



LEGAL FLEXIBILITY IN THE FORMATION OF OMNIBUS LAWS: A THEORETICAL EVALUATION OF MODERN INDONESIAN LEGISLATIVE PRACTICES

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ABSTRACT

This study aims to critically evaluate the practice of omnibus laws in Indonesia by examining aspects such as legislative flexibility, legal certainty, regulatory quality, and their alignment with responsive law theory, the rule of law, New Public Management (NPM), and Critical Legal Studies (CLS). Utilizing a literature review method, the research draws from a variety of sources, including books, academic journals, legislation, and policy documents, which are analyzed both descriptively and analytically, alongside a normative legal approach. The findings indicate that, while omnibus laws have the potential to streamline regulations and eliminate overlapping provisions, they also pose significant challenges regarding transparency, accountability, clarity of norms, and the lack of public participation. This study reveals a tension between legislative flexibility and the principles of the rule of law, demonstrating that the omnibus technique is not yet fully compatible with the civil law tradition in Indonesia, leading to potential regulatory inconsistencies and legal uncertainty. In conclusion, while omnibus laws can serve as instruments for reform, their implementation must adhere to constitutional limits, ensure meaningful public participation, and comply with regulatory drafting rules. This study contributes to the theoretical discourse on legislative reform and underscores the necessity for further empirical research.

Keywords: Omnibus law; Legislative flexibility; Rule of law; Regulatory quality; Responsive law; New Public Management (NPM); Critical Legal Studies (CLS); Legal certainty; Civil law system; Public participation

1. INTRODUCTION

Increasingly complex social, economic, and political developments necessitate the renewal of legislative mechanisms that can respond to these dynamics quickly and effectively. It is in this context that the concept of omnibus law has emerged as a strategy for regulatory harmonization that offers a high degree of flexibility in the process of forming legislation. Through this approach, various laws can be revised in a single regulatory package, thereby addressing the issues of hyper-regulation, overlapping rules, and normative disharmony that have long been obstacles to

national legal governance.

However, the application of legislative flexibility through omnibus laws has given rise to various theoretical and practical debates. On the one hand, this method is seen as being in line with the principle of responsive law, which emphasizes the adaptability of law to modern socio-economic needs. On the other hand, there are concerns that excessive flexibility could undermine the principles of the rule of law, particularly in relation to legal certainty, transparency, accountability, and meaningful public participation.

In addition, evaluations from various perspectives of modern legislative theory show that omnibus laws not only concern the technical aspects of norm formulation, but also touch on legal political issues and their compatibility with the civil law system adopted by Indonesia. Various critics argue that although omnibus laws seek to improve the efficiency and quality of regulation, their implementation has the potential to cause inconsistencies in norms, conflicts between regulations, and the strengthening of certain interests above the public interest.

Thus, the discussion on omnibus laws does not only focus on legislative efficiency, but also requires critical analysis of its implications for the principle of the rule of law, the quality of regulations, and the balance of power in the law-making process.

2. METHODS

This study uses a literature review method by collecting and reading various sources, such as books, scientific journals, laws, court decisions, and policy documents that discuss legal flexibility, the rule of law, and the implementation of omnibus laws in Indonesia. All data were analyzed qualitatively by selecting relevant sources, noting important ideas, and then comparing theories such as responsive law, NPM, and Critical Legal Studies to see how omnibus laws work in the Indonesian legal system. The analysis was conducted descriptively to understand the issues of overlapping regulations, regulatory quality, and clarity of norms. This research maintained ethical standards by correctly citing sources. The limitation of this research is that it did not use field data, so it is recommended to add interviews or regulatory impact studies to make the results more complete.

3. RESULTS AND DISCUSSION

A literature review shows that omnibus laws can respond to regulatory complexity through simplification and rapid revision of various laws. However, their implementation also raises new issues, such as inconsistency of norms, ambiguity, and limited transparency and public participation. Findings from various theories show that although omnibus laws aim to improve efficiency and the economic climate, in practice, they often conflict with the principles of the rule of law and Indonesia's civil law tradition. Thus, omnibus laws offer the benefits of reform, but their implementation presents serious challenges to legal certainty and democratic legitimacy.

Legal Flexibility as a Response to Regulatory Complexity

Legal flexibility in the context of regulation formation is seen as a normative response to the phenomena of hyper-regulation, overlapping rules, and disharmony in legislation that hinders the effectiveness of the national legal system. In Indonesia, this idea is embodied in the omnibus law model, which is a technique for drafting laws that allows for the amendment and repeal of many provisions in a single regulatory package. This model is considered capable of accelerating regulatory harmonization and increasing the efficiency of the legislative process.(Utomo, 2020)

From a theoretical perspective, the omnibus law approach is consistent with the idea of responsive law proposed by Nonet and Selznick, as this model emphasizes the adaptability of law to socio-economic needs. The responsive law approach prioritizes the function of law as a tool oriented towards solving public problems and balancing interests. In the Indonesian context, several studies have positioned omnibus laws as instruments that enable the modernization of the legislative system through the rapid updating of norms that are no longer considered relevant (Yusliwidaka, 2022).

In addition, the application of the omnibus law method is also considered theoretically relevant in efforts to reduce overlapping regulations and strengthen the national regulatory system, as emphasized in various studies on the relevance of the omnibus method in the formulation of regulations in Indonesia (Hamdhani & Fajrianto, 2024).

However, the effectiveness of omnibus laws as instruments of legal flexibility has not been without criticism. A number of studies have highlighted that the application of omnibus laws in practice still shows incompatibility with the principles of ideal regulatory simplification. There is a tendency that combining many different materials into one law actually creates new problems, both in terms of technical formulation and implementation (Rishan & Nika, 2022).

On the other hand, other studies assess that the formation of the Job Creation Law reflects complex legal and political dynamics, in which the omnibus law is not only a tool for harmonization, but also a strategic instrument for the government in promoting economic growth through broad regulatory changes (Febriana et al., 2025).

In addition, the practice of omnibus law legislation also poses risks to the principle of due process of law, especially when the deliberation process is carried out quickly and is considered to lack public participation. This is highlighted in research showing that the omnibus law method can shift the principles of prudence, accountability, and transparency in the formation of legislation (Michael, 2020).

Some legal literature indicates that the application of the omnibus law method in Indonesia does not fully comply with the rules for forming legislation; the lack of clarity regarding the position of the omnibus technique in the hierarchy of norms and the limited public participation could actually lead to polemics and social resistance to the Job Creation Law (Monitasari et al., 2021).

In the context of legal sociology, this dynamic reveals the tension between the goals of regulatory efficiency and democratic legitimacy that are expected to be present in every lawmaking process (Farrisqi & Fauzi, 2021).

Tension Between Legislative Flexibility and Rule of Law

Flexibility in the legislative process, such as the use of omnibus laws, is often seen as necessary to respond to rapid socio-economic dynamics. However, this flexibility directly conflicts with the principle of the rule of law, which demands certainty, clarity, and predictability of legal norms. In Lon L. Fuller's theory of the rule of law, the legitimacy of a rule is determined by the clarity of its formulation, its consistency, and the accountability of the law-making process. Meanwhile, A.V. Dicey emphasizes that the supremacy of law can only be realized when law-making is carried out in an open and accountable manner that does not create opportunities for abuse of power (Anggono, 2020).

In the Indonesian context, omnibus laws actually raise the opposite problem: their extremely broad scope and accelerated deliberation process often lead to issues of transparency and public participation. Constitutional law studies show that the accelerated legislative process for the Job Creation Law raises serious questions about whether legislative efficiency has sacrificed the quality of the articles and the consistency of the content.² Other studies criticize the legislative process for being closed and lacking public involvement, thereby contradicting the principle of meaningful participation, which is a pillar of the modern constitutional state (Nola, 2020).

This tension is also evident in the technical aspects of norm formulation. Several studies note that the omnibus law method is prone to producing ambiguity and new disharmony, thereby contradicting the principles of *lex certa* and *lex stricta* in the formation of legislation.⁴ In addition, excessive legislative flexibility is also considered to have the potential to weaken the principle of checks and balances, for example, when the legislature becomes less critical due to political pressure or the burden of discussing too many issues in a short period of time. (Suryati et al., 2021)

Thus, although legislative flexibility has a strategic function in legal reform, its application must remain within the framework of the rule of law. Constitutional and normative limitations, particularly those related to the principles of due process of law, public participation, and clarity of legal formulations, are key to ensuring that efficiency does not sacrifice democratic legitimacy and legal certainty.

Theoretical Evaluation of the Omnibus Law Practice in Indonesia

A theoretical evaluation of the practice of omnibus laws in Indonesia can be conducted through several perspectives of modern legislative theory. From the New Public Management (NPM) approach, omnibus laws are viewed as instruments of regulatory reform that aim to simplify rules, reduce bureaucratic barriers, and improve the effectiveness of economic governance. Within the NPM framework, legislation must support efficiency, administrative flexibility, and increased investment competitiveness. The implementation of the Job Creation Law, for example, is promoted as part of structural reforms to improve the business climate through broad and rapid deregulation and debureaucratization (Hariadi et al., 2023).

However, the Critical Legal Studies (CLS) perspective offers a more critical reading. From this point of view, omnibus laws can be seen not merely as technocratic instruments but as political tools that have the potential to strengthen the interests of dominant economic groups. Several studies show that the formulation of the Job Creation Law tends to be influenced by certain interests that promote market liberalization and labor flexibility, raising concerns that the

interests of the public and vulnerable groups are not adequately accommodated.² The CLS approach consistently emphasizes that laws often contain structural biases, so that omnibus laws have the potential to reproduce inequalities when the legislative process is not truly democratic and participatory (Setiawan et al., 2025).

In addition, theoretical evaluations also touch on the compatibility of the omnibus method with the Indonesian legal system, which adheres to the civil law tradition. The civil law system requires codification, a systematic structure, and consistency of norms. Several studies show that the omnibus law technique, which combines various substantive issues in a single law, has the potential to undermine the coherence of the regulatory system, as it complicates interpretation, implementation, and harmonization of the hierarchy of norms (Yunus et al., 2016). This raises the question of whether the omnibus approach is compatible with civil law construction, which prioritizes the systematization of law as the basis for legal certainty.

Finally, the evaluation also highlights whether the omnibus law actually improves the quality of regulation. Academic studies show that although the omnibus law aims to simplify regulation, its implementation has actually created new problems, such as inconsistencies in norms, the possibility of conflicts between regulations, and the potential for multiple interpretations in the fields of labor, the environment, and licensing. In this case, the effectiveness of the omnibus law as a legislative reform strategy still needs to be critically evaluated, especially in relation to its impact on legal certainty and the quality of national regulations (I Putu Sastra Wingarta et al., 2021).

4. CONCLUSION

From the overall discussion, it can be concluded that the practice of omnibus laws in Indonesia presents a complex dynamic between the need for legislative flexibility and the obligation to uphold the principle of the rule of law. On the one hand, legal flexibility through omnibus laws provides opportunities to respond to hyper-regulation, overlapping regulations, and the need for rapid legal harmonization. This approach is in line with the idea of responsive law and the regulatory modernization agenda that emphasizes efficiency, adaptability, and improvement of the investment climate.

However, on the other hand, this flexibility creates serious tension with the principles of the rule of law. The broad scope of material, the accelerated discussion process, and the lack of public participation raise questions about transparency, accountability, and legal certainty. Criticism from the perspective of critical legal studies shows that omnibus laws have the potential to strengthen the interests of certain groups if they are not implemented within a participatory and democratic framework.

In addition, the omnibus law method is not yet fully compatible with the civil law tradition, which demands systematization, coherence, and consistency of norms. As a result, instead of resolving regulatory issues, omnibus laws can give rise to new problems such as inconsistency of norms, legal conflicts, and multiple interpretations.

Thus, although omnibus laws can be a strategic instrument in regulatory reform, their application must remain limited by the principles of the rule of law, the principles of good

regulation, and checks and balances mechanisms. Only then can legislative flexibility function optimally without sacrificing democratic legitimacy and legal certainty.

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