



IMPLICATIONS OF OMNIBUS LAW ON JOB CREATION TOWARDS REGULATIONS IN DECENTRALIZATION PERSPECTIVE

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Submitted: July 27, 2022; Reviewed: September 22, 2022 ; Accepted: October 12, 2022
DOI: 10.25041/cepalo.v6no2.2683

Abstract

The discussion about omnibus law in the formation of laws and regulations has become a continuing discourse to this day, this is because omnibus law has been implemented in Indonesia through the work copyright law contained in Law Number 11 of 2020 concerning Job Creation. In its development, through the Constitutional Court Decision Number 91/PUU-XVIII/2020 on the Formal Review of Law Number 11 of 2020 concerning Job Creation, it is stated that the Job Creation Act is conditional. However, on one hand, the Instruction of the Minister of Home Affairs Number 68 of 2021 regarding the Follow-up to the Decision of the Constitutional Court Number 91/PUU-XVIII/2020 becomes a dilemma because in Indonesia regions must continue to follow the Job Creation Act and make adjustments to regional regulations on the follow-up to the existing law. The content material in the work copyright law is so diverse that it consists of eleven clusters and has changed, deleted and/or stipulated new arrangements for several provisions regulated in various laws, which have implications for the laws and regulations below them, including the regulations. On the other hand, some local government authorities have also experienced a shift through the law. The implications of the omnibus law regarding job creation on regional regulations include the deregulation of various regional regulations as a delegation of norms from higher regulations, and the responsibility of regional governments in harmonizing and synchronizing regional regulations in an effort to optimally implement autonomy and co-administration tasks.

Keywords: Decentralization, Job Creation, Omnibus Law

A. Introduction

The Constitution of the State of Indonesia as regulated in the 1945 Constitution of the Republic of Indonesia (UUD 1945) in Article 18 mandates that Indonesia adheres to a unitary state with a decentralized system. The decentralization policy is carried out in the context of vertical division of power as an area of division of power as stated in the constitution.¹

¹ Abdul Kholiq Azhari & Abdul Haris Suryo Negoro, *Desentralisasi dan Otonomi Daerah di Negara Kesatuan Republik Indonesia*, (Malang: Intrans Publishing, 2019), p.v

Autonomy is basically a derivative of decentralization. Decentralization is the delegation of government authority to regions to regulate and manage government and the interests of the community.² Decentralization as a form of democratization brings broad benefits to society. It is not surprising that many experts have expressed their opinions regarding the positive impact of decentralization, although in reality there are still obstacles and weaknesses in the practice of decentralization.

Based on the implementation of regional autonomy in Indonesia according to the 1945 Constitution, there are two basic values developed, namely, unitary values and decentralization values. The basic unitary value is manifested in the view that Indonesia will not have another government unit in it that is State, meaning that the sovereignty inherent in the people, nation and the Republic of Indonesia will not be divided among regional or local government units. Meanwhile, the basic value of decentralization is realized by the establishment of an autonomous region and the transfer of authority to administer government affairs that have been handed over or recognized as the household domain of the autonomous region.³

One form of regional autonomy, each region has the right to make regional regulations and or regional policies, this is in accordance with Article 236 paragraph (1) of Law no. 23 of 2014 concerning Regional Government as last amended by Law no. 11 of 2020 (Local Government Law), which states that "to carry out Regional Autonomy and Assistant Duties, the Regions form a Regional Regulation." Also in Article 17 paragraph (1) of the Regional Government Law which contains the provision that "Regions have the right to determine Regional policies to carry out Government Affairs which are under the authority of the Regions."

Regional regulations are one form of regional legal products that are regulating. Normatively, Law no. 12 of 2011 concerning the Establishment of Legislation as amended by Law no. 13 of 2022, defines regional regulations as statutory regulations established by the Regional People's Representative Council with the mutual consent of the regional head.

The content of regional regulations basically contains 3 (three) things including the implementation of regional autonomy and co-administration tasks, further elaboration of the provisions of higher laws and regulations, and/or local content material in accordance with the provisions of laws and regulations.⁴ As a form of regional regulation, Regional Regulations function as legal instruments for the implementation of regional autonomy and are legal instruments for further elaborating higher laws and regulations. So, if the central government passes laws or changes existing laws. This will have implications for regional regulations, including when the central government ratifies the draft law on job creation.

At the end of 2020, the government has ratified the Draft Job Creation Law into Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja). The presence of the Job Creation Law has created pros and cons in the community, so many people have taken to the streets to hold demonstrations. Some parties consider that apart from the content of the material which has the potential to be problematic, it is also from the procedural side of the formation of the legislation which seems rushed.

Omnibus law is a new term in the dimension of the formation of legislation. According to Jimly Asshidiqie, omnibus is a method or technique in the formation of laws in the form of laws and regulations relating to efforts to pour policies in the form of laws that are binding on all subjects in state legal traffic.⁵ Omnibus Law is a statutory regulation that has been made to provide an influential issue in a country. "Besides providing influential information, the aim is also to

²Rondinelly & Nellis, *Analyising Decentralization Policies in Developing Countries: a Political-Economy Framework*, Jurnal Development and Change, Volume 20, 1989. p.5

³Tim Penyusun. 2011. *Naskah Akademik Rancangan Undang-Undang tentang Hubungan Kewenangan Pemerintah Pusat dan Daerah*. p.34

⁴ See Law Number 12 Year 2011

⁵ Jimly Asshiddiqie, *Omnibus law dan Penerapannya di Indonesia*, (Jakarta: Konstitusi Press, 2020), p. 54

create or amend some laws."⁶ The formation technique using the omnibus method is applied to change several provisions or even many laws that contain various policy materials that are interrelated with one another.

Omnibus law as an effort to reorganize the legal system, not only has implications for regulations at the central level but also has implications for regional regulations. This is considering that the Region as a legal community unit that has autonomy has the authority to regulate and manage its region according to the aspirations and interests of its people as long as it does not conflict with the national legal order and the public interest.⁷

The various forms of legal choices taken by the addressat of the Constitutional Court's decision related to its follow-up, namely conditional constitutional decisions, conditional unconstitutional decisions, and decisions that formulate new norms. In fact, it is possible that the form of choice of law has the potential to be unrelated to the decision of the Constitutional Court itself.⁸

The existence of the Constitutional Court Decision Number 91/PUU-XVIII/2020 on the formal review of Law Number 11 of 2020 concerning Job Creation which states that the Job Creation Law is conditional on the condition that improvements are made within two years, is an interesting matter for the dilemma of the birth of an omnibus law on job creation. Through the decision of the Constitutional Court, the Constitutional Court ordered the Government to suspend all strategic and broad-impact actions or policies and it is not permissible to issue new implementing regulations related to Law Number 11 of 2020. The "conditional" decision issued by the Constitutional Court is in principle that in a conditional decision the Constitutional Court provides a certain requirement or interpretation that must be fulfilled in its implementation, so that the norm being tested becomes conditionally constitutional or unconstitutional.⁹

But on the other hand, the central government in terms of providing direction to local governments has issued Instruction of the Minister of Home Affairs Number 68 of 2021 concerning Follow-up to the Decision of the Constitutional Court Number 91/PUU-XVIII/2020 on Formal Examination of Law Number 11 of 2020 concerning Job Creation. This Instruction from the Minister of Home Affairs is a follow-up to the directives of the President of the Republic of Indonesia on the Constitutional Court Decision Number 91 so that steps can be taken quickly, accurately and in an integrated manner between the Government and Regional Governments, so that the instruction is addressed to all Governors and Regents/Mayors throughout Indonesia.

Several points in the Instruction of the Minister of Home Affairs Number 68 of 2021, the Governor and Regent/Mayor: continue to guide and implement the Job Creation Law and its implementing regulations; and immediately make changes, revocations or draft new Regional Regulations (Perda) together with the DPRD and/or Regional Head Regulations (Perkada) as a follow-up to the Job Creation Law and its implementing regulations that have been promulgated/stipulated. Apart from the consistency of the establishment of the Constitutional Court which gives legal considerations that the Job Creation Law is not valid so that the review of the Job Creation Law loses its object, the existence of the Minister of Home Affairs

⁶ Agnes Fitryantica, "Harmonisasi Peraturan Perundang-Undangan Indonesia Melalui Konsep Omnibus Law," *Gema Keadilan* 6, no. 3 (December 14, 2019): 300–316, <https://doi.org/10.14710/GK.6.3.300-316>.

⁷ Elucidation of Law Number 23 of 2014 concerning Regional Government

⁸ M. Mahrus Ali, et al, "Tindak Lanjut Putusan Mahkamah Konstitusi yang Bersifat Konstitusional Bersyarat serta Memuat Norma Baru", *Jurnal Konstitusi*, Volume 12, Nomor 3, September 2015.

⁹ Faiz Rahman, "Anomali Penerapan Klausul Bersyarat dalam Putusan Pengujian Undang-Undang terhadap Undang-Undang Dasar", *Jurnal Konstitusi* Volume 17, Nomor 1, Maret 2020. DOI: <https://doi.org/10.31078/jk1712>.

Instruction 68/2021 also presents its own complexities, especially for regional governments that are intended as addresses of the a quo Minister of Home Affairs Instructions.¹⁰

The problem that becomes the author's question is: what are the implications of the omnibus law on job creation on local regulations in the perspective of decentralization?

The novelty this article examine and find the implications of the omnibus law on job creation on regional regulations and provide recommendations for regions in responding to these implications based on the principle of decentralization.

This research is a normative legal research, which examines various laws and regulations that are used as the basis for legal provisions to analyze the implications of the omnibus law on job creation on regional regulations in a decentralized perspective. The legal research model used is a comprehensive and analytical study of primary legal materials and secondary legal materials. Considering that this research includes normative legal research, the approach in this study uses a statutory approach and a conceptual approach.¹¹ The approach is used, namely by reviewing the laws and regulations related to legal issues, and providing an analysis of the resolution of legal problems from the aspect of the legal concept behind it. The data were analyzed qualitatively by describing the data generated from the research into a systematic explanation form so that a clear picture of the problem under study could be obtained, the results of the data analysis concluded deductively.

B. Discussion

In this section, the author will describe the results of the research which are the answers to the formulation of the problem stated in the introduction with a description consisting of the following sub-chapters:

1. Omnibus Law on Job Creation on the Applicability of Related Regional Regulations

One of the purposes of the omnibus law on job creation is the arrangement of regulations from the regions to the center. So many regulations create overlaps that have the potential to hamper public services or in the context of the Job Creation Law, so many existing regulations result in delays in the pace of investment and economic growth.

There are 2 (two) patterns of implementing omnibus law in practice, namely: First, one law changes many laws at once by changing certain parts of the law without causing it to be revoked altogether. Second, one law integrates many laws into one new law by revoking all the old integrated laws while simultaneously changing some of the material of the old law according to needs.¹²

Substantially, there are at least 11 (eleven) clusters contained in the content of the Job Creation Law, which include construction and housing; licensing and sector business activities; government goods and services; spatial planning; economic area; land and land rights; investment; employment; cooperatives and Enterprises, Micro, Small, and Medium; and village-owned enterprises; fiscal facilities; and the environment. In addition, the Job Creation Law consists of 186 articles which contain, among others, amending, deleting and/or stipulating new arrangements for several provisions regulated in various laws, as well as new arrangements which are the material of the original content of the Job Creation Law.

This omnibus law on job creation has at least amended 82 (eighty two) laws at once and revoked 2 (two) laws. On the other hand, with the enactment of the Job Creation Law, the central government is obliged to form implementing regulations which are regulated in the form

¹⁰ Dian Agung Wicaksono, "Quo Vadis Pendirian Mahkamah Konstitusi dalam Menguji Undang-Undang Cipta Kerja dan Implikasinya Terhadap Kegamangan Pemerintah Daerah dalam Melaksanakan Kewenangan Mengatur", *Jurnal Rechtsvinding* Volume 11 Nomor 1, April 2022.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*. (Jakarta: Prenada Media, 2005).

¹² Jimly Asshiddiqie, *Omnibus law dan Penerapannya di Indonesia*, (Jakarta: Konstitusi Press, 2020), p. 222

of Government Regulations, Presidential Regulations, and Ministerial Regulations, which are certainly not small in number. Based on the data, currently the implementing regulations for the Job Creation Law that have been made and ratified by the central government are 51 (fifty one) implementing regulations consisting of 45 (forty five) Government Regulations, and 4 (four) Presidential Regulations.¹³

The presence of the Omnibus Law on Job Creation, although explicitly in the content material, only changes and also revokes several laws. However, in essence, it indirectly affects the enforcement of regional regulations. Regarding the applicability of regional regulations, it is necessary to understand in advance about regional regulations. One form of regional autonomy, each region has the right to make regional regulations and or regional policies, this is in accordance with Article 236 paragraph (1) of Law no. 23 of 2014 concerning Regional Government as last amended by Law no. 11 Year 2020.

Bruggink divides the notion of applicability into three, namely empirical applicability, normative applicability, and evaluative applicability, each of these meanings are:¹⁴

- a. The factual or empirical validity of the rule of law, i.e. the rule of law applies factually or effectively if the community for whom the rule of law applies, complies with the rule of law. The factual validity of this law is also often referred to as legal effectiveness.
- b. Normative or formal applicability of the rule of law, namely if the rule of law is part of a certain system of legal rules. Such a system of legal rules consists of an entire hierarchy of specific legal rules that are based on general legal rules. The lower rules of special law are derived from the higher general rules of law. According to Kelsen, a new legal rule has its validity if it is based on a higher legal rule.
- c. Evaluative applicability of the rule of law, that is, if the rule of law is based on its content it is considered valuable. Everyone will feel himself obliged to obey a rule of law that he views as valuable or very important for his social behavior.

The birth of the Job Creation Law, which has the main objective in the economic sector, poses a threat, one of which is environmental sustainability. The provisions in the Job Creation Law that change the basic legal politics regarding the environment include:¹⁵

- a. simplification of licensing, namely the concept of environmental permits into environmental approvals that eliminate administrative lawsuits through the courts in the event of a violation, as well as the categorization of risk-based business permits which Indonesia is currently still weak in its implementation;
- b. strict liability disorientation, namely from the definition of absolute responsibility (strict liability) to liability based on fault and there must be proof of absolute liability as contained in PP No. 22 of 2021 as a derivative rule of the Job Creation Law;
- c. limitation of rights to the environment, which is limited only to people directly affected; voting rights in decision-making are uncertain; the abolition of the clause for filing an objection to the EIA process; and the unclear position of environmental approvals as objects of state administration disputes.

There are several content materials contained in the Job Creation Law that are directly related to the implementation of decentralization, including:

First, regulations related to the environment are regulated in Law Number 32 of 2009 concerning Environmental Protection and Management. There are several articles related to regional government, including those concerning the abolition of environmental permits, the determination of the types of businesses and/or activities that must be completed with UKL-

¹³ <https://www.kemenkeu.go.id/publikasi/berita/51-peraturan-pelaksanaan-uu-cipta-kerja-telah-rampung/>

¹⁴ Bruggink. 2011. *Refleksi Tentang Hukum*, cet.3. Terjemahan: B Arief Sidharta. Bandung: PT Citra Aditya Bakti.

¹⁵ Hario Danang Pambudhi & Ega Rammadayanti, "Menilai Kembali Politik Hukum Perlindungan Lingkungan Dalam Undang-Undang Cipta Kerja Untuk Mendukung Keberlanjutan Ekologis", *Jurnal Hukum Lingkungan Indonesia*, Vol.7, No.2, 2021, p. 297-322

UPL, the appointment of banks in the depository of guarantee funds, and so on which reduces the authority of local governments.

Second, fiscal policy on local taxes and regional levies. The central government in encouraging the ease of investing or trying to create the widest possible work, the central government can make adjustments to the tax rates and/or levies that have been stipulated in regional regulations. The role of the central government through the Employment Creation Law on regional taxes and regional levies dominates, this provision can be seen in Article 114, Article 176 and Article 185 letter b of the Job Creation Law. Prior to the Employment Creation Law, the central government could not change the nationally applicable regional tax and levy rates, after the Job Creation Law, local policies in setting rates could be intervened and made changes by the central government.

Changes in concurrent affairs that have become the authority of the regions after the Job Creation Law, which can be seen are the recentralization of authority in several concurrent government affairs such as manpower, mineral and coal, industry, and other affairs. This is further strengthened by the substance of the Regional Government Law contained in Article 402A of the Job Creation Law, which obligates every region to interpret the government affairs under its authority in accordance with the provisions contained in the Job Creation Act.¹⁶

The background and origin of decentralization reform in Indonesia is the malfunction and failure of a centralized decision-making system, where the central government is unable to provide solutions for each community in each diverse locality. In addition, it also begins with an awareness of the need for management that managing the country centrally with a thousand and one kinds of government problems is clearly ineffective and tiring. Thus, bringing the government closer becomes a necessity for the existing conditions.¹⁷

Regional autonomy policies should be carried out by decentralizing the powers that have been centralized in the hands of the central government. In the decentralization process, the power of the central government was transferred from the central level to the local government as appropriate, resulting in a shift of power from the center to districts and cities throughout Indonesia. If in the original condition the flow of government power moved from the regions to the central level, it is idealized that since the implementation of the regional autonomy policy, the dynamics of power flow would move the other way around, namely from the center to the regions.¹⁸

The presence of the omnibus law on job creation, which changes many laws at once, causes derivative rules or legal norms derived from these provisions to change. This is in accordance with the tiered theory of Hans Nawiasky. Hans Nawiasky in his book entitled 'Allgemeine Rechtslehre' argues that according to Hans Kelsen's theory, a legal norm of any country is always layered and tiered. The norms below apply, are sourced and based on higher norms, higher norms apply, sourced and based on even higher norms, until a higher norm is called the basic norm.¹⁹ Based on the theory of layers of norms, in the context of the Indonesian legal system the layering of norms is based on Article 7 of Law no. 12 of 2011 concerning the Establishment of Legislation, which divides the types and hierarchy of laws and regulations in Indonesia as follows:

¹⁶ Syofyan Hadi & Tomy Michael, "Implikasi Hukum Resentralisasi Kewenangan Penyelenggaraan Urusan Konkuren terhadap Keberlakuan Produk Hukum Daerah", *Jurnal Wawasan Yuridika*, Vol.5 No.2, September 2021, p.267-289

¹⁷ Rudy, "Desentralisasi Indonesia Memupuk Demokrasi dan Penciptaan Tata Pemerintahan Lokal", *Jurnal Ilmu Hukum Fiat Justitia*, Volume 1 Nomor 1 Tahun 2007.

¹⁸ Hario Danang Pambudhi & Ega Rammadayanti, "Menilai Kembali Politik Hukum Perlindungan Lingkungan Dalam Undang-Undang Cipta Kerja Untuk Mendukung Keberlanjutan Ekologis", *Jurnal Hukum Lingkungan Indonesia*, Vol.7, No.2, 2021, p. 297-322

¹⁹ Hans Kelsen, *General Theory of Law and State*, (New York: Russell & Russell, 1945), p. 35. in Maria Farida Indrati S., *Ilmu Perundang-undangan: Jenis, Fungsi, dan Materi Muatan*, (Yogyakarta: Kanisius, 2007), p. 41.

- 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, the conformity of lower legal norms with higher ones also appears in a number of principles known in legal science. These principles are usually used in resolving conflicts of legal norms. P.W. Brouwer, *et al*,²⁰ P.W. mention the general principles of law that must be considered in the formation of legislation, namely:

- a. Principle *lex superior derogat legi inferiori*, means that laws and regulations of a higher level take precedence over lower-level laws and regulations and conversely, lower-level laws and regulations must not conflict with laws and regulations of a higher level. Based on this principle, the principle also applies that an equal or higher regulation can abolish or revoke an equal or lower regulation.
- b. Principle *lex specialis derogat legi generali*, means that special laws and regulations take precedence over general laws and regulations. This principle applies to the same level of legislation. If the regulations governing matters that are specific to general matters (in the sense of the same) are regulated by equivalent regulations, then the regulations governing the special matters shall apply..
- c. Principle *lex posterior derogat legi priori*, means that new laws and regulations take precedence over the previous ones. In the event that an equivalent regulation conflicts with other equivalent regulations (in the sense of the same), then based on this principle the latest regulations apply and the old regulations are considered to have been set aside.
- d. Principle *lex neminem cogit ad impossibilia*, means that legislation does not force someone to do something that is impossible to do or is often referred to as the principle of propriety (*bilijkheid*).
- e. Principle *lex perfecta*, means that The laws and regulations not only prohibit an action but also declare the prohibited act null and void.
- f. Principle *non retroactive*, means that statutory regulations are not intended to have a retroactive effect because they will create legal uncertainty.

Based on these applicable principles, the novelty in the context of the omnibus law of job creation, in accordance with the concept of the *lex superior derogat legi inferiori* principle and the *lex posterior derogat legi priori* principle, the position of all statutory regulations under the Job Creation Law which contains related legal norms is invalid. and has no binding legal force, including local regulations. This in turn results in legal norms related to the regional level being invalid and contrary to higher regulations.

When referring to the order of laws and regulations as regulated in Law no. 12 of 2011, the position or position of regional regulations is several levels below the law. This indicates in theory and in principle that the omnibus law on job creation contained in Law no. 11 of 2020 concerning Job Creation has resulted in the deregulation of related regional regulations.

In accordance with the hierarchy of legal norms and the position of the regional regulations, regional regulations are regulations that have material content that has a narrow level of flexibility because they must be in line with the laws and regulations above. Even though function of regional regulations is basically an attribution function as stated in Law no. 23 of 2014 concerning Regional Government as last amended by Law no. 11 of 2020, especially

²⁰ Armen Yasir, *Hukum Perundang-undangan*, (Bandar Lampung: Penerbit Unila, 2007), p. 60-61.

Article 236, which also attaches the delegate function of higher laws and regulations. Based on Article 236 of Law no. 23 of 2014, states that:

- a. To carry out Regional Autonomy and Assistant Duties, the Regions form a Regional Regulation.
- b. The regional regulation as referred to in paragraph (1) is established by the DPRD with the joint approval of the regional head.
- c. The regional regulation as referred to in paragraph (1) contains material content:
 2. Implementation of Regional Autonomy and Content Tasks;
 3. Further elaboration of higher statutory provisions.
- d. In addition to the content material as referred to in paragraph (3), the Regional Regulation may contain local content material in accordance with the provisions of the legislation.

The enactment of a regional regulation and the presence of an omnibus law on job creation have a connected relevance. Omnibus law as an effort to reorganize the legal system, not only has implications for regulations at the central level but also has implications for regional regulations. This is considering that the Region as a legal community unit that has autonomy has the authority to regulate and manage its region according to the aspirations and interests of its people as long as it does not conflict with the national legal order and the public interest.

There are at least several reasons why the omnibus law on job creation greatly influences and has an impact on the enactment of a regional regulation, namely:

- a. regional regulations are derived rules from laws that are affected by the omnibus law on job creation;
- b. regional policies contained in a regional regulation contradict the content contained in the omnibus work copyright law;
- c. there is a shift in the authority of the regions through the omnibus law on job creation.

This condition has implications for the deregulation of various regional regulations after the issuance of the omnibus law on job creation. Thus, the enactment of the omnibus work copyright law which has changed so many laws at the same time has implications for the enforcement of various related regional regulations so that any regional regulations that regulate related legal norms that are contrary to the Job Creation Act are invalid and have no binding legal force.

2. Further Efforts by Local Governments on the Implications of the Job Creation Law and the Implementation of the Omnibus Law at the Regional Level Based on Decentralization

The omnibus law on job creation is one of the many laws and regulations established by the central government that have a major impact on the implementation of decentralization. However, the existence of the birth of the work copyright law through the omnibus law is something interesting because throughout the history of the formation of a law in Indonesia, it is the first time that one law has changed dozens of other laws.

Omnibus law is also known as omnibus bill, Black's Law Dictionary formulates the word omnibus, namely relating to or dealing with numerous objects or items at once, including many things or having various purposes.²¹ Omnibus law is always related to and even more broadly understood as an omnibus bill or draft law. The omnibus, which after being mutually agreed and ratified, will only turn into an omnibus law. However, in practice the use of these two terms is often confused.²²

²¹ Black's Law Dictionary, West Publishing Wo, (2004), p. 1121 in Sodikin, *Paradigma Undang-Undang dengan Konsep Omnibus law Berkaitan dengan Norma Hukum yang berlaku di Indonesia*, Jurnal Rechtsvinding Volume 9 Nomor 1, April 2020

²² *Op.Cit.*, Jimly Asshiddiqie, p. 6

*The omnibus bill is a technique for the formation of new laws which was initially associated with the need to make changes to several existing laws at once.*²³ The omnibus method is needed in efforts to reform national laws, this is nothing but used in the framework of structuring the legal system as a whole.

Through the omnibus bill, a practice that is usually applied in civil law systems, can be improved, where each law is compiled in a text containing provisions that focus on material related to the title.²⁴ In the Indonesian context, the omnibus law on job creation also aims to simplify the number of regulations that might hinder investment in an effort to accelerate economic growth.

Omnibus law is a law that is related to or regulates a number of objects at once including having a number of purposes. So, conceptually, omnibus law is a comprehensive and comprehensive arrangement that is not tied to a particular regime.²⁵ Maria Farida Indrati defines omnibus law as a new law that contains or regulates various subjects for a simplification step of various laws that are still in effect.²⁶ The purpose of the omnibus law, according to the President, is to overcome all forms of regulatory obstacles that Indonesia is currently experiencing so that regulations must be simplified, cut and trimmed in number.²⁷ Therefore, as a further effort by the local government to the implications of the omnibus law on job creation which has deregulated the relevant regional regulations, the regional government needs to immediately harmonize and synchronize regional regulations so that the implementation of autonomy and co-administration does not violate the existing laws and regulations above. This is also a regional effort to provide legal certainty to the community.

Article 181 of the Job Creation Law has explicitly regulated the harmonization and synchronization efforts that must be carried out as a consequence of the enactment of the Job Creation Law. Paragraph (1) states that, "at the time this Law comes into effect, any statutory regulations under the applicable Law and contradict the provisions of this Law or contradict higher laws and regulations, or with a court decision, harmonization and synchronization must be carried out which is coordinated by the ministry or institution that carries out government affairs in the field of forming laws and regulations. In paragraph (2), "harmonization and synchronization related to regional regulations and/or regional head regulations are carried out by the ministry or institution that carries out government affairs in the field of forming laws and regulations together with the ministry that carries out domestic government affairs." Furthermore, in paragraph (3) that, "further provisions regarding harmonization and synchronization as referred to in paragraph (1) and paragraph (2) are regulated in a Government Regulation."

Furthermore, in the closing provisions section, Article 185 of the Job Creation Law, that at the time this Law comes into force:

- a. The implementing regulations of this Law must be stipulated no later than 3 (three) months; and
- b. All implementing regulations of the Law that have been amended by this Law are declared to remain in effect as long as they do not conflict with this Law and must be adjusted within a maximum of 3 (three) months.

²³ *Ibid.*, p. 5

²⁴ *Ibid.*, p. 219

²⁵ Henry Donald Lbn, Toruan, 2021, "Pembentukan Regulasi Badan Usaha dengan Model Omnibus Law", Jurnal Hukum to-ra, Vol.3, No.1, April 2017. Dalam Rudy, et al, *Model Omnibus Law: Solusi Pemecahan Masalah Penyederhanaan Legislasi dalam Rangka Pembangunan Hukum*, Bandar Lampung: Pusaka Media, p.13

²⁶ Maria Farida Indrati, "Omnibus law", UU Sapu Jagat?, Harian Kompas, 4 Januari 2020

²⁷ Bayu Dwi Anggono, *Omnibus law sebagai Teknik Pembentukan Undang-Undang: Peluang Adopsi dan Tantangannya dalam Sistem Perundang-Undangan Indonesia*, Jurnal Rechtsvinding Volume 9 Nomor 1, April 2020

As for the principle of *lex superior derogat legi inferiori* and the principle of *lex posterior derogat legi priori*, the legislators are required to harmonize and synchronize with existing and/or related regulations when drafting a regulation.²⁸ Harmonization and synchronization of statutory regulations is very necessary in forming a statutory regulation in order to know the existing legal conditions and to find out the position of the new regulations to be formed.

So it is appropriate that the deregulation of regional regulations as an implication with the ratification of the Job Creation Law brings legal consequences to immediately harmonize and synchronize regional regulations. This is urgent considering that the omnibus law on job creation not only creates new legal norms, but also changes and/or revokes related legal norms contained in various other laws.

This is also reinforced by the central government in terms of providing direction to local governments having issued Instruction of the Minister of Home Affairs Number 68 of 2021 concerning Follow-up to the Decision of the Constitutional Court Number 91/PUU-XVIII/2020 on Formal Examination of Law Number 11 of 2020 concerning Copyrights. Work. This Instruction from the Minister of Home Affairs is a follow-up to the direction of the President of the Republic of Indonesia on the Constitutional Court Decision Number 91 so that steps can be taken quickly, accurately and in an integrated manner between the Government and Regional Government, so that the instruction is addressed to all Governors and Regents/Mayors throughout Indonesia.

Based on the Instruction of the Minister of Home Affairs Number 68 of 2021, the Governor and Regent/Mayor:

1. continue to guide and implement the Job Creation Act and its implementing regulations;
2. immediately make changes, revocations or make new preparations of Regional Regulations (Perda) together with DPRD and/or Regional Head Regulations (Perkada) as a follow-up to the Job Creation Law and its implementing regulations that have been promulgated/stipulated;
3. in preparing Regional Regulations and Regional Regulations in order to guide the principles of formation and the principles of content material and preparation techniques in accordance with Law Number 12 of 2011 concerning the Establishment of Legislations as amended by Law Number 15 of 2019 and Regulation of the Minister of Home Affairs Number 80 2015 concerning the Establishment of Regional Legal Products as amended by Regulation of the Minister of Home Affairs Number 120 of 2018; and
4. in the framework of the formation of Regional Regulations and Regional Regulations in order to simplify regulations on similar arrangements.

This instruction was issued on December 21, 2021, about one month since the Constitutional Court Decision 91/2020. Based on the points of the contents of the instructions that have been described, it can be observed that although the Constitutional Court's Decision states that the Constitutional Court's Decision is conditionally unconstitutional to the Job Creation Act, on the other hand the President through the Minister of Home Affairs still orders all regional governments in Indonesia to comply with the content contained in the Law. Job Creation, even to continue to follow up on the formation of Regional Regulations and Regional Regulations to respond to the issuance of the Job Creation Law and the implementing regulations of the Job Creation Act.

Furthermore, the discourse on omnibus law usually dominates at the law level, which can actually be applied at the regional regulation level. This is because the current number of regional regulations is also very large.

²⁸ Malicia Evendia & Ade Arif Firmansyah, *Hukum Perundang-Undangan*, (Bandar Lampung: Aura Publishing, 2019), p. 27

According to Jimly Assidique, the perspective and method of omnibus law can be applied in the process of forming regional regulations with the aim of improving and changing many regional regulations that are related to each other in material that have existed so far, amended by an integrated regional regulation.²⁹ The omnibus law system can also be carried out in an effort to reorganize the legal system at the regional level, so that even though it differs from one region to another or is not uniform, the legal system of regional government laws throughout Indonesia can be well organized, effective, efficient and integrated in order to guarantee legal certainty, usefulness of law, and at the same time legal justice.³⁰

The formation of regional regulations using the omnibus law method must also pay attention to the technique of forming laws and regulations as regulated in Law no. 12 of 2011. The same thing was conveyed by Maria Farida Indrati, in her response to the omnibus law in Indonesia, that every statutory regulation must be formed based on the principles of establishing proper laws and regulations (*beginselen van behoorlijke regelgeving*) and also philosophical, juridical, and sociological foundations which are of course different for each statutory regulation. And also, regarding the existence of various laws whose articles have been revoked are placed in the omnibus law, because each law regulates different content, different subjects (addresses).³¹

The preparation of regional regulations using omnibus law is an alternative, especially to follow up the implications of the omnibus law on job creation on regional regulations. This takes into account the advantages and objectives of using the omnibus law.

One of the advantages of the omnibus law method is the practicality of correcting many problematic regulations. Increase speed in drafting laws, by drafting an omnibus law as well as correcting problematic laws that are currently in effect.³² In addition, several advantages of the omnibus law practice include:³³

1. In terms of time it is more efficient because it can solve many needs for new policies through regulation in a single process of law formation;
2. Regulations can be arranged to be more harmonious because at every opportunity to make changes to one law, the substance contained in many other laws can be simultaneously integrated into the new law;
3. For the business world, the world of work, and society in general, the guarantee of legal certainty and the usefulness of the law will be more guaranteed, although it may not guarantee justice;
4. State and government policies that apply are binding because they are officially stated in the form of laws and regulations that can be more easily understood and implemented.

The policy direction for structuring regulations is not only at the central level, but also at the regional level. This is also an effort to avoid disharmony between one regional regulation and another. So many applicable regional regulations allow disharmony, which will later become problematic and have a negative impact on the implementation of regional autonomy.

The legal consequences of disharmony of laws and regulations include the emergence of legal uncertainty, the implementation of laws and regulations being ineffective and efficient, the occurrence of different interpretations of a statutory regulation, the law as a guide for the

²⁹ *Op.Cit.*, Jimly Asshiddiqie, p. 131

³⁰ *Ibid.*, p. 231

³¹ Maria Farida Indrati, "Omnibus law", *UU Sapu Jagat?*, *Harian Kompas*, 4 Januari 2020, p.6, in Bayu Dwi Anggono, *Op.Cit.*

³² Ahmad Redi, *Omnibus law: Metode Sakti Mengatasi Kebuntuan Praktik Berhukum*, dalam Ahmad Redi & Ibnu Sina Chandranegara (ed), *Omnibus law: Diskursus Pengadopsiannya ke Dalam Sistem Perundang-Undangan Nasional*, (Depok: Rajawali Press, 2020), p. 5

³³ *Op.Cit.*, Jimly Asshiddiqie, p. 20

community and the government to not function properly.³⁴ The problem of overlapping regulations can not only be solved by harmonization but requires legal breakthroughs. This era requires a breakthrough, namely by simplifying regulations and the revision process as well as legislation.³⁵

The process of installing the omnibus method into the statutory system cannot be carried out without considering the factors of the legal system, the doctrines used in the system and the legislative process in Indonesia. The use of the omnibus method will be compatible if it is accompanied by the use of the consolidation method.³⁶ However, it is also necessary to pay attention to the weakness of the omnibus law concept in the formation of laws and regulations, which has implications for very weak law enforcement, because it will make it difficult for law enforcement officials themselves to take authority in law enforcement because of the breadth of content contained in the law with omnibus law concept.³⁷ Structuring regulations with the concept of omnibus law will be difficult to implement if there is no stakeholder participation and coordination between relevant agencies.³⁸

Thus, in essence, omnibus law can be applied at the level of formation of regional regulations. This is an effort to regulate regulations at the regional level, and also as an implication of the presence of omnibus law at the statutory level. The omnibus law on job creation has been ratified through Law no. 11 of 2020 concerning Job Creation is homework for local governments to be able to immediately harmonize and synchronize related regional regulations, so it is necessary to form regional regulations as derivative rules of the Job Creation Law so that the implementation of autonomy and co-administration tasks runs optimally.

C. Conclusion

Regulatory arrangements through the omnibus law as applied to the Job Creation Law have various implications for the process of forming laws and regulations, including regulations at the regional level. The existence of the Job Creation Law in theory and the principles of legislation has deregulated various related regional regulations, besides that it also provides homework for each region to adjust and respond to demands for new legal norms in the Job Creation Law through the formation and/or amendment of regional regulations as delegation of norms from higher laws and regulations as well as a form of implementing regional autonomy based on the principle of decentralization.

³⁴Firman Freddy Busroh, *Konseptualisasi Omnibus law dalam Menyelesaikan Permasalahan Regulasi Pertanahan*, Jurnal Arena Hukum Vol.10 No.2, Agustus 2017, p.233

³⁵ Dhaniswara K. Harjono, *Konsep Omnibus law Ditinjau Dari Undang-Undang No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan*, Jurnal Hukum tora, Vol.6 No.2, Agustus 2020, p. 101

³⁶ Ibnu Sina Chandranegara, *Kompabilitas Penggunaan Metode Omnibus dalam Pembentukan Undang-undang*, Jurnal hukum Ius Quia Iustum Vol.27 Issue 2, Mei 2020, p.259

³⁷ Sodikin, *Paradigma Undang-Undang dengan Konsep Omnibus law Berkaitan dengan Norma Hukum yang berlaku di Indonesia*, Jurnal Rechtsvinding Volume 9 Nomor 1, April 2020, p. 158

³⁸ Sekar Drupadi Muninggar, Dararida Fandra Mahira, & Linda Suci Rahayu, *Konseptualisasi Omnibus law Sebagai Upaya Sinkronisasi Regulasi Pergaraman di Indonesia*, Jurnal Legislatif Vol. 3 No.2, Juni 2020, p.251

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Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan sebagaimana diubah dengan Undang-Undang Nomor 13 Tahun 2022

Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah sebagaimana terakhir telah diubah dengan Undang-Undang Nomor 11 Tahun 2020

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