

The Application of Omnibuss Law in Land Regulation Reform Efforts

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Abstract

The times provide mandatory demands for laws in Indonesia to develop in accordance with the needs of today's society. However, in reality there are still many rules that intersect with each other and cause legal uncertainty. To deal with this, Indonesian law must be ready to adjust to the renewal of the legal system through omnibus law due to the accumulation of regulations. This research aims to open a new perspective in the implementation of omnibus law on land regulations that have been overlapping, resulting in the absence of legal harmonization. The research method is conducted with a normative juridical approach. The type of approach used is the statute approach. The legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials. Data collection techniques are carried out by means of literature studies related to research both from laws, scientific works and books. The results of this study indicate that the implementation of the omnibus law is a solution to the overlapping land regulations in Indonesia which must be accompanied by synergy and coordination from various institutions in order to create legal certainty.

Keywords

Omnibus Law; Land Regulation; Regulation Reform

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1. INTRODUCTION

In order to achieve justice, clarity and social benefits, laws will change over time. As the number of jobs in society increases and regulations are enforced by implementing agencies, law reform is inevitable. Violated regulations may be penalized, which highlights the need for legislative changes. (Firdaus, 2023). The omnibus legislation notion has been anticipated to be one method of creating laws in Indonesia, both conceptually and practically, in the process of reforming the country's legal system. One nation with a lot of restrictions is Indonesia. During Joko Widodo's inauguration speech as President of the Republic of Indonesia for the 2019-2024 period, the term "Omnibus Law" first appeared in the Indonesian conversation in October 2019. The President claimed that the Omnibus Law method



would be used as a plan to streamline regulations that were now becoming a hindrance. (Adhisatya & Firdaus, 2021). The Omnibus law is used as a method of forming regulations that has the aim of simplifying rules in various fields (Helmi et al., 2021).

For a considerable amount of time, Indonesian legislature has utilized the omnibus law. Legal reform through the omnibus law method is carried out by revoking old laws and then forming new laws. During the old order, the government had issued 83 laws and regulations that revoked 199 regulations issued during the Dutch East Indies government. Based on a study conducted by the National Law Development Agency (BPHN) of the Ministry of Law and Human Rights in 1992, the regulations issued during the Dutch East Indies, which amounted to around 400, are still valid in Indonesia (Subagio, 2006). Prior to the omnibus legislation method's implementation, Indonesia had 7,000 laws and regulations in place. Learning from this, omnibus law is a method of legal reform in order to realize justice, legal certainty and legal benefits in different times (Arianto, 2019).

According to Sofyan Djalil, the concept of omnibus law emerged as an effort to resolve overlapping regulations, especially in the investment sector (Ansari, 2020). One of them is the problem of land regulations that often collide with other laws and regulations. This has ramifications for those in charge of creating policy as their lack of comprehension of the pertinent legal and regulatory framework can lead to criminal activity, administrative mistakes, and civil damages. Reporting from *antaranews.com*, Head of BPN RI Hendarman Supandji said that the head of BPN RI will cooperate with universities, experts and related institutions or NGOs in harmonizing and synchronizing the 632 rules in the agrarian sector. The results of the study show that 208 regulations are no longer valid, so that only 424 regulations are valid. These regulations consist of various levels of laws to circular letters issued by ministers (Burhani, 2013). In actuality, overlapping rules still exist today and cause policy disagreements amongst policy makers; hence, the idea of an omnibus legislation is necessary to create a groundbreaking regulation. law (Zulaiha, 2022). In reality, based on the data mentioned above, there are still vulnerable to overlapping regulations in the land sector that cause policy conflicts among policy makers, so a legal regulatory breakthrough is needed through the concept of omnibus law. Therefore, this research is a special study on the application of the omnibus law in an effort to reform the regulation of the land sector which is an interesting research subject because of its significant potential impact.

The main problem that should be examined at this time is whether the number of regulations creates other problems, such as the incompatibility of regulations is the real problem. This is because the concept of omnibus law revises and revokes many laws at once, simplifying regulations through its concept is certainly the right choice in solving regulatory problems.

Based on these issues, it may be concluded that the omnibus bill effectively addresses the issue of excessive regulation. But without more work, conflicts, special interests, and non-participatory

regulations, the omnibus law's application will undoubtedly be ineffectual. As a result, the author will go over the numerous applications of the omnibus bill idea for enhancing regulation

2. METHOD

The research method used is normative juridical research. Data collection techniques are carried out by studying research-related literature from laws, scientific works and books. Data analysis is carried out by classification and categorization in accordance with their respective discussions and then analyzed using qualitative methods.

Normative juridical research is the type of research used. The statutory approach is the type of approach. Primary, secondary, and tertiary legal resources are the types of legal materials used. Legislation, official documents, and minutes of legislation making are examples of primary legal sources. Legal papers that provide further explanation of basic legal materials are referred to as secondary legal materials. Furthermore, tertiary legal documents are documents that provide a deeper understanding of secondary and primary legal materials, such as dictionaries. The data collection method was carried out through a review of literature related to the research from books, scientific publications, and laws and regulations. This research uses qualitative data analysis techniques by conveying descriptive normative juridical analysis, which means a qualitative data analysis approach used to examine the legal materials collected (Muchtar, 2015).

3. FINDINGS AND DISCUSSION

3.1. Application of Omnibus Law in Regulatory Reform Efforts

Public participation is crucial for democratization efforts, as it encourages participation from all societal elements, including individuals and community groups. The 1945 Constitution guarantees community participation, but it often overlooks the right to equal opportunity in government. Public participation has not been adequately guaranteed in legal formation, with mechanisms for following up on public aspirations and developing two-way communication mechanisms. This is crucial when the government wants to use the omnibus law idea to repeal or amend laws that impede business and investment. Despite the concept's potential, without public participation, the resulting legal product may still be difficult to accept. The 1945 Constitution guarantees community participation, but it is essential to ensure that all citizens have equal opportunities in government (Riskiyono, 2015). The implementation of the Omnibus Law is one of the strategies in regulatory reform efforts that aim to simplify, coordinate, and improve the existing regulatory framework in various sectors as a whole. The Omnibus Law integrates various provisions of related laws and regulations in one comprehensive law or package of laws.

Historically, the application of omnibus law has been used by Indonesia even though it is not

recognized as a form of application of the omnibus law concept. This was implemented when the People's Consultative Assembly issued MPR Decree Number I/MPR/2003 on the Review of the Material and Legal Status of Temporary MPR Decrees and MPR Decrees from 1960 to 2002 (Wicaksono, 2013). Later, this concept was also applied in the Election Law. Law Number 7/2017 on Elections basically unites and revises 6 (six) laws. The six laws that were unified and revised were Law Number 32 of 2004, Law Number 8 of 2005, Law Number 12 of 2008, Law Number 42 of 2008, Law Number 15 of 2011, and Law Number 8 of 2012. Much earlier, omnibus law had also been practiced by Indonesia in simplifying around 7,000 Dutch regulations into around 400 regulations.

Regulatory issues are complex and should not be stopped until an omnibus law is made. Regulatory reform should be considered as a comprehensive reform starting from formation, harmonization, and evaluation (Putra, 2020). This does not only mean uniting many laws into 1 (one) law or only being considered as legal reform, such as replacing existing laws with new ones. In order for the omnibus law to be effective and not misused, M. Nur Sholikin states that it can be realized with 5 (five) steps, namely (Silalahi, 2020) To ensure the effectiveness and legitimacy of omnibus laws, several important steps must be taken. First, the House of Representatives (DPR) and the government should actively engage the public during the drafting process as the scope of the law is very broad, thus ensuring the involvement of relevant stakeholders. Secondly, transparency on the progress of drafting is essential, with the DPR and government providing clear information on the process. Third, drafters need to carefully map related regulations to avoid inconsistencies. Fourth, rigorous harmonization—that is, horizontal alignment with analogous rules and vertical alignment with higher regulations—is crucial. Finally, before the legislation is enacted, a comprehensive examination should be carried out, with a focus on determining its possible effects. These steps collectively contribute to a more inclusive, transparent and effective legislative process for omnibus laws.

In the law-making process, awareness of the nature of law as a system can be applied by prioritizing harmonization and synchronization. Harmonization highlights the conformity in indicators and characteristics between existing regulations, while synchronization emphasizes the importance of alignment so that there are no discrepancies between one regulation and other laws and regulations. The government needs to consider a number of factors while putting the omnibus bill into effect, including (Sholikin, 2019):

1. The application of the omnibus law in forming participatory laws.

The public must be involved in the implementation of the law. It is impossible for a law to be accepted and implemented properly if the public is not involved in determining policy priorities for drafting laws and regulations. This is because public participation is one of the important conditions for producing effective laws.

2. There must be a clear mechanism for harmonization of laws and regulations.

At this stage, there needs to be a single authority that does it. The aim is to ensure that there is centralized harmonization and no overlapping authority. The President has promised to establish a specialized regulatory agency in this regard. In addition, the Law on the Establishment of Laws and Regulations 12/2011 should be amended again.

3. Evaluation of laws and regulations to be revised using the concept of omnibus law.

At the evaluation stage, laws to be revised, revoked or repealed must be thoroughly examined. One of the things that must be understood in this regard is that no law is perfect. However, fixing imperfections should also take other aspects into consideration. If a law is made for one area, other areas should not be neglected.

This shows that the use of omnibus legislation in participatory lawmaking highlights the importance of citizen participation in the legislative process. Adopting and successfully implementing a law is challenging in the absence of significant public engagement. Therefore, public engagement is an important prerequisite for setting policy priorities and creating practical and durable rules and regulations. Furthermore, the significance of possessing a precisely defined and cohesive framework is underscored in relation to the synchronization of legal and regulatory frameworks. It is important to have one authority in charge of maintaining centralized harmonization and preventing overlapping jurisdictions between entities. In order for this harmonization process to run smoothly, the President is determined to revise the Law on Law Formation and establish a special governing body.

In order for the harmonization process to run smoothly, the President is determined to establish a special regulatory body and revise the legislation on the Formation of Legislation Number 12 of 2011 to be closer to the principle of omnibus legislation (Harjono, 2020). In addition, at the evaluation stage of laws and regulations that need to be amended, it is necessary to conduct a thorough assessment of laws and regulations that need to be amended, canceled, or revoked. This assessment should consider a number of factors and ensure that no regulation is perfect. In addition, to ensure that other affected sectors are not neglected by the legislation and that fairness and harmony in the legislation are properly enforced, other relevant factors should be considered during the reform process.

3.2. Land Law in Indonesia

Since the Dutch East Indies era, Indonesia has had land laws founded on the concept of concordance (Busro, 2017). The colonial state benefited from the enactment of laws such as Agrarische Wet, Agrarische Besluit, Burgerlijk Wetboek, Koninklijk Besluit, Regering Reglement, and Indische Staatsregeling, while the Indonesian people were disadvantaged. The right of eigendom, an absolute property right granted to the colonizers with legal certainty and recorded in the land book, is one of

these items (Awaludin et al., 2021). According to customary law, this is in contrast to indigenous peoples who have no official documents proving their land ownership rights. Land law in Indonesia only regulates certain parts of the land itself, which relates to Land Tenure Rights (HPAT) (Hartana & Candraswati, 2019). Certain components of Land Tenure Rights (HPAT) are regulated by land laws in Indonesia. HPAT provides a legal basis for communities or organizations to manage and use land in accordance with relevant laws. It addresses a number of topics, including the ownership, use and transfer of land rights. However, it should be emphasized that Indonesia's land laws do not regulate every element of land, especially when it comes to the customary rights of indigenous peoples, which sometimes do not receive official recognition. Because of this, it is challenging to reconcile the needs of economic expansion with the protection of indigenous peoples' traditional rights to their ancestral lands.

During Indonesia's independence through the Agrarian Committee, Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles (UUPA) was issued, which has been in effect since September 24, 1960 until now (Peturun, 2019). In order to achieve the growth and welfare of the populace, as stated in the mandate in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, this legislation was created as a reform of the laws pertaining to agricultural law. However, along with the times, UUPA did not become the juridical umbrella legislation of several agrarian regulations that caused conflicts with a number of laws and regulations. This is caused by several things including:

1. Changing government regimes that cause the rules to change and are not sustainable.
2. The absence of fixed standards in the preparation of laws and regulations.
3. Formers of laws and regulations do not have a good understanding of the laws and regulations due to changes between officials.
4. The absence of active community participation in the preparation of laws and regulations.
5. Poor coordination between the institutions involved.

It can be concluded that agrarian law in Indonesia, as a whole, has undergone a development that has led to a shift in the role of the Basic Agrarian Law (UUPA) as an effective juridical umbrella in regulating agrarian regulations. This is due to a number of factors, including changes in government regimes, the absence of fixed standards in drafting regulations, rotation of government officials, lack of public participation, and weak coordination between relevant institutions. The impact of this situation is legal uncertainty and potential conflicts between regulations, which can hamper development and investment in the land sector. Therefore, serious corrective measures are needed, including improved coordination, more active public participation, and the establishment of a more consistent and sustainable regulatory framework, to ensure justice, legal certainty, and sustainable development in the agrarian sector.

Discussion

Land Regulation Renewal Through Omnibus Law

The renewal and formation of land legislation in Indonesia must consider three aspects including:

1. In order for laws and regulations to support the purpose of the establishment of the Indonesian state, the history of the Indonesian people must be considered.
2. Objective conditions that are happening in the government. The government must consider legal aspects in the formation of draft laws to suit the needs of the community so that they can be applied effectively and efficiently.
3. Ideals to be achieved in the future. The legislature needs to consider the future in forming laws and regulations as an effort to anticipate changes in society, science, technology, knowledge in the era of globalization.

Theoretically, the process of forming laws and regulations is carried out by forming, implementing, applying, discovering, interpreting, studying and teaching the law. Practically, it is done by enforcing the law in a real social environment in everyday life. Based on this, the law must be able to shape society with good goals.

The House of Representatives and the President are mandated to oversee the implementation of agrarian reform and further manage natural resources, as well as to revoke, amend, and/or replace any applicable laws and regulations that conflict with MPR RI Decree Number: IX/MPR/2001, which outlines the mandate for land law reform. (Supriyanto, 2008). In addition to being regulatory, renewal calls for addressing the National Land Agency of the Republic of Indonesia and the Ministry of Agrarian Affairs and Spatial Planning from the national level down to the local level.

The application of the omnibus law concept in Indonesia will bring several benefits in land regulation in Indonesia, namely:

1. Resolve conflicts of laws and regulations quickly, effectively and efficiently.
2. Uniform government policies both at the central and regional levels to support the investment climate;
3. Licensing is more integrated, efficient and effective;
4. Able to break the long chain of bureaucracy;
5. Improved coordination relations between related agencies because it has been regulated in an integrated omnibus regulation policy.
6. There is a guarantee of legal certainty and legal protection for policy makers.

In addition, one of the main features of the land regulatory reform brought about by the Omnibus Law was the simplification of licensing procedures. In this regard, efforts were made to simplify and merge the different licenses previously in place into one more all-encompassing license. As a result,

applicants in the land sector were spared the effort and expense of having to submit multiple licensing applications to various organizations. In addition, complicated administrative procedures were made simpler, including the elimination of unnecessary administrative steps such as burdensome document requirements or complicated workflows. Information technology is also used to streamline and speed up licensing procedures. Examples include online platforms for permit applications and applicant-agency communication. Better cooperation between many relevant parties

The Omnibus Law also has a significant impact on a number of other land-related issues. First, the Omnibus Law regulates the process of granting land rights more clearly and openly. This is important to provide legal stability to landowners and encourage investment in the land industry. Zoning reform through the Omnibus Law also helps control land use more effectively and sustainably. Zoning can avoid land use-related problems and accelerate infrastructure development. The Omnibus Law also considers the rights of indigenous peoples in natural resource management. This is necessary to ensure that the environment and indigenous peoples are not harmed by land sector development. Finally, the Omnibus Law often incorporates changes to laws and organizations.

The land-related section of the Job Creation Law, which was enacted in Indonesia, is part of the omnibus law. It governs a number of areas, including the protection of indigenous peoples' rights in relation to natural resource management, the granting of land rights, zoning arrangements, and changes to institutions or regulations in the land sector. However, the Job Creation Law will also have legal consequences, such as unclear laws for low-income communities and farmers, ineffective law implementation due to conflicting regulations, varying interpretations from lawmakers and scholars, and failure to harmonize legal innovations with underlying regulations that may violate the constitution.

The implementation of the omnibus law will run effectively if there is an active role of policy makers and coordination between related institutions. The government also needs to issue the right policy in handling land issues. Technically, this can be done by issuing a Government Regulation in Lieu of Law (PERPU) that can hinder investment.

4. CONCLUSION

The renewal and construction of land legislation in Indonesia must take three factors into account: the Indonesian nation's history, the government's ambitions, and future goals. Forming, putting into practice, applying, finding, interpreting, researching, and instructing the law are all steps in the process.. Land law reform must be implemented in line with MPR RI Decree Number: IX/MPR/2001, which authorizes the House of Representatives and the President to govern agrarian reform and natural resource management. The implementation of the omnibus law concept in Indonesia will result in

benefits such as conflict resolution, uniform government policies, integrated licensing, reduced bureaucracy, increased cooperation across agencies, and legal clarity for policymakers. The omnibus law's implementation necessitates active policymaking and cooperation among relevant authorities.

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