



An Analysis on the Omnibus Law and Its Challenges in Indonesia: The Perspectives of the Constitutional and the Islamic Law

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Abstract: The Omnibus Law, which encompasses the Constitutional Law and the Islamic Law, has been the subject of intense dispute since its inception. The controversy has occurred from the inception to the promulgation of the design process within larger communities. Multiple issues emerged from the outset when the administration introduced the proposal for an Omnibus Law in the Indonesian People's Consultative Assembly of the Republic of Indonesia (DPR RI) to its enactment. This study uses normative legal methodologies, which are examined through the lens of constitutional law theory and Islamic law. The study determined that the Omnibus Law is a legislative tool commonly employed by countries that follow a common law legal system. However, it was subsequently embraced by nations that follow a civil law framework, such as Indonesia. The Omnibus Law was enacted to ensure the efficient and effective execution of laws, particularly in the area of copyright regulations, in order to prevent any duplication or overlap. Consequently, the public perceives the law as lacking ambition and instead favoring the concerns of the community, particularly in relation to employee compensation, employment agreements, and the practice of subcontracting. Based on the constitutional law, this state policy is deemed conditionally unlawful, despite the ongoing application of these legal standards by the executive and parliamentary parties. Within the framework of the Islamic jurisprudence, it can be regarded as a component of *siyāsah syar'iyah* or governmental strategy that aligns with the principles of *maqāṣid al-sharī'ah*, particularly *hifdz al-mal*, which involves preserving economic stability and promoting *halal* certification. However, this article contends that the judgment of the Constitutional Court to deem it unlawful is contingent. It advocates for a modification of the copyright law pertaining to creative works, with the aim of ensuring broader adherence to legal regulations.

Keywords: Omnibus Law, constitutional law, *maqāṣid al-sharī'ah*, Islamic law

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Abstrak: *Omnibus Law merupakan salah satu Undang-undang yang Lahir penuh dengan kontroversi. Mulai dari awal proses pembentukannya sampai dengan diundangkannya terjadi pertentangan dari berbagai kalangan masyarakat. Berbagai persoalan pun muncul mulai dari awal ketika pemerintah menyampaikan wacana akan diusukannya Omnibus Law, di DPR RI sampai pada diundangkannya. Penelitian ini menggunakan metode hukum normatif yang dianalisis dengan teori hukum tata negara dan hukum Islam. Kajian tersebut menyimpulkan bahwa Omnibus Law merupakan mekanisme pembuatan undang-undang yang umumnya digunakan oleh negara yang menganut sistem common law. Tetapi kemudian diadopsi oleh negara-negara yang menganut sistem civil law seperti Indonesia. Omnibus law dibuat bertujuan untuk kepentingan efisiensi dan efektif pemberlakuan undang-undang agar tidak tumpang tindih terutama dalam pengaturan undang-undang cipta kerja. Akibatnya, sebagian masyarakat menilai undang-undang tidak aspiratif dan mengakomodir kepentingan masyarakat seperti kalangan buruh terkait dengan upah, kontrak kerja dan outsourcing. Secara hukum tata negara kebijakan negara tersebut menurut Mahkamah Konstitusi adalah inskonstitusional bersyarat, meskipun kemudian pihak eksekutif dan legislatif tetap menerapkan aturan hukum tersebut. Dalam konteks hukum Islam dapat disebut sebagai bagian dari siyasah syar'iyah atau kebijakan pemerintah yang sesuai dengan prinsip maqāsid al-sharī'ah terutama hifdz al-mal yakni menjaga kestabilan ekonomi dan mendorong sertifikasi halal. Meskipun demikian putusan Mahkamah Konstitusi yang memutuskan inskonstitusional bersyarat, maka artikel ini beragumen untuk dilakukan revisi undang-undang cipta kerja tersebut, sehingga aturan hukum tersebut lebih implementatif secara luas.*

Kata Kunci: *Omnibus Law, hukum tata negara, maqāsid al-sharī'ah, hukum Islam*

Introduction

The Omnibus Law is not a new concept in legislative systems worldwide. It was initially implemented by the United States in 1850 and subsequently adopted by Canada and Ireland. Subsequently, common law jurisdictions such as Australia, Argentina, France, and Spain followed this model legislation. Omnibus laws seek to consolidate a multitude of laws with similar purposes by means of modifications. This mechanism is prevalent in common law systems and is now being embraced by countries with civil law systems, such as Indonesia.¹

¹ Glen S. Krutz, "Tactical Maneuvering on Omnibus Bills in Congress," *American Journal of Political Science* 45, No. 1 (2001). p. 210–223. Sulistina, et.al., "The Pathway of Adopting Omnibus Law in Indonesia's Legislation: Challenges and Opportunities in Legal Reform," *Jurnal Kajian Pembaruan Hukum* 2, No. 2 (2022).

In Indonesia, the right to choose employment and work is protected by the 1945 Law, which also has an omnibus law specifically focused on job development, in compliance with legal provisions. In 2023, the Government passed Law Number 6 of 2023, which officially transformed the previously approved Law Number 2 of 2022, also known as the Job Creation Law, into a Law dubbed the Omnibus Law.² Nevertheless, the Omnibus Law continues to emerge, such as those pertaining to job termination, criminal penalties for business owners, foreign labors, salaries, severance payments, permanent contract employees, long-term outsourcing, working hours, vacation and holiday payments, health insurances, and pension protections for contracted workers.³

The design of the Omnibus Law has sparked criticisms in public discourses due to the government's failure to establish effective political communication. Furthermore, there exists a political arrangement including a selection of few individuals who own vested interests and intimate connections with the government, with a dearth of political engagement, namely among the lower socioeconomic strata. Consequently, if the bill is approved, these marginalized groups will bear the brunt of its consequences.⁴

The omnibus law seeks to enhance investment in Indonesia by implementing policies within the legal framework of the business sector. Currently, there are concerns that the legal products in the investment sector are unappealing, regulations are excessively burdensome, bureaucracy is complex, and regulatory excessiveness has significant consequences. Nevertheless, the proposal to establish an Omnibus Law presents unique obstacles for enhancing the legal framework, as it encompasses extensive and frequently disorganized contents, due to its high probability of containing language faults or formulation inconsistencies. Nevertheless, in order to enhance investment in Indonesia, the government enacted the Job Creation Bill, which has subsequently been ratified. Multiple issues emerged at the establishment of this regulation under the Omnibus Law policy. The Omnibus Law formulation incorporates the General Principles of Good Governance (AUPB), resulting in the establishment of Good Governance.⁵

Legally, the term "Omnibus" is commonly linked to the word "law" or "bill," referring to a regulation created by combining multiple statutes that cover various substances and levels. An Omnibus statute is a legislative proposal that consolidates

² Audy Amelia Siregar, "Legal Studies on Omnibus Law Issues in Indonesia," *International Asia of Law and Money Laundering* 1, No. 4 (2022), p. 270-278. Fatkhul Muin and Palmawati Tahir, "Legal Policy of Halal Products for The Development of Small and Micro Enterprises After the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on The Job Creation," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, No. 1 (2023), p. 1-12.

³ Mira Nila Kusuma Dewi and Abd. Basir, "Indonesia's Omnibus Law and Protection of Labor Rights," *Amsir Law Journal* 5, No. 1 (2023), p. 66-73.

⁴ Muhammad Fakhur Razy and Muhammad Fedryansyah, "Konflik Gerakan Masyarakat Sipil Dan Pemerintah Dalam Proses Penyusunan Rancangan Undang-Undang Omnibus Law," *Jurnal Kolaborasi Resolusi Konflik* 2, No. 2 (2023), p. 74.

⁵ Aida Mardatillah, "Kebijakan Omnibus Law Dalam Menata Good Governance di Indonesia," *Palar: Pakuan Law Review* 7, No. 2 (2021), p. 220-233.

multiple aspects into a single statute. The Omnibus Law is a convoluted and time-consuming procedure of formulating legislative laws. It encompasses a vast amount of materials, despite the fact that the themes, concerns, and programs it covers are not usually interconnected.⁶

Consequently, the multitude of employment laws and regulations, along with the absence of coordination among them, contribute to the stagnation of investment in Indonesia. The Government, in collaboration with the DPR, enacted Law no. 11 of 2020 on Job Creation to stimulate investment by streamlining various laws and regulations, including those related to employment, through the implementation of the Omnibus law approach. The process of enacting Law no. 13 of 2003 is arduous due to the need to reconcile several interests, endure a lengthy duration, and incur substantial financial expenses. Recently, Law no. 11 of 2020 on Job Creation underwent a swift discussion process in the DPR. However, it had been extensively prepared by the Government beforehand. Upon its promulgation, the law instantly encountered several legal reviews.⁷

Regrettably, the Omnibus bill implemented by the government was formulated without adhering to the relevant legal procedures and protocols. Thus far, it continues to provide a multitude of intricate issues. The Omnibus Law appears to have been imposed, evident from its creation process to its enactment, as it faced significant controversy and opposition from diverse groups, including academics, social activists, non-governmental organizations, and the immediate affected workers.

The Omnibus statute, a legislative initiative aimed at consolidating multiple laws into a single specialized statute, has sparked significant debates in the society since its introduction. Specifically, the Omnibus Law Bill was deemed to be declared law when the DPR or House of People's Representative, DPD or Regional Representative Council, and government representatives at that time reached an agreement. Throughout its journey, the formal procedures, creation processes, directions, and objectives of the Omnibus Law became progressively unclear. Numerous irregularities were committed by both the government, who initiated the law, and the legislature.

This state indicates a significant and overwhelming exercise of authority by government institutions, particularly the executive branch, over the House of People's Representative institution, which serves as the legislative. The presence of political power, characterized by its tendency to misuse authority, demonstrates the prevalence of power domination. This, in turn, impacts the legislative institutions and the legal outcomes they create. This violates the principles of the separation of powers in the trias politica doctrine, which emphasizes the importance of the executive, legislative, and judicial branches of government operating independently from each other. Both the

⁶ Abbe R. Gluck, et.al., "Unorthodox Lawmaking, Unorthodox Rulemaking", *Colombia Law Review* 115, 1789, (2015).

⁷Luthvi Febryka Nola, "The Implementation of Omnibus Law in Indonesian Labor Law," *Kajian* 25, No. 3, (2020), p. 217-229. Ronal Agusmi, et.al., "The Implications of Repealing the Law of Mandatory Company Registration on The Company Legality After the Enaction of Indonesia's Job Creation Law," *Syariah: Jurnal Hukum dan Pemikiran* 22, No. 1 (2022).

administration and the legislature should adhere to these values,⁸ To prevent any concentration of power in any of the branches of government - executive, legislative, or judiciary - and to ensure the establishment of a transparent and authoritative government.

This reality is in direct opposition to the ongoing process of creating the Omnibus Law, which is facing significant opposition from various groups. It is understandable that this opposition exists, as the creation of the Omnibus Law, which serves as comprehensive legislation, disregards many of the necessary provisions that should be followed, both in terms of formal procedures and in violation of existing laws. The text refers to Law No. 12 of 2011, which has been modified by Law No. 15 of 2019. The contents of which do not significantly contradict relevant legal regulations.

Therefore, it is evident that the Omnibus Law not only violates the principle of separation of powers but also contradicts the fifth principle of Pancasila, which is social fairness for all Indonesian citizens. The adoption of the Omnibus Law as Law Number 11 of 2020 further substantiated this idea, as it appeared to be a direct manifestation of the government's desires.⁹ According to Satjipto Rahardjo, the link between the political subsystem and the legal subsystem suggests that politics possesses a higher level of energy, resulting in the law consistently occupying a weaker position.¹⁰

The enactment of the Omnibus Law demonstrates the significant supremacy of the executive branch over the legislative branch. Therefore, it will have significant consequences for the final legislation and ultimately exert a substantial impact on the development of a comprehensive national law, encompassing both the specific provisions within the law and the underlying principles that lack clarity and purpose. One of these laws is Law Number 13 of 2003, which pertains to employment.

Hence, this study employs a normative legal research methodology, specifically focusing on doctrinal analysis, while adopting a legislative and the Islamic law perspective.¹¹ The legal approach is employed as an analytical tool for Omnibus law, whereas the Islamic law is utilized to evaluate omnibus legislation from an Islamic law standpoint. An analysis was conducted using both secondary data and primary data gathered from literature studies, specifically in the form of statutory rules. Secondary data include books, journals, and the findings of prior study, which are subsequently subjected to qualitative descriptive analysis.

⁸ Meriam Budiardjo, *Dasar-Dasar Ilmu Politik*, Jakarta; Gramedia, (2002), p. 150. Saldi Isra, *Pergeseran Fungsi Legislasi: Menguatnya Model Legislasi Parlemen dalam Sistem Presidensial Indonesia*, Jakarta: RajaGrafindo Persada, 2010.

⁹ Nandang Sutrisno and Sigar Aji Poerana, "Reformasi Hukum dan Realisasi Investasi Asing pada Era Presiden Joko Widodo," *Undang: Jurnal Hukum* 3, No. 2 (2020), p. 237.

¹⁰ Satjipto Rahardjo, *Beberapa Pemikiran tentang Ancaman antar Disiplin Dalam Pembinaan Hukum Nasional*, Bandung: Sinar Baru, 1985, p. 71. Soerjono Soekanto, *Perspektif Teoritis Studi Hukum dalam Masyarakat*, Jakarta: Rajawali Press, 1985.

¹¹ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, Jakarta: Rajawali Pers, 2014. Jimly Asshiddiqie, *Hukum Tata Negara Dan Pilar Demokrasi: Serpihan Pemikiran Hukum Dan HAM*. Jakarta: Konstitusi Press, 2005. Faisar Ananda Arfa and Watni Marpaung, *Metodologi Penelitian Hukum Islam*, Jakarta: Prenadamedia Group, 2018.

Issues Pertaining to the Omnibus Law in Indonesia

Indonesia possesses significant economic potential, although it currently attracts only limited investment. Several impediments hamper the business environment, thus diminishing investors' inclination to invest in Indonesia. Indonesia must enact comprehensive legislation, known as an omnibus law, to address the obstacles that impede investment in the country. The term "Omnibus Law" refers to a single law that has the ability to modify many laws simultaneously. There are three scenarios for implementing the Omnibus law: when the law to be modified is directly relevant, when the law to be modified is not directly relevant, and when the law to be modified is not relevant but has some practical connection. The omnibus bill is a legislative approach that seeks to enhance efficiency and effectiveness, making it highly feasible for implementation in Indonesia. Realizing this objective necessitates a comprehensive understanding of the omnibus law and a resolute political dedication from the DPR (House of People's Representatives) and the Indonesian Government.¹²

There are feasibilities for the implementation of an omnibus law in the Indonesian legal system, as a similar legal draft has been previously employed in the context of financial information for tax reasons. In addition to opportunities, the adoption of the omnibus law in Indonesia faces six significant challenges. Firstly, the regulatory problems in Indonesia are intricate and complex. Secondly, each law that is affected by the omnibus law has a philosophical foundation. Thirdly, the principle of constitutional supremacy sets boundaries on the authority to regulate different types of statutory regulations. Fourthly, there is legal uncertainty due to the dominance of sectoral egos among state administrators. Fifthly, there is a need to establish clear parameters for determining when a subject matter should be governed by the Omnibus Law or Ordinary Law. Lastly, ensuring public participation in the law-making process is crucial at every stage of its formation. If the Omnibus Law is to be adopted in the legal system in Indonesia, several requirements must be fulfilled. These include adhering to the principles of transparency and public participation from the initial drafting stage. Furthermore, discussions in the DPR (House of People's Representatives) must be conducted in a transparent and meticulous manner. Finally, the substance of the law must be guaranteed. Remains within the boundaries set by the Constitution while also incorporating the philosophical elements of the modified laws.¹³

¹² Vincent Suriadinata, "Penyusunan Undang-Undang di Bidang Investasi: Kajian Pembentukan Omnibus Law di Indonesia," *Refleksi Hukum: Jurnal Ilmu Hukum* 4, No. 1 (2019), p. 115-132. Kania Venisa Rachim, et.al., "Omnibus Law dalam Konstitusi Indonesia: Studi Perbandingan Indonesia, Amerika Serikat, dan Filipina," *Ajudikasi Jurnal Ilmu Hukum* 7, No. 1 (2023), p. 17-34.

¹³ Yuni Nurkuntari, "Omnibus Law Peluang Dan Tantangan Dalam Sistem Perundang-Undangan Indonesia," *Internasional Conference, Fakultas Ilmu Hukum Universitas Islam Sultan Agung Semarang* (2020). Bagus Hermanto, "Formulasi Pengaturan Undang-Undang Berbasis Omnibus Legislation Terhadap Penguatan Hak Asasi Manusia," *Jurnal Legislasi Indonesia* 20, No. 1 (2023).

Regulatory reform measures play a crucial role in Indonesia's efforts to improve its public administration. Regulatory reform aims to decrease obstacles to competitiveness and market accessibility, while also promoting market dynamics to assure the attainment of social welfare. The enactment of the Omnibus Law in Indonesia has garnered attention from policymakers, scholars, and practitioners. In a highly competitive corporate environment, it is evident that Indonesia's regulatory framework is characterized by a multitude of regulations that often overlap with one other. Furthermore, these regulations are no longer aligned with the current conditions of the Fourth Industrial Revolution period. The execution of the Omnibus Law is crucial for Indonesia as it consolidates multiple laws into a single legislation, hence enabling significant reforms.¹⁴

The Indonesian legal tradition is still unfamiliar with this approach, thus when the Job Creation Law, which was enacted, faced significant opposition, the omnibus law is also criticized. The omnibus law implemented in countries with a common law system differs significantly from Indonesia's existing legal system. Therefore, it represents a legal innovation undertaken by the government to establish new legislation. The government's decision to utilize the Omnibus Law is aimed at formulating laws to enhance economic progress. The convergence of multiple laws necessitates the government's need to streamline them by consolidating several rules into a single regulation, thereby fostering a favorable investment climate. Due to the extensive nature of the Omnibus Law, its drafting process must be conducted with accountability, transparency, and active involvement from several stakeholders. The government aims to modernize the nation's legal traditions in order to eradicate the negative perception of disharmony, excessive regulation, and overlapping rules in several sectors. This objective is intended to be acknowledged and embraced by diverse stakeholders. Naturally, the utilization of the omnibus bill approach is not an impromptu decision made by the administration.¹⁵

The significance and essence of law in the omnibus law diverges from the significance, essence, and concept of legal standards in current legislation. The issue is in the lack of alignment between the legal norms proposed in the omnibus law idea and the existing legal norms established by the Indonesian legal system under Law Number 12 of 2011, as amended by Law Number 15 of 2019. The concern emerge is the fact that the implementation of the omnibus law will bring about a transformation in the framework of statutory rules. The reason is that the conceptions and theories diverge from the existing legal models and norms in Indonesia. Hence, if the government and the House or People's Representative insists on enacting a law based on the omnibus law concept, it is imperative that the formulation of such a bill adheres to the standard

¹⁴ Ima Mayasari, "Kebijakan Reformasi Regulasi Melalui Implementasi Omnibus Law di Indonesia," *Jurnal Rechts Vinding Media Pembinaan Hukum Nasional* 9, No. 1 (2020).

¹⁵ Muhammad Fakhruddin Zuhri, "Omnibus Law: Inovasi dalam Bertradisi Hukum (Sisi Lain Undang-Undang Cipta Kerja)," *Magistra: Law Review* 2, No. 1 (2021), p. 1-10.

National Legislation Process, incorporates a well-researched scholarly document, avoids haste, and includes the participation of stakeholders and the public.¹⁶

The presence of an unconventional legislative process was the primary flaw in the formation of the Omnibus Law, as evidenced by the official procedures followed. Zainal Arifin Mochtar has found three irregularities: (1) five violations of procedural justice in the creation of the omnibus law, which demonstrate autocratic legalism in Indonesia; and (2) three contributing elements to this occurrence. The three elements that contribute to this issue are: (a) the assimilation of the ruling party in parliament, (b) breaches of law and the constitution, and (c) a lack of autonomy in the court. Undoubtedly, the practice of forming cartels inside political parties must be terminated. Hence, it is imperative for citizens to enhance collective surveillance. In addition, it is crucial to preserve the autonomy of the Constitutional Court.¹⁷

Legal philosophy posits that the primary purpose of the law is not to establish social justice for all Indonesian citizens, as explicitly stated in the fifth tenet of Pancasila, which advocates for social justice for all Indonesian people. Nevertheless, it is apparent that the legislation was enacted under coercion to serve the vested interests of specific parties, aiming to attain their desired objectives, be it political dominance, legal authority, or territorial and influential control. The epistemological process of formulating the Omnibus Law was evidently devoid of aspiration and lacked accommodation, both in terms of formal procedures and the substance of its provisions.

An analysis of the Omnibus Law from a constitutional law standpoint

The Constitutional Court (MK) has ruled that the Job Creation Law, which was formulated under the Omnibus Law approach, is conditionally unconstitutional. The Omnibus Law approach is relevant to the harmonization of legal regulations in Indonesia because it provides a means to implement comprehensive regulatory reforms. Although Law no. 15 of 2019 does not explicitly include this concept, it is necessary to carry out harmonization of laws and regulations to reconcile contradictory statutes and regulations. This strategy is anticipated to effectively and efficiently address legal and regulatory issues. Additionally, it is imperative to provide a solid legal foundation for the Omnibus Law to ensure smooth implementation and avoid any complications in law enforcement within Indonesia.¹⁸

According to several analysts, the Omnibus Law is a legal enactment that encompasses both benefits and drawbacks. The benefits of implementing this comprehensive legislation are evident in terms of time efficiency and administrative procedures. Thus far, these procedures have been perceived as complex, resulting in a

¹⁶ Sodikin Sodikin, "Paradigma Undang-Undang Dengan Konsep Omnibus Law Berkaitan Dengan Norma Hukum Yang Berlaku Di Indonesia," *Jurnal Rechts Vinding Media Pembinaan Hukum Nasional* 9, No. 1 (2020), p. 143.

¹⁷ Zainal Arifin Mochtar and Idul Rishan, "Autocratic Legalism: The Making of Indonesian Omnibus Law," *Yustisia Jurnal Hukum* 11, No. 1 (2022), p. 29.

¹⁸ Zuhri Umar Ma'rif and Lita Tyesta ALW, "The Relevance of Omnibus Law to The Harmonization of Legislation in Indonesia," *Melayunesia Law* 6, no. 1 (2022), p. 85. Atikah Mardhiya Rohmy, et.al., Corporate Criminal Sanction in Omnibus Law for Forest Destruction in Indonesia: Review of Law Number 11 of 2020 on Job Creation," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 21 No. 1 (2021).

sluggish investment environment. The Omnibus Law proposed by the current government aims to simplify and expedite this convoluted process. An adverse consequence of the implementation of the Omnibus Law in Indonesia is the emergence of controversy. In addition, the Omnibus Law, proposed by the Indonesian Government, is perceived to lack clear objectives and direction. This applies to both the procedures and processes involved, as well as the substance of the law. Furthermore, the Omnibus Law appears to favor specific groups, such as entrepreneurs (oligarchs), which contradicts the principles of Pancasila and the 1945 Constitution.

Barbara Sinclair explains that the Omnibus Law is a compilation of multiple intricate laws that requires a significant amount of time to finalize, as it has a substantial amount of content, despite the fact that the topics, problems, and initiatives may not necessarily be interconnected. The process of creating legislation, which encompasses a range of interconnected statutory rules, both in a direct and indirect manner.¹⁹ In the process of drafting the Omnibus Law, which is extensive and prone to altering existing legislation, the primary objective is to establish new regulations that address the underlying issues caused by the current regulations.

The question being asked is on the nature of Omnibus Law. Is the process of creating the Omnibus Law in accordance with the norms, procedures, and regulations for law-making as stipulated in Law Number 12 of 2011, which was subsequently amended to Law No. 15 of 2019? Conversely, the process being conducted flagrantly violates numerous established conventions, with the procedures disregarding essential guidelines that should be adhered to and followed.

According to Mahfud MD, law is the outcome of a legislative process that is influenced by various aspects, such as political factors and power dynamics, which significantly impact the final legal outcome. The laws governing political goods are modified by political determinants, which are the outcomes of specific political actions. If the political determinant, which is the outcome of political processes, favors a specific political group, then the resulting legislation will tend to align with the interests of that group. Conversely, if the political determinant leans towards the general or communal interest, and then the resulting legislation will prioritize the interests of the people.²⁰ Laws, as outcomes of the political process carried out by legislative institutions, are heavily influenced by the political landscape. Therefore, the amount of political effort exerted is an additional factor in the production of legal products in the form of laws that are founded on political intentions.

A.V. Dicey asserts that when creating laws, three crucial factors must be taken into account: the primacy of the law, equality under the law, and the proper application of legal procedures. By examining the fundamental issue in the law-making process conducted by the government and legislative institutions, it becomes evident that without prioritizing the supremacy of law, the government and legislative institution fail to fulfill their role as the ultimate authority. Consequently, the law loses its

¹⁹ Barbara Sinclair, *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress* (Washington DC: Congressional Quarterly Press, 1997).

²⁰ Moh. Mahfud M.D., *Pergulatan Politik dan Hukum di Indonesia*, Yogyakarta: Gema Media, 1999. Ahmad Muliadi, *Politik Hukum*, Jakarta: Akamedia Permata, 2012.

significance and ceases to exist. It is highly likely that if the procedures conducted do not adhere to the rules established by Law No. 12 of 2011, then the content of the law may be influenced by personal interests and lack substance. Politics, ultimately, disregards quality while producing laws through a political process. Therefore, if a law is not properly enacted and includes provisions that serve specific political goals, it is inevitable that this law will be challenging to apply as a legal framework for enforcement.

The concept of equality before the law is a clear indication of a legal and democratic society, where every citizen is placed on an equal footing in relation to the law (*gelijkheid van ieder voor de wet*).²¹ Therefore, it is imperative that the law be given the utmost authority as the commander in chief, serving as the highest standard (supremacy of law) in the context of law enforcement in court and in relation to the regulation of product output. However, if we consider the omnibus law as a collaborative effort between the government and the legislative body, it cannot be regarded as a fundamental guideline due to the formal procedures, processes, and contents of the law. Indonesian people are greatly distant from the hope and concept of justice.

Controversial and low-quality articles encompass Article 88C paragraph (1), which mandates the governor to establish the minimum wage at the provincial level, while paragraph (2) grants the governor the authority to set the minimum wage at the district/city level under specific circumstances. The usage of the term "can" in this article is evidently disadvantageous for workers, as it renders the establishment of the district/city minimum wage (UMK) non-mandatory.²² In addition to the contentious articles about subpar salaries, researchers have identified other factors that have contributed to the emergence of controversial articles.

The contract labor system, as defined in Article 81 point 15 of the Omnibus Law, modifies the terms of Article 59 of Law no. 13 of 2003, which pertains to employment. This article asserts that the Specific Time Work Agreement (PKWT) is not subject to any time constraints and highlights significant mistakes that are deemed critical in relation to the contract's time limit. According to Article 81 point 15 of the Omnibus Law, if a task is expected to be finished quickly, the phrase "not so long" will be used to modify the rules on the time frame for completing work, which is now set at "three years" as one of the criteria for a fixed-term employment contract (PKWT). Furthermore, numerous articles continue to demonstrate that the Omnibus Law does not prioritize the welfare of the general populace.

According to the statement mentioned in Article 81 point 15, it is hypothesized that this will grant employers autonomy in interpreting the expression "not too long" and hence render job security more ambiguous for workers. The PKWT extension term, as governed by the government, is seen as adding complexity to the workers' position. This implies that it is feasible for workers to be organized and contracted for a brief

²¹ Rofingi Rofingi, et.al., "Problems of Law Enforcement in Realizing the Principle of Equality Before the Law in Indonesia," *Law Reform* 18, No. 2 (2022), p. 222-237.

²² Kahar S. Karyono, ketua Departemen Komunikasi dan Media KSPI, disampaikan dalam pendaftaran gugatan uji material ke MK RI, pada hari senin 2/11

duration or according on the entrepreneurs' preferences, without a fixed period and continually without a time constraint, resulting in workers missing the chance to obtain permanent employment (PKWTT).

The clarity of outsourcing methods is progressively diminishing. The Job Creation Law does not establish specific guidelines for the types of work that can be outsourced. According to the Employment Law, outsourcing is only permitted when a job is distinct from the main activity or separate from production activities. However, the Job Creation Law primarily focuses on regulating the transfer of workers' protection to service provider companies or vendors. This is required by the Constitutional Court (MK) Decision Number 27/PUU-IX/2011. The Job Creation Law pertains to the transfer of job ties from vendors to employing enterprises, as specified in the legislation. The law does not encompass No. 13 of 2003. It is evident that the process of transitioning workers from their current position to becoming employees in the future is challenging.

In addition to that, exploitative working hours, as defined by the Job Creation Law refers to the practice of a firm prioritizing its own productivity and profitability over the well-being and leisure time of its workers. As an illustration, under the Job Creation Law, the previous maximum restriction for overtime working hours was three hours per day and 14 hours per week. However, under the Job Creation Law, this limit has been increased to four hours per day and 18 hours per week. The Job Creation Law prioritizes the interests of firms that derive significant benefits, rather than those of the workers, and diminishes entitlement to leave and relaxation. According to the Job Creation Law, firms are only required to provide workers with one day of rest per week. According to the Job Creation Law, corporations are not required to give workers two days off every week, as mandated by Law no. 13 of 2003.

The Omnibus Law is susceptible to the termination of employment rights (PHK). Article 81, specifically in section 42 of the Job Creation Law, includes Article 154 A which outlines the grounds for terminating employment. According to Article 154 A, this allows companies to have greater flexibility in unilaterally terminating workers' employment relations. One reason for laying off a person is when they suffer from a long-term illness or disability caused by a work accident, and they are unable to continue working after surpassing the 12-month restriction. According to the Job Creation Law, the employers has the authority to terminate their employment in such cases.

According to Von Savigny's perspective, laws ought to be formulated in alignment with the progress of the society, as laws evolve and cease to exist alongside the society. Consequently, legislation should be formulated in accordance with the requirements of the community rather than the preferences of the authorities or specific factions. Based on the premise that the law is essentially a reflection of public consciousness, it can be confidently asserted that the Omnibus Law will not encounter resistance or disapproval from the society. The outcome of democratic politics allows for the inclusion of all communities, providing many opportunities for their active engagement in shaping State policies. The democratic political system positions the

government as an executor that implements the desires of the people in a democratic manner.

Responsive or autonomous legal products are legal products that embody the realization of societal intent and engagement, both at the individual level and through collective social entities to make it more effectively embody a concept of fairness in individuals' lives. Similarly, the process of enacting laws is conducted transparently, involving the entire community, non-governmental organizations, and judicial institutions. The law serves as a means of executing the community's collective desires.

Conservative legal products are products that adhere to the political ideology of those in power, who have significant influence in shaping state policies. These products are not inclusive and often disregard public involvement. The law-making process is typically conducted as a simple formality, with the final legislation primarily serving to follow the government's ideological program and meet formal criteria, rather than prioritizing the quality of the law itself.²³ The formulation of the law is rudimentary, enabling authorities to intervene at their discretion.

In order to comprehend the nature of the Omnibus Law as a legal creation formulated by the President and the People's Representative Council of the Republic of Indonesia (DPR-RI), the author examines the collaborative process undertaken by the government and the DPR-RI. This analysis encompasses the entire process, beginning with the government's initial proposals to the DPR-RI. On February 7, 2020, the Government presented 11 proposed discussion clusters to the DPR-RI. However, these proposals were only deliberated in the DPR on April 2, 2020. In a span of slightly more than 6 months, the deliberation of the Omnibus Law Bill, which encompasses 79 laws, was concluded by the DPR and subsequently enacted into law during a plenary meeting on Monday, October 5, 2020.

The law passed by the DPR RI on October 5, 2020 has not been fully implemented due to strong opposition from various segments of the society, including workers, student activists, and academics. As a result, a lawsuit (Judicial Review) was filed by five plaintiffs, including a private employee named Hakimi Irawan Bangkid Pamungkas, a student named Novita Widyana, and three other students named Elin Diah Sulistiyowati, Alin Septiana, and Ali Sujito, to the Constitutional Court (MK). The culmination of this legal process occurred when the MK conducted a formal hearing led by the Chief Justice of the Constitutional Court on Thursday, November 25, 2021, specifically addressing Law no. 11 of 2020, which pertains to Job Creation. The assertion is that Law Number 11 of 2020, which pertains to Job Creation, is in conflict with the provisions of the 1945 Constitution and lacks legally binding effect, unless appropriate amendments are made within a specified timeframe. It has been two years since this choice was made.²⁴

²³ Moh. Mahfud M.D., *Pergulatan Politik dan Hukum di Indonesia*, Yogyakarta: Gema Media, 1999.

²⁴ Pemohon Uji UU Cipta Kerja Ajukan Permohonan Provisi Rabu, 25 November 2020, <https://www.mkri.id/index.php?>, diakses 9 September 2023. UU Cipta Kerja yang Kandas di MK Gugatannya Diajukan oleh Pelajar, Mahasiswa, dan Karyawan,

Out of the nine judges in the Constitutional Court, five justices approved the request for review while four judges expressed dissenting opinions. The lawsuit filed by the plaintiffs provides evidence of the losses suffered by the applicants, such as the infringement upon the constitutional rights of applicant I Hakiimi, which includes the reduction of weekly rest time, the elimination of certain wage policies that safeguard workers, and the removal of penalties for employers who fail to pay wages. Petitioner II Novita Widiana believed that her rights were infringed upon by the presence of the Job Creation Law, as it left her with the possibility of being a contract worker without any prospects, despite her educational attainment. Petitioners III, IV, and V expressed their belief that the Job Creation Law would lead to the commercialization of education in the future.

The Constitutional Court's decision to declare the Omnibus Law Ciptaker (Job Creation) Law Number 11 of 2020 unconstitutional, unless the government makes necessary improvements, indicates a lack of commitment on the government's part to enact a law that prioritizes the overall interests of the society. Instead, it appears that the government is favoring a specific group, which could potentially undermine the nation's sustainability and hinder social justice for all Indonesian citizens.

The Constitutional Court has officially confirmed the implementation of the Job Creation Law, acknowledging that there was a constitutional infringement during its development. The confirmation of this statement is supported by the Constitutional Court Decision Number 91/PUU-XVIII/2020, which establishes that the law is deemed 'conditionally unconstitutional'.²⁵ Following the Constitutional Court's ruling, multiple interpretations emerged, prompting the executive and legislature to persist in implementing employment-related regulations. This law serves as the initial measure in constructing a legal framework to govern the work regulation system in Indonesia.²⁶

Conversely, the Job Creation Law has significantly affected the safeguarding of Foreign Workers (TKA) through modifications to the Company's Placement Permit for Indonesian Migrant Workers (SIP3MI). This suggests a pressing need for the government to safeguard migrant workers in light of the rising number of migrant workers and associated grievances. The SIP3MI regulations undermine the principle of safeguarding Indonesian migrant labor. The Central Government now has the authority to provide SIP3MI information previously handled by the relevant Ministries. This change equates it with Business Licensing and alters the permit issuance mechanism, potentially having a significant impact on the supervision and protection of Indonesian migrant workers. Consequently, the level of protection for migrant workers remains unchanged since the issuance of the Omnibus Law. Legal certainty is essential for ensuring protection. The association of SIP3MI with business licensing is a contentious

<https://nasional.kompas.com/read/2021/11/25/14550311/uu-cipta-kerja-yang-kandas-di-mk-gugatannya-diajukan-oleh-pelajar-mahasiswa>, diakses 9 september 2023.

²⁵Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020.

²⁶Fitria Ningsih, "Politik Hukum Problematika Keberlakuan UU Cipta Kerja Pasca Putusan Mahkamah Konstitusi No. 91/PUU-XVIII/2020," *COMSERVA: Jurnal Penelitian dan Pengabdian Masyarakat* 2, No. 7 (2022), p. 963-970.

issue that could potentially provide legal safeguards for migrant workers who are facing growing marginalization.

Article 42A of Law Number 13 of 2022 in the Republic of Indonesia, which is the Second Amendment to Law Number 12 of 2011 regarding the Formation of Legislative Regulations, explicitly states that the omnibus method used in drafting a Legislative Regulation must be clearly specified in the planning document. Therefore, this provision clearly regulates that the use of the omnibus method in drafting regulations is mandatory and must be included in planning documents. This statute integrates the planning process with promulgation. This approach necessitates the inclusion of the term "must," indicating that statutory rules mandate that the established norms must be specified in planning documents and transformed into a legal obligation for the utilization of the omnibus method in formulating statutory regulations. In the absence of this stipulation, the proposed law is deemed invalid since it fails to fulfill the necessary criteria. The laws and regulations that can be created are restricted to those that enable a premeditated planning procedure. Regarding PERPPU or equivalent levels, it is not feasible due to the absence of suitable planning techniques.²⁷

Thus, based on the aforementioned analysis, it can be asserted that the copyright law or omnibus law in the realm of constitutional law presents certain issues. The law-making process, which is launched by the executive and the legislative and ultimately resolved by the judiciary through a constitutional court decision, highlights a clear legal issue despite the benevolent objectives of this law for the society.

The Omnibus Law from the perspective of the Islamic Law

The Omnibus law was established to address the pressing need for a systematic approach to formulating laws that modify many pertinent regulations, with the aim of generating advantages and ensuring coherence across numerous legal frameworks. The utilization of this comprehensive legislation should be evaluated from a favorable standpoint, specifically considering the principles of *maqāṣid al-sharī'ah*, particularly the idea of *hifdzul mal*, with a specific focus on assessing the efficiency of budget allocation in order to foster a favorable environment for investment and taxation. The omnibus law is necessary due to its consideration of the economic well-being (*hifdzul mal*) and its role in preserving the stability of the country's economy. Implementing individual corrections would be time-consuming and expensive.²⁸

Maqāṣid al-sharī'ah refers to the objective of the Islamic law, which encompasses five primary components: 1) safeguarding religion (*hifdzu ad-din*); 2) preserving life (*hifdzu an-nafs*); 3) protecting intellect (*hifdzu al-aql*); 4) ensuring the continuity of progeny (*hifdzu an-nasl*); and 5) safeguarding property (*hifdzu al-mal*). The omnibus law can be considered as a component of the state's safeguarding of property (*hifdzul mal*), while also influencing the protection of one's well-being, intellect, and future generations. Unemployment or job loss can have profound effects

²⁷Penerapan Metode Omnibus pada UU Cipta Kerja Tak Penuhi Syarat, <https://www.mkri.id/index.php?>, diakses 10 Desember 2023.

²⁸Mohammad Farid Fad, "Omnibus Law Dalam Tinjauan Hifdzul Mal," *eL-Mashlahah* 10, No. 1 (2020), p. 31-46.

on an individual's psychological well-being, cognitive functioning, and the welfare of their children.

The Omnibus Law in Indonesia is characterized by a 40% good sentiment, a 32% neutral opinion, and a 28% negative emotion. The ulama hold a positive perspective regarding the significance of the Omnibus Law, which consolidates bureaucracy and addresses numerous instances of overlapping rules. The approval of the Omnibus Law was met with widespread criticism due to its improper, non-transparent, and controversial nature, which led to the expression of several negative opinions. Meanwhile, the neutral mood occupies an intermediary stance, engaging in a discussion of the excellent aspects of the Omnibus Law while also offering criticism of inappropriate elements and presenting remedies and proposals. The rallies against the execution of the Omnibus Law evoked a strong and distinct positive mood among intellectuals, in stark contrast to the general public. The Omnibus Law addresses and governs the process of halal certification as part of its attempt to reduce bureaucratic procedures. The implementation of the Omnibus Law has significantly expedited the *halal* certification process in Indonesia, with a particular focus on the micro and small company sectors. This aligns with Indonesia's ambitious goal to establish itself as the global hub of the *halal* business by 2024.²⁹

This fails to initiate the government's collaboration with BPJPH, the Ministry of Religious Affairs, in order to implement the self-declaration process for issuing *halal* certification. A grand number of 25,930 halal certificates have been effectively issued for small and medium-sized enterprises (SMEs). This is an exceptional accomplishment, aiming to issue one million *halal* certifications. The purpose of this initiative is to enhance the competitive advantage of Indonesian business actors compared to those from other countries. To achieve this, it is necessary to shift the mindset of business actors by promoting public awareness about the significance of ensuring the *halal* certification of products. Therefore, it is necessary to implement a social approach that includes legal socialization periodically, despite the considerable time required to achieve favorable social and legal circumstances due to the implementation of formal laws. Following the implementation of the omnibus law, which includes the expedited self-declaration process for *halal* certification, it is imperative to continue conducting seminars and legal research. The collaboration between the *Halal* Product Guarantee Organizing Agency (BPJPH), the MUI, universities, and Islamic organizations facilitates the realization of this process by establishing a *halal* center and providing assistance in the certification of *halal* products.³⁰

When examined through the lens of the Islamic law, the Omnibus Law presents several issues, such as vague wording in labor contracts, alterations to minimum wage regulations, complex rules around outsourcing, the concept of terminating employment, and unclear criteria for taking leave. The government should prioritize these discoveries. When analyzed through the lens of *maqasid shari'ah*, work contract

²⁹ Mohamad Nur Efendi, et.al., "Omnibus Law Sentiment and Its Impact on The Halal Certification Program in Indonesia," *Justicia Islamica* 20, No. 1 (2023).

³⁰ Mohamad Nur Efendi, et.al., "Omnibus Law Sentiment and Its Impact...", p. 53-54.

conditions that are ambiguous, minimum wage regulations, the practice of outsourcing, and the termination of employment can be categorized as posing a threat to an individual's financial well-being. Concurrently, unresolved issues frequently exert an adverse influence on an individual's physiological and psychological well-being.³¹

From a holistic perspective on the Islamic law, the omnibus bill will serve as a means for capital owners and global business actors to further exploit Indonesia's resources and further marginalize people's rights. Agricultural products are valuable commodities that can be further developed in response to the growing demand from the global community. Indonesia must effectively use these prospects to enhance the well-being of its citizens.³²

Based on the aforementioned findings, in the realm of the Islamic law, it may be asserted that it falls under *siyasah syar'iyah* or government policy that aligns with the principles of *maqāṣid al-sharī'ah*, particularly *hifdz al-mal*, which involves ensuring economic stability and promoting *halal* certification. Indonesia, being the nation with the highest Muslim population globally, presents a significant market for the *halal* business and has the potential to emerge as the global hub for the *halal* sector.

Conclusion

The Omnibus Law is a legislative instrument commonly employed by countries that follow the common law system. However, it was subsequently embraced by nations that follow a civil law framework, such as Indonesia. The omnibus law was enacted to ensure the efficient and effective application of laws, particularly in the regulation of copyright laws pertaining to work, with the objective of avoiding any duplication or overlap. Consequently, certain individuals in the general population perceive the legislation as lacking ambition and instead prioritizing the concerns of the community, particularly in relation to employee compensation, employment agreements, and the practice of subcontracting. Based on constitutional law, this state policy is deemed conditionally unlawful, despite the ongoing application of these legal standards by the executive and parliamentary parties. Within the framework of the Islamic law, it can be understood as a component of *siyasah syar'iyah* or governmental policy that aligns with the principles of *maqāṣid al-sharī'ah*, particularly *hifdz al-mal*, which involves ensuring economic stability and promoting *halal* certification. However, this article contends that the Constitutional Court's decision to deem it unlawful is contingent. It advocates for a change of the copyright law to ensure broader adherence to legal regulations. Indonesia, as the country with the highest Muslim population globally, will fulfill its aspiration to become the epicenter of the global *halal* business. This is due to its significant market size for the *halal* sector.

³¹ Soni Hari Triwasono, "Workers' Rights on Omnibus Law Seen from Islamic Perspective in The Context of Maqasid Syariah," *Al-Insyiroh: Jurnal Studi Keislaman* 8, No. 2 (2022), p. 19-36.

³² Tengku Harunur Rasyid and Yeni Kusumawaty, "Omnibus Law and the Challenges of the Indonesian Agricultural Sector: An Islamic Perspective," *Jurnal Kajian Peradaban Islam* 5, No. 1 (2022), p. 49-61.

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