



Faculty of Law Unissula

THE 1ST PROCEEDING INTERNATIONAL CONFERENCE AND CALL PAPER

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

June 27 2020

June **27th** 2020

THE 1st PROCEEDING

International Conference And Call Paper

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

IMAM AS' SYAFEI BUILDING

Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh :
UNISSULA PRESS

ISBN. 978-623-7097-74-7

COMITTEE OF THE 6th PROCEEDING INTERNATIONAL CONFERENCE AND CALL PAPER

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

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Hal I-IX, 1-258

Cetakan Pertama Tahun 2020

Penerbit UNISSULA PRESS

Jl. Raya Kaligawe Km. 4 Semarang 50112

PO BOX 1054/SM,

Telp. (024) 6583584, Fax. (024) 6594366

ISBN. 978-623-7097-74-7

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Muh. Arifin, S.Kom

Desain Lay Out :

Suryo Atmojo, SH

ISBN :

978-623-7097-74-7

Penerbit :

UNISSULA PRESS

Alamat :

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Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

Puji syukur kehadiran Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadiran Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "Omnibus Law Opportunities And Challenges Towards Entrepreneurs And Labor : Comparative Review" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah membahas berbagai keilmuan Hukum dan Humaniora.

Sesungguhnya keberhasilan dalam mencapai tujuan pendidikan yang dicita-citakan sangat tergantung pada sikap mental, partisipasi serta disiplin setiap unsur yang terlibat dalam proses belajar mengajar. Mudah-mudahan seminar Internasional yang sederhana ini dapat memberi sumbangsih dalam mencerdaskan bangsa Indonesia serta semoga Allah SWT selalu menyertakan ridho-Nya. Amin. Akhir kata, kami mengucapkan terima kasih kepada pimpinan Universitas Islam Sultan Agung, pimpinan fakultas Hukum Unissuala, pemakalah, editor dan serta pihak-pihak yang telah membantu terselenggaranya seminar ini dengan lancar tanpa hambatan suatu apapun.

Wassalamu'alaikum Wr.Wb.

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OMNIBUS LAW IN RENEW OF CRIMINAL LAW

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ABSTRACT

Indonesia is currently experiencing obesity regulations, so that at the level of implementation of the legislation raises problems. President Joko Widodo in his first speech after being appointed president in the second period, last October 2019, said that the omnibus law would simplify regulatory constraints. The government believes that the omnibus law will improve Indonesia's investment ecosystem and competitiveness so that it can strengthen the national economy. The problem in writing this paper is how is the omnibus law in criminal law reform? In the view of criminal law, the enactment of omnibus law uses the principle of *lex specialist derogat legi generalis* (a special rule that overrides general rules, because with the existence of omnibus law, then automatically regional level regulations must also comply with new rules of the omnibus law concept). So if the omnibus law is to be applied in the legal system in Indonesia, it is usually in the form of a law, because the substance of the law is a further arrangement of the provisions of the 1945 Constitution of the Republic of Indonesia. If the omnibus law is made as a renewal of the criminal law, then all the Laws and even the Criminal Code must be thoroughly dismantled and revised to later be made into a new law in the form of an omnibus law. Because if it is not done so, then there cannot be two laws that govern the same thing. And this does not solve the initial problem experienced by Indonesia, namely regulatory obesity.

Keyword : *Criminal Law, Omnibus Law*

INTRODUCTION

The era of government leadership President Ir. H. Joko Widodo from the beginning always echoed to facilitate investment, this enthusiasm could be not because of other party elements but the experience before becoming a president was a Meubel businessman, who in running his business experienced obstacles in licensing procedures and other regulations that hindered him in attempted.

In Indonesia, we do not yet have a National Criminal Law Code so that the Criminal Law Act is still being imposed by the colonial government of the Dutch East Indies. The Systematics of the Criminal Law Code consists of Book I on General Provisions (Articles 1-103), Book II on Crimes (articles 104-488), and Book III on Violations (Articles 489-569)²². In addition, criminal law is also specifically regulated in special laws and various other statutory regulations that were made since after Indonesia's independence.

Unfortunately, Indonesia is now experiencing obesity regulations or the excess number of existing regulations. The number of regulations in Indonesia has now reached 42 thousand regulations from the central level to the regional level²³. In the level of implementation of the legislation raises problems, for example inconsistencies, disharmony, and legal obesity²⁴. The reason is the preparation of regulations that are not carried out in a structured, systematic, massive manner, and overlap between one regulation and another that results in regulatory products causing uncertainty and treatment gaps before the law.

One of the steps in aligning and disciplining carried out by President Joko Widodo is to cut or remove 3 thousand problematic Regional Regulations without going through studies. However, the alignment and discipline process will be difficult because the number of regulations is very large and tends to be over regulated so that the alignment and discipline process is not easy to do²⁵. These problems if not addressed will lead to legal uncertainty for the community and hinder national economic development. Legal certainty is needed to calculate and anticipate risks, even for a country legal certainty is one of the factors that greatly supports the economic resilience of a country²⁶.

For this reason, President Joko Widodo in his first speech after being installed as president in the second period, last October 2019, stated that the omnibus law would simplify the regulatory constraints²⁷. The government believes that the omnibus law will improve Indonesia's investment ecosystem and competitiveness so that it can strengthen the national economy.

The problem is How is the Omnibus Law in the renewal of Criminal Law?

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 research, because in this study describes the situation that occurs at the moment systematically and factually with the aim to describe and resolve the problem under study, the omnibus law in criminal law reform.

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

The data analysis method used is normative qualitative, namely the decomposition of data analysis which starts with the information obtained to achieve clarity of the problem to be discussed is Omnibus Law in the renewal of Criminal Law.

Research Result and Discussion

Omnibus Law in the renewal of Criminal Law

- 23 Pramono: Indonesia Alami 'Obesitas' Regulasi. Artikel accessed by <https://elshinta.com/news/162115/2018/11/28/pramono-indonesia-alami-obesitas-regulasi> on June 12, 2020.
- 24 Bayu Dwi Anggono. (2016). *The Politics of Law On The Formation of Responsive, Participative, and Populist Legislation*. International Journal of Business, Economics and Law, Vol. 9, Issue 4, April 2016, p. 10.
- 25 Andi Sandidi. (2016). *Refleksi Terhadap Pembatalan Produk Hukum Daerah*. Makalah Lecture on Law and Judicial Review: Konstitusionalitas Kewenangan Kemendragi dalam Membatalkan Perdadi Era Otonomi Daerah. Diselenggarakan oleh Keluarga Mahasiswa Magister Hukum Fakultas Hukum Universitas Gadjah Mada di Yogyakarta, September 2016.
- 26 Adi Sulistiyono. (2007). *Pembangunan Hukum Ekonomi untuk Mendukung Pencapaian Visi Indonesia 2030*. Inauguration Speech Professor of Economic Law. Sebelas Maret University Faculty of Law Surakarta on November 17, 2007
- 27 Was-was 'Sapu Jagat' Omnibus Law. Article accessed by <https://www.mongabay.co.id/2020/01/28/was-was-sapu-jagat-omnibus-law/> on June 12, 2020.

Omnibus law starts from the word Omnibus. The word Omnibus comes from Latin which means for everything²⁸. If coupled with the word Law it can be defined as law for all. According to constitutional law experts, the concept of the omnibus law is a concept of legal products that functions to consolidate various themes, materials, subjects, and laws and regulations in each different sector to become one large and holistic legal product²⁹.

Some of the goals for the formation of the omnibus law are as follows:

1. Overcoming conflict of laws quickly, effectively and efficiently.
2. Uniforming government policies both at the central and regional levels to support the investment climate.
3. Licensing management is more integrated, efficient, and effective.
4. Able to break the chains of bureaucracy that linger.
5. Improving coordination relationships between related agencies because it has been regulated in an integrated omnibus regulation policy.
6. There is guaranteed legal certainty and legal protection for policy makers³⁰.

The state constitutional law expert, Refly Harun, said that the application of the omnibus law could be done immediately because it was very good for establishing lean and harmonized rules. The problem is, we need a special team to analyze the regulations that need to be harmonized, partially or completely erased because they rely on inter-ministerial work that can take a long time and the position of the omnibus law in the legal order especially in the criminal law structure.

As mentioned above, Indonesia is a country that adopts a civil law legal system which is not familiar with the superior umbrella law (umbrella law or umbrella act)³¹. The law resulting from the concept of the omnibus law can be referred to as an umbrella law because it regulates thoroughly and then has power over other rules. But because Indonesia does not adhere to the umbrella law, because the position of all laws is the same, in theory the position of the legislation must be given legitimacy in Law No. 12 of 2011 concerning Formation of Regulations and Regulations.

But if it is not possible to make changes to Law No. 12 of 2011 then only see the contents of the provisions in the omnibus law, whether general or detailed like ordinary law. If it is general, not all provisions are revoked but only those that are contradictory. But if the provisions are general, it will be a problem if clashed with the principle of *lex specialis derogat legi generalis* (special rules override general rules, because with the omnibus law, then automatically regional level regulations must also comply with the new rules of the omnibus law concept).

So if the omnibus law is to be applied in the legal system in Indonesia, it is usually in the form of a law, because the substance of the law is a further arrangement of the provisions of the 1945 Constitution of the Republic of Indonesia.

Coordinating Minister for Economic Affairs Airlangga Hartarto said the omnibus law used an administrative legal basis. So that entrepreneurs or other parties who break the rules are only subject to sanctions in the form of fines. the application of administrative-based law has been applied in the capital market and banking. Thus, entrepreneurs who break the rules will not get a police line at their place of business. Conversely, employers who violate will be fined and if they refuse to pay, their license will be

28. Satjipto Rahardjo. (1981). *Hukum, Masyarakat, dan Pembangunan*. Bandung: Alumni, p. 29.

29. Bagir Manan. (1997). *Beberapa Masalah Hukum Tata Negara Indonesia*. Bandung: Alumni, p. 144.

30. Firman Freaddy Busroh. (2017). *Konseptualitas Omnibus Law dalam Menyelesaikan Permasalahan Regulasi Pertanahan*. Jurnal Arena Hukum Vol. 10 No. 2 (Augusts 2017), p. 247.

31. Nurul Qamar. (2010). *Perbandingan Sistem Hukum Civil Law System dan Common Law System*. Makassar: Pustaka Refleksi, p. 40.

revoked. He said, the policy would provide certainty for entrepreneurs³².

As a state of law (*rechtsstaat*) the principles of the rules of law must be upheld in the Republic of Indonesia. For us, the principle of the rules of law is none other than the rules of justice, law enforcement with the core of justice³³. So that justice is taken in the omnibus law (omnibus law on Taxation and Employment Creation) when viewed from the business side, administrative criminal sanctions are worth or as severe as criminal sanctions imprisonment, because for employers, by being sanctioned with fines can not get a business permit the same “give a deterrent effect” with sanctions imprisonment.

In practice so far the Act has delegated authority directly to the Minister / Head of Institution or Regional Government to implement the Act and its implementation arrangements. The Minister / Head of Institution or Local Government has the authority to delegate or delegate from the Act to implement the Act and its implementing regulations so that there are many regulations and are often out of sync with each other. NSPK (Norms of Standards for Procedures and Criteria) as a form of implementation of the authority and responsibility of the President for the implementation of the Government is not complete and standard and does not refer to best practices. The function of the Governor as the Representative of the Central Government has not been effective because of budget and apparatus limitations and is lacking.

In Article 8 paragraph 1 of Law 12 of 2011 various types of regulations were formulated which were considered as statutory regulations from various state institutions and authorized officials. If the formulation is reviewed based on the function and authority of the institution or official formulated according to Maria Farida Indrati, not all state institutions or officials have the authority to form a general regulation and apply as a statutory regulation³⁴.

The omnibus law concept will restore government authority and implementation of the law to the President as the holder of government power. The NSPK regulation by the President will reinforce the authority and synchronization of the implementation of authority and implementation of standardized laws and eliminate sectoral egos. Regulations for implementing the Law and the NSPK are determined by the President. However, as explained above, because Indonesia is not familiar with the term umbrella law or umbrella law which is superior, then if the omnibus law is made as a renewal of the criminal law, then all Laws and even the Criminal Code must be thoroughly dismantled and revised to later be made into one form of law new form of omnibus law. Because if it is not done so, then there cannot be two laws that govern the same thing. And this does not solve the initial problem experienced by Indonesia, namely regulatory obesity.

In this regard, the government must observe several things in the application of the omnibus law, namely:

1. Criminal policy must pay attention to the objectives of the criminal law itself. At present, the purpose of imposing a criminal offense may no longer be in the context of retaliation against a person (father) who commits an evil act. But it is also accompanied by rehabilitative, educational and preventive goals. If you take an example related to the decision of the Constitutional Court No. 2-3 / PUU-V / 2007 which tests Narcotics Law, the Constitutional Court’s view of the constitutional death penalty must be understood in order to maintain the balance between individuals and society. Not solely in the sense of “justice is giving offenders what they

32. Pengusaha Bebas dari Jerat Hukum Pidana di Aturan Omnibus Law. Article accessed by <https://katadata.co.id/berita/2019/12/18/pengusaha-bebas-dari-jerat-hukum-pidana-di-aturan-omnibus-law> on June 12, 2020.

33. Satjipto Rahardjo. (1983). *Masalah Penegakan Hukum*. Bandung: Sinar Baru, p. 109.

34. Maria Farida Indrati. (2007). *Ilmu Perundang-Undangan: Proses dan Teknik Pembentukannya*. Yogyakarta: Kanisius, hlm. 106.

deserve”.³⁵

2. The formulation of criminal policy must not cause the abuse of sanctions / reactions. A concrete example in this case is in the constitutional review of Article 79 letter C of the Medical Practice Law concerning doctors who do not add to knowledge and follow the development of medicine, and are subject to a maximum imprisonment of one year and certain fines. The provisions of article a quo governing criminal sanctions are not only inappropriate but also unnecessary. Aside from the fact that such a doctor’s action does not directly cause harm to others, it is not a criminal offense. The appropriate reaction to be imposed is administrative sanctions in the form of supervision, guidance, and training from the relevant agencies.
3. One of the capabilities that is needed in the formulation of criminal policy is the ability to measure the severity of a crime. A deep understanding of the legislators regarding the values and sequencing of social norms is mandatory. This lack of ability is now causing disparities in the imposition of criminal sanctions. If it keeps happening, then the criminal goal to achieve balance in society is increasingly difficult to achieve.
4. Knowledge that is qualified in the technical issues of lawmakers is also important. Because, matters relating to basic principles such as the origin of legality, *ultimum remedium*, nature against the law every criminal offense, and the science of legislation must become a foothold in the criminal law legislation process. The reason is, not a few of the criminal norms that have been applied were then tested materially to the Constitutional Court and were finally declared to be in conflict with the constitution because they were not in accordance with these basic principles.

Therefore, the reformulation of a criminal norm in the Omnibus Law is actually an important and open criminal policy agenda for the establishment of good criminal norms in the future. Thus, the use of criminal law as part of efforts to realize welfare and social protection can be done according to expectations and goals³⁶.

In reforming the criminal law, reformulation of criminal policy is needed to support the enforcement of existing administrative rules. However, the formulation of such criminal norms as the main strategy in social control requires selective and measurable aspirations. If the coercive element in criminal law to uphold the rule of law is not applied selectively and measurably, it will only result in injustice because there will be excessive punishment or overcriminalization. Thus, criminal law is no longer the last remedy (*ultimum remedium*) but as the main weapon (*primum remedium*)³⁷.

Legal transplantation as a national legal development policy is a political choice that is in accordance with the soul and spirit of Indonesian law, the soul and personality of the Indonesian nation, the ideological-philosophical basis of Pancasila which is the original paradigmatic value of Indonesian culture and society, is a political choice in the activities of making legal norms concrete (basic policy) without having to ignore the position and existence of Indonesia in the midst of international relations, including the omnibus law. Thus the law that is born is a law that commits nationally, think globally and act locally³⁸. The policy of making laws (basic policy) that combines elements originating from foreign law with laws sourced from the

35. Mike C. Materni. (2013). *Criminal Punishment and The Pursuit Of Justice*. Journal Brit. J. Am. Legal Stud, Vol. 2, p. 263.

36. Omnibus Law dan Kebijakan Pidana Oleh: Umar Mubdi. accessed by <https://www.hukumonline.com/berita/baca/lt5e54a21786142/omnibus-law-dan-kebijakan-pidana-oleh--umar-mubdi?page=2> on June 12, 2020.

37. Douglas Husak. (2004). *Crimes Outside the Core*. Tulsa Law Review, Vol. 39, Issue 4 Twenty-Five of George P., p. 755.

38. Evaristus Hartoko W. (2002). *Good Corporate Governance in Indonesia*. Griffin’s View on International and Comparative Law. Volume 3 Number 1, January 2002, p. 103.

original paradigmatic values of Indonesian culture and society must be carried out carefully and with full calculation, so that the law that will be enforced in this country is not revoked from ideological-philosophical roots of the Indonesian state and nation³⁹.

The application of the omnibus law method is not without consideration, the simplification of regulations focused on the Indonesian Cabinet Going forward is in line with the basic idea that “the application of the Omnibus Law can accelerate the economy,” Law Number Formation of Changes in ecosystems Order in Act 12 of 2011 concerning Legislation as already amended by Law Number 15 of 2019 concerning Amendment to Law Number 12 of 2011 concerning Formation of Laws and Regulations, when read through a progressive interpretation approach reading of the harmony of the omnibus law method with the laws forming legislation is interpreted as a method drafting, while still using the legal norms for the formation of laws.

The relation of the application of the building of the Omnibus law architecture model in the national legal system through literacy that has been carried out by the government, the application was also carried out through a logical ratio study of making a law with the omnibus law method with a substantive, constructive and transgressive comparative approach, in Indonesia and other countries. The process of applying the omnibus law in the national legal system to the formation of laws and regulations also takes into account the principles of the formation of laws and regulations, on the other hand the architectural design of the Indonesian omnibus law also pays attention to other principles in accordance with the relevant legal sector. Thus the Indonesian omnibus law approach applies the method by laying out a model for establishing legislation. In accelerating the revitalization of the regulatory climate related to the investment climate and improving the economy through the omnibus law of the Employment Copyright Bill and the Tax Draft Bill to strengthen the economy, the government considers the omnibus law method to be considered conditionally applied through a legal transplant process.

Transplant law policy from the common law system to the civil law system is no longer something new to discuss, but it is interesting if the pattern and usefulness extends to the community, in fact the legal transplantation in Indonesia has been going on for a long time from the Dutch East Indies until independence and until currently continues to make the system transparent by making adjustments to national law.

The inclusion of the common law system in the Indonesian legal system is inseparable from the influence of social, economic, political, and international relations which are largely rational affected by the development of civilization civil administration. This difference in the legal system must be overcome by legal reform as the concept and opinion of Moctar Kusumaatmaja, that the function of law as “a means of public renewal” (law as a social engineering tool)⁴⁰ and law as a system that is indispensable for the Indonesian nation as a developing country⁴¹. The law as a catalyst, the law can help to facilitate the process of change through legal reform (law reform) with the help of creative workers in the legal profession⁴².

The problem of regulatory structuring in Indonesia, will take time and does not require a lot of cost if the process of restructuring the legislation using the amendment method of a law, in the new tradition in the common law system, the omnibus law is able to provide answers with a pattern of drafting legislation which is substantive, constructive and transgressive, and a wide range of material content from how many

39. *Ibid*, p. 109.

40. Romli Atmasesmita. (2003). *Menata Kembali Masa Depan Pembangunan Hukum Nasional*. Makalah disampaikan dalam “Seminar Pembangunan Hukum Nasional VIII” di Denpasar, July 2003, p. 7.

41. Lili Rasjidi dan Ida Bagus Wijasa Putra. (2003). *Hukum Sebagai Suatu Sistem*. Bandung: Mandar Maju, p. 5.

42. I Putu Rasmadi Arsha Putra, I Ketut Tjukup, dan Nyiman A. Martana. (2016). *Tuntutan Hak dalam Penegakan Hak Lingkungan (Environmental Right)*. Jurnal Hukum Acara Perdata, Vol. 2, No. 1 January-July 2016, p. 98.

existing laws apply.

Conclusion

In the view of criminal law, the enactment of omnibus law uses the principle of *lex specialist derogat legi generalis* (a special rule that overrides general rules, because with the existence of omnibus law, then automatically regional level regulations must also comply with new rules of the omnibus law concept). So if the omnibus law is to be applied in the legal system in Indonesia, it is usually in the form of a law, because the substance of the law is a further arrangement of the provisions of the 1945 Constitution of the Republic of Indonesia. If the omnibus law is made as a renewal of the criminal law, then all the Laws and even the Criminal Code must be thoroughly dismantled and revised to later be made into a new law in the form of an omnibus law. Because if it is not done so, then there cannot be two laws that govern the same thing. And this does not solve the initial problem experienced by Indonesia, namely regulatory obesity.

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