an article www.hukumonline.com on February 16, 2017, who at that time served as Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency had proposed the concept of Omnibus Law in procedures for managing or checking the status of land ownership. According to him, the concept of omnibus law is a step to issue a law that can improve many laws that have been considered overlapping and hampering the process of doing business (omnibus law). With the issuance of one law to improve several laws, because with so many laws it cannot be accelerated because many laws still regulate and can conflict with each other.

From several descriptions of the opinions of legal experts above, it can be concluded that the main characteristics of Omnibus Law are (1) consisting of multiple sectors or consisting of many sector contents with the same theme; (2) consisting of many articles, due to the many sectors covered; (3) independent or independent, without being bound or at least bound by other regulations; and (4) negating/revoking part and/or all other regulations.

In addition, it can also be seen that the purpose of the Omnibus Law idea or idea being raised is (1) to resolve conflicting laws and regulations quickly, effectively and efficiently; (2) to uniform government policies both at the central and regional levels to support the investment climate; (3) to make licensing management more integrated, efficient and effective; (4) to break the lingering chain of administrative bureaucracy; (5) to improve coordination relations 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 makers⁴.

The Formation and Substance of the Omnibus Law

Complicated regulatory issues arise and cause the investment climate in Indonesia to move slowly compared to neighboring countries such as Singapore and Malaysia. In the President Jokowi regime, all regulations that hinder the entry and passage of investment must be removed. The Minister of Agrarian Affairs and Spatial Planning/BPN RI Sofyan Jalil proposed the concept of the Omnibus Law to resolve disputes over overlapping laws and regulations that hinder investment growth in Indonesia.

Observing the statutory system in Indonesia, the Law as a result of the Omnibus Law concept can lead to an Umbrella Law because it regulates thoroughly and then has power over other regulations. However, Indonesia does not adhere to the Umbrella Law because the position of all laws is the same. Problems that arise when examined from the perspective of the theory of legislation regarding its position, so that its position must be given legitimacy in Law Number 12 of 2011 concerning the Formation of Legislation must be amended.

The process of forming laws and regulations from theoretical studies related to the existence and application of law in society is known as Legal Development (*rechtsbeoefening*). This activity includes activities in forming, implementing, applying, discovering, interpreting, studying and teaching law. Legal enforcement is distinguished in Practical Legal Development and Theoretical Legal Development.

Practical law enforcement is a human activity with regard to actualizing the law in the concrete reality of everyday life. These activities include Legal Establishment, Legal Discovery and Legal Aid. Meanwhile, Theoretical Law Development is also referred to as Theoretical Reflection on the law, namely as an activity of reason to gain intellectual mastery of law or scientific understanding of law, which is methodically systematic - logically rational. Theoretical Law Development is divided into 3 (three) types based on the level of abstraction or based on the level of analysis, such as Legal Studies, Legal Theory and Legal Philosophy⁵.

In principle, the government under President Joko Widodo was encouraged to develop an investment climate with the work cabinet program, so that all policies were directed at simplifying and simplifying licensing and investment requirements. Based on this concept, the Omnibus Law concept is expected to be a solution to the condition of the state's legal system. So the substance of the Omnibus Law proposed by President Joko Widodo is as follows. (Results of the Seminar conducted by the Coordinating Ministry for Economic Affairs on October 30, 2019 in Jakarta).

³ <https://www.hukumonline.com/berita/baca/lt58a6fc84b8ec3/menimbang-konsep-omnibus-law-bila-diterapkan-di-indonesia/>, accessed on 15 January 2022, at 07.30 WIB.

⁴ Jimly Asshiddiqie, 2017, *Perihal Undang-Undang*, Raja Grafindo Persada, Depok, p.34.

⁵ Muhammad Bakri, 2013, *Pengantar Hukum Indonesia Jilid I: Sistem Hukum Indonesia Pada Era Reformasi*. Malang: UB Press, Malang, p. 51..

Omnibus Law in terms of Justice and Benefit

The advantages of legislation with the omnibus law concept lie in its multi-sectoral nature and the discussion time which can be faster than the usual formation of regulations. This advantage contains many dangers if forced to apply in a country that adheres to democratic civil law such as Indonesia.

Concerns about the omnibus law that will damage and harm the natural order of democracy are based on three factors⁶. First, the omnibus law narrows openness and public participation in the formation of laws. In practice in several countries, the formation of omnibus law is dominated by the government or the DPR. The material and time of the process also depend on the agency. Usually the law is sought to be completed as quickly as possible, even in just one decision-making opportunity. As a result, the space for public participation becomes small, even disappears. Whereas the principle of openness and participation in making laws is the main spirit in a democratic country.

Second, the omnibus law has the potential to ignore the formal provisions of the formation of laws. It is feared that it will break through several stages in the formation of laws, both at the planning, drafting, discussion, ratification, and promulgation levels. This violation is contrary to the principle of the rule of law which requires that all government actions be based on law.

Third, the omnibus law can add to the regulatory burden if it fails to be implemented. With its nature that covers more than one aspect that is combined into one law, it is worried that the discussion of the omnibus law will not be comprehensive. The discussion will focus on the omnibus law and forget about the law that will be repealed, which will present a more complex regulatory burden.

For example, what are the derivative effects of the repealed law, the impact on its implementing regulations, and practical implications in the field. Not to mention if this omnibus law fails to be implemented and makes regulatory problems even more complicated. The pretext of *lex posterior derogat legi priori* (the new law overrides the old law) is not enough because it is impossible to organize regulations with a one-principle approach.

In terms of usability, the existence of an omnibus law will simplify the regulation of laws and regulations. Arrangement of regulations which is indeed a problem in Indonesia, Bakornas records that there are 5000 regulations per legislation from the central to the regional level, but according to various elements of society, this goal is not achieved because the goal is only more directed at increasing investment, even though the end is job creation for society.⁷

Basically, this omnibus law is one of the opportunities seen by the president where this could be the answer to the problems that exist in Indonesia. Because he manages complicated policies, but in the eyes of the community, especially the affected people, it actually judges by the loss of regulations. This even eliminates the certainties that have been regulated in the previous law. In addition, there is a rule that it is not abolished, but conceptually replaced, which has implications. Is it really balanced from the assumed benefits that are proportional to the actual costs that can be estimated if this bill is indeed implemented.

The existence of omnibus law is believed to provide justice and a number of benefits. The concept of omnibus law can be used by the Indonesian government to overcome two things. First, the problem of criminalizing state officials. 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 losing money, they can be charged with corruption. 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 law can be a short way as a solution to conflicting laws and regulations, both vertically and horizontally.

There are five steps that must be fulfilled by lawmakers in the preparation of the Omnibus Law. The following are five steps that the government must take to ensure that the Omnibus Law is effective and not misused and fulfills the aspect of justice for all levels of Indonesian society.

First, the House of Representatives (DPR) together with the government must involve the public in every stage of its preparation. The broad scope of the Omnibus Law requires lawmakers to reach out and involve more relevant stakeholders.

Second, the DPR and the government must be transparent in providing any information on the progress of the Omnibus Law formulation process. This participation and transparency that absolutely needs to be improved is reflected in the legislative process that has caused recent controversy, such as the formulation of the revised Law on the Corruption Eradication Commission and the Revised Criminal Code.

Third, the compiler must map the relevant regulations in detail.

Fourth, the compilers must strictly harmonize both vertically with higher regulations and horizontally with equal regulations.

Fifth, the compiler must preview it before it is approved. This preview is prioritized to assess the impact that will arise from the law that will be passed.

CONCLUSION

Changes in the Ciptaker Law that amend the provisions of the PPLH Law, especially regarding Amdal and environmental permits, are considered by a number of environmental activists as a weakness that threatens the preservation of nature, moreover the environmental impact analysis is only for high-risk projects, while the basis for determining low or high risk projects is not clear. the rules of the game so far. There are also concerns that this rule change has the potential to make it easy to issue "fake" Amdal because the process of issuing this Amdal is without public control. In fact, community participation is the "soul" in the issuance of the Amdal. Omnibus law is a new thing in the field of laws and regulations of the Republic of Indonesia, apart from the fact that our country's legal system adheres to the Civil Law system because the current government regulations are inherited from the old system. The existence of omnibus law is believed to provide justice and a number of benefits. The concept of omnibus law can be used by the Indonesian government to overcome two things. First, the problem of criminalizing state officials. So far,

⁶ Bambang Sadono, 2019, *Penataan Sistem Ketatanegaraan*, Badan Pengkajian MPR RI, Jakarta, p.44.

⁷ Busroh, Firman Freaddy, 2017, *Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan*, Jurnal ARENA HUKUM Volume 10, Number 2, August 2017. Universitas Brawijaya, Malang.

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