LAPORAN PENELITIAN KOLABORASI

Accessibility Of Legislation: The Rise Of Consolidation Post Adoption Of Omnibus Method

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DAFTAR ISI

BAB I

A. Introduction

The problem starts with the perception of the swelling of the number of regulations perceived as not making it easier to support the investment climate(Chandranegara, 2019). The situation is even more complicated when laws and regulations are often not the same between one data manager and another data manager (Setiadi, 2018). Another problem is that no institution is the sole manager of official statutory data. The court's increasing role in determining each regulation and state policy's validity shows that Indonesia's laws experience acute problems (Dejonghe, 2015).

After the discourse among various legal experts and policymakers, the President chose to use the transplantation omnibus method. The policy is popularly known as the omnibus law; it will be compiled not only to mean only one bill, but four bills at once, including (1) job creation, (2) taxation, (3) mothers country city, and (4) pharmaceutical field. The bill has been criticized by scholars, trade unions, and civil society organizations working on environmental and human rights issues for provisions that threaten environmental sustainability and indigenous people and workers' rights. Given this, it is of profound concern that the mechanism by which the bill became law was profoundly procedurally flawed in at least four respects.

First, the government has failed to allow key stakeholders to be active in the drafting process. Under the Coordinating Ministry for Economic Affairs coordination, the job development bill was drafted at the end of 2019. The government believed the bill would create new jobs and enhance employees' health (Umar, 2020). But many primary affected groups were never invited to give their views, such as trade unions. The official version of the draft bill was also tricky for the public to access. The government argued that the version widely circulated via social media was inaccurate, or a "*hoax*," instead of presenting a publicly

accessible draft. This lack of accountability is explicitly contrary to the concept of openness (Chandranegara, 2020). Second, in the deliberation process, the House missed a critical point. The deliberation process was responsible for the Legislative Council (Badan Legislasi), a House body comprising 80 representatives from nine political parties. Under Article 155(1) of the House Standing Orders, at a meeting of the Legislative Council, all matters on the bill's list of concerns (Daftar Inventarisasi Masalah or DIM) must be addressed. Instead, the Legislative Council immediately formed a working committee and delegated the DIM debate without raising the issues at the Legislative Council meeting. The idea of participation was further weakened by this, as not all political groups were represented on the working committee. Third, during its recess time, the House held discussion sessions. While this is not forbidden, it is stipulated in Articles 1(13) and 239 (2) of the House Standing Orders that lawmakers should use the recess to visit their constituencies. Because of the Covid-19 pandemic, the DPR argued that it hastened the deliberation phase. But if Covid-19 was such a problem, why didn't the legislature prioritize its duty to monitor government policies to respond to Covid-19 instead of debating a bill that has hit Indonesia so hard with little connection to the public health emergency?(Chandranegara & Sihombing, 2021). Fourth, the House and the government introduced a graft of provisions never addressed in the draft bill. In the final draft brought to the plenary session on Monday, three tax laws were consolidated: the 2007 Law on General Taxation Provisions; the 2008 Law on Income Tax; and the 2009 Law on Value Added Tax on Goods and Services and the Sales Tax on Luxury Goods.

According to some issues related to omnibus job creation, law-making has shown that law-making and law-making politics are under the regulatory reform plan, but, most importantly, the volume of legislation needs to be managed. Putting the legislation in the ministerial web pages is not enough to improve access to the rules because ‘access’ is more than just to download legislation quickly but to provide a user-friendly format for the reader (Donelan, 2009). Making legislation more accessible means make it easier for the user to comply with. Improving access to legislation has discussed from many angles; said the urge of plain language (Butt, 2013), style and structure, formats, and technology use

(Voermans, 2011). These discussions are tied by the common pursuit called efficacy. However, Helen Xanthaki wrote that efficacy refers to the broad sense pursued by all actors in the policy process of which legislative drafting is only a part of it. Therefore it is not efficacy but effectiveness, which can be used as the functionality glue to transfer legislative solution across jurisdictions and legal traditions (Xanthaki, 2016). We could see that improving accessibility of legislation is in the same platform that aims to pursue the effectiveness of legislation itself. It is likely that in a more concise format, legislation is more accessible. In a comprehensive arrangement, we integrate scattered rules as well as reduce the volume of legislation. Omnibus methods adopted through job creation law shall need another connection instrument to support the Indonesian legislation system's compatibility and accessibility. There is a unique technique in amalgamating scattered rules to a more concise format that we recognized as consolidation. As a mechanism, it is designed to bring together the text of existing statutes, usually within a single generic topic and to amalgamate them in such a way that all amendments are integrated into the new single text; it is then updated and is structured (or restructured) in a more logical sequence(Teasdale, 2009). The publication is often done only in the statute book without further socializing it, mostly when the omnibus method is adopted into specific law.

In some cases, a private publisher or one government body independently issues one version of the collection of rules in such an area. This is helpful for the reader. Unfortunately, this does not bring significant influence to the legislative policy in improving access to legislation. Why not Indonesia does not consolidate the omnibus method law and their "origins law" all at once to clarify and amalgamate the volume of legislation? This article has the research question, among others. First, how is the compatibility of using the omnibus method into the Indonesian legislation system? Second, how consolidation deals with the volume of legislation and contributes to the accessibility of legislation?

B. Research Methods

This research uses normative research methods. The secondary data includes primary and secondary legal material in-laws and regulations and draft laws appropriate to the context. Secondary data obtained through a literature study. The method used is the conceptual approach and statue approach. Data analysis was carried out by systematizing the data. Subsequently, the data was used to translate the right concepts to calibrate the omnibus method in the law-making process and measuring the consolidation process after adopting omnibus methods to maintain the accessibility of legislation.

BAB II

A. Omnibus Method as a Tool of Regulatory Reform

When reviewing the conceptual aspect, in truth, the adoption of the omnibus methods can be examined from the study of legal comparisons. The known doctrine is the doctrine of legal transplants (legal transplants), which has relevant content and has even predicted the existence of epistemological and practical gaps in comparative studies of law. Alan Watson explained that there were at least two challenges in the legal transplant process, namely: reception in direction and reception in society, that is; first, it was a matter of how to deepen and adapt within the legal structure, ensuring that there are no legal contradictions when a transplant is performed. Second, the transplanted 'foreign legal organs' can work effectively in the country's society's 'new body'. Both receptions are considered an external dimension of legal comparison with legal and social measurements (Watson, 1974). Alan Watson further highlighted three relevance of legal transplants. First, transplantation is a standard and easy legal development method, so it is not uncommon in legal development (Watson, 1996). Second, many of the laws adopted require actions to match global needs and results (Watson, 1980). Third, the formation of the law is a product formed by an elite group represented by the government, politicians, lawyers, judges and legal academics whose needs are reflected in the law but not the needs of the community or the ruling elite, so that transplantation is in an impenetrable process (Watson, 1980).

On the contrary, Pierre Legrand criticized legal transplants' doctrine by arguing that transplantation of law is not possible because every law is culturally determined(Legrand, 2001). The influence of culture will never be the same will eliminate the meaning in the legal system. Pierre Legrand called it the no form of words purporting to be a "*rule*" can be utterly devoid of semantic content, for no rule can be without meaning. Such a foundation of thought gives birth to the conclusion that the purpose of law in different cultures can never be the same - 'meaning cannot survive the journey and transplantation is impossible (Legrand,

2001). These two views have come to be called the debate of transferists versus culturalist (Foster, 2000). Apart from the philosophical and epistemological debates above, the legal comparison has gained international recognition as an approach to legal research. Konrad Zweigert and H. Kötz present the thesis of functions and problems in the application of legal comparisons. Both argue that legal comparison also has limitations, namely, two or more objects being compared must have the same constitutional function and role. Besides, the object of the study must have the same problem to be achieved (Zweigert & Kötz, 1998). Mark Tushnet added that in constitutional regulations, each country must have a different set of functions. The comparative law researcher's task is to identify the similarities of both minor and major (although there must be differences) in the process of the legal entity being studied and analyze how the procedure is expected to solve the problem (Tushnet, 1999).

In transplanting Dutch law, Indonesia also faced several obstacles, especially in language and legal concepts. According to AB Massier records, when the Old Order government came to power in the 1960s, which required judges and courts as instruments of revolution, judges in the courts had many obstacles to misinterpretation. That is because the government stopped using Dutch as a legal language by replacing it with Indonesia. This change was a prerequisite for nationalism and unity echoed by the Old Order government (Massier, 2008). However, the policy, instead of being functional, has instead created new legal problems. That is because jurisprudence is considered a logical-language construction, where changing the language means also constructing the logical language.

When "omnibus" is interpreted as relating to dealing with numerous objects or items at once, including many things or having various purposes, while the definition of "*law*" itself is "the aggregate of legislation, judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial and administrative action; esp., the body of rules, standards, and regulations that the courts of a particular jurisdiction apply in deciding controversies brought before them (Black, 1968). The omnibus methods will have different meanings in the

United States and Indonesia. The legal system and the concrete conditions in the community must be a concern in using Omnibus's method to overcome the disharmony of laws and regulations (Chandranegara, 2020). A new law made will override several laws which are related and intersect with each other. Several laws were attached so that making laws using the omnibus method could be achieved without a hefty fee. The compatibility issue lies in how omnibus will require a legal system that can improve itself through judges' decisions in court based on concrete events (Ahmad & Chandranegara, 2020).

When assessing in terms of compatibility, the omnibus methods has the support of its application by Jimly Asshidiqie because according to him, currently there is an excavation of the legislative system in civil law countries, and the Legislating tendency the laws in practice in 'common law' countries. Besides that Ahmad Redi, the Omnibus Law increases the speed in drafting an Act because drafting an Omnibus Law can simultaneously use correct laws existing that are deemed problematic(Redi, 2020). In contrast to these two opinions, Adam Dodek stated at least three objections to the application of the Omnibus method, first, to position parliament to be powerless and challenging to hold the government accountable; second, to make it difficult for MPs to "scrutinize" in balance with the government; third, there is a radical impression of the omnibus methods because it not only removes a law but also raises new legal norms that negate the old legal norms, this method is suggested only for efficiency. All three concluded by Adam Dodek as methods abusive and by Adam Dodek expression as its Threatens (Parliament-Writer) autonomy and powers in the long term (Dodek, 2017).

When referring to Article 10 paragraph (1) of Law-Making Act of 2011, specifically letter e, it is stated that the material contained in the law is "meeting the legal needs in society", this means that everything can be regulated as long as it is formed jointly by the President and the Parliament. When examined in-depth, two reasons are still possible to sustain the omnibus methods, even though it is limiting. The first reason is that there are three forms of law when related to the 1945 Constitution, including:

1. There is a law that combines 2 or 3 material content that is regulated in the Constitution.
2. Some laws are formed based on the material content specified in the Constitution.
3. There is a law that extends the content of material regulated from what is stipulated in the Constitution.

The phrase formulation influences both forms of legislative policy in point number 1 and number 2 in the Constitution, namely "*regulated by law*" and "*regulated by law"*. While in number 3, it is seen that the legislators do not look at the original intent in understanding the text of the Constitution but rather expand the meaning, which has an impact on the breadth of the regulated object. Based on this analysis, the 1945 Constitution permits the formation of laws with more than 1 (one) object. However, the regulated material's content must start from its formation, not in the amendment law.

The second reason is the existence of a legal preference principle mechanism. The provisions of Article 7 paragraph (1) of the Law-Making Act of 2011 explain that the law's position is equal. However, there are principles of legal preference, which are well known in harmonizing laws and regulations. These principles include: (1) The principle lex superior derogate legi inferiori; (2) Principle lex specialist derogate legi generalis; (3) Principle of lex posterior derogate priori legi. So if the method is omnibus applied with a codification pattern, the use of the principle lex posterior derogate legi priori becomes the theoretical juridical justification. The condition of eliminating the notion that a law that uses the method is omnibus is not a lex generalist. This mechanism can be applied by removing the provisions in other laws considered contradictory in the provisions' concluding section. However, suppose later, the law that codifies the rules does not revoke some of the other laws' provisions. In that case, it will potentially create a debate in its implementation, thus leading to conflict with the principle of lex specialis derogate legi generalis.

B. The Rise of Consolidation Methods

These two reasons indicate that there are limitations when using the omnibus methods in Indonesian law. Such conclusions do not only occur in Indonesia, even though a preliminary study before the official adoption of the omnibus methods in Vietnam has given special consideration to the limitations that might arise if adopted into the system of legislation based on the legal system (Institute of Law Science, 2006).

Therefore, adoption requires some structuring and adding additional instruments. The structuring and addition of the instruments in question were to construct a hierarchy of the re- legislation by adding consolidation methods (Buana, 2017; Chandranegara, 2020). The consolidation method is needed to fill the gap in statutory law systematization. In the UK, the legal reform policy starts forming consolidated regulations and is even a prelude to law reform (Widiati, 2013). The consolidation methods could be defined as consolidating several laws and regulations with one theme or one area into one volume. In consolidation, legislation is sorted and collected in clusters according to the theme where the theme itself is determined based on need. For example, the consolidation of regulations on regional governance; then all the legal rules governing regional government, starting from the highest regulation to the regulations below, are sorted and organized into one particular volume. The public will find it easy if, for example, they want to study local governance; they do not need to look at the regulations one by one but only read the consolidated regulations. Because of its informal nature, a single volume of laws and regulations born from the consolidation process did not give rise to new enactment. The consolidation process aims to make the reader understand the logical sequence of a set of rules. In other words, this process also seeks to reveal the relationship between one rule and another and a higher rule of the implementing regulations where all the rules are actually on the same theme.

Therefore, adopting the omnibus methods would be ideal if the consolidation was applied after the rise of the job creation law. This law could interpret and clarified through laws that use the consolidation method is not only the domain of the House but the government must also be involved. If the material is related to regional autonomy,

then the advice and input of the Senate are also worth listening to. This construction is following the spirit established in Art 46 Para 2, Art 47 Para3 and Arti 48 Para 2 of the Law-Making Act of 2011, which all three articles require the need for harmonization, rounding up, and strengthening the conception (draft) legislation laws both from the House, the Government and the Senate. This is an essential solution considering that the method has consolidation developed by Hukumonline.com and has become their service business. They were even able to identify in advance the benefits of the consolidation method.

If this consolidation method enters the hierarchy of legislation, its position is placed inline or equal with the Law and Emergency law. The interpretation and clarification of the legislative-executive body in the Consolidation Law can be asked for constitutional review. The basis of the authority of this Consolidation Act can be used in the principles of the laws and regulations in Art 6 Para 1 (i) and (j) of Law-Making Act of 2011 that require the existence of order and legal certainty and/or balance harmony, and harmony in the legislation -invitation. Then what about the Omnibus method?\

In line with Buana's opinion, the omnibus methods would be better placed in a Presidential Regulation. It can be more concrete in the issue of overlapping laws and regulations. This scheme holds that the relation between the consolidation method placed at the low and Presidential Regulation uses the omnibus is attributive-hierarchical (Buana, 2017). Besides, the Consolidation and can harmonize norms that have the same subject area. This regulation was Omnibus made as a manifestation of the government's public policies to resolve the problems of reconciling legislation and meeting the legal needs in society. This is based on Art 13 of the Law-Making Act of 2011 that determine the material ordered by the Act, the material for implementing Government Regulations, or the material for carrying out the administration of governmental powers. This construction has also been encouraged by Jimly Asshiddiqie, who once advised to give special authority to the President through the Presidential Regulation to harmonize the laws and regulations and encourage the legislative system's excitation.

While the consolidation process remains puzzling, compared with codification, this is more realistic to handle. It is not easy to amalgamate rules in legislation, incorporate dispersed amendments and restructure them for simplicity. Since restructuring does not require changes, and because the legislative authority's role is limited, consolidation could save more time. The fact that the consolidation process is one step simpler and less time consuming could be the point to determine the area of law to consolidate. In other words, consolidation can be carried in a broader scope on omnibus methods that has impacted the legal system. Again, to optimize the restructuring value, we can look back on the consolidation pointers we have previously addressed. The executive should exercise the process of putting together numbers of legislation in a single format and logical order to get a more precise structure. In addition, since it does not require legislative authenticity, we need to preserve the benefits of a consolidation process that requires less time and less discussion. However, in terms of the consolidated text that should be cleaned from 'dead wood' to enhance usability, minor statutory improvements are necessary, of course. It should be achieved by authorization from the law if there are any improvements made to the legislation. Otherwise, the principle of democracy and representation would be breached. Therefore, legislative engagement in consolidation should be held in proportion between the need to minimize the debate session and the need for the process to be legitimate. To assess the area of law to be combined, legislative participation will be better positioned at the beginning of the consolidation process. This can be incorporated into the annual legislative schedule, as it also requires the preparation and review of amendments. It is also possible to clarify the consolidation process in the priority processes where the list of draft bills from both the executive and legislative meet. Firstly, the President initiates consolidation in a specific region at the early stages of the legislative program or, in other words, determines the scope to be consolidated. Then the executive is sorting out that occasion legislation that has already been enacted, and the dispersed amendment; may also include a new bill necessary to attach to the consolidation work. The executive should undoubtedly wait for parliamentary deliberation and approval for this new bill before placing it on the consolidated list. Finally, the executive should initiate and lead the project once the restructuring project remains in the legislative program.

BAB III

CONCLUSION

The process of installing the omnibus methods into the legislation system cannot be carried out without considering the legal system factors, doctrines used in Indonesia's system and legislation process. The application of contextual legal transplants must be carried out, taking into account the factors stated above. The use of the omnibus methods would be better if accompanied by the use of the consolidation method. Consolidation does not put out new legal consequences and does not hold any legal status with its format. This makes consolidation less time-consuming and debatable since the compilation's authentication does not inherently entail legislative participation.

All in all, we simplify and reduce the number of regulations by consolidating. Consolidation serves to improve the usability of laws, first as a prelude to codification and then to law reform. We have a single instrument and a more straightforward framework by consolidation. The legislation is more comfortable to grasp more fundamentally. The structure reordered in a logical sequence could enable the reader to understand such legislation's coverage in the region. The tidying process contributes to volume reduction. Consolidation would be able to tide the field of law into a larger one that is too narrow. The legislation is easy to use with this in mind. Of course, it would be better to look for rules in a single voluminous instrument instead of dispersed laws. This is the central consolidation point that leads most to usability. Sorting out outdated laws is the biggest issue with exaggerated legislation. In certain situations, reforms are carried out in a different legislative format and are not incorporated. We incorporate it by consolidation so that we have guidelines for updating.

REFERENCES

Black, H. (1968). *Black's law dictionary: Definitions of the terms and phrases of american and English jurisprudence, ancient and modern*. West Publishing Co.

Buana, M. (2017). Exploring the concept of omnibus law and consolidation law for the harmonization of indonesian legislation: A comparative approach to constitutional law. *Proceeding of 4th National Conference on Constitutional Law*.

Butt, P. (2013). *Modern legal drafting: A guide to using clearer language*. Cambridge University Press. Chandranegara, I. (2019). Forms of reduction and harmonization of regulation. *Jurnal Hukum Ius Quia Iustum*, *26*(3), 435–457.

Chandranegara, I.S. (2020). Compatibility of using the omnibus method in law making. *Jurnal Hukum Ius Quia Iustum*, *27*(2), 1-9.

Chandranegara, I.S., & Sihombing, E.N. (2021). Emergency law-making in Indonesia: Between political and constitutional process. *Journal of Legal, Ethical and Regulatory Issues*, *24*(4), 1-9.

Dejonghe, M. (2015). *Constitutional courts: Democracy vs. juristocracy?* Genht University.

Dodek, A. (2017). Omnibus bills: Constitutional constraints and legislative liberations. *Ottawa Law Review*, *48*(1), 1–42.

Donelan, E. (2009). European approaches to improving access to and managing the stock of legislation. *Statute Law Review*, *30*(3), 1-12.

Foster, N. (2000). Company law theory in comparative perspective: England and France. *The American Journal of Comparative Law*, *48*(4), 573–621.

Institute of Law Science. (2006). *Possible Use of the omnibus legislative technique for implemetation of Vietnam's WTO obligations and commitments*. The World Bank/

Legrand, P. (2001). What legal transplants? In D. Nelken & J. Feest (Eds.), *Adapting Legal Cultures* (pp. 55–69). Hart Publishing.

Massier, A. (2008). *The voice of the law in transition: Indonesian jurists and their languages, 1915-2000*. KITLV Press.

Redi, A. (2020). *Omnibus law gasasan arrangements for the prosperity of the people.*

Ahmad, R., & Chandranegara, I. S. (2020). Omnibus law discourse its adoption into the national legal system. *Omnibus Law Discourse Its Adoption Into The National Legal System.*

Setiadi, W. (2018). Simplification of Legislation in Order to Support Ease of Entrepreneurship. *Journal of Rechts Vinding: National Law Enforcement Media*, *7*(3), 321–334.

Teasdale, J. (2009). Statute law revision: Repeal, consolidation or something more. *European Journal of Law Reform, 11*(1), -145-157.

Tushnet, M. (1999). The possibilities of comparative law. *Yale Law Review*, *108*(1), 1226–1309.

Umar, B. (2020). *Omnibus law is used to respond to the challenges and opportunities of economic growth*. Voermans, W. (2011). Styles of legislation and their effects. *Statute Law Review*, *32*(1), 38–53.

Watson, A. (1974). *Legal transplant: An approach to comparative law*. University of Georgia Press. Watson, A. (1980). Society and legal change. *Michigan Law Review*, *78*(5), 834–837.

Watson, A. (1996). Aspects of reception of law. *The American Journal of Comparative Law*, *44*(2), 335–351. Widiati, E. (2013). *Achieving accessibility of legislation via consolidation*. Institute of Advanced Legal Studies.

Xanthaki, H. (2016). On transferability of legislative solutions: the functionality test. In *Drafting Legislation* (pp. 1– 18). Routledge.

Zweigert, K., & Kötz, H. (1998). *An introduction of comparative law*. Oxford University Press.