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The Problems of Conception of Law Amendment with Government Regulations of Omnibus Bill on Job Creation Studied from the Theory of Legislation Perspective

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ABSTRACT

Crucial issues in the Omnibus Bill on Job Creation are the actual discussion today. In particular, the potential for executive heavy in Article 170 paragraph (1) of Omnibus Bill on Job Creation is because the Law could be amended by a Government Regulation. This paper trues to analyze the problems of conception in the Omnibus Bill on Job Creation and also the problems in the perspective of statutory theory. The research method used is normative juridical legal research. The results show that Article 170 paragraph (1) of Omnibus Bill on Job Creation contradicts Article 7 of Law no. 12 of 2011 and the theory of legislation put forward by Adolf Merkl and Hans Kelsen's theory of norms level.

KEYWORDS

Law; amendement; government regulations

INTRODUCTION

The conception of further regulation in the form of concretisation of Government Regulations is certainly different from the mechanism for amending laws that must not violate the rules and hierarchy of laws and regulations, including the amendment process that goes beyond the authority of the legislative body to make and revise laws in accordance with those stipulated by the constitution. and laws.

For example, in the regulation of the Omnibus Bill on Job Creation there are several articles in the umbrella act which are currently a big issue to discuss because there are several clusters of laws that are combined into one in the omnibus law system. The hierarchy of guidelines must be considered and guided so that they do not conflict with each other or even bypass the strength of the type of legislation that should be.

Article 170 paragraph (1) of the Omnibus Bill on Job Creation in essence shows confusion because it allows changes to laws with a government regulation. In fact, it is clear that this is not in accordance with the hierarchy and procedures for revising a law. Regarding the Bill, According to Ann Seidman:

> "There are four steps to solve the problem as a methodology to show that the proposed bill must rest on a rationale based on experience. The four steps are "identifying the difficulty, proposing and warranting explanations, proposing a solution, and monitoring and evaluating implementation." In order to change the behavior of social problems, a law must be aimed at changing or eliminating every interrelated cause of the behavior. Thus in drafting a law, a designer should examine all categories of ROCCIPI19 for input on testable and interrelated explanatory propositions. The government has been trying to create a good investment climate in Indonesia through various regulatory instruments, including Government Regulations, Presidential Decrees and Local Regulation. The spread of these various arrangements makes it difficult and there is no legal entity. In addition, it does not rule out legal disharmony, both vertically and horizontally. This needs to be the awareness of the government and legislators in order

to create a complete, simple, efficient and effective investment law in creating a good investment climate in Indonesia. The importance of creating a conducive investment climate and providing supporting facilities will increase investment in Indonesia. The instrument to create a conducive climate is law".[1]

The implications of the two articles need to be studied in the perspective of statutory theory, especially regarding the legality of Government Regulations ability to change the law. Indeed, in essence, the draft law is still in a discussion process because it has not been ratified, so through this paper it is intended that it can serve as a reference and advice for stakeholders (interested parties) and it is also hoped that corrections to confusion over the confusion of the hierarchy of laws and regulations it can be resolved immediately. This is because the implication is that if the articles are not changed, the Government Regulation has the potential to revise regulations that are higher than that, namely laws. However, in the context of the legal theory, the Government Regulation should not have the power to cancel or revise a law.

Based on the problems contained in Omnibus Bill on Job Creation which contradicts several existing legal principles, the authors are interested in studying and analyzing the "The Problems of Conception of Law Amendment with Government Regulations of Omnibus Bill on Job Creation Studied from the Theory of Legislation Perspective".

RESEARCH METHODS

This writing uses normative research, namely analyzing based on secondary data or through literature study. That the data set is used to examine and analyze the problems being studied.[2]

Secondary data sources whose notes and citations relate to books, searches of legal literature that are searched both online and offline to identify the problems discussed. Data analysis is used by describing it in detail in the discussion.[3]

RESULTS AND DISCUSSION

The Problems of Conception of Law Amendment with Government Regulations of Omnibus Bill on Job Creation Studied from the Theory of Legislation Perspective

The actual discussion regarding Omnibus Bill on Job Creation has become a centralistic issue lately. It is not something abnormal, because the Omnibus Bill on Job Creation was formed using the omnibus law system which was not so popular among the public. However, the most common problem is the need for an open understanding regarding the regulation of substances that are in accordance with the hierarchy of laws and regulations.

The form of structuring regulations to avoid hyper-regulatory conditions, especially in the ease of doing business. The current government offers the concept of omnibus law which is commonly used in countries with the common law system. The unique concept of the omnibus law is to make one law by bringing several regulations at once. Basically there is a problem of conflict between government officials and the many turmoil that arises due to the existence of a regulation on substances that are not pleasing to the community.

Omnibus Bill on Job Creation in the form of the omnibus law is a legal product in the form of law but it is considered to have a new element because Omnibus Bill on Job

[1] Vincent Suriadinata, Penyusunan Undang-Undang Di Bidang Investasi: Kajian Pembentukan *Omnibus Law* Di Indonesia, *Refleksi Hukum Jurnal Ilmu Hukum,* Vol. 4, No. 1, October 2019.

[2] Soerjono Soekanto, *Pengantar Penelitian Hukum,* (Jakarta: UI- Press, 1986), p. 63.

[3] Peter Mahmud Marzuki, *PenelitianHukum,* (Jakarta: KencanaPrenada Media Group, 2005), p. 171).

Creation does not only regulate one type of law title and its substance, but regulates a plurality of regulations which are combined into one in order to harmonize PUU nationally and locally, however, the concept is considered far from being a solution to colliding laws and regulations, both vertically and horizontally. This is because the substance in Omnibus Bill on Job Creation is still inconsistent with the legal theory related to Judicial Review and positive law regarding the formation of Judicial Review .

The correlation between the Omnibus Law which nuances the intention to open the widest possible job opportunities through Omnibus Bill on Job Creation, is associated with the objectives in the rule of law expressed by Pavolini & Ranci in Darmawan:[4]

> "Some of the known theories about the existence of a well-known state include the concept of a rule of law and the concept of a welfare state. In the concept of law, the state carries out its activities in the corridor of various legal instruments. In fact, in the concept of a welfare state, the role of the state becomes dominant in every aspect of people's life for the realization of social welfare. Emmanuale Pavaloni and Costanzo Ranci, stated that several countries in the western European region must reform the law for a long time to support the realization of increasing the welfare of their people ".

In fact, the people's welfare is very important, because it is one of the goals of the State. However, in supporting the improvement of welfare through a law it must not be in conflict with the process of forming a law which is in accordance with what is regulated in positive law in Indonesia. The risk is that the hierarchy will be harmed, and it will also relate to the future fate of the people. If the law is flexible enough to be changed by state organs, it will be very easy to cut people's interests in order to fulfill other interests.

Comparisons with other countries that have met effectiveness, because the omnibus law has streamlined and simplified by bringing many laws into one umbrella law only. In order to strengthen rule of law values, long-term orientation, it is necessary to maintain participatory democracy to ensure its sustainability as well as aspirational rules and not violate the rules because it presents legal experts who are guided by positive law relating to the formation of statutory regulations and also not in line with statutory theory which is always guided from time to time in the process of making laws so that they are acceptable for the community and from the perspective of legal experts.

The efforts to consolidate norms, conceptual definitions, and regulate the subjects that will carry out the legislation of the Omnibus Law. The role of the omnibus law is essentially very effective in overcoming regulatory disharmony, but it still has to pay attention to the principles of forming good laws and regulations, including the substance regarding the procedures for amending or revising the law. Thus, public participation and academic papers are the key to overseeing so that their substitution is not only in the interests of a few people but by overstepping the applicable legal rules.

The government is currently initiating Omnibus Bill on Job Creation in the omnibus law format, it will be effective if it is based on legislative principles from dynamic legal rules and adheres to the principles and procedures for amending the Law that are good and correct in substance before the bill is passed.

Law and politics are the main concepts and principles in the formation of a law, so that intensive supervision of a bill is important so that the resulting law can meet quality standards. This is because the purpose for the welfare of the people through Omnibus Bill on Job Creation must also reflect on existing norms so that in the future, one norm with another does not conflict and conflict with one another.[5]

[4]Agus Darmawan, Politik Hukum *Omnibus Law* Dalam Konteks Pembangunan Ekonomi Indonesia, *Indonesian Journal of Law and Policy Studies*, Vol. 1, No. 1, May 2020.

[5]Ibid.

Omnibus law carries several legal provisions by bringing several laws to be revised at once so that their substantially updated substance to facilitate the investment climate is enough to distract the public. 11 clusters of Omnibus Bill on Job Creation, namely: Ease and Protection of MSMEs, Government Administration, Employment, Imposition of Sanctions, Research and Innovation Support, Land Control, Ease of Doing Business, Simplification of Land Permits, Ease of Government Projects, and the eleventh cluster regarding Special Economic Zones, Investment Requirements. The clusters will contain 74 laws which will be worked on revising simultaneously.[6]

Article 170 paragraph (1) of Omnibus Bill on Job Creation stipulates that "In order to accelerate the implementation of the strategic work copyright policy as referred to in Article 4 paragraph (1), based on this Law the Central Government has the authority to change the provisions of this Law and / or change the provisions in Laws that are not amended in this Law. " Then, to make matters worse by the reason for the typo Article in Article 170 paragraph (2) it is explained that "Amendments to the provisions referred to in paragraph (1) shall be regulated by a Government Regulation."

The tiered Juridical Review theory is also in line with the provisions in Article 7 paragraph (1) of Law no. 12 of 2011, which basically regulates that Juridical Review hierarchy in Indonesia starts from the 1945 Constitution of the Republic of Indonesia, then its degradation is the Decree of the People's Consultative Assembly, then the Law structure is parallel to its existence with Government Regulations in Lieu of Laws, as implementing rules of the hierarchy and The previous types of Juridical Review, are usually further regulated through Government Regulations, specifically for the President given the authority to be able to make Presidential Regulations, at the regional level the Governor can make Provincial Regulations, and for the Regent / Mayor are given the authority to make Regency / City Regional Regulations.

The various of Juridical Review hierarchies have different characteristics, substance, legal force, and also different modes of change. Material content that must be regulated by law includes: rights and obligations of citizens, human rights, state power which is divided according to its authority, enforcement of national sovereignty and division of territory, population and state finances.

In addition, between content materials has a systematic and chronological continuity starting from the 1945 Constitution of the Republic of Indonesia-Local regulation. It means, the material on top of it can be further regulated by the rules below. However, the rules below, may not change the rules above. The rules that fall under it are residual rules above it. Thus, it is very unethical if the rules under it revise the rules that are above it.

Referring to the principles, in the formation of Juridical Review there are material principles as well as material principles. For formal principles to become a reference in the formation of laws, these principles consist of clear objectives (*beginsel van duidelijke doelstelling*), namely that every Juridical Review must have a concrete destination. Furthermore, based on the exact organ and institution that made it (*beginsel van het juiste orgaan*), that is, it must be made by a party that is legally authorized if it cannot be null and void (*van rechtswege nietig*). The principle of applicability (*het beginsel van uitvoerbaarheid*), namely that Juridical Review is expected to be effective in the midst of society and has fulfilled philosophical, juridical, and sociological aspects since its compilation stage. Furthermore, the principle that is used as a reference is the urgency of making arrangements (*het noodzakelijkheidsbeginsel*), and finally the principle of consensus (*het beginsel van de consensus*).

[6]Adhi Setyo Prabowo, Andhika Nugraha Triputra, Yoyok Junaidi, Politik Hukum Omnibus Law di Indonesia, *Jurnal Pamator*, Vol. 13 No. 1, April 2020, pp. 1-6.

Apart from the formal principles above, Juridical Review is also formed based on material principles, which are also crucial principles in the formation of Juridical Review. Thus, we must also pay attention to material principles such as the principle of legal certainty (*het rechtszekerheidsbeginsel*), the principle of equal treatment in law (*hetechtsgelijkheidsbeginsel*), the principle of correct terminology and systematics (*het beginsel van duidelijke terminologie en duidelijke systematiek*), an individual condition (*het beginsel van de individuuele rechtsbedeling*). A principle can be recognized (*het beginsel van de kenbaarheid*).

The material principle of the content of laws and regulations that is most crucial in the process of forming legislation must be guided, so that the contents of the law are not subject to injury by the regulations under them. Then, it must also be based on other principles in accordance with the field of law.[7]

With the issuance of various of Juridical Review, it caused problems and confusion over their chronology and hierarchy, especially for Laws and Presidential Decrees and between Government Regulation and Presidential Decrees. The Perpres is the result of a legal rule made by the executive (government), so its implementation is only with Government Regulation. Perpres is identical to the dominance of power so that laws cannot be revised with Government Regulation or Perpres. In addition, the House of Representatives questioned why the President is needed to make independent regulations in the form of Presidential Regulations. In addition to being able to make government regulations, because the president is the holder of executive power, not legislative if we analyze the presidential system.[8]

Law number 12 of 2011 is in line with those stipulated by Article 22A of the 1945 Constitution of the Republic of Indonesia which differentiates two types of regulations, namely the hierarchical order of Juridical Review starting from Constitution of Indonesia 1045-Local Regulation and rules that are not contained in the hierarchy, as long as they do not conflict with the above rules as a concretization of the sound of Article 7 paragraph (4).

Aziz states from a philosophical perspective, does the rule of law only know purely like the two types of rules mentioned above? According to Waddijk regulations (*regelingen*): regulations (*regels*) and other regulations (*andere bepalingen*). Meanwhile, other rules have a normative meaning because they relate to one regulation and another. Aziz in Susanti, states that the difference between the two types above can be explained by the logic of the rules that rules are made with three types of elements: subjects, namely individuals and bodies that may (or may not) do something. Subjects in norms are called target norms (*normadreesaten*), characters, which are elements of a rule indicating that there are norms that require, allow, do not require, or do not allow something. Its character element is called a nexus. Object, namely elements of behavior (*gedrafting*) that may or may not be carried out with various urgent provisions in terms of the fulfillment of the three elements.

Salim Quoting Fockema Andreae, Zafrullah Salim revealed that in the Dutch Legal Dictionary, the term Pseudowetgeving (Pseudolaw) means that the organs that issue the regulation do not explicitly give authority to other organs. This definition shows clear legislative elements, namely the rule of law (*regelstelleing*), which means that it looks from the outside as if it is a general rule, just like any law in general. Furthermore, related

[7]Retno Saraswati, Problematika Hukum Undang-Undang No.12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan, *Yustisia*, Vol. 2, No. 3, September-December 2013.

[8]Zaka Firma Aditya dan M. Reza Winata, Rekonstruksi Hierarki Peraturan Perundang-Undangan Di Indonesia (*Reconstruction Of The Hierarchy Of Legislation In Indonesia*), *Negara Hukum*, Vol. 9, No. 1, June 2018.

government organs (*betrokken bestuursorgaan*) are made, issued or made by government agencies / agencies starting from the center as a large unit then distributed to the regions as smaller units and still referring to the rules made by the institutions. the central level, which holds the duties of the general government. PUU which is not firm (*uitdrukkelijke bepalingen*) gives the government the authority to make and legalize it. The granting of authority to issue debated laws (policy rules) is a doctrine in governance law (*bestuursrechtelijke doctrine*) there is a clear authorization (bevoegdheid inplicite) to formulate policy rules (*beleidsregels*). Mochtar Kusumaatmadja stated that:

> Law has a goal to be achieved, namely to create an orderly society, create order, balance and justice. By achieving order in society, it is hoped that human interests will be protected. According to Satjipto Rahardjo, the existence of the law is to integrate and coordinate interests that can collide with one another. To achieve legal objectives and the presence of these laws, it starts with the formation of laws, namely the making of laws (legislation) made by People's Representative Council of Indonesia and Regional Representative Council of Indonesia as a legislative function.

The hierarchical theory of norms, the level of norms (*stufentheorie*) expressed by Kelsen argues that in fact norms are multi-layered, with high norms there are still higher ones and so on until there are norms and even abstract values that are abstracted from the bottom up then again guided downward, namely the basic norm (*Grundnorm*) in the Indonesian context, known as Pancasila.

Consistent norms follow a hierarchy of rules in line with the positivist group of H.L.A. thought. Hart, as a figure of the positivist school to explain:[9]

> "Changes in law in modern life. Changes in society or life based on the 'primary rule of duty' (natural-looking law) to the 'secondary rule of duty' (legal structure). The legislation contains interests, safeguards the law as a means of renewing society and ensnares people into the realm of the legal process, so the philosophy contained in the legal ideals (*rechtsidee*) of Pancasila is actually manifested in models of community participation and aspirations, open space. communication and encouraging to be able to see social facts so that legal decisions make laws reflect social justice and provide benefits to their people".

The controversy of Omnibus Bill on Job Creation must be immediately limited before it is passed, through the roles of legislators to think and act in an idealistic and objective manner in discussing the Draft Bill, it is very urgent that as the spearhead to create a law with high integrity based on the interests of the people. As a formulator of norms, legislators must pay attention to the hierarchy of the law. Moreover, if the law has the potential to be revised or amended by a Government Regulations or a Presidential Decree, it will be more sensitive in the process of change, even the form of executive heavy will eliminate public participation in the process of change in the future, because Government Regulations and Presidential Decree do not create public participation in their formulation. The hierarchical arrangement of the law, the law occupies a middle position, between the constitution and other regulations that apply Article 10 of Law no. 12 of 2011, one of which regulates the regulation of laws, that the order of a law to be regulated by law.

Referring to the principle that a regulation must not conflict with a higher regulation (lex specialis derogat legi generalis), including in the process of revocation and amendment to a statutory regulation, it cannot be carried out by a lower regulation, and also the law cannot be overridden with PP as the lex posterior derogat priori principle,

[9]Wahyu Nugroho, Rekonstruksi Teori Hukum Pembangunan Kedalam Pembentukan Perundang-Undangan Lingkungan Hidup Dan Sumber Daya Alam Pasca Reformasi Dalam Bangunan Negara Hukum, *Jurnal Legislasi Indonesia,* Vol. 14, No. 04, Desember 2017, pp. 369-382.

furthermore in terms of laws and regulations or the equivalent, it regulates special fields with regard to the lex specialis derogat lex generalis principle. In line with this According to Budiono Kusumohamidjojo:

> "The formation of regulations must understand the meaning of the principle of a better law formation as regulated in Article 5 of Law no. 12 2011, in essence stipulates that the clarity of purpose (every law formation must have clear objectives to be achieved), the appropriate forming institutions or organs (all types of laws and regulations must be made by the legal formative institution / establishment of the law. can be canceled or canceled by law, if it is made by an unauthorized institution / official), the conformity between the type and content of the material (in the formation of a law must really pay attention to the material content that is in accordance with the type of legislation), can be applied (all forms of legal and regulatory establishment must consider the effectiveness of the Regulation in society, be it philosophical, juridical and sociological), its versatility and efficiency (each policy). laws are made because they are very necessary and useful in regulating the life of the community, nation and state), clarity of formulation (each law must meet the technical requirements for drafting laws, systematic, choice of words or terminology, as well as clear and clear legal language. easy to understand, so that it does not lead to various interpretations in its implementation), and openness (in the process of formulating laws starting from planning, preparation, preparation, and transparent and open discussions. Thus the entire community has the opportunity to provide input in the law-making process. and regulations)".

In addition to the fundamental regulations in the 1945 Constitution of the Republic of Indonesia, a bill to become a law must refer to Law no. 12 2011. In this law, there are regulations regarding the principles of the formation of laws, content material, to the technical formulation of language in preparing legal regulations.

Judicial Review is a step to overcome conflicting laws and regulations if hierarchies clash with one another. However, while Omnibus Bill on Job Creation has not yet been passed, the substance of the contradiction needs to be corrected in the discussion before it becomes a law. Because it seriously injures the process of forming good and correct laws and regulations as usual, which are always maintained and guided, because law is a principle that occupies its own classification and has its own field of validity. While rules support conscience, positive moral rules, rules of decency, customary and religious rules are non-legal rules.

Implementation of two groups of rules that cannot be combined. If positive law is very rich in moral values. The law feels like a compulsion from the ruling party, which has a belief in moral values specific to people who do not or even do not believe in the importance of these values. Legal formation is a process associated with the creation of new laws, the formulation of legal rules, additional rules or changes in rules. The theory of law as the major premise and the rule of law as the minor premise must be a reference for forming statutory regulations in accordance with the rules.

Based on the author's analysis, Article 170 paragraph (1) of Omnibus Bill on Job Creationcontradicts Article 7 and Article 10 of Law no. 12 of 2011, so that juridically the applicable positive law which regulates the hierarchy of statutory regulations shows that it is clear that Government Regulations are under the Law. So, it is unethical if Omnibus Bill

on Job Creation, if passed into law, can later be revised by all Ministers through a Government Regulation.[10]

The sensitivity of the articles contained in Omnibus Bill on Job Creation, of course, seriously injures the process of forming laws and regulations which are usually guided. This is because it is unethical if a law can be changed by a lower level regulation. Marwah UU as a higher rule must be maintained, because the hierarchy cannot be followed.

Just imagine, if Omnibus Bill on Job Creationwas passed, all ministerial organs could change the law. Its flexibility will also have implications for the loss of democracy in Omnibus Bill on Job Creationwhich is made in the omnibus law format, although to streamline the rule of law should not be overlooked.

The loss of public participation if the law can be revised or amended through Government Regulations or Presidential Decree, because there will be no community participation in the revision process later. Then, the dominant sectoral ego which has the potential to attract interests will also occur.

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Law should not be lower than Government Regulations. In Omnibus Bill on Job Creation which is in the form of a Law it can be amended by a Government Regulation. Especially in the case afterwards Government Regulations is regulated into a Ministerial Regulation so that each minister can change the Law so that it has the potential (executive heavy). According to Dahlan Thaib in Lutfi, the Amendment to the 1945 Constitution of the Republic of Indonesia in the 1999-2002 period implies checks and balances to avoid the abuse of power and authority which is not running as it should be.[11] So in the opinion of the author, that a law which can be revised by a government regulation includes the abuse of power and eliminates the principle of checks and balances and also bypasses the legislative authority which should be authorized to make changes to the law.

Law as a legal product collects various regulations governing legal subjects, namely humans and legal entities. Law as a source of formal law.[12] According to Hans Kelsen, multiple layers are standard criteria and characteristics in Juridical Review, because in the hierarchy norms are arranged in layers. Understanding, the legal norms that are applied and enforced, and are based on higher and higher norms also come from and are based on higher norms and so on.[13] A similar but slightly different view, directed by Adolf Merkl:[14]

> "That legal norms always have two faces (*daste rechtsantlitz*). According to Adolf Merkl, the legal norms above originate and are based on the norms underneath, but they also become the source and become the basis for the legal norms that are underneath them again, so that validity has a relative period (*rechtskraht*), because legal norms depend on these laws. If the legal norms at the top are revoked or deleted, basically the legal norms under them will be revoked or deleted as well".

[10]Rahel Octora, Urgensi Fungsionalisasi Teori Hukum Dalam Proses Pembentukan Hukum Pidana di Indonesia, *Dialogia Iuridica,* Volume 9 Nomor 2, April 2018, pp.070-083.

[11] Lutfi Widagdo Edyono, Penyelesaian Sengketa Kewenangan Lembaga Negara oleh Mahkamah Konstitusi, *Jurnal Konstitusi*, Vol. 7, No. 3, June 2010, p. 2.

[12]Muhammad Tahir Azhari, *Negara Hukum*, (Jakarta: Kencana, 2010), p.123.

[13]Aziz Syamsuddi, *Proses Dan teknik Penyusunan Undang-undang*, (Jakarta: Sinar Grafika, 2011), pp. 14-15.

[14]Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan (1) (Jenis, Fungsi, Materi Muatan)*, (Yogyakarta: Kanisius, 2007), pp. 41-42.

AdollfMerk in theory says something a little different from Hans Kelsen's opinion on grundnorm. The difference lies in the fact that if the usual Merkl norm is referred to as the basis for norms below it is a framework for thinking about the degree to which legal norms can be changed but still conform to hierarchies and ordinances that have legality, whereas Hans Kelsen's Grundnorm it is abstract, it is assumed that it does not exist. It is the basis of everything formal as a source of law and as a manifestation of meta-laws.[15]

Legislation as a broadly binding regulation and made by a legal and authorized ruler who is regulated by law to be able to make it either by state officials or institutions that still refers to statutory regulations, because their authority to do so is regulated by law so that all his actions in exercising his authority are also regulated and must comply with the law. Indroharto argues about binding regulations, namely:[16]

> "... In general, the legal norms that are applied, as previously said, can be about time, place, person and legal facts. These general aspects should be interpreted in relative terms. This is because, for example, a general rule does not always apply to everyone, in all places and at all times. The operation of such general rules is usually tied to a particular place, time and category of people. The relevant measure for saying a rule is general is if the legal facts can be applied repeatedly. Every time there is an event or action which is a legal fact as regulated in that decision, the regulation can be applied. " This problem arises in connection with the provisions of Article 10 paragraph (1) of Law no. 12 of 2011 that one of the contents of the law is due to the command of the law. The problem is whether the law which orders is regulated by law has a higher position or there is no hierarchy between the two because they are both laws. Another problem is whether a law whose content is due to a law order can be called a delegation regulation? According to the attachment of Law no. 12 of 2011, higher laws and regulations can delegate further regulatory authority to lower laws and regulations. One of the delegations of authority can be done from law to other laws. Thus, according to Law no. 12 of 2011 delegation regulations can take the form of laws.

A constitution that accommodates various acts of movement of law and law is known in constitutional practice and on the other hand allows the development of a new form of constitutional rule of law. Establishing the type of law is no longer in a detailed model like the one in Law no. 12 of 2011 and previous regulations but based on group rules with an open system. The system is open to accommodate the development of new types of laws and regulations emerging in governance practices. Second, determining the hierarchy of laws from the beginning based on the type of rule change based on group rules. Edward C. Page stated that:[17]

> "Delegation regulations are laws whose legitimacy comes from legitimate power, namely when the government is given the legal authority to make delegation regulations. Consequently, each delegation regulation must contain specific provisions in the law that the government has the authority to make delegation rules. All delegation rules according to Edward C. The next problematic hierarchy is between Government Regulations and Presidential Decree. If you only glimpse Article 7 paragraph (1) of Law no. 12 of 2011, it seems as if there is no problem because it is clear that Government Regulation is higher than the Perpres. From a deeper investigation, it is found that there is a hierarchy problematic between the two types of legislation. Government

[15]I Gde Pantja Astawa, *Dinamika Hukum dan Ilmu Perundang-undangan di Indonesia*, (Bandung; PT. Alumni, 2008), p. 37.
[16]A'an Efendi, Problematik Penataan Jenis Dan Hierarki Peraturan Perundang-Undangan, *VeJ*, Vol. 5, No. 1, June 2019.
[17]*Ibid.*

Regulations content is the content ordered by the Law while the Presidential Regulation contains the material due to the order of the Law or Government Regulations. If the Presidential Regulation contains the contents of Government Regulations then it becomes logical that the Government Regulation is higher than the Presidential Regulation. Because the main regulation commands the same, Government Regulations cannot be said to be higher than Presidential Decree or vice versa, Presidential Decree is lower than Government Regulations".

There is no probability that Ministerial Regulations have the same hierarchy as Perpres, especially since Local Regulation has the same hierarchy as Government Regulations or Presidential Decree because laws are higher than Central Government regulations and the lowest is Regional Government regulations. For the same group of rules, for example regulations at the central level, the hierarchy is seen from the position of the body or official who made them. The stipulation of the types of laws and regulations on the basis of these groups of laws and regulations will be able to keep developing new types of laws and regulations according to the needs and practices of government administration. As with the Das Doppelte Rechtsantlitz Theory by Adolf Merkl, expresses norms that have 2 (two) faces: 1) Norms looking down (sourced from the norm below), and 2) Norma looking up (sourced from the norm above).[18] Bagir Manan in Efendi states that:

In determining the types or types of laws and regulations in positive law, it is unique. Therefore, any attempt to determine in law the type or type of law and regulation in the law will immediately reveal many weaknesses that are difficult to overcome when tested based on the general characteristics of a law. Philipus M. Hadjon in Effendi argues that compared to other countries, no country has formulated a tree pattern but the background pattern of this formulation is a historical constitution which states that the pattern is bottom-up and not top-down.

There are 6 (six) factors of Juridical Review disharmony, namely the sectoral approach in the formation of laws and regulations that is stronger than the system approach. officials who are authorized to form laws and regulations change because they are limited by the term of office, standards and standards that bind all institutions authorized to make laws and regulations, public access to participate in the process of forming laws and regulations is still limited, transfer of duties or replacement, formation is carried out by different institutions and often at different times, the method and method is not yet established, there is weak coordination in the process of forming laws and regulations involving various agencies and legal disciplines.

The implication of Juridical Review disharmony is the occurrence of legal dysfunction, meaning that the law cannot function for legal uncertainty, resolving disputes and as a means of social change in an orderly and orderly manner, laws and regulations are not implemented effectively and efficiently, lack of social control, and differences in interpretation. the implementation.

Omnibus Law is essentially an antidote to the disharmony of the law, but its contradictory and controversial substance also needs to be monitored. This is because the initial goal to harmonize must stay on track and not be out of the box so that this goal can still be achieved.

A solution to overcome disharmony at the draft law stage is to fix it at the discussion stage. Alternatives for disharmony towards Juridical Review (if the bill has been passed) can be carried out by examining the law against the constitution in the Constitutional Court, examining the law against the law in the Supreme Court, changing the contradictory

[18]Riana Susmayanti, Konsep Tanggung Jawab Sosial Dalam Peraturan Perundang-Undangan Di Indonesia *Arena Hukum*, Vol. 7, No. 3, Desember 2014, pp. 303-471.

and disharmony substance on Omnibus Bill on Job Creation by the authorized institution / agency to do so. Apply the lex superior derogat legi inferiori principle and also the lex specialis derogat legi generalis principle.

According to the author's opinion, there may be rules that facilitate the investment climate but it must be for the welfare of the people and more importantly, the substance must be in accordance with statutory theory, in particular, reflect the color of executive heavy and also the process of changing the law in the future must be consistent in following the procedures which has been regulated in law.

CONCLUSION

The conception in Omnibus Bill on Job CreationArticle 170 paragraph (1) is legally contradicting Article 7 and Article 10 of Law no. 12 of 2011 which explicitly and straightforwardly regulates the hierarchy of statutory regulations that it is clear that Government Regulations are under the Law. So, it is unethical if Omnibus Bill on Job Creation, if passed into law, can later be revised by all Ministers through a Government Regulation.

The problem of Omnibus Bill on Job Creation which can be amended by Government Regulation also contradicts statutory theory in particular and reflects executive heavy and inconsistency in following the procedures stipulated in statutory regulations to make good laws.

Supposedly, the Government in drafting and forming laws must refer to the order, hierarchy, chronology and systematic order as regulated in Article 7 of Law no. 12 of 2011. And the hope is that, in the discussion process, Article 170 paragraph (1) of the CIKA Bill must be corrected, that in essence the Government Regulation may not revise the Law.

The need to consider established theories in shaping legislation should refer to statutory theory, for example the norms level theory put forward by Hans Kelsen and also strengthened by the theory put forward by AdollfMerk.

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