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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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Table Of Content

STRENGTH AND WEAKNESSES OF OMNIBUS LAW IN INDONESIA

Saprodin, Widarto 1

OMNIBUS LAW BETWEEN JUSTICE AND BENEFITS

Hartanto, Aris Sudarmono 7

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

Amir Darmanto, Muh. Tommy Fadlurohman 14

IMPACT OF LAW OMNIBUS APPLICATION IN INDONESIA IS POSSIBLY HAPPENING TO ENVIRONMENT DEGRADATION

Sunarto, Eva Kurniasih 19

Omnibus Law in Progressive Law Views in Indonesia

Nasrudin, Joko Prasetyo 25

OMNIBUS LAW WAS REVIEWED FROM THE EXCESS AND LACKS OF THE LEGAL CODIFICATION SYSTEM IN INDONESIA

Binov Handitya, Jarot Jati Bagus Suseno 32

OMNIBUS LAW AS SIMPLIFICATION OF LEGISLATION IN INDONESIA

FA Alexander GS, Sundoyo 38

PREROGATIVE RIGHTS OF PRESIDENTS IN OMNIBUS LAW

Tri Mulyani, Sih Ayuwatini 44

OMNIBUS LAW AND IT'S IMPLEMENTATION OF INDONESIAN COUNTRY MARITIME DEFENSE AND ISLAMIC LAW VIEWS ABOUT STATE DEFENSE

Aminudin Yakub, Teddy Prayoga 50

OMNIBUS LAW AND PROBLEMATICS LABOR IN INDONESIA

Nukhbatul Mankhub, Aep Saepudin² 57

OMNIBUS LAW IN INDIGENOUS LAW VIEWS IN INDONESIA

Carolina da Cruz, Suwitno 63

| | |
|---|-----|
| OMNIBUS LAW IN RENEW OF CRIMINAL LAW | |
| <i>Lukman Muhadjir ,Salidin</i> | 69 |
| URGENCY OF THE OMNIBUS LAW BILL | |
| <i>Andi Lala ,Sudiharto</i> | 77 |
| THE APPLICATION OF OMNIBUS LAW IN THE EFFECT OF LEGAL REFORM IN INDONESIA | |
| <i>Warijan ,Tri Setyadi Artono</i> | 85 |
| OMNIBUS LAW IN ECONOMIC DEVELOPMENT CONTEXT IN INDONESIA | |
| <i>Indrayana Addhywibowo Kusumawardana ,Iva Amiroch</i> | 93 |
| IMPLEMENTATION OF OMNIBUS LAW IN LAW OF WORK FIELD IN INDONESIA | |
| <i>Yimmy Kurniawan ,Henny Rosita</i> | 101 |
| OMNIBUS LAW OPPORTUNITIES AND CHALLENGES IN THE INDONESIAN LEGISLATION SYSTEM | |
| <i>Yuni Nurkuntari ,Sunardi</i> | 109 |
| OMNIBUS LAW IN COMPLETION OF LAND REGULATION PROBLEMS | |
| <i>Enju Juanda, Mairul</i> | 117 |
| LAW OF OMNIBUS LAW BUSINESS AGENCY FOR INDONESIAN COMMUNITY WELFARE | |
| <i>Ilham Akbar ,Ahmad Husaini</i> | 125 |
| THE CONCEPT OF OMNIBUS LAW RELATED TO NORMAL LAW APPLICABLE IN INDONESIA | |
| <i>Ariyanto ,Joncik Muhammad</i> | 133 |
| OMNIBUS LAW FOREIGN INVESTMENT IN INDONESIA | |
| <i>Adhi Budi Susilo ,Irwanto Efendi</i> | 141 |
| OMNIBUS LAW AND THE NEED OF INDONESIAN ECONOMIC INVESTMENTS VIEWED FROM ISLAMIC LAW VIEWS RELATED TO ECONOMY | |
| <i>Ahmad Syauqy S ,Yanto Irianto</i> | 149 |

| | |
|--|-----|
| CRITICISM OF THE COMMUNITY IN THE OMNIBUS LAW BILL | |
| <i>Sitta Saraya ,Puguh Triatmojo</i> | 156 |
| MANIFESTATION OF PANCASILA VALUES IN THE OMNIBUS LAW FOR JUSTICE | |
| <i>Andri Winjaya Laksana</i> | 164 |
| LEGAL REVIEW OF LAW PROTECTION THEORY IMPLEMENTATION | |
| IN DISPUTE OF ADMINISTRATIVE COURT | |
| <i>Ahmad Yani</i> | 174 |
| OMNIBUS LAW ON JOB CREATION BILL IN THE ZEMIOLOGY PERSPECTIVE | |
| <i>Arif Awaludin, Eti Mul Erowati, Ninik Hartariningsih</i> | 182 |
| Application Of Omnibus Law In The Investment Field As A Efforts To The Settlement Licensing Regulation And Harmonization Of Law Regulation In Indonesia | |
| <i>GaluhKartiko Ludfi Djajanto,Rosy ApriezaPuspita Zandra</i> | 191 |
| IDEAL CONSTRUCTION OF THE IMPLEMENTATION OF A CONSTITUTIVE SYSTEM (“FIRST TO FILE”) IN BRAND REGISTRATION | |
| <i>Hani Subagio</i> | 202 |
| CRIMINAL PUNISHMENT AGAINST PERPRETRATORS OF HUMAN TRAFFICKING | |
| <i>Johny Koesoema</i> | 210 |
| WEAKNESSES OF THE LEGISLATION FUNCTION OF THE REGIONAL REPRESENTATIVE COUNCIL IN THE BICAMERAL PARLIAMENT SYSTEM IN INDONESIA | |
| <i>Kelik Endro Suryono</i> | 220 |
| UTILIZATION OF VILLAGE FUNDS ACCORDING TO LAW NO. 6 OF 2014 TO PREVENT CRIMINAL ACT OF CORRUPTION | |
| <i>M. Rohmidhi Srikusuma</i> | 227 |
| POTENTIALS OF NATURE TYPE AROUND BY THE ADVANCED: JURIDICAL ANALYSIS OF LAW OMNIBUS LAW DRAFT OF LAW | |
| <i>Subaidah Ratna Juita, Deni Setya Bagus Yuherawan</i> | 235 |

**MEDIATION ROLE IN SOLVING SHARIA ECONOMIC DISPUTE AS CIVILIZATION
TOWARD ETHICAL VALUE OF ISLAM**

Santoso..... 240

**THE IMPLEMENTATION OF CRIMINAL CONVICTIONFOR CHILDREN UNDER
THE AGE OF CRIMINAL RESPONSIBILITY BASED ON JUSTICE VALUE**

Yustinus Bowo Dwinugrono 251

**Re-Conceptualizing Workers’ Constitutional Rights in the *Cipta Kerja* Bill based on the
Indonesian Welfare State Principles**

Zulkarnain Ridlwan, Yuswanto, Muhtadi, Yusdiyanto 258

OMNIBUS LAW WAS REVIEWED FROM THE EXCESS AND LACKS OF THE LEGAL CODIFICATION SYSTEM IN INDONESIA

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ABSTRACT

Pros and cons of opinion that enlivened the government's plan related to the omnibus law, among those who supported the government's plan, stated that the omnibus law was the right solution to address the overlapping issues of several laws and regulations in Indonesia. But the opponents or contra think that the omnibus law plan is considered as an effort to delegitimize the rights of each sector of the nation's life, especially concerning labor and other sectors that can be affected due to their enactment.

The problem in writing this paper is how is omibus law in terms of advantages and disadvantages of the legal codification system in Indonesia? Codification and omnibus law systems are systematic and integrated written patterns of norms for written regulations based on the principle of popular sovereignty with the formation of laws as a product of political approval or the highest legislative act under the law basis through people's representative institutions whose elaboration is further stipulated by executive acts by the implementing agency of the law or branch of executive power. 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. Even though the aim is good, it must still be considered in terms of advantages, that is, there are efficiencies and shortcomings that allow for legal deviations in our legal codification system in Indonesia.

Keywords : *omnibus law, excess, lack*

INTRODUCTION

The idea of the rule of law actually had long been developed by philosophers from Ancient Greece. Plato, at first in the Republic, argued that it was possible to realize an ideal state to achieve the good with a core of goodness. But in his books The Statesman and the Law, states that what can be realized is

thesecondbest form of putting the rule of law¹. The purpose of the state according to Aristotle is to achieve the best life (the best life possible) that can be achieved through the rule of law. Recognition of the principle of rule of law, which places the law as the highest command holder in the administration of the state. Therefore, it can be understood that the rule of law as a concept, is a tool for the state to achieve its goals.

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 certainty². 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 form³.

With regard to statutory regulations as an embodiment of written law, Bagir Manan has explained that one of the elements of the statutory regulation is that it is binding public and in written form so that it can also be called written law⁴. Whereas on the other characteristics, legislation usually has a variety of types, and each of the forms of legislation is arranged hierarchically.

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 Representatives⁵. 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 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 Economy⁶.

Pros and cons of opinion that enlivened the government's plan, among those who supported the government's plan, stated that the Omnibus Law was the right solution to address the overlapping issues of several laws and regulations in Indonesia. But the opponents or contra think that the omnibus law plan is considered as an effort to delegitimize the rights of each sector of the nation's life, especially concerning Labor and other sectors that can be affected due to its validity⁷. In the plan to implement the Omnibus Law, it must be seen from various aspects, including its advantages and disadvantages in the codification of Law in Indonesia, for this reason the authors formulated and poured some of their opinions as contained in this paper.

The Problem

The problem in writing this paper is how is omnibus law viewed from the strengths and weaknesses of the legal codification system in Indonesia?

- 1 Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar-Pilar Demokrasi*, Cetakan Kedua, (Jakarta: Sinar Grafika, 2012), p. 129-130.
- 2 Mochtar Kusumaatmadja, *Konsep-Konsep Pembangunan Hukum dalam Pembangunan*, (Bandung: Alumni, 2002), p. 5-6.
- 3 Mahfud MD., *Konstitusi dan Hukum dalam Kontroversi Isu*, (Jakarta: Rajawali Pers, 2009), p. 255.
- 4 Bagir Manan, *Dasar-Dasar Perundang-Undangan Indonesia*, (Jakarta: Ind-Hill-Co, 1992), p.3.
- 5 CNBC Indonesia, <https://www.cnbcindonesia.com/news/20200212114420-4-137233/hari-ini-draft-omnibus-law-cilaka-diserahkan-ke-dpr>,
- 6 CNN Indonesia, <https://www.cnnindonesia.com/nasional/20200122164312-32-467714/4-ruu-omnibus-law-dikebut-dpr>
- 7 Fitryantica, A. (2019). Harmonisasi Peraturan Perundang-Undangan Indonesia melalui Konsep Omnibus Law. *Gema Keadilan*, 6(3), 300-316. Haryono, H. (2019). Eksistensi Aliran Positivisme Dalam Ilmu Hukum. *Meta-Yuridis*, 2(1), p.96-107

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 the resolution of the problem under study namely the Omnibus law in terms of advantages and disadvantages of the legal codification system in Indonesia.

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 normative qualitative, namely the decomposition of data analysis which starts with the information obtained to achieve clarity of the problem to be discussed.

Research Result and Discussion

Strengths and weaknesses of Omnibus Law in the Indonesian Law Codification System

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, namely⁸:

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. The 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, of course the basis for consideration of a Legal Entity must change again whereas previously it has been regulated in such a way through the standards of agreement and study for so long.

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

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. which had been proclaimed by our founding father, expressed the ideals of the nation and hopes of becoming an independent country they had 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, of course so far the writer has not found a phrase in the 1945 Constitution that can be the basis formulation of Omnibus Law⁹.

Omnibus Law can indeed be a solution to overlapping regulations in Indonesia, but the preparation 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 criticism¹⁰.

In the Statutory Principle, we recognize several legal principles, one of them is the Lex Posterior derogat legi priori principle. "The New Regulation rules out the old rules" of course when the Omnibus Law has been established by facing the fluctuation of public criticism that formed the background of the formation of a new law. the Automatic Omnibus Law that was previously determined will be defeated again with the enactment of the new Law. So what should be of concern is that the government focuses on the content of the legislation that will be formulated and the focus is not on the Omnibus Law as the final Solution to the Conflict of Norms.

Indonesia is a state of law as stated in the 1945 Constitution, namely in article paragraph 3 which reads "The State of Indonesia is a State of Law"¹¹

1. Supremacy of law;
2. Equality before the law;
3. The guarantee of human rights through law and justice (The constitution based on individual right).

Indonesia is a law state that adopts a mixed legal system whose main system is the continental european system because Indonesia consists of various ethnicities, races, classes, religions and cultures regardless of the existence of the Concordance Principle (A Principle which underlies the enactment of European law or Dutch domestic law at the time to also applied to groups in the Dutch East Indies (Indonesia at the time¹².

Codification and 'omnibus law' systems are systematic and integrated written patterns of legislating norms based on the principle of popular sovereignty with the formation of laws as a product of political approval or the highest legislative act under the law. the basic law through a representative institution whose elaboration is further stipulated by an executive act by the implementing agency of the law or branch of executive power.

The codification system prioritizes and idealizes the writing and drafting of laws in a single integrated unit on the subjects and objects regulated in each draft law. In its development, the codification system can be distinguished between legislative codification in which the codification law is determined by the people's representative institution, and the executive codification in which the codification is compiled later by the

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

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

11 Siallagan, H. (2016). Penerapan Prinsip Negara Hukum di Indonesia. *Sosiohumaniora*, 18(2), 122-128.

12 Nurhardianto, F. (2015). Sistem Hukum dan Posisi Hukum Indonesia. *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam*, 11(1), 33-44.

government while still referring to the law which is approved by the people's representative institution.

The 'omnibus law' system prioritizes and idealizes writing and drafting, in addition to being integrated, also harmonious with various legal materials governing subjects and objects that differ from other laws in one united system of a rule of law state based on the constitution as a source of law the highest.

The system currently practiced in Indonesia, in essence, can be said to be a codification system, but is limited to legislative codification by containing material cohesiveness as long as it concerns subjects and objects that are thematic in nature, which cannot reach matters relating to other themes or topics. The advantages and disadvantages of codification, namely¹³:

Advantages:

1. In accordance with the tradition of 'civil law' practiced in Indonesia;
2. The preparation is easier, because it does not have to first know the entire material regulated by other laws in detail and takes time;
3. Facilitating the discussion in political forums which are colored by the political climate in the people's representative institutions which do not idealize political discussions that are too detailed and technical;
4. Giving an opportunity to the judicial power branch to overcome various deficiencies contained in the law, if in the field found a conflict between norms.

Deficiency:

1. Do not establish harmony with various laws that regulate material that is indirectly related, but in its implementation, the fields are interrelated;
2. Material arranged in political forums contains content that is too detailed and comprehensive, although it is not necessary to answer urgent problems;
3. The agenda for legal reform is inefficient and ineffective because it idealizes the perfection of laws which takes a long time to be formulated and discussed in the political forums of representative institutions.

The strengths and weaknesses of Omnibus Law, namely¹⁴:

Advantages:

1. More flexible because at the same time it can change many laws, even if it is not about material that is directly related to one another;
2. Productivity of drafting of law can be increased more efficiently;
3. Facilitate dissemination for the benefit of the community and its implementation in the field.
 1. Deficiency:
 1. The Manuscript of the Law regulates various materials which at a glance are not interrelated, so that the structure of the Act of the Law appears as not systematic;
 2. If the law is made concise and affects many other laws across sectors, to understand it requires the support of a more complex legal norm audit system, thus requiring the sophistication of supporting technology to audit interrelated legal norms;
 3. Requires the support of the expertise of many professional legal auditors who are supported by additional legal audit courses in the world of legal education.

13 Jimly Asshiddiqie. 2019. Kelebihan dan Kekurangan Sistem Kodifikasi dan Omnibus Law serta Kombinasi Keduanya. Jakarta: Makalah Ceramah Hukum.

14 *Op. Cit.* Jimly Asshiddiqie

Conclusion

Codification and omnibus law systems are systematic and integrated written patterns of norms for written regulations based on the principle of popular sovereignty with the formation of laws as a product of political approval or the highest legislative act under the law basis through people's representative institutions whose elaboration is further stipulated by executive acts by the implementing agency of the law or branch of executive power. 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. Even though the aim is good, it must still be considered in terms of advantages and disadvantages in our legal codification system in Indonesia.

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