



# The urgency of the Second Amendment to Law Number 12 of 2011 concerning the Formation of Regulations Legislation

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## Abstract

In order to create a legal objective to protect and provide the people with fair treatment, the law should protect every citizen of the nation so that their rights are guaranteed in state regulations. The regulation is also used as guidelines in the further preparation of legislation. With the existence of standard procedure, each drafting of regulations such as defining, standardization, and choosing a method that binds all institutions authorized to form laws and regulations so that the regulations in question can meet the needs of the community for good laws and regulations. The 1945 Constitution of the Republic of Indonesia itself has mandated Law Number 12 of 2011 concerning the Establishment of Legislation to be a guide in forming legislation, one of the proposed changes from the Second Draft Amendment to Law Number 12 of 2011 concerning the Establishment of Legislation is to add the omnibus law method. The legislation technique with the omnibus law model was chosen to be used by law policymakers in various countries for a number of reasons. One of the main reasons is that with this technique, it will be easy for legislators to reach an agreement or approval of new legislation drafts and avoid political impasse/interest.

*Keywords:* Urgency, Establishment of Regulations, Legislation

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## 1. Introduction

Legislation is a part or sub-system of the legal system. Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states "Indonesia is a state of law". The concept of the rule of law used by Indonesia is more directed to the Continental European legal tradition (civil law) which prioritizes written law in the form of legislation as the basis for every administration of government activities (Nonet & Selznick, 2011). The conception of the rule of law desired by the founding fathers since the beginning of the struggle for independence is clearly seen by the inclusion of basic ideas in the preamble to the 1945 constitution, namely independence, justice, humanity, and the statement that the state government is obliged to protect the entire nation and the entire homeland of Indonesia and to promote the general welfare (Nurkuntari & Sunardi, 2021). This provides direction and hopes that the law will protect all people, all individuals from unfair treatment and arbitrary actions. The law will protect every citizen of the nation so that their rights as citizens and their human rights are guaranteed.

In order to create laws that can protect the people, fair treatment, laws that protect every citizen of the nation so that their rights are guaranteed of course, there must be regulations that are used as guidelines in the preparation of laws and regulations, as the main rules that apply to drafting regulations from the initial process of their formation until the end (Seo, 2013). These regulations apply to the public. So that with the existence of standard rules, each drafting of regulations can be carried out in a definite, standard way and method that binds all institutions authorized to form laws and regulations, thus the said regulations can meet the needs of the community for good laws and regulations. The 1945 Constitution of the Republic of Indonesia has mandated Law Number 12 of 2011 concerning the Establishment of Legislation to serve as guidelines in forming laws and regulations. In civil law countries, the formal requirements for the legality of the formation of laws and regulations must be based on Law Number 12 of 2011 concerning the Establishment of Legislation.

## 2. Literature Review

The background of the preparation of academic texts and the draft law regarding the second amendment to Law Number 12 of 2011 as stated by the Head of the DPR's expertise agency, the first is in order to follow up and perfect

what has been mandated by Article 22 of the law (Nurkuntari & Sunardi, 2021). The constitution of the Republic of Indonesia, basically regulates the procedure for the law to be regulated by law. The second is to follow up on the decision of Constitutional Court number 91 of 2020. The various content materials that are the focus of the amendment to this law are the first, amendments to Article 1 of the Bill by including the definition of the omnibus law. Namely, "The Omnibus Method is a method of drafting laws and regulations by adding new content material, changing content material that has relevance and/or legal requirements regulated in various laws and regulations, and/or revoking laws and regulations of different types and hierarchies. the same, by combining them into one statutory regulation to achieve certain goals" (Siagian, 2021).

Second, changes to the explanation of Article 5 letter g of the Bill. Third, amending Article 9 of the Bill by adding four new paragraphs that regulate the handling of judicial review of the Law in the Constitutional Court by the DPR and the government. As well as the handling of testing of statutory regulations under the Law at the Supreme Court by the government through the ministries/institutions that handle government affairs in the field of establishing laws and regulations. Fourth, amending chapter IV of the bill by adding a new section with the title "planning legislation using the omnibus law method". Fifth, the addition of Article 42A of the Bill which regulates the use of the omnibus law method in drafting laws and regulations that must be stipulated in the planning document.

Sixth, amendments to Article 58 of the Bill that regulates harmonization, unanimity, and consolidation of the conception of draft provincial regulations originating from the provincial DPRD and from the governor; regency/city regional regulations originating from regency/municipal DPRD; as well as the regulations of the head of the province and the regulation of the head of the regency/municipality are coordinated by the minister or the head of the institution that carries out government affairs in the field of the formation of statutory regulations. Seventh, the amendment to Article 64 of the Bill by adding a new paragraph, namely paragraph (1a) which regulates the preparation of draft laws and regulations can use the omnibus law method. Eighth, the amendment to Article 72 by adding new paragraphs namely paragraphs (1a) and paragraph (1b) regulate the mechanism for technical improvement of draft laws and regulations that have been agreed upon by DPR and the president.

Ninth, the amendment to Article 73 by adding a new paragraph, namely paragraph (1), regulates the technical improvement mechanism by the ministry of state see the cretariat in the event that there are still typos. Especially after the bill that has been jointly appcentrapp centre used by the DPR to the president for ratification and promulgation. Tenth, amending Article 95A by adding new paragraphs, namely paragraphs (3a) and paragraph (3b) related to the regulation of monitoring and reviewing statutory regulations carried out by the DPD and the government. Eleventh, amendments to Article 96 of the Bill that regulates public participation in the formation of laws and regulations.

Twelfth, the addition of Article 97A, Article 97B, and Article 97C. The three articles regulate laws and regulations that use the omnibus law method, which can only be changed by changing the legislation in question. Then the formation of legislation can be done electronically. Furthermore, harmonization, consolidation and consolidation of conceptions as well as evaluation of all types and hierarchies of draft laws and regulations under the Law in the government environment. Thirteenth, amendments to Article 99 of the Bill which replaced the word "researcher" with "legislative analyst". Fourteenth, amendment to the attachment I of the bill that regulates academic texts. Fifteenth, attachment II of the bill which regulates the technical preparation of legislation.

### **3. Materials and Methods**

#### **3.1. Materials**

This writing study is the result of research using normative juridical methods, namely by reviewing or analyzing secondary data in the form of primary, secondary, and tertiary legal materials by understanding law as a set of regulations or positive norms in the legal system that regulates human life. So that this research is understood as library research, namely research on secondary data.

The approach method used in this research is normative juridical using a case approach which is carried out by examining cases related to the issues at hand. This study uses secondary data sources as supporting data to examine and explore research so that the results can be justified scientifically. The sources of secondary data are as follows: Primary legal materials, namely legal materials that have binding power secondary legal materials, namely legal materials that explain primary legal materials, which analyze and understand primary legal materials consisting of books, scientific papers and works of scholars, research results, and scientific journals. Tertiary legal materials, namely legal materials that provide instructions or explanations of primary and secondary legal materials, such as dictionaries, encyclopedias, and cumulative indexes of journals containing news or regulatory issues.

#### **3.2. Methods**

The data collection method is the procedure or steps of researchers to obtain research data. Researchers must use data collection techniques and procedures that are in accordance with the type of data needed, whether the data is qualitative or quantitative. The data collection used in this research is a literature study. Collecting data for this research is a study of documents sourced from these secondary data. The secondary data that was traced included primary legal materials, secondary legal materials, and tertiary legal materials.

The data analysis method required in this study is a qualitative method. Data analysis was carried out qualitatively, comprehensively, and completely. Data analysis means describing quality data in regular sentences, logical sequences, not overlapping, and effective, thus facilitating data interpretation and understanding of the results of the analysis. Comprehensive means in-depth data analysis from various aspects according to the scope of research. Complete means that no part is forgotten, everything has been included in the analysis.

## 4. Results and Discussion

### **The Purpose of the Drafting of the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Legislation**

Law is tasked with creating legal certainty because it aims to create order in society. This is the first objective of drafting the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Legislation. Legal certainty is an inseparable feature of law, especially for written legal norms. According to Fence M. Wantu, "law without the value of legal certainty will lose its meaning because it can no longer be used as a code of conduct for everyone". Legal certainty is defined as the clarity of norms so that they can be used as guidelines for people who are subject to this regulation. The definition of certainty can be interpreted that there is clarity and firmness towards the enactment of the law in society. This is to avoid misinterpretation. According to Van Apeldoorn, "legal certainty can also mean things that can be determined by law in concrete matters". Legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented. Legal certainty is a justifiable protection against arbitrary actions which means that someone will be able to get something that is expected in certain circumstances.

Legal certainty refers to the application of a clear, permanent and consistent law in which its implementation cannot be influenced by subjective circumstances. Quoting the opinion of Lawrence M. Wriedman, a Professor at Stanford University, he is of the opinion that to realize "legal certainty" it must at least be supported by the following elements, namely: legal substance, legal apparatus, and legal culture. A regulation is made and promulgated with certainty because it regulates clearly and logically. It is clear in the sense that it does not cause doubt (multi-interpretation) and is logical so that it becomes a norm system with other norms that do not conflict or cause norm conflicts. Norm conflicts arising from uncertainty of rules can take the form of norm contestation, norm reduction or norm distortion.

One of the proposed changes from the Second Draft Amendment to Law Number 12 of 2011 concerning the Formation of Legislation is to add the omnibus law method. There are a number of reasons for choosing the use of legislation using the omnibus law model by legislators in various countries. One of the reasons is that with this technique, it will be easy for legislators to reach agreement or approval of new legislation drafts and avoid political deadlock because the content is very complex and contains many substances so that differences in interests can be accommodated with each member of parliament being able to include the substance he wants. As Louis Massicotte said, "omnibus bills, when presented in legislatures where members are free to vote as they wish, may include the outcome of complex negotiations between self-interested legislators.

The word omnibus, when associated with the legal system, is indeed closer to the practice in America and England which uses the tradition of the common law system. Meanwhile, Indonesia inherited the legal system used by the Dutch, namely the civil law system. In the civil law legal system, the concept of omnibus law has never been heard of because in the civil law legal system it prioritizes the codification of regulations to overcome overlapping and partial regulations. Omnibus law is a method for making a regulation or law consisting of many subjects or basic materials for a specific purpose to deviate from a regulatory norm. Omnibus differs from most draft regulations in terms of the amount of content covered, the number of articles regulated (size), and finally in terms of complexity in a law.

Maria Farida Indrati, Professor of Legislation at the Faculty of Law, University of Indonesia conveyed a critical note in the formation of the Omnibus law. First, every statutory regulation must be formed based on the principles of the formation of appropriate laws and regulations (*beginselen van behoorlijke regelgeving*) and also on philosophical, juridical, and sociological foundations which are of course different for each statutory regulation. Second, regarding the existence of various laws whose articles were revoked (transferred) and placed in the Omnibus law, because each law, apart from regulating different content, also regulates different subjects (addresses).

Furthermore, Louis Massicotte explained 2 advantages or benefits obtained from the adoption of the omnibus law technique in the formation of laws, namely, first, the omnibus law technique saves time and shortens the legislative process because there is no need to make changes to many laws to be amended, but simply through one plan.

## 5. Conclusion

The preparation of academic texts and draft laws concerning the second amendment to Law Number 12 of 2011 concerning the Establishment of Legislation is in order to follow up and perfect what has been mandated by Article 22 A of the Constitution of the Republic of Indonesia which basically regulations regarding the procedure for the law are regulated by law. The second is to follow up on the decision of the Constitutional Court number 91 of 2020 which basically mandates to further regulate two things, namely relating to the adoption of the omnibus method and in order to regulate the improvement of the quality of public

participation. With the omnibus law system, the making of laws and regulations can be carried out in a short time and cost and the creation of integrated legislation.

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