

Application of the Omnibus Law Method to the Legislative System in Indonesia (An Analysis of Legislation regarding the Taxation Sector)

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Abstract

The adoption by Indonesia of the rule of law has caused all aspects of social, state and administrative activities to be based on the law, as provided for in various laws and regulations. One of the efforts made to organize legislation is through law harmonization. Legislative issues in the country cannot only be resolved through this harmonization, but also require legal breakthroughs, one of which is by using the omnibus law method. One area of legislation that needs to be re-organized concerns tax legislation, as in order to increase economic growth, support is needed in the form of policies that may increase investment funding, provide fair treatment to the business community from within and outside the country and a legal basis for the government to provide more flexible tax facilities achieve the object above. The problems analyzed concern the application of the omnibus law method to the legislative system in the country, especially tax legislation after the promulgation of Act Number 7 of 2021 concerning the Harmonization of Tax Regulations and after Order of the Constitutional Court Number 91/PUU-XVIII/2020 concerning Formal Examination of Act Number 11 of 2020 concerning Job Creation against the Constitution. The research has employed the normative legal research method and the statutory approach and the analytical approach. The omnibus law method is urgently needed to fill the substantive elements of tax legislation by compiling them into 1 (one) act, regulating the general provisions of taxation, income tax, value added tax on goods and services and sales tax on luxury goods, excise, duty, voluntary disclosure programs, and imposition of a carbon tax. Order of the Constitutional Court Number 91/PUU-XVIII/2020 serves as the basis for lawmakers to improve the legislative process, especially through the usage of the omnibus law method. For this purpose, the Act concerning the Making of Ancillary Legislative Regulations.

Keywords

Omnibus Law, Legislation, Taxation.

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Introduction

Indonesia has adopted the rule of law, as provided for in Article 1(3) of the Constitution. The adoption has been grounded the variety of past and present ideas, under the strong influence of the concepts developed in the Continental Europe (called as *rechtsstaat*) and Anglot-Saxon countries (rule of law) and other concepts (Hamidi, Jazim, 2009). The term rule of law The country literature is almost always considered to be the equivalent of the term *rechstaat*, *etat de droit*, law-abiding country, or law-compliant state (Irfan Fachruddin, 2004). Hence, the principle of the rule of law must be enforced in the country. The principle is none other than the rule of justice, justised-based law enforcement. The principle needs to be emphasized, as discriminatory law enforcement practices are too obvious. Legal products and their enforcement are more in favor of the ruling class, groups of people who have economic or political power on one hand. The rights of the people seeking justice, who mostly come from the powerless class, are always sidelined, substantive or sociological justice is always enjoyed by those who are powerful, while those who are powerless only receive formal justice (Satjipto Rahardjo, 1983). Therefore, this causes all aspects of social life, the nation and government to always be based on legislation as outlined in various laws and regulations. During the 2014-2018 period, there were 8,945 regulations in the form of acts, presidential regulations, and ministerial regulations, which means that six regulations were promulgated every day in the country. One of the efforts to organize legislation is through harmonization of laws. As of now, the country still has problems in structuring laws and regulations. One of them is regarding hyper-regulation and overlapping rules, namely, that many of these rules are not followed by harmonization of laws and regulations, so that overlapping arrangements are inevitable. Regulatory problems in the country cannot only be solved through harmonization but also require legal breakthroughs, one of which is by using the omnibus law. President Joko Widodo mentioned the omnibus law in his first speech after being sworn in as President of the country for the 2019-2024 period. The President in his inauguration speech stated that we must simplify all forms of regulation, we must cut them, and we must trim them. This idea is highly reformative; it can even be said to be revolutionary in the field of legislation, as one act will cut down several or even dozens of laws and regulations that contradict each other, overlap, and cause disharmony. One regulatory measure needs to be taken is legislation in the field of taxation, as in order to increase economic growth, support is needed in the form of policies that can increase investment funding, provide fair treatment for business actors from within and outside the country who carry out economic activities in the country, as well as providing a legal basis for the government to provide more flexible tax facilities to encourage economic growth. The collection of taxes is regulated by an act in accordance with the provisions in Article 23A of the Constitution that taxes and other levies of a coercive nature for the benefits of the State shall be regulated by act. The legislative measures relating to taxation are as follows:

1. Act Number 6 of 1983 concerning General Tax Terms and Procedures, most recently amended by Act Number 16 of 2009 concerning the Determination of Government Regulations in Lieu of Act Number 5 of 2008 concerning the Fourth Amendment to Act Number 6 of 1983.
2. Act Number 7 of 1983 concerning Income Tax, as most recent amended by Act Number 36 of 2008 concerning the Fourth Amendment to Act Number 7 of 1983.
3. Act Number 8 of 1983 concerning the Value-added Tax on Goods and Services and Value Added Tax and Sales Tax on Luxury Goods, as most recently amended by by Act Number 42 of 2009 concerning the Third Amendment to Act Number 8 1983.
4. Act Number 11 of 1995 concerning Excise, as amended by Act Number 39 of 2007.

In line with continuing tax reform, especially in the regulatory and business process aspects, it is necessary to adjust tax policy arrangements that are comprehensive, consolidated, and harmonious, so that on October 29, 2021, Act Number 7 of 2021 concerning Tax Harmonization was promulgated. This act was drafted using the omnibus law which regulates general terms and procedures for taxation, income tax, value added tax and sales tax on luxury goods, taxpayer voluntary disclosure programs, carbon tax, and excise.

Problem Identification

Act Number 11 of 2020 concerning Job Creation uses the omnibus law method and on November 25, 2021, the Constitutional Court in Ruling Number 91/PUU-XVIII/2020 concerning Formal

Examination of Act Number 11 of 2020 provides that the Constitutional Court accepted the formal review as conditionally unconstitutional. Hence, the problems analyzed in this paper are regarding the application of the omnibus law method in the statutory system in the country, especially analyzing legislation in the taxation sector, especially after the enactment of Act Number 7 of 2021 concerning Harmonization of Tax Regulations and after the ruling above.

Research Methods

This paper will employ a normative legal research method and the statutory approach and the analytical approach. The statutory approach is used in analyzing the problem; this paper will study various legal rules or related legislation which are the reference sources in the research.

Results and Discussion

There are several definitions of omnibus law, namely, "Omnibus Bill: A bill that deals with all proposals relating to a particular subject, such as an "omnibus judgment bill" covering all proposals for new judgship or an "omnibus crime bill" dealing with different subjects such as new crimes and grants to states for crime control" (Bryan A Garner, 2004). A draft act 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. In its history of the formation of laws and regulations, the country has practiced the preparation of omnibus law, although it is not explicitly referred to as omnibus law. In contrast to the United States, which has practiced drafting acts using the omnibus law method, and several other European countries, many countries in Asia have followed suit. In Indonesia, in theory the development of legislation uses legal transplants in the formation of legislations, ranging from efforts to adapt to global or international trends to facilitating economic, technological, social, and political changes. The legal transplants referred to mean the moving of a rule or a system of act from one country to another, or from one people to another have been common since the earliest recorded history (Alan Watson, 1993). Furthermore, according to Alan Watson, legal transplantation is the borrowing and transmissibility of rules from one society or system to another. This definition can be called a broad definition, which considers not only the formation of legislations as a relationship between countries but also the influence of legal traditions between communities. Alan Watson introduced the term legal transplants or legal borrowing, or legal adoption, to refer to a process of borrowing or taking over or transferring acts from one country or from one nation to another place, country or nation, then the Legislations prepared are applied in a new place together with the existing legislations. This method is a legal transplant from countries that adhere to the common law system and is currently often used by countries that adhere to the civil law system, including Indonesia. In the country, the omnibus law method needs to be carefully and clearly observed first. There is a weakness in this method, namely, the format that has not been standardized in Act Number 12 of 2011 concerning the Formation of Legislations as amended by Act Number 15 of 2019. The more acts that use omnibus law, of course the more difficult it will be to socialize them among the public, especially as it is difficult to read the format. The format still needs to be processed or studied further. When a format is found that is already ideal enough, it is possible to standardize it and then combine various rules into one. Obstacles to the formation of legislations using the omnibus law method include:

- a. Acts that will be revised and/or repealed through an omnibus law need to be reviewed first. In this case, what needs to be understood is that no act is perfect. However, in correcting these imperfections, other aspects must also be considered. If an act is perfected in one sector, the other sectors cannot be ignored. It should also be understood that economic and investment issues most often intersect with public interests. Therefore, the Government and Parliament need to thoroughly review the plan before the omnibus law is actually implemented. To overcome legislative problems, it is not enough just to have an omnibus law, but a special authority is needed that focuses on reviewing at the stages of formation, harmonization and evaluation. The results of the review are the basis for revising and/or revoking acts using the omnibus law concept.
- b. At the harmonization stage, harmonization problems in the formation of legislations, Government Regulations, and Presidential Regulations occur as this stage looks more at the linkage of one regulation or draft regulation to other laws and regulations without looking at the suitability of the substance for the content and the type of legislation. As a result, various

regulations have been born whose substance is not the content of certain types of legislation. Ideally, at the harmonization stage, the idea of forming an act coming from the Government and Parliament can be assessed whether or not it is in accordance with the material contained in it. This of course also has the potential to occur in the formation of legislations through the omnibus law concept, although the nature of the acts formed through this concept is to revise and/or revoke many other acts. This problem also proves that it is not enough to just go to the omnibus law to solve the problem of legislation. If there is no clear harmonization mechanism, the application of omnibus law to solve legislative problems will also not be effective, as the problem is not just too many regulations, but also disharmonious regulations. The omnibus law method basically incorporates many topics into an act, but that becomes a problem when too many acts are changed, as is the case in Act Number 11 of 2020, whose formation process is considered inconsistent with the formation process of Act Number 12 of 2011 in conjunction with Act Number 15 of 2019 concerning the Establishment of Legislations, has created a polemic, so that the public submitted a judicial review to the Constitutional Court. In Ruling Number 91/PUU-XVIII/2020 which was promulgated on November 25, 2021, the Constitutional Court accepted the formal examination subject to the conditional unconstitutionality:

- a. that the formation of Act Number 11 of 2020 is contrary to the Constitution and does not have conditionally binding legal force as long as it is not interpreted as "no correction is made within two (2) years from the date of this ruling;
- b. the same act is still valid until amendments are made in accordance with the grace period as determined in this ruling;
- c. the ruling instructs the legislators to make improvements within a maximum period of two (2) years from the date of this ruling, failing which the same act shall become permanently unconstitutional;
- d. that if within a period of two (2) years the legislators are unable to complete the revision of the same act, any other act or its articles or material content which has been revoked or amended by it shall be declared to be valid again; and
- e. all strategic and broad-impact actions/policies are suspended, and it shall not be permitted to issue any new ancillary regulations under it.

The ruling concerns conditional unconstitutionality, meaning that the act concerned is considered unconstitutional and will not be enforced until it is amended. The conditional condition referred to is that it is still valid until the formation is corrected within the grace period as determined. The reason for the issuance of the ruling is to create efficiency and effectiveness for the public. Hence, the rules concerning the field of taxation that have been promulgated by Act Number 7 of 2021 concerning the Harmonization of Tax Regulations using the omnibus law method constitute a problem that needs to be analyzed. The omnibus law method is urgently needed to fulfill the substantial components of legislation in the field of taxation by compiling them in a single text, namely, regulating the general terms of taxation, income tax, value added tax on goods and services and sales tax on luxury goods, excise duty, voluntary disclosure program, and imposition of a carbon tax. Act Number 7 of 2021 is part of a series of tax reforms. The reforms carried out during the pandemic are expected to produce the right momentum to build a new foundation in national and state activities which are better, more resilient to continue to grow sustainably. The omnibus nature in the field of taxation can be a positive thing not only in terms of quantity but also from a thematic point of view; it is possible to use the omnibus law method as the theme is all about taxes. With the omnibus law approach, the theme of taxation is appropriate so that it does not conflict or overlap with the arrangements between one act and another, for example the act that regulates general terms and procedures of taxation, income tax, and value added tax on goods and services. So, using the omnibus law method in legislation in the taxation sector will be a positive measure. The method is not problematic as long as the discussion process is carried out properly. The method aims to facilitate the harmonization of laws and regulations and speed in the formation of legislations in the country. The preparation of a Tax Act, previously carried out separately from the material acts, namely, the Act on Value Added Tax on Goods and Services and Sales Tax on Luxury Goods and the Act on Income Tax with its formal act, namely, the Act on General Terms and Procedures of Tax. Discussions on material acts and formal acts are not carried out at the same time. This causes several provisions that were not previously discussed in the previous act to appear in the discussion on the subsequent act, thus causing disharmony, while in the speedy formation of a rule, the Taxation Act cannot be denied as regulating the economic

activities of the public. Any development of the people's economic activities must be balanced with changes to the Tax Act. Given the rapid socio-economic development as a result of national development and globalization as well as reforms in various fields, it is necessary to amend the act in order to improve its function and role in supporting national development policies, especially in the economic sector. If piecemeal changes are made to the act, this will require a lot of energy, costs, and time. Thus, considering that the regulated materials include general terms and procedures for taxation, income tax, value added tax, excise tax, and carbon tax, a legal instrument is needed in the act that can provide legal certainty. There are many benefits of using the omnibus law method, namely, it can improve several acts so that there is a simplification of the process. In addition, costs will not be high due to such a simplification. Hence, this omnibus method is a good thing, namely it can complete many acts in a relatively short time. The benefits of this omnibus law are avoiding overlapping arrangements, simplifying legislation, and fulfilling the synchronization of laws and regulations, so that the productivity of legislation becomes higher under several parameters, especially after the ruling above, namely, the technique and format of drafting acts using the omnibus method needs to be included in the Act on the Formation of Legislation. In further addition, as a form of the principle of openness and public participation, it is necessary to involve public participation in every process of forming legislation.

Conclusions

Based on the analysis of the omnibus method as an instrument for structuring legislation: (1) The omnibus law method may be one among many others for adoption in the formation of legislation, as a number laws and regulations in the country have used this method in a different format; (2) A number of requirements must be fulfilled when adopting this method, which among them include the necessity to pay attention to the principle of openness and public participation in every process of forming legislation; (3) In the application of the method, it is necessary to make changes to Act Number 12 of 2011 concerning the Formation of Acts, as amended by Act Number 15 of 2019 regarding formal and material provisions, in the preparation of laws and regulations. Appendix II to the former needs to be revised which regulates the format and technical drafting of legislation using the, and this is one of the matters mandated by Ruling of the Constitutional Court Number 91/PUU-XVIII/2020; (4) The application of the method technically and substantially in taxation legislation is urgently needed to fulfill the substantial components of laws and regulations that may be easily understood by the public by compiling them in a single text, namely, regulating the general terms of taxation, income tax, added tax value of goods and services and sales tax on luxury goods, and excise so as to make it easier for the public to understand laws and regulations; (5) In taxation legislation, the method also needs to consider the timing of the discussion on the formation of acts between Parliament and the President, as it will take some time to make changes to a number of acts in comparison with the application of the method by which e a number of acts in the field of taxation may be combined, so that the discussion concerned will be relatively speedy.

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