

THE CONCEPT AND POSITION OF FORMULATION OF THE LAW REPUBLIC OF INDONESIA NUMBER 11 OF 2020 CONCERNING JOB CREATION WAS PREPARED USING THE OMNIBUS LAW TECHNIQUE

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Abstract:

The application for judicial and formal review of the Job Creation Law was registered on November 12, 2020, with Case Number: 103/PUU-XVIII/2020. Regarding the formal test, KSBSI took issue with forming the Government Job Creation Law. The House of Representatives of the Republic of Indonesia did not involve trade unions, the establishment of the Job Creation Law did not meet the principles of forming good laws and regulations and the Job Creation Law was made hastily, which caused controversy. This research uses a legal approach, which is to review all relevant laws related to legal issues that are the formulation of the problem. Data collection in normative legal research is divided into 3 (three) types or 3 (three) secondary data collection methods: literature studies, documents and archival studies. The ratification of the Omnibus Law as a law means that the Omnibus Law, in the perspective of the Legislation hierarchy, is considered the same as other laws which are not prepared using the omnibus law method. However, it is essential to know that after the Constitutional Court's decision, the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation is declared valid and must be corrected within two years at the latest. Otherwise, it will be declared permanently unconstitutional.

Keywords: Omnibus Law, Law, Job Creation

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INTRODUCTION

Since the formulation of the Law using the Omnibus Law technique, various questions have arisen from people in all circles questioning what exactly is meant by the Omnibus Law. Some say that the Omnibus Law is one type of Legislation, both laws and government regulations instead of laws. Some say the Omnibus Law is a sweeping universe or superpower law or superpower and superpower laws (Redi, 2020). As time passes, the terminological Omnibus Law is increasingly meeting bright spots. Omnibus Law is a method or a technique for compiling and formulating norms. The word "law," pinned after the Omnibus, is not justified in terms of legal terminology because the law is interpreted as law. In contrast, the law is interpreted with a comprehensive legal definition. It is not so that it is concluded that the correct term is "Omnibus technique" or "Omnibus method" in preparing laws and regulations (Redi, 2020).



However, Omnibus Law has become so grounded in most Indonesians that it seems to have become an official term. The term Omnibus Law is repeatedly spoken in public, in official and unofficial forums, and also in legal treasures in Indonesia. (Redi, 2020) Besides being questioned, since the drafting of the Omnibus Law, there have been many pros and cons (Anggraeni, 2020). After it was passed, many parties revealed that drafting the Job Creation Law could have been more careful because it contained many typos (Asmara, 2020). Because of these pros and cons, it is interesting to analyze related to the concept of formulating the Omnibus Law. With the presence of the omnibus law, there was criticism of rejection from one of the trade unions, namely the All-Indonesia Trade Union Confederation (KSBSI), by submitting a request for judicial review to the Constitutional Court (MK) (Baihaki, 2022).

The application for judicial and formal review of the Job Creation Law was registered on November 12, 2020, with Case Number: 103/PUU-XVIII/2020. The establishment of the Job Creation Law did not meet the principles of forming good laws and regulations, and the Job Creation Law was made hastily, which caused controversy (Lembaga Bantuan Hukum Konfederasi Serikat Buruh Seluruh Indonesia, 2023). Regarding the formal test, KSBSI took issue with forming the Government Job Creation Law, and the House of Representatives of the Republic of Indonesia did not involve trade unions.

Regarding the material test, KSBSI took issue with several articles. "The enactment of the Job Creation Law, directly or indirectly, is detrimental to the constitutional rights of workers and trade unions regulated in the 1945 Constitution (Mashabi, 2020). Based on description provided above, the authors decided to conduct another research titled "The Concept and Position of Formulation of The Law Republic of Indonesia Number 11 Of 2020 Concerning Job Creation Was Prepared Using The Omnibus Law Technique". This paper analyzes how the concept for formulating the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation is compiled using the Omnibus Law technique in the Indonesian Legislation System. The next objective is to analyze the Labor Law's legal position after the application for judicial review was submitted by the applicant to the Constitutional Court.

METHODS

In writing this journal, the author uses normative juridical methods. According to Soerjono Soekanto and Sri Mamudji, "normative legal research is carried out by examining library materials or mere secondary data" (Mamudji & Soekanto, 2004). This research uses a legal approach, which is to review all relevant laws related to legal issues that are the formulation of the problem. Data collection in normative legal research is divided into 3 (three) types or 3 (three) secondary data collection methods: literature studies, documents and archival studies (Muhammad, 2008). The data required in normative legal research are secondary. In this case, the authors use secondary data with 3 (three) legal materials: Primary legal materials, Secondary legal materials, and Tertiary legal materials. Primary legal material is laws and regulations relating to the issues to be studied. Secondary legal materials are legal materials that explain primary legal materials, which consist of literature, books including annual agency reports, academic papers, legal theses and dissertations, legal journals, and legal dictionaries. Tertiary legal materials are legal materials that explain existing additions or support, namely by searching on the internet.

Data or materials obtained, both primary legal data/materials and secondary legal data/materials, can be processed and analyzed qualitatively and/or quantitatively. Qualitative analysis is used in normative legal research (Ishaq, 2017). The qualitative analysis presents secondary data related to the object of writing and problems in the field, then analyzed without using formulas or statistical methods (Soekanto, 2022). Data analysis begins by reviewing all data



collected from various sources, namely the results of literature studies. After that, the data obtained are compiled systematically, and further qualitative analysis is used to achieve the explanation discussed. In conducting the analysis, the author uses the interpretation method, which is a method that starts from opinions that already exist in the legal problem and is interpreted through interpretation linguistically by looking at legal concepts from a normative point of view.

RESULT AND DISCUSSION

Concept of Job Creation Law: Position. President Joko Widodo first coined the word Omnibus Law during his inauguration as President for 2019-2024. He said he would make the Job Creation and Tax Law using the Omnibus Law in his speech. He said that the Omnibus Law is intended to simplify regulatory constraints and improve the investment ecosystem in Indonesia (Redi, 2020). At the beginning of its appearance, this Omnibus Law reaped pros and cons in all circles of society, including legal experts. Some of the problems arising from the existence of the Omnibus Law include (1) hierarchy in Legislation in Indonesia, (2) the application of legal principles, and (3) techniques for drafting Legislation (Redi, 2020). Behind all the debates over the birth of the Omnibus Law, it is good to understand comprehensively, starting from the understanding and purpose itself.

According to Jimmy, the mention of the Omnibus Law is incorrect. The Omnibus Law is precisely referred to as an omnibus bill because where the Omnibus Law method is practised in Canada and the United States, the term commonly used is an omnibus bill, although sometimes the term Omnibus Law is also used (Asshiddiqie, 2020). The word "omnibus" comes from the words "omni" (Latin) and "bus" (English). The term "omnibus" is used in the United States and Canada, and the term implies "for all" or "all-encompassing." For example, in the United States, the State Budget Law is unlike in Indonesia, which is prepared individually by each Ministry and Institution. The preparation of State Budget Law in the United States is integrated so that it is an example to explain what is meant by an omnibus bill or Omnibus Law (Asshiddiqie, 2020).

In the United States Duhaime Legal Dictionary, the definition of an Omnibus Bill is "Omnibus Bill is a draft before a legislature which contains more than one substantive matter, or several minor matters which have been combined into one bill, ostensibly for the sake of convenience" (Asshiddiqie, 2020). Bryan A Garner (Black Law Dictionary Ninth Edition) defines the Omnibus Bill as "Relating to or dealing with numerous objector items at once; including many things or having various purpose ." According to Bryan A. Garner, the Omnibus Law is to connect various diverse objects in one regulation. The regulation contains many things and has various purposes. According to Glen Stuart Krutz, the omnibus is the preparation of regulations containing many things, only sometimes related to problems and programs, so they are usually very complex and lengthy. Glen Stuart Krutz also defines omnibus drafting as "*any piece of major legislation that: spans three or more major topic policy areas or ten or more sub-policy areas and is greater than the mean plus one standard deviation of major bills in words .*"

Ahmad Redi defines Omnibus Law or omnibus bill or omnibus Legislation, or omnibus drafting as "norming techniques or norm formulation of laws and regulations that contain various kinds of regulatory substances combined in one legislation for various norm conflicts/norm distortions/norm contestation/mal-interpretation of norms/multi-interpretation of norms including overlapping authority created due to various laws and regulations created policy uniformity by correcting various other laws and regulations that are considered problematic" (Garner, 2004). In the same vein, Jimly also defines an omnibus bill or Omnibus as "a technique for forming laws to change and integrate arrangements on matters that are considered interrelated originating from several laws simultaneously in one law."

Furthermore, Jimly revealed that the formulation of omnibuses could save time and energy compared to changing the rules of one law, which is only one material law. In its implementation, several possibilities can occur as follows:

1. One primary law that wants to be amended is the Law on A. Still, the draft amendment is prepared by planning to also amend one or two articles contained in the Law on B, and one or two articles of provisions in the Law on C without revoking the enactment of Law B and Law C, except for only changing a few articles with a new law. This draft law is included in the category of the Omnibus Bill as pattern 1.
2. There is a new law to regulate a completely new policy, but the new policy, if done without a separate law, will crash or violate several laws at once. All laws that are not following the new policy need to be changed, with the new law following the need for new regulatory norms. This new omnibus is also included as Omnibus pattern 2.
3. Two or three laws simultaneously want to be amended by one new law, and by repealing the new law later, two or three of the old laws will be repealed and become invalid. According to him, this third pattern is more complicated and can cause more legal complications in the field with more social impacts (Asshiddiqie, 2020).

One of the objectives of the Omnibus Law in Indonesia, as stated by President Joko Widodo, is to overcome regulatory obesity, which can be a tactical and technical goal. Still, more than that, material objectives related to unraveling tangled norm threads are carried out (Asshiddiqie, 2020). According to Jimly, there are three goals to be achieved by implementing the idea of omnibus law or omnibus bill, namely:

1. Simplifying and facilitating the formation, correction, and implementation of laws to better support creativity and innovation in development to accelerate quality national economic growth;
2. Harmonize various provisions of various laws that intersect with each other in practice so that fair legal certainty can be more easily guaranteed in the application of these laws to achieve state goals;
3. Integrate various laws in one integrated text provision to facilitate understanding and application in practice to support the development process with fair legal certainty.

These three objectives can be achieved by drafting an omnibus law that simultaneously amends many other existing laws, namely through:

1. The text of the Law integrates all existing laws whose norm material is interrelated in one new law, just as the Criminal Code integrates all other law provisions relating to criminal law provisions into a single unit in the Criminal Code. Therefore, this second method can be compared to the familiar concept of codification;
2. The text of the Law that simultaneously corrects, revises, or amends by adding various provisions of paragraphs or Articles and reduces the paragraphs or Articles in the Law are interrelated without canceling the existing Law (Asshiddiqie, 2020).

Omnibus Law as a Technique for Drafting Laws and Regulations in Indonesia. The technique of forming laws with the "omnibus" method is applied to amend some or many laws that contain various materials related to each other. Conceptually, with this "omnibus" technique, it is hoped that the different laws will be combined and harmonious on the same dominant issues as one law. In general, the omnibus draft law can be prepared with 3 (three) possible changes, namely:

1. One or more Laws at once are repealed and amended with and become one new Law (Asshiddiqie, 2020);



2. Only certain Articles of several Laws at once are amended by the new Law, while the old Law remains in force with amendments under the new Law; or
3. With the formation of a new Law, there are one, two, or more old Laws that are declared repealed and no longer valid, and there are also one, two, or more other Laws that remain in force but with changes to specific Articles as stipulated by the new Law.

The law resulting from the omnibus formulation can function as a means of legislative consolidation of all policies that are in the same theme in a new law that is harmonious and integrated. In Vietnam, the recommended option is Number (1) or Number (2). If it is the former, there is no need for further consolidation of the manuscript. If the second option is, in the subsequent implementation of the Law, steps are still needed to consolidate the text of several laws regulating interrelated matters. In addition to these two forms, a combined variation can also be carried out between Number (1) and Number (2), namely Number (3), by simultaneously repealing several other Laws and amending the Articles of several other Laws does not invalidate their validity, as far as they relate to the material of interrelated rules.

The practice of forming laws using the omnibus or omnibus legislative technique method in Canada is more accepted because the legal system is mixed. On the one hand, it was influenced by the common law tradition brought from England, but on the other hand, it was also influenced by the civil law tradition over the influence of the French legal system. The influence of the two British and French systems simultaneously caused, on the one hand, the doctrine of judge-made law to develop in practice. Still, the habit of forming laws due to representative democratic decisions in Parliament also developed very strongly.

Laws are often late in the development of society, which is usually overcome by making changes to the Law at a later date. However, the second weakness also arises: when drafting laws in their formulations, one often cannot imagine the relationship between the existence of other laws, which in their respective implementations are often interrelated with the rules in this Law. Therefore, in the civil law system, many laws contradict each other. To overcome this, if each Law is amended one by one, it is confident that it will take longer with more significant resources. For this reason, the idea arises to draft one law while changing several laws simultaneously.

Thus, with the omnibus formulation technique, the first step is to review and evaluate all statutory legal documents horizontally and vertically. Horizontally it is meant by material regulating the same thing contained in different Acts. Vertically is meant between rules with different levels of hierarchy, ranging from the highest to the lowest, as long as they regulate the same or interrelated matters. In many countries, the experience of conducting such evaluations is carried out by specialized institutions or professional organizations such as legal auditors and on their respective initiatives or assignment from or with facilitation support from the Government. In Indonesia, there is already a Ministry of Law and Human Rights to handle this, and there is even an idea to institutionalize it separately into a National Regulatory Body.

This omnibus bill is a technique for forming new laws originally associated with changing several laws simultaneously. The law that is considered the first time it was formed in the manner mentioned above was the Railway Act in Canada of 1888 which combined the two treaties that were in force as an Act at that time into one new Act text, which was later associated with the term omnibus. Since then, one by one, the practice of omnibus bills in Canada has continued to emerge, and every time it appears, there are pros and cons voiced, but less loudly than in the United States. In the experience in the United States, the pros and cons regarding the practice of proposing omnibus bills are louder, leading to bans in 42 states even contained in their respective state constitutions.

From Vietnam's experience, this "omnibus" method does not need to be considered an alternative or a better or worse option but rather is a way to change and strengthen existing

mechanisms in the lawmaking process. This method allows legislative institutions and government agencies to work more effectively and efficiently, as well as more quickly and comprehensively, to respond to needs, both because of national demands and to meet the demands of an increasingly international solid integration process. The impact of the benefits is clear the productivity of the formation of laws will increase. The need for structuring and improving the legal system reflected in the products of Legislation will develop better along with efforts to safeguard the freedom, maintain harmony and unity, encourage the acceleration of welfare, and ensure justice in the life of society, nation, and state.

Since it began to be discussed as a term of law and Legislation, Omnibus Law is indeed understood as a method or technique of forming laws intended to make overall changes simultaneously or several existing and previous laws. Therefore, the term Omnibus Law is always related and even widely understood as an omnibus bill or bill, which later, after being mutually approved and ratified, will only turn into an Omnibus Law. That is, if later the draft law has become law, then the term omnibus is not too important anymore or no longer needed because its status has officially become a law like other laws in general. Therefore, there is no particular need to distinguish between laws formulated using omnibus techniques and ordinary laws because both are laws.

According to Ahmad Redi, Omnibus Law is a method or technique of formulating laws and regulations which, through a new law, simultaneously corrects many articles in many laws to achieve essential state policies (Redi, 2020). Omnibus Law has the following characteristics: (1) multisector, consisting of many contents but several sectors have the same theme; (2) Many Articles are covered; (3) the rules that are collected are provided one rule at a time; (4) independent, unbound or at least bound by other regulations; and (5) its embassy repeals some and/or all other regulations.

The purpose of the multisector here is the existence of various sectors that are the content of regulations made using the Omnibus Law technique. Although many sectors are regulated, only problem-themed Articles are either deleted or reformulated, with specific objectives constrained by the number of arrangements that can be united in one theme. As in the promulgated Job Creation Law, sectors that hinder the goal of job creation "can be transported in a 'bus' to the intended destination quickly."

In line with Jimly's opinion, Ahmad Redi also said that if the reformulation or revocation of the articles that have been evaluated and analyzed sectorally is an obstacle to the goals of the Government, then of course, in terms of effectiveness and efficiency, it will not be good, expensive and takes a long time. For example, like the Job Creation Law that has been promulgated, if the improvement process is carried out through one law by one, the resources released are certainly very extraordinary. It can be assumed that if 80 laws want to be changed, but every year the DPR, together with the Government, can complete four laws, it takes 20 years for 80 laws to be corrected. In the next 20 years, legal needs will differ from current ones.

For example, the Omnibus Budget Reconciliation Act of 1993 is multi-sectoral in the United States. The Omnibus Budget Reconciliation Act of 1993 contains agriculture and related sections, armed services, banking and housing provisions; student loans and ERISA; transportation regulatory commission; patent and trademark office; merchant marine; heart care, human resources, income; security, customs and trade, food stamp' program, and timber sale provisions; and budget process. So very multi-sectoral is the content of the Omnibus Budget Reconciliation Act of 1993, which was formed to solve the problem of budget reconciliation in the United States.

After describing the many sectors covered, the impact of the diversity of the sectors in question is undoubtedly many articles covered in the Legislation using the omnibus technique. For example, the Law on Job Creation has more than 1,200 articles in about 80 Laws related to job creation.

In Canada, laws that use the omnibus technique have many articles, for example, related to international agreements. Any international treaty in Canada does not directly apply and does not automatically become part of national law without legal transformation. The parliament in Canada has the highest judicial power in the country. If a treaty requires a change in law, an endorsement must be made by Parliament. Canada applies an omnibus approach to implementing international trade agreements. As in the United States, the omnibus bill in Canada is a complete package of all legal changes necessary to implement the agreement. The omnibus approach has been used to implement Canada's commitments in the North American Free Trade Agreement (NAFTA) and The World Trade (WTO).

The impact of the massive regulations that are improved through the omnibus bill technique, the number of laws and regulations collected in the laws and regulations with the omnibus technique will be large. The various Laws that at the time they were drafted when this Law was formed with their various legal politics were improved with the same regulatory direction with a rich thematic nature of various sectors. In Australia, in 2005, as an implementation of the Free Trade Agreement (FTA) between the United States and Australia, namely through the Act on Implementation of United States, FTA was also formed omnibus bill. The character of many laws and regulations collected in the law with the omnibus technique is also seen in the Philippines. In the Philippines, there is The Omnibus Investments Code of 1987, signed on July 16, 1987, by President Corazon C. Aquino with the product of Executive Irder Law Number 226. The Omnibus Investment Code of 1987 was formed to integrate, clarify and harmonize the Law on Investment to encourage domestic and foreign investment in the country.

The practice of omnibuses in Australia and the Philippines exemplifies the nature of collecting several rules into one new rule. It looks to sweep the universe of problems that hinder job creation. It can also be seen in the omnibus practice in Indonesia as in the draft Job Creation regulation, which accommodates about 80 sector laws included in the draft Job Creation regulation.

The Omnibus technique applied as a Law will stand alone and is very superpower regulating the things desired. In formulating laws and regulations using the omnibus condensation technique, the drafters turn a blind eye to the substance in similar laws and regulations at other levels so that the formulation of norms can change drastically following legal politics. For the formation of the new norm to be harmonious, the Articles in other laws that contradict the new Law with the omnibus technique are amended Article by Article, or in the concluding provisions of the new Law that uses the omnibus technique, regulate the phrase: "Provisions governing ... in an Act which this Act has amended, shall base and adjust its arrangements on this Act".

The formulation of Legislation using the Omnibus Law technique poses problems in applying the legal principles of Laws and Regulations. As is known, there are often conflicts between conflicting and unclear norms in practice. There are even no norms governing these provisions. When faced with such a situation, the principles of the Laws and Regulations apply, namely:

1. *Lex specialist derogate legi generalis* (special law overrides general law);
2. *Lex superiori derogate legi inferiori* (the higher law overrides the lower law);
3. *Lex postpriori derogate legi priori* (newer laws override older laws).

Using the principles of the law of preference is essential in solving the abovementioned problems. The problem is whether the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation is formulated through the Omnibus Law formulation technique. Which legal principles can be used to overcome these problems? Can the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation be declared more general than sector laws? (Redi, 2020).

However, as a Regulation, laws drafted using omnibus formulation techniques remain bound to the principles of forming laws and regulations. As the principle of *lex specialist derogat legi generalis* or higher laws deviates from lower laws or, in other words, laws that use the omnibus technique must not contradict and deviate from higher laws and regulations. For this reason, the Law on Job Creation must not contradict and deviate from the 1945 Constitution.

Furthermore, the principle of *lex postpriori derogate legi priori*, or the principle of the most recent Legislation, deviates from the old Legislation. Applying this principle can only be carried out with similar laws and regulations. Laws that use the omnibus technique must comply with this principle. If, in the future, there is a sector Law that contains material with the omnibus Law, then according to this principle, the sector Law formed after the omnibus Law can deviate from the omnibus Law. If this happens, it has the effect that if the existence of the omnibus law is still needed and then there is a new law that regulates differently, it will disrupt the purpose of the omnibus law.

Laws and regulations prepared with omnibus techniques were born to solve various norm problems in Legislation. The norm problem is resolved by improving the norm or reformulation, affirming the norm or deviating from the old norm with the new norm in the Laws and Regulations prepared with omnibus formulation techniques, or by repealing the Laws and Regulations, chapters, sections, paragraphs, articles, paragraphs or numbers in the laws and regulations wrapped in the omnibus method.

This reformulation, affirmation, and/or revocation is carried out following the results of a thorough analysis and evaluation to produce recommendations for the reformulation, affirmation, and/or revocation of the repeal of laws and regulations, chapters, sections, paragraphs, articles, paragraphs, letters, or numbers in laws and regulations. It is done so that the desired policy can be implemented without being hampered by various conflicts of non-conformity to norms.

The enforceability of Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation which is formulated through the Omnibus Law formulation technique, turns out that there are still problems in its application, especially in terms of formulation techniques that have been developed in Indonesia referring to Appendix II of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. For example, Article 223 states that the body of the amending laws and regulations consists of 2 (two) articles written in Roman numerals, namely as follows:

1. Article I contain the amended Laws and Regulations title by mentioning the State Gazette of the Republic of Indonesia and the Supplement to the State Institution of the Republic of Indonesia, which is placed between parenthetical punctuation marks and contains amended material or norms. If more than one material changes, then each material change is detailed using Arabic numerals (1.2.3 onwards)
2. Article II contains provisions regarding when it comes into force. In some instances, Article II may also contain transitional provisions from amended laws and regulations, the meaning of which is different from the transitional provisions of the amended laws and regulations.

Example 1:

Article I

Some provisions in Law Number ... Year... about... (State Gazette of the Republic of Indonesia Year ... Number ..., Supplement to the State Gazette of the Republic of Indonesia Number ...) amended as follows:

1. *The provisions of Article 6 are amended to read as follows: ...*
2. *The provisions of paragraph (2) and paragraph (3) of Article 8 are amended to read as follows: ...*
3. *and so on..."*



In Law Number 11 of 2020 concerning Job Creation, changes to articles of sector laws are carried out by grouping the primary substance of the articles embedded in the torso. For example:

"Article 16

"To simplify the basic requirements of Business Licensing and to provide certainty and convenience for Business Actors in obtaining conformity for space utilization activities, this Law amends, deletes, and/or establishes new arrangements for several provisions stipulated in:

1."

By looking at the two provisions above, it can be concluded that the drafting technique of Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation formulated through the Omnibus Law formulation technique is not following Appendix II of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. Furthermore, referring to the provisions of Item 230 Annex II of Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Laws and Regulations stipulates that changes to Laws and Regulations can be made by "Insert or add material to laws and regulations; or delete and replace some statutory materials."

In essence, the formulation of Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation, formulated through the Omnibus Law formulation technique, was carried out by deleting and replacing parts of related Legislation related to Job Creation. However, the pattern of formulating the provisions of the amended Article in the Omnibus Law will raise fundamental questions, from the technical aspect of drafting laws and regulations, whether articles that are not amended in Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation can be changed independently by the Sector Law. For example, Law of the Republic of Indonesia Number 26 of 2007 concerning Spatial Structuring of several articles was amended in Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation. Whether in the future, one Law can be amended by two Laws, first by the technique of formulating the Omnibus Law and second by amending the Law not using the technique of the Omnibus Law.

The technique of drafting the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation with the Omnibus Law method is new in Indonesia's legislation drafting techniques. Of course, this must be immediately accommodated in changes in the technique of drafting laws and regulations in Appendix II of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations to provide legal certainty in forming laws and regulations using the technique of formulating the Omnibus Law (Redi, 2020).

The position of the Omnibus Law results in terms of the Hierarchy of Laws and Regulations in Indonesia. Hans Kelsen suggests that legal norms are tiered and multi-layered in a hierarchy, in the sense that a lower norm applies, originates, and is based on a higher norm, a higher norm applies, originates, and is based on a higher norm, and so on where a norm cannot be traced further, will be fictitious, namely the basic norm (*grundnorm*) (Redi, 2018).

Hans Nawiasky was a student of Hans Kelsen who developed the theory of "theorie vom stufenbau der rechtsirdnun". This theory is known as hierarchical theory or norm tiering theory. According to the theory, the hierarchy of the norm system is grouped into 4 (four) norm groups, including:

1. Fundamental norms of the state (*staatsfundamentalnorm*);
2. State ground rule norms/state (*staatsgrundgesetz*)

3. Formal Legal Norms (*formell gesetz*)
4. Implementing norms and autonomous rules (*verordnung and autonome satzung*) (Redi, 2020).

According to Bagir Manan, the theory of norm hierarchy above essentially contains the following principles or principles (Manan, 2003) that lower-level laws and regulations must be sourced from or based on a higher level of Legislation, and the content or content of lower-level laws and regulations must not deviate or contradict higher-level laws and regulations, except when higher-level laws and regulations are made without authority or exceed authority;

The principles and principles of hierarchical theory have been implemented and legalized by undergoing several improvements, including the following table:

Table 1. Development of Hierarchy of Laws and Regulations from Time to Time in Indonesia

TAP MPRS Number XX/MPRS/1966	TAP MPR Number III/MPR/2000	Law No. 10 of 2004	Law No. 12 of 2011
1. the 1945 Constitution of the Republic of Indonesia;	1. the 1945 Constitution of the Republic of Indonesia;	1. the 1945 Indonesian Constitution;	1. the 1945 Indonesian Constitution;
2. MPRS/MPR Provisions;	2. MPR Decrees;	2. Government Laws/Regulations instead of Law;	2. MPR Decrees;
3. Government Law/Regulation instead of Law;	3. Law;	3. Government Regulations; and	3. Government Laws/Regulations instead of Law;
4. Government Regulations;	4. Government Regulation instead of Law;	4. Local Regulations	4. Government Regulations;
5. Presidential Decree;	5. Government Regulations;	a. Provincial Local Regulations;	5. Presidential Regulation;
6. Implementing regulations such as Ministerial Regulations and other Ministerial Instructions.	6. Presidential Decree; and	b. District/City Regional Regulations; and	6. Provincial Local Regulations; and
	7. Local Regulations.	c. Village Regulations/Same Level Regulations	7. District/City Regulations

Source: Data Processed 2021

Forming laws and regulations with the Omnibus Law method invites pros and cons related to hierarchy. According to Jimmy Usfunan, the existence of the Law formed through the Omnibus Law formulation technique seems to position the Omnibus Law higher hierarchically compared to sectoral laws. Forming laws through formulating the Omnibus Law will lead to an umbrella law (umbrella act). This Law will regulate thoroughly, cover all matters, and have higher legal force than sectoral Laws (FNH, 2017).

The Law on the Establishment of Laws and Regulations does not recognize an umbrella law (umbrella act) because each law has the same position in the hierarchy of laws and regulations. Therefore, the hierarchy of laws and regulations in Indonesia needs to be reconstructed to clarify and provide legal legitimacy for the existence and position of laws formed through the Omnibus Law method. It is because, in a country based on law, the hierarchy of Legislation is used as legality in solving problems in the legal field to create justice and legal certainty. With the hierarchy of regulations, it will maintain consistency and positive legal compliance in Indonesia (Redi, 2020).

According to Maria Farida Indarti, Professor of Laws and Regulations, "The formation of laws and regulations in Indonesia has used a system called civil law or continental Europe where there is



a connection with the highest source of law, namely Pancasila and the 1945 NKRI Constitution. Then, the formulation with the Omnibus Law technique developed in common law countries' tradition. Regarding the position of the Omnibus Law, Maria explained that it is incorrect that the Law resulting from the formulation of the Omnibus Law is said to be an umbrella law or the "parent" of other laws. He said the umbrella law was born earlier than the "child" law.

Meanwhile, the Law prepared using the Omnibus Law technique currently in force is interpreted as a new Law regulating various kinds of simplified materials and subjects from various laws that are declared still in force. Furthermore, according to him, the law resulting from the formulation of the Omnibus Law is different from codification which is the preparation and determination of legal regulations in the Code whose arrangement is systematic regarding the field of law, such as the Criminal Code (DA, 2020).

Apart from this, since it began to be discussed as a legal term, Omnibus Law legislation has indeed been understood as a method or technique of forming laws intended to change at once to several existing and previously applicable laws. It means that if later the draft law becomes law, then the title Omnibus Law is not too important anymore or is no longer needed because its status has officially become law like other laws in general (Asshiddiqie, 2020).

According to the author, what Jimly said above is correct. Although Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Laws and Regulations as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 does not recognize the term Omnibus Law formulation technique. However, the provisions regarding the application of the Omnibus Law must still be subject to the regulations in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations and Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations both the position and material content.

As shown in the hierarchy development table above, which is also regulated in Article 7 paragraph (1) of Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Laws and Regulations mentions the types and hierarchy of laws and regulations in Indonesia, namely: Constitution of the Republic of Indonesia Year 1945, Decrees of the People's Consultative Assembly, Government Laws/Regulations instead of Law, Government Regulations, Presidential Regulation, Provincial Local Regulations, and District/City Regulations.

The existence of laws as Legislation in Indonesia shows that every law has the exact requirements under the 1945 NKRI Constitution and the MPR TAP. Looking at the provisions above and associated with the Job Creation Law, the Law resulting from the Omnibus Law method remains under the Constitution of the Republic and the MPR TAP. So, the position of Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation which was formed using the technical formulation of the Omnibus Law, is no too important anymore or even no longer needed to use the term because its status has officially become a law like other laws in general. Hierarchically its enforceability is the same as the Law formed, not through the method of formulating the Omnibus Law.

CONCLUSION

The Omnibus Bill or Omnibus Law is a technique for drafting laws and regulations that were drafted with the aim of the President overcoming regulatory obesity. Even though the technique for drafting the Omnibus Law, in terms of suitability of the writing format with Attachment II to the Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislation, there are contradictions. However, considering its status has officially become law, this conflict is no longer essential to be disputed. The ratification of the Omnibus Law as a law means that the

Omnibus Law, in the perspective of the Legislation hierarchy, is considered the same as other laws which are not prepared using the omnibus law method. However, it is essential to know that after the Constitutional Court's decision, the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation is declared valid and must be corrected within two years at the latest. Otherwise, it will be declared permanently unconstitutional.

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