



THE NATURE AND URGENCY OF THE OMNIBUS METHOD REGULATION IN LAW NUMBER 13 OF 2022

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Abstract:

The omnibus concept is intended to offer a solution to problems caused by too many regulations (over regulation) and frequent overlapping between regulations (overlapping). Both of these problems are not easy to solve in the usual way, because it will take a long time and a lot of money. In order to overcome these problems, the omnibus method is considered one of the responsive and progressive methods in solving the problems of over regulation and overlapping in Indonesia. The implementation of this research applies normative legal methods. There are several factors that cause too many regulations to be born in our country. First, many people think that every legal problem can be resolved by forming a regulation. Second, every examiner in carrying out their duties and functions always questions the existence or absence of regulations that serve as a legal umbrella or as a basis. Third, in determining the budget, the Ministry of Finance also often passes or does not pass the budget of ministries/institutions based on the existence or absence of regulations as a legal umbrella. The nature and urgency of the omnibus method regulation in Law 13 of 2022 concerning the Second Amendment to Law 12 of 2011 concerning the Formation of Legislation (PPP Law), when viewed with Aristotle's approach that the essence of law exists because of causality, the omnibus method regulation in the PPP Law is more inclined to be caused by the existence of a goal (causa finalis).

Keywords:

omnibus method, justice, regulation

1. Introduction

The omnibus concept is intended to offer a solution to problems caused by too many regulations (over regulation) and frequent overlapping between regulations (overlapping). Both of these problems are not easy to solve in the usual way, because it will take a long time and a lot of money. In order to overcome these problems, the omnibus method is considered one of the responsive and progressive methods in solving the problems of over regulation and overlapping in Indonesia.[1]

In the book "Omnibus Law, Discourse on Its Application in the National Legislative System", it is explained that omnibus is a regulatory formulation technique that has the following characteristics: 1) Multi-sector or consists of many sector contents with the same theme; 2) Consists of many articles, due to the many sectors covered; 3) Consists of many laws and regulations collected in one new law and regulation; 4) Independent or stands alone, without being bound or at least bound by other regulations; 5) Negates/revokes some and/or all other regulations.[2]

The application of omnibus in the formation of legislation in Indonesia, at least until now there have been 3 legal products at the level of Laws that have been formed using the omnibus method, namely, (1) Law Number 6 of 2023 concerning the Stipulation Perppu Number 2 in 2022 concerning Job Creation into a Law that has been ratified and comes into effect on March 31, 2023, (2) Law Number 7 of 2021 concerning Harmonization of Tax Regulations

which has been ratified and comes into effect on October 29, 2021, (3) Draft Law on Health which was just approved on July 11, 2023. [3]

In Indonesia, omnibus still reaps pros and cons among academics both conceptually and theoretically. This can be seen when the omnibus was first implemented in the formation of the Job Creation Law in 2020, several academics criticized that this method did not yet have a clear legal umbrella, because constitutionally there were no regulations that accommodated omnibus, even in Law Number 12 of 2011 concerning the Formation of Legislation (P3) it has not been regulated. Historically, Law Number 11 of 2020 concerning Job Creation which uses the omnibus method, has been ruled by the Constitutional Court to be contrary the Constitution and stated that Job Creation Law was conditionally unconstitutional.

The first time the omnibus method was implemented in the formation of Legislation in the period 2020 to 2022, there was still the problem of a legal vacuum (*rechtvacuum*). Because as previously stated, as a country that adheres to the civil law system, of course all actions of the organizers must be based on applicable law and have legal certainty. In terms of overcoming the existence of *rechtvacuum* and responding to this criticism, in 2022 the government and the Indonesian House of Representatives finally formed and ratified Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation (P3).

2. Research Method

The implementation of this research applies normative legal methods.

3. Discussion

The Nature and Urgency of Omnibus Method Regulation in Law Number 13 of 2022

Talking about the essence, citing the expression of Ristotle who argued that the essence in law exists because of causality, namely from a cause in the form of material (*causa materialis*), from a cause in the form of form (*causa formalis*), from a cause in the form of a maker (*causa efficient*), and from a cause in the form of a goal (*causa finalis*). Meanwhile, J.J.H. Bruggink has the view that essence of law is language. Bruggink views it this way because what allows law to exist and can be understood with several definitions is language. By causal definition, namely that law exists by the ruler. Functional definition, namely the essence of law is function. Phenological definition, namely the essence of law is agreement. Synonymous definition, namely the essence of law is regulation. Etymological definition, namely law comes from the Arabic "*al hukma*" which means regulation. Connotative definition, namely the essence of law lies in its nature.

Various legal ideologies that express their opinions on the essence of law, the meaning of essence is still the existence of law. Legal Content, The main problem in the essence of law is to find out what the contents of the law are. As the basis for the essence of law is the existence of law, the existence of law can be seen through the optical means in the law, namely what is the content of the law.[4]

The nature of the omnibus method regulation in Law 13 of 2022 concerning the Second Amendment to Law 12 of 2011 concerning the Formation of Legislation (PPP Law), if viewed with Aristotle's approach that the essence of law exists because of causality, the omnibus method regulation in the PPP Law is more inclined to be caused by the existence of a goal (*causa finalis*). This can be traced based on the history of the emergence of the omnibus method regulation in the Second Amendment to the PPP Law in essence *causa finalis*, namely as follows;

- a) aims to fill the legal vacuum (*rechtvacuum*), because there are no regulations that form the basis for using the omnibus method in Indonesia;
- b) aims to overcome the problems of hyper regulation and overlapping as well as disharmony of laws and regulations in Indonesia;
- c) aims to carry out the mandate of Constitutional Court Decision No. 91/PUU-XVIII/2020 case reviewing the Job Creation Law;

Based on the explanation of the nature of the final cause of the omnibus method regulation in

There are several factors that cause too many regulations to be born in our country. First, many people think that every legal problem can be resolved by forming a regulation. Second, every examiner in carrying out their duties and functions always questions the existence or absence of regulations that serve as a legal umbrella or as a basis. Third, in determining the budget, the Ministry of Finance also often passes or does not pass the budget of ministries/institutions based on the existence or absence of regulations as a legal umbrella.[5]

In addition to these factors, there are several other fundamental problems, first, the lack of synchronization of planning of laws and regulations, both at the central and regional levels with development planning and policies. Second, there is a tendency for laws and regulations to deviate from the content of the material that should be regulated. Third, non-compliance with the content of the material gives rise to the problem of "hyper-regulation". Fourth, the effectiveness of laws and regulations is also often a problem that arises during implementation. The situation is exacerbated by the absence of monitoring and evaluation procedures for laws and regulations and the absence of a special institution that handles all aspects of the law and regulation system. Therefore, the omnibus method is used with the aim of synchronizing several laws and regulations which can reduce overlapping laws and regulations.[6]

Based on historical research into the nature of the omnibus method in Indonesia, it turns out that Indonesia has implemented it in the formation of legislation. However, at that time it was not yet known or referred to as an omnibus law, where at that time the People's Consultative Assembly issued Decree of the MPR RI Number I / MPR / 2003 concerning the Review of the Material and Legal Status of the Temporary MPR Decree and the MPR RI Decree from 1960 to 2002. Then, this method was also applied in Law Number 7 of 2017 concerning Elections which basically united and revised 6 (six) laws. The six laws that were united and revised were Law No. 32 of 2004, Law No. 8 of 2005, Law No. 12 of 2008, Law No. 42 of 2008, Law No. 15 of 2011, and Law No. 8 of 2012. Long before, the omnibus law had also been practiced by Indonesia in simplifying 7,000 (seven thousand) regulations left by the Dutch into 400 (four hundred) regulations at that time.

Then we enter into the extent of the urgency of implementing the omnibus law in resolving the problem of forming regulations in Indonesia. The formation of laws should lead to the essence of law (law truth). This means that the formation of laws is a way to advance and protect certain interests or prioritize one interest over another. National development is influenced by regulation as an important element. Legislation also plays a role as the goal of development itself. This is because regulations are the basis for legality and legitimacy for government officials to carry out their duties. However, the regulatory formation system in Indonesia is still far from perfect.

Indonesia's regulatory problems need to be resolved immediately by seeking effective and efficient legal channels as a progressive legal step that still guarantees the realization of justice, benefits and order as well as welfare for the Indonesian people. Therefore, the omnibus method has the urgency needed to be practiced in Indonesia in order to resolve regulatory problems from overlapping and disharmony so that regulations in Indonesia do not experience high obesity again. [7]

The essence of the legal content of the omnibus method regulation in the Second Amendment to the PPP Law which specifically discusses the omnibus method and new norms regarding community participation and the regulation of improvements after mutual agreement which is the effect of the omnibus method, can be found in Article 42A, Article 64, Article 72, Article 73, and Article 96 of the PPP Law. The following is an explanation of the substance of the regulation and the legal essence regarding the omnibus method, improvements after mutual agreement and community participation:

Article 42 A states that "The use of the omnibus method in preparing a Draft Legislation must be stipulated in the planning document."

Based on the provisions above, what is meant by "planning documents" include Prolegnas, Government Regulation drafting program, Presidential Regulation drafting program, Provincial Prolegda, and Regency / City Prolegda. We can understand that the use of the omnibus method can be used in the 'formation of legislation' of any type, meaning that all types of legislation can use the omnibus method in their formation, starting from the 1945 Constitution to the lowest regulations, namely Village Regulations (Perdes) as regulated in Article 7 and Article 8 of the PPP Law concerning the types and hierarchy of legislation. It can be understood that the provisions in Article 42A of the Second Amendment to the PPP Law do not provide limitations on the use of the omnibus method for the types of legislation in Indonesia, so that it is universal and can be used in forming any regulation (not only limited to laws).

Then the provisions of Article 64 paragraph (1a) of the Second Amendment to the PPP Law read, "The preparation of Draft Legislation as referred to in paragraph (l) may use the omnibus method." Furthermore, Article 64 paragraph (1b) states, "The omnibus method as referred to in paragraph (1a) is a method of preparing Legislation by: a.) containing new content material; b.) changing content material that has a legal relevance and/or need regulated in various Legislation of the same type and hierarchy; and/or c.) revoking Legislation of the same type and hierarchy, by combining them into one Legislation to achieve certain objectives."

Based on the provisions above, it further confirms that the use of the omnibus method can be applied in forming all types of laws and regulations in Indonesia. Even examining the provisions of Article 64 paragraph (1b), the regulation is also universal because we can understand that in the provision there is no explanation either in the provisions of the Article or the explanatory provisions of the Article of the Law which provide an explanation of what kind of content material can be considered the same or still similar, so that it can be combined using the omnibus method? This provision actually still contains unclear norms, so it can be said that the provision does not comply with the principle of clarity formulation.[8]

Furthermore, the provisions in Article 72 paragraph (1a) and (1b) fully state that; (1a) In the event that the Draft Law that has been jointly approved by the DPR and the President as referred to in paragraph (1) still contains technical errors in writing, corrections must be made by the leadership of the DPR supporting apparatus discussing the Draft Law and the Government represented by the ministry discussing the Draft Law. (1b) The results of the corrections as referred to in paragraph (1a) must obtain approval from the leadership of the DPR supporting apparatus discussing the Draft Law and the representative of the Government discussing the Draft Law.

Based on the provisions above, it can be said that after the joint approval of a draft law there is still an opportunity to make corrections to any errors, with the note that the error is a technical error in writing. The meaning of the phrase 'technical error in writing' includes incomplete letters, incorrect references to articles or verses, typos, and/or inappropriate titles or serial numbers of chapters, sections, paragraphs, articles, verses, or points, which are not substantial.

Furthermore, Article 73 paragraph (1) states that; "In the event that the Draft Law that has been submitted by the DPR leadership to the President as referred to in Article 72 still contains technical errors in writing, the ministry that organizes government affairs in the field of state secretariat together with the ministry discussing the Draft Law will make improvements by involving the leadership of the DPR supporting apparatus discussing the Draft Law."

The essence of the substance of Article 96 of the Second Amendment to the PPP Law basically regulates to open up space for more meaningful public participation in the process of forming laws and regulations. However, there are still so many weaknesses contained in this provision as stated at the beginning of the discussion of the provisions regarding public participation only limited to talking about public rights and have not regulated the obligations of the former to implement so that meaningful public participation can be carried out. This is in line with Ann Seidman's opinion, which states that "a right will not be fulfilled or can be implemented if the person who has the obligation does not do so."

On the one hand, actually speaking about public participation before the Second Amendment to the PPP Law was passed, there were already regulations governing public participation, namely Presidential Regulation Number 87 of 2014 concerning the Implementing Regulations of Law Number 12 of 2011 concerning the Formation of Legislation as amended by Presidential Regulation Number 76 of 2021 concerning Amendments to Presidential Regulation Number 87 of 2014 concerning the Implementing Regulations of Law Number 12 of 2011 concerning the Formation of Legislation. The provisions are regulated in Article 188 of Presidential Regulation 87 of 2014, which in substance states that "The public has the right to provide input verbally and/or in writing in the Formation of Legislation by means of public consultation." Furthermore, Article 188 paragraph (3) states "the procedures for implementing public consultation are regulated by the Ministerial Regulation."

4. Conclusion

The nature and urgency of the omnibus method regulation in Law 13 of 2022 concerning the Second Amendment to Law 12 of 2011 concerning the Formation of Legislation (PPP Law), when viewed with Aristotle's approach that the essence of law exists because of causality, the omnibus method regulation in the PPP Law is more inclined to be caused by the existence of a goal (*causa finalis*).

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