

## IMPLEMENTATION OF OMNIBUS MODEL REGULATIONS IN THE ESTABLISHMENT OF REGIONAL REGULATIONS

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<b>Keywords</b>	Abstract. Currently, the formation of laws and regulations using the omnibus method has been accommodated in the system of laws and regulations in Indonesia. The problem is how to apply it to regional regulations? This research is legal research (legal research) with a typology of normative legal research or doctrinal research that aims to produce arguments, theories, or new concepts for solving the problems to be studied. The results of the study concluded that the application of the omnibus model regulation in the formation of regional regulations can be carried out on the substance of the contents of regional regulations whose formation provisions are based on the implementation of laws formed using the omnibus law method. In addition, the application of the omnibus model regulations in the formation of Regional Regulations are intended to solve various problems in the formation of the Regional Regulations themselves, mainly with regard to the increasing number and inconsistent and harmonious contents.
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### 1. INTRODUCTION

The 1945 Constitution (UUD 1945) states in Article 1 paragraph (3) that "Indonesia is a country based on law." Therefore, all state administration must be based on law. In this view, what actually becomes the highest command in administering the state is the law itself, with the principle of rule of law, and not of man in the context of *nomocracy* or power exercised by law. Indonesia as a rule of law country which is closer to the term *rechtstaats* based on historicity and philosophy is included in the category of countries adhering to the civil law system or Continental Europe which has implications for the dominance of the state in the executive and legislative sense in forming various regulations that are made, both at the level of laws, government regulations, ministerial regulations and regional regulations. These various types of regulations were formed as an effort to create order and legal certainty in a country, so that the basis for running the administration of the state, society, legal entities, or a business can have a legal basis or umbrella.

During the second term of President Joko Widodo's administration, one of the government's focuses in the field of law was to simplify various regulations and carry out several deregulations. The regulation simplification strategy is currently carried out using the Omnibus Law model. Conceptually, the term omnibus comes from *omni* (Latin) and *bus* (English). This word was originally used in France in 1828 to mean a long horse-drawn vehicle that carried people along the main streets of Paris.

Then the term omnibus was also used in the United States and Canada, but with the meaning "for all" or "covers all", namely a new law formed to accommodate and regulate material provisions originating from several laws at once. From these words and meanings, the terms omnibus law and omnibus bill are recognized. The omnibus bill is a draft omnibus law, that when mutually agreed upon and ratified, turns into an omnibus law. After approval and ratification, which means it has become a law, the term omnibus law itself is not important or necessary, because its status has become looks like a law in general. This shows that the omnibus law is actually just a method or technique for forming laws, in this case a method or technique for forming or amending several existing and previously applicable laws.

The concept of omnibus law developed in common law countries with the Anglo Saxon legal system, such as the United States, Belgium, England, and Canada. The concept of the omnibus law offers to fix problems caused by too many regulations (over regulation) and overlapping. If the problem

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is solved in the usual way, it will take quite a long time and cost a lot. Not to mention that the process of designing and formulating laws and regulations often creates deadlocks or is not in accordance with interests.

The use of the omnibus law model is different from previous legal models known in Indonesia, such as the Basic Law, Organic Law, Umbrella Law and Codification, or Legal Unification and Compilation of Laws. The omnibus law model in question is a law made to unify major issues or accommodate various legal aspects that might repeal or amend several laws at once, so that it becomes simpler. One example of forming regulations in Indonesia that uses the omnibus method is Law Number 11 of 2020 concerning Job Creation (Job Creation Law), which since December 30

2022 has been revoked by Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (Perppu on Job Creation) as a follow-up to abolish the conditional unconstitutional status of the Job Creation Law as stated in the previous Constitutional Court decision Number 91/PUUXVIII/2020, and then on March 31 2023, Perppu No.2 of 2022 was accepted, approved by the DPR, stipulated and promulgated in Law No. 6 of 2023, the Perppu has become law (UU) concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to become Law.

Currently, the formation of laws and regulations using the omnibus method has been regulated in Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning Formation of Legislation. Based on this law, the use of the omnibus method meets certain standard and standardized methods, and methods in the preparation of laws, and regulations.

Based on the problems mentioned above, the author will discuss about how the position of the omnibus law in the system of laws and regulations in Indonesia more comprehensively. The second formulation is how is the application of the omnibus model regulation in the formation of regional regulations?

## 2. METHOD

This research is legal research with a typology of normative legal research or doctrinal research. The reason researchers use normative legal research is to produce arguments, theories, or new concepts for solving problems regarding the application of omnibus model regulations in the formation of regional regulations.

The approach method used is a statute approach and a conceptual approach, carried out by examining all relevant laws and regulations as well as discussing and analyzing concepts, theories, and doctrines that discuss issues. With regard to this approach, the research was carried out in two stages, i.e., library research and field research which was only supportive. The data analysis used was qualitative juridical analysis, i.e., the data obtained both in the form of secondary and primary data were analyzed without using statistical formulas. However, this is done through a process of hermeneutical interpretation.

## 3. RESULTS AND DISCUSSION

### A. The Position of the Omnibus Law in the Legislation System in Indonesia

The rule of law principle adopted in Indonesia is the Pancasila Law State, which is a type of modern rule of law state in which the function of laws and regulations is not only to give shape to the deposit of values and norms that live in society. Besides that, not only to merely be function of the state in the field of regulation, but also legislation is one of the powerful methods and instruments available to regulate and direct people's lives towards the ideals expected.

In order to meet the public's need for good laws and regulations, it is necessary to make regulations regarding the formation of laws and regulations which are carried out in a definite standard and standardized way and method that binds all institutions authorized to form laws and regulations. On this matter, the government has issued Law Number 12 of 2011 concerning the Formation of Legislation which is an improvement to Law Number 10 of 2004 concerning the

Formation of Legislation which was previously in effect. In Article 1 point 2 of Law Number 12 of 2011 concerning Formation of Legislation, it is explained that what is meant by "Legislation" is

written regulations that contain legally binding norms in general and are formed or stipulated by state institutions or authorized officials through the procedures stipulated in the Laws and Regulations.

In general, Law Number 12 of 2011 contains the main materials, which are systematically arranged as follows: Principles for Forming Legislation; Type, Hierarchy, and Content Material of Legislation; Planning of Laws and Regulations; Preparation of Legislation; Engineering for Drafting Legislation; Discussion and Ratification of the Draft Law; Discussion and Stipulation of Draft

Provincial Regulations and Draft Regency/City Regional Regulations; Promulgation of Legislation; Dissemination; Community Participation in Forming Legislation; and other provisions containing the formation of a Presidential Decree and other state and government institutions.

Each stage of the formation of laws and regulations, starting from planning, drafting, discussing, validating and stipulating, as well as promulgation, is steps that basically must be taken in the formation of laws and regulations. However, these stages are certainly carried out in accordance with the needs or conditions, as well as the types and hierarchies of laws and regulations. In Article 7 paragraph (1) of Law Number 12 of 2011, it is determined that the Types and Hierarchy of Legislation consists of:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Laws/Government Regulations in Lieu of Laws;
- d. Government Regulations;
- e. Presidential Regulation;
- f. Provincial Regulations; And
- g. Regency/City Regional Regulations.

In addition, based on the provisions of Article 8 paragraph (1) of Law Number 12 of 2011, that includes the Types of Legislation, namely regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Financial Auditor, the Judicial Commission, Bank Indonesia, minister, body, institution, or commission at the same level established by law or the government by order of law, Provincial People's Legislative Council, Governor, Regency/City Regional People's Legislative Council, Regent /Mayor, Village Head or equivalent.

Looking at the current legal and political conditions in Indonesia, it shows that the use of the omnibus law method has been adopted or accommodated in the system of laws and regulations in Indonesia, namely since the issuance of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Regulations. Legislation. The enactment of this law is a follow-up to the Constitutional Court Decision Number 91/PUU-XVIII/2020 for a formal review of Law Number 11 of 2020 concerning Job Creation, because the technique of its preparation used the omnibus law method which at that time had not yet been regulated in Law Number 12 of 2011. Thus, the recent use of the omnibus method meets the standards for the preparation of laws and regulations in Indonesia.

The basis for using the omnibus method in drafting laws and regulations is contained in the provisions of Article 64 paragraph (1a-b) and Article 42A of Law Number 13 of 2022. Based on Article 64, paragraph (1a) of Law Number 13 of 2022 it is stated that "Compilation The Draft Legislation as referred to in paragraph (1) may use the omnibus method." It should be noted that, based on Article 64 paragraph (1a), the omnibus law is only a method of "compiling" statutory regulations. This means that the omnibus law method is only related to the preparation of statutory regulations, not the formation of statutory regulations, because the preparation is part of the formation of statutory regulations, which includes the stages of planning, drafting, discussing, validating or stipulating, and enactment. Thus, the position of the omnibus law in the system of laws and regulations in Indonesia is only as a method of drafting laws and regulations.

Based on Article 64 paragraph (1b) of Law Number 13 of 2022, it states that stating the conditions for preparation using the omnibus method include:

1. Loading new payload material;
2. Changing content material that has legal relevance and/or requirements regulated in various laws and regulations of the same type and hierarchy; and/or

### 3. Revoking laws and regulations of the same type and hierarchy.

Furthermore, based on Article 42A of Law Number 13 of 2022, it states that "The use of the omnibus method in preparing a Draft Legislation must be stipulated in the planning document." As for what is meant by "planning documents" include the National Legislation Program, programs for drafting Government Regulations, programs for drafting Presidential Regulations, Provincial Prolegda, and Regency/City Prolegda. Therefore, in the future, the drafting of regulations using the omnibus method must first be contained in planning documents at every level of government, both central and regional.

With the publication of the omnibus method in Law Number 13 of 2022, it is considered good to be applied in the Indonesian legal system as an effort to simplify and integrate the substance of statutory regulations that are interrelated, have the potential to cause overlap, and provide legal uncertainty. Legislation that uses the omnibus method reflects an integration of regulations with the ultimate aim of streamlining the implementation of regulations for the benefit of (zweckmassigkeit).

#### **B. Application of Omnibus Model Regulations in Forming Regional Regulations**

As the omnibus law method has been adopted or accommodated in the system of laws and regulations in Indonesia, efforts to follow the omnibus method in the formation of other regulations also need to be considered, including in the preparation of regional regulations. Considering that a large number of regulations is even called obesity, it will hamper the acceleration of development and improvement of public services, resulting in long bureaucracy, regulations that are not harmonious, out of sync, and overlapping., then the pattern of simplification of regulations in the regions becomes very important to follow. In addition to answering these problems, the use of the omnibus law method in structuring regional regulations is also urgent to carry out government affairs in the framework of realizing people's welfare.

Constitutionally, the authority of the regions to form Regional Regulations in the framework of administering regional government is regulated in Article 18 paragraph (2) of the 1945 Constitution that states "Provincial, Regency and Municipal Governments regulate and manage their own government affairs according to the principle of autonomy and co-administration." Then in the provisions of Article 18 paragraph (6) of the 1945 Constitution it is again emphasized regarding the authority of the regions in forming the Regional Regulation that states "The Regional Government has the right to stipulate Regional Regulation and other regulations to carry out autonomy and coadministration tasks."

In general, the formation of Regional Regulation is based on 3 (three) things. First, the Regional Regulations are formed on the basis of statutory orders. Second, the Regional Regulations are formed in order to further elaborate the provisions of the law. Third, the Regional Regulations are formed on the implementation of regional autonomy or regional needs. These three things became the basis for the formation of Regional Regulations as stipulated in Law Number 12 of 2011 concerning the Formation of Legislation as amended several times, most recently by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning Formation Legislation.

Like the function of every legal instrument, the Regional Regulations also have functions, namely as legal instruments in carrying out regional autonomy, as implementing regulations of laws, as regulations and containers for regional specificities, and as development instruments in improving the welfare of the people in the regions. Based on the provisions of Article 7 of Law Number 12 of 2011, the Regional Regulations are a type of regulation that is at the lowest level in the hierarchical system of laws and regulations, thus making the scope of material content quite large, but the flexibility is limited because they must be in line and in accordance with statutory provisions invitation on them.

The position of the region as a legal territory in the context of the unitary state of the Republic of Indonesia. Therefore, it is necessary to have legal products that are also in line with the laws above it in order to carry out regional autonomy. It cannot be ruled out that Regional Regulations are an important instrument in the management and arrangement of local government in terms of regulating every line and sector that is the authority of the local government.

Regional Regulations provide strong legal authority for regional governments to act within the

framework of administering regional government in order to achieve the goal of people's welfare. Therefore, the substance of regional regulations is important, considering that the position of regional regulations in the administration of regional government is also very important and strategic. In an effort to present regional regulations that are harmonious and aligned within the framework of the legal system of laws and regulations in Indonesia, it is necessary to apply the omnibus law method, which is seen as capable of presenting effectiveness and efficiency in the formation of regional regulations.

Based on the provisions of Article 64, paragraph (1a) of Law Number 13 of 2022, it states that "The preparation of Draft Legislation can use the omnibus method." This means that currently all laws and regulations in Indonesia, including regional regulations, can use the omnibus method. However, in several conditions for drafting Regional Regulations using the omnibus method, i.e., as stipulated in Article 64 paragraph (1b) of Law Number 13 of 2022, that the requirements for drafting using the omnibus method include:

- a. Loading new payload 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. Revoking laws and regulations of the same type and hierarchy.

From the several conditions above, the preparation of Regional Regulations using the omnibus method must contain new norm content, contain changes to norm material, and contain repeal of Regional Regulations of the same level. Furthermore, based on Article 42A of Law Number 13 of 2022 that "The use of the omnibus method in preparing a Draft Legislation must be stipulated in the planning document." Therefore, the formulation of Regional Regulations using the omnibus method must first be determined in Prolegda/Propemperda.

#### 4. CONCLUSION

The position of the omnibus law in the system of laws and regulations in Indonesia is only as a method of drafting laws and regulations. This means that the omnibus law method is only related to the preparation of statutory regulations, not the formation of statutory regulations, because the preparation is part of the formation of statutory regulations, which includes the stages of planning, drafting, discussing, validating or stipulating, and enactment.

The application of the omnibus model regulations in the formation of Regional Regulations can be carried out on the substance of the content material of Regional Regulations whose formation provisions are based on the implementation of laws formed using the omnibus law method. In addition, the application of the omnibus model regulations in the formation of Regional Regulations is intended to solve various problems in the formation of the Regional Regulations themselves, especially with regard to their increasing number and inconsistent and harmonious contents. The drafting of Regional Regulations using the omnibus method must contain new norm content, contain changes to norm material, and contain revocations of regional regulations of the same level. In addition, it must be determined in advance in the Prolegda/Propemperda.

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