

## Position of Laws Using The Omnibus Method (Review of Article 97A of The Law on The Establishment of Laws and Regulations)

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### ABSTRACT

This paper aims to determine the legal position of laws that use the omnibus method in the system of laws and regulations in Indonesia. The focus of the research focused on the legal position of laws using the omnibus method in terms of the provisions of Article 97A of the Law on the Establishment of Laws and Regulations. Using the normative juridical method through literature study, this paper concludes that with the characteristics of laws that use the omnibus method based on the regulations in Article 97A of the Law on the Establishment of Laws and Regulations, these provisions result in inconsistencies in norms with the provisions of the hierarchy of laws and regulations regulated by Article 7 paragraph (1) and paragraph (2), provision number 223 Annex II Law on the Establishment of Laws and Regulations, as well as deviating the principle of legal precedence, namely the principle of *lex posterior derogate legi priori*. The vagueness and inconsistency in the formulation of Article 97A norms results in legal uncertainty, thus contradicting the guarantee of legal certainty as mandated by Article 28D paragraph (1) of the NRI Constitution of 1945.

**Keywords:** Law, Omnibus Method, Standing.

### INTRODUCTION

The omnibus method as one of the methods in the formation of laws and regulations was initially poorly known in the system of forming laws and regulations in Indonesia (Gainau, 2022). The omnibus method, which is more familiar with the term omnibus law, began to be discussed by the public since it was delivered by the President in a speech at the plenary session of the People's Consultative Assembly of the Republic of Indonesia on October 20, 2019.

The application of the omnibus method is a form of transplation of the law formation mechanism in the common law tradition into the law formation mechanism in Indonesia that adheres to the civil law system (Rahyani et al., 2021). The application of the omnibus method is motivated by the problem of regulatory obesity (over regulated) in Indonesia, so it is necessary to simplify existing regulations (Pulukadang et al., 2022). These regulatory problems have resulted in many laws and regulations in Indonesia that conflict horizontally and/or vertically, legislative inconsistencies, multiple interpretations of legislation, and non-operational legal content material. This regulatory obesity problem has resulted in legal uncertainty in the community.

Initially, Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (Law on the Establishment of Laws and Regulations) as a guideline in forming laws in Indonesia has not accommodated the regulation of the omnibus method specifically. Although it has not been accommodated, the Government still submits a bill proposal with the omnibus method format to the House of Representatives of the Republic of Indonesia (DPR RI) with the submission of the Bill on Job Creation on February 12, 2020. The bill was then successfully approved jointly by the President and the House of Representatives of the Republic of

Indonesia so that it became Law Number 11 of 2020 concerning Job Creation.

As a result of the unregulated omnibus method in the Law on the Establishment of Laws and Regulations, the Constitutional Court then ruled that the Law on Job Creation was contrary to the NRI Constitution of 1945 and did not have the force of binding law conditionally. In considering its Judgment, the Constitutional Court stated that:

"Any technical or method used by the framer of the law in an effort to simplify the law, eliminate various overlapping laws, or speed up the process of forming laws, is not a question of constitutionality as long as the choice of the method is carried out within the corridors of definite, standard and standard guidelines and is set forth in advance in the technique of drafting laws and regulations so that it can be a guideline for the formation of laws that will use such techniques or methods."

The Constitutional Court decision then became one of the bases for the House of Representatives of the Republic of Indonesia to make changes to the Law on the Establishment of Laws and Regulations, by containing regulations regarding the omnibus method. After going through a discussion process between the House of Representatives of the Republic of Indonesia and the President, on May 24, 2022, Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations was passed.

One of the important arrangements in Law No. 13 of 2022 is the accommodation of the omnibus method in the system of forming Indonesian laws and regulations. This is as stipulated in Article 64 paragraph (1a) which states that the preparation of a draft law can use the omnibus method. Provisions regarding the omnibus method are at least regulated in 3 (three) article provisions, namely Article 42A, Article 64, and Article 97A as well as in annex II regarding techniques for forming laws and regulations.

Article 97A stipulates the provisions for making changes and/or repeals to the content of laws using the omnibus method. The provisions of Article 97A stipulate that "Content material regulated in laws and regulations using the omnibus method can only be changed and/or revoked by amending and/or repealing the laws and regulations.

Based on the provisions of Article 97A, if in the future there is substance in the sectoral law that has been amended by the law using the omnibus method is no longer in accordance with the legal needs of the community and wants to be changed or repealed, then it cannot be changed or repealed through the sectoral law. However, it must make changes and/or repeals through laws that use the omnibus method. Thus, the provisions of Article 97A indirectly position laws that use the omnibus method to be higher hierarchically compared to similar sectoral laws.

Therefore, the substance of Article 97A of the Law on the Establishment of Laws and Regulations needs to be studied and analyzed in order to clarify and provide legal legitimacy to the position of laws formed using the omnibus method in the hierarchy of laws and regulations. The author in this legal research will discuss how the legal position of the law uses the omnibus method. Research on the position of laws using the omnibus method will focus on reviewing the provisions of Article 97A of the Law on the Establishment of Laws and Regulations (Herlina, 2023).

## **RESEARCH METHODS**

Based on the explanation above, the author uses normative juridical research methods, namely by reviewing authoritative laws and regulations, related literature, and legal expert opinions as theoretical concepts that will be connected with the problems analyzed in this study. This research uses two approaches, namely the statute approach and the conceptual approach by referring to three sources of legal materials, namely primary, secondary, and tertiary legal materials.

## RESULTS AND DISCUSSION

### **Omnibus Method in the Formation of Laws and Regulations in Indonesia**

Omnibus is a word derived from Latin, namely "omnis" which means that "all, every, the whole, of every kind". In the context of law, the word omnibus is usually matched with the word law or bill which means as a legal regulation formed through the combination of several legal regulations with different material content substances and levels.

The term omnibus comes from countries that adhere to the common law system. The meaning of the word omnibus, as contained in the Black Law Dictionary is: "relating to or dealing with numerous objects or items at once; including many things or having various purposes. Then the definition of omnibus contained in the Duhaime Legal Dictionary is: "omnibus is a draft law before a legislature which contains more than one substantive matter, or several minor matters which have been combined into one bill, ostensibly for the sake of convenience".

The omnibus is basically a technique for forming laws. As a method, the formation of legal regulations using the omnibus method will combine several regulations that have different regulatory substance so that it becomes a large regulation. The application of the omnibus method allows the formation of an integrated bill (omnibus bill) that contains changes or mergers to several laws at once.

Furthermore, Maria Farida Indrati interpreted the omnibus law as a new law that regulates various content materials and various subjects that aim to simplify various laws that are still in force. Laws that use the omnibus method cannot be equated with umbrella laws (*raamwet*, *basiswet*, *moederwet*) or the parent laws of various other sectoral laws, so their position is higher than "child" laws. Thus, the definition of omnibus is a choice of method in drafting laws and regulations by combining or combining various content materials of laws and regulations in one large regulation at once aimed at achieving a state policy.

There are several advantages and disadvantages of using the omnibus method in forming laws in a country. According to Anggono, there are at least four advantages of using the omnibus method, namely: first, it can shorten the process of forming laws and regulations, because it does not require proposing one by one draft laws for content material spread across many laws. Second, reducing deadlocks in the process of discussing bills, because lawmakers have the opportunity to lobby and exchange interests. Third, it can reduce the budget in the formation of laws, because to change various laws it is enough to do with one omnibus bill. Fourth, maintaining harmonization and consistency of content material between laws, because changes are made at the same time.

While the disadvantages of using the omnibus method, namely: First, the content of the draft law can grow thicker which results in the discussion process becoming in-depth. Second, the time for discussion of draft laws is very limited. Third, community participation, which is usually done by inviting and informing affected interest groups and communities, is hampered. Fourth, the systematics of the omnibus bill becomes unsystematic, making it difficult for the public to understand the substance of the omnibus law.

Furthermore, related to the use of the omnibus method in the formation of laws and regulations in Indonesia, it refers to several provisions regulated in Law Number 3 of 2022 concerning the Second Amendment to the Law on the Establishment of Laws and Regulations. The law *a quo* does not specifically regulate the definition or meaning of the omnibus method in general provisions. However, the definition of the omnibus method can be understood from the provisions of Article 64 paragraph (1b) of Law 13 of 2022.

The omnibus method in Article 64 paragraph (1b) is interpreted as a method of drafting laws and regulations carried out by adding new content material; change content material that has legal relevance and/or needs regulated in various laws and regulations of the same type and

hierarchy; and/or repeal laws and regulations of the same type and hierarchy, by combining them into one legislation intended to achieve certain objectives.

Based on these provisions, the draft law that uses the omnibus method is multisectoral because the content material is related to many other articles or laws. There are also requirements in making changes and revocations to the content of other laws and regulations, which must be the same type and level of hierarchy. The incorporation of various sectoral law content materials is then tied to certain objectives to be achieved by the government. This is different from the practice of drafting laws which are usually used in accordance with the provisions of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations before the change, which only uses the method of one proposed change in law, amending or repealing one law, and not changing the substance of another.

In terms of the formation process, based on the provisions of Article 42A of Law Number 13 of 2022 concerning the Second Amendment to the Law on the Establishment of Laws and Regulations, it is stipulated that "The use of the omnibus method in the preparation of a draft law must be stipulated in the planning document". This means that the proposal of a bill that will use the omnibus method must be expressly stated the choice of method from the beginning. The proposal to use the omnibus method is stated since the planning stage, namely through the National Legislation Program (Prolegnas), both in the medium-term Prolegnas and the annual priority Prolegnas. Thus, the process of forming a bill using the omnibus method can be said to be the same as the process of forming other bills in general, namely through the stages of planning, drafting, discussing, ratifying / determining, and promulgation.

Furthermore, there is one provision of the Article that regulates the signs in making changes and/or repeals of the content of the law using the omnibus method, namely the provisions of Article 97A of Law Number 13 of 2022 concerning the Second Amendment to the Law on the Establishment of Laws and Regulations. The provisions of Article 97A of Law Number 13 of 2022 stipulate that:

"Content material regulated in laws and regulations using the omnibus method can only be changed and/or revoked by amending and/or repealing the laws and regulations."

The provisions of Article 97A contain implicit restrictions or prohibitions, because the content material that has been regulated or changed in the law using the omnibus method cannot be changed and/or repealed, except through changes and/or repeals to the omnibus law. The regulation regarding the position of the material content of the law using the omnibus method in the provisions of Article 97A needs to be studied if it is related to the provisions regarding the hierarchy of laws and regulations regulated in the provisions of Article 7 paragraph (1) and paragraph (2) of the Law on the Establishment of Laws and Regulations. This will be examined further in the subchapter below.

### **Legal Position of Laws Using the Omnibus Method**

Hans Kelsen's theory of the hierarchy of legal norms (*stufentheorie*) states that the structure of an absolute legal norm is hierarchical and will culminate in a *grundnorm* (basic norm). The hierarchy of laws and regulations is closely related to the level of strength of a type of legislation. Therefore, in the hierarchical system of laws and regulations, the principle is adopted that a regulatory norm of a lower position must not conflict with a regulatory norm of a higher level.

Based on this, the high and low position of the hierarchy of laws and regulations is usually officially regulated based on the laws of a country. Therefore, many countries organize a hierarchical system of laws and regulations in force in the country. The existence of a hierarchy of laws and regulations is needed by a country to maintain legal order and legal certainty. If the structure or hierarchy of the legal system is wrong, it will make the process of determining the legal system disorderly in realizing the ideal of true justice.

Regulations regarding the hierarchy of laws and regulations in Indonesia are contained in the provisions of Article 7 paragraph (1) of the Law on the Establishment of Laws and Regulations. Based on the provisions of the article, the hierarchy of laws and regulations in Indonesia consists of: NRI Constitution of 1945, Decrees of the People's Consultative Assembly, Government Laws/Regulations in Lieu of Law, Government Regulations, Presidential Regulations, Provincial Regional Regulations, and District/City Regional Regulations.

The existence of provisions regarding the hierarchy has the consequence that the legal force of a law is in accordance with its level or hierarchy as stipulated in Article 7 paragraph (2) of the Law on the Establishment of Laws and Regulations. The hierarchical provisions also indicate that there are no laws and regulations of the same type and the same level of hierarchy that are parent or above other similar laws and regulations.

Furthermore, related to the position of laws using the omnibus method, there are provisions in Article 97A of Law Number 13 of 2022 concerning the Second Amendment to the Law on the Establishment of Laws and Regulations which stipulates that: "Content material regulated in laws and regulations using the omnibus method can only be changed and/or repealed by amending and/or repealing the laws and regulations." Based on the grammatical interpretation (*de grammatikale of taalkunde interpretatie*) of the phrase "can only" in the provisions of the article, the word "only" has the meaning of "free" and according to its function is a limiting conjunction, that is, a conjunction that connects limiting. While the word "can" means "able, able, or able".

Meanwhile, authentic interpretation of this provision can be traced in the official explanation of Article 97A of Law Number 13 of 2022. In the explanation of the article is described as follows:

"What is meant by can only be changed and/or repealed by amending and/or repealing the Laws and Regulations, for example, Article 6 of Law Number 26 of 2007 concerning Spatial Planning has been amended by Law Number 11 of 2020 concerning Job Creation. The article can only be amended and/or repealed by making changes and/or repeals to Law Number 11 of 2020 concerning Job Creation. Another example, Article 5 of Law Number 26 of 2007 concerning Spatial Planning is not amended by Law Number 11 of 2020 concerning Job Creation. The article can only be amended and/or repealed by Law Number 26 of 2007 concerning Spatial Planning."

Furthermore, to understand the rationale behind the formulation of Article 97A, based on the history of the formation of the norm (*wetshistorie interpretatie*) by tracing the academic text of the Bill, minutes of meetings, and the Problem Inventory List (DIM) of the Bill on the Second Amendment to the Law on the Establishment of Laws and Regulations. In the drafting process in the House of Representatives of the Republic of Indonesia, the initial substance of the formulation of Article 97A came from the draft bill proposed by the initiative of the House of Representatives of the Republic of Indonesia with the following formulation:

"Content material regulated in laws and regulations using the Omnibus Method can only be changed and/or revoked by amending and/or repealing these laws and regulations."

In the views of the factions submitted in writing at the plenary meeting of the House of Representatives of the Republic of Indonesia on Tuesday, February 8, 2022, only the United Development Party (PPP) faction mentioned the substance of Article 97A. The views of the PPP faction conveyed by Dr. Syamsurizal, S.E., M.M. stated:

"That against the proposal to add Article 97A inserted between Article 97 and Article 98, the PPP faction of the House of Representatives of the Republic of Indonesia can approve it, if the aim is to maintain regulatory continuity. This means that laws affected by changes using the omnibus law method, then sectoral laws can no longer make changes to the content that has been included in the omnibus law, and can only be changed through the Omnibus Law itself.

So changes to sectoral laws must be limited, except for the agreement between the Government and Parliament, which only aims to strengthen and perfect the politics of legislation in Law No. 11 of 2020 concerning Job Creation. And so the addition of Article 97B and Article 97C as mentioned in the proposed PPP Bill Draft is also acceptable to us."

Furthermore, in the Academic Paper there is no specific discussion about the substance of Article 97A. In Chapter V of the Academic Manuscript, the scope of regulation of the content of the Bill is only described in accordance with its systematics, one of which is regarding the amendment or revocation of the content of laws and regulations using the omnibus method, with the description of the material exactly the same as the formulation of Article 97A.

In the process of discussion between the House of Representatives of the Republic of Indonesia and the President, based on the Problem Inventory List (DIM) submitted by the Government, the formulation of Article 97A was proposed only as an editorial change DIM. Then through the meeting of the Formulation Team/Synchronization Team (Timus/Timsin) on Wednesday, April 13, 2022, the formulation of Article 97A was approved in accordance with the proposal of the Government DIM, namely only editorial changes (capital letters). Thus, the formulation of Article 97A stipulated is "Content material regulated in laws and regulations using the omnibus method can only be changed and/or repealed by amending and/or repealing the legislation."

Although it has been agreed in the Timus/Timsin Meeting, the formulation of Article 97A was again highlighted by the PKS Faction in the Working Meeting of the Legislation Body related to Level I Decision Making on Wednesday, April 13, 2022. In the decision-making meeting, 8 factions accepted and 1 faction stated that they could not approve the bill. The mini opinion of the PKS Faction delivered by Ledia Hanifah Amalia stated that:

"The PKS faction does not agree if the content material regulated in the laws and regulations using the omnibus method can only be changed and/or revoked by amending and/or repealing the laws and regulations. This is because the provision limits the revision of a material of direct content in the original legislation or parent legislation affected by laws and regulations that use the omnibus method."

Based on the description of the minutes of discussion, it can be seen that the process of discussing the substance of Article 97A was not widely discussed in the drafting process until the approval of the bill at the meetings of the Legislation Body of the House of Representatives of the Republic of Indonesia, both by the Government and Members of the House of Representatives of the Republic of Indonesia. The formulation of Article 97A only underwent an editorial change agreed at the Timus/Timsin meeting, namely the change of the phrase "omnibus method" which originally used capital letters to lowercase.

The existence of regulations in Article 97A results in legal problems in relation to the position of laws that use the omnibus method. Based on the formulation of Article 97A norms and their explanations, these provisions limit and do not provide opportunities for revision or change to the content of sectoral laws that have been amended by laws using the omnibus method. In fact, it may happen that one of the material contents of the omnibus law needs to be changed through revisions to its sectoral laws, due to social, political, and legal needs of the community.

With the phrase "can only be amended and/or repealed by amending and/or repealing the legislation", there is no exceptional clause to be able to revise content material that has been amended and/or repealed by the omnibus law, except through the omnibus law. Thus, the provisions of Article 97A indirectly position laws using the omnibus method to be higher in the hierarchy compared to sectoral laws that are amended and/or repealed.

The provisions of Article 97A are inconsistent and out of sync with the provisions of Article 7 paragraph (2) of the Law on the Establishment of Laws and Regulations which stipulates that: "The legal force of laws and regulations is in accordance with the hierarchy as

referred to in paragraph (1)". The provisions of Article 7 paragraph (2) of the Law on the Establishment of Laws and Regulations mean that the position of laws and regulations at the same type of level has an equal position.

The provisions in Article 97A are also inconsistent and not in accordance with the techniques for the formation of laws and regulations regulated in number 223 of Appendix II of the Law on the Establishment of Laws and Regulations. Provision number 223 states that: "Laws and regulations can only be repealed by laws of the same level or higher". This provision means that in the context of the repeal of a law it is necessary to pay attention to its position in the hierarchy of laws and regulations (Article 7 of the Law on the Establishment of Laws and Regulations). If it is at the same or higher level of hierarchy, then a law can repeal other laws as well as regulations under the law.

In addition, the provisions of Article 97A also deviate from the principle of legal preference, namely the principle of *lex posterior derogate legi priori* which means that a new law (norms and rules of law) will override the enforceability of the old law (norms and rules of law). Thus, in the condition that a new law is equal to the old law, this legal principle can be used to resolve conflicts between legal norms, namely by considering the time of entry into force of the two laws chronologically.

The inconsistencies and regulatory insynchronization between Article 97A and other provisions in the Law on the Establishment of Laws and Regulations and deviating from the principle of legal preference have resulted in legal uncertainty, especially regarding the position of laws formed using the omnibus method. In fact, legal certainty (*rechtszekerheid*) is an important principle in legal action (*rechtshandeling*) and law enforcement (*hondhaving, uitvoering*). There is legal certainty in a law and regulation, one of which is reflected in its unambiguous formulation and consistency in its formulation.

The condition of vagueness of Article 97A norms that result in legal uncertainty certainly contradicts the guarantee of legal certainty mandated by Article 28D paragraph (1) of the NRI Constitution of 1945, that "Everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law". In formulating a legal norm, it must be able to provide certainty for the fulfillment of the rights of everyone who is bound by the norm of the rule. Thus, legal norms would be "an agency of power; an instrument of government", because it has power as a foothold for everyone to will or do something for everyone and institutions of power. This principle is required from the provisions of Article 28D paragraph (1) of the NRI Constitution of 1945.

## CONCLUSION

The provisions of Article 97A of the Law on the Establishment of Laws and Regulations as described can cause problems in their application. Therefore, to maintain the continuity of the material content of the law using the omnibus method on the one hand and still ensure legal certainty on the other, the framer of the law (DPR RI and the President) needs to revise the formulation of the norms of Article 97A of the Law on the Establishment of Laws and Regulations along with its explanation. The formulation needs to be emphasized in its meaning so as not to cause multiple interpretations in its implementation and can guarantee legal certainty. In addition, so that the use of the omnibus method in the formation of laws can be carried out without denying the theory of norm levels or the hierarchy of laws and regulations, it can consider adopting the concept of umbrella acts or basic laws. This is to avoid inconsistencies in the norms of Article 97A of the Law on the Establishment of Laws and Regulations with the provisions of Article 7 paragraph (2) of the Law on the Establishment of Laws and Regulations and provisions regarding techniques for the formation of laws and regulations.

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