



Legislative Formation Design Using the Right Omnibus Law in Indonesia

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Abstract

Omnibus law arrangements are progressing. However, the technique of drafting laws through an omnibus law is not simple. In Indonesia, Article 64 of Law Number 13 of 2022 does not fully regulate the omnibus method which can cause legal uncertainty. Normative legal research with statutory, comparative, and conceptual approaches is the choice in this research. The results of the research: (1) omnibus law as a method of drafting laws in Indonesian is not easy to understand and implement, it even has the potential to increase the number of new regulations; (2) the thematic omnibus law is a simple law drafting design by integrating several different laws into one law that has relevance to the theme of achieving national goals.

Keywords: *Legislative Formation; Design; Omnibus Law; Indonesia*

Introduction

Omnibus law is an exclusive method of establishing high-risk laws. Even though it carries a high risk and often raises protests and draws criticism, recently the omnibus law has been frequently used and made an attractive option for parliament and the government. The basis of the argument built is that the country is experiencing an acute problem of legislation which is marked by the accumulation of the number of laws so that if left unchecked continuously it can hamper the administration of the state government.

The objective condition for the accumulation of laws, called hyper-regulation in the form of laws, also occurs in Indonesia (Mayasari, 2020). In fact, in the period from 2001 to 2019, the number of laws reached 543, and as of March 20, 2020, the number of laws was 1,687 (Fadli, 2020). Too many laws from a legislative drafting perspective can lead to complications and complications and hinder economic growth and investment.

Worse, these conditions are compounded by disharmony, interlocking one law with other laws, and overlapping (Buana, 2017), so that laws become disruptive tools for the legislature's authority (Amin, et al, 2020). The negative impacts: first, there is legal uncertainty; second, the implementation of laws becomes ineffective and inefficient; third, the occurrence of differences in the interpretation of the law; and fourth, laws as guidelines for society and government cannot function as they should (Busroh, 2017). It is this problem with the swelling number of laws that will be resolved through an omnibus law which is believed to be able to tidy up many laws into one law in a relatively short time.

The regulation of the omnibus law in the Indonesian context has made progress after obtaining a legal basis through Law Number 13 of 2022. However, the technique for drafting laws through the omnibus law is not completely regulated. Article 64 paragraph (1b) of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Legislation, the regulation of the omnibus law is still too dynamic. This means that it has not been regulated in a strict and detailed manner. From a juridical perspective, there are no clear provisions (*lex certa*) governing the boundaries regarding the relevance of material content that can be used to draft laws using the omnibus law.

The leniency in regulating the omnibus law in Law Number 13 of 2022 has resulted in the formation and formulation process being highly speculative and unaccountable (Rishan, 2022). As a result, law-forming institutions or officials only follow their tastes and interpret subjectively by using the omnibus law. Ignoring such conditions is certainly dangerous for the survival of the state. There are at least 2 (two) dangers that accompany incomplete omnibus law arrangements, namely: first, the potential for abuse of legislative procedures to occur, and second, if there is malicious intent from legislators, then in a relatively short time many laws can be dismantled law in one law that can tear down the pillars of the nation and state.

The establishment of an omnibus law-based law in Indonesia is still controversial, there are still debates on the pros and cons from the point of view of each academician and practitioner regarding several requirements that must be met in the use of the omnibus law. This problem is even more interesting to study if in the future there is no construction for the formation of omnibus law-based laws in Indonesia. Designing an appropriate omnibus law in Indonesia is an urgent need, bearing in mind that Law Number 13 of 2022 does not yet describe in detail how several laws are related that can be integrated into one law. In short, there is no complete and precise omnibus law regulation in Indonesia.

Explaining to understand the weaknesses of setting the omnibus law in Indonesia and designing the right omnibus law, is the contribution offered in this research. Therefore, there are 2 (two) discussions in this study, namely: (1) the weaknesses of the omnibus law in Indonesia, and (2) the proper design of the omnibus law in Indonesia.

Methods of Research

Normative legal research (Fadli, 2012), is the choice of this legal research. The field of work is Constitutional Law, especially legislative drafting. The approach used is statutory, comparative, and conceptual approaches (Fadli, 2012). The legal materials used are primary and secondary legal materials. The collection of legal materials is done through library research. The analysis was carried out in a qualitative and juridical manner and was presented prescriptively.

Results and Discussion

1. Weaknesses of the Omnibus Law in Indonesia

Incomplete arrangements and techniques that are not simple and difficult to understand are the weaknesses in the formation of laws drafted using the omnibus law. In most people, the use of the omnibus law is felt uncomfortable, and not user-friendly. The omnibus method raises other side effects, such as: (a) there will be a new over-regulation rather than simplification, (b) there will be a law that loses its usefulness because it is only amended by a few articles, and the enforcement of others is forgotten.

Problems that have existed from the experience of the omnibus law in Indonesia in the case of Law Number 11 of 2020 concerning Job Creation, have resulted in many problems, unfortunately, it is justified to continue its practice based on Law Number 13 of 2022. Even the omnibus law used to form the Copyright Law Work is not a good example of lawmaking techniques. The form of the law on changing the omnibus method is a drafting guideline but it is not user-friendly, but it is also the basis for justifying the existence of many laws that use the omnibus law in Indonesia (Indonesian Center For Legislative Drafting, 2022).

Law Number 13 of 2022 is an endeavor of a noble idea to achieve even better legislation. However, what is seen is just to justify so that improvements to the Job Creation Law can be used. Almost all people who read and guide the Job Creation Law which uses the omnibus law agree that this law is not simple, it makes it difficult for all parties to understand (Indonesian Center For Legislative Drafting, 2022).

It is not easy for the public to understand the formation of laws using the omnibus law, because this method is not user-friendly, especially the appendix must look at 2 (two) laws. The public must open the main law and juxtapose it with the amended law:

- a. If the amendment to a new law is made only once, then two laws must be adhered to, namely the main law and the amended law;
- b. If the second amendment to the law is made, then three laws must be adhered to, namely the main law and two amended laws;
- c. If the third amendment to the law is carried out, then four laws must be adhered to, namely the main law and three amended laws (Sujendro, 2020). The same goes for subsequent changes.

The public's difficulty in understanding the law is not in harmony with the concept of the Indonesian rule of law. The concept of a rule of law state in Indonesia changed after the 1945 Constitution of the Republic of Indonesia was amended. After the change, the concept of a rule of law state in Indonesia is no longer a *rechtsstaat* or rule of law, but a state based on the law of Indonesia. The State of Indonesia as a constitutional state as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, requires the existence of a legal order regarding the formation of laws. Orderly formation of laws is legally regulated in Article 22A of the 1945 Constitution of the Republic of Indonesia which states that further provisions regarding procedures for forming laws are further regulated by law. The formation of the latest laws and regulations is regulated in Law Number 13 of 2022. For this reason, the formation of laws using the omnibus law should be regulated using a simple drafting technique. The logic is getting simpler, getting closer to achieving the goal of establishing Indonesian law which prioritizes the public to know their basic rights, that is, to be able to easily understand every law enacted as part of the human rights of citizens.

The drafting of laws using simple techniques has long been Crabbe's point of view, who stated: "The target audience for drafting laws varies widely, from those who have studied law to those who are

already specialists in their field. Some people will try in good faith to understand the law, some people have bad faith to understand the law wrongly. For this reason, it is necessary to draft a simple law” (Anggono, 2014). Laws must be easily understood by every citizen, including even citizens who are unfamiliar with the law.

On the other hand, laws that are not easy to understand will harm society, including: (i) it will allow prejudice between the public and legislators, (ii) the public will be easily influenced by incorrect information regarding the law. formed using the omnibus method, and (iii) abuse of authority arises (Sujendro, 2020). Even under certain conditions, the formation of laws based on omnibus law tends to: (i) be anti-scientific; (ii) anti-democratic rule of law state; and (iii) not pro people's needs.

It doesn't stop there, various problems accompany the practice of the omnibus law. Among other things, this problem is difficult to implement because it is not easy to understand and leaves traces of the old law. Concerning this issue, the Indonesian Center for Legislative Drafting (ICLD), noted that: “Almost all say that the omnibus method is not easy to understand, let alone to hope that it can be implemented. Not to mention the effect of using the omnibus law has removed any traces of the law being changed or repealed because it is not in the title. By repealing/amending part of the law, the original law loses its validity or efficacy” (Indonesian Center For Legislative Drafting, 2022).

Omnibus law is not just a drafting technique that is chosen and is the easiest when you have to transport lots of substances (omnibus) to be changed, regulated, or repealed. Omnibus laws that carry a lot of substance will create a confusing understanding. Omnibus laws are not simple, tend to be confusing and can be misleading, and tend to hide important things. In such a context, it seems that legislators ignore the importance of form or conformity in a draft law, which should be guided by. Seidman once conveyed the importance of a formal form or framework or external form (*kenvorm*) of a draft law. In his book, *Legislative Drafting for Democratic Social Change: A Manual Drafter*, Seidman provides an illustration that there are several basic principles why the construction or architectural design of a bill is not effective (Seidman et al, 2001). Some factors influence the ineffectiveness of a draft law, namely:

First, because of the poor organization of the norms set out in the draft law. This has implications for the difficulty of readers or parties affected by this law to understand the contents of a law. If the affected party finds it difficult to read the law, this will greatly affect the level of compliance and effectiveness of the law;

Second, the law is not user-friendly. User-friendly laws are laws that are structured with good logic and structure. One way to determine this is that the affected party does not have to flip through too many specific pages to understand what impact the law has on them. With good drafting and structure, the law will be more accessible (Seidman et al, 2001).

Laws must be easily found and read by users. The format and arrangement of the law are very important for people who use the provisions in the law. This will make it easier for users to interpret the contents of the law and increase findability and usability (Seidman et al, 2001). This problem is indeed only about technicalities, but bad technicalities will not be able to offer good substance arrangements. Moreover, hoping for the implementation of good regulations.

2. Comparative Study: Omnibus Law in Canada

Canada is one of the countries that implements the common law and civil law legal systems. Meanwhile, the Indonesian state after the third amendment to the 1945 Constitution of the Republic of Indonesia in Article 1 paragraph (3) emphasized: "Indonesia is a state of law". The juridical formulation of this principle is known as the *rechtsstaat* with a civil law style and the rule of law is a common law

style (Prasetyo, 2010). Both Canada and Indonesia have used the omnibus law in forming laws. This equation is the consideration for choosing Canada as a comparison.

It is not known exactly when the omnibus law practice in Canada began to be used. However, in the notes of Ittai Bar Siman Tov (Tov, 2021), in his book *Comparative Multidisciplinary Perspectives on Omnibus Legislation*, the practice of drafting laws and regulations using the omnibus method existed for the first time in 1888, when a draft law was submitted to approve 2 (two) separate railroad agreements. The Canadian Parliament passes a law within a limited time in which several laws can be traced as an omnibus bill. This draft law consists of several related matters but is regulated separately which aim to amend, revoke, and/or enforce one or several laws.

The omnibus practice in Canada aims to streamline the legislative process by trimming several statutes into one statutory regulation (Massicotte, 2013). Like laws in general, the omnibus bill must follow the generally applicable legislation process (Bédard, 2012). In Canada, there are no regulations that specifically regulate the preparation of bills using the omnibus method. However, these requirements can be found at the Saskatchewan provincial level. The Rules of Saskatchewan Legislative Assembly stipulates: “74 (2) An omnibus bill may be introduced to amend more than one Act if: (a) the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy; (b) the amendments to be effected to each Act are similar in each case”.

Interestingly, in 1937 the omnibus law had become phenomenal. It is called interesting because of 2 (two) things, namely: first, in Canada there is a law on Shipping that combines common law traditions (England) and civil law (France). Second, this shipping law has been revised or amended by changing various provisions of the law that are not directly related to shipping law.

The marriages and divorces of sailors were the beginning of the problem. The large number of seafarers who marry and divorce is a big problem that causes many legal complications to the implementation of the law on shipping (Asshiddiqie, 2019). To reduce the rate of marriage, divorce, and even marriage agreements and other problems that are still related to family matters, changes have been made to the Law on Shipping which covers the scope of other laws outside of the Law on Shipping. At first, this change became a prolonged controversy in Canada, but over time the law on shipping was acceptable and came to be called the omnibus law (Asshiddiqie, 2019).

Concerning the many topics regulated in the draft omnibus law, Canada has an alternative to improve it by breaking it into several bills. This provision appears in the discussion of the draft Omnibus Energy Security Act bill to the House of Commons which is termed Bill C-94. Bill C-94 regulates changes from the Petroleum Administration Act, National Energy Board Act, Foreign Investment Review Act, Canada Business Corporations Act, Petro-Canada Act, Energy Supplies Emergency Act, Oil Substitution and Conservation Act, Energy Monitoring Act to Motor Vehicle Fuel. Consumption Standards Act (Bédard, 2012). The opposition refused to vote on the majority of the bills to be used, so the Government finally decided to split the omnibus law draft from 13 (thirteen) into 8 (eight) separate bills (individual bills) (Doern & Toner, 2019).

Although the formation of the omnibus law in Canada is inseparable from criticism from various community groups, there is a positive side to the implementation of the omnibus law in Canada. There are no less than 3 (three) advantages of the Canadian state using the omnibus law, including: first, it does not cause commotion and minimal commotion both in society and in parliament. Second, the formation of an omnibus law is not always initiated by the majority group, but often it is initiated by the government which controls the minority in parliament. Third, to maximize the absorption of aspirations for participation, an omnibus that is too large in scope is split into several omnibuses with interrelated topics.

3. Omnibus Law Thematic

The thematic omnibus law is a design idea that the author offers in the formation of appropriate omnibus law-based laws in Indonesia. Learning from the comparative experience of omnibus law practices in Canada, a valuable lesson is found that the formation of laws with cross-sectoral and unrelated content is not recommended at all. Historically, there were indeed 2 (two) models of law content material that used the omnibus method, namely first, the omnibus method with cross-sectoral content material (multi-subject), and second, the omnibus method with single-subject rule material. Acceptance as it is, the omnibus method used to describe being able to transport everything, without certain limitations, has proved difficult to understand and difficult to operationalize.

Article 64 paragraphs (1a) and (1b) of Law Number 13 of 2022 is the juridical basis for drafting using the omnibus law method in Indonesia. Article 64 paragraph (1b) of Law Number 13 of 2022, the omnibus law method is interpreted as a method for preparing statutory regulations by: (a) loading new content material; (b) changing content material that has legal relevance and/or requirements regulated in various laws and regulations of the same type and hierarchy; and/or (c) repeal laws and regulations of the same type and hierarchy.

Observing the provisions of Article 64 paragraph (1b) of Law Number 13 of 2022 there is no word "compulsory" or "must" in the building of legal norms to use across sectors or instead use only one type of sector. This means that in theory, legal norms do not order (*gebod*), nor do they prohibit (*verbod*). The provisions of Article 64 paragraph (1b) only state changes in material content that are related. While the phrase "relatedness" itself does not provide further explanation.

There are no provisions that explicitly explain the phrase "relatedness", making legislators have the freedom (*vrijstelling*) or allowed (*verlof*) to draft laws in accordance with the peculiarities based on socio-political balance (socio equilibrium) in the country of Indonesia (Hidayat, 2019). With the hope that it is easy to understand, legislators can be creative and modify it by combining several laws into one law that is related to the theme so that a thematic omnibus law is formed.

Thematic in the Big Indonesian Dictionary is defined as "concerning the theme, a main idea" (Big Indonesian Dictionary, 2008). In the Popular Scientific Dictionary, thematic means "regarding the main theme" (Agustin, 2010). While the thematic in foreign terms is called "Integrated Thematic Instruction Based Curricula", which means that integrative thematic emphasizes the integration of all disciplines with experience. Thematic is closer to learning, namely learning based on the student experience (Randle, 2010), and is very suitable for lower education levels, namely ages 6 to 12 years (Sukayati, 2009). In Drake's view, a thematic approach is a form of learning strategy that uses themes through the creation of active, interesting, and meaningful learning. It is said to be meaningful because it directly connects concepts and experiences (Drake, 2012).

By adopting thematic learning science, the formation of omnibus law-based laws in Indonesia can be said to be relatively new at the adaptation and development stage. Because it is still new and at the stage of development, it is necessary, in particular, to form laws that make it easier for the public to understand them. You do this by linking several laws into one law that is packaged in one theme. The thematic omnibus law is the formation of laws by combining several laws into one law that is related to the theme of achieving national goals.

Omnibus law is thematic as an effort to formulate laws quickly but simply so that they are easy to understand and provide fair legal certainty for the community. Thematic omnibus law can be the right choice in Indonesia which is based on philosophical, juridical, and theoretical aspects.

From a philosophical aspect, the Pancasila legal state is prismatic which requires that every law be rooted in the uniqueness of Indonesia (Hamzani, 2014). Building a legal system Indonesia must have the courage to assert its Indonesian identity, even though it may have to collide with world standards (Rahardjo, 2008). The concept of an omnibus law imported from a model applicable in other countries is not necessarily suitable for application in Indonesia (Sadono & Rahmiaji, 2021). The thematic omnibus law is an idea to overcome legislative obesity in Indonesia which is based on empathy, dedication, commitment, and honesty. The thematic omnibus law concept in the Indonesian legal state which is based on Pancasila wishes to implement justice that is civilized and humane (Sadono & Rahmiaji, 2021). The marker of the law is formed in a simple and easily understood by the public.

From a juridical aspect, Article 22A of the 1945 Constitution of the Republic of Indonesia provides a blank delegation to legislators regarding the formation of laws. This means the legislator's right to freedom in determining the omnibus law model in the formation of laws. Thematic omnibus laws can be the right choice in line with Article 64 and the academic text of Law Number 13 of 2022. In the academic text of the Draft Law concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Legislation, it is explained that the main characteristics of the use of the omnibus method in the technique of drafting laws and regulations are "concerning many articles or regulations with the same theme...". In the academic text, it is also explained that "the linkage of bills drafted using the omnibus method is at least still very closely correlated in similar fields...". Based on these quotes, provides an understanding that the thematic omnibus laws are appropriate for use in the formation of laws that use the omnibus method.

Theoretical aspect, the thematic omnibus law in the formation of laws has been strengthened by experts. Yuliandri stated that the imperfections of a statute law were influenced by the presence of redundancy and disorderliness. In the case of the formation of the Job Creation Law which uses the omnibus method with a cross-sectoral model, there has been an excess of material contained in the law, so that it is not drafted in an orderly manner. Such use of the omnibus method is inappropriate. Jimly Asshiddiqie (Asshiddiqie, 2020) provides his argument regarding the inaccuracy of implementing the omnibus law in Indonesia, as follows: "It is not appropriate for the Indonesian state to have just introduced the practice of the omnibus law which immediately contains various provisions which produce a very thick bill, integrating 80 laws into one law (Asshiddiqie, 2020). The solution requires a limited omnibus law, namely only to unify important provisions and still be in accordance with the general title of the relevant law (Asshiddiqie, 2020).

Foreign experts who have highlighted the need to limit the omnibus method include Olivier Rozenberg and Klaus Meberschmidt. Almost similar to the opinion of experts in Indonesia, Olivier Rozenberg stated: "...monster bill that is too say remarkably long laws, putting together heterogeneous elements (Tov, 2021), seems to imply that these bills are not good for democracy" (Tov, 2021). The existence of heterogeneous omnibus law bills is not good for democracy. Heterogeneous can be interpreted across sectors that are not related. This is also the view of Klaus Meberschmidt, who proposed a legislative standard regarding the use of the omnibus, stating: "...in relation to large multi-topic bills which requires an explanation as to how the part of the bill..." (Tov, 2021). Multi-topic bills must be accompanied by an explanation of the interrelated parts.

Designing a thematic omnibus law in the formation of laws by focusing on the theme, still referring to the theory of the formation of statutory regulations as contained in Article 1 number 1 Law Number 12 of 2011 as amended several times and most recently Law Number 13 of 2022, including:

First, at the planning stage identification of several problematic laws is carried out. Identification activities by paying attention to 3 (three) things, including (a) compiling indicators that are formulated in

themes; (b) do not force to combine several laws that are not at all related to the theme; and (c) every law that cannot be linked to one theme in the thematic omnibus law, a separate law must be made.

Second, the drafting stage is done by determining the theme. Broadly speaking, several things can be done in combining several laws through thematic omnibus laws, as follows: (a) integrate at least 2 (two) different laws and do not need to integrate as many laws as possible, (b) take one uniqueness of each law that can be related to thematic omnibus laws packaged in a theme, and (c) determines the same purpose associated with a theme.

Third, is the discussion stage. The theme that has been chosen as a combination of several laws is technically and formally discussed by the legislators, involving public participation that does not only go one-way or one-way traffic communications. However, it also opens opportunities for the creation of two-way traffic communications between legislators and the public, community organizations, academics, researchers, experts/professionals, and intellectuals.

Fourth, is the validation stage. Ratification of laws formed with thematic omnibus laws is subject to the Law on the Formation of Legislation. Normatively, arrangements regarding discussion and ratification are carried out in a unified Chapter VII with the title Discussion and Ratification of the Draft Law. The act of ratifying a law regulated in Part Two of Chapter VII can be said to be quite detailed, in Article 72, Article 73, and Article 74.

Fifth, is the promulgation stage. The act of enacting a law is emphasized in Article 81 of Law Number 12 of 2011, namely so that everyone knows it. Legislation must be promulgated by placing it in a. State Gazette of the Republic of Indonesia; b. Supplement to the State Gazette of the Republic of Indonesia; c. State Gazette of the Republic of Indonesia; d. Supplement to the State Gazette of the Republic of Indonesia; e. Regional Gazette; f. Regional Gazette Supplement; or g. Regional News.

Laws and regulations promulgated in the State Gazette of the Republic of Indonesia, according to Article 82, include a. Laws/Government Regulations in Lieu of Laws; b. Government regulations; c. Presidential decree; d. Other laws and regulations according to the applicable laws and regulations must be promulgated in the State Gazette of the Republic of Indonesia. Thus, the promulgation of laws must be contained in the State Gazette of the Republic of Indonesia (LNRI). Whereas Article 84 paragraph (1) of Law Number 12 of 2011, stipulates that the explanation of the law is contained in the Supplement to the State Gazette of the Republic of Indonesia (TLNRI) which is separate from the State Gazette of the Republic of Indonesia (LNRI).

The omnibus law system contains material integration insofar as it relates to subjects and objects that are thematic, providing benefits, including: (a) facilitating understanding and implementation in the framework of legal reform, (b) being integrated and harmonious even though it consists of several laws different (Asshiddiqie, 2020).

Thematic omnibus laws are not only beneficial for legislators but also for society. The benefits of the thematic omnibus laws for legislators include: first, encouraging legislators to develop creativity in forming laws. Therefore legislators are required to have qualified insight and understanding of the technical field of drafting laws. Second, provide opportunities for legislators to develop dynamic and meaningful lawmaking techniques according to the legal needs of society. In this regard, the thematic omnibus law provides an opportunity for the development of knowledge of legislation, particularly regarding legislative drafting.

The benefits of the thematic law omnibuses for the community include: first, facilitating and motivating the public to provide input orally and/or in writing. Second, it saves time and effort in understanding laws because they have similarities and are related in the form of themes.

Conclusion

The discussion above leads to 2 (two) conclusions, namely: first, the formation of laws has developed in accordance with the development of the country. Omnibus law is a method of drafting laws, but Article 64 of Law Number 13 of 2022 has a weakness, namely that the regulation of the omnibus law is incomplete and not simple. As a result, laws are difficult to understand and legal uncertainty occurs. Second, the design of forming an omnibus law-based law in Indonesia is urgent to be carried out so that it fulfills the principle of forming good statutory regulations. Combining several different laws into one law that is packaged in a related theme, so that the thematic omnibus law is formed is the right idea for overcoming the problem of legislative obesity in Indonesia. In the future, legislators will immediately formulate a thematic omnibus law standard form as a model for forming omnibus law-based laws in Indonesia.

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