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Omnibus Law in Legislative Drafting: Realising High-Quality Legislation in Indonesia

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Abstract: The implementation of the Omnibus Law method in Indonesia represents a significant innovation in the formation of legislation aimed at ensuring legal quality, coherence, and efficiency. As noted by Jimly Asshiddiqie, the Omnibus Law can serve as a corrective mechanism to overcome hyper-regulation and legal fragmentation that have long undermined legal certainty and governance. However, its application raises questions about democratic legitimacy, public participation, and the balance of power among state institutions. From Hans Kelsen's perspective, the Omnibus Law must still adhere to the principle of a hierarchical legal order (Stufenbau theory), ensuring that every regulation derives its validity from higher norms, ultimately grounded in the 1945 Constitution of the Republic of Indonesia (UUD 1945). Thus, while the Omnibus Law offers potential to enhance the quality of legislation in Indonesia, its success depends on maintaining constitutional conformity, participatory inclusiveness, and alignment with both theoretical and practical demands of a democratic legal state.

Keyword: Omnibus Law, Formation of Legislation, Legal Quality, Constitutional Law.

INTRODUCTION

The conception of the Rule of Law is realised by developing a legal system that is both functional and just. This is pursued through the orderly structuring of political, economic, and social institutions, and by cultivating a rational and objective legal culture and legal consciousness in societal and state life. Accordingly, the legal system must be properly made (law-making) and enforced (law-enforcing), beginning with the Constitution as the highest law, in order to guarantee its force as the supreme law of the land.[1]

With the Fourth Amendment to the 1945 Constitution of the Republic of Indonesia in 2002, the concept of a Negara Hukum (Rechtsstaat), which had previously appeared only in the Explanatory Memorandum to the 1945 Constitution, was affirmed in Article 1(3): "The

[1]Jimly Asshiddiqie, Gagasan Negara Hukum Indonesia, https://www.pn-gunungsitoli.go.id/assets/image/files/Konsep_Negara_Hukum_Indonesia.pdf, accessed 15 March 2022

State of Indonesia is a state based on law." In this conception, law rather than politics or economics must lead the dynamics of state life. Since independence on 17 August 1945, numerous statutes and regulations have been in force in Indonesia, some inherited from the colonial administration and others enacted under Indonesia's own constitutions: (1) the 1945 Constitution (UUD 1945); (2) the 1949 Constitution of the Republic of the United States of Indonesia (Konstitusi RIS 1949); (3) the Provisional Constitution of 1950 (UUDS 1950); and (4) the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).

Certain colonial-era regulations remain applicable pursuant to Article II of the Transitional Provisions of the 1945 Constitution: "All state bodies and existing regulations shall remain in force, pending the establishment of new ones under this Constitution." Article I of the Transitional Provisions of the UUD NRI 1945: "All existing laws and regulations shall remain in force pending the enactment of new ones under this Constitution".[2] Some legislation was formed under colonial legal policy, while others reflect Indonesia's legal policy, varying across the unitary and federal constitutional structures that have existed. In the unitary period, moreover, regulation has not always been consistent, as the dominance of particular institutional interests has contributed to disharmony among laws and regulations, thereby hampering legal development in Indonesia.[3] This disharmony has impeded the development of high-quality law in Indonesia.[4]

Such disharmony reveals a gap between das Sein (what happens in practice) and das Sollen (the normative ideal embodied in legislation). Legal problems frequently arise from weak implementation, regulatory disharmony, and indeterminate sanctions. Das Sein is visible in empirical realities within society. Redundancy, in principle, need not generate legal problems, provided redundancies are mutually reinforcing. Yet Indonesian legal reality exhibits das Sein in the form of overlaps, disharmony, and the coexistence of colonial and national regulations that are neither harmonious nor synchronised, even though harmonisation and synchronisation are, in principle, undertaken at each level of authority. Das Sollen requires legislation to be harmonious, effective, and to deliver legal certainty.[5] In reality, the aspiration to build an orderly and high-quality national legal system is often obstructed by sectoral interests, weak inter-agency coordination, and insufficient law reform grounded in societal needs. Coordination among institutions is frequently conducted as a mere procedural formality. Public legal literacy is also hampered by knowledge gaps and limited access to information.

Disharmonious legislation must therefore be evaluated and adjusted to ensure relevance to societal legal needs, and to realise order, certainty, and utility for the Indonesian people. Yet evaluation and amendment are often carried out piecemeal, without regard to the legal system as a whole. At the same time, the drive to produce new regulations remains strong, slowing evaluative reforms and leaving them behind societal developments. The Government of the Republic of Indonesia through the Ministry of Justice has long socialised

[2]Cf. Article I of the Transitional Provisions of the UUD NRI 1945: "All existing laws and regulations shall remain in force pending the enactment of new ones under this Constitution.", https://openparliament.id/wp-content/uploads/2021/08/penggunaan-metode-omnibuslaw-dalam-pembentukan-ppuu.pdf, accessed 25 June 2024

[3]When the 1945 Constitution, the 1950 Provisional Constitution, and the UUD NRI 1945 were in force, Indonesia was a unitary state; under the 1949 RIS Constitution, it was federal. Ibid., https://openparliament.id/wp-content/uploads/2021/08/penggunaan-metode-omnibuslaw-dalam-pembentukan-ppuu.pdf, accessed 25 June 2024.

[4]*Ibid*.,

[5] Seidman, A., Seidman, R. B., & Abeysekere, N. (Year). Legislative drafting for democratic social change: A manual for drafters. Kluwer Law International, hlm 126-127.

the idea of "law as a tool of social engineering" (hukum sebagai sarana pembaharuan masyarakat)[6], but implementation has yet to become optimal.

Beyond social control, law functions as an instrument to drive societal change towards public welfare and civility. Legislation must therefore be harmonious, interconnected, and non-overlapping, so as to form a coherent, effective, and efficient legal system and to realise legal certainty.[7] In a modern Rule-of-Law state, law is not only a tool of social control to maintain public order, but also an instrument to steer society towards desired ends i.e., a primary means to deliver public welfare and civility.[8]

Given these tasks and functions, legislation at every type and hierarchy must be interrelated, harmonious, aligned, and non-overlapping, thereby producing a legal construction that is coherent, effective, efficient, high-quality, and comprehensive. As a component of the national legal system, legislation must function to realise legal certainty (rechtszekerheid), and all elements of the system must ultimately support and be in sync with one another so as to avoid and resolve problems arising in national and societal life.[9] The United States Agency for International Development (USAID) has identified three recurring problems in Indonesian regulation: (a) the objectives of formation are misaligned with the substantive content of the regulation; (b) excessive proliferation of regulations governing the same matters; and (c) regulations that delegate too much discretion to officials.[10]

An innovative breakthrough is needed to reorganise legislation while remaining faithful to foundational principles of law-making. Such a breakthrough must be applicable both at central and regional levels to achieve vertical and horizontal harmonisation of the system. President Joko Widodo has recognised that the proliferation of regulations hampers economic growth, complicates bureaucracy, and slows national development due to overlapping rules.[11] One governmental strategy to spur growth by increasing investment is regulatory reform in the area of business licensing. The reform aims to remove investment barriers such as long bureaucratic chains, overlapping regulations, and lack of harmony between central and regional rules (hyper-regulation). This calls for deregulation relating to business licensing, investment requirements, labour, micro, small and medium enterprises (MSMEs) and co-operatives, land acquisition, economic zones, the execution of government projects, and public administration, including criminal sanctions scattered across multiple statutes.[12]

The Government has explored various methods to repair the regulatory framework. If deregulation is conducted conventionally by amending statutes one by one, integrated solutions will be difficult to achieve swiftly. Hence the need to apply the Omnibus Law method, by enacting a single thematic Act that amends diverse provisions in many other Acts.[13] In his inaugural address for the second presidential term on 20 October 2019,

[6]a concept advanced by Mochtar Kusuma-Atmadja—then Minister of Justice and Professor at the Faculty of Law, Universitas Padjadjaran—known as the "Theory of Law and Development", influenced by Harold D. Lasswell, Myres S. McDougal, and Roscoe Pound.

[7]Jalaludin, "Hakikat dan Fungsi Peraturan Perundang-Undangan Sebagai Batu Uji Kritis terhadap Gagasan Pembentukan Perda yang Baik", Jurnal Aktualita, 6(3), 2011, p. 2.

[8]Agus Riwanto, "Mewujudkan Hukum Berkeadilan Secara Progresif Perspektif Pancasila", Jurnal Al-Ahkam, 2(2), 2017, p. 137

[9]Nomonsen Sinamo, Ilmu Perundang-Undangan. Jakarta: Jala Permata Aksara, 2016, p. 3

[10]USAID, "RegMap: Melembagakan Reformasi Peraturan Perundang-undangan di Indonesia" , Jakarta: USAID, 2009, pp. 27‑28

[11]Facebook, https://fr-fr.facebook.com/Jokowi/posts/773205216201663, accessed 1 June 2024.

[12] Naskah Akademis RUU tentang Cipta Kerja, file:///C:/Users/User/Downloads/Naskah-Akademis-RUU-tentang-Cipta-Kerja.pdf, pp. 23–24.

[13]Ihsanuddin, "Setahun Jokowi dan Pidatonya soal Omnibus Law RUU Cipta Kerja", Kompas.com, https://nasional.kompas.com/read/2020/10/20/06255981/setahun-jokowi-dan-pidatonya-soal-omnibus-law-ruu-

President Joko Widodo stated that an Omnibus Law is a way to simplify convoluted legislation that hinders investment.[14] The Omnibus Law technique is intended to facilitate investment by streamlining regulation, licensing, and various requirements that complicate business.[15] It is also supported by the theory of legal integration, i.e., the need to integrate overlapping or conflicting norms without amending each sectoral statute individually.[16] A thematic omnibus statute can revise, supplement, or repeal provisions across dozens even hundreds of other Acts. That said, legal certainty must remain paramount, any Omnibus Law must be crafted with openness, high-quality norms, and public participation so as not to create new uncertainty for business actors or society.

In common-law countries, the use of omnibus bills is typically accompanied by public testing mechanisms, cross-sector consultations, and detailed academic memoranda prepared prior to enactment.[17] Accordingly, the Omnibus Law technique is not merely an innovation in legislative drafting; it is a manifestation of the need to accelerate legal adaptation to societal change while foregrounding efficiency, legal integration, and guarantees of legal certainty for all stakeholders thereby producing high-quality legislation that accommodates the spirit of the nation (Volksgeist).

In the formation of law, whether by conventional methods or through the relatively new Omnibus Law approach the essentials are legal certainty and citizens' knowledge of the content of the law. The idea and substance of legislation is that every citizen knows and understands its content, this is the principle of legality in a Rule-of-Law state. Social life is ordered by normative provisions, justice and legal certainty are distributed, and offences are sanctioned where they contravene legislation.[18] In the modern state, law is not only a means of social control to create order, it is also an instrument to achieve state aims and to move society towards improvement[19] Thomas Hobbes, as cited by Koen J. Muylle, observed that an excessive and unnecessary quantity of laws and regulations does not make for good law; rather, it becomes a snare upon the budget.[20]

The legal basis for using the Omnibus Law method in the formation and regulation of legislation is now found in Law No. 13 of 2022 (the Second Amendment to Law No. 12 of 2011 on Law-Making), following the Constitutional Court's Decision No. 91/PUU-XVIII/2020, which conditionally unconstitutionally reviewed Law No. 11 of 2020 on Job Creation. Current examples of legislation formed in the omnibus manner include: (1) Law No. 11 of 2020 on Job Creation; (2) Government Regulation in Lieu of Law (Perpu) No. 1 of 2020 on State Financial Policy and Financial System Stability for the Handling of COVID-19 and/or in the Context of Addressing Threats to the National Economy and/or Financial System Stability; (3) Government Regulation No. 9 of 2021 on Tax Treatment for Ease of Doing Business; (4) Minister of Finance Regulation No. 18/PMK.03/2021 on the Implementation of the Job Creation Act in the fields of Income Tax, Value Added Tax and

cipta-kerja?page=all, last accessed 18 March 2022

[14]Luthfia Ayu Azanella, "Apa Itu Omnibus Law, yang Disinggung Jokowi dalam Pidatonya?", Kompas.com, https://bit.ly/3g85pkA, last accessed 18 March 2022

[15]Rizal Irvan Amin, et al., "Omnibus Law Antara Desiderata dan Realita", Jurnal Hukum Samudera Keadilan, 15(2), 2020, p. 191.

[16] Oleske, J. V. Jr. (2009). Omnibus Legislation in the States. Legislation and Public Policy, 12, 489–522

[17] Stone Sweet, A. (2000). Governing with Judges: Constitutional Politics in Europe. Oxford: Oxford University Press.

[18]JJalaludin, "Hakikat dan Fungsi Peraturan Perundang-Undangan Sebagai Batu Uji Kritis Terhadap Gagasan Pembentukan Perda yang Baik", Jurnal Aktualita, 6(3), 2011, p. 2.

[19]Agus Riwanto, "Mewujudkan Hukum Berkeadilan Secara Progresif Perspektif Pancasila", Jurnal Al-Ahkam, 2(2), 2017, p. 137.

[20]Koen J. Muylle, "Improving the Effectiveness of Parliamentary Legislative Procedures", Statute Law Review, 3, 2004, p. 85

Sales Tax on Luxury Goods, and General Tax Provisions and Procedures; (5) Law No. 7 of 2021 on Harmonisation of Tax Regulations; (6) Law No. 17 of 2023 on Health; and (8) Law No. 6 of 2023 stipulating Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation as an Act. Implementation of the Omnibus Law method faces various challenges, from newly encountered technical issues in Indonesia and the application of law-making principles, to public participation. There is also a potential recentralisation of authority in the making of statutes relating to regional government.[21] As a legislative technique that repeals and revises many Acts at once, the Omnibus Law functions to simplify the sheer number of regulations.[22] Even so, this research underscores that, before fully adopting the Omnibus Law concept, the principles of participation, transparency, and accountability in the law-making process must be foregrounded.[23]

The Omnibus Law technique has two sets of characteristics: general and specific. General characteristics are those that must be present in every application of the technique; specific characteristics are supporting or complementary and need not all be applied. Comparing the omnibus approach with codification, Vincent Suriadinata argues that the two are not far apart conceptually; the greatest challenge lies in educating both law-makers and the public. [24]

In applying the Omnibus Law to form legislation, Bayu Dwi Anggono identifies six obstacles to its adoption in Indonesia: (a) the complexity of Indonesia's regulatory problems; (b) each statute amended by an omnibus act already has its own philosophical foundation; (c) the principle of constitutional supremacy sets jurisdictional limits across types of legislation; (d) legal uncertainty arising from the dominance of sectoral ego among state organs; (e) the absence of clear parameters to determine when a subject-matter warrants the omnibus method; and (f) public participation, which is guaranteed at all stages of law-making.[25]

From the standpoint of adopting the Omnibus Law within Indonesia's law-making system as an ideal alternative for regulatory restructuring, the technique cannot simply be transplanted. As it has developed primarily in common-law systems, its application must be adapted to Indonesia's constitutional order. Indonesia first formally implemented the omnibus method in enacting Law No. 11 of 2020 on Job Creation. The House of Representatives (DPR) and the Government adopted it to simplify, synchronise, and expedite the formation of complex, sectoral law. This, however, generated challenges, particularly at the stage of bill initiation in the DPR. Initiative processes that are typically sector-specific became more complex due to the wide scope of omnibus bills and their involvement of multiple sectors. The method's impact on bill initiation also affects national legal politics: deliberations that previously focused on a single sector now span cross-sectoral interests, heightening potential power struggles between the legislature and the executive and increasing the need for meaningful public participation. The omnibus method has also raised debates about compliance with the principles of good law-making, such as openness, clarity of purpose, and orderly formation. More broadly, concerns have arisen about legal certainty and social legitimacy: omnibus products are vulnerable to multiple interpretations due to their

[21] Novianto Murti Hantoro, "Konsep Omnibus… op.cit. p. 3
[22] Antoni Putra, "Penerapan Omnibus Law dalam Reformasi Regulasi", Jurnal Legislasi Indonesia, 17(1), 2020, p. 4.
[23] *Ibid.*
[24] Vincent Suriadinata, "Penyusunan Undang-Undang di Bidang Investasi: Kajian Pembentukan Omnibus Law di Indonesia", Jurnal Refleksi Hukum, 4(1), 2019, p. 129
[25]Bayu Dwi Anggono, "Omnibus Law sebagai Mekanisme Pembentukan Undang-Undang: Peluang Adopsi dan Tantangannya dalam Sistem Perundang-undangan Indonesia", Jurnal Rechtsvinding, 9(1), 2014, p. 35

complexity and breadth, which can reduce predictability and create uncertainty for both society and business.

Given the foregoing, it is important to examine more deeply the impact of the omnibus method on bill initiation in the DPR and on the DPR's power as the holder of legislative authority, from the perspectives of legal politics, law-making principles, and its implications for legislative quality and the power to make laws in Indonesia. This study aims to provide a more comprehensive understanding of the advantages, challenges, and consequences of applying the omnibus methodology within the national legislative system.

Research Questions

Based on the foregoing background, this paper addresses issues concerning the application of the Omnibus Law approach in the formation of legislation to realise high-quality law in Indonesia. It therefore poses three questions:

1. Conceptual and theoretical foundations. What are the conceptual underpinnings, theoretical bases, and trajectory of the use of the Omnibus Law as a method or model of legislative formation?
2. Regulatory design and practice in Indonesia. How is the Omnibus Law method regulated and used in the formation of legislation in Indonesia to realise high-quality law?
3. Policy and comparative perspective. What policy measures should be adopted to enhance the quality of legislation through the Omnibus Law method in Indonesia, and how does Indonesia's experience compare with that of other jurisdictions?

METHOD

This paper use normative legal research, which treats law as a system of norms. The relevant system comprises principles, norms, and rules derived from legislation, judicial decisions, agreements/contracts, and legal doctrine (teachings).[26] The study focuses on the research materials to be utilised. In normative legal research, the principal materials examined are library-based or secondary sources.[27] The object of analysis consists of an inventory of relevant statutes and regulations, accompanied by an examination of the Memorie van Toelichting (Explanatory Memorandum) and the official records/minutes related to the Omnibus Law. The methodological approaches adopted are: (a) a separation-of-powers approach and a statute (legislation) approach; (b) a conceptual approach; and (c) a comparative approach.

RESULTS AND DISCUSSION

Power and the Formation of Legislation

Sociological studies of law commonly proceed from the assumption that law does not exist in a vacuum; where there is society, there is law "ubi societas, ibi ius". Law cannot be detached from society, nor can it exist without a forum in which it may be studied.[28] Social and state life requires a legal order if it is to proceed in an orderly and regular fashion.[29] Social and state life requires a legal order if it is to proceed in an orderly and regular fashion.[30] A legal order comprises the set of rules of conduct intended to create security for

26 Mukti Fajar MD and Yulianto Ahmad, Dualisme Penelitian Hukum Normatif dan Hukum Empiris, Yogyakarta: Pustaka Pelajar, 2010, p. 34

27 Salim HS and Erlias Septiana Nurbani, Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi, Jakarta: RajaGrafindo Persada, 2013, p. 12.

28This sentence is quoted by Alan Hunt in explaining the sociological jurisprudence tradition: Alan Hunt, Explorations in Law and Society Toward Constitutive Theory of Law (New York: Routledge, 1993), p. 37

29 Satjipto Rahardjo, Ilmu Hukum, 6th ed. (Bandung: Citra Aditya Bakti, 2006), p. 14

30 Bayu Dwi Anggono, Asas Materi… op. cit., p. 1.]

members of society and to provide guidance towards justice rules whose operation may be compelled by the community.[31] David Trubeck views law-making as an instrumentalisation of political will that is never autonomous or sterile, but rather saturated with group interests or potential power relations within the state.[32] With respect to the legislature, John Locke stated that legislative power is held by a group of persons vested with the power to make laws.[33] Executive power, according to Locke, is the power to execute the laws, whereas the federative power concerns war and peace, alliances and confederations, and all dealings with foreign persons and bodies,[34] John Locke maintained that state power ought to be entrusted to three institutions: the legislative, the executive, and the federative.[35]

Montesquieu distinguished three types of power: legislative, executive, and judicial. He conceived of the judicial power (the power to punish offenders or to resolve disputes arising between individuals) as a distinct power.[36] The legislative power, the authority of the state to enact statutes is the highest governmental power; nevertheless, it is limited by the will of the people who elect their representatives and thereby possess higher authority.[37] Locke also emphasised that laws enacted by the legislature must be for the public good and embody the public interest.[38] Otherwise, adverse consequences may follow for the state, since statutes provide the juridical foundation for governmental administration.[39] In certain theoretical contexts, whenever rules are issued without the consent of the people or society, the government may at least in theory be subject to overthrow.[40]

The existence of statutes cannot be detached from the concepts of legalism and positivism[41] Legalism grounds its thinking in state-enacted written rules and carries the idea that justice can be served through objective, impartial, impersonal, and autonomous systems and procedures of law-making.[42] Through the doctrine of positivism, Soetandyo Wignjosoebroto explains that law must be formed by actors situated not in a meta-juridical sphere but within an objective domain[43] Consequently, each legal norm should be formulated explicitly, carefully, and precisely by the competent officials and/or institutions[44]. In this way, law attains quality, and meaningful public involvement becomes essential. In Indonesia, the formation of legislation rests at least on three pillars: (1) the principles of good law-

[31]Suparman Marzuki, "Politik Hukum Hak Asasi Manusia (HAM) di Indonesia pada Era Reformasi: Studi tentang Penegakan Hukum HAM dalam Penyelesaian Pelanggaran HAM Masa Lalu", Doctoral Dissertation, (Yogyakarta: Faculty of Law, Universitas Islam Indonesia, 2010), p. 25.

[32] *Ibid.*

[33] Bayu Dwi Anggono, "Asas Materi Muatan… *Op.cit*.hlm 30

[34]John Locke, Two Treatises of Civil Government, cited in M. D. A. Freeman, Introduction to Jurisprudence, 7th ed. (London: Sweet & Maxwell, 2001), p. 149.

[35] *Ibid.*

[36] Fatmawati, Struktur dan Fungsi Legislasi Parlemen dengan Sistem Multikameral: Studi Perbandingan antara Indonesia dan Berbagai Negara (Jakarta: Penerbit Universitas Indonesia, 2010), p. 13

[37] Theo Huijbers, Filsafat Hukum Dalam Lintasan Sejarah, (Yogyakarta: Kanisius, 1982), p. 83

[38] MDA Freeman, " Introduction to Jurisprudence...op.cit, p. 150

[39]Sayuti Una, Pergeseran Kekuasaan Pemerintahan Daerah Menurut Konstitusi Indonesia (Kajian tentang Distribusi Kekuasaan antara DPRD dan Kepala Daerah Pasca Kembali Berlakunya UUD 1945) (Yogyakarta: UII Press, 2004), p. 11.

[40]Satya Arinanto, Politik Hukum 1, 1st ed. (Jakarta: Faculty of Law, Universitas Indonesia, 2018.

[41]Sumaryono, "Etika dan Filsafat, Relevansi Teori Hukum Kodrat Thomas Aquinas" , (Jakarta: Kanisius, 2002), p. 20

[42]Nonet and Selznick, as cited in Satjipto Rahardjo, Sisi-Sisi Lain dari Hukum di Indonesia (Jakarta: Penerbit Buku Kompas, 2003), p. 10

[43]Soetandyo Wignjosoebroto, "Menggagas Terwujudnya Peradilan yang Independent dengan Hakim yang Tidak Memihak", Buletin Komisi Yudisial I(3), Dec 2006, p. 16

[44] *Ibid.*

making; (2) national legal policy on legislation; and (3) an adequate system of review of legislation.[45] In essence, good legislative drafting must attend to its foundational bases, particularly the basic and principles related to its substantive content.[46] The making of statutes is not a mere formal procedure preferred by those in power; a statute must be enacted pursuant to constitutional mandate and to meet shared legal needs, which ought to be reflected in its substantive provisions, jointly enacted by the President and the House of Representatives (DPR).[47] In legislating on matters beyond what the Constitution has prescribed, the legislature must determine the scope of regulation,[48] While scholars have yet to reach a settled consensus on the outer limits of such scope, the material domain of statutory content can nonetheless be identified and delimited.[49] Careful adherence to principles of legislative formation is crucial, as it helps avert a situation in which judicial review of defective statutes results in the judiciary effectively encroaching upon legislative power.[50]

Whereas the power to legislate formerly lay with the President, the reform era relocated that power to the DPR. Following the four amendments to the 1945 Constitution, the enactment of statutes requires joint approval between the DPR and the Government. This joint-approval requirement generates three core consequence, [51] (i) no statute can exist without the joint consent of the President and the DPR; (ii) if either party refuses consent, the bill may not be re-submitted during the same DPR session; and (iii) the authority to approve a bill into law is a shared competence of the DPR and the President.

In essence, statute-making is a political decision taken by the DPR together with the President and, for certain statutes, with the involvement of the Regional Representative Council (DPD). Such policy emerges from a formal agreement between the DPR and the Government to regulate the full breadth of national life.[52] For sub-statutory regulations, competence lies with the issuing authority itself, either on the basis of delegation (including from the Constitution) or by its own initiative such as government regulations, presidential regulations, and other instruments in the hierarchy.

Throughout the law-making process, human rights concerns must be considered, both at the drafting stage and once a regulation enters into force, because the vindication of human rights is an output of the broader social and political dynamics supported by the prevailing legal framework. Accordingly, whether legislation is formed through ordinary procedures or by the Omnibus Law method, public participation is indispensable. In this regard, law-making is not merely about producing formal rules; it must also fulfil/satisfy philosophical, juridical, and sociological requirements.[53] oreover, any legal product must command both social legitimacy and political legitimacy to be applied effectively and in practice.[54]

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[45] Bayu Dwi Anggono, "Asas Materi Muatan… *Op.cit*. p. 33
[46] *Ibid.*
[47] Bayu Dwi Anggono, "Asas Materi Muatan..*Op.cit,* p. 26
[48] *Ibid.*
[49] *Ibid*. p. 27
[50] Anita S. Krishnakumar, "Representation Reinforcement: A Legislative Solution To A Legislative Process Problem", Harvard Journal on Legislation, Vol.46, 2009, p. 1
[51] Saldi Isra, "Pergeseran Fungsi Legislasi, Menguatnya Model Legislasi Parlementer Dalam Sistem Presidensial Indonesia", (Jakarta: Rajawali Pers, 2010), p.6
[52] Maria Farida, "Laporan Kompendium Bidang Hukum Perundang-Undangan", National Law Development Agency (BPHN), 2008, p. 11, available at https://www.bphn.go.id/data/documents/kompendium_perundang2an.pdf
[53] *Ibid.*
[54] *Ibid.*

Law-Making for Legal Certainty

According to Aristotle, the state must be established upon laws that guarantee justice for its citizens. Justice is an essential condition for the attainment of citizens happiness, and as basic of justice moral education is needed so that each individual may become a good citizen. In the constitutional order, it is not human beings who rule but just reasoning; rulers act solely as executors of the law and guardians of balance.[55]

The Rechtsstaat notion, rooted in the Continental European legal tradition, seeks to regulate human conduct so that it is orderly, non-conflictual, and just. Law is formed from human interaction in order to anticipate or resolve conflicts arising from negative potentials within the human person. Although law may at times be imperfect or perceived as unjust, it must still be obeyed so long as it remains in force, for violations would erode the authority of law itself. Law enforcement must also consider utility, so as not to cause public unrest. Too often, attention is confined to statutory rules that do not necessarily reflect societal aspirations. In line with Prof. Satjipto Rahardjo, said justice is indeed important, but benefit must likewise be weighed in enforcement, through a proportionate balance between advantage and sacrifice. This perspective is influenced by European history, where the Rechtsstaat developed out of royal absolutism.[56] The rule-of-law state is a key principle of modern development, the state must carefully delimit the bounds and scope of its activities, safeguarding individual liberty against infringement. The state is tasked with realising moral values in accordance with legal principles and must not transgress limits set by law. The concept of the rule of law is not confined to maintaining legal order or protecting individual rights, it is also a means by which the state pursues its purposes through the operative legal framework.[57]

Following Gustav Radbruch, law should embody three identity values: (a) the principle of legal certainty (rechtmatigheid); (b) the principle of justice (gerectigheit); and (c) the principle of utility (zwech matigheid / doelmatigheid / utility). Normatively, legal certainty arises when legislation is drafted clearly and logically, thereby avoiding multi-interpretation or normative conflict, uncertainty breeds contestation, reduction, or distortion of norms. For Hans Kelsen, law is a system of norms prescribing what ought to be done (das Sollen). General provisions in statutes guide individual behaviour in society and circumscribe action against individuals, through clear rules and their implementation, legal certainty is produced.[58] Utrecht adds that legal certainty entails the existence of general rules and security for individuals against governmental arbitrariness.[59] From another perspective, the law's purpose is not justice or utility, but certainty.[60] Legal justice must not be conflated with equalisation, justice does not mean that each person receives an identical share.[61] Rather, justice requires that each case be weighed on its own terms, what is just for one may not be just for another. Satjipto Rahardjo articulates justice as a balance between rights and duties; to attain it, law must attend to the fit of its mechanisms by regulating both substantive and procedural matters. Substantive law stipulates permitted and prohibited acts, while procedural

[55] Moh. Kusnardi and Harmaily Ibrahim, Pengantar Hukum Tata Negara Indonesia (Jakarta: PSHTN FH UI and Sinar Bakti, 1988), p. 153.
[56]Padmo Wahjono, *Guru Pinandito*, Jakarta: Lembaga Penerbit Fakultas Ekonomi Universitas Indonesia, 1984, p.69.
[57]O.Notohamidjojo, *Makna Negara Hukum Bagi Pembaharuan Negara dan Wibawa Hukum Bagi Pembaharuan Masyarakat Di Indonesia*, Jakarta: Badan Penerbit Kristen, 1970, p.24.
[58] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Kencana, Jakarta, 2008, p. 158
[59] Riduan Syahrani, *Rangkuman Intisari Ilmu Hukum*, penerbit Citra Aditya Bakti, Bandung, 1999, p. 23
[60]Achmad Ali, *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*, penerbit toko gunung agung, Jakarta, 2002, pp. 82-83
[61]L.J. Van Apeldoorn, Pengantar Ilmu Hukum, terj. Oetarid Sadino, Jakarta: Pradnya Paramita, 1993, p. 11

law governs how substantive law is implemented.[62] As Fence M. Wantu writes, "to be just is, in essence, to place something in its proper place and to give to each what is his or her rights," based on the principle that all persons are equal before the law."[63]

Law-Making Oriented to Utility (Utilitarianism)

Jeremy Bentham is the principal architect of utilitarianism. He criticized natural-law conceptions as unsatisfactory, obscure, and inconsistent, urging a move from abstract, idealistic, a priori approaches to those that are concrete, material, and experience-based. On Bentham's emphsized, law must rest upon the principle of utility, whose primary aim is to confer benefit and the maximum happiness upon society, law thus functions as an instrument to realise that happiness within a social philosophy that prioritises collective welfare.[64] At its core, utilitarianism holds that human beings may promote happiness by reducing suffering through deliberate action.[65] Bentham's doctrine is often summarised by two ideas: (1) the end of law is to secure happiness for persons, "the greatest happiness of the greatest number"; and (2) in pursuing social happiness, legislation should be judged not merely formally but in terms of the quality of the happiness it produces. In practical terms, Bentham identifies four legislative objectives: (a) to provide subsistence; (b) to provide abundance; (c) to provide security; and (d) to attain equity.[66]

A good law is therefore one that yields broad-based happiness. Whether a rule is just or unjust, good or bad, turns on its capacity to produce social happiness. Hence the persistent association between utility and utilitarianism: the maxim "the greatest happiness of the greatest number" treats happiness as the relevant metric, and the rightness of conduct depends on how far it advances that happiness.[67]

Bentham also makes the principle operational. Beyond counting "the greatest number", one must assess "the greatest happiness" itself through a felicific (hedonic) calculus. "Utility" denotes what brings benefit, advantage, pleasure, or happiness, and what prevents harm, pain, evil, or unhappiness.[68] The morality of actions is thus determined by their usefulness in achieving the happiness of humankind, not the pursuit of selfish pleasure characteristic of classical hedonism.[69]

Integrating Legal System Theories into the Analysis of Indonesia's Omnibus Law Legislation

An assessment of how effectively the public is engaged in the making of Indonesia's Omnibus Law can be undertaken through several theories of the legal system. Lawrence M. Friedman conceives of a legal system as comprising three core elements substance, structure, and legal culture.[70] Substance concerns the content or norms of statutes; structure refers to

[62] Satjipto Rahardjo, Ilmu Hukum, Bandung: PT. Citra Aditya Bakti, 1996, pp. 77-78

[63] Fence M. Wantu, "Mewujukan Kepastian Hukum, Keadilan dan Kemanfaatan Dalam Putusan Hakim di Peradilan Perdata, Jurnal Dinamika Hukum, (Gorontalo) Vol. 12 Nomor 3, September 2012, p. 484

[64] Darji, in Hyronimus Rhiti Darmodihardjo. (2011). Filsafat hukum: Edisi lengkap (Dari klasik sampai postmodernisme). Yogyakarta: Gramedia Pustaka Utama.

[65] Rasjid, L. (1984). Filsafat hukum: Apakah hukum itu? Bandung: Remadja Karya CV.

[66] Salman, H. R. O. (2010). Filsafat hukum (Perkembangan & dinamika masalah). Bandung: PT Refika Aditama.

[67] Pratiwi, E. (2022). Teori utilitarianisme Jeremy Bentham: Tujuan hukum atau metode pengujian produk hukum. Jurnal Konstitusi, 19, pp. 273–274.

[68] Bentham, J. (2000). An introduction to the principles of morals and legislation. Kitchener, ON: Batoche Books.

[69] Burns, J. H., & Hart, H. L. A. (1977). A comment on the Commentaries and A fragment on Government. London: The Athlone Press.

[70] Lawrence M. Friedman. M. Khozim (Penerjemah). (2015). Sistem hukum : Perspektif ilmu sosial Bandung : Nusa Media

law-making and law-enforcing institutions (e.g., the DPR, the Government, and the Constitutional Court); and legal culture denotes the values, perceptions, and levels of societal participation vis-à-vis the law. In the omnibus context, public participation becomes a key indicator of whether Indonesia's legal culture supports the production of responsive, high-quality omnibus statutes. Where participation is merely formalistic, the resulting legal culture is passive and uncritical, with downstream effects on the legitimacy and functioning of the legal system as a whole.

Philippe Nonet and Philip Selznick's theory of responsive law distinguishes three developmental stages of legal order: repressive law, autonomous law, and responsive law.[71] Repressive law privileges authoritative command; autonomous law emphasises the institutional autonomy of law from external interference; while responsive law adapts to social needs and accommodates public participation. Ideally, the practice of participation in omnibus legislation should catalyse a transition from autonomous to responsive legality one that does not merely preserve the status quo, but proactively absorbs public aspirations and needs.

From a sociological perspective, Donald Black underscores that law does not operate in the abstract; it is shaped by social structure, access, and the distribution of power.[72] Law tends to be more responsive and effective when there are clear channels for social groups to voice their views and influence legislation. Where access to participation is constrained by social, economic, or political barriers, legal outputs are more likely to privilege dominant groups and be less responsive to the broader public interest.

Synthesising these perspectives, Friedman directs attention to the interplay of substance, structure, culture; Nonet & Selznick emphasise the imperative of responsiveness; and Black warns that the distribution of participatory access conditions both effectiveness and fairness. The experience of Indonesia's Job Creation Bill suggests that to render omnibus legislation legitimate and inclusive, it is insufficient to perfect structure and substance alone; it is equally necessary to cultivate a participatory, responsive, and justice-oriented legal culture capable of sustaining high-quality legislation.

CONCLUSION

From the perspectives of theories of power and of legislative formation, Indonesia's use of the Omnibus Law technique in the DPR (House of Representatives) reflects complex political, social, and jurisprudential dynamics. By consolidating numerous rules into a single statute, the technique can accelerate and streamline the legislative process. However, it also poses challenges to the principles of good and high-quality law-making, particularly with respect to transparency, public participation, and accountability. The omnibus approach additionally affects both the allocation of legislative authority and the initiation of bills within the DPR.

Viewed through the lens of legal certainty, the omnibus technique risks producing ambiguous, multi-interpretable norms owing to the breadth and complexity of subject-matter regulated in a single Act. This may unsettle legal order and open room for arbitrariness in implementation. By contrast, utilitarian theory highlights the potential practical advantages of the omnibus method legislative efficiency and faster legal reform, provided that such benefits are balanced against the protection of individual and collective rights and the maintenance of legal certainty.

[71] Nonet, P., & Selznick, P. (2003). Hukum Responsif : Pilihan di Masa Transisi. Jakarta : United Nations Department.

[72] Donald Black. (2020). (trans) Bambang Murtianto ; Stevano Brando Thoviano. *Behavior of Law* : Perilaku Hukum. Jakarta : Pelangi Cendekia.

Taken together, theories of power and legislative formation, legal certainty, and utility indicate that the omnibus method must respect institutional authority in the law-making process and be tempered by prudence, openness, and guarantees of public rights. Only on this basis can the technique deliver high-quality legislation that is just, beneficial, and both politically and socially legitimate. Although the method has been accommodated in Indonesian law, detailed regulation covering drafting techniques, the academic memorandum, and mechanisms for meaningful public participation remains a normative challenge requiring more granular implementing guidance.

The formation of bills through the Omnibus Law technique should, in practice, prioritise legal certainty by articulating clear, logical, and unambiguous norms. Judicial review by the Constitutional Court serves as a strategic juridical safeguard to ensure that omnibus products do not conflict with the 1945 Constitution and the core principles of the rule of law. Striking an appropriate balance between legislative efficiency and the protection of public rights ought to remain a central concern whenever the omnibus technique is employed.

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