

# ARRANGING REGULATORY POLICIES TO SUPPORT ECONOMIC GROWTH, INVESTMENT, INDUSTRIAL REVOLUTION 4.0, SOCIETY 5.0, AND THE GLOBAL ECONOMY WITH OMNIBUS LAW

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## Abstract

Arranging regulatory policies to support economic growth, investment, the Industrial Revolution 4.0, Society 5.0, and the global economy using the omnibus law turned out to be problematic. Among the people, there are pros and cons because it is not following the Indonesian legal system, which follows the "civil law" tradition. It is necessary to research the pros and cons of this research. The purpose of this research is to analyze the effectiveness of the omnibus law policy in managing regulations to support economic growth, investment, Industrial Revolution 4.0, Society 5.0, and the global economy. The research method used is normative legal research with a literature study approach. This study concludes that implementing the omnibus law policy in managing regulations to support economic growth, investment, the Industrial Revolution 4.0, Society 5.0, and the global economy is very effective and efficient because the formation is cheaper, faster, and avoids various political conflicts. Law policies formed using the omnibus law method are part of the national legal system. Therefore, the omnibus law policy in managing regulations must refer to the provisions and principles regulated in Law Number 12 of 2011 on the Establishment of Legislation as amended by Law Number 15 of 2019 and Law Number 13 of 2022 and its implementing regulations, Presidential Regulation Number 87 of 2014 and Number 76 of 2021, as well as general and universal principles, the principles and concepts of customary law or, in some instances, the principles and concepts of Islamic law. Everything is elaborated in a direction based on the omnibus law method so that the law developed based on the omnibus law method can create happiness for the Indonesian people, as mandated in the fourth paragraph of the opening of the 1945 Constitution.

**Keywords:** *Omnibus Law; Regulation; Policy; Law*

## 1. INTRODUCTION

In his inauguration speech as President of the Republic of Indonesia for 2019–2024 period on October 20, 2019 before the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat/MPR*), Joko Widodo stated, among other things, the ideals of Indonesia in 2045, a century after Indonesia's independence, namely: "getting out of the medium income class trap". Achieving these goals is necessary to support a climate of ease of doing business and investing with harmonious and straightforward rules/regulations. Therefore, various legal products that have been felt to hamper economic development and investment flows must be immediately renewed.<sup>1</sup> Jokowi conveyed the idea based on his

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<sup>1</sup> Marojahan JS Panjaitan, *Membangun Badan Peradilan Yang Beradab, Berbudaya, dan Berkeadilan Menurut Teori, Praktik, dan UUD 1945* (Bandung: Pustaka Reka Cipta, 2018).

experience running the wheels of government in the 2014–2019 period, where there were too many laws and regulations governing the same thing. Some were overlapping, not harmonious, and convoluted, thus hampering growth economy and investment. Through data obtained from the Ministry of Law and Human Rights, the total number of laws and regulations until 2019 reached 42,733. The details can be seen in the table below:

**Table 1. Number of Legislations**

No.	Types of Legislation	Amount
1.	Law ( <i>Undang-Undang</i> )	1687
2.	Government Regulation in Lieu of Law ( <i>Peraturan Pemerintah Pengganti Undang-Undang</i> )	180
3.	Government Regulation ( <i>Peraturan Pemerintah</i> )	4554
4.	Presidential Regulation ( <i>Peraturan Presiden</i> )	2006
5.	Ministerial Regulation ( <i>Peraturan Menteri</i> )	14620
6.	Institutional Regulation ( <i>Peraturan Lembaga</i> )	3721
7.	Local regulation ( <i>Peraturan Daerah</i> )	15.965
Total		42.733

Examining the laws and regulations as mentioned above, there are several laws and regulations governing the same thing, there are overlapping rules, both in the same hierarchy and with the implementing regulations, some are contradictory and not in harmony with each other. So, its implementation becomes problematic. For example, investing in the natural resources sector is regulated by several regulations, namely Law Number 5 of 1960 on Basic Agrarian Regulations, Law Number 41 of 1999 on Forestry, Law Number 32 of 2009 on Environmental Protection and Management, Law Number 23 of 2014 on Regional Government. Additionally there are Government Regulations, Presidential Regulations, Ministerial Regulations, and Regional Regulations. This causes the management of natural resources to be hampered.

Likewise, the laws used to prevent and eradicate corruption are also regulated by several laws, including Law Number 1 of 2004 on the State Treasury, Law Number 15 of 2004 on Auditing and Management of State Financial Responsibilities, Law Number 30 of 2014 on Government Administration, and Law Number 23 of 2014 on Regional Government, and

several implementing regulations. Several institutions handle it, namely the Police, the Prosecutor's Office, the Corruption Eradication Commission, the Supreme Audit Agency, and the Government's Internal Supervisory Apparatus. The courts that handle it are the Corruption Court and the State Administrative Court.

In addition to facing the problems stated above, regulatory policy structuring is also needed in the face of the Industrial Revolution 4.0, Society 5.0, and the fast-moving global economy without boundaries. This is because this development has extraordinary potential to overhaul the conventional industry towards a digital enterprise and change the management of permits and aspects of human life. This opinion follows what Muhammad Yahya said that the Industrial Revolution 4.0 as a phase of the technological revolution changes the way human activities are carried out in scale, scope, complexity, and transformation from previous life experiences.<sup>2</sup> Astrid Savitri also said that Industry 4.0 could unify the digital and physical worlds fundamentally and offer new opportunities to collect and use information. This can increase efficiency and encourage innovation on a large scale.<sup>3</sup>

The emergence of Society 5.0, namely the concept of a human-centered society by laying the basis of digital technology. This will provide new opportunities for humans to enjoy a meaningful life. According to Halifa Haqqi and Hasna Wijayanti, Society 5.0 is an ideal concept capable of bringing closeness between humans to respect each other.<sup>4</sup> Each individual is expected to lead their own active and fun life. Achmad Fajar Hendarman and Aria Bayu Pengstu also said that Society 5.0 is community information built on Society 4.0, aiming to make poor people prosperous. Based on these two opinions, technology is directed to make humans happy.<sup>5</sup>

It turns out, as stated by Ngakan Timur Antara, that technological development will, of course, continually progress and even accelerate exponentially.<sup>6</sup> For this reason, each country is prepared to design strategies in dealing with any changes caused by these technological developments so as not to be left behind. Likewise, the emergence of a global economy supported by digital technology moves quickly without limits, and not a single country in the world can resist it must also be faced. Indeed, as stated by Romli Atmasasmita, the view of globalization as a world system in all fields is unrealistic and prone to social and cultural conflicts; it can even affect law formation and law enforcement.<sup>7</sup> What Romli Atmasasmita said is true, but we cannot sit idly by and remain silent and must move forward. If not, Indonesia could be eroded and left behind and trapped in the trap of developing

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<sup>2</sup> H. Muhammad Yahya, "Era Industri 4.0: Tantangan dan Peluang Perkembangan Pendidikan Kejuruan Indonesia," paper presented at Sidang Terbuka Luar Biasa Senat Universitas Negeri Makassar, Makassar, March 2018, <https://eprints.unm.ac.id/6456/>.

<sup>3</sup> Astrid Savitri, *Revolusi Industri 4.0 Mengubah Tantangan Menjadi Peluang di Era Disrupsi 4.0* (Yogyakarta: Genesis, 2019).

<sup>4</sup> Halifa Haqqi and Hasna Wijayati, *Revolusi Industri 4.0 di Tengah Society 5.0: Sebuah Integrasi Ruang, Terobosan Teknologi, dan Transformasi Kehidupan di Era Disruptif* (Yogyakarta: Quadrant, 2019).

<sup>5</sup> Achmad Fajar Hendarman and Aria Bayu Pangestu, *Manajemen Modal Insani Kontemporer* (Bandung: ITB Press, 2019).

<sup>6</sup> Ngakan Timur Antara, *Making Indonesia 4.0: Transformasi Industri Manufaktur Nasional Ke Industri 4.0* (Yogyakarta: Andi Yogyakarta, 2019).

<sup>7</sup> Romli Atmasasmita, *Hukum Kejahatan Bisnis: Teori dan Praktik di Era Globalisasi* (Jakarta: Kencana, 2016).

countries. As a result, job opportunities will transfer to other more competitive countries and the unemployment rate will be high.

President Jokowi introduced the Omnibus law method of updating various existing laws and regulations to respond to technological advances and the fast-moving global economy without limits. This was said because, as stated above, economic growth and investment flows were hampered by too many regulations governing the same thing, not being harmonious, and overlapping. In overcoming this, Jokowi said, among other things, that: "... all forms of regulatory obstacles must be simplified, we must cut them, we must trim them... Each of these laws will become an omnibus law ...". Furthermore, Jokowi launched a regulatory restructuring program, which will be carried out over the next 5 (five) years.

For this regulatory arrangement to be realized, Jokowi also asked for the support of the House of Representatives of the Republic of Indonesia (*Dewan Perwakilan Rakyat/DPR*) so that the discussion of law draft using the omnibus law method could be carried out quickly, namely 100 days at most. To Jokowi's proposal, the *DPR* responded positively and promised to help the government discuss the bill using the omnibus law method in 100 days according to the president's request.

The public's response to Jokowi's idea of using the omnibus law to organize regulations has pros and cons. This can be seen, for example, when the Job Creation Bill, which amended 79 laws at once, was submitted by the government to *DPR* but was rejected by the Indonesian Workers Union (*Serikat Pekerja Seluruh Indonesia/SPSI*), the Coalition of Action to Rescue Indonesia (*Koalisi Aksi Menyelamatkan Indonesia/KAMI*), the Democratic Party (*Partai Demokrat*), the Prosperous Justice Party (*Partai Keadilan Sejahtera*), and other elements of society. This refusal is their right deserving of respect. Moreover, the omnibus law method in renewing laws in Indonesia is new and not yet understood by many.

Looking at the history of using the omnibus law method to regulate regulations in several countries globally, this method has been widely practiced. Examples of countries that have used the omnibus law method in managing their rules and are considered successful, among others, are Australia, the United States, Ireland, and Singapore. Based on several world countries' experiences, the Indonesian government's steps to organize regulations to support economic growth and investment, the Industrial Revolution 4.0, Society 5.0, and the global economy using the omnibus law method should be supported. This is because, for example, updating the 79 laws one by one as was done in forming the Job Creation Law, of course, will take a long time, cost a lot, and cause a conflict of political interest, while the Law is urgently needed. However, the Omnibus Law's use in updating the law must still refer to the procedures and principles in the formation of rules and regulations as regulated in Law Number 12 of 2011 on the Establishment of Legislation as amended by Law Number 15 of 2019 and Law Number 13 of 2022 and its implementing regulations, Presidential Regulation Number 87 of 2014 and Number 76 of 2021. In addition, it is necessary to think about how the position of the law is formed based on the omnibus law method in the national legal system, whether its function is equivalent to the law as referred to in Article 7 paragraph (1) of Law Number 12 of 2011.

Meanwhile, the position of the replaced law must also be considered, whether it is still valid or not after the issuance of the new law. This is a concern, considering that the law

formed using the omnibus law method will revoke and update several legal norms from several directions, which will then be incorporated into one law. Based on this, the purpose of this study is to analyze the effectiveness of the Omnibus Law policy in managing regulations to support economic growth, investment, the Industrial Revolution 4.0, Society 5.0, and the global economy.

## 2. RESEARCH METHODS

This research is descriptive, namely by providing an overview or description of the problems in this research. Furthermore, the research method is adjusted to formulate the problem that is the focus of the study. On that basis, this type of research is normative legal research. The data studied are secondary in the form of primary legal materials secondary and tertiary legal materials. The material is then processed and analyzed qualitatively in the form of words and not in the form of numbers. This research will focus on the Job Creation Law made by way omnibus law method.

## 3. ANALYSIS AND DISCUSSION

### 3.1. The Effectiveness of the Omnibus Law Policy in Arranging Regulations to Support the Growth of the Investment Economy, the Industrial Revolution 4.0, Society 5.0, and the Global Economy

The word Omnibus Law comes from Latin, which means one for all. In addition to the term Omnibus law, there are other terms: the Omnibus Bill and the Omnibus Rule. Based on definitions provided by Black's Law Dictionary<sup>8</sup> and Duhaime's Law<sup>9</sup> Dictionary, the Omnibus Law or the Omnibus Bill is a method of updating laws combined into a single bill that contains more than one problem. In that case, it is submitted to the legislature to be passed into law. Based on this understanding, the law formed based on the Omnibus Law method is a comprehensive and is not bound to a single regulatory regime but includes several issues regulated in one form of code.

This model of law reform utilizing the Omnibus Law was adopted because it is considered more effective and efficient. After all, it costs less, takes less time, is more efficient and avoids clashes of political constellations. This Omnibus Law is primarily intended to change various rules that govern the same thing, overlap, and are not in harmony with one another. Mirza Satria Buana said that in the context of history and common law legal tradition, Omnibus Law could be interpreted as an effort to reform legislation to change, reject, and create new legal norms that aim to negate previous legal standards, some laws only through one law.<sup>10</sup> Firman Freaddy Busroh also said that with the omnibus law concept, regulations that are considered irrelevant or

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<sup>8</sup> Henry Campbell Black, *Black's Law Dictionary*, Abridged 6th ed. (St. Paul, MN: West Publishing Co., 1991).

<sup>9</sup> *Duhaime's Law Dictionary*, "Omnibus Bill Definition," accessed January 21, 2020, <https://www.duhaime.org/LegalDictionary/O/Omnibus-Bill.aspx>.

<sup>10</sup> Mirza Satria Buana, "Menakar Konsep Omnibus Law dan Consolidation Law untuk Harmonisasi Peraturan Perundang-Undangan Indonesia: Pendekatan Perbandingan Hukum Tata Negara," paper presented at Prosiding Nasional Hukum Tata Negara ke-4 Penataan Regulasi di Indonesia, Universitas Jember, November 2017.

problematic could be resolved quickly.<sup>11</sup> Likewise, Gayus Lumbuun stated that the idea of omnibus law is a government policy choice to consolidate laws and regulations, mainly so that laws and regulations are harmonious both vertically and horizontally.<sup>12</sup> Basuki Rekso Wibowo also said that omnibus law is a method or concept of making regulations that combine several rules with different regulatory substances into one crucial principle that functions as an "umbrella act."<sup>13</sup>

Based on opinions above, it can be stated that the law formed using the omnibus law method is a law that regulates several issues which are combined into one direction. For example, it can be seen in the formation of Law Number 11 of 2020 concerning Job Creation, which consists of 11 clusters and changes the previous 79 to 76 laws, which are combined into one direction. Changing the 76 laws one by one might take 30 years, the costs are substantial, and they collide with political interests. However, the formation of Law Number 11 of 2020 took less than a year and the cost was low. It can be fast, effective, and efficient with light use of funds.

Indeed, it cannot be denied that omnibus law also has disadvantages apart from having advantages. The advantages of omnibus law are: 1) Legislative performance can be more productive because it can update several laws into one law at once; 2) It can be made faster with low cost and avoids conflicts of political interest; 3) Remembering it can be more accessible because it is regulated in one law; 4) Socialization can be more accessible so that people understand it quickly; 5) The application is more accessible because the norms are made straightforward and uncomplicated; 6) Can prevent corrupt actions from government officials, as well as bribes from the public and business people; 7) More responsive to advances in science and technology, and able to face a fast-moving global economy without boundaries.

The drawbacks include: 1) It is considered too pragmatic because the production is fast, so it is considered not transparent, accountable, and participatory; 2) The systematics seems irregular, so it is considered that the formulation is not following the principles in the formation of the law; 3) Cross-professional cooperation with legal experts is required in formulating norms into laws; 4) Data from the results of multi-disciplinary research are needed to formulate norms into laws; 5) The formulation is considered unsystematic because it combines several laws into one law.

Regarding the advantages and disadvantages of omnibus law, as stated above, the author is more inclined to look at the purpose of using the omnibus law method in updating the law without ignoring its shortcomings. This deficiency will be used as correction material so that the use of the omnibus law to update the law does not deviate.

As stated by Louis Massicotte, many parties do not agree with using omnibus law to regulate regulations because it is considered too pragmatic, but not a few countries

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<sup>11</sup> Firman Freaddy Busroh, "Konseptualisasi Omnibus Law dalam Menyelesaikan Permasalahan Regulasi Pertanahan," *Arena Hukum* 10, no. 2 (August 2017): 227–50, <http://dx.doi.org/10.21776/ub.arenahukum.2017.01002.4>.

<sup>12</sup> Gayus Lumbuun, "Pemikiran Tentang Omnibus Law," paper presented at HUT ke-7 IKANOT UNDIP diselenggarakan oleh Yayasan Komunitas Cendekiawan Hukum Indonesia, Jakarta, January 2020.

<sup>13</sup> Basuki Rekso Wibowo, "Omnibus Law: Sebagai Kebijakan Politik & Hukum," paper presented at FGD HUT ke-7 IKANOT UNDIP, Jakarta, January 2020.

follow it. According to Louis Massicotte, Ireland is one of the world's record holder countries for using the omnibus law to regulate its regulations, reaching 3,255 laws. It is known from Louis Massicotte's statement that "...Ireland passed a statute of that nature that repealed no less than 3,225 status, arguably a world record".<sup>14</sup>

Another country also uses omnibus law in Australia regarding three policies: the Bill on Changes in Justice and Safety, the tax amendment program, and the Bill on Amendments to the Law on Planning, Building, and the Environment. At Singapore in 2018 the omnibus law was also used to update the legal aspects of Singapore's bankruptcy and debt restructuring. The scope of regulation of the Omnibus Bill in Singapore regulates the practice of bankruptcy which includes minimum qualifications, provisions for grants and license renewals, as well as a disciplinary framework.

The United States in 1950 also issued an omnibus law to increase the efficiency of drafting bills, in the form of one direction to regulate all the rules and regulations that would be formed at that time, namely: the Omnibus Appropriations Act of 1950. From 1986 to 2016, there were 170 regulations issued that were made using the Omnibus Law approach.

Previously in Indonesia, although it was not explicitly stated using the term Omnibus Law, the New Order government had practiced it in changing various laws and regulations that had been issued to the Old Order government because both the substance (content) and the process of formation were deemed inappropriate or contrary to Pancasila and the 1945 Constitution. From a formal juridical point of view, it began with the promulgation of MPR Decree Number XIX/1996/MPRS on the Review of State Legislative Products Outside the MPRS Products, which are not following the 1945 Constitution. This MPRS stipulation states: "That in the context of refining the implementation of the 1945 Constitution, it is necessary to review legislative products, both in the form of Presidential Decrees, Presidential Regulations, as well as in the form of Laws and Government Regulations instead of Law."

Following Article 2 of the MPRS Decree No. XIX/MPRS/1966, the task was given to the Government and the DPR-GR. Based on these MPRS Decrees, consecutive laws were issued, namely: 1) Law Number 25 of 1968 on the Declaration of the Invalidity of various Presidential Decrees and Regulations; 2) Law Number 5 of 1969 on Statements of Various Presidential Stipulations and Presidential Regulations as Laws; 3) Law Number 6 of 1969 on the Statement of Non-Applicability of Laws and Government Regulations in Lieu of Laws; 4) Law Number 7 of 1969 on the Stipulation of Various Statutory Regulations into Laws.<sup>15</sup> The same thing was also done in 2003, issuing MPR Decree No. I/MPR/2003 on the Review of the Material and Legal Status of the 1960 to 2002 MPR Decrees.

In the issuance of Law Number 13 of 2003 on Manpower, this was also carried out. This law revokes 6 ordinances, namely: 1) Ordinance on the Mobilization of Indonesia

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<sup>14</sup> Louis Massicotte, "Omnibus Bill in Theory and Practice," *Canadian Parliamentary Review* 36, no. 1 (Spring 2013), <https://www.revparlcan.ca/en/vol36-no1-omnibus-bills-in-theory-and-practice-2/>.

<sup>15</sup> Marojahan JS Panjaitan, *Pembentukan & Perubahan Undang-Undang Berdasarkan UUD 1945* (Bandung: Pustaka Reka Cipta, 2017).

to Perform Work Outside Indonesia; 2) Ordinance on Restrictions on Child Labor and Night Work for Women; 3) Ordinance on the Work of Children and Young Persons on Ships; 4) Ordinance on Regulating Activities for Prospective Workers; 5) Ordinance on the Return of Workers Received or Deployed from Outside Indonesia; and 6) Ordinance concerning the Restriction of Child Labor, and nine laws, namely: 1) Law Number 1 of 1951 on the Statement of Enforcement of the Work Law of 1948 Number 12 from the Republic of Indonesia for All of Indonesia; 2) Law Number 21 of 1954 on Labor Agreements Between Labor Unions and Employers; 3) Law Number 3 of 1958 on the Placement of Foreign Workers; 4) Law Number 8 of 1961 on Compulsory Work for Undergraduates; 5) Law Number 7 of 1963 on Pharmacy; 6) Law 14 of 1969 on Basic Provisions Regarding Manpower; 7) Law Number 25 of 1997 on Manpower; 8) Law Number 11 of 1998 on Changes in the Applicability of Law Number 25 of 1997 on Manpower; and 9) Law Number 28 of 2000 on Stipulation of Government Regulation in Lieu of Law Number 3 of 2000 on Amendments to Law Number 11 of 1998 on Changes in the Enforcement of Law Number 25 of 1997 on Manpower Becoming Law.

Likewise with Law Number 23 of 2014 on Regional Government which has an impact on four previously existing laws, namely repealing Law Number 5 of 1962 on Regional Enterprises and Law Number 32 of 2004 on Regional Government, several provisions in Law Number 17 of 2014 on the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat/MPR*), the People's Representative Council (*Dewan Perwakilan Rakyat/DPR*), the Regional Representatives Council (*Dewan Perwakilan Daerah/DPD*), and the Regional People's Representative Council (*Dewan Perwakilan Rakyat Daerah/DPRD*), and Law Number 28 of 2009 on Regional Taxes and Regional Retribution.

Based on the description above, it appears that the Omnibus Law in several countries of the world has been widely practiced, including in Indonesia. In Indonesia, it is not explicitly mentioned with the Omnibus Law, but the model is similar. This method was adopted because the process is considered fast and does not require a large amount of money.

The refusal of various parties to use the omnibus law to update the law can be understood moreover, as Indonesia is considered a follower of a legal positivism regime that bases its legal system on the "civil law" tradition. In contrast, in many people's minds in Indonesia, omnibus law is only adopted in countries that adhere to the "common law" practice. Thus, omnibus law is considered unsuitable to be applied in Indonesia which follows the "civil law" tradition. It can be seen from the MPR Decree No. II/MPR/1983 and Law Number 12 of 2011 on the Establishment of Legislation, amended by Law Number 15 of 2019 and Law Number 13 of 2022 which direct the formation of written law in Indonesia. However, Indonesia does not strictly adhere to a written legal system at the implementation level. Because, in judicial practice, Indonesia also uses jurisprudence (court judgment/*yurisprudensi*) as a source of law. An example is what is stated in Article 244 of the Criminal Procedure Code that the prosecutor does not have the right to file a cassation against an acquittal. However, with the Supreme Court's Decision Number 275K/Pid/1983 of December 10, 1993, the prosecutor can file



a cassation against the acquittal. The same thing also happened to Article 263 paragraph (1) of Law Number 8 of 1981, which relates to the authority of the Public Prosecutor (JPU) to conduct a review. Because, in Article 263 paragraph (1) of the Criminal Procedure Code, it is not regulated in a limited manner whether the public prosecutor mayor cannot conduct a review. However, with the Supreme Court's Decision Reg.No. 55PK/PID/1986 dated October 25, 1996 (Dr. Mochtar Pakpahan Case), the Public Prosecutor may apply for a review. This jurisprudence was then used as the basis for the Supreme Court's Decision Reg. No. 3PK/PID/2001 dated August 2, 2001 (The Gandhi Memorial School Case) and Supreme Court's Decision Reg. No. 4PK/PID/2000 (Iskandar Hutualy case). Some of these jurisprudence shows that the Indonesian legal system is not solely based on written law but also uses jurisprudence as the basis for deciding cases. Even though the existence of Article 263 paragraph (1) of the Criminal Procedure Code, especially regarding the judicial review carried out by the Public Prosecutor, has been annulled by the Constitutional Court based on the Constitutional Court's Decision Number 33/PUU-XIV/2016, the Public Prosecutor can still file a judicial review. This is because the Public Prosecutor has submitted a judicial review based on jurisprudence, and the Constitutional Court is not authorized to overturn jurisprudence.<sup>16</sup>

Likewise, Article 5 paragraph (1) of Law Number 48 of 2009 on Judicial Power states that judges are obliged to explore, follow, and understand legal values and a sense of justice that live in society. This provision gives freedom to judges to make interpretations in adjudicating a case.<sup>17</sup> In this case, judges in adjudicating and deciding cases are not solely based on written law. Still, they must explore, follow, and understand legal values and a sense of justice that live in society. That means that the role of judges in developing the law is enormous. In particular, Romli Atmasasmita said that judges in deciding cases must explore cases similar to the same in the past but must be in line with legal needs in society.<sup>18</sup>

The idea that legal development in Indonesia is directed to written law is not wrong. However, in using the written law, one must think innovatively, creatively, and comprehensively so that it is not rigid, with the intention that the development of the law can support economic growth and investment flows. Therefore, even though some reject it, using the omnibus law method to update the law is within constitutional right.

New legal institutions are urgently needed to support economic growth and investment flows and deal with all the problems caused by the emergence of the Industrial Revolution 4.0, Society 5.0, and the global economy. Especially in the face of Covid-19, which caused a health crisis but also caused an economic and financial crisis and other social crises. In dealing with all the impacts caused by Covid-19, innovation and creativity are needed in developing the economy and investment flows supported by harmonious and straightforward rules/regulations.

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<sup>16</sup> Marojahan JS Panjaitan, *Politik Hukum Membangun Negara Kebahagiaan Pada Era Revolusi Industri 4.0 dan Society 5.0* (Bandung: Pustaka Reka Cipta, 2020).

<sup>17</sup> Marojahan JS Panjaitan, *Membangun Badan Peradilan Yang Beradab*.

<sup>18</sup> Romli Atmasasmita, *Moral Pancasila, Hukum, dan Kekuasaan* (Bandung: Refika Aditama, 2020).

### 3.2. The Position of the Law Formed by the Omnibus Law Method in the National Legal System

As stated above, the Omnibus Law method has recently been introduced to update several Acts in a single draft law that contains more than one problem and is combined into one Act. Omnibus law is used at the implementation level. Many regulations regulate the same thing, are not harmonious, and overlap with one another, which in turn causes many problems, such as 1) Economic growth is slowing down; 2) Investment flows are hampered; 3) The government's movement in implementing development is slow; 4) Legal uncertainty often occurs; 5) The unemployment rate is still high; 6) There is a waste of state finances to finance the formation of laws and regulations; and 7) Corruption is rampant.

What is stated above can be proven from the World Bank Group data and Indonesia's Economy Profile Doing Business 2020, Indonesia's DB (doing Business) Rank is in the 73<sup>rd</sup> position and the DB score obtained 69.6 from surveys in 190 countries.<sup>19</sup> The World Bank then revised its projection for Indonesia's economic growth in 2019 from 5.3% to 5.2%. This happened because of the outflow of foreign capital, the weakening of the exchange rate, the correction of the capital market, and the decline in foreign exchange reserves.<sup>20</sup>

In terms of job availability, for example, according to data from the Central Statistics Agency, the Open Unemployment Rate in 2019 was still at 5.28%. There are five unemployed people out of 100 people in the workforce.<sup>21</sup> Likewise, corruption in Indonesia is still quite severe. This can be seen from Indonesia's Corruption Perception Index. According to data released by Transparency International, Indonesia's Corruption Perception Index is 40, ranked 85. A position that is still poor compared to Singapore has a Perception Index (IP) of 85 on the 4<sup>th</sup> rank. Malaysia's IP is 53 on the 51<sup>st</sup> rank. The best countries are Denmark with IP 87 on the 1<sup>st</sup> rank, New Zealand with IP 87 on the 1<sup>st</sup> rank; Finland with IP 86 ranking 3<sup>rd</sup>; Sweden with IP 85 ranking 4<sup>th</sup>; Switzerland with IP 85 ranking 4<sup>th</sup>; and Norway with IP 84 ranking 7<sup>th</sup>.<sup>22</sup>

It is suspected that the causes of the things mentioned above are hyper-regulation and institutional factors. Where regulations do not support the creation and development of businesses and even tend to limit them, particularly on the principle of Manpower, Investments, and Trade. The quality of institutions is low, leading to high corruption, inefficient bureaucracy, and very weak coordination between policies; as stated by

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<sup>19</sup> World Bank Group, *Economy Profile Indonesia Doing Business 2020: Comparing Business Regulation in 190 Economies* (2019), <https://documents1.worldbank.org/curated/ar/760081575000864905/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies-Economy-Profile-of-Indonesia.pdf>.

<sup>20</sup> Ari Mulianta Ginting, "Tantangan dan Prospek Perekonomian Indonesia Tahun 2019 di Tengah Perlambatan Pertumbuhan Ekonomi Global," *Bidang Ekonomi Dan Kebijakan Publik IMFO Singkat Kajian Singkat Terhadap Isu Aktual dan Strategis* 11, no. 2 (January 2019): 19–24, [https://berkas.dpr.go.id/pusaka/files/info\\_singkat/Info%20Singkat-XI-2-II-P3DI-Januari-2019-224.pdf](https://berkas.dpr.go.id/pusaka/files/info_singkat/Info%20Singkat-XI-2-II-P3DI-Januari-2019-224.pdf).

<sup>21</sup> Badan Pusat Statistik, *Keadaan Ketenagakerjaan Indonesia Agustus 2019* (Jakarta: BPS RI, 2019), <https://www.bps.go.id/id/publication/2019/11/29/96138eccc33ccc220007acbdd/keadaan-angkatan-kerja-di-indonesia-agustus-2019.html>.

<sup>22</sup> Transparency International, *Corruption Perception Index 2019* (Berlin, Germany: Transparency International, 2020).

Arfan Faiz Muhlizi, the state needs to form a business climate that can facilitate business and minimize business risks.<sup>23</sup>

What Arfan Faiz Muhlizi said above is accurate because it is no longer an open secret how complicated the bureaucracy is in obtaining a business license in Indonesia. So far, getting a business license is regulated by nine laws, two government regulations, four presidential regulations, and twenty ministerial regulations. Not to mention the existence of Regional Regulations and Regional Head Regulations, which also regulate the granting of business permits in the regions. The many rules for obtaining a business license have made getting a business license even more complicated. Unscrupulous policymakers then use this situation to blackmail investors. The presence of several state officials pieces is evidence of this, such as regional heads, State-owned Public Entity (*Badan Usaha Milik Negara/BUMN*) leaders, political elites, members of the DPR, business people, and members of the public who were caught red-handed by the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi/KPK*), the Prosecutor's Office, and the Indonesian National Police during transactions related to licensing arrangements. For example, the Regent of Bekasi and eight other suspects were caught red-handed by *KPK* while accepting bribes related to obtaining permits for the Meikarta development project in Bekasi, West Java. Likewise with the Governor of Riau, the Director of PT Citra Hokai Triutama and other suspects were also caught by the *KPK* in a bribery case related to the submission of revisions to the conversion of forest functions in Riau Province in 2014. In this case, investors have been extorted before getting permits. This situation made investment flows slowly, and many even left Indonesia. Investment flows are very much needed in supporting economic growth to increase the country's foreign exchange and creating jobs.

Concerning regulatory constraints as stated above, Yustinus Prastowo said that with the Omnibus Law, the government and parliament do not need to revise laws one by one, but rather make a new law that amends articles in several directions at once. Yustinus Prastowo said this is true because, as stated in the previous discussion, changing laws one by one would take a long time and cost a lot. The potential for political clashes is relatively high.<sup>24</sup> The author agrees with Yustinus Prastowo's statement that as long as it is preceded by comprehensive problem identification and mapping, the Omnibus Law scheme creates efficiency and effectiveness because it combines several rules with different regulatory substances into one extensive regulation. However, it should be noted what was stated by the Indonesian Legal Concern Advocacy Team that the government and the Indonesian House of Representatives must ensure that the laws formed based on the Omnibus Law complies with the broadest legal principles and create a harmony of regulations so as not to overlap in the formation of rules so that all groups can accept them to build social justice.

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<sup>23</sup> Arfan Faiz Muhlizi, "Penataan Regulasi Dalam Mendukung Pembangunan Ekonomi Nasional," *Jurnal Rechtsvinding Media Pembinaan Hukum Nasional* 6, no. 3 (December 2017): 349–67, <http://dx.doi.org/10.33331/rechtsvinding.v6i3.191>.

<sup>24</sup> Yustinus Prastowo, "Mujarabkah Omnibus Law sebagai Obat Lesu Ekonomi," paper presented at Seminar Ikatan Akuntan Indonesia and CITA, Jakarta, 2019.

Maria Farida Indrati also reminded that in the construction of a law using the omnibus law, the following must be considered: 1) The fulfillment of the principles of openness, prudence, and public participation; 2) Extensive socialization is implemented, especially for officials and parties involved in the substance of the bill, the legal profession, and academics; 3) A transparent discussion in the DPR by taking into account input from parties related to the bill, and not in a hurry to discuss it; 4) Considering the effective period for the enactment of the law; 5) Considering the enactment of the following affected (existing) law.<sup>25</sup>

Maria Farida's opinion above aligns with I.C. van der Vlies that in the formation of laws, it is not enough only to pay attention to juridical problems because a rule can be formulated beautifully from a juridical point of view.<sup>26</sup> Still, from a societal point of view, it cannot function according to its purpose. Some of the opinions as stated above must be a concern in using the omnibus law to update the law so that the purpose of reforming the law is instrumental in overcoming hyper-regulation and can overcome all problems caused by advances in science and technology, the global economy, and be able to overcome all kinds of issues, such as the impact of COVID-19.

Meanwhile, the omnibus law to regulate regulations must not conflict with the core content contained in Pancasila and the 1945 Constitution. This is following the position of Pancasila and the 1945 Constitution, which are the highest laws in Indonesia. Therefore, any form of regulation issued to implement it, its contents must not conflict with it. This follows the principle that lower rules must not conflict with higher-level regulations. This principle applies universally to a country that claims to be a state of law. According to Article 1 paragraph (3) of the 1945 Constitution, Indonesia is a state based on the rule of law. This provision cannot be violated and must be guided by the use of the omnibus law to regulate regulations.

Regarding the position of the 1945 Constitution in Indonesia, it can be seen in Article 7 paragraph (1) of Law Number 12 of 2011 where the 1945 Constitution is placed as the highest law in the hierarchy of legislations. That means that regulations' content must not conflict with the 1945 Constitution. This provision must not be violated and must be obeyed. This is because a violation of this is a violation of the concept of the rule of law as mentioned above.

If the matters as stated above are related to the position of the law established based on the Omnibus Law, neither the process of its formation nor its contents should conflict with Pancasila and the 1945 Constitution because the law is part of the national legal system. This needs to be conveyed because there is an assumption in the community that omnibus law is a law, so it is called omnibus law. As stated in the previous description, the omnibus law is not a law but an updating method. The only thing that distinguishes the law that was formed using the Omnibus Law method from other laws in the process or technique of its formation, while its position is the same as the law as referred to in Article 20 of the 1945 Constitution in conjunction with Article

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<sup>25</sup> Maria Farida Indrati, "Menyikapi 'Omnibus Law' Sebagai 'Undang-Undang Sapu Jagad'," paper presented at Seminar "Menyikapi Omnibus Law Pro and Kontra RUU Cipta Lapangan Kerja," Jakarta, 2020.

<sup>26</sup> I.C. van der Vlies, *Handboek Wetgeving* (Zwolde: W.E.J. Tjeenk Wilink, 1987).

7 paragraph (1) of the Law Number 12 of 2011. After various provisions in various laws were combined into one law, the conditions in the old law were revoked or declared invalid. This means that the previously regulated requirements in different separate laws are then combined into one law, then the provisions as held in the new law will apply. Because, in Indonesia, there is only one term of law that the DPR and the President formed following Article 5 paragraph (1) in conjunction with Article 20 of the 1945 Constitution in conjunction with Law Number 12 of 2011. However, so that the public knows it, it is better if some amended or revoked law articles are stated in the State Gazette.

The stages of forming a law using the omnibus law method are the same as creating a law regulated in Article 1 number 1 of Law Number 12 of 2011, namely: through the process of planning, drafting, discussing, ratifying or determining, and promulgating. The stages of the planning process start from the preparation of the national legislation program (*Program Legislasi Nasional/Prolegnas*), the practice of an academic text, and the submission of an application for an initial permit to the President. The preparation stage starts from preparing the initial draft by the ministry's internal committee (PIK), discussing the current at the inter-ministerial committee (PAK), and discussing harmonization at the Ministry of Law and Human Rights. The stage of discussion in the DPR begins with level I meetings (commissions, committees, bodies, or other equipment in the DPR) and level II discussions through mutual approval of the bill by the DPR and the President in the DPR plenary meeting. All of these stages must be passed in the formation of law through the omnibus law method.

Likewise, with the principles informing normatively regulated laws in Article 5 of the Law Number 12 of 2011 must also be obeyed. The content material must also reflect Article 6 of the Law Number 12 of 2011. At the same time, it is necessary to pay attention to what Mochtar Kusumaatmadja said, that we need to maintain and develop legal principles and concepts that are generally embraced by humanity or universal legal principles.<sup>27</sup> Mochtar Kusumaatmadja then said that national law must be built that unites or unifies the Indonesian nation based on the principles of general legal concepts by combining them with the principles and concepts of customary law or, in some instances, the principles and concepts of Islamic law can be considered a burden or an advantage.<sup>28</sup> In this case, in using the omnibus law to renew the law, in addition to paying attention to the principles explicitly stated in Law Number 12 of 2012, must also pay attention to general and universal principles, as well as the principles and concepts of customary law or in some instances the principles and concepts of Islamic law. Everything is elaborated in a direction based on the omnibus law method so that the law developed based on the omnibus law method can create happiness for the Indonesian people, as mandated in the fourth paragraph of the opening of the 1945 Constitution.

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<sup>27</sup> Mochtar Kusumaatmadja, *Konsep-konsep Hukum dalam Pembangunan* (Bandung: Alumni, 2002).

<sup>28</sup> *Ibid.*

#### 4. CONCLUSION

Based on the research as stated above, the following conclusions can be drawn: 1) The Omnibus Law policy in arranging regulations to support economic growth, investment, the Industrial Revolution 4.0, Society 5.0, and the global economy is very effective and efficient because the formation is cheaper, faster, and avoid various political conflicts; 2) Laws formed using the omnibus law method are part of the national legal system. Therefore, omnibus law must refer to the provisions and principles held in the Law Number 12 of 2011 as amended by Law Number 15 of 2019 and Law Number 13 of 2022 and its implementing regulations, Presidential Regulation Number 87 of 2014 and Number 76 of 2021, as well as general principles that are universal and the principles and concepts of customary law or, in some instances, the principles and concepts of Islamic law. Everything is elaborated into a law based on the omnibus law method. The law based on the omnibus law method can create happiness for the Indonesian people as mandated in the fourth paragraph of the opening 1945 Constitution.

The suggestions in this study are: 1) There is a need to socialize the omnibus law method in managing regulations in Indonesia to understand the meaning of the omnibus law. This needs to be done because, in the community, there is an assumption that the omnibus law is a law. Omnibus law is not a law, but a method of updating the law; 2) It is necessary to take legal action in the state gazette against several articles that have been revoked or renewed from the old law so that the public knows that these articles have been regulated in a law established by the omnibus law method.

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