



The Omnibus Method: Challenges in the Legislative Process

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Abstract

The Omnibus Law in the Job Creation Law marks the beginning of the use of the omnibus method in Indonesia's legislative process, aimed at reducing the country's excessive regulatory framework. The law was reviewed by the Constitutional Court, which declared it conditionally unconstitutional, requiring amendments within two years. Failure to comply would result in the law becoming permanently unconstitutional, with repealed provisions reinstated. In response, Undang-Undang Pembentukan Peraturan Perundang-undangan was amended to include the omnibus method in legislative formulation. As a result, other laws, such as the Health Act and the Financial Sector Development and Strengthening Act, have also adopted this approach. However, a key challenge is the need for laws created through the omnibus method to be revised using the Omnibus re-method, highlighting the difficulties in applying the omnibus method in response to evolving legal and societal needs.

A. Introduction

The use of the omnibus method in Indonesia's legislative process has become a significant feature of the country's legal system. Following the enactment of the Omnibus Law on Job Creation, other laws, such as the Law on the Development and Strengthening of the Financial Sector and the Health Act, have also been introduced using this method. The omnibus method is now formally regulated under the second amendment to the Law on the Formation of Legislation, a change prompted by the Constitutional Court's Decision No. 91/PUU-XVIII/2020. This ruling declared that the creation of laws with formal and unconstitutional defects is permissible, provided that the laws remain effective for two years to amend the Omnibus Law on Job Creation.



While the use of the omnibus method in legislative drafting has been studied, it presents various challenges in practice.¹ Its primary aim is simplification, which often leads to a delegation of authority in legislative regulations. In Indonesia, the omnibus method results in amendments that preserve the validity of the original law alongside the new laws and their technical regulations. The method is viewed as incompatible with Indonesia's civil law system, which emphasizes legal certainty through clear, formal state-issued laws.² As a result, the omnibus method's application raises concerns about the coherence and relevance of legal provisions within the civil law framework.

Bayu Dwi Anggono discusses the strengths, weaknesses, opportunities, and challenges of the omnibus method, highlighting its complications in the formulation of legislative regulations in Indonesia. One of the primary issues arises from the application of the omnibus method in amending laws, such as the Omnibus Law on Job Creation. This method is now regulated under Law No. 13 of 2022, which amends Law No. 12 of 2011 on the Formation of Legislation. Article 97A of this law states that "materials regulated in legislation created using the omnibus method can only be amended and/or repealed by amending and/or repealing the same legislation." This provision creates a problem in situations where legal changes are necessary to address societal dynamics without waiting for another law, which may require the use of the omnibus method.

The restriction imposed by "locking" the omnibus method in the substance of legislation presents a challenge in the legislative process. For example, efforts to amend key laws like Law No. 32 of 2014 on Maritime Affairs and Law No. 30 of 2014 on Government Administration have encountered difficulties because the substances of these laws, once amended via the omnibus method, cannot be modified outside of this framework. This creates a legal constraint, as necessary changes to meet societal needs are delayed, ultimately hindering the adaptability of the law. The regulation in Article 97A of the Second Amendment to Law No. 12 of 2011 complicates the amendment or revocation of laws modified through the omnibus method, further complicating the legal process in several ways:

1. further regulation of the provisions of the Basic Law of the Republic of Indonesia of 1945;
2. the order of a law to be governed by a law;
3. confirmation of specific international agreements;
4. follow-up to the ruling of the Constitutional Court; and/or
5. fulfillment of legal needs in society.

These constraints create challenges, particularly when legal changes are required to address societal needs, as the omnibus method cannot always accommodate such adjustments. The Constitution of the Indonesia views laws as tools to protect individual rights and freedoms, ensuring fairness and justice in accordance with moral considerations, religious values, and democratic principles. Thus, the omnibus method's restrictions may impede the flexibility necessary to fulfill these constitutional objectives.³

¹ Ima Mayasari, "Kebijakan Reformasi Regulasi Melalui Implementasi Omnibus Law di Indonesia", *Jurnal Rechtvindings*, Volume 9, Nomor 1, April 2020, hlm. 7.

² Bayu Dwi Anggono, "Omnibus Law Sebagai Teknik Pembentukan Undang-Undang: Peluang Adopsi dan Tantangannya Dalam Sistem Perundang-undangan di Indonesia," *Jurnal Rechtsvinding*, Volume 9, Nomor 1, 2020. hlm. 27

³ Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 28J ayat (2).

B. Discussion

1. Omnibus and Its Developments in Indonesia

The term "Omnibus," originating from the French word "Bus Omni" in 1820, referred to "a vehicle capable of transporting many people and all kinds of goods, making travel easier."⁴ Bryan A. Garner, in Black's Law Dictionary (Ninth Edition), defines "Omnibus" as "relating to or dealing with numerous objects at once; including many things or having various purposes," which reflects its essence of handling multiple objects or purposes simultaneously.⁵ The omnibus method in legislation refers to the unification of various laws or regulations that contain related provisions, thus creating a single law that incorporates several related laws or diverse charges.⁶

In Indonesia, the omnibus method is increasingly explored to streamline the legislative process. This need for simplification is driven by the large volume of regulations, which, by 2019, had reached approximately 48,413.⁷ The omnibus method is viewed as a potential solution to simplify this complex regulatory landscape while minimizing conflicts between existing laws and regulations.⁸

The adoption of the omnibus method in Indonesia's legislative process has sparked controversy. Critics argue that, in practice, it does not align with the principles of good legislative regulation and is traditionally unsuitable for Indonesia's legal framework. As a country that follows the civil law tradition, Indonesia faces particular risks in applying the omnibus method to its legislation. One of the main risks is that societal legal needs and issues may remain unresolved, as they must await the integration of relevant provisions in omnibus bills.⁹ This could lead to legal uncertainty, even in the implementation of existing laws.

Maria Farida Indrati and other scholars argue that the omnibus method, often used in common law systems, is not inherently illegal in Indonesia's legislative process. However, they contend that its application is inappropriate, both normatively and practically.¹⁰ In Indonesia, legislation requires joint approval from the President and the Parliament, with the President holding the authority to veto laws. This joint approval process implies that the President, as the enforcer of the law, must fully understand and agree with the laws enacted. The 1945 Constitution of the Republic of Indonesia grants the President the right to withhold approval of a bill already agreed upon by Parliament, but this is not a veto in the traditional sense. Instead, it reflects a form of formal approval, since the material approval occurs during the bill's drafting phase. Moreover, it is essential to recognize that legislative proposals in Indonesia can originate from not only the DPR (People's Representative Council) and DPD (Regional Representative Council) but also the President, further complicating the application of the omnibus method.

In her writing, Princess Sartika highlighted both support for and skepticism about the adoption of the omnibus method in Indonesia. One of the primary concerns stems from the fact that Indonesia follows a civil law tradition, while the omnibus method is more commonly

⁴ Putra Antoni, 2022, "Materi Muatan "Omnibus Law" dan Perbaikan UU Cipta Kerja", available online <https://pshk.or.id/blog-id/materi-muatan-omnibus-law-dan-perbaikan-uu-cipta-kerja/>.

⁵ Angga Dwi Prasetyo, Abdul Rachmad Budiono, Shinta Hadiyantina, "Politik Hukum Perubahan Norma Perizinan dan Iklim Investasi Dalam Undang-Undang Cipta Kerja Menggunakan Metode Omnibus Law, Jurnal Media Iuris, 5, (2), 2022, hlm. 159-188.

⁶ Miharadi, R. Muhammad, 2019, Omnibus Law: Menuju Hukum Ramah Investasi?, available online https://unpak.ac.id/pdf/2019/miharadi_omnibus.pdf, Desember, 19, 2019, dalam Putri, Dewi Sartika, 2021, "Penerapan "Omnibus Law" Cipta Kerja di Indonesia Efektif Atau Tidak? Studi Tinjauan Berdasarkan Sistem Hukum di Indonesia, Jurnal Hukum dan Pembangunan, 51, No. 2.

⁷ <https://peraturan.go.id/tahun>

⁸ Nicolas Wianto, Penggunaan Metode Omnibus Law Dalam Pembentukan Peraturan Perundang-undangan di Indonesia, diakses melalui <https://lbhpengayoman.unpar.ac.id/penggunaan-metode-omnibus-law-dalam-pembentukan-peraturan-perundang-undangan-di-indonesia/>.

⁹ Ima Mayasari, *Op.Cit.*, hlm. 6.

¹⁰ Supriyadi dan Andi Intan Purnamasari, "Gagasan Penggunaan Metode Omnibus Law dalam Pembentukan Peraturan Daerah, Jurnal Ilmiah Kebijakan Hukum, Volume 15, Nomor 2, Juli 2021, hlm. 257-270.

associated with the common law tradition. This distinction affects the priority of legal sources: in the civil law system, laws themselves are paramount, and judges are bound by statutory provisions rather than judicial doctrines. In contrast, in the common law system, the judiciary plays a more prominent role in shaping legal principles. This fundamental difference influences how legislation is crafted, enforced, and monitored in each legal system.¹¹

The omnibus method complicates lawmaking in Indonesia, as it often results in more complex legislation and extended drafting timelines. The content of omnibus laws, which may combine various subjects, issues, and programs, is not always coherent or directly related.¹² In common law systems, however, the omnibus method is simpler, as it typically involves creating a single law that consolidates multiple themes, materials, and regulations from various sectors without the need for extensive technical regulation through delegated authority.¹³

Princess Sartika, citing Ahmad Redi, noted that Indonesia has already adopted elements of the omnibus method in various legislative processes, such as in the drafting of the Omnibus Law on Job Creation, the Financial Sector Development and Strengthening Law, and the Health Act. The MPR RI No. I/MPR/2003, which reviewed the substance and legal status of the Provisional MPR and its provisions from 1960 to 2002, is another example of a legislative regulation influenced by the omnibus approach. This MPR regulation addresses both active and inactive provisions of the TAP MPR, as well as laws governing regional governance and the MPR, DPR, DPD, and DPRD.¹⁴

In practice, one of the most significant and contentious issues concerns the enactment of the Law on Job Creation. The legislative process was protracted and characterized by several procedural irregularities, including minimal public participation and inconsistencies in the number of pages within the draft. These factors contributed to skepticism regarding the use of the omnibus method in Indonesia's legislative framework. The Constitutional Court, in Decision No. 91/PUU-XVIII/2020, declared the Job Creation Law (*Undang-Undang Cipta Kerja*) formally unconstitutional due to procedural defects.¹⁵ However, the Court stipulated that the law would remain in effect for a period of two years to allow for necessary amendments.

Rather than merely revising Law No. 11 of 2020 on Job Creation, the government issued Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation, which was subsequently ratified through Law No. 6 of 2023 on the Establishment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation. This legal development was accompanied by the second amendment to the Law on the Formation of Legislative Regulations (*Undang-Undang tentang Pembentukan Peraturan Perundang-undangan*).

A key objective of this amendment was to institutionalize the omnibus method as a standardized and definitive approach in legislative drafting. Previously, legislative practice in Indonesia adhered to a conventional framework in which a single bill was used to amend or repeal only one law. However, the omnibus method allows a single legislative act to modify or replace multiple laws simultaneously.¹⁶

With the enactment of Law No. 13 of 2022, which amended Law No. 12 of 2011, the omnibus method has been formally recognized as an established legislative mechanism. By the end of

¹¹ Dewi Sartika Putri, "Penerapan Omnibus Law Cipta Kerja di Indonesia Efektif atau Tidak? Studi Tinjauan Berdasarkan Sistem Hukum Indonesia," *Jurnal Hukum dan Pembangunan*, Volume 52, Nomor 2, hlm. 536.

¹² Fithri, Winda dan Luthfia Hidayah, "Problematisa Terkait Undang-Undang Cipta Kerja di Indonesia: Suatu Kajian Perspektif Pembentukan Perundang-undangan," dalam *e-Journal Komunitas Yustisia Universitas Pendidikan Ganesha*, 4, Nomor 2.

¹³ Disarikan dari Ayu Nopitasari dan Yohanes Suwanto, *Konsep Omnibus Law Dalam Penyusunan Undang-Undang Cipta Kerja Berdasarkan Teori Penyusunan Produk Hukum Yang Baik*, *Jurnal Demokrasi dan Ketahanan Nasional*, 1, Nomor 1, 2022, p. 99.

¹⁴ Dewi Sartika Putri, *Op. Cit.*, hlm. 534.

¹⁵ Nano Tresna A, Ed. Lulu Anjarsari P, MK: Inkonstitusional Bersyarat, UU Cipta Kerja Harus Diperbaiki Dalam Jangka Waktu Dua Tahun, November, 25, 2021, available online <https://www.mkri.id/index.php?page=web.Berita&id=17816>.

¹⁶ Badan Keahlian DPR-RI, *Naskah Akademik Rancangan Undang-Undang tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan*, Februari, 1, 2022, available online <https://www.dpr.go.id/dokakd/dokumen/BALEG-RJ-20220204-113021-3532.pdf>.

2023, two additional laws had been enacted using this approach, namely, Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector, the Tax Harmonization Act, and Law No. 17 of 2023 on Health.

2.The Omnibus Method Becomes a Problem of Legislative Regulation in Indonesia.

The application of the omnibus method in Indonesia's legislative framework presents several challenges. Scholars such as Ida Bagus Gede, the Grand Son of Dhikshitaa, Deni Clara Sinta, and Candra Dwi Irawan argue that the omnibus method must be explicitly stipulated in the Law on the Establishment of Legislative Regulations (P3 Act) to uphold due process in lawmaking. The method's implementation has raised concerns about legislative transparency and legal certainty, as it affects the rule of law and democratic principles.¹⁷ Despite its formal adoption, the omnibus method has not resolved legislative complexities, though it has facilitated the enactment of laws such as the Tax Harmonization Act and the Health Act.

A key issue following its regulation is the difficulty in amending or repealing laws modified through this method. Article 97A of Law No. 13 of 2022, which amends Law No. 12 of 2011, mandates that provisions enacted using the omnibus method can only be revised or repealed by amending the original law itself. This rigid framework limits legislative flexibility, potentially hindering legal reform and adaptation.

The amendment and/or repeal of legislation is typically grounded in research addressing legal issues or societal needs, a process formalized in the Academic Manual. Following the second amendment to Act No. 12 of 2011, research into the application of the revised legal framework should incorporate methodologies such as Regulatory Impact Analysis (RIA) and/or the Rule, Opportunity, Capacity, Communication, Interest, Process, and Ideology (ROCCIPI) approach. However, the requirement to employ the Omnibus method or maintain the status quo due to the lack of alternatives raises concerns about excessive rigidity in legislative reform. The provisions of Article 97A of Act No. 13 of 2011, which amends Law No. 12 of 2011 on the Establishment of Legislative Regulations, risk constraining the legislative drafting process, effectively creating a "prison" for legal formulation.

From a public policy perspective, law is one of the products of policymaking, necessitating a range of alternatives to facilitate informed decision-making. As Weimer and Vining emphasize, policymakers require advisory input to ensure they have comprehensive information about the issues at hand.¹⁸ Similarly, Selznick posits that law serves as a mechanism for realizing specific societal values, transforming morality into legality, reinforcing normative principles, and even shaping new moral frameworks.¹⁹

Considering these theoretical approaches, the constraints imposed by Article 97A of Act No. 13 of 2011 render legislative policymaking overly rigid, eliminating viable alternatives for lawmakers. This rigidity not only limits legislative flexibility but also risks granting excessive substantive legal autonomy in defining particular values through legislation. Consequently, the transformation of law becomes overly constrained, potentially undermining its capacity to adapt to evolving societal needs.

When the amendment or repeal of a law is strictly governed by a specific method, such as the mandated use of the omnibus method, legislative flexibility is significantly constrained. This challenge is evident in Indonesia's legislative practice, where, normatively, the procedure has been rigidly regulated. According to Article 95A of Act No. 13 of 2011, which amends Law

¹⁷ Ida Bagus Gede Putra Agung Dhikshitaa, Deni Clara Sinta, Candra Dwi Irawan, "Politik Hukum dan Quo Vadis Pembentukan Undang-Undang Dengan Metode Omnibus Law di Indonesia, Jurnal Legislasi Indonesia, Volume 19, Nomor 2, Juli 2022, hlm. 165-184.

¹⁸ Irawanto dan Murakhman Sayuti Enggok, Ed. Rikky Willy Saputra, Analisis Kebijakan Publik: Teori dan Konsep, (Padang: PT. Global Eksekutif Teknologi, 2022), Hlm. 20.

¹⁹ Salman Luthan, "Dialektika Hukum dan Moral Dalam Perspektif Filsafat Hukum", Jurnal Hukum IUS QUIA IUSTUM, No. 4, Vol. 9, Oktober 2012, hlm. 506-523

No. 12 of 2011 on the Establishment of Legislative Regulations, legal monitoring and review processes are conducted to assess the effectiveness, impact, and utility of existing laws. These assessments may conclude with recommendations for legal amendments. However, when a law subject to amendment is part of the legislative framework established through the omnibus method—such as the Labour Creation Act—its modification becomes highly restricted.

For instance, proposed amendments to Law No. 32 of 2014 on Maritime Affairs and Law No. 30 of 2014 on Government Administration have been met with significant challenges due to their entanglement with the omnibus method. The provisions of Article 97A of Act No. 13 of 2011 effectively dictate that legislative revisions must follow the omnibus approach, thereby complicating the amendment process. While the omnibus method allows for a more integrated regulatory framework, it also necessitates comprehensive planning and analysis, as multiple legal domains are consolidated within a single legislative instrument. Additionally, this method raises concerns regarding the dilution of public participation in the lawmaking process, as its broad scope may limit opportunities for meaningful engagement. Moreover, the resource and budgetary demands of omnibus legislation are considerably higher than those of conventional legislative methods.

The regulatory constraints imposed by Article 97A of Act No. 13 of 2011 effectively limit the transformative function of law, impeding its ability to respond to evolving legal needs and societal challenges. A rigid procedural requirement that prevents the amendment of necessary legal provisions undermines the principles of justice, legal certainty, and order. Consequently, a critical reassessment of Article 97A is imperative to avoid a “normative prison” that restricts legislative responsiveness. A more flexible approach is required to ensure that the omnibus method does not become an absolute prerequisite for legislative reform, particularly when alternative regulatory approaches may be more effective in addressing specific legal issues.

C. Conclusion

The omnibus method, as stipulated in Article 97A of Act No. 13 of 2011 on the Second Amendment to Law No. 12 of 2011 concerning the Establishment of Legislative Regulations, functions as a normative constraint that restricts the adoption of alternative legislative drafting methods. Rather than facilitating the transformation of legal principles and values into legislative instruments, this provision introduces new challenges in the law-making process. From a policy perspective, the approach outlined in Article 97A of Act No. 13 of 2011 does not constitute a well-formulated policy, as it fails to provide alternative mechanisms for legislative adoption and consideration.

D. Suggestion

It is recommended that the Act on the Creation of Legislative Regulations be replaced and incorporated into the National Legislation Programme for 2025–2029 to ensure a more flexible and comprehensive legislative framework.

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