

CHAPTER I

INTRODUCTION

A. Background

Omnibus legislation is not a new invention in the world of legislation. Countries that adopted the *Anglo-Saxon* or standard law system initially used the omnibus bill. The concept of an omnibus bill has been known in the *Anglo-Saxon* legal system since the 1850s in the United States, starting with the draft omnibus bill, namely the Compromise Act of 1850.¹ The law incorporates some fifty court rulings and fifteen conflicting norms that are already ineffective in enforcement.

Countries with *Anglo-Saxon* legal systems, such as the United States, know the Omnibus Law as the Omnibus Bill.² The United States widely applies the Omnibus Bill because it is essential to perfecting the birth of court decisions as a basis for making laws and regulations for the wider community. In modern American political news, the term omnibus has become commonplace. The term can refer to many different types of legislation and has many uses. Any discussion of omnibus legislation then begins by examining the contents of an omnibus bill.³

Omnibus legislation is widely applied during the legislative process and is inherent among various types of legislation in the U.S. Congress in the United States. Omnibus legislation in the United States consists of three primary forms: the omnibus reconciliation acts, general legislation, and the omnibus appropriations act.⁴ The use of omnibus

¹ Hassanain Haykal, "Penerapan Metode Omnibus Law Dikaitkan Teori Kemanfaatan Hukum Dalam Permasalahan Legislasi Lingkungan Hidup", *Ajudikasi: Jurnal Ilmu Hukum*, Vol. 5, No. 1 (June, 2021), p. 36.

² Kuku Tejomurti and Sukarmi Sukarmi, "The Critical Study of the Omnibus Bill on Job Creation Based on Jhon Rawls View on Justice, *Unnes Law Journal*. Vol. 6, No. 2, (October, 2020), p. 194.

³ Evan Wright, "Omnibus Legislation and Separation of Powers: To Big to Fail?", *J. Legis.*, No. 49, (2022), p. 115.

⁴ James, V. Saturno and Jessica Tollestrup, 2016, *Omnibus Appropriations Acts: Overview of Recent Practices*, United States, *Congressional Research Service*, p. 1.

legislation in various legislative processes in the United States, which is considered capable of significantly overcoming regulatory problems, became a spirit for other countries to adopt. Regulations and structures that the United States has made become a reference for overcoming and preventing issues in other countries.

Initially, countries that adhered to the *Anglo-Saxon* legal system or common law widely used the omnibus method. Along with the development of the era of countries with the Continental European legal system or civil law, it also applies the omnibus method to overcome regulatory problems. In the continental European system or civil law, the omnibus method is intended to structure all norms in laws and regulations. Restoring legal certainty is indeed the goal of law in countries that adhere to the Continental European system.

The adoption of the omnibus method as an effort to overcome regulatory problems is carried out by the State of Indonesia. Indonesia is one of the countries that adheres to the civil law system, which also applies the omnibus method. Adopting the omnibus method is considered one of the efforts to solve regulatory problems where regulation is crucial as a state of law in Indonesia.

Indonesia is a state of law that places laws and regulations as the main source of law in state life. Given the duties and functions of law, legal products in all types of hierarchies must be interrelated and harmonious.⁵ Suppose the linkage and compatibility between regulations do not materialize. In that case, there can be problems such as obesity and laws and regulations that overlap, which will cause national laws not to run effectively and efficiently.⁶

⁵ Nomonsen Sinarno, 2016, *Ilmu Perundang-Undangan*, Jakarta, Jala Permata Aksara, p. 3.

⁶ Riza Irvan Armin and Achmad, "Mengurai Permasalahan Peraturan Perundang-Undangan di Indonesia", *Res Publica*. Vol. 4, No. 2, (Mei, 2020), p. 8.

As a state of law, Indonesia cannot avoid regulatory problems. The regulatory problem that began to be felt was the conflict of norms and hyper-regulation of regulations. The problem of conflict of norms and hyperregulation is caused by four main problems, namely: (1) problems in the law-making process; (2) interpretation issues; (3) implementation issues; and (4) capacity issues.⁷ The conflict of norms and hyper-regulation implies that it raises new problems, namely the potential for overlapping regulations, multiple interpretations of regulations, the burden of harmonization and synchronization between regulations, and no institution to monitor and evaluate.

The Indonesian government took steps to solve the problem of hyper-regulation and weak economic growth and investment by drafting a job creation bill using the omnibus law method.⁸ The Indonesian government took steps to solve the problem of hyper-regulation and weak economic growth and investment by drafting a job creation bill using the omnibus law method. The Job Creation Bill was then passed and signed into Law 11 of 2020 on Job Creation, better known as the Job Creation Law, by President Jokowi on November 2, 2020.⁹ The enactment of the Job Creation Law using the omnibus method is by uniting several laws consisting of several clusters. The law was created to facilitate investment with an emphasis on economic aspects.

Implementing the omnibus method in Indonesia has caused many polemics and problems. First, the counter opinion regarding the Job Creation Law uses the omnibus method, whose hasty formation, lack of transparency, and lack of public participation are considered to hurt democracy. The planning and drafting stage that seems closed and rushed becomes and has the potential to get a formal test in the Constitutional Court.

⁷ Ahmad Redi, 2018, *Hukum Pembentukan Peraturan Perundang-Undangan*, Jakarta, Sinar Grafika, p. 20.

⁸ Ihsanuddin and Fabian Januarius Kuwado, 2023, *Omnibus Law UU Cipta Kerja, Keinginan Jokowi yang jadi nyata*, <https://nasional.kompas.com/read/2020/10/07/06264741/omnibus-law-uu-cipta-kerja-keinginan-jokowi-yang-jadi-nyata?page=all>, (accessed on November 13th 2023, 23:51)

⁹ Agus Suntoro and Komnas HAM RI, "Implementasi Pencapaian Secara Progresif dalam Omnibus Law Cipta Kerja", *Jurnal Ham*, Vol. 12, No. 1, (March, 2021), p. 3.

Second, simplification and streamlining regulations are feared to have the potential to fatten regulations under the law, especially Government Regulations. Third, omnibus law, which has a nature that can cover more than one aspect in one law, it is feared that the discussion is not comprehensive.

Another problem faced is the position of omnibus law in national legislation. Some of these views state that the omnibus law method is not regulated in Law 12 of 2011 on the Establishment of Laws and Regulations, so it is considered chaotic and violates legislation. There is a view that also states that omnibus law is unsuitable for use by the Indonesian state that adheres to the Continental European system or civil law.¹⁰

The Job Creation Law was considered unconstitutional at the beginning of its enactment, so the law underwent a formal test in the Constitutional Court. The Constitutional Court decision number 91/PUU-XVII/2020 on the formal test of the Job Creation Law partially granted it by stating that the Job Creation Law has no binding legal force but remains in effect until improvements are made to the formation following a grace period of two years since the decision was pronounced.¹¹

After the Constitutional Court Decision, the government issued several new regulations related to the Job Creation Law. The regulation is in the form of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation, which was later promulgated again into Law Number 6 of 2023 on the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 on Job Creation into Law.¹² The government also responded to the issue of the legitimacy of regulations regarding the application of the

¹⁰ Eko Noer Kristiyanto, "Urgensi Omnibus Law Dalam Percepatan Reformasi Regulasi Dalam Perspektif Hukum Progresif", *Jurnal Penelitian Hukum De Jure*, Vol. 20, No. 2, (Mei, 2020), p. 237.

¹¹ Mahkamah Konstitusi Republik Indonesia. MK: Inkonstitusional Bersyarat, *UU Cipta Kerja Harus diperbaiki dalam Jangka Waktu Dua Tahun*, <https://www.mkri.id/index.php?page=web.Berita&id=17816>, (accessed on November 14th 2023, 20:52)

¹² Kania Venisa Rachim, Christo Sumurung Tua Sagala, and Eddy Mulyono, "Omnibus Law dalam Konstitusi Indonesia: Studi Perbandingan Indonesia, Amerika Serikat, dan Filipina", *Ajudikasi: Jurnal Ilmu Hukum*, Vol. 7, No 1, (June, 2023), p. 20.

omnibus method in Indonesia by passing a special regulation regulating the application of the omnibus law method, namely Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on the Establishment of Laws and Regulations.

Based on the many problems described above, it does not necessarily make the omnibus law method cannot be used as a new method in the formation of laws. Given that initially adopting the omnibus law method was to help overcome regulatory problems in Indonesia. The need for improvement in adopting a good omnibus method by adjusting the legal system in Indonesia. As well as requiring optimization in terms of regulations regarding the preparation of material content for implementing regulations. Provide clarity on what clusters are united and how many regulations can unify into one law.

Based on the description above, the author is interested in conducting a comparative study on implementing the omnibus law method in Indonesia and the United States. The author analyzes how to form an ideal omnibus law by learning from the application of it in the United States as one of the countries that has successfully implemented it. The above comparison is carried out to examine the prospects for optimizing the application of omnibus law in the future in the law formation system in Indonesia.

B. Statement of Problems

The focus of the problems of this research can be identified from the background that has been conveyed. The problems statement are as follows:

1. How is the implementation of the Omnibus Law method in the legal formation system in Indonesia and the USA?
2. How is the optimization of the omnibus law method for the formation of laws in Indonesia?

C. Objectives of Research

Based on the statement of problems that has been mentioned, the author can convey the research objectives as follows:

1. To study the application of the omnibus law method in forming laws in Indonesia and the USA.
2. To analyze the optimization of the application of the omnibus law method in the formation of laws in Indonesia.

D. Benefits of Research

1. Theoretically

The successful completion of this research is expected to make a significant contribution to the field of legal sciences, particularly in the areas of constitutional law and legislation law.

2. Practically

The results of the research are expected to contribute ideas to the House of Representatives of the Republic of Indonesia and the President as a state institution that forms laws and regulations on how to form laws using the omnibus law method.