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Preparation of Law Creating Work Based On Law No. 12 of 2011

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ABSTRACT

The formation of Indonesia laws is stipulated by the 1945 Constitution regarding Article 96 of Law No. 12 of 2011, which emphasizes the importance of public participation in every stage of lawmaking. However, in reality, the process of forming laws and regulations, such as in the case of the Job Creation Law, does not involve maximum public participation. This has led to the emergence of dissatisfaction among the public with the resulting omnibus law concept. To achieve the goals of democracy and social justice, the government needs to improve the participation mechanism by opening up space for public input. This process must be conducted transparently from the planning stage to enactment so that the public feels involved and heard. Without active participation from the public, legal products could potentially be unaccepted and deemed illegitimate. Therefore, efforts to implement omnibus law as a solution to simplify regulations must be accompanied by concrete steps to involve the community. Otherwise, the ideals of legal reform will be difficult to achieve.

Keywords : Omnibus Law, Job Creation, Article 96 of Law No. 12/2011, Public Participation.

1. INTRODUCTION

From a theoretical point of view, the legal system is the most important system for implementing a series of institutional powers that prevent abuse of power in politics, economics and society. This system acts as the main intermediary in social relations between society and the state in the fight against criminalization and aims to build a framework for lawmaking, protection of human rights, and expansion of political power. It also provides a means to represent elected officials (Yudanegara, 2024). Regarding trade, the regulatory environment, or military operations, matters between sovereign states are governed by international law, while administrative law is used to check government decisions.

The Relationship Between Legal Politics and the Politics of Legal Formation. The term "legal politics" refers to the study of the interaction between political factors and the legal system as a whole, especially the policies that the federal government has or will enact at the national level. Here, law is not only understood as a set of requirements or a collection of imperative articles, but is seen more as a subsystem whose development, as well as its implementation and enforcement, is very vulnerable to political influence. Political variables can

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be classified as democratic or authoritarian, and a legal product can be characterized as responsive or conservative/orthodox (Muhtar, 2019).

In every country the law of legislation has a central and strategic role, because it is the basis of legality in the dialectic of everyday life. Legislation in terms of ideas and meaning is real and cannot be denied by anyone, this is what is then called the principle of legality in state law. With legislation, life is organized and regulated, justice and legal certainty are distributed, and crimes and violations are prosecuted (Zuhdi, 2016). Law has a strategic and central role because it is an instrument that determines a country's progress in the current era of globalization. A country can progress because of the law, and it can also be left behind because of the law. So, to build a strong state within the rechtsstaat framework, existing laws must be laws that are effective, working and of good quality, and not laws that are problematic juridically or sociologically. When the law in a country experiences acute problems such as hyper-regulation, multiple interpretations, overlap, inconsistency and disharmony, then the law will only become a tool to disrupt a country's authority.

This is what is currently being felt by Joko Widodo's government, where there is growing concern about the hyper-regulated phenomenon that is shackling Indonesian law. Based on data on the quantity of statutory regulations, currently there are a total of 38,606 (Thirty eight thousand six hundred and six) active regulations in force, this condition is then considered to be able to hamper the pace of the economy and investment, as well as impact on the slow response of the government in making decisions (Aedi, 2020). As a progressive response to overcome existing multi-sectoral problems, the government then issued the idea of regulatory reform through the concept of omnibus law as the main actor. The term omnibus law itself first appeared when President Jokowi delivered a state speech at the inauguration of the President and Vice President of the Republic of Indonesia for the 2019-2024 period. In his speech, the president invited members of the Working Representative Council (DPR) to jointly discuss and promulgate 2 (two) large draft laws (RUU), namely the Job Creation (Ciptaker) Bill and the Micro, Small and Medium Enterprises (MSME) Empowerment Bill. with the omnibus law mechanism, therefore the idea of an omnibus law conception was actually idealized by the government as a breakthrough to create a better constitutional climate, especially in the fields of economics, investment and bureaucracy.

Still fresh in memory, on 2 (two) November 2020 President Joko Widodo signed the Omnibus Law which was later recorded as Law no. 11 of 2020 concerning Job Creation. This signing is a follow-up after on 5 (five) October 2020, the DPR of the Republic of Indonesia

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together with the government passed the Job Creation Omnibus Law Bill as the first step in the regulatory reform package rolled out by the government. In this way, the provisions contained in the Ciptakeir Law have been officially in force and binding since November 2 2020, however the Ciptakeir Law, which is in fact one part of the omnibus law package, has actually faced a lot of conflict in its implementation. Starting from the discussion stage, ratification, to promulgation of this law, there are pros and cons. In fact, several times at its peak, the community carried out demonstrations even during the Covid-19 pandemic. The idea of an ideal omnibus law that is planned is much different when it enters the execution level or the reality of its implementation. The Liquid Creation Law, as an initial experiment in omnibus law, is considered by various groups of society as a flawed regulation, both referring to procedural due process of law and substantive due process of law, both of which are attributive requirements in the formation of a regulation in a rule of law state.

Even the rejection of the Omnibus law is not subjective and is only voiced by one or two groups of people. However, almost all groups, from workers, students, to professors also voiced their rejection which made it objective. Based on the description above, the author is interested in discussing more deeply the Omnibus Law (Liquid Creation Law) in terms of legal issues and legal studies. Law and the initial goal of the government is to implement it according to the law based on the reality of its current implementation.

2. RESEARCH METHODS

Method The research used in writing this law is normative legal research. Normative research is a type of research that examines documents in the form of statutory regulations, justice decisions and those related to formal juridical matters regarding the subject matter being studied. The approach method used in this research is, Approach legislation (statute approach) is an approach that examines and examines the statutory regulations contained in this research. Approach Conceptual approach is an approach that refers to opinions and doctrines in legal science in order to obtain ideas that give rise to legal concepts and legal principles that are relevant to the subject matter.

3. RESULTS AND DISCUSSION

Establishment of Omnibus Law in Indonesia

Based on Article 20 of the 1945 Constitution of the Republic of Indonesia:

a. The DPR holds the power to form laws.

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b. Each The bill is discussed by the DPR and the President to obtain joint approval
c. If the bill does not get mutual agreement, the Bill cannot be submitted again in the DPR session at that time
d. President pass a bill that has been mutually agreed to become law.

In the event that a bill that has been approved is not ratified by the President within 30 (thirty) days after the bill is approved, the bill will legally become law (UU) and must be promulgated (BAPPENAS RI, 1945). In essence, the basic regulations for forming legislation using the omnibus method are the same as forming general legislation. The regulations governing the formation of invitational legislation are contained in Law Number. 12(twelve) of 2011 Juncto Law Number. 15(fifteen) of 2019

1. Planning Stages

Planning for drafting laws is carried out in the National Legislation Program (Prolegnas). Prolegnas as intended in Article 16 is a priority scale for the law formation program in the context of realizing a national legal system. The National Legislation Program, hereinafter referred to as Prolegnas, is a planning instrument for the law formation program which is prepared in a planned, integrated and systematic manner. (Ministry of State Secretariat of the Republic of Indonesia, 2011).

The preparation of the Prolegnas is carried out by the DPR, the Regional Representative Council (DPD), and the Government. Prolegnas is determined for the medium and annual term based on the priority scale for drafting the bill. The preparation and determination of the medium-term Prolegnas is carried out at the beginning of the DPR's membership period as Prolegnas for a period of 5 (five) years. Before preparing and establishing the mid-term Prolegnas as intended in paragraph (3), the DPR, DPD and the Government carry out an evaluation of the mid-term Prolegnas membership of the previous DPR. The medium-term Prolegnas as intended in paragraph (3) can be evaluated at the end of each year at the same time as the preparation and determination of the annual priority Prolegnas. The preparation and determination of the annual priority Prolegnas as the implementation of the medium-term Prolegnas is carried out every year before the enactment of the Bill on the State Revenue and Expenditure Budget (Law Number 15 (Fifteen) of 2019).

2. Preparation Stages

Bills can come from the DPR or the President. Bills originating from the DPR as intended in paragraph (1) can originate from the DPD. Bills originating from the DPR, President or DPD must be accompanied by an Academic Text. The bill proposed by the President is

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prepared by ministers or heads of non-ministerial government institutions in accordance with the scope of their duties and responsibilities. In drafting the bill, the minister or head of the relevant non-ministerial government institution forms an inter-ministerial and/or inter-non-ministerial committee. The harmonization, enactment and consolidation of the concept of a bill originating from the President is coordinated by the minister who handles government affairs in the legal sector. Further provisions regarding procedures for preparing the Bill as intended in paragraph (1) are regulated by Presidential Regulation (Ministry of State Secretariat of the Republic of Indonesia, 2011).

Draft bills from the DPR are submitted in a letter from the DPR leadership to the President. The President assigns the representing minister to discuss the bill accompanied by an inventory list of problems with the DPR within a maximum period of 60 (sixty) days from the day the DPR leadership's letter is received. The Minister as referred to in paragraph (2) prepares discussions with ministers or heads of institutions that carry out government affairs in the field of Formation of Legislative Regulations (Indonesia, 2022).

A bill from the President is submitted with a letter from the President to the leadership of the DPR. The President's letter as intended in paragraph (1) contains the appointment of ministers who are tasked with representing the President in discussing the Bill with the DPR. The DPR begins discussing the bill as intended in paragraph (1) within a maximum period of 60 (sixty) days from the time the President's letter is received. For the purposes of discussing a bill in the DPR, the minister or head of the initiating institution reproduces the text of the bill in the required number (Ministry of State Secretariat of the Republic of Indonesia, 2011).

3. Discussion Stages

Discussion of the bill is carried out by the DPR together with the President or assigned minister. Discussion of the Bill as intended in paragraph (1) relating to: a. regional autonomy; b. central and regional relations; c. formation, expansion and merger of regions; d. management of natural resources and other economic resources; and ei. Balancing central and regional finances is carried out with the participation of the DPD. Discussion of the Bill is carried out through 2 (two) levels of discussion as intended in Article 66 consisting of: a. level II discussions at commission meetings, joint commission meetings, Legislative Body meetings, Budget Body meetings, or Special Committee meetings; and b. level II discussions in plenary meetings.

Level II discussions are carried out with the following activities: a. introduction to deliberation; b. discussion of the problem inventory list; and c. conveying a mini opinion (Ministry of State Secretariat of the Republic of Indonesia, 2011). Level II discussions are

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decision making in a plenary meeting with the following activities: a. submission of a report containing the process, mini-fraction opinions, mini-opinions of the DPD, and the results of level II discussions; b. verbal statement of approval or rejection from each faction and member as requested by the chairman of the plenary meeting; and c. delivery of the President's final opinion carried out by the assigned minister.

4. Validation Stages

A bill that has been jointly approved by the DPR and the President is submitted by the DPR Leadership to the President to be ratified into law. Submission of the Bill as intended in paragraph (1) is carried out within a maximum period of 7 (seven) days from the date of joint approval (Ministry of State Secretariat of the Republic of Indonesia, 2011).

The bill as intended in Article 72 must be separated by the signature of the President within a maximum period of 30 (thirty) days after the bill is jointly approved by the DPR and the President. If the bill as intended in paragraph (1) is not signed by the President within a period of no more than 30 (thirty) days from the date of mutual approval of the bill, then the bill becomes effective and becomes law and promulgated. Regarding the validity of the Bill as intended in paragraph (2), the ratification clause reads as follows: This Law is declared to be valid in accordance with the provisions of Article 20 Paragraph (5) of the 1945 Constitution of the Republic of Indonesia. The ratification clause reads as follows: As regulated in Article 3, the ratification clause must be announced on the last page of the law before the text of the law is published in the State Gazette of the Republic of Indonesia.

5. Invitation Stages

So that everyone knows about it, Legislative Regulations are promulgated by having to place them in: So that everyone knows about them, Legislative Regulations are promulgated by having to place them in: a. State Gazette of the Republic of Indonesia; b. Supplement to the State Gazette of the Republic of Indonesia; c. State Gazette of the Republic of Indonesia; d. Supplement to the State Gazette of the Republic of Indonesia; ei. Regional Gazette; f. Additional Regional Gazette; or g. Regional News. Legislation promulgated in the State Gazette of the Republic of Indonesia, including: a. Laws/Government Regulations in Lieu of Laws; b. Government regulations; c. Presidential decree; and d. Other Legislative Regulations which according to the applicable Legislation must be promulgated in the State Gazette of the Republic of Indonesia (Ministry of State Secretariat of the Republic of Indonesia, 2011). The Supplement to the State Gazette of the Republic of Indonesia contains an explanation of the Legislative Regulations contained in the State Gazette of the Republic of Indonesia. The supplement to the

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The promulgation of Legislative Regulations in the State Gazette of the Republic of Indonesia or the State Gazette of the Republic of Indonesia as intended in Article 82(eighty two) and Article 83(eighty three) is carried out by the minister who carries out government affairs in the field of law. The process of drafting a bill from the DPR is carried out in accordance with Law Number 27 (twenty seven) of 2009 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council. (Law 27 of 2009)

Institutions that assist in the preparation of the DPR Initiative Proposal. There are several institutions that assist in the preparation of legislative regulations before the DPR Initiative Proposal is prepared. The bill concerning procedures for drafting legislative regulations for sessions is prepared by the Legislative Body Assistance Team (Baleg). Apart from that, there are several other institutions that have the functional authority to draft legislative regulations that are proposals for the DPR's initiative. This agency consists of the Service Research Center Data and Information (DI PDII) which conducted research on the contents of the bill, and the drafting team from the DPR Secretariat General who compiled the findings into the bill. According to Law Number 12 of 2011 Chapter 5 Part 1 Development of Legislative Regulations Article 43 Paragraph (1): 1. Bills can be proposed by the DPR, DPD and President. 2. Draft bills from the DPR are submitted in the form of a letter from the DPR leadership to the President and DPR leadership for bills relating to the DPD's responsibilities.

The first stage of the DPR's initiative proposal is that the drafting of the bill can be done in two ways, namely based on the National Legislation Program and secondly the initiative of the Members, Commission, Joint Commission or Baligh. The preparation of the Prolegnas by the DPR is coordinated by the DPR through Balige. In the Prolegnas, a priority scale is determined according to the development of community needs. The initial stage for submitting an initiative proposal bill can be submitted by a Member, Commission, Joint Commission, or Legislative Body. The bill initiative proposal along with an explanation of the information and/or academic text submitted in writing by the Member or Chair of the Commission, the Chair of the Joint Commission, or the Chair of the Legislative Body to the DPR leadership is accompanied by a list of names and signatures of the proposer as well as the name of the faction for harmonizing, strengthening the concept. Second Stage, The next stage, in the Plenary Meeting after the initiative proposal for the Bill is received by the DPR Leadership, the DPR

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Leadership notifies the Members about the inclusion of the initiative proposal for the Bill, then it is distributed to the Members. The entire Plenary Meeting is to decide whether the proposed bill can in principle be accepted as a bill proposed by the DPR or not, after being given the opportunity for the factions to provide their opinions. Decisions at the Plenary Meeting can be in the form of: a. Agreement; b. Agreement with changes; or c. Rejection.

Presidential Initiative Based on the First Amendment to the 1945 Constitution, the President has the right to submit a bill to the DPR. This provision places a dynamic relationship between the two state institutions in the formation of laws. The word entitled in the norms of Article 5 paragraph (1) clearly provides a role that the President may or may not carry out. And in constitutional practice, the President plays an active role in the formation of laws, back to the process and stages of preparing a bill, discussing a bill and at the stage of promulgating a law.

Preparation of the Bill according to Law no. 12(twelve) of 2011 Chapter V Article (43) paragraph (3) states that a bill from the president must be accompanied by an Academic Text of the Bill. In Article 50 of Law no. 12(twelve) of 2012 paragraph (1): Bills from the president are submitted with a presidential letter to the leadership of the DPR and to the leadership of the DPR for bills that fall under the authority of the DPD. The drafting of a bill can be done in two ways, namely: Firstly, preliminary drafting is carried out based on the National Legislation Program. The preparation of a bill based on Prolegnas does not require approval of an initiative permit from the President. And secondly, in certain circumstances, the initiative in drafting a bill outside the National Legislation Program can be carried out after first submitting an application for initiative permission to the President, accompanied by an explanation regarding the regulatory conception of the bill to be submitted. An explanation of the regulatory conception of the Bill includes: a. Urgency and regulatory objectives; b. Goals to be realized; c. The main idea, scope, or object to be regulated; and d. Range and direction of setting.

Submission of the Bill Based on the provisions of Article 25 of Presidential Regulation no. 68 (sixty eight) of 2005 concerning Procedures for Preparing Bills, Draft Government Regulations in Lieu of Laws, Draft Government Regulations, and Draft Presidential Regulations (Perpres 68 of 2005) regarding a Bill that has been approved by the President, will be submitted to the DPR based on the provisions of Article 25 Presidential Decree no. 68 (sixty eight) of 2005, a bill that has been approved by the President will be submitted to the DPR for discussion. Next, the Minister of State Secretary will prepare a Presidential Letter to the DPR Leadership to submit the Bill accompanied by a Government Statement regarding the Bill. The Government Statement was prepared by Prakarsa, which includes, among other things: a). Urgency and

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purpose of delivery; b). Goals to be realized; c). The main idea, scope, or object to be regulated; d). The scope and direction of the regulations describe the overall substance of the bill. The Preisiideiidein letter is addressed to the Deputy Preisiidein, to the coordinating minister, the minister assigned to represent the President/Prakarsa, and the Minister. The Government's final opinion in discussing the Bill in the DPR is conveyed by the Minister of Law and Human Rights who is tasked with representing the President, after first reporting it to the President (Hari Lama & Paransi, 2024).

Article 96 Law No. 12 of 2011 Juncto Law No. 15 of 2019

In the environment of a democratic country, as a quote from the former president of the United States, Abraham Lincoln, who once said "Government of the people, by the people, for the people, must not disappear from the face of this earth", then a country should, in this case, not only guarantee the people's lives with a sense of security but are also required to provide the people with a red carpet to open the door to space for the community to participate in the running of the country. In fact, a good country is a country that is able to provide this way to the people, as for example in article 5 letter g of Law no. 12(twelve) of 2011 which places the principle of openness as the basis for the formation of a law.

Adherents of the theory of "participatory democracy" reject the assumption that citizens are always in a state of conflict with each other, but instead hold the view that the essence of human personality is to complement each other in a shared life (collective yifei) so that people are able to harmonize their personal interests (individual). interests) with common interests (social interests) through acceptable means. According to adherents of participatory democracy theory, the essence of democracy is to ensure that decisions made by the government include citizens who may be affected by those decisions, therefore the meaning of democracy is to provide encouragement to participate in making decisions that affect their life. Thus, this theory not only wants to create a democratic government but also a democratic society.

Even though it has been stipulated in the norms of the Law, provisions regarding community participation in the formation of legal products need to be discussed further. In the provisions of article 96 of Law Number 12(twelve) of 2011, this participation is only generally normalized. Paragraph (1) states that the public has the right to provide verbal and/or written input in the formation of statutory regulations. The provision "in the formation of statutory regulations" means that public input is conveyed from the planning stage to promulgation in accordance with the definition of the formation of statutory regulations themselves. Next, namely at the discussion stage, public input is also limited to level II discussions, because level

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II discussions are the decision-making stage in the plenary meeting. At level II discussions, the community is of course no longer able to provide input on a draft legal product that will be created.

Next, the draft legislative regulations enter the ratification or stipulation stage and then the promulgation stage. At these two stages, it is clearly impossible for the community to participate in accordance with the provisions of paragraph (1) above. Therefore, the provisions of paragraph (1) in Article 96 must be read "The public has the right to provide oral and/or written input in the stages of planning, drafting and discussing statutory regulations".

Furthermore, the provisions of paragraph (2) of Article 96 state that input from the public, both verbally and/or in writing, can be done through public hearings, work visits, outreach, and/or seminars, workshops, and/or discussions. Every item of activity in the provisions of paragraph (2) is included in the government's domain. First, public hearing meeting. Public opinion meetings are activities that only occur if the government wants to implement the agenda. This is also related to the budget for holding public hearings. It is impossible for the public as a party who wants to provide participation in the form of opinion input in the formation of a legal product to have to pay their own costs for this. On the other hand, both central and regional governments have the budget to implement it. In other words, community participation in the formation of laws and regulations still relies on "compassion" from the central and regional governments, both working visits. The effectiveness of the working visit itself is still a matter of long discussion. In fact, if done correctly, work visits can be the most productive activity in getting input from the people visited. The logical reason is very simple, namely that with working visits, people can see the real conditions of the people visited and see and hear directly from individuals or groups who have an interest in the substance of the draft legislation that will be formed. This is also contained in paragraph (3) of the article regarding community participation above.

Article provisions regarding community participation in Article 96 which are the obligations of the government as the creator are in paragraph (4). This paragraph requires that every draft legislation can be easily accessed by the public. As a consequence of the provisions of this paragraph, the government must provide facilities and/or media to disseminate draft legislative regulations.

The public/society is often forgotten in the formation of laws, which results in a law being rejected by the public. For example, in the revision of Law Number 30 (thirty) of 2002 concerning the Corruption Eradication Commission (UU KPK). Due to the lack of public

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participation, the law received massive rejection, even the revised law, which does not yet have a number, has had its constitutionality tested at the Constitutional Court. Formally, Article 96 of Law Number 12(twelve) of 2011 in conjunction with Law 15(fifteen) of 2019 concerning the Formation of Legislative Regulations has provided guarantees for citizens to be involved in the process of drafting legislative regulations in the legislature. Then it is also stated in Article 170 (one hundred and seventy) paragraph (6) of Law Number 17 (seventeen) of 2014 concerning the MPR, DPR, DPD and DPRD, and Article 138 paragraph (8) of DPR Regulation Number 1 (one) of 2014 concerning DPR Rules of Procedure. However, the forum for accommodating and the flow for conveying public participation is not clear, so that public participation in forming laws is only used as a formal requirement without any clear benchmarks. The absence of a clear forum and flow also causes claims of public participation to be only manipulative results (Meindoza eid al., 2020).

In realizing the government's desire to apply the omnibus law concept to revise and/or revoke many laws which are considered to be hampering the economy and investment. No matter how good this concept is, without public participation, the resulting legal product will still be difficult for the public to accept. Moreover, when referring to current developments, the provision of public space or community participation is an absolute demand as an effort to democratize. The public has become increasingly aware of their political rights, so that the making of laws and regulations can no longer be the domain of bureaucrats and parliament domination. Even though community participation is too ideal and is not a guarantee that a law produced will be effective in society, at least the participatory steps taken by the legislative body in every law formation will encourage the public to accept the presence of a law (Putra , 2020).

The existence of Omnibus Law in Indonesia

System The law of a country functions as a foundation for legal politics, which seeks to advance the goals and objectives of the state or society through the advancement of law. The principles of Indonesian society, including the creation of democratic and socially just legislation, must underlie the country's legal framework. The Preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia states that legal development must aim to end an unjust social order and oppression of human rights. Therefore, legal politics must be oriented towards the ideals of a legal state based on the principles of democracy and social justice in one unified Indonesian nation (Mochtar M. H., CONSTITUTIONAL THEORY & LAW: Basic Knowledge and Understanding and Insight into the Implementation of Constitutional Law in Indonesia, 2023).

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Even though omnibus law is an old practice in legal theory, its existence in the Indonesian constitutional system has only emerged recently. The term omnibus law started to become a topic of conversation when Jokowi's new government in its second term was intensively spreading the policy agenda for the next 5 (five) years. And one of the main agendas is regulatory reform with the omnibus law as the main instrument. The implementation of the omnibus law is focused as a solution concept to resolve the problems of legal regulations in Indonesia, especially the large number of regulations (hyper regulated) and overlapping regulations. With the omnibus law, it is hoped that it will be able to produce a domino/cumulative effect. Starting from the unraveling of regulatory problems, more responsive regulations will emerge to make the government move to serve the community and attract foreign investors to invest their capital in Indonesia, so that it will open up employment opportunities which can automatically improve the welfare of the community.

The background to the emergence of the omnibus law began with the government's concern about the difficulty of procedures for investing in Indonesia. These difficulties are reflected in several aspects, namely taxation, licensing, land acquisition, and other aspects related to ease of doing business and investing. Based on data from the 2020 Eisei of Doing Business report issued by the World Bank, Indonesia is ranked 73 (seventy three) out of a total of 190 (one hundred and ninety) countries. Then in 2021 President Jokowi targets Indonesia to rise to the 50th (fiftieth) position in terms of ease of investment. To prove the government's claim that the omnibus law needs to be implemented to overcome existing regulatory problems, it is necessary to first look at the condition of legal regulations in Indonesia. In terms of quantity, there are currently 38,606 (thirty thousand six hundred and six) active laws and regulations in Indonesia.

The number of regulations is certainly not a problem if the regulations have quality substance or material. However, if the existing laws and regulations are not of good quality, then quantity will only be a threat to quality. President Joko Widodo even realized that having so many regulations would actually hamper the rate of economic growth and make it difficult for the government to move. The President in his official personal Facebook account once stated that the problem entangling our country is the high level of existing regulations, starting from regulations at the central level down to the lowest level, namely the regions.

According to Thomas Hobbes in M. Nur Sholikin, states that unnecessary laws are not good laws, but only traps to get money (a large and unnecessary quantity of laws or regulations are not good laws, but only traps to get money). From there it can be seen that there has indeed

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been a change in the situation towards the need rather than the law itself. If the context is talking about the post-reformation situation, it may be true that massive and rigid legal formation and regulation is needed, because at that time we needed legal instruments to balance democratic civilization, but if the context is in modern times like now, perhaps this paradigm is not appropriate , because what we are facing is accelerated economic growth, legal certainty, and accelerated service delivery in Siisii, therefore legal formation must be oriented towards substance, not procedural. Laws or regulations are needed that are small in quantity but maximum in quality (enough rules but implemented strictly) so that they are effective and efficient in their implementation.

Apart from that, the number of low-quality regulations has actually created a situation of increasingly complicated bureaucracy and licensing which will ultimately disrupt the investment climate, development and the running of government programs. For example, a government program that seeks to attract as much investment as possible from abroad is, in practical terms, hampered by a jungle of bureaucracy and difficult licensing requirements. Regulations on permits and fees are a barrier to investment promotion programs, because they create high-cost economic practices.

A similar opinion was also expressed by the Investment Coordinating Board (BKPM) of the Republic of Indonesia as stated in Hilma Meilani, where BKPM revealed that there are 5 (five) investment obstacles in Indonesia, one of which is regulatory issues. So the program to attract foreign investment also cannot run optimally. Even though foreign direct investment is important to cover the current account deficit (CAD) in a country. Based on Bank Indonesia data, it was revealed that Indonesia's current account balance in the third quarter of 2019 recorded a deficit of US$ 8.4 billion or the equivalent of 3.04% of Gross Domestic Product (GDP). This value actually continues to increase, where in the third quarter of 2019 the deficit was 2.7% of GDP, then entering the 2020 period the CAD deficit only became 1.4% in the second quarter of 2020 and 1.5% in the third quarter of 2020. However, this deficit still needs to be an important note for the government.

Apart from that, investment in Indonesia can also have a positive impact in reducing the unemployment rate in Indonesia. With incoming investment, it will automatically open the doors of businesses that require workers. Based on data from the Central Statistics Agency (BPS), as of August 2020, the number of open unemployed in Indonesia since August 2019 has increased by 1.84% (2.67 million people) to 7.07% (9.77 million people). This figure is

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expected to continue to increase considering that the Com ID-19 pandemic is still not over and the number of Indonesian people who do not or will not work in the future will also be high.

From this it can be concluded that the government's policy to implement the omnibus law can actually be said to be correct. This is based on the nature of the omnibus law, which is a legal product that covers various major issues at once, the substance of which is to revise and/or revoke other regulations into new, comprehensive regulations, by looking at the problems borne by Indonesia's reagulation and taking into account the government's desire to achieve this. To carry out rapid and precise regulatory reforms to improve government performance, the omnibus law is a good concept to implement. Please note that the implementation of this omnibus law must first be adapted to the Indonesian legal system and carried out carefully by maximizing the role of existing legal experts. Apart from that, choosing the omnibus law as a regulatory reform policy is the right political choice because it is in line with the soul and characteristics of the Indonesian nation, as well as the basic philosophical ideology of Pancasila which is a pure paradigm of Indonesian culture. The election of this omnibus law is a political choice in the activity of making concrete legal norms (basic policy) without having to ignore Indonesia's position and existence in the midst of international relations. Thus, the law that is born is a law that is committed nationally, thinks globally and acts locally.

Making legal policies (basic policies) that combine elements originating from foreign law with laws originating from the values of the original paradigm of Indonesian culture and society must be carried out carefully and with full calculation, so that the laws that will be enforced in this environment do not uprooted from the ideological-philosophical roots of the Indonesian state and nation.

The implementation of this omnibus law can also accelerate changes in the economic ecosystem whose spirit is in line with the existing order in Law no. 12(twelve) of 2011 Juncto Law no. 15(fifteen) of 2019 concerning the formation of statutory regulations as amended by Law no. 15 (fifteen) of 2019 concerning amendments to Law no. 12(twelve) of 2011 concerning the formation of statutory regulations. Even though the omnibus law method has not been regulated in this law, this does not mean that it cannot be carried out while it is being drafted using the provisions in the formation of statutory regulations in Indonesia.

Initial experiments on omnibus law in Indonesia. The Ciiptakeir Law which was passed by the DPR RIi together with the government on 2 (two) November 2020 was an initial experiment in implementing and drafting the omnibus law concept in Indonesia. The Ciiptakeir Law is one of two omnibus law bills included in the 2020 priority National Legislation Program,

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where there is still another omnibus law bill that has not been passed, namely the bill on tax provisions to strengthen the economy. The two omnibus law bills are bills that originated from the government's initiation as the holder of executive power. According to information from Airlangga Hartarto as Coordinating Minister for Economic Affairs, in the Liquid Creation Law there are 11 (eleven) discussion clusters. These clusters are: 1). Simplification of Licensing; 2). Capital Investment Requirements; 3). Employment; 4). Facilitation, empowerment and protection of Micro, Small and Medium Enterprises (MSMEs); 5). Ease of Doing Business; 6). Research and innovation; 7). Government Administration; 8). Imposition of Sanctions; 9). Land Acquisition; 10). Government investments and projects and; 11). Eikonomii area, but the Ciiptakeir Law, which in its final draft when it was promulgated consisted of 15 (fifteen) chapters and 186 (one hundred and eighty six) articles, actually received a lot of conflict in its implementation. The practice of drafting the omnibus law is considered far from the efficiency of the omnibus law in Legal Science and from the government's original ideal intention to implement the omnibus law iii. In its substance, the Ciiptakeir Law seems to put forward mere economic logic so that investors can freely invest their capital in Indonesia and on the other hand ignores the principles of sustainable development and workers' rights. If the aim of the Ciiptakeir Omnibus Law is in accordance with its initial provisions, namely to resolve regulatory issues and make it easier for investment to enter Indonesia with the ultimate aim of improving people's welfare and is carried out logically and in accordance with existing regulatory mechanisms, then this can still be justified. For example, simplifying complicated licensing procedures, improving the quality of the bureaucratic system and ease of doing business.

Based on Law no. 12(twelve) of 2011 Juncto Law no. 15 (fifteen) of 2019 concerning the Formation of statutory regulations. Procedurally due process of law or procedures for forming statutory regulations, the Ciiptakeir Law can be considered formally flawed. According to constitutional law expert, Agus Riewanto said that the drafting of this law was not carried out in accordance with the norm of drafting technocratic regulations, so it had the potential to be formally flawed. Regarding the rules for drafting laws and regulations in Indonesia, they are actually regulated rigidly in Law no. 12(twelve) of 2011 in conjunction with Law no. 15(fifteen) of 2019 concerning the Formation of Legislative Regulations. Based on Article 1 Paragraph (1) of the Law on the Establishment of Legislative Regulations, it is emphasized that the process of drafting statutory regulations consists of the stages of planning, drafting, discussing, ratifying and promulgating. In the case of drafting the Ciiptakeir Law, it was made not to follow

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technocratic drafting rules because the planning stage was very closed without involving the widest possible public participation, and instead accommodated more videos from businessmen and political elites. In fact, the planning and preparation stage is an essential process, because in reality it is at this planning and preparation stage that, politically speaking, the direction of the political goals of a legislative regulation will be determined.

Regarding community participation in the process of making statutory regulations, this has actually been confirmed and guaranteed by the Law, namely in Chapter XIi Article 96 concerning community participation, in full the article reads:

(1) The public has the right to provide oral and/or written input in the formation of statutory regulations. (2) Oral and/or written input as intended in Paragraph (1) can be made via;

a. Audience public
b. Work visit
c. Socialization and/or
d. Seminar, Workshops, and/or discussions.

(3) the public as intended in Paragraph (1) is an individual or group of people who have an interest in the substance of the draft law regulations. (4) to facilitate the public in providing oral and/or written input as referred to in Paragraph (1), every draft legal regulation must be easily accessible to the public.

In the process of forming the Ciiptakeir Law, it is still far from the mandate of Article 96 above, this can be seen from the beginning to the end of the making process which is considered not participatory. In the initial process of drafting the bill prepared by the government, it was apparent that there was a problem of uncertainty regarding access to Academic Manuscripts (NA) and access to updates to the bill. Article 96 paragraph (4) which mandates that every bill must be easily accessible to the public, however in practice there is uncertainty because many institutions publish regulations in each institution through the Legal Documentation and Information Network (JDIH). This results in the public having to work extra hard to find the latest version of the draft regulations, even though currently there are hundreds of JDIH managed by ministries or government agencies, not all of which are always updated on time.

When the Ciiptakeir Law has reached the legislative level, the publication of the NA and the Bill is sometimes not updated. Regarding the transparency of the discussion process, there are also irregularities, even though there are parliamentary media channels that broadcast the discussion process, their voice is limited in that not all discussion meetings are broadcast on Parliamentary Television. Then regarding the final draft of the bill, even when the draft had

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been submitted by the DPR to the president for separation, it was still not accessible to the public, of course this whole process had deviated from article 96 paragraph (4) first of the Law concerning the formation of statutory regulations.

Another fundamental thing that is considered contrary to Article 96 is public participation at the level of substantive discussion of the law. The government, as the initiator, wants the Ciiptakeir Law to be implemented within 100 (one hundred) days, at least to be able to accommodate the aspirations of the wider community, especially related parties. Not to mention that the Omnibus Law covers more than one substance and material (multi & subject divisions) which, if we refer to the experience of other countries, this triggers the emergence of three weaknesses, namely limited space for the DPR to discuss it comprehensively, prone to illegal riders smuggling in articles. articles, and limited space for public participation. And it turns out that it is actually true. According to Said Iqbal, president of the Confederation of Indonesian Trade Unions (KSPI), workers were not fully involved in the process of forming the Ciiptakeir Law. In fact, in the process of planning and drafting statutory regulations, the widest possible participation of the public from various backgrounds of interest is actually needed, especially community groups who will be the main legal subjects in the regulations. In terms of the Ciiptakeir Law, the parties whose interests should be heard and accommodated are workers and other interest leaders. According to Henry D. Hutagaol, the public as the party affected by the implementation of this law is not required to participate in discussing the entire academic text or law. However, at least the public should be able to examine academic texts and bills that impact them so they can provide adequate input. Instead of providing input, access to academic texts and bills until the time the Ciiptakeir Law was passed by the DPR and delegated to the president had not been provided in a transparent manner. Strangely, during the gap between the ratification of a bill and becoming a law, it is usually used to make changes to grammar, typing errors and numbering, but in this period the Ciiptakeir Law actually also makes substantive changes and can eliminate articles. From the original 905 (nine hundred and five) pages it then changed to 1,305 (one thousand three hundred and five), a few hours later it was reduced again to 812 (eight hundred and twelve), and finally when it was promulgated it became 1,187 (one thousand one hundred and eighty five) pages. , if seen from the perspective of legislative intent, the government and the DPR are indeed seen to be running a certain business.

From the drafting of the Ciiptakeir Law, it can be seen that it is very different from the nature of the omnibus law and the government's initial intention to implement this conception in Indonesia. In particular, if the Ciiptakeir Law is designed in accordance with what is idealized

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and the drafting process is in accordance with what has been mandated by the Law on the formation of statutory regulations, where public participation must be included to the maximum, then the Ciiptakeir Law will not encounter many obstacles and will instead be supported by society as a progressive reform process (Sitompul, 2023).

4. CONCLUSION

Process preparation of the beryllium Job Creation Law/not in accordance with the provisions of Law no. 12 of 2011 concerning the Formation of Legislative Regulations Juncto Law no. 15 of 2019 concerning Amendments to Legislative Regulations, due to formal defects (not yet/not fulfilled public participation and transparency).

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