



Original Article

The Significance of Omnibus Law Technique to Indonesia's Law Making: How it Started and Would Evolve

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Abstract: Indonesia's omnibus highlights the drafting technique's importance and development. In pursuit of addressing the bureaucratic burden and proliferation of overlapping regulations, the Government of Indonesia introduced the omnibus drafting technique, a way of amending multiple laws within a single law, and the first of its kind in Indonesia. The first omnibus law in Indonesia was followed by public outrage because it contained unpopular provisions, did not comply with drafting techniques, and did not satisfy public participation standards. The omnibus law technique had not been adopted to the official Guide of Legislative Drafting when the law was made. In the next development, other omnibus laws on health and financial agencies were enacted. Each of them has its unique features. Omnibus Job Creation Law and the omnibus technique do actually affect the legislative drafting style in Indonesia's recent lawmaking practices, namely the amendment style and the importance of public participation given omnibus's massive size. Therefore, it is worth pausing to visit the initial development of the omnibus law in Indonesia while also foreseeing how it would affect drafting style and evolve.

Keywords: Omnibus law, technique drafting, indonesia, job creation law, legislative drafting.

1. Introduction

Omnibus law in Indonesia did not come out without reason. The reason is that law reforms are needed to accelerate investment and

development, and the omnibus law technique, in the Indonesian government's view, would be the answer to that need. Economic, infrastructure

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development, and investment led to significant changes in drafting style. Lawmakers believe investment does not work as fast as it should because of many regulatory and unnecessary licensing burdens [1]. To deal with and even eliminate said burdens, laws and regulations related to the investment need to be revised and repealed, and some improvements need to be made. Therefore, to acquire those objectives, given the massive numbers of related laws on investment and licensing, in President Jokowi's view, the existing technique of one amending bill to amend one law would not satisfy the said objective. That is why omnibus law was introduced in his Second Term Inauguration Speech in 2019 [2].

The development of omnibus law in Indonesia has been significantly influenced by Constitutional Court decisions, especially regarding clarity and public participation concerns. Unfortunately, the Court did not address the most crucial aspect of omnibus law, the homogenous rule of law, or *lex caecilia didia* (i.e., a law is prohibited to contain multiple, diverse subjects). In the Drafting Guide, however, the guide requires the drafter and lawmaker to ensure that omnibus law will only be for laws that have interconnectedness to one another, in which the relation among the laws is a crucial prerequisite to make omnibus law.

This paper will be divided into three parts. *First*, Initial Understanding of the Omnibus Drafting Technique. Indonesian legislation has developed a new drafting technique, which historically has never been practiced in Indonesia's lawmaking and drafting. In his second-term 2019 inaugural speech, President Jokowi introduced his idea to propose an omnibus bill that will revise many and even dozens of existing laws [3]. His idea came with the intention to 'cut' dozens of laws that, in his view, "hinder job creation and SMEs development". In amending and cutting (repealing) the laws, it would be made within just a single law instead of having an amending bill for every existing law that was intended to be amended. Further, President Jokowi

explained that his intention in introducing omnibus law was to "simplify licensing and bureaucracy", which eventually could fasten the public service for attracting investments. The introduction of the omnibus law by President Jokowi is an investment-driven motive of legislation [4]. Thus, in the framer's understanding, omnibus law is a technique of amending and repealing multiple existing laws by having them in just a single law instead of having as many laws as the existing laws to be amended.

Second, Heterogeneous Nature of Omnibus Law. In the name of "simplifying licensing and bureaucracy", Indonesia's first ever omnibus law of Job Creation Law set the precedent of having deeply diverse subjects in a single law. That fact corresponds to the scholars' position on defining omnibus law. The criterion of determining a law to be in an omnibus sense is its heterogeneous subjects contained within. Subjects in the omnibus law are noticeably broad, diverse, and even unrelated to one another [5]. There is another criterion, besides the diverse criterion, to determine whether a law is an omnibus law. The length of the law is sometimes considered when defining omnibus law. The omnibus law tends to be longer than typical law; perhaps one of its reasons to be longer is its diverse subject. However, some scholars argue that to be an omnibus, a law does not need to be lengthy because if the law only includes three articles but amends more than one law, that law could be said to be an omnibus law [6].

Third, Connectedness Principle. Based on the official Drafting Guide, their connectedness determines the arrangement and grouping of would-be amended laws into omnibus law. Ideally, laws amended by an omnibus law should be closely related to their subjects or matters [7]. Connectedness is hard to measure, if not impossible. The Drafting Guide, however, does not provide indicators or guidance on what it means to be "connectedness". There has also been an absence of court cases so far to test the meaning and extent of the connectedness to an

omnibus law in Indonesia.

This principle is not similar to the *Lex Caecilia Didia*, a Roman principle that prohibits *lex satuta* or a practice that includes multiple subjects on a single law [8]. Indonesia's connectedness principle seems to mean that even though the law is mainly about investment licensing relaxation, it could also regulate how the central government may interfere with how the local government sets regulations regarding said investment. In other words, the omnibus law could include rules on investment and the governance of local division [9].

Based on the above discussion, an omnibus law is a law seeking to amend, repeal, and/ or insert new provisions within a single law, and the law should have a single purpose that will tie together its multiple subjects. When a single law deals with multiple matters that are not always related or germane to one another, that is an omnibus law. A view argues that because multiple subjects are regulated within a law, an omnibus law could be a single giant law with hundreds or even thousands of pages [10]. However, the massive size of a law is not a prerequisite for saying whether a law is an omnibus. What matters here in defining an omnibus is its multiple subjects' nature, which is largely distinct. A scholar referred to the nature of being a distinctive subject within a single law as a "deep omnibus". Zamboni argues that omnibus law could take up very different topics without a unifying factor among them [11]. Objectively, the subjects it contains are unrelated, but politically, it might be a form of compromise, carrying many electoral manifestos and promises into a single law. Hence, from a political perspective, an omnibus law must have had a unifying purpose. There is another aspect to qualify what an omnibus law is, which is the single purpose. An omnibus law is expected to have a single purpose or principle that ties together multiple, unrelated subjects. Such a definition is forced in the Canadian parliament by the speaker to allow the passage of an omnibus bill. In Canadian practices, some major amendments to several acts of parliament have

been tabled to the parliament by a single bill [12]. The omnibus bill includes a number of amendments and repeals, and it even enacts new provisions that are all regulated within a single bill. The inclusion of many revisions, repeals, and new provisions is synonymous with Indonesia's recent omnibus law enactments since 2020.

Any legislative drafting technique used in making law is required to be set before the lawmaking process. Like an anomaly, the making of Indonesia's first omnibus law was not based on the current drafting guidance. The introduction of the omnibus technique was sudden but had strong political support, ensuring immediate parliamentary debate process and its passing. The bill, proposed by the President, suddenly gathered support from almost all political parties in parliament, allowing it to pass without any fundamental obstacles. Due to its strong support, the legislative drafter was not shy about drafting the omnibus technique even in the absence of its official guide for the omnibus technique.

Why is it so important to have prior guidance? Because it is a constitutional rule to make laws in compliance with the already-set guide. If a law is made but its drafting guide is absent, the Constitutional Court could nullify such law on the ground of non-compliance to the guide. Hence, in avoiding such legal risk, any style or technique of lawmaking should be provided by the law in advance. Indeed, such grounds of nullification have already been acknowledged by Indonesia's Constitutional Court in the challenge to the omnibus law.

The absence of a prior set Drafting Guide is exactly the reason used by the Constitutional Court to be struck down Indonesia's first ever omnibus law, the Job Creation Law of 2020. The petitioners invoked and made such absence the grounds for applying judicial review of the Job Creation to the Constitutional Court, then the Court decided in the petitioners' favor. The Court reasoned that lawmaking should be an orderly process that directs it to be subjected to a prior-set, definitive, and standardized drafting

style. In conclusion, because Job Creation Law seems to have combined all styles of amendment, repeal, and replacement, while the drafting style has not had such style until the law's promulgation, thus the Job Creation Law was declared to be unconstitutional on the basis that it lacks prior set Drafting Guide [13].

2. How Indonesia's Omnibus Law Technique is Structured and its Layout

We will differentiate the two models of how an omnibus law is structured, which we name the Amendment Model and the Rearrangement Model. The latter does not negate the fact that the omnibus is not only to regroup or rearrange the order of provisions of articles from multiple existing laws into one single law. It still can contain amendments or insertions of new provisions, but the layout will not come as the regular amending laws.

The former (amendment model) will purely contain amendment and repeal clauses; therefore, its layout will be in the form of an amending bill. On the other hand, the similar character of the two models is that they both still deal with multiple existing laws, and the difference is their layout.

2.1. Amendment Model

Although the name is "amendment", we should not be confused about it. This model is named because the law would be in the layout of an amending bill. Within this model, the omnibus law still contains the amendment, repeal, and insertion of new provisions.

An omnibus law is typically divided into chapters that contain the same scope of matters. In its first attempt, Indonesia's omnibus law provisions were grouped on a connectedness or scope basis. This means that any related matters are grouped into a chapter, and so are the other matters. For example, amended laws on the energy sector would be grouped into one chapter, and laws on governance would be

grouped into a different chapter [14].

The first article in the chapter always lists and details what laws will be amended by the law. The following article will typically contain the amendment of the said listed law. The amendment of every listed law will be contained in a different article. Therefore, an article is designated for only one law. Within that article, there will be many paragraphs that detail the amendment. The number of paragraphs depends on how many articles will be amended. Let's say 11 articles are going to be amended. Hence, there would be 11 paragraphs in that said article.

To sum up, since it amends multiple laws, Indonesia's omnibus law is structured into chapters. A chapter will amend closely related laws. Within that chapter, there will be articles as many as the laws that are so related. Each article of every law will be contained in the form of a paragraph in the same article.

Omnibus law could also repeal a whole law, not necessarily amending it partially. Generally, before the omnibus, Indonesia's legislative drafting practice would always place a repeal clause in the second last article of a bill. However, after introducing the omnibus law, such practice does not apply. In contrast, the placement solely depends on where the chapter is going to be. First, we should determine what chapter the repealed laws can be grouped into, considering their close relation to the chapter. After that, we know in what order the repeal clause of the said law would be. The related laws will be simply repealed, and the repeal clause will also be in the same chapter. For instance, the Job Creation Law repealed the old colonial law, *Hinderordonantie*, which was placed between amending clauses. Therefore, a repeal clause in an omnibus law could be put on the typical second last article. Instead, it could be put anywhere on the bill, solely depending on the connectedness aspect of the chapter. As we explained, an omnibus is divided into chapters based on the law materials connectedness. Let's say a law on geothermal would be repealed, and the chapter on energy would be placed on the first order; such a repeal of geothermal law

would be placed on the front of the laws.

Besides repealing and amending the existing laws, an omnibus bill can also include new materials or provisions that are considered necessary to the omnibus laws' objective. For example, if an omnibus law aims to attract investment, it needs an essential land procurement. Therefore, such an omnibus law could contain and provide for the organization of land procurement (also known as land bank). Like the above mentioned, the order or place where such insertion will be placed depends on material groupings. Land procurement would be placed in a chapter regulating land in general or otherwise land procurement specifically.

2.2. *Rearrangement Model*

The other major type of omnibus law technique is repealing all existing and related laws, and then the matters so repealed are technically combined into one law. If the other, well-known omnibus technique is an accumulation of multiple amendments to multiple laws made by a single law, the second model is different. Based on Indonesia's newly drafted guide, omnibus law could also mean that a repeal of many laws and the provision within laws so repealed is being amended, inserted, copied and pasted, and, most importantly, rearranged in new articles of a new law. In other words, if there is a provision on hospitals in one law and nurses in the other, by the second model, such provisions will be placed on the single laws.

This model could also be referred to as a rearranging law, but it is safe to the fact that it is not only about rearranging the existing provisions of laws but could contain an amendment and insertion. Yet, the apparent contrast to the first model is that the amendment clause and technique are absent. Generally, an omnibus law would easily be identified because it contains primarily amendment clauses. Conversely, this second model brings no amendment clause in its law. The second model will make an omnibus law the same as a non-omnibus law.

3. Practice Takeaways

3.1. *Deviation to Practice of One Amending Bill Amended Only One Law*

Not until 2022 did Indonesia's drafting style have a layout guide and form to accommodate amendments to multiple existing laws within a single law (i.e., omnibus style). For example, the name or title of an amending law should be "Law Number... of On Amendment to..." which will be filled with the name of the amended law [15]. A repeal can be made by having a law that exclusively repeals just a law, and its name should be as follows: "Law Number... of on The Repeal of..." [16]. The other way to repeal a law is by enacting an entirely new law that replaces the law that will be repealed, and then the repeal clause will simply be included within the replacing law [17]. Hence, within a law, there will not be a part or article that contains a new provision while the other part amends the existing law. Regardless, the legislature passed the first omnibus bill of its kind, the Job Creation Law, in 2020. The Job Creation Law amended 78 existing laws, repealed laws, and inserted some new provisions that had not previously existed.

Although the initial intention of the omnibus law, as per President Jokowi's speech, is to be a law that would amend several existing laws and repeal the same, the amended Indonesia's Guide of Legislation on omnibus law seems to define omnibus law to include a massive repeal of many existing laws. The repealed laws' provision will then be gathered, re-structured, re-arranged, re-ordered, and re-grouped into a single entirely new law, but not precluding revision, reform, and innovation to the newly gathered provisions. In 2023, Indonesia's legislature passed the Law on Health, which contains subjects from health service administration and governance, health facilities, doctors, nurses, other health-related human resources, and even health outbreaks. The Health Law also repealed many existing laws that previously governed the said subjects; in total, there are 10 laws that the Health Law has

repealed. The law's drafters intended and explicitly argued that the Health Law's drafting style is an omnibus law as it repealed many existing laws, and then the law gathered provisions into a single entirely new law.

3.2. New Law-naming Technique

Omnibus law drafting technique also changes how an amending bill is named. As mentioned above, a long-standing practice is that a bill will only amend one. Hence, the name of the amending bill is simply "Law Number... on. Amendment to... Law." The name of the bill plainly says that the bill is an amendment to a law. If the amendment is the second, third, and so on, that order will just be added and become a "Second/Third Amendment to.." However, since omnibus law amends multiple laws, the name of the law using omnibus law drafting technique no longer follows that long-standing practice of naming an amending bill. Instead, the drafter may name the omnibus law with a new name, but the name is still required to represent the whole provisions of the omnibus law [18]. By only reading the title, the reader now still does not have an idea whether the law is an amendment law, and they would not even know whether the law is an omnibus law.

3.3. Political Statement Naming

Current practices of naming laws in Indonesia lean toward naming a law based on the purpose of such enactment and have political statements. Indonesia's official Indonesia's Guide of Legislation only directs the drafter to pick a name for a bill that reflects the substances of such a bill. The title [19] of a law should thus be a plain description and identification of what the bill is about rather than a political statement [20]. Purposive-style naming is when a bill does not reflect its contents or substances but is named after its purpose, which implies a political statement. For instance, the US Inflation Reduction Act is a budget allocation and tax reform policy law that funds projects that promote clean energy [21] and lower drug and

insulin prices [22]. The Inflation Reduction Act thus does not directly address inflation; rather, it deals with budget allocation and other various policies. Such practice will no longer be new for Indonesia's drafting style because in 2020 and 2023, two laws were passed and named after their purpose, the Job Creation Law and the Financial Sector Development and Strengthening Law, respectively. The former is an omnibus bill in form that sought to amend, repeal various existing laws, and even insert new subjects (i.e., Investment and business licensing, standards, requirements, and governance reform for easing business) into a single law. In the drafter logic, easing the licensing and eliminating unnecessary regulatory burdens would drive investment and business growth, eventually creating jobs [23]. Meanwhile, the latter consists of financial sector agencies' role and authority reforms, which regulate banking, capital market, digital currency, SMEs sector, insurance, and even pension plans. The Financial Sector Development and Strengthening Law thus was named after its purpose of strengthening the financial sector.

3.4 Projection on the Use of Omnibus Law and How it Evolves

With the new government cabinet and parliament just sworn in, a list of laws that will be made using omnibus law techniques have already lined up. The religious ministry is on its way to making an omnibus law on zakat [24]. The culture minister intends to make an omnibus law on cultural organizations [25]. The development of omnibus law seems more diverse, as seen by the statement from the vice chair of the legislation commission that the parliament also intended to make omnibus law for the organization of political institutions [26]. Around eight laws are set to be revised through the omnibus law technique.

The use of omnibus law techniques in Indonesia is limited to the law or act of parliament. However, there is no prohibition on its use in non-law regulations. Therefore,

independent governmental bodies, agencies, and even local governments may use it. We argue there are three big questions to be answered before expanding the practice of omnibus law in such a wide span. First, the connectedness principle should be followed when drafting an omnibus law. Having multiple subjects in a single law could be a sign of a political move to prevent proper public deliberation, undermine political legitimacy, and spark public opposition to the bill. Second, the drafter's competency and comprehension of such wide, diverse, and lengthy provision is a prerequisite. A failure to comply with technicalities set by the Drafting Guide or unclear formation could lead to a judicial review, which hinders the effectiveness and efficiency of the law's implementation. Third, the use of omnibus law should take public participation seriously. The public needs to be consulted in a due and proper way in terms of sufficient time to read, understand, and prepare responses. On the other hand, the government should also be as communicative as they can be in answering and replying to public comments and concerns.

4. Conclusion

The omnibus law technique is a lawmaking that includes multiple subjects (heterogeneous) into one single bill, but it does not necessarily have to be lengthy. Indonesia's practices showed that it contained amendments, insertions, repeals, and even rearrangements of existing laws, with some changes and insertions at the same time. That practice can be referred to as the Amendment Model and Rearrangement Model. The structure and layout of omnibus law differ from the typical, long-standing practice of amending statutes. Additionally, the name of the law could arguably be classified as a political statement rather than a plain restatement and summary of the law's subjects. Lastly, omnibus law will evolve in the future, but some caveats need to be taken seriously, especially regarding its connectedness principle, deliberation, and

public participation.

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