

**MEASURING POLITICAL DIRECTIONS FOR LAW FORMATION WITH
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Abstract

This study aims to determine the direction of legal politics from the formation of laws with the concept of omnibus law which for some people still feels foreign. The concept of Omnibus Law is now a debate, even some legal academics are worried that if the concept is applied it will disrupt the legal system in Indonesia. This type of research is socio legal. The result of this research is that we can see that the purpose of establishing an omnibus law is to increase the level of investment in Indonesia, which in this case will be discussed in more detail in the segment of Indonesia's investment activity. In this case, Tengku Muhammad Radi defines the purpose of establishing law or what is commonly referred to as legal politics is a statement of the will of the ruler regarding certain goals to be achieved through law.

Keywords: *Constitution; Omnibus Law; Politics of Law*

INTRODUCTION

Since the founding of the Republic of Indonesia, the founding fathers and mothers have agreed to form the newly independent state, known as the state of law.¹ which in its application is adjusted to the rules that govern society (rule of law).² President Joko Widodo complained about the many regulations that Indonesia had. The regulations range from around 42,000 regulations covering laws, government regulations, presidential regulations, ministerial regulations to regulations for governors, mayors and regents in the regions. This country has a lot of rules. Of the 42 thousand, there are those who are contradictory. The number of regulations makes the speed of the government's attitude to take decisions to be slow. Moreover, currently fast countries will be able to beat slow countries.

After being sworn in as President of the Republic of Indonesia for the period 2019-2024, President Ir. H. Joko Widodo (Jokowi) in his first speech on 20 October

2019, he conveyed a legal concept, namely the Omnibus Law. The background is based on his experience when he was a Furniture Entrepreneur before becoming President, experiencing problems with licensing procedures and other regulations that became obstacles in running his business. Since the beginning, Jokowi has always proclaimed to make it easier to invest in Indonesia.

The concept of Omnibus Law is also known as the omnibus bill which is often used in countries that adhere to the common law system such as the United States in making regulations. The regulation in this concept is to make one new law to amend several laws at once. This statement arises because of overlapping regulations, especially regarding investment. This omnibus law model is actually only known in the Anglo Saxon legal system, not known in the continental law school (civil law).

The definition of the Omnibus Law starts from the word Omnibus. The word Omnibus comes from Latin and means for everything. Bryan A. Garner's Black Law Dictionary Ninth Edition mentions omnibus: relating to or dealing with numerous objects or items at once; including many things or having various purposes, which means relating to or dealing with various

¹ Lihat Pasal 1 Ayat (3) UUD NRI Tahun 1945 yang menyatakan bahwa “Indonesia adalah negara Hukum”

² *Rule of law* merupakan konsep pengaturan negara yang membedakan antara negara kekuasaan (*machtstaat*) dan negara hukum (*rule of law*) atau juga biasa disebut dengan *rechtsstaat*. Lihat Basuki Kurniawan, Persamaan Hak Pilih TNI Polri dalam Pemilihan Umum di Indonesia, Tesis, (Jember: Universitas Jember), 2014, hlm. 56

objects or items at once; include many things or have multiple purposes. When coupled with the word Law, it can be defined as law for all. So, the concept of omnibus law is a comprehensive and comprehensive rule, not tied to a single regulatory regime.

The term Omnibus Law for some people still feels foreign. The concept of Omnibus Law is now a debate, even some legal academics are worried that if the concept is applied it will disrupt the legal system in Indonesia. Moving on from the description above, it is appropriate to ask a question as a formulation of the problem, namely What is the direction of legal politics in the formation of laws with the concept of omnibus law?

METHOD

The writing in this study uses a normative juridical method.³ Through this approach, the author explores all legal materials relevant to the issue to be discussed. The legal materials are sourced from primary legal materials, namely in the form of laws, decisions of the Constitutional Court, as well as secondary legal materials in the form of books, research reports, articles in journals containing

opinions of experts in the field of law, theories or doctrines in science. law. All of these legal materials are critically examined, then analyzed qualitatively by using the logic of legal thinking.⁴

ANALYSIS AND DISCUSSION

Political Direction of Law Formation of Laws With the Concept of Omnibus Law

The concept of legal politics, which in the concept of Mahfud MD (2004), can be discussed at least into three things. First, the "blueprint" of the policies and regulations that are aspired to. Second, political tug-of-war in the process of discussion and approval of legislation. Third, the implementation that is expected and can be controlled by the policy. The blueprint is actually a draft law relating to the whole law and system that is expected to be developed in the future in the policies that will be made. It contains a comprehensive view, both philosophically, juridically, and sociologically. At least, it is present in the academic text. Of the 2,278 pages of academic manuscripts that were made, not much was said about what

³ Mahmud Marzuki dan Peter Mahmud, "Penelitian Hukum," *Jurnal Penelitian Hukum*, 2011.

⁴ Muhammad Abdul Kadir, "Hukum Dan Penelitian Hukum.," *Bandung: PT. Citra Aditya Bakti.*, 2015.

building was expected in drafting the law in the future. Of the 11 clusters affected by this bill, it is not clear what will be developed in the future from the theme of the cluster.⁵

In the blueprint, the possibility of tug-of-war political interests must also be watched out for. Anyone understands that the law is a resultant of political interests. However, that is where the function of the constitution and laws and regulations provides space to not only fulfill political rules, but also fulfill the wishes of the public. Therefore, a space is opened called participation, aspiration, and various adjustment actions and other inputs. Article 96 of Law no. 12/2011 concerning the Establishment of Legislation (UU P3), for example, clearly states that community participation is very important. In relation to legal politics, the choice of policy method is also interesting to note. In simple terms, this omnibus method does have several advantages in being able to quickly tidy up and harmonize overlapping and irregular laws. Indeed, there is no uniformity of terms and practice of using them. However, at its simplest, omnibus law is ‘A draft law before a legislature which contains more than one substantive matter or several minor matters which

have been combined into one bill, ostensibly for the sake of convenience” (Duhaimé Legal Dictionary).

According to Hans Kelsen, the norms are tiered and layered in a hierarchical arrangement, the norms below apply, sourced and based on the higher norms apply, originate and are based on the higher norms, and so on until finally 'regressus'. ' This stops at a highest norm called the basic norm or grundnorm. Hans Nawiasky, a student of Hans Kelsen, developed his teacher's theory of the noma level in relation to a country. He argues that in addition to norms that are layered and tiered, legal norms in a country are also grouped, and the grouping of legal norms in a country consists of four major groups, namely staatsfundamentalnorm, staatsgrundgesetz, formell gesetz, and verordnung & autonome. satzung. This theory also forms the basis that applies in modern countries regarding the hierarchy of laws and regulations.

The debate about Omnibus Law as the main means for structuring regulations, enlivened the people in Indonesia, when the Omnibus Law method, which was previously not widely known in Indonesia – countries with a Continental European legal system, became used in the preparation of the Draft Law (RUU)

⁵ Zainal Arifin Mochtar, Dipublikasikan di Harian Kompas edisi Senin, 9 Maret 2020 hlm. 6.

which became the Legislation Program. National Priority for 2020. Regulatory reform policies through the implementation of the Omnibus Law in Indonesia, of course, are not something the government does rashly. Many considerations were made by the government why it chose the Omnibus Law method in carrying out urgent regulatory reforms. The DPR at the 8th Plenary Session of the Second Session of the 2019-2020 Session Year established the National Legislation Program for the 2020 Priority Bill (Prolegnas, the 2020 Priority Bill), one of which was the Employment Creation Bill (RUU Job Creation). is omnibus law. The plan to issue the Job Creation Bill as a legal policy is of public concern, because the omnibus law is not yet known in the Indonesian legal system, there is a recentralization of authority in the central government, it affects labor rights, and takes sides with investors⁶ One of the causes of investor reluctance to invest in Indonesia is the difficulty of doing business in Indonesia, the difficulty of investing in Indonesia has implications for the low competitiveness of Indonesia compared to neighboring countries, The efforts made by the government to improve the ease of doing

business in Indonesia are issuing Presidential Regulation Number 91 of 2017 concerning Acceleration of Business Implementation. implications in terms of business licensing is the main substance.

Where is the omnibus law? In this case, the omnibus law referred to in the Indonesian legal system is a form of law that regulates various objects in one legal instrument. so that there is a spread of discourse related to the omnibus law which is equated with the Umbrella Law, namely the law which is the parent of other laws that are still one sector. However, if the omnibus law is narrated as the Umbrella Law, then the omnibus law is not regulated in Law Number 12 of 2011 concerning the Establishment of Legislation, therefore the omnibus law in the Indonesian context is narrated as a law.⁷

President Joko Widodo has shown the stretching of forming an omnibus law since participating in the electoral contest. In the 5th Presidential and Vice-Presidential Debate, the president alluded to his anger over Indonesia's investment achievements which were inferior to neighboring countries in Southeast Asia. At the time of his inauguration, the presi-

⁶ Ima Mayasari, Kebijakan Reformasi Regulasi Melalui Implementasi Omnibus Law Di Indonesia, Jurnal Rechvinding Vol 9 No 1 2020, hlm.1.

⁷ Suryati dkk, *Tinjauan Hukum Terhadap Omnibus Law Undang-Undang Cipta Kerja*, Jurnal Simbur Cahaya Fakultas Hukum Universitas Sriwijaya, 2020, hlm 101

dent declared that he would form an omnibus law aimed at cutting down on regulations that he felt were too complicated. This is aimed at increasing the level of investment in Indonesia, as in accordance with the ease of doing business report, where complicated licensing makes Indonesia's ranking lag behind neighboring countries in Southeast Asia.⁸

From here, we can implicitly see that the purpose of establishing the omnibus law is to increase Indonesia's investment level, which in this case will be discussed in more detail in the segment of Indonesia's investment activity. In this case, Tengku Muhammad Radi defines the purpose of establishing law or what is commonly referred to as legal politics is a statement of the will of the ruler regarding certain goals to be achieved through law.⁹ Pragmatically, the interaction of law and politics is in a balanced degree of determination between each other. Therefore, this does not deny that law is a political product, but political life must also be subject to legal rules. The political configuration will affect the character of the legal product and the law must be a guide-

⁸ *Ibid*, hlm 104.

⁹ Moh. Mahfud MD, 'Politik Hukum Hak Asasi Manusia Di Indonesia', *Jurnal Hukum Ius Quia Iustum*, 2000 <<https://doi.org/10.20885/iustum.vol7.iss14.art1>>. diakses tanggal 17 November 2021

line, so that the political configuration carried out by the elites does not deviate from the goals of the state.¹⁰

Therefore, there is a need for legal politics in the development of law in Indonesia. This is based on so that the law continues to be a vehicle that is responsive to the needs of the community. Legal politics itself has the core of making and updating legal materials so that they can be in accordance with the needs and indicate the nature and direction in which the law will be built and enforced. In practice, there are many criticisms of the Job Creation Bill, which can scapegoat people's rights and are considered too pro-elite. A number of practitioners and the public also think that the creation of the job creation bill favors entrepreneurs over workers. Faisal Basri said that the omnibus law could be a bias in favor of the business world, because the composition of the drafting team was mostly filled by entrepreneurs.¹¹

In the end, talking about legal politics is simply defined as the purpose of

¹⁰ Merdi Hajji, 'Relasi Hukum Dan Politik Dalam Sistem Hukum Indonesia', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 2013 <<https://doi.org/10.33331/rechtsvinding.v2i3.65>>. diakses tanggal 17 November 2021

¹¹ CNN, 'Faisal Basri Kritik Omnibus Law Jokowi, Apa Alasannya?' <<https://www.cnbcindonesia.com/news/20191218211906-4-124277/faisal-basri-kritik-omnibus-law-jokowi-apa-alasannya>> , diakses tanggal 17 November 2021

establishing a law. We cannot distance politics and law. on the one hand, the two are like bone and flesh that are difficult to separate from each other. Law is a political product as a source of binding force for the law. However, the law should not be formed without a legal policy oriented to the needs of the people. then the formation of legal politics that absorbs the aspirations and needs of the people in real terms is needed in terms of formulating the objectives of establishing omnibus law through the methods mentioned in the previous segment in involving community participation.

President Jokowi's goal in reducing the number of laws and regulations with the omnibus law is a noble goal in accordance with the theory of simplification of laws and regulations. Simplification is the simplification of laws and regulations carried out in order to reduce the number of laws and regulations so that they become proportional in number. Simplification is important to ensure effectiveness and prevent overlapping of laws and regulations, besides that it can be aimed at reducing lengthy procedures and reducing excessive costs.

In this case, it is important to cut down the laws and regulations related to investment. It is also aimed at increasing

the level of the economy. However, do not let the simplification technique contradict the principles of people's economy, where the legal substance that is formed tends to favor investors. But it must be done for the sake of the people, in a way that there is no substance that is problematic with the people's sense of justice just to make it easier for investors to enter. In addition, the proportionality of the number of laws needs to be considered in order to avoid regulations that are not harmonious and have multiple interpretations. In this case, do not let the simplification technique over-regulate so that the use of this technique is useless.

CONCLUSION

Talking about legal politics, which is simply defined as the purpose of establishing a law. We cannot distance politics and law. on the one hand, the two are like bone and flesh that are difficult to separate from each other. Law is a political product as a source of binding force for the law. However, the law should not be formed without a legal policy oriented to the needs of the people. then the formation of legal politics that absorbs the aspirations and needs of the people in real terms is needed in terms of formulating the objectives of establishing omnibus law through

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