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# Omnibus Law: Government's Solution To Overcome Hyper Regulation A Review Of State Law

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## **Abstrak**

Indonesia menjadi negara dengan regulasi terbanyak (*hyper regulation*) di dunia jika dibandingkan dengan beberapa negara besar seperti Amerika Serikat, Jerman serta Inggris. *Hyper regulation* yang terjadi di Indonesia akan menyebabkan regulasi di Indonesia menjadi *malfungsi* dan menjadi ancaman, hal ini dikarenakan regulasi-regulasi tersebut akan tumpang tindih, saling menjerat. *Hyper Regulation* yang terjadi di Indonesia ini dapat diatasi, salah satu caranya ialah melakukan revisi peraturan perundang-undangan tersebut, akan tetapi pelaksanaan revisi secara konvensional ini akan membutuhkan waktu yang sangat lama untuk melakukan harmonisasi dan sinkronisasi. Metode omnibus law menjadi solusi pemerintah untuk mengatasi *hyper regulation* serta menciptakan harmonisasi peraturan. Metode penelitian yang digunakan ialah metode penelitian yuridis normatif dengan spesifikasi penelitian bersifat deskriptif analitis. Hasil dari penelitian ini adalah persoalan apakah metode omnibus law ini dapat menjadi solusi utama dalam memecahkan masalah *hyper regulation* yang terjadi di Indonesia dan benar-benar memberikan keuntungan atau malah menimbulkan lebih banyak masalah dan kerugian itu tergantung dengan seberapa bijak dan matang para pembuat kebijakan mengkajinya dari berbagai perspektif. Karena memang omnibus law ini sangatlah kompleks karena perlu pengkajian yang dalam atas banyaknya peraturan yang akan diubah, dicabut, dan/atau digabungkan.

## **Abstract**

Indonesia is the country with the most regulation (*hyper regulation*) in the world when compared to several large countries such as the United States, Germany and England. *Hyper regulation* that occurs in Indonesia will cause regulations in Indonesia to malfunction and become a threat, this is because these regulations will overlap, entangle each other. The *Hyper Regulation* that is occurring in Indonesia can be overcome, one way is to revise the statutory regulations, however implementing this conventional revision will take a very long time to carry out harmonization and synchronization. The omnibus law method is the government's solution to overcome *hyper regulation* and create harmonization of regulations. The research method used is a normative juridical research method with descriptive analytical research specifications. The result of this research is the question of whether the omnibus law method

## **Kata kunci:**

*Omnibus Law, Solusi Pemerintah, Hyper Regulation*

## **Article Histori:**

Received: 29-3-2024

Received in Revised Form:  
21-08-2024

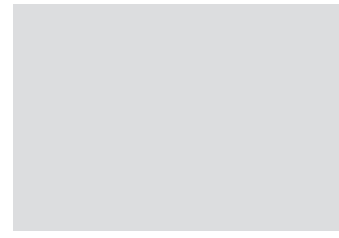
Accepted: 13-10-2024

Publish: 30-11-2024

## **Keywords:**

*Omnibus Law, Government Solutions, Hyper Regulation*

can be the main solution in solving the problem of hyper regulation that occurs in Indonesia and really provide benefits or even cause more problems and losses, depending on how wise and mature the policy makers are in reviewing it. various perspectives. Because this omnibus law is very complex because it requires an in-depth study of the many regulations that will be changed, revoked and/or combined.



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## 1. Introduction

Over time, Indonesia has gone through various government regimes, starting from the Old Order, New Order, Reformation to subsequent government regimes. In each government regime, of course there will be and produce policies that are different from each other, which are then expressed in the form of statutory regulations and other related regulations in accordance with the needs and interests of each power holder (Alfan, 2021). Since Indonesia's independence until now, the accumulation of regulations has continued to increase, accompanied by various problems, such as regulatory disharmony or overlapping regulations (Bayu, 2019).

According to Ahmad Redi, Indonesia is the country with the most regulation (hyper regulation) in the world when compared to several large countries such as the United States, Germany and England (Fajar, 2020). It is said that Indonesia is a country that has hyper regulation, because the laws and regulations in Indonesia alone have reached 220,346 regulations. Ahmad Redi then also said that the hyper regulation that occurs in Indonesia will cause regulations in Indonesia to malfunction and become a threat, this is because these regulations will overlap, entangle each other and ultimately will hinder development and cause it to become stagnant (Habibah, 2022).

*Hyper Regulation* What is happening in Indonesia can be overcome, one way is to revise these laws and regulations, however, implementing this conventional revision will take a very long time to harmonize and synchronize these regulations (Aulia, 2020). President Joko Widodo, in a speech on October 20, 2019, briefly touched on this issue and planned to create a statutory legal concept called *Omnibus Law*. Furthermore, President Joko Widodo also said that the omnibus law would simplify complicated and lengthy regulatory obstacles, overcome hyper regulation and create harmonization of regulations (Novianto, 2020). This government commitment is based on the belief that the omnibus law can improve Indonesia's investment ecosystem and competitiveness so that it can strengthen the national economy (Tomi, 2020).

*Omnibus Law* is a law that regulates all things in one area. Omnibus Law in this context is likened to an umbrella law. Fachri Bachmid stated that omnibus law is a concept of a legal product which has the function of consolidating various themes, materials, subjects and statutory regulations in each different sector into a large and holistic legal product (Hadi & Gandryani, 2024). Meanwhile, Sofyan Djalil stated that the omnibus law concept is a step in issuing one law that can improve various laws that have so far overlapped and hampered the development process. It is hoped that the issuance of one law using the omnibus law method can overcome hyper regulation and overlapping regulations, because the omnibus law method is very profitable in terms of time. However, the question is, will the idea of simplifying

laws and regulations by the government due to hyper regulation not cause additional problems? Bearing in mind that the Indonesian legal system is different from the legal systems of countries that use the omnibus law method (Nugroho, 2024a).

Based on these opinions, a conclusion can be drawn that the omnibus law is a law whose role is to cut down several overlapping laws, to harmonize several aspects into one more effective legal product. The omnibus law method has developed and is used by several countries that adhere to a common law legal system such as the United States and England (Nurul, 2010). The omnibus law method operates as an effort to fix problems resulting from hyper regulation and overlapping regulations. Based on this background, the author is interested in researching and writing it in the form of an article regarding the omnibus law method, henceforth the author uses the title «Omnibus Law: The Government's Solution to Overcoming Hyper Regulation, A Review of Constitutional Law».

## **2. Methods**

The research method used is the normative juridical research method. This research was conducted by examining primary and secondary legal materials. This research uses a statutory approach and a conceptual approach (Diantha, 2016). The specification of this research is analytical descriptive, namely research that aims to collect detailed actual information that describes existing symptoms, then compile it, explain and analyze it (Moleong, 2005). This writing uses qualitative methods, so that the data collected are words and images, not numbers, the data collected by the author becomes research material.

## **3. Research Results and Discussion**

Legal inconsistency is one of the legal issues in constitutional law. Legal inconsistency occurs if there are articles that regulate the same act, but contradict each other. This conflict can cause various problems, one of which is that the judge can have difficulty in determining the decision. Conflicting law is a norm in legislative regulations that is not in sync between one statutory regulation and another statutory regulation, one of the causes is hyper regulation. In the author's opinion, the idea of simplifying legal regulations due to hyper regulation will cause various problems (Shalihah & Huroiroh, 2024). This is because the omnibus law method that the government will use in its simplification efforts comes from a country that adheres to a common law legal system, where this legal system is different from the Indonesian legal system. However, the omnibus law method is still the government's choice, one of the reasons being to speed up the long and convoluted bureaucratic process (Wardani & Putra, 2024).

The bureaucratic problem is actually the impact of the choice of Indonesia's legal system, namely the civil law legal system. The civil law system is characterized by a codification system, judges are free from precedent or doctrine, so that the law is the main reference and the judicial system is inquisitorial. The omnibus law method is basically a concept that has no connection with the applicable legal system, however, the substance of the omnibus law can be a solution in making legislative regulations. Susiwijono believes that the omnibus law has several big benefits for the hyper regulation that occurs in Indonesia, namely: a) Omnibus law can eliminate overlap between regulations; b) Omnibus law guarantees the efficiency of the process of changing or revoking statutory regulations; c) Omnibus law is able to eliminate sectoral egos contained in various statutory regulations; d) Omnibus law is able to act as a legal umbrella (umbrella act). Umbrella laws are laws that play a role in covering related technical laws.

Apart from the benefits mentioned by Susiwijono, the Indonesian Government also has several reasons which are the basis for consideration in making the Omnibus law, namely:

1. Too Many Regulations. Hyper regulation or too many regulations is the first reason, because it is not uncommon for one regulation to overlap and hinder public services, as well as ease of doing business. As a result, programs to accelerate development and improve community welfare are difficult to realize.
2. Based on the regulatory quality index released by the World Bank, Indonesia from 1996 to 2017 recorded regulatory quality as minus or below zero. The World Bank regulatory index score of 2.5 points indicates the best regulatory quality, while -2.5 is the lowest score. In 2017, Indonesia's score was recorded at -0.11 points. Indonesia's position is fifth behind Singapore, Malaysia, Thailand and the Philippines in the ASEAN ranking.

Apart from the benefits and reasons previously mentioned, the Indonesian government's commitment to using the omnibus law method is also based on the advantages offered by the omnibus law method. In dealing with the problem of hyper regulation in Indonesia, namely:

1. Resolving legal and regulatory conflicts (vertical and horizontal more efficiently and effectively and not taking a long time);
2. Harmonization between government policies at the central and regional levels to support the investment climate;
3. Streamlining licensing processing to make it more integrated, efficient and effective;
4. Strengthening coordination between agencies, due to integrated omnibus regulation policies;
5. Breaking the chain of convoluted bureaucracy;
6. Guarantee of legal certainty and legal protection for policy makers.

However, behind the advantages provided by the omnibus law method, there is also a problematic side as expressed by Patrick Keyzer, namely: "a). Very difficult to draft; b) Limited opportunities for debate and scrutiny; c) It may make consultation very difficult; d) It may be hard to implement; e) It can add the complexity, rather than remove it." Apart from the benefits, advantages and reasons that are the basis for the government's commitment to using the omnibus law method, the author wants to emphasize that the omnibus law will be a type of statutory regulation that has the same meaning as an "umbrella" or "parent" over other laws. Therefore, it will have a higher position than its "son" law and existed first. Of course, this is not recognized in Law no. 12 of 2011.

Even though it is not recognized in Law Number 12 of 2011 concerning the Formation of Legislative Regulations, the existence of the omnibus law does not conflict with Law no. 12 of 2011, according to several experts, as long as the content contained in the omnibus law is in accordance with the provisions of the law. Experts who oppose the existence of the omnibus law base their opinions on Article 27 paragraph (1) of Law no. 12 of 2011 emphasizes "the types and hierarchy of laws and regulations in Indonesia, namely the 1945 Constitution, MPR Decrees, Laws or Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regional Regulations and Regency/ City Regional Regulations" (Usfunan, 2020).

Based on Article 27 paragraph (1) Law no. 12 of 2011, it is clear that every law issued by the Government has the same position under the 1945 Constitution of the Republic of Indonesia and the MPR's decrees. However, the presence of the omnibus law method has placed the omnibus law law in a higher position than sectoral laws because its formation produces an umbrella law.

The question of whether this omnibus law method can be the main solution in solving the problem of hyper regulation that occurs in Indonesia and really provide benefits or even cause more problems and losses depends on how wise and mature the policy makers examine it from various perspectives. Because this omnibus law is very complex because it requires an in-depth study of the many regulations that will be changed, revoked and/or combined. Apart from that, there must be a public space for conveying people's aspirations as one of the absolute demands in national development efforts.

#### 4. Conclusion

Conflicting law is a norm in legislative regulations that is not in sync between one statutory regulation and another statutory regulation, one of the causes is hyper regulation. In the author's opinion, the idea of simplifying legal regulations due to hyper regulation will cause various problems. This is because the omnibus law method that the government will use in its simplification efforts comes from a country that adheres to a common law legal system, where this legal system is different from the Indonesian legal system. However, the omnibus law method also has several benefits and advantages. The question of whether this omnibus law method can be the main solution in solving the problem of hyper regulation that occurs in Indonesia and really provide benefits or even cause more problems and losses depends on how wise and mature the policy makers examine it from various perspectives. Because this omnibus law is very complex because it requires an in-depth study of the many regulations that will be changed, revoked and/or combined.

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