

## **PRESPECTIVE OF OMNIBUS LAW POLICY IN LEGAL ASPECTS OF STATE ADMINISTRATION**

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### **ABSTRACT**

*The phenomenon of the pros and cons of the Cipta Field or Omnibus Law regulations, for those who are pro, is the right solution to address the problem of overlapping laws and regulations in Indonesia. Whereas those who are against, think that the omnibus law plan is seen as an effort to delegitimize the rights of every sector of national life, especially regarding employment and other sectors that may be affected by its implementation. Thus, the implementation of the Omnibus Law must be seen from various aspects, including legal theory and more technical aspects of state administrative law in the Unitary State of the Republic of Indonesia.*

**Keywords: Land Disputes, Legal Rules, publick Facilities**



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### **INTRODUCTION**

The third amendment to the 1945 Constitution of the Republic of Indonesia in Article 1 paragraph (3) states that "Indonesia is a state based on law". The law determines what must be done and or what is allowed and what is prohibited (Kurniadi, 2020). The government under the leadership of President Ir. H. Joko Widodo from the start has always proclaimed to make it easier to invest. attempted.

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly states that "Indonesia is a country based on law." Because of the constitutional mandate, Indonesia wants to adhere to the concept of a rule of law in carrying out all aspects of state life.

The idea of a rule of law has long been developed by philosophers from ancient Greece. Plato, at first in the Republic argued that it is possible to realize the ideal state to achieve goodness with the core of goodness. However, in his book The Statesman and the Law, he states that what can be realized is the second-best form which places the rule of law (Asshiddiqie & Husein, 2020). The goal of the state according to Aristotle is to achieve the best life possible which can be achieved through the rule of law. Recognition of the principle of the rule of law, namely placing the law as the highest command holder in the administration of the state.

Therefore, it can be understood that the rule of law as a concept is a tool for the state to achieve its goals.

Law is a legal regulatory instrument in a rule-of-law state. According to Mochtar Kusumaatmadja, the main purpose of the law is to guarantee order, justice, and certainty (Kusumaatmadja, 2002). Thus, the law is a system that has characteristics and characteristics that become the driving force and regulator of people's lives. This law manifests itself in the form of statutory regulations, a set of written laws in various forms that regulate all aspects of state and social life. According to (Mahfud, 2009), laws, and regulations are all laws in a broad sense that are formed in a certain way by authorized officials and outlined in written form.

Concerning statutory regulations as the embodiment of written law, (Manan, 1992) explained that one of the elements of statutory regulations is that they are generally binding and in written form so they can also be called written law. Meanwhile, on other characteristics, statutory regulations usually have various types, and each form of statutory regulation is arranged hierarchically.

The phenomenon relating to laws and regulations that are now surfacing and reaping debate, namely the Omnibus Law. The debate over this is reasonable because the Draft Bill on Job Creation was created by the government through the Omnibus Law. Not only that, out of the 50 draft laws included in the 2020 National Legislation Program (Prolegnas), four of them are omnibus laws consisting of the Bill on the State Capital, the Bill on Pharmaceuticals, the Bill on Job Creation, and the Bill on Provisions and Tax Facilities for Strengthening the Economy.

Pros and cons of opinion enlivening the government's plan, among those who support the government's plan state that this Omnibus Law is the right solution to answer the problem of overlapping several laws and regulations in Indonesia. But those who oppose or contra think that the omnibus law plan is seen as an effort to delegitimize the rights of every sector of national life, especially regarding employment and other sectors that may be affected by its enactment (Fitryantica, 2019). In implementing the Omnibus Law, it must be seen from various aspects, including the aspect of State Administrative Law Theory.

### **Problem**

The problem in this paper is how the Omnibus Law is viewed from the perspective of state administrative Law in Indonesia.

## **RESEARCH METHOD**

The method used in writing this applied paper is descriptive-analytical, namely by using data that clearly describes the problems directly in the field, then the analysis is carried out and then concluded to solve a problem. Methods of data collection through observation and literature study to obtain problem-solving in the preparation of this paper (Hutama, 2019).

Sociological juridical approach, namely the method of juridical approach used to examine problems from a legal and systematic perspective, and as a guide to

rules that can be used as a basis for analyzing legal phenomena that arise. Sociological approach, namely the approach used to examine a problem in society or the community environment with the intent and purpose of obtaining facts, followed by finding problems, identifying problems, and finding solutions to problems.

## RESULT AND DISCUSSION

### Omnibus Law Definition

The scope of criminal law includes three provisions, namely criminal acts, accountability, and punishment. The criminal provisions contained in Law no. 35 of 2009 concerning Narcotics are formulated in Chapter XV of the Criminal Provisions Article 111 to Article 148. There are four categories of unlawful acts that are prohibited by law and can be threatened with criminal sanctions, such as : (Sunarso, 2012)

The definition of the Omnibus Law starts with the word Omnibus. The word Omnibus is of Latin origin and means everything. In Bryan A. Garner's Black Law Dictionary Ninth Edition, it is stated that Omnibus (Aristeus, 2021); relating to or dealing with numerous objects or items at once; including many things or having various purposes, meaning related to or dealing with various objects or items at once; include many things or have various purposes. When coupled with the word Law, it can be defined as a law that has related objects/items or all that is related.

According to Constitutional Law Expert Bivitri Savitri, the Omnibus law is a law made to target big issues and possibly revoke or amend several laws, this law is intended to streamline regulations in terms of numbers, besides that it also simplifies regulations. to be more on target. The idea is not only simplification in terms of quantity, but also terms of consistency and tidiness of arrangement. So it can also be called a procedure to make it simpler and right on target. So according to the expert, it can be concluded that the Omnibus law is a product of a law that can revoke or change several existing laws that are in effect which can be spread over several regulations, then streamlined into one law so that it is more on target.

Constitutional law expert, Jimmy Z Usfunan, in his opinion responding to the problem of the Omnibus law, stated that there is a problem of conflict between government administrators when they want to make innovations or policies which then conflict with laws and regulations. So the concept of the omnibus law is one way out that the government might take. However, the omnibus law must be carried out at the level of the law. So, according to the legal expert, the Omnibus law is a law product that is a solution to conflicts between government administrators and statutory regulations (FNH, 2017).

According to Sofyan Djalil in the article [www.hukumonline.com](http://www.hukumonline.com) on 16 February 2017, who at that time served as Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency, had proposed the concept of the

Omnibus Law in procedures for managing or checking the status of land ownership. According to him, the concept of the omnibus law is a step to issue one law that can improve the many laws that have been considered to overlap and hinder the process of facilitating doing business (omnibus law). The issuance of one law to amend so many laws, because with many laws it cannot be accelerated because many laws still regulate and can conflict with each other.

From the descriptions of the opinions of legal experts above, it can be drawn that the main characteristics of the Omnibus Law are (1) it consists of multi-sectors or consists of many sectors with the same theme; (2) consists of many articles, due to the many sectors covered; (3) independent or independent, without being bound or minimally bound by other regulations; and (4) negate/revoke part and/or all other regulations. Apart from that, it can also be seen that the purpose of the Omnibus Law idea or idea was raised (1) to resolve conflicts of laws and regulations quickly, effectively, and efficiently; (2) to uniform government policies both at the central and regional levels to support the investment climate; (3) so that licensing arrangements are more integrated, efficient and effective; (4) to break the long chain of administrative bureaucracy; (5) to improve coordinating relations between related agencies because it has been regulated in an integrated omnibus regulation policy; and (6) as a guarantee of legal certainty and protection for policymakers (Fernando, Pratiwi, & Putra, 2021).

### Omnibus Law Definition

Examining the Omnibus Law cannot only be viewed from the Legitimacy Aspect of Legislation. We can also approach the Omnibus Law Concept through Legal Theory, namely: (Hamidi, Sugiharto, & Ihsan, 2013)

1. Montesquieu's theory of law is a type of law. According to him, all creatures including humans have their own laws. First, natural law cannot be changed or contradicted. Second, religious law comes from God. Third, the moral law of the philosopher where this law can be made and changed. Fourth, political law and civil law. Political law (political rights) is concerned with constitutional structure, the relationship between those who govern and those who are governed, and the combination of power, pre-eminence, and power. Meanwhile, civil law (rights) is the relationship of individual desires. Even though the two laws are aspects of the same society, each type is a product of a political state with public nuance and constitutional politics. Meanwhile, civil law is a civil state product with non-political nuances.
2. Hans Kelsen's theory or Stufenbau's theory is a theory that states that the legal system is a ladder with tiered rules where the lowest legal norms must adhere to higher legal norms, and higher legal norms must adhere to the most basic norms (grundnorm).

First, we examine this Omnibus Law through the Montesquieu Theory approach. This Omnibus Law must be seen as a constitutional policy or this policy is based on the political configuration of the regime, which is deliberately promoted

by the government and the DPR as an effort to smooth out foreign investment. The freedom to carry out business activities in Indonesia without regard to rights - Individual rights of the Indonesian people who have a close relationship with each process of forming regulations or laws themselves. The government's political rights (power) must pay attention to individual rights that have been technically regulated through specific laws, for example regarding employment, of course, the application of this omnibus law cannot guarantee a constitutional relationship between workers and wage providers, because when there is a placement or merger of course which is the basis for the consideration of a Legal Entity must change again, whereas previously it had been arranged in such a way through the standards of agreement and review for so long.

Second, we examine it through the approach of Hans Kelsen's Theory where the Omnibus Law must go through a systematic study so that it does not conflict with the constitution of the Republic of Indonesia, namely Pancasila and the 1945 Constitution. Everything has been clearly stated in our country's Constitution regarding how our country is described in a rule which had been proclaimed by our previous founding fathers, containing the nation's aspirations and hopes of becoming an independent country that they had formulated through the Indonesian constitution. The concept of Harmonization of Legal Norms through the Omnibus Law by the government at least has to find a hierarchical basis for content in our constitution so that the birth of the Omnibus Law planned by our government still maintains the dignity of the constitution, of course so far the author has not found a phrase in the 1945 Constitution which can be the basic formulation of the Omnibus Law (Lumbantoruan, 2017).

The Omnibus Law can indeed be a solution to overlapping regulations in Indonesia, but the preparation of the Omnibus Law is very expensive and not simple because the substance is multi-sectoral and requires a lot of power to prepare, including dealing with public criticism (Busroh, 2017).

In the Principles of Legislation, we recognize several legal principles, one of which is the Principle of *Lex Posterior derogat legi priori* "The New Regulation overrides the enforcement of the old regulations" of course when the Omnibus Law has been enacted by facing the turmoil of public criticism which is the background to the formation of the new Law then automatically the Power of the Omnibus Law that was set previously will be defeated again with the enactment of the new Law. So what should be a concern is that the government focuses on the material content of the legislation that will be formulated and the focus is not on the Omnibus Law as the final solution to the Norm Conflict.

Indonesia is a country based on the law as stated in the 1945 Constitution, namely in article paragraph 3 which reads "Indonesia is a country based on law":(Siallagan, 2016)

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

Indonesia is a rule-of-law country that adheres to a mixed legal system whose main system is the continental European system because Indonesia consists of various ethnicities, races, groups, religions, and cultures regardless of the existence of the Concordance Principle (a principle which underlies the enactment of European law or Dutch law at that time to also applied to groups in the Dutch East Indies (Indonesia at that time (Siallagan, 2016).

One of the opinions of state administration expert Jimmy Z Usufan thinks that: "The concept of the Omnibus Law can be applied in Indonesia which adheres to the Civil Law System, he also believes that the problem of conflict between government administrators, when they want to make innovations or policies which then conflict with laws and regulations. So the concept of the Omnibus Law is one way out that the government might take. But the Omnibus law must be carried out at the level of the law. Even though Indonesia adheres to a civil law system, Jimmy believes this concept can be used by the government to overcome two things." (Siallagan, 2016)

Conflict of Legal Norms as the basis for the planning of the Omnibus Law is not the only objective reason for the government to apply this concept, more than that the government needs to study theologically, philosophically and from a juridical aspect to maintain the values of justice in society. One of the significant efforts that can be carried out by the government at this time is to codify each material content or substance of the contents of the Law which are contradictory to each other.

## CONCLUSION

The process of forming an Omnibus law is carried out in the same way as the formation of laws in general. In Article 1 number 1 of Law 12 of 2011 what is meant by the Formation of Legislation is the making of Legislation which includes the stages of planning, drafting, discussing, validating, or stipulating, and enacting. In the hierarchy/order of laws and regulations in Indonesia as stipulated in Law Number 12 of 2011 concerning the Establishment of Legislation, the concept of the Omnibus Law has not been included as one of the principles in the sources of law. However, the harmonization of laws and regulations in Indonesia is continuously carried out to minimize conflicts between laws and regulations. The Indonesian legal system, which adheres to the Civil Law system, is one of the reasons why the Omnibus Law concept is not yet known.

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