

Dynamics of Political Configuration in the Formation of Law No. 13 of 2022 Concerning the Second Amendment to Law No. 12 of 2011 Concerning the Formation of Legislation

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ABSTRACT: The influence of politics on law also applies to law enforcement, the characteristics of legal products, and the process of their formation. The number of legal products produced is increasing quantitatively, but their legal substance and function do not always improve or align with public aspirations. The asynchronous relationship between legal structure and legal function, as mentioned above, is caused by intervention or disruption from political actions. The purpose of this study is to determine and analyze the causality between the political and legal subsystems, namely, how the political configuration and the omnibus law influence the process of forming legislation in Indonesia. The research method used is a doctrinal method analyzed using qualitative analysis. The results show that the Omnibus Law is a method or technique in the formation of laws with the aim of simultaneously amending several previously applicable laws. The legal policy direction of the formation of Law No. 13 of 2022 is solely to provide a legal umbrella for Law No. 11 of 2020 concerning Job Creation. The implications of the formation of Law No. 13 of 2022 are principally a follow-up by the Lawmakers to the Constitutional Court Decision No. 91/PUU-XVIII/2020 regarding the need for regulations regarding the omnibus method, clarifying the concept of meaningful public participation.

KEYWORDS: Law; Legislation; Legal Politics; Omnibus Law; Public Participation

I. INTRODUCTION

Law and politics are closely interrelated, as there is a causal relationship between them. Two perspectives address the relationship between law and politics. The first perspective emerged from Von Savigny, who stated that law always evolves in accordance with the development of society; law grows and dies with it. This is based on the belief that law is essentially a manifestation of society's legal awareness. This means that the law must be a dependent variable on external circumstances, one of which is politics. In other words, law can be stated as a product of politics (Marpaung, 2012: 10-11).

The second perspective stems from Roscoe Pound's opinion, stating "law as a tool of social engineering," which means that law must be able to control and engineer societal development, including its political life. Law functions as a guide and direction-setter to ensure order and protect the interests of society. According to Satjipto Rahardjo, the relationship between the political and legal subsystems appears to be one where politics has a greater concentration of energy, resulting in law always being in a weaker position (Jimung, 2005: 55). It can be concluded that, in reality, politics significantly determines the operation of the law.

The influence of politics on law also applies to law enforcement, the characteristics of legal products, and the process of their creation. As legal products, laws and regulations are considered objective because they are formulated by representative institutions in procedural and technical forms in accordance with legal principles. Legislation is defined as written provisions containing generally binding legal norms and established or stipulated in statutory regulations (Fitryantika, 2019: 1).

Legal structures can develop in any political configuration, marked by the successful codification and unification of law, as evident in the National Legislation Program. However, the implementation of legal functions and enforcement tends to be weak. Although the number of legal products produced increases quantitatively, their legal substance and function do not always improve or align with public aspirations. This lack of synchronization between legal structure and legal function, as mentioned above, is caused by the intervention or disruption of political actions (Friedman, 2009: 15). Laws sometimes cannot be enforced due to the intervention of political power.

Based on the aforementioned background, the author of this study aims to identify the causal correlation between the political and legal subsystems, namely how the political configuration and the omnibus law influence the process of forming legislation in Indonesia..

II. METHOD

The type of research used in this study is normative juridical legal research. Data collection techniques employed include document and library studies of secondary data in the form of primary, secondary, and tertiary legal materials. The analysis employed is descriptive. This study specifically focuses on the dynamics of political configuration in the formation of legislation, how the omnibus law method is regulated in Law Number 13 of 2022 concerning the Formation of Legislation and how the political configuration influences it.

III. DISCUSSION

A. The Omnibus Law Method in Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation Reflects the Need for Modern Legislation

Omnibus law is a method of creating legislation used by the government to resolve the problem of overlapping regulations and bureaucracy in Indonesia. One of its goals is to facilitate investment in Indonesia, particularly for foreign investors, and to provide better public services to the public (Asshiddiqie, 2020: 1).

This concept developed in common law countries with Anglo-Saxon legal systems such as the United States, Belgium, the United Kingdom, and Canada. Anglo-Saxon legal systems are based on jurisprudential sources of law, and their legal systems tend to prioritize customary law and adapt to changing societal dynamics (Prabowo et al., 2020: 1).

An omnibus law is considered a law whose substance revises and/or repeals numerous laws. The omnibus law concept offers solutions to problems caused by excessive regulations, which lead to overlapping regulations (Asshiddiqie, 2020: 20-26). Resolving these issues through conventional methods would be costly and time-consuming.

The omnibus method, as enshrined in Law Number 13 of 2022 concerning the Formation of Legislation, relates to the norms contained in a law that will be followed by subordinate regulations. Therefore, it is crucial that the legal product produced by the omnibus method is of high quality and its benefits are felt by the public (Warassih, 2010: 27).

This is in line with the opinion of Hans Kelsen in his book "General Theory of Law and State" and Prof. Maria Farida in her book "Legal Science 1," which essentially states that legal norms are hierarchical. Therefore, basic norms are first established by society as a guideline for subordinate regulations, thus a norm can be considered presupposed (Suriadinata, 2019: 116).

Firman Freddy (2017: 241) stated that Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation focuses on adding several improvements, including:

- a. Adding and regulating the technical aspects of the omnibus method;
- b. Correcting technical errors after the joint approval process between the DPR and the President in a plenary session and before ratification and promulgation;
- c. Strengthening meaningful public involvement and participation;
- d. Electronic formation of legislation;
- e. Changing the support system from researchers to other functional officials whose scope of duties is related to the formation of legislation;
- f. Changing the technique for compiling academic manuscripts;
- g. Changing the technique for compiling legislation.

The focus in the formation of this latest law is the omnibus law method, which is incorporated from the planning stage in the Legislation Development Planning Document. Subsequently, the omnibus method is used in the drafting of the Legislation. This is stipulated in Article 42A, which reads: "The use of the omnibus method in the preparation of a Draft Legislation must be stipulated in the planning document." There are also several regulations regarding the omnibus method in the formation of legislation, as follows:

- a. Article 64 paragraph 1b explains that the omnibus method referred to in paragraph (1a) includes:
 - 1) adding new material;
 - 2) changing material that is related to and/or has legal requirements regulated in various laws and regulations of the same type and hierarchy; and/or
 - 3) revoking laws and regulations of the same type and hierarchy by combining them into a single law and regulation to achieve a specific objective.
- b. The material content is further emphasized in Article 97A, which stipulates that the material content regulated in laws and regulations using the omnibus method can only be changed and/or revoked by amending and/or revoking the laws and regulations themselves. Changes and additions regarding the omnibus method were also made to the technique for drafting Legislation, along with examples, which are included in Appendix II of Law Number 13 of 2022.

Changes to the technique for drafting Legislation were made by adding the omnibus method to provide definite, standardized, and binding guidelines for all institutions authorized to draft Legislation.

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- a. 3a explains that the use of the omnibus method may use a new name that is not the same as the name of the legislation being amended or revoked. However, the name (title) can be created briefly using a single word or phrase, but can reflect the content of the legislation drafted using the omnibus method.
- b. 27a The considerations of Legislation that implement orders or implement Legislation using the omnibus method only contain one consideration containing a brief description of the need to implement the provisions of the article or articles of the Legislation using the omnibus method and/or add other considerations that reflect the urgency or purpose of drafting the Legislation.
- c. 41b Legislation that will be amended by Legislation using the omnibus method may not be included in the legal basis.
- d. 41c If the material regulated in Legislation other than the material already amended by Legislation using the omnibus method is to be amended again, the Legislation whose material has been amended by Legislation using the omnibus method shall be included in the legal basis.
- e. 41d Legislation using the omnibus method that will be amended by Legislation using the omnibus method shall be included in the legal basis.
- f. 111b regulates the technical writing of books, chapters, sections, and/or paragraphs in the main material of Legislation using the omnibus method that have interconnections consisting of: a) articles containing new material; b) articles that change material that has interconnections and/or legal requirements regulated in various Legislation of the same type and hierarchy; and/or c) articles that revoke existing legislation of the same type and hierarchy.
- g. 111c regulates articles added to new material using the omnibus method, formulated in short, clear, and straightforward sentences.
- h. 111d regulates changes to material using the omnibus method that are related to other legislation and are also formulated briefly, concisely, and straightforwardly, including the reasons for the change and details of the title of the amended legislation.
- i. 111i If legislation using the omnibus method deletes a book, chapter, section, paragraph, article, verse, or item, the order of the book, chapter, section, paragraph, article, verse, or item remains listed with a statement that it has been deleted.

The dynamic influence of democratic and/or authoritarian political configurations has occurred throughout the history of the Republic of Indonesia. The interplay between democratic and authoritarian political systems has alternately emerged and declined, with trends evident throughout the historical period. Along with these dynamics, the development of the character of legal products demonstrates its influence, with a pattern of push and pull between responsive legal products and conservative legal products.

Responsive legal products are participatory in their creation, inviting the widest possible participation of all elements of society, both individuals and community groups. They must also be aspirational, stemming from the desires or will of the people. This means that these legal products are not the will of those in power merely to legitimize their power. The concept of democratic political configuration is determined based on three indicators:

1. The party system and the role of representative institutions or parliament;
2. The dominant role of the executive; and
3. Freedom of the press.

According to Mahfud MD (2017: 12), the opposite is true for authoritarian political configurations. Three indicators can be used as a reference for determining whether a legal product is responsive or conservative, as follows:

1. Weak political parties and parliament due to executive control;
2. Interventionist executive institutions;
3. Silenced press.

Based on the *das sein* view, which states that law is a political product, legal products can be divided into at least two types: conservative and responsive. Conservative/orthodox/elitist legal products are centralized-dominant in nature, with positive-instrumentalist content and multi-interpretable details. Responsive legal products are participatory in nature, aspirational in content, and non-limiting in details (Rishan, 2020: 11).

This occurs because law is a determinant of power, making it important to further elaborate on the stages of government that determine various types of political configurations, thus influencing the character of its legal products. The concept of responsive/autonomous law, meanwhile, is identified based on the law-making process, the assignment of legal functions, and the authority to interpret the law. The conceptual definition is further formulated as follows:

1. A democratic political configuration is one that opens up space for maximum public participation in determining state policy. This political configuration positions the government more as an organization that must implement the will of the people, which is formulated democratically. Therefore, representative bodies and political parties function proportionally and are

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more decisive in state policymaking. The press is involved in carrying out its functions freely without the threat of banning or other criminalization.

2. An authoritarian political configuration is one that places the government in a highly dominant position with an interventionist nature in determining and implementing state policy, so that the potential and aspirations of the people are not aggregated and articulated proportionally. In fact, with the government's dominant role, representative bodies and political parties function poorly and serve more as tools to justify the government's wishes. Meanwhile, the press lacks freedom and remains under government control, often under the shadow of censorship.
3. Responsive or autonomous legal products reflect the fulfilment of the aspirations of the people, both individuals and various social groups, thus relatively better reflecting a sense of justice within society.
4. Conservative, orthodox, or elitist legal products represent the social vision of the political elite, which is positive-instrumentalist and more representative of the government's expectations. Orthodox legal products are closed off from the public and lack public involvement in the creation process.

Mahfud MD, regarding the dynamics of political configuration in the creation of legal products, states that law is a political product. Based on this, in practice, the law often becomes a manifestation of the desires of those in power. Consequently, many people view law as power due to the greater political energy involved in dealing with it. Using the hypothesis that law is a product of politics, it is correct to say that politics will significantly influence law, with politics being the independent variable and law being the dependent variable. More specifically, certain political configurations in certain countries produce legal products with specific characteristics. Responsive legal products are born in countries that implement democratic political configurations. Meanwhile, orthodox/conservative/or elitist legal products are born in countries that employ authoritarian political configurations (Agus Susanto and Abdur Rahim, 2022: 384).

Furthermore, Prof. Mahfud conceptualized legal politics by categorizing it into several parts (Mochtar, 2017: 56). First, the ideals or blueprint expected from the formation of the law. Second, the political process behind the formation of the law. Third, the methods or mechanisms by which the legal provisions can be implemented. In this regard, the scope of this study is limited to the blueprint or academic text, as well as the political or legislative process that occurred in the formation of Law Number 13 of 2022.

As a follow-up to the Constitutional Court Decision No. 91/PUU-XVIII/2020, Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 concerning the Formation of Legislation was enacted. This is to meet the needs of governance and avoid a legal vacuum in society (Ummah, 2022: 180). The legislators also accommodated the omnibus method, clarifying the concept of meaningful public participation, correcting technical errors after joint approval between the DPR and the President in a Plenary Session prior to ratification, establishing electronic-based legislation, and changing the supporting system, namely involving other functional officials related to the formation of legislation into Law Number 13 of 2022.

In drafting legislation, there are at least three foundations that must be included in an academic paper: philosophical, sociological, and legal. These three foundations are the main ideas in the formation of legislation. In other words, these three foundations are the basis for compiling the material regulated in each section of the law. This means that they are the foundation for the formation of sound legislation. The foundations behind the formation of Law Number 13 of 2022 are divided into three (Chamdani et al., 2022: 53), with the following explanation:

1. Philosophical Foundation

The philosophical foundation behind the formation of this law stems from the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia. Within the concept of a state based on the rule of law, the state uses legal rules to achieve its goals. Pancasila, as the source of all legal sources, means that Pancasila serves as Indonesia's legal ideology, a collection of values that must underlie all Indonesian law, and principles that must be followed as guidelines for making choices of law in Indonesia.

2. Legal Basis

One of the Court's bases for issuing Constitutional Court Decision No. 91/PUU-XVIII/2020 was the Court's order to immediately establish a legal basis for using the omnibus method in formulating laws and regulations, which is binding. Therefore, Law No. 13 of 2022 was enacted to create an integrated legal regulatory system.

3. Sociological Basis

Since the enactment of Law No. 12 of 2011, weaknesses have persisted, preventing it from meeting the public's legal needs for sound legislation. These weaknesses include the numerous regulations that have been drafted at both the central and regional levels. To address the numerous regulations and achieve the creation of definitive, standardized, and consistent legislation, structuring and improvements are needed using the omnibus method.

Constitutionally, some of the new provisions in Law No. 13 of 2022 do not reflect the principles of sound legislative formation. This is evident in the intention of the legislators to provide an opportunity for corrections if there are any typographical errors in the draft law that has been jointly approved by the House of Representatives (DPR) and the President (Kurniawan et al.,

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2022: 474). Essentially, the joint approval stage is the final stage in the formation of legislation. Furthermore, the Coordinating Ministry for Economic Affairs' significant involvement in the revision of the P3 Law violates the structure, established duties, and primary functions of the state ministry, which has traditionally positioned the Ministry of Law and Human Rights as the vanguard in every legislative formation process.

Amendments to the laws that form the basis of all legislative processes are appropriate for the purpose of structuring and improving the legislative mechanism, thereby realizing the legal objectives of justice, benefit, and legal certainty (Kendry Tan and Hari Sutra Disemadi, 2022: 65). However, the amendments to these two P3 Laws reflect the political goals of the legislators, which are greater than the true direction and purpose of Law No. 13 of 2022.

CONCLUSIONS

Omnibus law is a method or technique in the formation of laws with the aim of making changes simultaneously to several laws that were previously in force. The legal political direction of the formation of Law No. 13 of 2022 is solely to provide a legal umbrella for Law No. 11 of 2020 concerning Job Creation. The implications of the formation of Law No. 13 of 2022 are in principle as a follow-up by the Law Makers to the Constitutional Court Decision No. 91 / PUU-XVIII / 2020 regarding the need for regulations regarding the omnibus method, clarifying the concept of meaningful public participation; namely the right to be heard; the right to be considered; and the right to receive an explanation or answer to the opinion given (right to be explained), correction of technical errors after joint approval between the DPR and the President in a plenary session and before ratification, the formation of electronic-based legislation, Changes to the supporting system, namely involving other functional officials related to the formation of legislation. Thus, in the various dynamics that exist in Law No. 13 of 2022 fulfills the democratic political configuration as a follow-up to the Constitutional Court Decision No. 91/PUU-XVIII/2020 to clarify the concept of meaningful public participation and conservative/orthodox/elitist legal products that reflect the political goals of the lawmakers that are greater than the actual direction and goals.

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