

Ideal *Omnibus Law* Model in the Legal System in Indonesia

Pahittiartik*, GatotDwiHendroWibowo*, Galang Asmara*, Kaharuddin*

*Doctoral Study Program of Law, Faculty of Law, University of Mataram, Indonesia

Abstract- Philosophically, the formation of legislation formed by omnibus law should make Pancasila as a paradigm. As one of the state supporters of law, the laws and regulations must be in a good and quality system to encourage the achievement of the state objectives outlined in the Preamble to the Constitution of the Republic of Indonesia in 1945. The purpose of the research is to understand the nature of omnibus law, the application of omnibus law, and find the ideal omnibus law model in the legal system in Indonesia in the future. This type of research is normative legal research with philosophical approach, conceptual approach, historical approach, statutory approach, and comparison approach. Legal materials used are primary, secondary, and tertiary legal materials for descriptive analysis. The results of the research are: Omnibus law is a new legal breakthrough as a methodological framework in the framework of structuring legislation and has not been regulated in Law No. 12 of 2011 on the Establishment of Legislation. Omnibus law is a concept, method, or technique that is not related to the prevailing legal system, but the substance of omnibus law that makes the concept or method appropriate to be a solution in the arrangement of legislation. The omnibus law model in Indonesia is to form new laws that change, remove, and or create new provisions from various laws. Law No. 11 of 2020 on Copyright Work as the realization of omnibus law was formed to realize the purpose of the State as mandated by the Constitution by synchronizing 78 laws.

Index Terms- *Binding Agreement on Sale and Purchase, Land Rights, and Constitution*

I. INTRODUCTION

The Constitution of the Republic of Indonesia of 1945 (1945 Constitution) specifies that Indonesia is a country of law. The state law must be able to maintain and encourage the achievement of state objectives that are generally outlined in the Preamble to the 1945 Constitution, which include: advancing the general welfare, educating the nation's life, and participating in implementing a world order based on independence, lasting peace, and social justice.¹

One of the state supporters of the law is the system of prevailing laws and regulations. Thus, the legislation must be able to create conditions that support the achievement of community welfare and shared life. Therefore, the laws and regulations must be in a good and quality system.²

¹ Alwi Wahyudi, *Hukum Tata Negara Indonesia dalam Perspektif Pancasila Pasca Reformasi*, (Yogyakarta : Pustaka Pelajar, 2013), hlm. 64.

² I Gde Pantja Astawa & Suprin Na'a, *Dinamika Hukum dan Ilmu Perundang-undangan*, (Bandung : PT Alumni Bandung, 2012), hlm. 133.

Legislation is a legal policy aimed at achieving justice, certainty and benefit as the purpose of the law according to Gustav Radbruch which is inseparable from the law.³ But in practice, there are various problems in the legal system in Indonesia.

The issue of legislation has lately become a very concerning issue. The occurrence of overlap of legislation equivalent to other laws and regulations both at the central and regional levels. Developments to date indicate that the legislation deviates from the material content that should be regulated. Disobedience to the content raises the issue of "hyperregulation". Furthermore, the effectiveness of legislation is also often an issue that arises at the level of implementation.⁴

Various efforts have been taken by the government in improving the legal system. Policy tightening of planning and efforts to streamlining and harmonizing have been carried out but have not had a significant impact on the fundamental problems in the legal system. One of the highlights is the legislation in the field of economics, especially investment, ease of business, micro, small and medium enterprises (UMK-M), and licensing. This is in line with the direction of legal development in the National Long-Term Development Plan (RPJP) year 2005-2025 which is directed to support the realization of sustainable economic growth, regulate problems related to the economy, especially the business and industrial world, and create investment certainty, especially enforcement and legal protection.

To overcome the problem of legislation that causes the investment climate in Indonesia to move slowly, and simplification of bureaucratic constraints, the President initiated a new breakthrough called omnibus law aimed at combining various materials and substances contained in various laws in 1 (one) law. For some people, the term omnibus law has not been popular in the legal system in Indonesia. Law No. 12 of 2011 on the Establishment of Legislation also has not included the concept of omnibus law, either as one of the principles, types, or methods as the foundation of the law in the formation of legislation.

The concept of omnibus law continues to be a debate among legal experts to date, especially related to Law No. 11 of 2020 on Copyright Work established with omnibus law. Various problems encountered related to the application of omnibus law in the formation of legislation in Indonesia, making the idea

³ O. Notohamidjojo, *Soal-soal Pokok Filsafat Hukum*, (Salatiga : Griya Media, 2011), hlm. 33.

⁴ Pusat Kajian Hukum dan Konstitusi (PSHK), *Kajian Reformasi Regulasi di Indonesia: Pokok Permasalahan dan Strategi Penanganannya*, (Jakarta : YSHK, 2019), hlm. 3.

interesting to be reviewed from the prevailing legal system in Indonesia.

II. RESEARCH METHODS

The types of research used are normative legal research with philosophical approach, conceptual approach, historical approach, statutory approach, and comparison approach. The legal materials used are primary, secondary, and tertiary legal materials. All legal materials are systematically collected, processed, and analyzed descriptively.

III. RESULT AND DISCUSSION

The Nature of Omnibus Law in the Establishment of Legislation

There is no single definition of omnibus law. The word "omnibus" comes from the Latin meaning "for all". In the context of the law, the word omnibus is not just related to law or bill. Omnibus is also used for various legal terminology, such as omnibus hearing or adagium/legal principle. In Black's Law Dictionary, Bryan A. Garner defines the omnibus bill: "*Relating to or dealing with numerous objects or items at once; including many things or various having purpose*".⁵

Herb Gray, Opposition Leader in Canada mentions : "*The essential defence of an omnibus procedure is that the bill in question, although it may seem to create or amend many disparate statutes, in effect has one basic principle or purpose which ties together all the proposed enactments and thereby renders the bill intelligible for parliamentary purposes*".⁶ Although it seems different and many laws are amended, basically the omnibus law has one basic principle or purpose that binds all amended laws. Therefore, often senators in Canada refer to omnibus law as "unifying principle", "single purpose", "unifying thread" or "unitary purpose" that binds various components in the omnibus law.

In keeping with that opinion, Barbara Sinclair gives the definition of: "*Legislation that addresses numerous and not necessarily related subjects, issues, and programs, and therefore is usually highly complex and long, is referred to as omnibus legislation*".⁷

Based on the various definitions above, the author argues that omnibus law is interpreted as a method or technique in the formation of legislation that covers many subjects or materials that have a specific purpose. Omnibus law as a concept in the formation of legislation that combines several regulations whose regulatory substance is different, into a large regulation, which at the same time revises and repeals several laws and makes new provisions. As a consequence, the omnibus law will repeal certain rules in various laws and regulations, where the norm or substance may be declared invalid, either in part or in whole.

Thus omnibus law can basically be interpreted: 1. Related form: there is one bill that governs many things put together; 2. Related purposes: regulate certain specific matters by changing several provisions in many laws so that they can be discussed by the legislature simultaneously and decided in one decision making.

In practice implementation, Jimly Ashiddiqie presented 3 (three) omnibus law patterns:

1. There is one major law to be amended, namely the law on A, but the draft amendment is prepared to plan to also change one or two articles contained in the law on B, and one or two articles of provisions in the law on C without revoking the application of law B and law C, except to change only a few articles with the new law. This bill belongs to the category of bills classified as omnibus law pattern 1.
2. There is one new law to set a completely new policy, but the new policy if done without its own laws will crash or violate several laws at once, then all laws that do not comply with the new policy, need to be changed accordingly with the new law in accordance with the need for new rule norms. The new bill also falls into the category as a pattern 2 omnibus law.
3. There are two or three laws that are simultaneously to be amended by a new law, and with the new law later, two or three old laws will be repealed and become invalid. The bill falls into the category of omnibus law pattern 3.⁸

If referring to the above opinions, there are 3 (three) circumstances to practice omnibus law, i.e. the law to be changed directly, the law to be changed is not directly related, and the law to be changed is not related but in the practice of tangent, then it can be concluded that the regulated problem must be complex because it consists of several types of problems.

Based on various practices applied in various countries, can be summarized 2 (two) patterns of application of omnibus law:

1. One law changes many laws at once by changing certain parts of the law without causing it to be repealed at all.
2. One law integrates many laws into one new statutory entity by repealing all the old laws that are integrated with and amending some of the old legal materials as needed.

Meanwhile, omnibus law has characteristics, both general and special characteristics. A common characteristic of omnibus law is the acceleration of the process of legislation and the complexity of the problems stipulated in one law. While special characteristics related to the politics of government law.

Omnibus law is not a new practice. O'Brien and Bosc argue that omnibus law is a longstanding practice. In various literature it was found that the first practice of omnibus law was applied in Canada. Historically, the Canadian parliament passed two Railways into one Railway Act.⁹The omnibus law has been in place for decades and is well entrenched in the Canadian

⁵Privacy Exchange.org., A global information resource on consumers,commerce, and data protection worldwide National Omnibus Laws,<http://www.Privacyexchange.Org/legal/nat/omni/nol.html>, 20/9/2020

⁶Michel Bédard, "Omnibus Bills: Frequently Asked Questions"https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201279E#txt, April, 2020.

⁷Glen S. Krutz, *Omnibus Legislating In The U.S. Congress*, (Ohio State University Press), hlm. 3.

⁸Jimly Ashiddiqie, *Omnibus Law and Its Application in Indonesia*, (Jakarta, Konstitusi Press, 2020), hlm. 4.

⁹Audrey O'Brien and Robert Bosc, *House of Commons Procedure and Practice*, (2nd. Editions Yvon Blais, 2009), hlm. 724-725.

Parliament so it is often seen as an exception to the usual legislation process.¹⁰

In its development, omnibus law is not necessarily accepted as a technique or method in the process of legislation. In the United States, some jurisdictions prohibit this practice, such as the California Constitution which states that a law contains only one subject as set forth in the title of the law. In the United States Constitution there is a provision that states that a law contains only one subject. The practice of omnibus law is not allowed under the constitutions of many states in the United States. One bill is prohibited from containing more than one subject at a time. Some 42 countries have such provisions.

In a test ruling the case in Pennsylvania Court was mentioned:

Bills, popularly called omnibus bills, became a crying evil, not only from the confusion and distraction of the legislative mind by the jumbling together of incongruous subjects, but still more by the facility they afforded to corrupt combinations of minorities with different interests to force the passage of bills with provisions which could never succeed if they stood on their separate merits.¹¹

By the Court, omnibus law is like a practice of retribution and unpleasant because the law is likened to a rider on a variety of unrelated subjects. An organization called Downsize DC campaigned for the "One Subject at a Time Act" (OCTA) and called on Congress to stop laws that people don't want. In addition, the organization proposes one subject in one law. The provision can then be found in the California Constitution which states that: "*a statute shall embrace by one subject, which shall be expressed by its title. If a statute embraces a subject not expressed in its title, only the not expressed is void*".¹²

In its development today, omnibus law is increasingly practiced, both in the common law state and in the civil law state. Some of the countries that implement omnibus law include the United States, Canada, New Zealand, United Kingdom, Germany, Turkey, Ireland, Vietnam, Philippines, Australia and many other countries.

Some of the goals to be achieved by implementing omnibus law are as follows: a) Simplifying and facilitating the formation and application of laws so as to further support creativity and innovation in development in order to accelerate quality national economic growth; b) Harmonize various provisions of various laws that intersect in practice so that fair legal certainty can be more easily guaranteed in the application of the law to achieve state objectives; and c) Integrate various laws in a unified legal text in an integrated manner to facilitate the understanding and application of them in practice to support the development process with fair legal certainty.

In fact, omnibus law has a spirit to organize legislation in order to achieve the country's goals. The legislation must express an adagium that reads "Salus populi suprema lex exto", which means that happiness, well-being, safety, health are the highest

¹⁰ Michel Bedard, "*Omnibus Bills: Frequently Asked Questions*", Publication No. 2012-79-E 1 October, 2012.

¹¹ Louis Massicotte, "*Omnibus Bills in Theory and Practice*", Canadian Parliamentary Review, 2013.

¹² *Ibid.*, hlm. 15.

laws. The provision becomes the basic format in formulating the laws and regulations. Therefore, the State must be able to express the adagium so that the norms made are not substantively invalid. The salvation and prosperity of the people is the main purpose of the state, as written in paragraph 4 of the opening of the 1945 Constitution, which reads: "*establishing an Indonesian Government that protects all Indonesians... to promote the general welfare, educate the nation's life, and participate in implementing a world order based on independence, lasting peace, and social justice*".

The Constitution of the Republic of Indonesia in 1945 also provides a place for the concept of a welfare state that requires government intervention concerning the lives of many people or the welfare of the people. The theory of state welfare law is in line with the constitutional spirit and objectives of the Unitary State of the Republic of Indonesia as stated in the preamble to the 1945 Constitution which has expressly stated that one of the main tasks of the founding father when proclaiming the State of the Republic of Indonesia is to "advance the general welfare". The piece of the mandate hints that policy makers, especially the government, must have a clear political will in running the government and put the public interest first.¹³

The modern state of law today tends to be a progressive legal state when viewed from the initiative to realize the general welfare that comes always from the state (government), meaning that in order to realize the general welfare then the state actively takes the initiative to act, not the people "begging" to be served by the state. This is where the idea of the country of Indonesian law is aspired to. In modern welfare countries such as Indonesia today, the government is given the obligation to participate and be active in the socioeconomic association of its people in order to realize mutual welfare as a form of justice.

Omnibus Law in the Legal System in Indonesia

The state regulatory system of law actually requires the structuring of the legal system to realize justice for all citizens. Structuring the legal system is very important because Indonesia faces many legal problems.

For some experts who uphold the principles of the civil law system, omnibus law is considered as an affirmation of the principle of civil law itself so it is considered unsuitable to apply. However, if you look at the historical common thread, in practice Indonesia has actually also implemented the preparation of regulations through omnibus law, although at the time of its formation is not explicitly mentioned its approach through omnibus law as mentioned in the Copyright Act. Because it is not explicitly mentioned the approach of its formation through the omnibus law approach, it does not cause a long debate that leads to the pros and cons as during the formation of the Copyright Act.

Although not referred to as omnibus law, Indonesia has applied the same concept when the People's Consultative Assembly (MPR) issued a Decree of mpr ri Number I /MPR/2003 on The Review of Materials and Legal Status of Provisional MPR Provisions and Decrees of MPR RI year 1960

¹³ King Faisal Sulaiman, "*Initiating Bureaucratic Reform in the midst of the Crisis of Public Trust, presented at the 2004 National Law Assessment Seminar*", organized by the National Law Commission of the Republic of Indonesia, December, 2004, page 6.

to 2002. This omnibus law is also applied in Law No. 7 of 2017 on Elections basically uniting and revising 6 (six) laws. Long before, omnibus law has also been practiced by Indonesia in simplifying about 7,000 dutch heritage regulations to about 400 regulations.¹⁴

The omnibus law cannot be defined simply as one law or one bill that revises dozens of laws. Omnibus law is not a parent/umbrella/principal law nor a codification. In its implementation, omnibus law is faced with several challenges of its application, namely the technique of legislation, the application of the principles of legislation, and the potential for centralization. Through omnibus law, the practice that is usually applied in the civil law system, can be improved where each law is drafted in a text that contains provisions centered on the material related to the title, without taking into account other material that is actually in practice in the field often has a mutually supportive relationship, or otherwise contradictory so as to cause uncertainty and injustice, even sometimes the uselessness to be applied because it causes problems in achieving legal objectives.

Thus, there is actually nothing wrong with the concept of omnibus law scientifically legal as long as the purpose of applying this concept in the process of legislation is to solve regulatory problems. However, as one of the ideal alternatives in the arrangement of legislation in a country, in the process of drafting the omnibus law can not necessarily be applied immediately. The implementation must be adjusted to the conditions and character of each country's state. The practice of copying and pasting the concept of state regulation from one country to another is commonly practiced by various countries around the world with the legal term of legal transplantation. In the case of omnibus law, it can be said that when omnibus law is applied in a country whose basis is not common law, then the country has conducted a praksis called omnibus law transplant process.

The application of omnibus law is also a practice of legal transplantation in the global era must also be adjusted in advance to the conditions and character of the state based on the reference of their respective legal systems. Moreover, the essence of omnibus law is a legal product that directly covers a variety of major issues. Therefore, there is no denying that omnibus law has a considerable impact on the entire community. If the omnibus is not implemented in a manner adapted to the state legal system graft, and is not implemented by the mechanism of legal formation applicable in the country, either referring to the procedural due process of law or substantive due process of law, then the born is only a disruptive legal product.

One of the realizations of the application of omnibus law in Indonesia is Law No. 11 of 2020 on Copyright Work. In the Copyright Act contained the intention to simplify the number of rules that are considered to hinder the pace of investment in order to spur the acceleration of economic growth. The idealized policy is deregulation and not reregulation, let alone adding new regulations that instead add additional burden to the dynamics of

¹⁴Satya Arinanto, *Reviving omnibus law: Legal option for better coherence*, Harian Jawa Post, <https://www.thejakartapost.com/news/2019/11/27/reviving-omnibus-law-legal-option-better-coherence.html>, 20/10/2020.

economic growth that is precisely to be accelerated. The Copyright Act consists of 10 Clusters, as follows:

- a) Improvement of investment ecosystem and business activities;
- b) Employment;
- c) Ease, protection, and eradication of cooperatives and UMKM;
- d) Ease of business;
- e) Research and innovation support;
- f) Land procurement;
- g) Economic area;
- h) Central Government investment and acceleration of national strategic projects;
- i) Implementation of government administration; and
- j) Imposition of sanctions.¹⁵

Law No. 12 of 2011 on the Establishment of Legislation has not included the concept of omnibus law as one of the principles in the source of law or as a methodological framework for revising legislation so that various views arise. According to Jimly, ideally to practice omnibus law policy, changes are needed to the law on the formation of legislation. However, without changes, the practice of establishing legislation with omnibus law can be done. The guidelines in the appendix to the law are guiding and do not need to be rigidly understood. The guidelines are prepared based on the practices carried out so far so that the format and the design process follow the existing habits so that it can also be passed by breakthrough so that new conventions and customs are formed as a legal basis equivalent to the law for further practice.¹⁶

With the practice of such state conventions, the tradition that is usually done in common law countries can be done in civil law countries and vice versa. If an unusual omnibus law is sued through a petition in the Constitutional Court then the decision of the Constitutional Court can immediately become a legal source equivalent to a change in the law through the legislative review process. Thus, the idea of practicing omnibus law can be continued without having to wait for changes in the law on the formation of legislation first.¹⁷

Omnibus law can also be seen from the perspective of legal transplantation.¹⁸ Through this method, the exploration of the text and the meaning of the reading of legal science (interpretation of law) in the development of the national legal system in the context of the science of reading the meaning of law on the alignment of the omnibus law method is interpreted as long as the making of legislation obeys the hierarchy and meets the principles of the formation of legislation. Alignment with the law on the formation of legislation, not interpreted formally

¹⁵Article 4 of Law Number 11 of 2020 concerning Work Copyright.

¹⁶Jimly Asshiddiqie, *Omnibus Law Does Not Have to Revise the Law on the Formation of Legislation*, <https://www.hukumonline.com/berita/baca/lt5dd6787f9f806/omnibus-law-tak-harus-merevisi-uu-pembentukan-peraturan/>, 03/03/2021.

¹⁷Jimly Asshiddiqie, *Omnibus Law, Simplification of Legislation, and Administrative Codification*, <https://www.jimlyschool.com/baca/34/uu-omnibus-omnibus-law-penyederhanaan-legislasi-dan-kodifikasi-administratif>, 03/03/2021.

¹⁸Cotterrell, Roger, *Law, Culture, and Society*, (England: Ashgate 2006), p.109. Lihat Pula, Watson, Alan, *Legal Transplants, an Approach to comparative Law, Athens and London*, (The University of Georgia Press: 1993), p. 21.

legalistic, but through a progressive legal reading approach that reads the meaning of the law on the alignment of omnibus law methods is interpreted throughout the making of legislation in compliance with the hierarchy and meets the principles of the formation of legislation.

Policy of making a law (basic policy) that combines elements derived from foreign law with the law derived from the original paradigmatic values of Indonesian culture and society must be done carefully and calculatingly, so that the laws that will be enforced in this country are not uprooted from the ideological roots of the country and the nation of Indonesia.¹⁹

One of the principles of legislation states that a regulation can be changed and repealed with a higher regulation or equivalent. Based on this, it is possible that there is a law that repeals other laws that do not govern the same thing or title. It's just that the technique of changing the law that has never been or rarely happened is the elimination of provisions in dozens of laws with one law.

Law No. 12 of 2011 on the Establishment of Legislation does not recognize the term omnibus law. However, the provisions of the omnibus law shall be subject to the Law regarding the position or material content therewith. Omnibus law is a method in the process of legislation or drafting regulations, not a type of legislation. If omnibus law is understood as a type of legislation similar to the term umbrella law (umbrella act) which is not known in the Law on the formation of legislation. But if the omnibus law is understood as a method, it is not contrary to the legislation, as long as the type is a bill that covers more than one aspect that is combined into one law. Similarly, when associated with the content of the law, the existence of omnibus law is not contrary to Law No. 12 of 2011 concerning the establishment of legislation.

The Indonesian legal system adheres to the concept of the single subject rule or the One Subject at a Time Act which is a method that regulates one subject in one law. This method is also indirectly in accordance with the method used in Indonesia as specified in CHAPTER I letter A angka 6 and 7 Annex II of the Law on the establishment of legislation that mentions:

6. On the name of the revised Legislation added the phrase change over in front of the title of the amended Legislation.
7. If the legislation has been amended more than 1 (one) time, between the word change and the upper word is inserted a description indicating how many times the change has been made without detailing the previous changes.

This method is intended to prevent the misuse of legislators to violate private rights as stated by Millard H. Ruud as *to combat various forms of legislative misconduct*.²⁰

If reviewed more deeply, there are two possible reasons for the implementation of omnibus law: First, there are three forms of law when associated with the NRI Constitution of 1945, among others: 1) There are laws that combine 2 or 3 content

materials regulated in the Constitution; 2) There are laws established based on the material specified in the Constitution; and 3) There is a law that expands the content material stipulated from those stipulated in the Constitution.

Both forms of law at points 1 and 2, are influenced by the use of the phrase formulation in the Constitution which is "regulated in law" (which emphasizes that on an issue must be regulated in a law) and "regulated by law" (arrangement with a stand-alone law). While at point 3, the legislator does not look originally inten in understanding the text of the 1945 Constitution, but rather expands the meaning that impacts the widerness of regulated objects. Based on this, the 1945 Constitution allows the establishment of a Law whose content material is more than 1 object.

Second, the existence of the basic mechanism of legal preference. The provisions of Article 7 paragraph (1) of the Law on the establishment of legislation explain that the position of the law is aligned. But due to continental European influence, there is a principle of legal preference to harmonize conflicting laws and regulations, both vertically and horizontally.

In its implementation, omnibus law should be avoided for topics or policy themes containing large scale, especially related to human rights because strategic policies have a wide impact requires discussion and giving deep consideration. However, because the omnibus law has not been regulated in the Law on the establishment of legislation, its existence is attached to government policy or government legal politics that may not be continued.²¹

Therefore, in order for the omnibus law to gain legitimacy of Law No. 12 of 2011, the formation and process of legislation is carried out with the provisions of: 1) Provided that the type is a Law (bill) that covers more than one aspect combined into one Law; 2) As long as the content material is regulated omnibus law in accordance with the provisions in the Law on the establishment of legislation; 3) There is no prohibition in the Law on the establishment of legislation for the establishment of omnibus law that serves to accommodate several content materials at once. 4) Revise the Law on the establishment of laws and regulations.

The omnibus law method approach of Indonesia can be applied by laying out a model method of forming legislation. The differences in this legal system must be overcome by the renewal of the law as the concept and opinion of Mochtar Kusumaatmaja, that the function of law as a means of community renewal (law as a tool social engineering) and law as a system is indispensable for the Indonesian nation as a developing country.²²

In practice often legislators do not have the ability and speed of work that is able to keep pace with the speed of change in legal needs. Therefore, the law (meaning: law) often runs hobbled behind the development of the legal needs of the community. Many laws and regulations (especially laws) are established to address every problem without considering: (1) whether such legislation is needed in order to support

¹⁹ Evaristus Hartoko W, *Good Corporate Governance in Indonesia, Griffin's View on International and Comparative Law*, Volume 3 Number 1, Januari, 2002.

²⁰ Millard H. Ruud, *No Law Shall Embrace More Than One Subject*, Minnesota Law Review Vol. 42 No. 1, 1958.

²¹ Bayu Dwi Anggono, *Points of Thought of Structuring Laws and Regulations in Indonesia*, (Jakarta : Konstitusi Press , 2020), hlm. 190.

²² Romli Atmasmita, *Reorganizing the Future of National Legal Development*, The Paper was presented in "Seminar on National Legal Development VIII" in Denpasar, July, 2003.

development priorities; and (2) whether the substance is regulated by other sector legislation.²³

Many people think that omnibus law cannot be applied in the legal system and legislation in Indonesia. The progress of the era of globalization positively requires that a statutory regulation that can meet the demands of globalization in this case a legislation must be able to reflect the will and realize justice for the community. This is where the law should be able to appear to demonstrate the potential of regulating it or performing regulatory functions.²⁴

Based on the various descriptions above, the author argues that omnibus law can be applied in the legal system in Indonesia. Basically omnibus law is a concept, method, or technique that is not actually related to the prevailing legal system, but the substance of the omnibus law is what makes the concept or method is very appropriate to be a solution in the arrangement of legislation. Omnibus law does not make the established law higher than other laws.

Ideal Model of Omnibus Law in The Legal System in Indonesia

The application of omnibus law in Indonesia is still a problem. Copyright Law as the realization of the application of omnibus law also does not escape the issue both from the aspects of engineering, principles, methods, procedures, and substance. Establishing legislation in the legal system in Indonesia is not difficult, but it is also not easy. Many factors must be considered, both from the procedures, stages, methods and principles of the formation of legislation, as well as the substance as stated by Lon Fuller in "The Morality of Law" related to the criteria of good regulation.²⁵

In the context of the formation of legislation, there are some popular methods that are usually offered by academics and/or practitioners, such as Cost and Benefit Analysis (CBA) and Regulation Impact Assessment (RIA). Detection from the beginning of the formation of legislation formed by omnibus law method is very important to do. Normatively, the legislation, especially the law focuses on 2 (two) matters, the process of its formation and its content material as mentioned in Article 5 and Article 6 of Law No. 12 of 2011 concerning the Establishment of.

Another important aspect of the formation of legislation is the paradigm of.²⁶ Paradigm has always been the basis and background of the formation of legislation. The paradigm of a law in general can be seen in the Considerant weighing as well as the general explanation of the law in question. But also does not close the possibility, the paradigm can be seen in the torso of a law so that there can be found urgency, orientation, and impartiality of the law.

Ideally, the formation of legislation by omnibus law method should be accompanied by an Academic Manuscript

containing a description of the road map of the formation of legislation in order to avoid the risk that the process of forming legislation on an omnibus basis is considered out of line. In the stage of academic manuscript preparation must be accompanied by cost analysis and benefits analysis. Furthermore, an inventory of how many regulations exist and what regulations are affected and what legal action needs to be taken against the affected regulations, whether repealed, replaced, revised, or other legal action. Thus it is important to have knowledge of risks (risk knowledge) in the formation of legislation, as follows:

1. Risk knowledge is one of the success factors in early detection systems, so it is necessary to conduct an assessment of risk factors and vulnerabilities of the community, as well as build an information management so that the public can get information about risks and emergency plans.
2. Monitoring and warning services conducted by the board fittings with the Government. Another aspect is constitutional compliance by not regulating substance that has been expressly declared unconstitutional based on the Decision of the Constitutional Court.
3. Dissemination and communications. Both of these things are important to do both from the planning stage to the discussion stage by considering community criticism and providing easy access to the public in monitoring the development of legal discussions. Omnibus law with a fairly broad material requires a longer discussion process so that more substantive community participation and genuine public participation space can be implemented. This is in accordance with the mandate of Article 28C of the 1945 Constitution which protects the right of every person to fight for his or her collective right to build their society, nation and country, as well as Article 28F which protects everyone's right to communicate and obtain information to develop their personal and social environment. Another principle, the 1945 Constitution as the highest legal norm, puts forward the principle of ecologically sustainable development in the national economy (Article 33 paragraph (4) of the 1945 Constitution). Thus, economic growth efforts should not sacrifice aspects of ecosystem support and social justice for the benefit of the current generation (intragenerational equity) and the future (intergenerational equity). In addition, investment growth in Indonesia is not only influenced by the investment climate that can be measured by the easy of doing business (EODB) index, but also the climate of governance in general that can be measured by *World Governance Indicators* (WGI). When looking at WGI in 2018 and EODB index in 2020, Indonesia is in a not good position compared to other Southeast Asian countries such as Malaysia and Thailand. That is, if governance including improving the quality of public services and eradicating corruption in the bureaucracy is not fully improved, then the measures to improve the investment climate reflected in the Copyright Act will not be effective.
4. Response capability, namely the ability and willingness to provide a quick response when an unwanted condition occurs.

In the formation of legislation is also required standards and methodologies of good legislation making as introduced by Ann Seidman and Robert B. Seidman called *Institutional*

²³Bernard Arief Sidharta, *Legal Development Today in Indonesia, Epistema Institute*, Berkala Isu Hukum dan Keadilan Eko-Sosial, 2012.

²⁴Suteki, *Law and Technology Transfer A Sociological Struggle*, (Yogyakarta: Penerbit Thafa Media, 2013), hlm. 11.

²⁵ Lon Fuller, *The Morality of Law*, Revised edition Ninth Printing (New Haven and London : Yale University Press, 1973).

²⁶Paradigma are the fundamental models or frames of reference we use to organize our observation and reasoning observations and reasoning.

Legislative Theory and Methodology (ILTAM).²⁷ ILTAM is a guide to creating evidence-based legislation, which can effectively assist the government in achieving the desired goals. Some of the stages used are: 1) Identifying problems that occur; 2) Conduct a review of the identified problem; 3) Creating evidence-based legal solutions resulting from the study; and 4) Monitoring and evaluating the implementation process.

Based on comparisons in other countries, the application of omnibus law should pay attention to the following criteria:

1. Require omnibus law to only regulate related topics. Such practices can be seen in the 2008 Manual for Drafting Legislation published by the Federal Ministry of Justice of the State of Germany. That is, the topics that will be regulated there must be a strong link (close link) between the provisions stipulated in the omnibus law. The practice is also carried out in New Zealand to regulate similar (*interrelated topics* atau *similar nature*).
2. Affirming all provisions in the omnibus law must relate to its title. Such provisions can be found in some state regulations in the United States. For example, California's state constitution governs the content of laws unrelated to titles deemed invalid (*void*).
3. Limiting the use of the Omnibus Law to regulate certain matters.

The use of omnibus law in New Zealand is only allowed for finance bills, taxation bills, statutes amendment bills, local regulations, and Maori bills (Indigenous New Zealanders). The use of omnibus law methods outside of these things can only be done under certain conditions and must meet certain requirements.

Omnibus law combines 10 clusters that have an uns uniform legal pattern and paradigm. When combined in a uniform concept, it is very likely to be a problem and complexity of the problem as the verdict of the test case in the Pennsylvania Court of.

The principle that should be considered in simplification of regulation through omnibus law is to put forward the principle of *lex posterior derogate legi priori* (the new rule overrides the previous rule) followed by the arrangement in the "closing provisions" to cancel the regulation to be canceled. The omnibus law will override *lex's* principle of *specialist derogate legi generalist* because this omnibus law can be said to govern more generally. Nevertheless, this principle remains a consideration for the legislators / designers of the legislation to stick to it at the time of drafting the legislation.

Based on the description above, in the process of applying omnibus law in the legal system need strengthening of instruments as follows:

First, the House of Representatives (DPR) together with the Government, must involve community participation, as mandated by Article 96 of Law No. 12 of 2011 which mentions: "*the public has the right to give input orally and/or in writing in the formation of legislation*". Then in the next paragraph, it is mentioned: "*oral and/or written input can be done through: (a) public hearing meeting; (b) work visits; (c) socialization of (d)*

seminars, workshops, and/or discussions. Second, the Dpr and the Government must be transparent in providing any information on the process and development of the formation of legislation established by omnibus method. Transparency (openness) is an important factor so that the public can provide input, especially to the community that will be the target of the enactment of the law established. Third, the House of Representatives together with the Government harmonizes legislation both vertically and horizontally so that the law established by the omnibus method is harmonious and does not overlap with other laws and regulations. Fourth, the use of information technology to manage the legal administration system in Indonesia to socialize the law systematically, programmatically, deliberately, and seriously.

The most important thing is that the values of Pancasila and the 1945 Constitution should be internalized in the formation of legislation as part of the development of laws directed to achieve the goals of the state. Pancasila as the *staatsfundamentalnorm* of the Indonesian nation must always animate and underlie all national and state life and become a Guide Star (*leitsar*) national policy direction, including legal development. Thus, the characteristics of omnibus law must be in harmony and in harmony with the characteristics of Pancasila. The characteristic of Indonesian law is the nature of protecting, not just governing. The protection in question is to protect the entire nation of Indonesia and all Spilled Blood of Indonesia. Therefore, there are 2 (two) ideas that become the basic reference: 1. Protection that bases itself on unity. 2. In realizing unity, there is an idea that becomes a reference for unity, namely the realization of social justice for all Indonesians.

IV. CONCLUSION

The nature of omnibus law in the formation of legislation is in the framework of structuring legislation, because the laws and regulations in a country have a strategic and important position in order to achieve the objectives of the State as mandated by the Constitution. As a methodological framework in the formation of legislation, omnibus law has not been regulated in Law No. 12 of 2011 on the Establishment of Legislation. The omnibus law model in Indonesia is to form new laws that change, remove, and or create new provisions from various laws. Law No. 11 of 2020 on Copyright Work as the realization of omnibus law was formed to realize the purpose of the State as mandated by the Constitution by synchronizing 78 laws.

V. SUGGESTION

Omnibus law must have a strong legal basis in order to provide legal certainty in the formation of legislation. To implement the omnibus law, Law No. 12 of 2011 on the Establishment of Laws and Regulations must be amended. Furthermore, the Government and the House of Representatives must establish an omnibus law model that regulates the requirements and procedures for drafting omnibus law in Indonesia, whose contents must at least contain: 1) Materials that can be arranged by omnibus law; 2) Conditions and criteria that can be the basis of consideration to use the omnibus method; 3) The necessity of omnibus law to set one subject only; 4) The necessity that the provisions in the omnibus law relate to each

²⁷ Ann Seidman and Robert B. Seidman, *Itam : Drafting Evidence Based Legislation For Democratic Social Change*, Boston University Law Review, Vol. 89, p. 435-484.

other, and the substance in accordance with the title; and 5) Provisions that ensure the process of community involvement in every stage of the formation of legislation. In addition, omnibus law in the future can not only be applied in the state of the law, but can also be applied in the framework of harmonization of other laws and regulations such as the local regulations

REFERENCES

- AlwiWahyudi, *Hukum Tata Negara Indonesia dalam Perspektif Pancasila Pasca Reformasi*, (Yogyakarta: PustakaPelajar, 2013). [Indonesian]
- I GdePantjaAstawa&SuprinNa'a, *Dinamika Hukum dan Ilmu Perundang-undangan*, (Bandung : PT Alumni Bandung, 2012). [Indonesian]
- O. Notohamidjojo, *Soal-soal Pokok Filsafat Hukum*, (Salatiga : Griya Media, 2011). [Indonesian]
- PusatKajianHukum dan Konstitusi (PSHK), *Kajian Reformasi Regulasi di Indonesia: Pokok Permasalahan dan Strategi Penanganannya*, (Jakarta : YSHK, 2019). [Indonesian]
- Gunnar Myrdal, dalam Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2000). [Indonesian]
- Privacy Exchange.org., *A global information resource on consumers, commerce, and data protection worldwide National Omnibus Laws*, <http://www.Privacyexchange.Org/legal/nat/omni/nol.html>, 20/9/2020
- Michel Bédard, "Omnibus Bills: Frequently Asked Questions", https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201279E#txt, April, 2020.
- Glen S. Krutz, *Omnibus Legislating In The U.S. Congress*, (Ohio State University Press).
- JimlyAshiddiqie, *Omnibus Law dan Penerapannya di Indonesia*, (Jakarta, Konstitusi Press, 2020). [Indonesian]
- Audrey O'Brien and Robert Bosc, *House of Commons Procedure and Practice*, (2nd. Editions YvonBlais, 2009).
- Michel Bedard, "Omnibus Bills: Frequently Asked Questions", Publication No. 2012-79-E 1 October, 2012.
- Louis Massicotte, "Omnibus Bills in Theory and Practice", Canadian Parliamentary Review, 2013.
- King Faisal Sulaiman, *Mengagas Reformasi Birokrasi di tengah Krisis Kepercayaan Publik*, disampaikan pada Seminar Pengkajian Hukum Nasional 2004, diselenggarakan oleh Komisi Hukum Nasional RI, Desember, 2004. [Indonesian]
- SatyaArinanto, *Reviving omnibus law: Legal option for better coherence*, *Harian Jawa Post*, <https://www.thejakartapost.com/news/2019/11/27/reviving-omnibus-law-legal-option-better-coherence.html>, 20/10/2020.
- Alan Watson, *Legal Transplants, an Approach to Omparative Law*, (Athens and London: The University of Georgia Press, 1993).
- Ahmad Redi, *Hukum Pembentukan Peraturan Perundang-undangan*, (Jakarta : Sinar Grafika, 2018). [Indonesian]
- JimlyAshiddiqie, *Omnibus Law Tidak Harus Merevisi UU Pembentukan Peraturan Perundang-undangan*, <https://www.hukumonline.com/berita/baca/lt5dd6787f9f806/omnibus-law-tak-harus-merevisi-uu-pembentukan-peraturan/>, 03/03/2021. [Indonesian]
- JimlyAshiddiqie, *Undang-Undang Omnibus Law, Penyederhanaan Legislasi, dan Kodifikasi Administratif*, <https://www.jimlyschool.com/baca/34/uu-omnibus-omnibus-law-penyederhanaan-legislasi-dan-kodifikasi-administratif>, 03/03/2021. [Indonesian]
- Cotterrell, Roger, *Law, Culture, and Society*, (England: Ashgate 2006).
- A.ZuhdiMuhdlor, *Kajian Politik Hukum Terhadap Transplantasi Hukum di Era Global*, *Jurnal Hukum dan Peradilan*, Vol. 5 No. 2, 2016. [Indonesian]
- Anthon F Susanto, *Semiotika Hukum, Dari Dekonstruksi Teks Menuju Progresifitas Makna*, (Refika Aditama : Bandung, 2005). [Indonesian]
- Evaristus Hartoko W, *Good Corporate Governance in Indonesia, Griffin's View on International and Comparative Law*, Volume 3 Number 1, Januari, 2002.
- Romli Atmasasmita, *Menata Kembali Masa Depan Pembangunan Hukum Nasional*, Makalah disampaikan dalam "Seminar Pembangunan Hukum Nasional VIII" di Denpasar, Juli, 2003. [Indonesian]
- I Putu Rasmadi Arsha Putra, I Ketut Tjukup dan Nyoman A. Martana, *Tuntutan Hak dalam Penegakan Hak Lingkungan (Environmental Right)*, *Jurnal Hukum Acara Perdata*, Vol. 2, No. 1, Januari-Juni 2016. [Indonesian]
- Bernard Arief Sidharta, *Pengembangan Hukum Dewasa ini di Indonesia*, Epistema Institut, Berkala Isu Hukum dan Keadilan Eko-Sosial, 2012. [Indonesian]
- Michael D. Gilbert, *Single Subject Rules And The Legislative Process*, *University Of Pittsburgh Law Review*, Vol. 67, No. 4, 2006.
- Millard H. Ruud, *No Law Shall Embrace More Than One Subject*, *Minnesota Law Review* Vol. 42 No. 1, 1958.
- Bayu Dwi Anggono, *Pokok-pokok Pemikiran Penataan Peraturan Perundang-undangan di Indonesia*, (Jakarta: Konstitusi Press, 2020). [Indonesian]
- Suteki, *Hukum dan Alih Teknologi Sebuah Pergulatan Sosiologis*, (Yogyakarta: Penerbit Thafa Media, 2013). [Indonesian]
- Lon Fuller, *The Morality of Law*, Revised edition Ninth Printing (New Haven and London: Yale University Press, 1973).
- Widodo Dwi Putra, *Anatomi paling sensitif dari Peraturan Perundang-undangan*, Prosiding Tim Peneliti Pusat Studi Hukum dan Kebijakan Indonesia, Menggagas Arah Kebijakan Reformasi Regulasi di Indonesia, (Yayasan Studi Hukum dan Kebijakan Indonesia (YSHK), Jakarta : 2019). [Indonesian]
- Ann Seidman and Robert B. Seidman, *Iltam : Drafting Evidence Based Legislation For Democratic Social Change*, *Boston University Law Review*, Vol. 89.
- Mohammad Koesno, *Nilai-nilai Dasar Tata Hukum Nasional Kita*, Makalah yang disajikan dalam Praseminar "Identitas Hukum Nasional" yang diselenggarakan Fakultas Hukum Universitas Islam Indonesia, Yogyakarta 19-21, Oktober, 1984. [Indonesian]

Authors

First Author – Pahittartik, Doctoral Study Program of Law,
Faculty of Law, University of Mataram, Indonesia

Second Author – GatotDwiHendroWibowo, Doctoral Study
Program of Law, Faculty of Law, University of Mataram,
Indonesia.

Third Author – Galang Asmara, Doctoral Study Program of
Law, Faculty of Law, University of Mataram, Indonesia.

Third Author – Kaharuddin, Doctoral Study Program of Law,
Faculty of Law, University of Mataram, Indonesia.

Correspondence Author – Pahittartik,
Pahittartik@unram.ac.id