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## THE 1ST PROCEEDING INTERNATIONAL CONFERENCE AND CALL PAPER

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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: Comparative Review"*

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# JURIDICAL REVIEW OF THE FORMATION AND IMPLEMENTATION OF OMNIBUSLAW IN LAW SYSTEM

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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). For some people, it still feels strange to hear the term Omnibus Law. Even some legal academics are still debating the concept of the Omnibus Law if it is implemented it is feared that it will disrupt the Indonesian legal system because it is allegedly the cause of the legal system adopted in Indonesia, which is the dominant Civil Law, while the Omnibus Law comes from the Common Law system. In the description of writing, the problem is how is the juridical review of the implementation of the Omnibus Law in the Indonesian legislative system? Can it be applied in the Indonesian legislative system? 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. The law that will later be produced from the Omnibus Law concept can be referred to as the Umbrella Law because it regulates thoroughly and then has power over other rules. However, in Indonesia it does not adhere to the Umbrella Law because the position of all Laws is the same, so its position must be given legitimacy in Law No. 12 of 2011 needing to be amended.*

**Keyword : Omnibuslaw , Juridical Review**

## 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.

Several times President Joko Widodo stressed, investment and exports are two important things to be increased. These two things are sustaining national economic growth and opening up employment opportunities in Indonesia. This was stated by President Jokowi when opening the Plenary Cabinet Session at the State Palace on Wednesday, May 16, 2018 afternoon, before the Working Cabinet ministers.

In order to increase the interest in investing, President Joko Widodo has made many changes in the regulations that hamper investment. In addition the government also shortens licensing procedures by simplifying and accelerating the licensing process in doing business. During this time in managing business licenses always have time and certainty constraints, the length of business licensing is not predictable, and unclear regulations and conflicting business licensing procedures always become obstacles in business.

The constraints of regulations and licensing in investing finally made President Joko Widodo launch the concept of the Omnibus Law in the legislation. This concept was first conveyed by president Joko Widodo in his first speech after his inauguration as the second president for the 2019-2024 period. This idea certainly makes politicians and legal experts re-review what is meant in the Omnibus Law.

According to President Joko Widodo, through the Omnibus Law, there will be a simplification of regulatory or regulatory constraints that are currently complicated and lengthy in investing or doing business. The initial step to be implemented by President Jokowi is to invite the Indonesian Parliament to finalize the two major laws. The intended law is first, the Employment Creation Act and secondly, the UMKM Empowerment Act. The two laws will become Omnibus Law, which in their statements can revise several related laws or even dozens of laws.<sup>1</sup>

Indonesia has passed the government regime from the Old Order government to the Reform Order. The change of President and cabinet of government resulted in the birth of many laws and regulations in accordance with the wishes of each government in power at that time. This then raises regulatory issues where there are several laws and regulations that overlap, causing a policy conflict between one ministry and another. To solve the regulation problem, an appropriate legal breakthrough is needed and one of the solutions is through the Omnibus Law concept. For some people, it still feels strange to hear the term Omnibus Law. Even some legal academics are still debating the concept of the Omnibus Law if it is implemented it is feared that it will disrupt the Indonesian legal system because it is allegedly the cause of the legal system adopted in Indonesia, which is the dominant Civil Law, while the Omnibus Law comes from the Common Law system. This is then the idea becomes interesting to study from the applicable legal system in Indonesia.

The problem is How is the juridical review of the implementation of the Omnibus Law in the Indonesian legal system? Can it be applied in the Indonesian legislative system?

## 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 study.

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

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 which starts with the information obtained to achieve clarity of the problem to be discussed, namely the juridical review of the implementation of Omnibus Law in the Indonesian legislative system. Could it be possible to apply it in the Indonesian legislative system.

## **Research Result and Discussion**

From the description of the legal experts opinions above, the main characteristics of the Omnibus Law can be drawn are (1) it consists of multiple sectors or consists of many sectors with the same theme; (2) consists of many articles, due to the many sectors covered; (3) independent or independent, without being bound or minimally bound by other regulations; and (4) negate / revoke parts and / or all other regulations.

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 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.

The complicated issue of regulation arises and causes the investment climate in Indonesia to move slowly compared to neighboring countries such as Singapore and Malaysia. In the regime, President Jokowi wants all regulations that impede the entry and operation of investments to be removed. Minister of Agrarian Affairs and Spatial Planning / BPN RI Sofyan Jalil brought up the idea of the concept of the Omnibus Law to resolve disputes over overlapping laws and regulations that hamper investment growth in Indonesia.

Looking at the legal system in Indonesia, the Law resulting from the Omnibus Law concept can be referred to as the Umbrella Law because it regulates thoroughly and then has power over other rules. But Indonesia will not adhere to the Umbrella Law because the position of all the Laws is the same. Problems that arise when examined from the perspective of the theory of legislation regarding their position, so that their position must be given legitimacy in Law Number 12 of 2011 concerning Formation of Legislation must be amended.

The process of establishing statutory regulations from theoretical studies related to the existence and validity of law in society is known as Legal Bills (*rechtsbeoefening*). This activity includes activities in forming, implementing, applying, finding, interpreting, studying and teaching law. Legal worship is distinguished in Practical Legal Development and Theoretical Legal Development.

Practical Law Development is a human activity regarding the realization of the law in the reality of daily life in a concrete way. These activities include Legal Formation, Legal Discovery and Legal Aid. While the Theory of Legal Development is also called the Theoretical Reflection on law, namely as an activity of reason to gain intellectual mastery of law or a scientific understanding of law, that is methodically systematic - rational logical. Theoretical Law Development is divided into 3 (three) types based on the level of abstraction or based on the level of analysis, namely the Legal Sciences, Legal Theory and Legal Philosophy.

The process of establishing the Omnibus law is carried out in the same manner as the formation of a

law in general. In Article 1 number 1 of Law 12 of 2011, what is meant by the Formation of Regulations and Regulations is the making of Regulations that cover the stages of planning, drafting, discussion, ratification or enactment, and enactment. The stages of forming laws and regulations are generally carried out as follows:<sup>2</sup>

1. Stages of Planning for Drafting the Law
2. Preparation for the Formation of Law
3. Submission of Draft Law

Based on Article 7 of Law Number 12 of 2011 which amends Law Number 10 of 2004, it is stated that the type and hierarchy of statutory regulations consists of:

- The 1945 Constitution of the Republic of Indonesia;
- Decree of the People's Consultative Assembly;
- Government Act / Regulations in Lieu of Law;
- Government regulations
- Presidential decree;
- Provincial Regulations; and
- Regency / City Regulations

Regarding the hierarchy, Jimly Ashidqie argues that the regional regulation (Perda) is like a law at the national level, otherwise known as local statute or locale wet. Because of this, local regulations can be referred to as local laws, if seen from the organs that make them up, namely the executive and legislative branches of local government.

In the hierarchy / sequence of laws and regulations in Indonesia as regulated in Act Number 12 of 2011 concerning the Formation of Legislation, the Omnibus Law concept has not been included as one of the principles in legal sources. But the harmonization of laws and regulations.

## Conclusion

Omnibus law is a new thing in the field of statutory regulations of the Republic of Indonesia, in addition to our country's legal system adopting the Civil Law system as well as the products of current government regulations are inherited from the old system. So the conclusions and discussion above can be drawn as follows. 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. The law that will later be produced from the Omnibus Law concept can be referred to as the Umbrella Law because it regulates thoroughly and then has power over other rules. However, in Indonesia it does not adhere to the Umbrella Law because the position of all Laws is the same, so its position must be given legitimacy in Law No. 12 of 2011 needing to be amended.

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1. Busroh, Firman Freaddy, 2017. *Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan*, Jurnal ARENA HUKUM Volume 10, Nomor 2, Augusts 2017. Universitas

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