



THE USE OF OMNIBUS METHOD BY FORMATION OF LOCAL REGULATIONS IN INDONESIA

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Abstract:

The implementation of good governance, innovation in public sector is often done on an ad hoc basis, for example in response to new programs, budget disbursements, or requests to improve the quality of public services to be better delivered by the government. The alternative is to create a governance model that supports strategic management innovation, where innovation becomes an ongoing strategy to address efficiency goals and simplification of procedures across the public sector. The underlying philosophy is to develop an organization's ability to systematically improve the output of services provided to the public. Legal research in this study uses normative research. The omnibus method is appropriate, meets the requirements and is urgent to be used in the formation of Regional Regulations, which philosophically will provide benefits and legal certainty through the arrangement and consolidation of regulations. Theoretically, omnibus is an alternative method in order to improve and simplify regional regulations because it can change, revoke and form several regional regulations into one regional regulation.

Keywords:

Local regulations; Omnibus; Regional regulations

1. Introduction

The implementation of good governance, innovation in public sector is often done on an ad hoc basis, for example in response to new programs, budget disbursements, or requests to improve the quality of public services to be better delivered by the government. The alternative is to create a governance model that supports strategic management innovation, where innovation becomes an ongoing strategy to address efficiency goals and simplification of procedures across the public sector. The underlying philosophy is to develop an organization's ability to systematically improve the output of services provided to the public.[1]

This has been realized by the Indonesian government, hence the drafting of the Job Creation Law against the backdrop of a unanimous determination as stated in the following Academic Paper of the Draft Job Creation Law:

Based on Indonesia's Vision 2045, Indonesia intends to become a top 5 (five) world economic power by becoming a high-income country by 2040. Therefore, in the National Medium-Term Development Plan (RPJMN) document of the National Development Planning Agency (Bappenas) for 2020-2024, the Government has targeted economic growth that grows at an average of 6 (six) percent in 5 (five) years and Gross Domestic Product (GDP) growth per capita of 4 (four) +/- 1 (one) percent. In the long term, the economic transformation carried out in 2020-2024 will make Indonesia get out of the Middle Income Trap (MIT) in 2036. With an average economic growth of 5.7 (five

point seven) percent and real GDP growth per capita of 5 (five) percent, in 2045 Indonesia is predicted to become a developed country with a sustainable economy, a poverty rate close to 0 (zero) percent, and a qualified workforce.[2] For this reason, Omnibus as a concept of the formation of laws and regulations can be used as a solution and answer to problems in the formation of laws and regulations in Indonesia, including the formation of regional regulations. Initially, the discussion was still using the diction of Omnibus Law which became a topic of discussion among academics, legal observers and observers as well as the public, when the Government proposed the idea of applying the Omnibus concept in the formation of laws and regulations in Indonesia. After President Joko Widodo conveyed it in the official forum of the People's Consultative Assembly (MPR) during his inauguration as President of the Republic of Indonesia, on October 20, 2019, the idea was followed up by the Government by proposing the Job Creation Draft Law, which later became the Job Creation Law, namely Law Number 11 of 2020 after the DPR in a plenary meeting on October 5, 2020 approved the Job Creation Draft Law to be enacted into law.

Omnibus has again become a concern and material for legal studies, after the Constitutional Court's decision Number 91/PUU-XVIII/2020 on November 25, 2021 which stated in its decision, among others:

-Declare that the formation of Law Number 11 of 2020 concerning Job Creation is contrary to the 1945 Constitution and does not have conditional binding legal force as long as it is not interpreted as "no improvements are made within 2 (two) years since this decision was pronounced".

-Declares that Law Number 11 of 2020 concerning Job Creation remains in effect until improvements are made to the formation in accordance with the time limit as determined in this decision.

In general, the situation in Indonesia has experienced what is called hyper regulation which makes the rule of law tend to experience disharmony of legal products. According to the Regulatory Quality Index issued by the World Bank, Indonesia's position during 1967-2017 was always ranked 92 out of 193 countries. Hyper regulation is a problem inherent in the rule of law (*rechtsstaat*), because the state loves to make written rules. The same thing also happens in Regional Regulations. It is inseparable from the problem of disharmony and overlap between Regional Regulations.[3]

The application of the omnibus method in the preparation of regional regulations has become a necessity to form good regional regulations, harmonious both vertically and horizontally, supporting the climate of ease of doing business in the region and the substance can be applied. However, until now there has been no specific regulation that can be used as a basis and as an option for the Regional Government to apply the omnibus concept in the formation of regional regulations, although Law Number 13 of 2022 concerning the second amendment to Law Number 12 of 2011 has adopted the omnibus method in the provisions of Article 164, but has not provided an affirmation that this method can be applied as an option for the Regional Government as well as how the mechanism and procedures and procedures are. Likewise, Presidential Regulation Number 87 of 2014 as amended by Presidential Regulation Number 76 of 2021 concerning Implementation of the Formation of Legislation and Minister of Home Affairs Regulation Number 80 of 2015 as amended by Minister of Home Affairs Regulation Number 120 of 2018 concerning the Formation of Regional Legal Products, have not followed up on the provisions of Article 64 of Law Number 13 of 2022. So that what is called a normative vacuum occurs and/or at least the existence of vague norms. The problem taken is the urgency of using the omnibus method in the formation of Regional Regulations in Indonesia and the reconstruction of the Omnibus method regulations in the preparation of Regional Regulations in Indonesia.

2. Research Method

Legal research in this study uses normative research.[4]

3. Results Analysis

3.1. Omnibus Method and Consolidation of Regional Regulations

The omnibus method is a method of forming legislation that combines various provisions from several regulations into one regulation. One of the latest developments in Indonesia is that it has implemented the omnibus method in the formation of one type of legislation, namely Law Number 11 of 2020 which is now Law Number 6 of 2023 concerning Job Creation. Furthermore, there has been a discourse to use this method in the preparation of other laws that are considered urgent to be formed using the omnibus method. The law governing the formation of legislation has also been adjusted after the Constitutional Court Decision Number 91/PUU-XVIII/2020 which

stated that the Job Creation Law which uses the omnibus method in its preparation is conditionally unconstitutional. Now the omnibus method has been included in the provisions of Article 64, especially paragraph 1b of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation which states that the omnibus method is a method of preparing legislation by: a. containing new content, b. changing the content of the material that has a legal relevance and/or need that is 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, by combining them into one Law and Regulation to achieve a certain objective.[5]

The use of the omnibus method now has a legal basis, so there must be an effort so that this method is not only used at the level of the Law. Various types of laws and regulations whose legality is recognized in the Law on the Formation of Legislation also need attention to be sorted according to their level of urgency so that in their preparation they use the omnibus method with the hope that the desired goals can be achieved more quickly. Omnibus is said to be a consolidation rule because the omnibus method regulates the contents of many things (objects) and also contains many legal norms in one rule. Omnibus is a form of consolidation of conflicts between sectoral interests, with the compromise outlined in the legal rules in the form of omnibus, legal uncertainty due to overlapping regulations will end.[6]

The meaning of consolidation that needs to be carried out on Regional Regulations includes 2 (two) steps so that the existence of Regional Regulations as one type of legal regulation that is recognized and has legality in the legal regulatory system in Indonesia, namely: 1. Consolidation of Regional Regulations with higher legal regulations, 2. Consolidation of Regional Regulations with other Regional Regulations.

3.2. The Urgency of Using the Omnibus Method in the Formation of Regional Regulations

As the welfare state theory, the state or government has an obligation and responsibility for the welfare of its people. Namely, realizing general welfare for its citizens. The government intervenes in all aspects of its citizens' lives. The method is through policies that guarantee a better and more prosperous life for its citizens. The implementation is that the state organizes public services that can be enjoyed by the entire community. One important element in organizing public services is the existence of adequate regulations to provide legal certainty to the community.[7]

Indonesia is a unitary state in which the implementation of its government has the principle of decentralization for regions to carry out government affairs that are within their authority. To support this right, regions are given the authority to form regional regulations, one of the purposes of which is to carry out decentralization and assistance tasks. Regional regulations are recognized as one type of statutory regulation as is the constitution and its derivative statutory regulations. Therefore, regional regulations as a source of law in the region must be ensured to provide legal certainty, benefits and justice for all, both state administrators and the community.[8]

Regulations at all levels, including regional regulations, must have a positive impact on efforts to improve community welfare. Therefore, in the context of regional regulations, they must be prepared in accordance with regional needs and in the process of their formation according to the mechanisms, procedures and methods of their formation based on applicable laws and regulations. The omnibus method as an effort to improve the formation of laws and regulations in Indonesia, is urgently needed to be applied in the process of forming legal products in the regions.

The omnibus method is a method of forming legislation that combines various provisions from several regulations into one regulation. One of the latest developments in Indonesia is that it has implemented the omnibus method in the formation of one type of legislation, namely Law Number 11 of 2020 which is now Law Number 6 of 2023 concerning Job Creation. Furthermore, this method is also used in the preparation of other laws that are considered urgent to be formed using the omnibus method.

3.3. Reconstruction of the Rules on the Omnibus Method

Reconstruction of legal norm regulation means restructuring or updating existing legal regulations. This can include changes or revisions, additions or deletions of legal provisions to suit the needs of society or developments in the era. Reconstruction can include changes in the substance of norms, for example expanding or narrowing the scope of the rules or adding new provisions. Reconstruction to review, improve and adjust to social developments, technology or changes in community values.

Efforts to adopt the Omnibus method in the system of forming Regional Regulations in Indonesia since the beginning have had very open opportunities, but these opportunities must be accompanied by the ability to answer

the challenges that arise. There are at least 6 (six) major challenges to the adoption of Omnibus in the formation of Regional Regulations in Indonesia, namely:

- 1)Indonesia's complex regulatory problems are not only a matter of technique or method of drafting Regional Regulations;
- 2)Each statutory regulation whose provisions are changed by the Omnibus Law has its own philosophical basis;
- 3)The principle of constitutional supremacy has set limits on the authority to regulate each type of legislation;
- 4)Legal uncertainty due to the dominance of sectoral egos among state administrators;
- 5)Parameters determine when a material must be with Omnibus and when with regular legislation; and
- 6)Public participation in the formation of Regional Regulations in Indonesia is guaranteed at all stages of formation.[9]

In addition, it must be understood that there are a number of fundamental problems related to the formation of Regional Regulations in Indonesia, namely:

- 1)Lack of synchronization between planning of legislation and development planning and policies;
- 2)There is a tendency for legal regulations to deviate from the content of the material that should be regulated, resulting in "hyper-regulation" (excessive regulation);
- 3)Effectiveness of laws and regulations during implementation;
- 4)Absence of monitoring and evaluation procedures for statutory regulations;
- 5)The absence of a special institution that handles all aspects of the legal regulatory system.

Until now, neither Presidential Regulation Number 87 of 2014 as amended by Presidential Regulation Number 76 of 2021 concerning the Implementation of the Law on the Formation of Legislation, nor Minister of Home Affairs Regulation Number 80 of 2015 as amended by Minister of Home Affairs Regulation Number 120 of 2018 have been revised to comply with changes that have been made in Law Number 12 of 2011 concerning the Formation of Legislation.

By examining and reviewing the provisions of Article 64, especially paragraph (1b), the regulations regarding the omnibus method are still general or universal in nature, because there is no clarity in the article or its explanation regarding the limitations regarding what kind of content material is considered the same or similar so that it can be combined with the omnibus method. Likewise, the phrase "changing the content of the material that has a legal relevance and/or need regulated in various laws and regulations of the same type and hierarchy". This phrase does not yet have a clear meaning about what is meant by content that has a legal relevance and/or need. Likewise, the phrase, "by combining it into one law and regulation to achieve a certain goal".

The provisions in Article 64, especially paragraph (1b), still give rise to multiple interpretations, so that the use of the omnibus method by the compilers/makers of legislation can be done by making all legislation into one legislation without any limitations with the argument that there is still a relationship, so that its preparation is subjective. In addition, Article 64 paragraph (1b) reflects the unclear norms, so that these provisions do not comply with one of principles formation in good legislation, namely the principle of clarity of formulation as regulated in the provisions of Article 5 letter f of Law Number 12 of 2011 as amended by Law Number 13 of 2022 concerning the Formation of Legislation. So that the provisions in this article need to be revised to be perfected.

Considering the importance of using the omnibus method by context of structuring and consolidating Regional Regulations, the right and strategic step is to make changes and improvements to the provisions of Article 64 of Law Number 13 of 2022 along with Attachment II by adding several more detailed provisions regarding the omnibus method.

4. Conclusion

The omnibus method is appropriate, meets the requirements and is urgent to be used in the formation of Regional Regulations, which philosophically will provide benefits and legal certainty through the arrangement and consolidation of regulations. Theoretically, omnibus is an alternative method in order to improve and simplify regional regulations because it can change, revoke and form several regional regulations into one regional regulation.

It is necessary to reconstruct the regulation of omnibus method, namely changes or revisions to the substance of norms so that they meet the principle of clarity of formulation, do not cause multiple interpretations, especially the provisions of Article 64 paragraph 1(b) in Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation, which is still very broad. Changes were made to the

substance of the material content to make it clearer and more detailed while adding new material content, especially regarding the use of the omnibus method in the formation of regional regulations, with the concept of collecting regional regulations into several clusters/groups/clusters of new regional regulations which are a combination of regional regulations related to the similarity of themes or sub-themes determined according to regional authority, based on the division of government affairs as stipulated in Article 12 Law Number 23 of 2014 concerning Regional Government.

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