

Formation of Indonesian Laws Post-2022 Amendment to Law No. 12 of 2011

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Abstract

This study aims to analyze the evolution of legal politics in Indonesia's legislative framework following the amendment of Law No. 12/2011 through the enactment of Law No. 13/2022. This amendment introduced the omnibus method as an innovative approach to drafting regulations. Employing a qualitative methodology rooted in doctrinal legal research and normative analysis, the study examines legal texts, judicial decisions, and other legislative materials. The methodology emphasizes the analysis of legal principles and norms to ensure alignment with constitutional directives and international legal standards. The findings indicate that the implementation of the omnibus method enhances efficiency in the legislative process by consolidating overlapping regulations into a cohesive legal framework. This approach facilitates efforts to address regulatory overload and promotes greater legal certainty. Nevertheless, the study identifies challenges such as resistance within the legislative process and the necessity for continuous oversight to maximize the benefits of this approach. In conclusion, the enactment of Law No. 13/2022 represents a pivotal advancement toward a more responsive and efficient legislative framework in Indonesia. This research provides a valuable contribution to understanding the political dynamics of legal reform and the broader implications of adopting the omnibus method in the national legislative system.

Keywords: *Indonesia, Law No. 13 of 2022, Legal Politics, Legislation formation, Omnibus Method.*

INTRODUCTION

The Constitution of the Republic of Indonesia, particularly Article 1 Paragraph (3), establishes Indonesia as a State of Law, where law is the fundamental aspect governing the nation's and state's life. The principle of the rule of law underscores that the law governs state affairs, commanding paramount authority. It mandates that the law applies universally to all citizens, without any exceptions, ensuring that no individual is exempt from legal obligations. In a legal state, there is a distinct separation among the legislative, executive, and judicial branches, designed to prevent any misuse of power and to guarantee that each state institution performs its duties in strict accordance with the law. The rule of law upholds human rights, ensuring that every individual is entitled to legal protection, including the right to be treated fairly and equally under the law (Umbara, 2020).

In a state governed by the rule of law, justice must be rigorously upheld, with every legal decision founded upon well-defined norms and procedures. This practice fosters legal certainty for all citizens. The process of law-making must actively involve public participation, ensuring that the laws enacted reflect the aspirations and needs of the populace. Furthermore, this inclusivity generates accountability for the government and state institutions. The rule of law in Indonesia is fundamentally grounded in the values of Pancasila, which serves as the state's philosophical and ideological foundation. These characteristics encompass the concept of the Family State, which emphasizes the prioritization of collective interests over individual ones, mirroring the communal social values of Indonesian society. Another characteristic is Prismatic Law, wherein the Indonesian legal system is integrative, amalgamating various elements from existing legal systems to formulate a comprehensive and coherent body of law that aligns with

Indonesia's social and cultural context.

This legal framework, rooted in the Dutch Rechtsstaat tradition, emphasizes the law as the guiding principle in societal and governmental activities. The historical evolution from the colonial era to post-independence has significantly influenced Indonesia's legal system, which is now characterized by a complex interplay of Continental European and Anglo-American legal principles (Ridwan, 2003). The reformation era, marked by the amendments to the 1945 Constitution, introduced a shift towards a more dynamic legal tradition, integrating elements of both Civil Law and Common Law systems.

An example of the application of human rights can be seen in the 1945 Constitutional Amendment, which underlines the importance of human rights as an essential element in the Common Law legal system. This amendment established a stronger legal framework for the protection of individual rights in Indonesia. In addition, increased public involvement in the legal system characterised by greater openness and transparency - facilitates public engagement in the legal process, thus reflecting the broader democratic principles inherited from the Common Law tradition (Tamrin, 2015).

The principles of the Rechtsstaat, as developed by Julius Stahl and A.V. Dicey, outline the fundamental elements of the rule of law, including the protection of human rights, power sharing, government by law, administrative justice, supremacy of law, equality before the law, and due process of law. These principles have been further expanded by the International Commission of Jurists to include the independence and impartiality of the judiciary, ensuring that the state respects individual rights and operates under the law. The legal framework in Indonesia, as mandated by the 1945 Constitution and subsequent legislation such as Law Number 12 of 2011, reflects these principles, aiming to create a just and orderly society based on Pancasila and the Constitution (Keputusan Mahkamah Konstitusi, 2020).

Philippe Nonet and Philip Selznick's concept of Political Law underscores the interaction between law and politics, emphasizing that law serves not only as a regulatory framework but also as a political tool to achieve justice and security. Their categorization of law into repressive, autonomous, and responsive types highlights the evolving nature of legal systems and the need for law to adapt to social needs and realities (Nonet & Selznick, 2003). This perspective is crucial in understanding the legislative processes in Indonesia, where legal policies must consider long-term societal impacts and adhere to universal legal values. 1) Repressive Law: This form of law functions to serve power by suppressing and controlling society. Governments often employ repressive law to maintain authority and regulate citizens' behavior without regard for social justice. 2) Autonomous Law: As an independent institution, autonomous law seeks to regulate power and preserve its integrity. It aims to ensure that the legal system is not entirely subject to political influence, while still maintaining clear boundaries and regulations. 3) Responsive Law: According to Nonet and Selznick, responsive law is the most desirable type. It acts as a facilitator that addresses the needs and aspirations of society. This concept emphasizes that the law should be adaptive, capable of responding to evolving social challenges, and instrumental in creating greater justice and security for the community (Sulaiman, 2014).

The science of legislation (*gesetzgebungswissenschaft*) is integral to the formation of effective laws and regulations, encompassing legislative theory, methods, and techniques. The internal and external functions of legislation, as outlined by experts such as Burkhardt Krems and Ann Seidman, emphasize the importance of legal creation, reform, integration, and stability (Manan, 2011). Good legislation, as conceptualized by Lon Fuller and Meuwissen, must meet criteria such as promulgation, generality, clarity, consistency, and moral enforceability, ensuring that laws are accepted, procedurally sound, and ethically aligned with societal values (Fuller, 1964; Sidharta & Meuwissen, 2007). The Omnibus Method, commonly used in common law countries like the United States, has been adopted in Indonesia to address regulatory obesity and streamline the legal framework. The omnibus law functions as an umbrella regulation,

consolidating various norms and resolving conflicts to achieve overarching policy goals. Research by Listio (2023) demonstrates that the Omnibus Law is structured to integrate diverse regulations under a unified legal framework, streamlining regulatory management and addressing inconsistencies commonly found among legal norms in Indonesia. This simplification aims to establish legal certainty while fostering investment and advancing national strategic projects. The Omnibus Law's primary advantages include resolving legal conflicts and reducing bureaucratic complexity, thereby creating a favorable climate for investment. However, the critical challenge lies in ensuring that these new regulations do not disadvantage specific groups, particularly workers, while upholding the principles of social justice.

The Job Creation Law (Law Number 11 of 2020) exemplifies this approach, aiming to enhance investment and job creation through a unified legal structure (Christiawan, 2021). While the omnibus method offers significant benefits, such as regulatory simplification and harmonization, it also poses challenges, including potential legislative resistance and impacts on legal stability (Hantoro, 2020). For example, dissatisfaction may arise among legislators who perceive the legislative process as lacking transparency or not allowing sufficient time for thorough deliberation. Each faction within the legislature harbors distinct interests. When the omnibus method amalgamates unrelated issues into a single package, factions may withhold their support if the combined legislation does not align with their political agendas. Such dissatisfaction may result in the rejection of the proposed legislative package. In addition, if the legislature fails to pass laws through the omnibus method, it can erode the authority and legitimacy of the institution.

Research by Putra et al. (2023) suggests that this perception may arise from constituents questioning their representatives' capability to enact significant change. Additionally, the inability to pass an omnibus law could result in a disjointed and incremental approach to governance, potentially intensifying existing challenges rather than addressing them effectively. The failure to implement such legislation may also heighten legal uncertainty and confusion, as omnibus laws are designed to harmonize and streamline existing regulations, minimizing overlaps and inconsistencies. Without these reforms, the legal framework could become increasingly complex, complicating interpretation and enforcement.

This heightened legal ambiguity may further diminish public trust in the legislature's ability to provide clear and effective governance, as citizens and stakeholders struggle to navigate the intricate regulatory environment. Furthermore, the failure to pass an omnibus law could have broader political ramifications, signaling a lack of consensus among legislators and revealing deeper divisions within the governing body. This situation may cause the public to question the capacity of the legislature to represent their interests, potentially fuelling a crisis of confidence (Ruhijat, 2019).

In conclusion, the development of Legal Politics in Indonesia, particularly after the enactment of Law Number 13 of 2022, reflects a complex interplay of historical legal traditions, contemporary legislative science, and innovative methods like the omnibus approach. This evolution underscores the importance of a dynamic legal system that balances the need for stability, adaptability, and responsiveness to societal needs, ensuring that the rule of law remains the cornerstone of Indonesian governance and societal order.

RESEARCH METHODS

This research uses a qualitative methodology, focusing on doctrinal legal research and normative analysis (Rushagama & Dsm, 2024). The doctrinal approach thoroughly examines legal texts and statutory provisions, revealing the legislative intent and the impact of the amendments introduced by Law No. 13 of 2022. Normative analysis evaluates the legal

principles and doctrines underpinning these legislative changes, ensuring they align with constitutional mandates and international legal standards. Rushagama et al. (2024) explained that doctrinal legal research primarily centers on analyzing and synthesizing existing legal principles, rules, and doctrines. This method seeks to interpret the law as it is written, excluding empirical societal factors. Employing a textual approach, this research examines laws, judicial decisions, and other legal documents, emphasizing primary legal sources such as constitutions, statutes, regulations, and jurisprudence. The process involves three key steps: first, identifying legal issues through the review of legal documents; second, analyzing legal norms and doctrines to address specific legal problems; and third, formulating conclusions grounded in logical arguments derived from the applicable legal rules.

Normative analysis, as applied in legal research, aims to identify, evaluate, and interpret legal norms and their application within specific contexts. This approach extends beyond formal evaluations of the law to include an examination of the principles and moral values underpinning legislative processes. It seeks to analyze the content of legal norms to ensure the consistency, coherence, and applicability within society while also exploring the interplay between law and social, cultural, and political values. This method utilizes philosophical and juridical frameworks to delve into the foundational principles of law and subsequently evaluates how legal institutions interpret and implement these principles.

Data Collection

This study uses a variety of materials, including legal documents, regulatory frameworks, and legislative texts relevant to Indonesian law, with a particular focus on Law No. 13 of 2022 and its amendments to Law No. 12 of 2011. Key documents include the Constitution of the Republic of Indonesia, previous legislative acts, and regulatory guidelines from various government bodies. Additionally, scholarly articles, legal commentaries, and expert analyses offer contextual and theoretical support for understanding Indonesia's legal and political dynamics. The study also incorporates data from legislative debates, official government publications, and reports from international legal organizations, ensuring a comprehensive overview of the legislative changes and their impacts.

Data Analysis

1. Document Analysis

Comprehensive examination of key legal texts, such as the Constitution, Law No. 13 of 2022, and relevant legislative reports. The analysis focuses on the proposed modifications, their justification, and any possible effects.

2. Comparative Analysis

An analysis of the legislative procedures and results prior to and following the implementation of Law No. 13 of 2022. This involves assessing how well the omnibus approach streamlines and expedites the legislative process.

RESULT AND DISCUSSION

System of Legislation Formation in Indonesia

The formation of laws and regulations in Indonesia has been regulated in the PPPU Law as a form of implementation of the provisions of Article 22A of the 1945 Constitution which reads that "Further provisions on the procedures for the formation of laws shall be regulated by law". As a manifestation of the rule of law, all procedures and mechanisms for the formation of laws and regulations, both at the central level and at the regional level, must be in accordance with and based on the PPPU Law. Based on the General Provisions of Article 1 Point 1 of the PPPU Law, it reads that "Formation of Laws and Regulations is the making of laws and

regulations which includes the stages of planning, preparation, discussion, ratification or stipulation, and enactment". Article 1 Point 1 explains that there are 5 (five) stages of the Formation of Legislation as a formal requirement of the Formation of Regulations in Indonesia. In addition, based on Article 1 Point 2 of the PPPU Law, it reads that "Legislation is a written regulation that contains legal norms that are binding in general and is formed or stipulated by state institutions or authorised officials through procedures stipulated in the Legislation".

Based on Article 5 of the PPPU Law, in forming regulations, it must be based on the principles of the formation of good laws and regulations, which include:

1. Clarity of Purpose
What is meant by the Principle of Clarity of Purpose is that every Formulation of Laws and Regulations must have clear objectives to be achieved.
2. Appropriate Institution or Forming Official
What is meant by the Principle of Institutional or Appropriate Forming Officials is that every type of Laws and Regulations must be made by state institutions or authorised officials of Laws and Regulations Formers. The Laws and Regulations can be cancelled or null and void if made by a state institution or an unauthorised official.
3. Conformity Between Type, Hierarchy, and Content Material
What is meant by the Principle of Conformity Between Types, Hierarchy, and Content Material is that in the Formation of Laws and Regulations must really pay attention to the right content material in accordance with the type and hierarchy of Laws and Regulations.
4. Implementable
What is meant by the Implementable Principle is that every Formulation of Laws and Regulations must take into account the effectiveness of the Laws and Regulations in society, both philosophically, sociologically, and juridically.
5. Utilisation and Usefulness
What is meant by the Principles of Efficacy and Usefulness is that every Legislation is made because it is really needed and useful in regulating the life of society, nation and state.
6. Clarity of Formulation
What is meant by the Principle of Clarity of Formulation is that every Laws and Regulations must fulfil the technical requirements for the preparation of Laws and Regulations, systematics, choice of words or terms, and legal language that is clear and easy to understand so as not to cause various interpretations in its implementation.
7. Openness
What is meant by the Principle of Openness is that in the Formation of Laws and Regulations starting from planning, preparation, discussion, ratification or stipulation, and legislation are transparent and open. Thus, all levels of society have the widest possible opportunity to provide input in the Formation of Legislation.

The Principle of Formation of Laws and Regulations as referred to underlies every Regulation Formation, so it is a formal requirement that must be fulfilled. In addition to the Principles of Formation, based on Article 5 Paragraph (2) of the PPPU Law, every content material of the Regulations must also reflect the principles:

1. Safeguarding
What is meant by "The Principle of Safeguarding" is that every Content of Laws and Regulations must function to provide protection to create public peace.
2. Humanity

What is meant by "Humanity Principle" is that every Content of Laws and Regulations must reflect the protection and respect of human rights and the dignity of every citizen and resident of Indonesia proportionally.

3. Nationality

What is meant by "Nationality Principle" is that every Content Material of Legislation must reflect the nature and character of the pluralistic Indonesian nation while maintaining the principle of the Unitary State of the Republic of Indonesia.

4. Kinship

What is meant by the "Principle of Kinship" is that every Content Material of Laws and Regulations must reflect deliberation to reach consensus in every decision-making.

5. Civilisation

What is meant by "Kenusantaraan Principle" is that every Content Material of Legislation always pays attention to the interests of the entire territory of Indonesia and Content Material of Legislation made in the region is part of the national legal system based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

6. Unity in Diversity

What is meant by the "Unity in Diversity Principle" is that the Content Material of Laws and Regulations must pay attention to the diversity of population, religion, ethnicity and groups, special regional conditions and culture in the life of society, nation and state.

7. Justice

What is meant by the "Principle of Justice" is that every Content Material of Laws and Regulations must reflect justice proportionally for every citizen.

8. Equal Status in Law and Government

What is meant by "The Principle of Equal Status in Law and Government" is that every Content Material of Laws and Regulations must not contain things that distinguish based on background, among others, religion, ethnicity, race, class, gender, or social status.

9. Order and Legal Certainty

What is meant by the Principle of Order and Legal Certainty" is that every Content Material of Laws and Regulations must be able to create order in society through guarantees of legal certainty.

10. Balance, Harmony, and Harmony

What is meant by the Principles of Balance, Harmony, and Harmony is that every Content of Legislation must reflect balance, harmony, and harmony, between the interests of individuals, society and the interests of the nation and state.

Legal Politics of the Establishment of Law Number 13 of 2022 Concerning the Second Amendment to Law Number 12 of 2011 Concerning the Establishment of Legislation

Legislation is an important part of the legal system in a country. Legislation is a rule made by the state authority to regulate the life of society, nation and state. Therefore, the process of forming laws and regulations must be carried out carefully and transparently in order to fulfil the objectives of the law and the interests of society. Legislation is a political product formed between the President together with the House of Representatives (hereinafter abbreviated as DPR), therefore it should be in making regulations must be in accordance with the mandate of the 1945 Constitution.

One of the sociological considerations for the amendment of the PPPU Law is that the Preamble of the 1945 Constitution has mandated that the purpose of the establishment of the Republic of Indonesia is to realise a just, prosperous and prosperous Indonesian society. In line

with this goal, Article 27 paragraph (2) of the 1945 Constitution also stipulates that "Every citizen has the right to a job and a livelihood worthy of humanity", therefore the state needs to take various measures or actions and attitudes to fulfil the rights of citizens to obtain a job and a decent livelihood.

Fulfilment of the right to work and a decent livelihood is, in principle, one of the important aspects of national development implemented in the context of the development of the whole Indonesian human being. The Central Government has made various efforts to create and expand employment in the context of reducing unemployment and accommodating new workers as well as encouraging the development of Cooperatives and Micro, Small and Medium Enterprises with the aim of improving the national economy which will improve people's welfare. The Central Government needs to take strategic policies to create and expand jobs through increasing investment, encouraging the development and improving the quality of Cooperatives and Micro, Small and Medium Enterprises. To be able to increase job creation and expansion, stable and consistent economic growth is needed every year.

The chaotic issue of the rapid growth of regulations in Indonesia makes it difficult for the Government to take steps and policies to realise legal certainty for the community and state administrators because it takes a long time to achieve the expected goals in accordance with the mandate of the constitution. However, the government is required to immediately take steps and attitudes to be responsive to the problems of the nation and state as mandated by the constitution. Philippe Nonet and Philip Selznick argued that in modern legal civilisation today the Government needs to form laws that are more responsive to social needs and to take into account more fully and more intelligently the social facts that are the basis and purpose of the application and implementation of the law itself. Responsiveness can be interpreted as a form of serving social needs and interests that are experienced and discovered not by officials but by the people. Responsive Law is a result-orientated law, on goals to be achieved outside the law so that in Responsive Law a legal order is negotiated not won through subordination. Responsive law is law as a facilitator and a number of responses to the aspirations of social legal needs that develop roots in society (Peters. & Kosrini, 1990).

The Omnibus method is one of the developments in Legal Politics that is considered capable of answering the needs of the community so that it can be responded to responsively, with the omnibus method, the Government no longer needs to linger to make adjustments to overlapping arrangements, through 1 (one) regulation can change and revoke several regulations at once through 1 (one) regulation.

On 16 June 2022 the Government passed Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on the Formation of Legislation to make arrangements and improvements as mandated by the Constitutional Court Decision Number 91/PUU-XVII/2020 by adding the omnibus method in the Formation of Legislation. As the provisions of Article 64 reads that:

1. The drafting of laws and regulations is carried out in accordance with the technique of drafting laws and regulations.
 - (1a) Preparation of Draft Legislation as referred to in paragraph (1) above referred to in paragraph (1) may use the omnibus method.
 - (1b) The omnibus method as referred to in paragraph (1a) is a method of drafting laws and regulations with:
 - a. Contains new content material;
 - b. Changing content material that has a connection and/or legal needs regulated in various laws and regulations of the same type and hierarchy; and/or
 - c. Revoking Laws and Regulations of the same type and hierarchy, by combining them into one Law and Regulation to achieve certain objectives.
2. Provisions regarding the technique of drafting laws and regulations as referred to in

paragraph (1) are set out in Appendix II which is an inseparable part of this Law.

3. Provisions regarding changes to the technique of drafting laws and regulations as referred to in paragraph (2) shall be regulated by Presidential Regulation.

The Omnibus method is a discretionary policy that is not an obligation or requirement for the Law Enacting Body to use the Omnibus method.

CONCLUSION

This research examines the evolution of legal politics in the formation of legislation in Indonesia following the enactment of Law No. 13 of 2022. This law introduced significant changes to the existing legislative framework, particularly by incorporating the omnibus method. Key findings highlight how political dynamics and legal traditions in Indonesia have influenced the development and implementation of this law. The study underscores the challenges and opportunities presented by the implementation of the omnibus method, which aims to streamline and simplify the legislative process in response to the problem of regulatory obesity.

This study concludes that the implementation of Law No. 13 of 2022 marks a significant step towards a more efficient and responsive legislative framework in Indonesia. By addressing the issue of regulatory obesity through the omnibus method, Indonesia aims to improve the efficiency and effectiveness of its legal system. However, continuous monitoring and evaluation is essential to ensure that the benefits of this approach are maximised while mitigating its potential shortcomings. This research provides a fundamental understanding of recent developments in Indonesia's legislative process and lays the groundwork for future research into the ongoing evolution of legal politics in Indonesia.

Broader Implications and Contributions in the Field

The passing of Law No. 13 of 2022 is an important change in the legislative process in Indonesia, reflecting a move towards a more responsive and efficient legal framework. This change has significant implications for governance and the regulatory environment in Indonesia. This research contributes to the wider field by providing a detailed analysis of the interaction between political dynamics and legal reform, illustrating the practical impact of adopting the omnibus method. The research provides insights into the benefits of regulatory simplification and the potential risks associated with comprehensive legislative change.

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