



Democratic Omnibus Law in Indonesia

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Abstract

Omnibus law is a method of forming laws. The use of the omnibus law is often problematic from a democratic aspect. Omnibus law arrangements in Indonesia have been legalized through Law Number 13 of 2022, but it remains a problem regarding participation as a pillar of democracy. Therefore, the concept of comparison is needed for further refinement. This research is normative research with statutory, case study, and comparative approaches. The results of the study are: (1) the application of the omnibus law in Indonesia in the case of the Job Creation Law is undemocratic because it narrows the space for public participation, (2) changes to the Law concerning the Formation of Legislation, especially those relating to participation, representation of participation, and the provision of a two-way information system is a necessity for realizing a democratic omnibus law in Indonesia.

Keywords: *Omnibus Law; Democracy; Participation*

Introduction

The formation of laws must comply with the principle of forming good laws and regulations. Laws that fulfill the principles of forming good laws and regulations will gain legitimacy and legality, on the contrary, they will lead to destructive legislation if they are formed without fulfilling the principles of forming good laws and regulations. Laws gain legitimacy if they are formed through certain stages that reflect openness and involve community participation as a guarantee of people's sovereignty (principle of democracy), and have legality if their formation is based on laws that guarantee order, benefit, legal certainty and justice as a reflection of the purpose of the law (rule of law principle).

In a country that adheres to an ideology based on law with a democratic government system, the formation of laws is characterized by the approval of the people. The emergence of this idea is a reaction to the consequences of the nature of laws that can impose rules by threatening sanctions that can limit,

reduce, and even take away the basic rights of the people (Indrati, 2021). Democracy also eventually became the basic principle of the state and gave birth to the theory of popular sovereignty.

One of the many countries in the world that uses democracy is Indonesia. The inclusion of the phrase "populist led by wisdom...", in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia), is authentic and constitutional evidence that democracy is adhered to. Article 1 paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia, is an affirmation of a democratic legal state (Yuliandri, 2014). In a democratic rule of law, laws as one of the subsystems of a rule of law are imaged as covering and answering all national issues that are intertwined with the political interests of political parties in representative institutions (Buana, 2017). The adherence to the notion of a democratic rule of law has implications for the formation of laws regarding anything and for any purpose requiring the fulfillment of the fundamental principles of state administration, namely sovereignty in the hands of the people who want openness, transparency, which allows every citizen to participate in providing input and views (Redi & Chandranegara, 2020). The formation of omnibus law-based laws in Indonesia is no exception.

Omnibus law which is interpreted as "one for everything" allows one law to attempt to amend and revoke several laws at once, and is defined by O'Brien and Bosc as "...seeks to amend, repeal or enact several acts..." (Massicotte, 2013), and in simple language, the omnibus law means law for all (Amin, et al, 2020), in its development there are indeed advantages, but in its implementation, it causes many problems. One of the most crucial problems is that it can undermine the democratic process (Asshiddiqie, 2020).

In the Indonesian context, the omnibus law is a new phenomenon in the formation of laws. As an initial experiment, the practice of the omnibus law was used in the formulation of Law Number 11 of 2020 concerning Job Creation, to revise dozens of laws that impede job creation, development of Micro, Small, and Medium Enterprises (MSMEs), and investment (Hardjono, 2020). However, the formation of a law based on the omnibus law has drawn reactions from the wider community. The omnibus law only prioritizes efficiency but is not transparent and open by marginalizing participation as the main pillar of democracy. As a result, through the decision of the Constitutional Court Number 91/PUU-XVIII/2020 concerning the Formal Review of Law Number 11 of 2020 concerning Job Creation, the formulation of which used the omnibus law was contrary to the 1945 Constitution of the Republic of Indonesia and was declared conditionally unconstitutional.

There is a danger if the formation of laws based on the omnibus law does not fulfill the principle of openness which accommodates public participation. The danger for legislators can be a loss of trust. This means that laws produced by legislators have weak legitimacy. Meanwhile for the community, the loss of momentum to communicate, provide input, and discuss according to their interests. An even more dire danger is the violation of the principle of popular sovereignty as an ethical value in the formation of laws (Hardjono, 2020).

Various efforts have been made by the state to ensure the implementation of democracy in the formation of laws based on the omnibus law. First, the decision of Constitutional Court Number 91/PUU-XVIII/2020 has laid a good enough foundation to guarantee meaningful participation. Second, the enactment of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation, has accommodated, and legalized the omnibus law and enhanced the strengthening of community participation. On the one hand, the regulation of the omnibus law as the preparation of laws is a form of progress in the formation of laws. However, on the other hand, it still leaves its challenges because the formation of laws using the omnibus law is often undemocratic.

Based on the description above, it is necessary to conduct further research regarding the formation of democratic omnibus law-based laws in Indonesia. This research is intended to contribute ideas to legislators in forming laws using the omnibus law so that the resulting laws meet democratic standards.

Methods of Research

This legal research is a type of normative juridical research (Fadli, 2012). The approaches used are statutory, comparative approaches, and case approaches (Fadli, 2012). The study of laws and regulations related to the problems studied is carried out using a statutory approach (Fadli, 2012). A comparative approach is taken by comparing participation in the United States. The comparison function identifies a model of legislation between countries to find a better mechanism (Cruz, 1999). The case approach is used to examine the case for the formation of the Job Creation Law (Fadli, 2012). The legal materials used in this study include primary legal materials and secondary legal materials. The legal material is collected through library research. The analysis was carried out in a qualitative and juridical manner and was presented prescriptively.

Results and Discussion

1. Implementation of the Omnibus Law

The formation of laws is not a simple thing. A law is a law formed by its founder and has the power to apply, can be in the form of orders or prohibitions against the people and citizens. Rousseau describes in the "social contract" that the people give power to the state for so many affairs, including governing the people. And therefore, there must be limitations for the state to carry out this entrusted authority. The sovereign people then entrust their sovereignty to the state through a process of electoral representation and contestation, and therefore the state actor who is then elected must carry out the wishes of the people who entrusted this sovereignty.

The principle of democracy states that legislators, the President, and Parliament in a Presidential system, are an extension of the people's sovereignty. That is, only to be the executor of the will of the people. In Bryan Thompson's perspective, the constitutionality of the country's work must originate from basic law which is only binding if it is based on the highest power (sovereignty) in a country. And when that power has been given, he is obliged to obey and comply with the concept of limiting power embedded in the state and pay serious attention to the wishes of the people, through the application of the principles of transparency and openness or community participation.

The implementation of public participation should not stop at being involved in the process of forming laws but is expected to determine the final results and impacts arising from the birth of a law (Arnstein, 1969). Which community should be involved in participating, Bagir Manan gave the statement "Stakeholders have the right to participate actively in determining the course of the life of the state" (Manan, 2004).

The existence of public participation in the formation of laws will make the community more important and the government more responsive in the democratic process, thus creating a moral government and responsible citizens. Laws made unilaterally by the legislature allow their presence to be rejected because they do not fulfill a sense of justice in society (Huntington & Nelson, 1994). Laws whose formulation process is not participatory tend to generate controversy because laws are a precipitate of conflicts (gathers of conflicts) in society (Hidayat & Arifin, 2019). In connection with the potential for

controversy over the law, the formation of the law must be carried out carefully, with full accuracy, and ensure that it involves community participation (Riskiyono, 2015).

The absence of public participation is a potential for controversy that will come later, including the formation of laws based on the omnibus law in Indonesia (Bariun, 2021). The application of the omnibus law in the case of the formation of the Job Creation Law in practice does not fulfill the principle of participatory transparency at the stages of submission, discussion, and approval (Firdaus, 2020). At the submission stage, from the start, the community was confused about the existence of an Academic Paper for the Job Creation Bill (Alhakim & Ginting, 2021).

At the discussion stage, the process was carried out quickly (fast track), closed (Rishan, 2022), and only described the work of coalition politics (Gava, et al, 2020). Many parties who should have been asked to participate in the Job Creation Law were not involved. For example, there are changes to Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, the discussion process does not involve groups of Indonesian migrant workers, such as Indonesian migrant workers' union organizations. Or even though various meetings have been held with various community groups, these meetings did not discuss the essence of changes to any laws that will be incorporated into the Job Creation Law.

During the pause in the ratification of laws based on the omnibus law, there were still changes in the number of pages. There were at least 4 (four) changes, from the initial 905 pages to 1,305, a few hours later it was reduced again to 812 pages, and finally when it was promulgated it became 1,187 pages (Amin, et al, 2020). This condition, from the perspective of legislative intent, allegedly violates Article 72 of Law Number 12 of 2011 and at the same time invites suspicion that the Government and the DPR are playing a certain business by using an omnibus law-based law-making instrument (Amin, et al, 2020).

The provisions above are finally understood as a process that does not meet the requirements regarding procedures for forming laws and does not fulfill the principle of openness by eliminating public participation as a democratic pillar in the formation of laws, so that the Job Creation Law using the omnibus law must be declared unconstitutional conditionally unconstitutional (Asshiddiqie, 2021), through Constitutional Court Decision Number 91/PUU-XVIII/2020. In the ruling, the Constitutional Court stated that the Job Creation Law is contrary to the 1945 Constitution of the Republic of Indonesia and does not have a conditionally binding law as long as it does not mean "no amendments have been made within 2 (two) years since this decision was pronounced".

The lesson that can be drawn from the Constitutional Court's decision is that any enactment of laws, especially those using the omnibus law, must accommodate community participation as evidenced by active involvement by the community. The reason is that public participation in forming laws legally has been guaranteed in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which affirms: "Sovereignty is in the hands of the people and implemented according to the Constitution". Participation is also regulated in Article 28 of the 1945 Constitution of the Republic of Indonesia, which in principle provides space for the community to freely associate, gather, and express thoughts orally and/or in writing. It is not enough that Law Number 12 of 2011 in Article 5 letter g emphasizes the need for the principle of openness, which requires that any formation of laws based on an omnibus law be carried out transparently and openly to create democracy.

On the other hand, if the community's involvement is not fulfilled, let alone distance them from the process of forming laws based on the omnibus law, by not providing an opportunity to provide input and discuss the substance, then the formation of such laws is a form of denial of democratic principles.

2. Omnibus Law Arrangements

The urgency to implement the decision of the Constitutional Court Number 91/PUU-XVIII/2020 which ordered that a standard legal basis be immediately formed to serve as a guide in forming laws using the omnibus method, became the starting point for legal arrangements regarding the omnibus method in Law Number 13 Year 2022. In the ruling of the Constitutional Court, Number 91/PUU-XVIII/2020 stated that the formation of the Job Creation Law is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force conditionally as long as it does not mean "no amendment is made within 2 (two) years since the decision was pronounced". This means that the Constitutional Court provides an opportunity within 2 (two) years time limit for the DPR, President, and DPD as legislators to make improvements to the formation of the Job Creation Law. If within the 2 (two) years time limit no corrections are made, then the Job Creation Law becomes permanently unconstitutional. The result is clear, that is, an article that changes, adds, or revokes the provisions of more than 70 (seventy) other laws is declared invalid and must return to the rules that applied before or the old rules.

Understanding the ruling of Constitutional Court Number 91/PUU-XVIII/2020 above, grammatically, it is very clear and bright, namely ordering the DPR, President, and DPD to make improvements to the Job Creation Law. Improvements to the Job Creation Law using the omnibus method are based on at least 3 (three) considerations. These three considerations are: (1) the formation of the Job Creation Law using the omnibus method is unclear, unknown, and contradictory to Law Number 12 of 2011 in conjunction with Law Number 15 of 2019, (2) there have been substantial changes in content material after approval, and (3) The Job Creation Law is contrary to the 1945 Constitution of the Republic of Indonesia and the principles for forming good laws and regulations.

Even so, there is a legal consideration in the decision of the Constitutional Court Number 91/PUU-XVIII/2020 which orders the legislators to first make a second amendment to Law Number 12 of 2011. This legal consideration appears in the decision of the Constitutional Court Number 91/PUU-XVIII/2020 paragraph 3.18.2.2 which confirms "...any method including the omnibus method cannot be used as long as it has not been adopted in the law regarding the formation of laws and regulations".

The meaning contained behind the decision of the Constitutional Court Number 91/PUU-XVIII/2020 paragraph 3.18.2.2 is to provide opportunities for the DPR, President, and DPD to first change the law regarding the formation of statutory regulations (UU Number 12 of 2011), to provide a legal basis for the omnibus method and specifically regulate the preparation of laws using the omnibus method. After amendments were made to Law Number 12 of 2011, the Job Creation Law was revised formally, the procedure for which follows Law Number 12 of 2011 which has been revised by adding regulations regarding the omnibus method. If Law Number 12 of 2011 has not been amended and improved on the Job Creation Law first, then it is certain that the revisions to the Job Creation Law that have been made are not in accordance with the orders of the Constitutional Court and will be useless improvements. In short, the promulgation of Law Number 13 of 2022 by adding regulations regarding the omnibus method ends all polemics regarding the legal basis of the omnibus law.

Omnibus law arrangements are scattered in various provisions in Law Number 13 of 2022, both in preambles and several articles. In the preamble, the omnibus law is contained in the provisions of considering letter b. Furthermore, the omnibus law is also contained in the seventh part, the planning of laws and regulations that use the omnibus method. Meanwhile, several articles that include the omnibus law include Article 42A, Article 64 Paragraph (1a) and Paragraph (1b), and Article 97A.

As a solution, the omnibus method, which was legalized through Law Number 13 of 2022, can be considered a legal breakthrough. In theory it can also be justified, because according to Roscoe Pound's theory, "law is a tool of social engineering", meaning that law can be used to regulate, change or

manipulate people's behavior. Laws are appointed as positive laws in a country because there is a need to answer economic and political demands. Economic and political pressures affect the process of forming laws (Sadono & Rahmiaji, 2021). This theory is in line with Jeremy Bentham's thought, that "the aim of law is the greatest happiness for the greatest number". Every law made by parliament has the good intention of making people happy and benefiting them (Sadono & Rahmiaji, 2021).

Roscoe Pound's views influenced the minds of Mochtar Kusumaatmadja, who sparked the legal theory of development, by changing the word "tool" to "means". Laws, especially laws, can be used to make changes in society. In other words, laws play an active role in engineering social change in society. Law Number 13 of 2022 is an effort to meet legal needs with a legal and development paradigm. In the paradigm of law and development which is oriented towards legal certainty, it is directed at order. To achieve order, legal certainty has been endeavored. Without legal certainty and order, humans can't develop their talents and abilities optimally (Mulyadi, 2002). Order and regularity are absolute in a development effort that has a pragmatic dimension or practical uses. The process of forming laws always takes into account the benefits arising from living law.

Putting benefits for as many people as possible is used as a philosophical basis in the formation of Law Number 13 of 2022 which regulates the omnibus method. Starting from the theory of utilitarianism presented by Jeremy Bentham, in which the substance of the utilitarianism theory is guided by that law as an order of life together must be directed at the happiness and benefits of as many people as possible. Legislators have attempted to seek proportionality for the two greatest happiness, namely the welfare of investors who invest and protect the interests of the people.

Holderoft and Davies in Ian Mc Leod (Leod, 1999), explain the concept of philosophical benefits in the formation of laws as follows:

Utilitarianism is a goal-based theory that evaluates actions in terms of their propensity to maximize goodness, however this is defined. Hence, it takes the view that our conception of what is right depends on our conception of what is good, since a right action is defined as one which produces more good than he or she have one of what is right?

Holderoft wants to explain that utilitarianism is a goal-based theory that evaluates actions in terms of their tendency to maximize the good, however that is defined. Hence, he takes the view that our conception of what is right depends on our conception of what is good, because right action is defined as that which produces more good than any alternative. So that only if a person has any conception of what is good can he have either of what is right.

The concept of utilitarianism and the benefit approach in legislating is happiness in general. In addition, utilitarianism emphasizes that every individual always seeks his happiness, therefore the task of legislators (legislators) is to produce harmony between public interests and private interests, the purpose of this is safety and comfort for as many people as possible, which is then called the doctrine that happiness is the only good and suffering is the only bad (Christiawan, 2021).

However, putting the central point on the element of benefits in the formation of laws based on the omnibus law based on social engineering will only result in restrictions on individual and group freedoms for the benefit of the authorities. In addition, the benefit aspect will become blurred if the basic conditions are not fulfilled, namely inconsistent in its application. It is also not uncommon for laws to prioritize aspects of expediency, the quality of laws is only assessed by their ability to follow the dynamics of societal development, not measured by their ability to create certainty and justice (Christiawan, 2021).

It has become a general understanding of the purpose of the law, one of which is legal certainty. The law that is made has certainty in force (legality) because legal certainty affects the development of development. For investors who want to invest, of course, they want legal certainty, order, and justice in society. These conditions will guarantee the continuity and security of the business world and development. Legal development in the context of legal politics includes 3 (three) things: (i) guaranteeing justice in society (guarantee justice in society); (ii) creating a live placidity by maintaining legal certainty; and (iii) realizing use (realize use) by addressing real interests in concrete shared life (Hidayat, 2019). Law is a point of socio-political balance (socio-equilibrium) (Hidayat, 2019).

The omnibus method which has been legalized through Law Number 13 of 2022 is an example of an order-oriented law with a focus on legal certainty. Laws are still seen as a necessity to provide answers and economic demands. Although it cannot be denied that the economic, political, and social are very influential in the process of forming laws. In the name of order in development, law enforcers do not hesitate to collaborate with legislators to produce various laws that can serve their interests (Sidharta, 2012). The situation got worse when the nuances of making the law itself were under the full control of authoritarian law enforcers. In an authoritarian regime like this, people are afraid to give a response outside of the scenario set up by the authorities. That is, living law is the law that has been engineered by the authorities through laws made by the authorities. If there is resistance, then the resistance can be considered as opposition to the will of the authorities in carrying out development (Sidharta, 2012).

The success of law and development is determined by the fulfillment of a healthy political climate, which can provide free space for public discourse to participate in correcting the quality of laws formed by the authorities. If these conditions are not fulfilled, law and development can easily get entangled in a circle of power games that are detrimental to the wider community.

Regarding legal and community relations, Peter L. Berger, as quoted by Arif Hidayat stated (Hidayat, 2019):

Law is an inseparable part of society because law regulates people's behavior. The formation of laws is not only seen as work that is technical, procedural, and professional, but rather a work that has social origins, social goals, and social impacts (social reconstruction) which takes place dialectically and simultaneously, based on 3 (three) momentums, namely externality, objectivity, and internality.

The formation of laws, especially laws, is not merely a matter of technical legal drafting, but is also part of the implementation of legal politics. At the same time, attention should be paid to other issues such as human rights. The idea of seeking a breakthrough does not only concern the substance of legislation, but also determines the direction to be developed in accordance with the goals of the state, the desired form of law, and the implementation of legal regulations (legal drafting) that are consistent with the building of legal politics (Sadono & Rahmiaji, 2021).

The problem is that legislators often see the formation of laws solely as the realm of political power, not the realm of reason (realm of power, not reason). Decision-making mechanisms in the formation of laws often show a political power struggle and not an argumentative battle to produce the most rational laws. The formation of laws becomes a matter of who has the most votes, not who has the most rational arguments. As a result, laws only become the result of a power game that is won by the interests that control more votes, not won by the votes that represent the most interests.

The process of forming a law cannot be seen as a mere political formality. Legislators must be able to produce laws that have legitimacy, fulfill legality, and are rational. Aspects of legitimacy and legality can be resolved with a good institutional and procedural approach. But to produce rational laws, legislators must implement them based on the principles of law formation and high adherence to ethics in the state. Borrowing a term from Hannele Isola Meietinen, Susi Dwi Harijanti stated: "Legitimacy and

legality matters can be achieved solely through rule-based norms, but creating rational laws can only be achieved if accompanied by willingness and obedience to follow legal principles".

Good laws can be obtained by guarding and ensuring that there is no access to the interests of businessmen or other groups that are smuggled through the dominant power. The conspiracy between the DPR, the government, and the possibility of involving the DPD as the legislator coupled with inadequate control from both the public and the press will only worsen the legislative process. Legislators with all the legitimacy they have are given the freedom to use their authority to make laws for any purpose and under any circumstances but still use the state ideology as a reference. For the Indonesian state, Pancasila as a state ideology provides a moral direction to be achieved. Idealistic and responsive legal norms are always born from the translation of Pancasila values as the basic norm on which laws are formed, including Law Number 13 of 2022 which accommodates the omnibus method.

3. Scheme for Realizing a Democratic Omnibus Law

The formation of an omnibus law-based law in Indonesia to serve the real needs of society will be achieved if it is carried out through a democratic process by taking into account all aspirations in the form of community participation. Currently, participation arrangements have made much progress. However, the challenge of participation in the future will not be easy. Constitutional Court Decision Number 91/PUU-XVIII/2020 provides a guideline regarding the ideal model of community participation, namely meaningful participation. There are at least 3 (three) main prerequisites in fulfilling meaningful public participation, namely: first, the right to be heard; second, the right to have their opinion considered (right to be considered); and third, the right to receive explanations or answers to opinions given (right to be explained). Nevertheless, no further criteria were found regarding meaningful participation in the Constitutional Court decision.

As a comparison, the United States used the omnibus law in the form of an omnibus spending bill in 2018. Controversy is not uncommon for the establishment of an omnibus law in the United States because the omnibus law is considered to sacrifice participation and is undemocratic. The fact is that the omnibus spending bill raises debate because of its very wide size and scope (Juwana, 2020). However, the United States quickly succeeded in forming a democratic omnibus law involving public participation. No less than 5 (five) models of public participation in the process of forming laws, including: (1) citizen participation offices, obtaining information is a citizen's right and to facilitate citizen access, parliamentary offices can be established in locations outside the capital ; (2) ad-hoc meetings or workshops with civil society organizations, where citizens' rights are invited as representatives to appear before members of parliament, and receive training or workshops in the field of citizen expertise, so that parliament can build parliamentary skills and knowledge on certain subjects; (3) institutional bodies, parliament can appoint representatives from community institutions that are integrated into institutional bodies temporarily or permanently; (4) public outreach, parliament can implement a public outreach program to share information and collect feedback; and (5) town hall meetings, where citizens are invited to dialogue and ask questions to legislators regarding various concerns about the impact of enactment of the law.

The United States prefers to absorb people's aspirations which include citizens, experts or experts in their fields, and lobbyists to examine the omnibus law (Diniyanto, et al, 2021). Even in its history, the United States has dreamed of solving all problems academically, a scientific government, where competent people with scientific capacity find solutions (Rizal, 2003), including finding solutions to the omnibus law problem. Today, the United States has developed a form of public participation that is more accessible to the public, especially indigenous peoples through digital mechanisms in the form of a public participation geographic information system (SIG-PP) (Kyem, 2015).

In fulfilling openness as a standard of democracy, the United States Government does not only provide draft laws but is equipped with a cost-and-benefit analysis and regulatory impact assessment (Shapiro & Murphy, 2013). Likewise, the Government is obliged to publish some information, such as: (a) all documents and/or written responses and documented information; (b) transcript of the public hearing; (c) all available documents that are important in drafting laws; and (d) draft laws before being consulted with the public, all published documents have been peer-reviewed to improve scientific integrity in the formation of laws (Shapiro & Murphy, 2013).

In the Indonesian context, to realize a democratic omnibus law, it is interesting to serve as material for consideration of the thoughts of Marc Jans and Kant de Backer. In the thought of Marc Jans and Kant de Backer, community participation in the formation of laws achieves democracy when there is a dynamic balance between 3 (three) dimensions, namely capacity, connections, and challenges (Jans & Backer, 2012). The scheme for realizing a democratic omnibus law in Indonesia is as follows:

a. Capacity

Capacity is defined as the skill or ability of legislators. In forming democratic omnibus law-based laws in Indonesia, skills or abilities related to skills in drafting laws (legislative drafting) are needed. Realizing a democratic omnibus law in Indonesia, it is necessary to improve related regulations both at the level of laws and implementing regulations.

First, at the law level, improvements are made regarding the technical rules for community involvement in the process of forming laws referring to Chapter XI Article 96 of Law Number 12 of 2011 as amended several times and most recently by Law Number 13 of 2022. The provisions in this article have not been able to accommodate the decision of the Constitutional Court which requires meaningful participation. Changes were made especially by including the phrase meaningful community participation in the CHAPTER title. Then, changes also need to be made to Article 96 paragraph (3) by replacing "groups of people who have interests" with people who "have concerns".

Second, the existence of restrictions on non-governmental organizations "registered with the competent ministry" as contained in the elucidation of Article 96 paragraph (3) will be a barrier for many community groups to provide input. This policy needs to be changed by eliminating the phrase "registered with the competent ministry" to "those with concern".

Third, for the implementing regulations, if the formation of the omnibus law bill originates from the government, public participation is regulated by Presidential Regulation Number 87 of 2014. Article 188 of the Presidential Regulation regulates the provision that the public has the right to give oral or written opinions in the formation of laws in activities of public consultation. Public consultation is expected to be carried out by the Government to receive views and suggestions from the public to draft laws using a democratic omnibus law. Public consultation must be carried out from the planning, and preparation, to the discussion stages.

Public consultation in the preparation of the academic text of the draft law is regulated in the Regulation of the Minister of Law and Human Rights Number 11 of 2021, in Article 5 paragraph (2), which is carried out by the Minister by disseminating the concept of the draft law to the public by means of (1) upload into the information system of laws and regulations; (2) sending official letters to certain stakeholders containing concept information along with requests for comments or input; and (3) conveying through other methods or media that are easily accessible to the public according to their conditions and needs.

Improvements to this provision need to be made so that it can be in line with the Constitutional Court's decision. The improvement must provide access for affected communities. Affected communities must be provided with draft laws that will be drafted along with their academic texts. Opinions and suggestions from affected communities can later complement or reduce the existing concept of draft laws. Furthermore, the relevant minister must record and process the response so that it becomes a discussion in drafting the law.

b. Connection

Connection means connectedness between the aspirations and needs of the community and the legislators. Connections for conveying aspirations can be made directly or through representation. Currently, participation is defined as a situation in which all members of a community are involved in determining the policies that will be formed related to the interests of the community. Thus, participation is made a condition that is mandatory for a country whose members are far larger than its community.

The problem is, under normal conditions it is not easy to achieve genuine community participation (Arnstein, 1969). Especially in a pandemic or economic recession that hasn't ended yet. Realizing genuine public participation requires high costs and a lot of time. For this reason, if participation is used in making laws using the omnibus law so that it is democratic, the following notes should be considered again.

First, community participation as stipulated in Article 96 of Law Number 12 of 2011 as amended several times and most recently by Law Number 13 of 2022 must continue and not just be a formality. Although due to condition considerations, it is still being carried out on a limited basis. Community input as a form of public participation can be done via email, WhatsApp, Instagram, or other social media. Furthermore, the correct input should be accommodated and processed by the expert staff in charge of perfecting the draft law.

Second, in the discussion stage of the draft law, empirical research or the absorption of people's aspirations is needed. In the context of discussing this draft law, they often visit several institutions (including campuses). This activity can be limited, to reduce costs and time. For example, by inviting around 10 (ten) academics, researchers, experts, or professionals and selected scholars (doctoral level or even professors in their fields) whose reputations are widely recognized. These experts should consist of substance experts and legal experts who are relevant to the draft law in question. Likewise, representatives of stakeholders will be affected by the rules, including or especially associations.

Third, after the empirical research or the absorption of people's aspirations is completed, the draft law is further refined. Next, the draft law is finalized by inviting around 10 (ten) academics, researchers, experts, or professionals and selected scholars (at the doctoral level or even professors in their fields) to return. Listening to input from around 10 (ten) academics, researchers, experts or professionals, and intellectuals who have a high reputation, in terms of substance, is no less qualified than hearing input from hundreds of bachelor's and master's degrees in several regions during the socialization of the draft law. In addition, listening to input from 10 (ten) academics, researchers, experts, or professionals and selected scholars will reduce costs and time compared to working visits by members of the DPR in several regions in Indonesia.

In a common understanding, a country as large as Indonesia, in current world conditions, achieving the ideal level of participation as initiated by Sherry R. Arnstein in her article 'A Ladder of Citizen Participation (1969) is very difficult and costly. Hopefully "substantive meaningful participation" as the author thinks above, is realistic, affordable, and very possible to implement. It is hoped that the two

things that the authors put forward above will help in the effort to produce a democratic draft law even though it was formed using an omnibus law.

In short, it can be stated that in the process of deliberating a draft law, public participation must be maintained, even though the process is simplified without reducing the stages of forming a law, but modified in a more substantive direction. Thus the democratic process of forming laws has been carried out so that it can be expected that laws will be implemented because they bring benefits in accordance with the expectations of society.

c. Challenge

Challenges are defined as efforts to develop information system facilities. Regarding electronic media as an information system, the DPR already has at least 3 (three) types of electronic media that can be used as a means to realize a democratic omnibus law in Indonesia by accommodating public participation. However, these three social media are still going one way. This can be found through the Legislative Information System (SILEG), which is an information platform for parliament to monitor all legislative processes in the DPR. Likewise, the Community Participation media in drafting laws (SIMAS PUU) is a platform for realizing the formation of omnibus law-based laws that are democratic, transparent, accountable, with integrity, efficient, and effective through the preparation of databases. Apart from that, there is also Parliamentary TV and DPR Social Media which are not optimal because the public can only monitor the trial and also the development of draft laws without interacting with and responding to any comments or comments.

The same thing also happened in "Partisipasiku" which is the Government's platform to support the arrangement of laws and regulations. The "Partisipasiku" platform is an application designed by the Government through the National Legal Development Agency of the Ministry of Law and Human Rights (BPHN) in 2018, the purpose of creating the "Partisipasiku" application is to capture community participation in legal analysis and evaluation activities for structuring statutory regulations -invitation and preparation of academic papers.

However, in its implementation, the "Partisipasiku" application is only limited to the public to provide input on the draft law which is the object of evaluation in the current year (Yuharningsih, 2021). So the impact is that the community cannot provide input on other laws and regulations in the opinion of the public that needs to be corrected.

Improvements made to the DPR's electronic media will also increase public participation. These media should not stop at the level of just conveying information, but must also be a means of media for discussion (e-discussion), petitions (e-petition), voting (e-voting), opinion polls (e-polls), as well as public consultation (e-consultation) (Damanik, 2016), especially for certain issues in the discussion of the bill which requires a fast response from the affected community.

Conclusion

Based on the discussion above, conclusions can be drawn, namely: first, the application of the omnibus law in the case of the formation of the Job Creation Law has drawn controversy because it is undemocratic because it narrows the space for public participation, as a result, the Job Creation Law which uses the omnibus law is contrary to the 1990 Constitution of the Republic of Indonesia. 1945 and conditionally declared unconstitutional by the Constitutional Court. Second, the arrangement by adding the omnibus law to Law Number 13 of 2022 is a form of progress in law but still leaves the main challenges related to community participation as a pillar of democracy. Third, to realize a democratic

omnibus law in Indonesia, dynamics between 3 (three) dimensions are needed, namely the capacity or ability of legislators, connections that are manifested in representations of substantive meaningful participation, and information systems that work both ways.

In the future, the omnibus law in the formation of laws is not enough to just speed up the legislation process but must be balanced with fulfilling participation as an implementation of the principle of openness in the formation of good legislation and the pillars of a democratic country.

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