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Indonesia's Directive Legislation: Balancing with Pancasila Law-Idea

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Abstract: The implementation of the Omnibus Law in the formation of laws and regulations in Indonesia commenced with the introduction of directive legislation in a range of sectors. Conversely, the Omnibus Law has given rise to a number of issues, particularly in relation to the Pancasila law-idea. This is because the Omnibus Law is perceived to be at odds with the Pancasila law-idea, with critics arguing that it fails to reflect the spirit of Pancasila in terms of both practice and legislative methodology. This paper aims to examine, evaluate and identify potential avenues for the development of national regulations in alignment with the principles of the Omnibus Law, taking into account the role of Pancasila as an ideological and legal foundation. This research paper employs a normative juridical methodology, complemented by the utilisation of statutory, conceptual, and legal fact approaches to examine the conformity and harmonisation of omnibus legislation with the Pancasila law idea. This paper demonstrates that the Pancasila idea-law can serve to balance and harmonise the various understandings held by countries around the world, particularly in relation to the application of the Pancasila law-idea as a foundation in the practice of Omnibus Law and the formation of national regulations.

Keywords: Directive Regulation; Law-Idea; Omnibus Law; Pancasila.

1. Introduction

Pancasila represents an ideology, the foundation of the state's philosophical principles, a way of life, and a legal concept. It is characterised by a profound respect for the values of life, humanism, and the protection of human rights for all Indonesian citizens (Hadiprayitno, 2010). Pancasila provides guidance in the political, economic, social, cultural, legal, defence, and national security spheres (Alfitri, 2018). The strategic position of Pancasila is reflected legally normatively in the 1945 Constitution of the Republic of Indonesia (referred to hereinafter as the 1945 Indonesia Constitution). This is evidenced by the Fourth Paragraph of the Preamble to the 1945 Indonesia Constitution, as quoted below:

Subsequently, the objective was to establish an Indonesian state government that would safeguard the interests of all Indonesians and guarantee the protection of Indonesian blood. Additionally, the aim was to promote public welfare, educate the nation, and participate in the implementation of a global order based on independence, enduring peace, and social justice. The Indonesian Constitution establishes the state of the Republic of Indonesia as a sovereign entity, founded upon the grace of God, the principles of justice and civility, a unified Indonesia, and a leadership guided by wisdom and consultation. It also aims to ensure social justice for all Indonesian people. (Croissant, 2014).

The essence of Pancasila was incorporated into the Preamble of the 1945 Indonesian Constitution, thereby establishing it as a constitutional and legal foundation, as well as a foundation in national legal politics. This encompasses all aspects of the

Indonesian nation's life, based on and reflecting the values of Pancasila in all aspects of Indonesian society and governance. The Constitution's Preamble reflects the existence of Pancasila, encompassing concepts, principles, and values that serve as a foundation and reference point in the context of real life. The incorporation of Pancasila into the Constitution Preamble demonstrates its significant strategic role). Pancasila can be understood as reflecting Indonesia's national soul, its national personality, the noble agreement reached at the time of establishing the state, its ideals, and its vision for the future.

The Pancasila is the ideology of the nation and the idea of national law, occupying the highest position in the Indonesian state of law. The elaboration of the concepts, principles, and values contained in each of the Pancasila principles confirms the placement of the Pancasila as a paradigm of national development in all fields, especially as a paradigm of national law development.

The proposed utilisation of the Omnibus Law in the formation of regulations in Indonesia has given rise to a new scientific discourse, with due consideration being given to the national laws of Indonesia, specifically Law Number 13 of 2022 concerning Amendments to Law Number The 2011, 2019 and 2022 versions of the Indonesian legislation formation law (referred to as Law P3 2011, Law P3 2019, and Law P3 2022) have yet to be drafted in a manner that accommodates the existence of the Omnibus Law. Nevertheless, as the formulation of laws is a product of a political agreement between the government and the Parliament, the Omnibus Law can be implemented in the legislative process going forward, particularly with regard to the examination of the aspects of urgency and significance of the Omnibus Law in the context of national law development.

One of the laws based on omnibus legislation, the Job Creation Law, as set forth in both Law Number 11 of 2020 and Perppu Number 2 of 2022 (Law Number 6 of 2023), is in contradiction with Pancasila. This is evidenced by the observation of Constitutional Law Expert Bivitri Susanti, who noted the peculiarity of Article 175, which amends Article 53 of the State Administration Law. Similarly, article 175 is a misreference, as is article 6. Since its inception, the Job Creation Law has been the subject of debate between the House of Representatives and the government. The content of the law is perceived as detrimental to workers, and the drafting process has been critiqued as problematic (BBC, 2020). The enactment of the regulation would have a detrimental impact on the lives of workers.

Consequently, numerous workers' rights have been curtailed, including the stipulation that the minimum wage should have been collectively determined between the government and the workers (Hakim, 2021), which now hinges on the investor's discretion in determining the remuneration (Siagian, 2021). This is contrary to the principles of Pancasila, including the fourth precept (Hamid & Hasbullah, 2022). A similar situation can be observed in the follow-up version of Constitutional Court Decision Number 91/PUU-XVIII/2020, which was elaborated in the form of Perppu Number 2 of 2022. This contravenes the spirit of constitutionalism and the principles of Pancasila, which encourage meaningful participation (Kurnianingrum, 2023).

The quality and quantity of regulations in Indonesia have indeed become a significant challenge. As evidenced by data released by the Indonesian Center for Law and Policy Studies (PSHK), a total of 8,945 regulations were issued between 2014 and October 2018. Accordingly, the details comprise 107 laws, 452 government regulations, 765 presidential regulations, and 7,621 ministerial regulations. This data is also consistent with the Regulatory Quality Index, as published by the World Bank. Throughout the period from 1996 to 2017, Indonesia's score position has consistently remained below

zero or negative. As is widely acknowledged, the regulatory quality index scale, as devised by the World Bank, categorises a score of 2.5 points as the upper limit of the highest index, indicative of optimal regulatory quality. Conversely, the lowest score, at -2.5 points, is indicative of poor regulatory quality. In 2017, Indonesia's score was -0.11, placing it 92nd out of 193 countries. Amongst the ASEAN countries, Indonesia is still ranked fifth, below Singapore, Malaysia, Thailand, and the Philippines (PSHK Indonesia, 2019).

The aforementioned data substantiate the assertion that the primary obstacle impeding national development, regulation, and institutional advancement is the lack of effective regulatory frameworks. The lack of control exerted by the legislation in question has not only resulted in a lack of coherence and synchronisation between the regulations in question, but has also had an impact on the existence of overlapping regulations. The aforementioned conditions have implications for the implementation of programmes designed to accelerate development and enhance community welfare (Chopra, 2015). An increase in legal certainty and the effectiveness of regulations will result in a paradigm shift in national legal development, with a focus on streamlining and harmonising regulations between central and regional governments. It is for this reason that a regulatory framework, prepared in an appropriate, simple, flexible and constructive manner, has the purpose of facilitating, encouraging and regulating the behaviour of the public and state administrators in order to achieve the objectives of the state. The quality and quantity of regulations must be improved with governance that not only considers the rules that apply in legislation but is also able to produce legislation and regulations that are simple, easy to understand, and orderly, and provides concrete benefits in the implementation of national development.

The proposal advocates for the implementation of the Omnibus Law as a regulatory framework in Indonesia, taking into account the comprehensive and expansive scope of the Omnibus Law. In practice, the application of the omnibus law or omnibus bill precludes the possibility of lengthy debates. Historically, the omnibus law or omnibus bill has been employed on occasion to alter a number of controversial laws, which has resulted in the omnibus law or omnibus bill being perceived as antidemocratic and centralising. Nevertheless, the enactment of the omnibus law or omnibus bill is undertaken with the objective of simplifying and streamlining legislation, which is deemed essential for addressing the challenges, changes and evolving community needs that are currently occurring at a rapid pace. The enactment of several laws and regulations in a piecemeal fashion has resulted in a situation of hyper-regulation. The Omnibus Law is not only intended to harmonise and eliminate overlapping regulations that have previously existed, but it is also designed to enhance the quality of regulation in Indonesia. This is expected to foster a pro-investment climate and facilitate the process of obtaining business permits (Spranz et al., 2012).

The current debate concerns the compatibility of the Omnibus Law regulations with the principles of Pancasila. Some commentators have proposed that the fundamental premise of the Omnibus Law is inconsistent with the tenets of Pancasila, particularly the fourth principle pertaining to meaningful participation. They have further suggested that the law was shaped by the influence of Western countries and non-European adherents. This is pertinent to the question of the formation of laws based on the omnibus legislation method, which has the effect of circumventing established processes. This is particularly the case given the necessity to accommodate a number of important aspects relating to democracy, the rule of law and constitutionalism. These include aspects of public involvement in line with the fourth precept of Pancasila. Conversely, other scholars have

proposed that the Omnibus Law can be a valuable tool for enhancing the quality and effectiveness of national regulations.

The incorporation of Pancasila as a source of constitutional law into the concept of a law-idea (rechtsidee) has established it as the framework of thought, the source of value, the direction of drafting, change, and developing regulation and legislative products in Indonesia.

This paper aims to examine the Omnibus Law and Pancasila legal ideas as directives of legislation and to explore how the placement of the Omnibus Law in conjunction with the Pancasila law-idea can serve as a model for the legislative process in other countries. This paper also aims to actualise the directives of the Pancasila-based law-idea in the implementation of the Omnibus Law, thereby achieving the optimal legal development and organisation of national regulations. This study focuses on two main issues: the practice of omnibus legislation and omnibus law products in a number of countries, with a particular focus on Indonesia; and the question of conformity or achieving balance between the omnibus law and the values set out in Pancasila in relation to their internalisation in Indonesian directive legislation.

2. The Idea of Pancasila Law as the National Law Development Paradigm

Paradigm describes a person's perspective on a fundamental problem that is fundamental to understanding a science or basic beliefs that lead a person to act in everyday life sometimes in general. The paradigm defines as a concept often assumed or just followed without being realized and allows a person or group of people to see or understand the world of all contents (Gijssels & Hoecke, 1982). In this context, the paradigm is the unity of various working assumptions, procedures, and findings that are routinely accepted or recognized by a group of scientists. Overall, it defines a pattern of established and steady scientific activity for the scientific community concerned, and at the same time, the reverse process also occurs where this pattern also defines how the contents and forms of the scientific community with the same paradigm (Simanjuntak & Priyono, 2022).

The term paradigm then developed in various fields of human life and other sciences, such as politics, law, economics, culture, and other spheres. The term paradigm in terminology which contains connotations of understanding, namely sources of values, frameworks, basic orientations, source of principles, and the direction and objectives of a particular field, including in the sphere of development, reform, and education (Astariyani, et.al., 2023).

According to Guba and Lincoln, they saw the starting point for ideas about the paradigm, which influence the development of science, sharpening in the direction of both qualitative and quantitative research. In the context of paradigm grouping in social science, the paradigm that includes both systematize and rational by Guba and Lincoln divided into 4 (four) main paradigms, namely positivism, postpositivism, critical theory, and constructivism. The four divisions of the paradigm well-known based on ontological, epistemological, and axiological frameworks. Ontologically and axiologically, the perspective of this flow is critical realism. Epistemologically, this flow emphasizes the importance of interactive relationships between researchers and the object under study so that researchers can be a neutral level of subjectivity that can at least reduce. Thus, the paradigm is a tool in formulating what shall to learn, what problems shall answer, and what rules shall follow in interpreting the information obtained (Guba & Lincoln, 1994).

Pancasila represents the overarching framework for national development, closely intertwined with the subsequent legal reform process following the collapse of the

previous regime. It underscored the necessity for reform in the realm of legislation, regulation, and their enforcement (Hermanto, 2023). These circumstances have resulted in the further estrangement of human values and a distinctive sense of justice within Indonesian society. The character of legal products and the legal system that operated in the previous regime is no longer a protector of social interests (Lorenzo, 2007). In light of these considerations, the reform of the legal system is to be achieved by the enactment of legislation and regulations in accordance with the values enshrined in Pancasila, which serves as the foundation and ideal for the implementation of reforms. Pancasila represents a source of value transformation, whereby legal norms are transformed into a legal idea (rechtsidee), providing a framework of thought, a source of value, a direction for the preparation of legal reforms, and a means of modifying positive law in Indonesia (Hermanto, 2021). Reflections on the value of Pancasila include the following five precepts:

The first precept Pancasila contains the concept of religiosity that recognizes the existence of religion and belief in God Almighty. In this case, Indonesian people fear and believe in the power of the supernatural that has developed since ancient times. The concept and principle of religiosity are reflecting the essence protection for all religions and beliefs. The existence of human faith believes that only He has the will to create or regulate the universe (Lerner, 2013).

The concept contained in the second precept is the concept of humanity means as a concept or principle that upholds the dignity of human beings as individuals who have their image, namely identity. The humanity concept in question is related to humans as the creation of God Almighty seated under nature, dignity, and dignity (Carnegie, 2013). Humans with fundamental abilities "will," and supported by the ability to think, feel, work, humans always try to live in the conditions that are best for themselves (Chalabi, 2014).

The concept contained in the third precepts, namely the nationality concept is closely related to Indonesian living as a society and a state bound in an Indonesian community, without prejudice to the rights of each person and the public interest upheld from each person's affairs. Of course, the development of nationalist insight as to the embodiment of concepts, nationality, and class, is respected and placed proportionally in upholding the unity and integrity of the nations.

The concept contained in the fourth precepts is the concept or principle of sovereignties namely in the context of how the picture should be the proper procedure for the relationship between the elements involved in shared life, henceforth how to determine the wisdom and steps that shall pass in dealing with life's problems.

The concept contained in the fifth precept is the concept or principle of social-justice refers to the description of the goals to be realized in life together, living in a society, nation, and state. In essence, it emphasizes these goals relating to the welfare of all people as well as the nature of social justice for all Indonesian people, namely the creation of a just and prosperous society.

According to the 1945 Indonesia Constitution, the legal system applicable to Indonesia placed Pancasila in dual position. First, Pancasila as law-idea (rechtsidee) is located outside the norm hierarchy, but permeates the values of the legal system. Secondly, Pancasila is defined as the "Principles for the Preamble to the 1945 Constitution" (Gillespie, 2016). It represents a legal ideal, a conceptual construction that guides the legal system towards the ideality desired by the community.

The law-idea plays an essential role in the formation of legislation, including that pertaining to social welfare and is a crucial reference point for policymakers engaged in the development of public policy. The dimensions of value embedded within the law-idea

inform the process from the initial formulation of regulations to their subsequent implementation (Hug, 2011). Pancasila must be established as a paradigm in the implementation of national development, with the objective of achieving the national goals. Furthermore, Pancasila must be positioned as the foundation of the country's development goals. Furthermore, Pancasila must serve as the foundation for the conduct and disposition of development actors. In this sense, the Pancasila serves as a legal paradigm, particularly with regard to the various endeavours to alter the law. It thus becomes imperative that the Pancasila become a paradigm within the legal field itself. It is therefore imperative that the material in legislation or regulations is capable of being modified. Furthermore, the value sources must be reharmonised and undergo changes in accordance with the times, demands, and aspirations of the people, in line with the guidance provided by Pancasila. Pancasila serves as a paradigm for national development, particularly within the legal domain. It can be regarded as a legal ideal enshrined as a Staatsfundamentalnorm in Indonesia. Furthermore, Pancasila forms the foundation for the derivation (elaboration) of the Indonesian legal order, including the 1945 Constitution, which enables the realization of state goals in the development of national law in Indonesia, including in terms of regulation.

3. Omnibus Law Concepts and Omnibus Law Practices: Comparative Study of US, Canada, Serbia, and Indonesia Practice

An omnibus law, or omnibus bill as it is commonly known in countries that adhere to the Anglo-Saxon legal system, is a legislative proposal that encompasses a range of disparate and unrelated matters (Hermanto, et.al. 2024). An omnibus law, or omnibus bill, is a document that is approved through a vote by parliament. It is a joint package that includes one or a combination of various subjects (Asshiddiqie, 2019).

Given the extensive scope of such legislation, it is not uncommon for omnibus bills to result in lengthy debates. Historically, the omnibus law or omnibus bill has also been used to change several controversial laws, which lends further weight to the argument that the omnibus law or omnibus bill is antidemocratic and centralising. The advent of the omnibus law or omnibus bill is often seen as a means of simplifying and streamlining legislation (Asshiddiqie, 2020). It considers the necessity of meeting the challenges, changes, and community needs that are currently developing rapidly, especially in the context of an environment characterised by an influx of laws and regulations (Goertz, 2011).

An omnibus bill is defined as a single bill containing various distinct matters. It is used by legislators to force the executive to either accept all the unrelated provisions or to veto the provisions. An omnibus bill may also be defined as a bill that deals with all proposals relating to a particular subject. Examples of such bills include omnibus judgeship bills and omnibus crime bills. The latter deals with different subjects, such as new crimes and grants to states for crime control.

In the common law tradition, the term 'omnibus law' is more commonly used than 'omnibus bill'. Marc Bosc and André Gagnon posit that the omnibus law or omnibus bill is a legislative instrument that aims to amend, revoke, or stipulate at once (combine) several related initiatives that were previously separate and independent. The omnibus law is designed to provide a foundation for the enactment of specific legislation that revokes various pertinent laws or distinct substances. Omnibus laws or omnibus bills may be conceptualised as a methodology or concept of formulating regulations that integrate multiple rules, thereby creating a comprehensive regulatory framework that encompasses the diverse arrangements within these laws and regulations (Bosc & Gagnon, 2017).

The practices of several countries that adopted the Omnibus Law in the formation of national regulations are as follows:

First, the United States as one of the countries that practice the omnibus bill, in this case, puts the omnibus into one of the jargons that are often used by legislators at the American Congress, which at the simplest level, the omnibus bill is a simple package of adjustments to several budgets and changes in state policy. The omnibus bill used as an organizational and structural tool purely used by legislators to make a draft law in the same place. The Omnibus bill is in practice the same as any other bill in the form of an official draft amendment to the regulations that go through stages in the legislative and executive circles. The existence of the Omnibus bill in the practice of state administration in the United States considers the importance of the omnibus bill to avoid any deviation from any clause in the American Constitution.

Secondly, Canada employs the Omnibus Bill in the formation of national legislation. One such example is the Omnibus Bill related to the Criminal Law Amendment Act, 1968-1969, which is incorporated into the Canadian Criminal Code. This Code addresses a number of issues, including homosexuality, prostitution, abortion, gambling, weapons control, and traffic violations involving driving under the influence of alcohol. The Omnibus Bill (Bill C-195) is also commonly referred to as a reform of the previous Canadian Criminal Code, which was conveyed by the Minister of Justice, Pierre Trudeau, during the second session of the 27th Canadian Parliament on 21 December 1967. Subsequently, Bill C-195 was modified and resubmitted by the Minister of Justice, John Turner, during the inaugural session of the 28th Canadian Parliament on 19 December 1968. On 14 May 1969, following an extensive deliberation process within the Canadian Parliament, Bill C-150, comprising 120 clauses, was introduced. This amendment to the Canadian criminal law and criminal justice process then went through three stages of voting at the Canadian House of Commons with 149 votes to 55 votes. This Omnibus Bill then discriminates homosexuality, allows abortion with several conditions, legalizes contraceptive sales, regulates gambling-related lotteries, regulates the use of weapons as well as new arrangements related to motion sickness while driving, damaging telecommunications lines, delivering fake advertisements and cruel acts against the animal (Hooper, 2014). This Omnibus Bill well-known as the breakthrough in Canadian legislation and inspired the other omnibus bill in the next decades (Brabazon & Kozolanka, 2018).

Third, a comparative study of Serbian practices in adopting the omnibus law related to the formation of new national territories and the granting of special-autonomy. Serbia-Montenegro applies the omnibus law in the formation of national legislation, both economic, social, cultural, and several other aspects, even though the Serbian-Montenegro legal system adopts the Continental European legal system, as do most countries in the Balkan Peninsula (Brusis, 2010). It employs the omnibus law approach through the use of a zakon omnibus, or omnibus law, which is commonly referred to as the Serbian Omnibus Law of Vojvodina 2002 or the Law on Establishing Jurisdiction of the Autonomous Province of Vojvodina. The omnibus law method was employed in the preparation of the draft Vojvodina Special Autonomy Law, with the specific objective of regulating the autonomous status of the Vojvodina Province, to affirm matters pertaining to the provincial administrative jurisdiction, as it delegates affairs from the Serbian Constitution. (Golić & Počuča, 2017). This section of the article assures that the issues governed by the omnibus law method can be observed appropriately and achieve harmonization of regulations given that the practice of Serbia can make special-autonomy in Vojvodina Province still exist today, especially being able to harmonize 30 laws that

clash with each other when forced to form the Law on Establishing Jurisdiction of the Autonomous Province of Vojvodina (Davinić & Krstić, 2018).

Fourthly, the Omnibus Law approach was practically implemented through the simplification of regulations and the deregulation of economic policy packages in Indonesia.

The central tenet of the omnibus law approach employed in Indonesia is the evaluation, assessment and research of regulations and policy choices, with the objective of ensuring that they are properly, flexibly and accountably implemented. In accordance with the President's directive to facilitate business and investment and streamline regulations, Ministries/Institutions and Local Governments are required to propose one new regulation that revokes at least two existing regulations that are still valid and address the same substance (Pepinsky & Wihardja, 2011).

The omnibus bill is a crucial instrument for the establishment of a robust economic structure based on competitive advantage in various regions and supported by qualified and competitive human resources. This can be achieved, in part, through the development of robust and competitive institutions in the political and legal spheres, which serve as the foundations for sustainable development. In this context, the implementation of a stable and effective legal and political framework is essential for the advancement of legislation (Wintgens, 2006). The omnibus law approach offers a valuable tool for achieving this goal.

4. Realizing the Balance and Alignment of the Omnibus Law Legislation Directive in the Formation of National Legislation: Omnibus Law in Harmony with the Idea of Pancasila Law

National development must be based on strong political and legal institutions as pillars of development so that a stable law politics needed in the field of legislation. The law-political process has begun since there is a political will from the President to implement legislation processes (Lee, 2020), including use the omnibus law. The political will shows the Government's commitment to reforming regulations so that public welfare and economic growth achieved (Setiyono, 2019). However, the omnibus law manifested at the level of national regulations in Indonesia.

The fundamental premise of the omnibus law is to mitigate the legal issues stemming from regulatory conflicts caused by an excess of legislation and regulations dispersed across various types and hierarchies of legislation and regulations. This results in a lack of coherence, inconsistencies, redundancies, and multiple interpretations, which collectively contribute to a heightened level of legal uncertainty (Hermanto, 2019). The omnibus law represents a simplification of the legislative process, with the formation of comprehensive laws that are affordable to the general public. The implementation of an omnibus law has the potential to address conflicting legislation and regulations in a prompt, effective, and efficient manner. It can also facilitate the standardisation of government policies at both the central and regional levels, thereby fostering a supportive investment climate. Furthermore, it is designed to break the chain of bureaucracy that has become a hindrance, facilitate increased coordination between related agencies, and guarantee legal certainty and legal protection for policymakers.

The basic thesis in this paper is related to the balance and harmony between the directive legislation omnibus law and the Pancasila law-idea in Indonesia, and this can be found in the essence that connects omnibus law and Pancasila law-idea. As for placing Pancasila as the paradigm of national development, it can understand that this becomes the basis in the direction of national legal politics, given that by placing law science to get

embodied or commonly referred to as developing national law science. The development of jurisprudence has importance in making the existing set of rules productive in determining what the law is for several concrete situations or what legislation or regulations needed by the community (Tamanaha, 2015). It can be based on two theories as a touchstone to find balance and harmony.

Firstly, the ROCCIPI theory should be employed as part of the second stage of problem-solving methods in the formation of legislation and regulation. The ROCCIPI theory, developed by Ann Seidman, Robert B. Seidman, and Nalin Abeyserkere, provides an explanatory framework for understanding the underlying causes of problematic behaviour, which can inform the development of effective legislation (Seidman et al., 2001).

The touchstone with the subjective factors, which are in the minds of the performers in the form of their interests and their ideologies (values and attitudes), was initially identified based on instincts as the "reasons" of community behaviour (Arnscheidt et al., 2008). This is referred to as the form of interest, in accordance with the fundamental principles of the Omnibus Law and the Pancasila legal concept, which encompasses the perspectives of the actors with regard to the potential consequences and benefits, both material and non-material (Samekto & Purwanti, 2023).

The balance and harmony of the Omnibus Law and Pancasila legal ideas reflect in ideological elements (values and attitudes). Ideology is the second subjective category of probable causes of behavior, referring to a set of values held by society to feel, think, and act (Anggono, 2020). The motivations encompass a multitude of factors, including values, attitudes, assumptions about the world, religious beliefs, political, social, and economic ideologies (Diprose, et. al., 2019). This is evident in both the fundamental principles of the Omnibus Law and the Pancasila legal ideas, which encompass views on the objectives of the Indonesian nation and state. Furthermore, they serve to establish the fundamental principles and direction for the enactment of legislation and regulations aimed at national development.

Subjective factors, including interests and ideology, provide a partial explanation of problematic behaviour (Surahno, 2023), including in terms of balancing and aligning the basic idea of the Omnibus Law with the Pancasila law-idea. Legislation designed to change the interests and ideology of individuals is therefore required. Legislative solutions that focus solely on the subjective causes of problematic behaviour are insufficient to address the underlying objective institutional factors.

With regard to the test stone, the objective factors that focus on the causes of institutional behaviour that hinder clean governance (Börzel & Risse, 2010) represent the essence of achieving the basic idea of the Omnibus Law in alignment with the Pancasila law-idea. This category should prompt the drafter to propose an alternative explanation hypothesis to the proposed solutions, which should be analysed in light of the Rule element. This will enable the identification of any weaknesses in the regulations governing or relating to problematic behaviour, which can then be defined as the problem behaviour (Wiratmadinata, 2020).

The processing element includes four main processes are first, the input process involving anyone that asking for input. Second, the conversion process related to the filters that consider the existing-input as a basis for making decisions. Third, the output process concerns who and in what way the issuance of the decision, and fourth, the feedback process concerns who is asking for feedback based on criteria and procedures whether - with what process - the role actors decide to obey the law or not, if a group of role actors consists of individuals (Seidman et al. (2003)). The "Process" category

produces several hypotheses that are useful for explaining their behavior, which translates from the Pancasila legal idea as the most ROCCIPI category that must balance with regulatory elements (Atmaja, et.al., 2022).

Second, realizing the balance and harmony of Omnibus Law with the Pancasila legal ideas can be seen with the momentum theory put forward by D.H.M. Meuwissen (Meuwissen, 1982). The political-idiom moment is closely related to the Pancasila legal idea which emphasizes the content of laws and regulations that are formed or intended to display the desired content of the law (aspirated), this relates to articulating or processing political goals (by politicians, state officials, jurists, and others) so that political solutions are possible (Subawa, 2023a). The legislation and regulation process is a political act, the goals and results of the political process (Tamanaha, 2015), but, is not just the result of the crystallization of the political constellation, but also has a normative aspect. The ideological moment implies that legal principles (law-idea) should realize, and it has a correlation in the formation of statutory regulations, and the technical-moment relates to the ability to formulate in concrete normative texts (Meuwissen, 1979). It presupposes the formulation of ability common understandings into concrete-norms (Hermanto, 2024). Ideological moments divide into two, namely idiotic-philosophical moments in the form of worldview, culture or culture, religious beliefs, legal philosophy, legal awareness, and national insight (Usfunan, 2015). This ideological moment contextually colored by the natural-reality and social history of a nation, and legal-awareness is the core of the Pancasila law-idea. Political-aspirational moment of political interests and goals is determined to the aspirations of the real needs of society (Meuwissen, 1982). The community aspiration and needs require political articulation into political interests and goals (Subawa, 2023b). The role of legislators as politicians, political parties, and critical views of scientists/intellectuals, the media forms public opinion into its motor, which reflects the direction of the Omnibus Law regulations that grounded with Pancasila law-idea (Suartha, et.al., 2021). The political moment is factual validity and is a process of dialectical interaction with the third moment is the normative moment (Huzaeni, 2022). The technical-moment that reflected the Omnibus Law's basic ideas includes the normative moment, component of the ideal, values, constitutions, principles, norms, and legal institutions. It is the moment that becomes central so that the law can reflect the law goals of justice, legal certainty, and benefit (Meuwissen, 1979).

The link between Omnibus Law and the Pancasila legal idea is best understood in the context of the momentum theory proposed by DHM. In the context of legislation and regulation, Meuwissen identifies the most significant and contemporary form of legal formation. The omnibus law, based on an abstract behavioural model, is expected to be used to solve concrete social problems by placing the Pancasila legal idea at the highest level through the omnibus law. The formation of laws and regulations is conducted through the formulation of abstract and general rules for a number of issues at the subsequent stage. In order to address specific instances, the omnibus law requires a degree of specificity directed at concrete events (Hermanto & Aryani, 2021).

The balance and harmony between the fundamental principles of the Omnibus Law and the Pancasila legal idea reinforce the necessity for a definitive recognition of the legal position derived from the omnibus law. This matter is relevant to Lawrence Meir Friedman's concept of the legal system, which comprises three inseparable components: the legal material or substantive component, the institutional or structural component, and the legal awareness of the community, which is referred to as the cultural component of the legal system (Friedman, 1987). These perspectives remain pertinent in the present

era, particularly in the context of the Pancasila law idea, which was agreed upon by the founder of the Indonesian nation.

The position of the balance and the harmonious relationship between the Omnibus Law and the Pancasila law-idea are reflected in the existence of the legislation formation principles. It is essential that the principles of forming appropriate statutory regulations are formalised into clear, detailed principles that encompass the following aspects: the rationale for regulation, the authority responsible for enacting the regulation, the content of the regulation, the procedure for implementing the regulation, and the mechanism for recognising the regulation. The material principle with details is in accordance with the ideals of national law, in alignment with the fundamental principles of the country's basic law, the principles of a state based on law, and the principles of a government based on a constitutional system.

The equilibrium and concordance between the Omnibus Law and the Pancasila law-idea give rise to a number of generalisations, which may be formulated as follows:

1. In both common law and civil law countries, the practice of omnibus law refers to the submission of draft laws by the executive in the relevant countries. The omnibus law model for the draft law has yet to be adopted by Parliament, with the omnibus law thus tending to be directed at the political policy will of the government in each country concerned. Such a process may result in the centralisation of power and the concentration of authority in the executive branch, leading to the deviation from the fundamental principles of separation of powers between the executive and legislative branches while maintaining adherence to the Pancasila principle.
2. The nature of the government system, whether parliamentary or presidential, has no bearing on the typical use of the omnibus law, which is identical to the submission of a draft law proposed by the executive/government/president while still adhering to the Pancasila law idea.
3. The practices of several countries have also given rise to philosophical discourse. A conflict emerged between the value of benefits and justice in the context of the welfare state, effectiveness, and efficiency in government administration through the Omnibus Law. Conversely, the legal certainty value of the Omnibus Law or Omnibus Bill persists throughout the legislative process. When confronted with Civil Law countries, it is perceived that the Omnibus Law has not been incorporated into the positive law concerning the formation of legislation. This has ramifications for legal uncertainty and cannot be disregarded by countries that adhere to Civil Law, which reflects the Pancasila law-idea.
4. The existence of practices in countries that adhere to either a civil law or a common law system has implications for those who adhere to the latter. It demonstrates that it is possible for a country to no longer rigidly apply either civil or common law. This results in a phenomenon known as the convergence of civil law and common law (Tamanaha, 2011). This convergence also affects the formation of law, with the aim of achieving a balance and harmony between the Omnibus Law and the Pancasila law-idea.

These generalisations reflected the fundamental premise of the Omnibus Law's intended equilibrium and concord with the Pancasila legal concept. Furthermore, this approach can be adopted by other countries worldwide. In theory, legislation and regulations reflect the observance of legal principles arranged hierarchically. This is due to the fact that the legal norms of any country are always multi-layered and tiered, despite being compiled based on the Omnibus Law. The legislation or regulatory norms below are based on sources and higher-level norms. The higher-level norms are themselves

valid, sourced, and based on even higher-level norms up to the highest-level norm, which is known as the Basic Norms in the form of Pancasila law-ideas.

5. Conclusion

The application of the balance and harmony of the omnibus law with the idea of Pancasila law can be as general or detailed as an ordinary law, according to the circumstances of each case. In general, the revocation of provisions is not absolute; rather, it is limited to those that are contradictory. Should related general rules give rise to a new problem in the event of a clash with the principle of lex specialis derogate legi generalis, the solution would be to seek an alternative approach. This is due to the fact that the omnibus bill is responsible for the transfer of regional regulations to comply with the new omnibus law concept. In doing so, it is essential to consider the relevance of these regulations to the Pancasila legal idea when applied to unitary states. In the case of federal countries, the application of the omnibus law must also reflect a balance and harmony of legal ideas. This implies that the omnibus law can still be applied, but with due consideration of the legal ideas that inform it. The concept of law in Indonesia, as set forth in Law P3 2011, stipulates that the highest law level does not recognize the aforementioned law levels that have the same regulatory objects. This may be of no consequence, given that it does not concern other legal objects. An omnibus law in the form of an act is not a basic law; rather, it is an act that is equivalent to other laws, wholly or partially amended or removed by the introduction of new norms.

The study further proposes a minimum of five steps that lawmakers must undertake in order to achieve a harmonious balance between the Omnibus Law and the Pancasila law-idea. Firstly, the House of Representatives, in collaboration with the executive, must engage the public at each stage of the preparation process. Furthermore, the scope of the Omnibus Law necessitates that legislators extend their outreach to include a greater number of stakeholders in order to uphold the Pancasila law-idea. Secondly, the DPR and the government must ensure transparency in the provision of information regarding the development of the Omnibus Law formulation process in alignment with the Pancasila law-idea. It is imperative that the participation and transparency measures currently in place be reconsidered and implemented throughout the process of forming the Omnibus Law. Thirdly, the drafters must create a comprehensive map of the regulations pertaining to the utilisation of the Omnibus Law, and establish a clear correlation with the Pancasila law-idea. Fourthly, those responsible for policy-making must ensure that the Omnibus Law is aligned with both higher-level regulations and equivalent rules. Ultimately, the drafters must conduct a preliminary assessment before the Omnibus Law is approved, ensuring that it is aligned with the Pancasila law-idea and the Omnibus Law regulations, which are designed to achieve a balance and harmonisation. This assessment should prioritise the evaluation of the potential impact of the law.

References

Alfitri (2018) Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam, *Asian Journal of Comparative Law* 13(2), 389-413, doi: 10.1017/ASJCL.2018.10.

Anggono, B.D. (2020). Aktualisasi Pancasila dalam Produk Hukum Daerah: Permasalahan dan Solusi, Makalah disampaikan dalam Seminar Nasional Kerjasama FH UNUD dan BPIP RI, 16 Oktober.

Asshiddiqie, J. (2019, July). Kelebihan dan Kekurangan Sistem Kodifiksi dan "Omnibus Law" Serta Kombinasi Keduanya. Makalah disampaikan dalam forum FGD Pejabat Penentu Perancang Peraturan Perundangundangan Antarkementrian di Badan Pembinaan Hukum Nasional (BPHN), Jakarta.

Asshiddiqie, J. (2020). Omnibus law dan penerapannya di Indonesia. Jakarta: RajaGrafindo Persada.

Astariyani, N.L.G., et.al. (2023). Preventive and Evaluative Mechanism Analysis on Regulatory and Legislation Reform in Indonesia, Law Reform, 19(2), 248-269, DOI: http://dx.doi.org/10.14710/lr.v19i2.55819.

Atmaja, G.M.W. et.al. (2022). Hukum Kebijakan Publik, Swasta Nulus, Denpasar.

Arnscheidt, J., van Rooij, B., Otto, J.M. (2008). *Lawmaking for Development: Explorations into the theory and practice of international legislative projects*, Leiden University Press, Amsterdam.

BBC, 2020, "UU Cipta Kerja: Kesalahan 'fatal' pasal-pasal Omnibus Law akibat 'proses legislasi ugal-ugalan', apakah UU layak dibatalkan?", URL: https://www.bbc.com/indonesia/indonesia-54768000

Bosc, M. & Gagnon, A. (2017). *"Committees" in House of Commons Procedure and Practice*, 3rd Edition, Éditions Yvon Blais, Cowansville.

Brabazon, H., Kozolanka, K. (2018) Neoliberalism, Authoritanian-Populism, and the "Photo-Op Democracy" of the Publicity State: Changes to Legislative and Parliamentary Norms by the Harper Government *Canadian Journal of Political Science* 51(2), 253-277, doi: 10.1017/S0008423917001020.

Brusis, M (2010) European Union incentives and regional interest representation in Central and East European countries *Acta Politica* 45(1-2), 70-89, doi: 10.1057/ap.2009.31.

Börzel, T.A. & Risse, T. (2010) Governance without a state: Can it work? *Regulation & Governance* 4(2), 113-134, doi: 10.1111/j.1748-5991.2010.01076.x.

Carnegie, P.J. (2013). Can an Indonesian Model Work in the Middle East? *Middle East Quarterly*, 20(3), 59-67.

Chalabi, A. (2014). Law as a System of Rights: A Critical Perspective *Hum Rights Rev* 15(2), 117-138, doi: 10.1007/s12142-013-0297-8.

Cheesman, N. (2014). Law and Order as Asymmetrical Opposite to the Rule of Law *Hague Journal on the Rule of Law* 6(1), 96-114, doi: 10.1017/S1876404514001031.

Chopra, S. (2015). Legislative Safety Nets: Comparing Recent Social Protection Laws in Asia *Indiana Journal of Global Legal Studies* 22(2 Summer), 573-629, doi: 10.2979/indjglolegstu.22.2.573.

Croissant, A. (2014). Ways of Constitution-Making in Southeast Asia: Actors, Interests, Dynamics *Contemporary Southeast Asia* 36(1), 23-50, doi: 10.1355/cs36-1b.

Davinić, M. & Krstić, I. (2018). The Institution of Local Ombudsman in the Republic of Serbia – Success Story or Missed Opportunity? *Lex Localis* 16(3), 551-568, doi: 10.4335/16.3.551-568(2018).

Diprose, R., et.al. (2019). Two decades of reformasi in Indonesia: its illiberal turn. Journal of Contemporary Asia, 49(5), 691-712, DOI: https://doi.org/10.1080/00472336.2019.1637922.

Friedman, L.M. (1987). *The Legal System: A Social Science Perspective*, Reprinted Edition, Russels Sage Foundation, New York.

Gillespie, J. (2016). Public Discourse and Constitutional Change: A Comparison of Vietnam and Indonesia *Asian Journal of Comparative Law* 11(2), 209-218, doi: 10.1017/asjcl.2016.17.

Goertz J.M.M. (2011) Omnibus or not: package bills and single-issue bills in a legislative bargaining game *Social Choice Welfare* 36(3-4), 547-563, doi: 10.1007/s00355-010-0508-z.

Golić, D. & Počuča, S. (2017) Decentralized and Delegated Affairs of a State Administration in the Field of Agriculture (Decentralizovani I Porvereni Poslovi Državne Uprave u Oblasti Poljoprivrede) *Ekonomika Poljoprivrede* 64(2), 769-785.

Guba, E.G., Lincoln, Y.S. (1994) Competing paradigm in qualitative research. In: Denzin N.K., Lincoln, Y.S. (eds) *Handbook of qualitative research*, pp. 105-117. Thousand Oaks, CA: Sage.

Hadiprayitno, I.I. (2010). Defensive Enforcement: Human Rights in Indonesia *Human Rights Review* 11(3), 373-399, doi: 10.1007/s12142-009-0143-1.

Hakim, M.W.T., 2021,"RUU Cipta Kerja yang Tidak Sesuai Dengan Isi Pancasila Ke-4", URL: https://www.kompasiana.com/m42138/61a22be006310e48e0704ab2/ruu-cipta-kerja-yang-tidak-sesuai-dengan-isi-pancasila-ke-4

Hamid, A. and Hasbullah. (2022) Legal Hermeneutics of the Omnibus Law on Jobs Creation: A Case Study in Indonesia. Beijing Law Review, 13, 449-476. doi: 10.4236/blr.2022.133028.

Hermanto, B. (2019). Law Instruments within Disruptive World and Polarization of Culture, Discussant on the International Seminar Master of Law Disruptive Era in Law Perspective Udayana University and UNDP, 27 September 2019.

Hermanto, B. & Aryani, N.M. (2021). Omnibus legislation as a tool of legislative reform by developing countries: Indonesia, Turkey and Serbia practice, The Theory and Practice of Legislation, 9(3), 425-450, DOI: https://doi.org/10.1080/20508840.2022.2027162.

Hermanto, B. (2023). Deliberate legislative reforms to improve the legislation quality in developing countries: case of Indonesia. The Theory and Practice of Legislation, 11(1), 1-31, DOI: http://dx.doi.org/10.1080/20508840.2022.2080392.

Hermanto, B. (2024). Dinamika Partisipasi Publik dalam Mewujudkan Legislasi yang Partisipatoris, Jurnal Yudisial, 16(2), 205-221, DOI: http://dx.doi.org/10.29123/jy/v16i2.668.

Hermanto, B., Ibrahim Nur, A., & Subawa, M. (2024). Indonesia parliamentary reform and legislation quality backsliding phenomenon: case of Indonesia post reformasi. The Theory and Practice of Legislation, 12(1), 73-99.

Hooper, T. (2014). "More than Two is a Crowd": Mononormativity and Gross Indecency in the Criminal Code 1981-82 *Journal of Canadian Studies* 48(1 Winter), 53-81.

Hug, S. (2011). Policy consequences of direct legislation theory, empirical models and evidence *Quality and Quantity* 45(3), 559-578, doi: 10.1007/s11135-010-9313-0.

Huzaeni, M. R. (2022). Kedudukan Hukum Pancasila dan Konstitusi dalam Sistem Ketatanegaraan Indonesia, Pancasila: Jurnal Keindonesiaan, 2(1), 114-125, DOI: https://doi.org/10.52738/pjk.v2i1.83.

Kurnianingrum, A., 2023, "Tiga Tahun Kemunculan Omnibus Law UU Cipta Kerja: Sejauh Mana Nilai-nilai Pancasila Sila Keempat Tercapai?", URL: https://www.researchgate.net/publication/371680039_Tiga_Tahun_Kemunculan_Omnibus_Law_UU_Cipta_Kerja_Sejauh_Mana_Nilai-nilai_Pancasila_Sila_Keempat_Tercapai.

Lee, D.S. (2020). Executive control of bureaucracy and presidential cabinet appointments in East Asian democracies *Regulation & Governance* 14(1), 82-101, doi: 10.1111/rego.12190.

Lerner, H. (2013). Permissive Constitutions, Democracy, and Religious Freedom in India, Indonesia, Israel, and Turkey *World Politics* 65(4), 609-655, doi: 10.1017/S0043887113000208.

Lorenzo, V.D. (2007). Business Ethics: Law as A Determinant of Business Conduct *Journal of Business Ethics* 71, 275-299, doi: 10.1007/s10551-006-9139-9.

Meuwissen, D.H.M. (1979). *Vijf Stellingen Over Rechtsfilosofie*, *Een beeld van recht*, Ars Aequi.

Meuwissen, D.H.M. (1982). *Recht en Vrijheid: Inleiding in de rechtsfilosofie*, Aula-Paperback.

PSHK Indonesia (2019). *Menggagas Arah Kebijakan Reformasi Regulasi di Indonesia: Prosiding Forum Akademik Kebijakan Reformasi Regulasi 2019*, Yayasan Studi Hukum dan Kebijakan Indonesia, Jakarta.

Pepinsky, T.B., Wihardja, M.M. (2011). Deentralization and Economic Performance in Indonesia *Journal of East Asian Studies* 11(3), 337.

Samekto, A., & Purwanti, A. (2023). Perubahan Tatanan Sosial dan Transformasi Pemaknaan Pancasila. Pancasila: Jurnal Keindonesiaan, 3(1), 1–10. https://doi.org/10.52738/pjk.v3i1.132.

Suartha, I.D.M., Martha, I.D.A.G.M. & Hermanto, B. (2021). Innovation based on Balinese Local Genius shifting Alternative Legal Concept : Towards Indonesia Development Acceleration, Journal of Legal, Ethical and Regulatory Issues 24(7), 1–9.

Subawa, M. et.al. (2023). Dinamika Filsafat Ilmu Hukum Pancasila: Ontologi dan Aksiologis Sumber dari Segala Sumber Hukum di Indonesia (Ponorogo: Uwais Inspirasi Publishing).

Subawa, M. et.al. (2023). Aktualisasi Filsafat Ilmu Hukum Pancasila dalam Penguatan dan Pembenahan Pembentukan Undang-Undang di Indonesia. Uwais Inspirasi Indonesia.

Setiyono, B. (2019). *Model & Desain Negara Kesejahteraan*, Nuansa Cendekia, Bandung.

Seidman, A., Seidman, R., Abeyserkere, N. (2001). *Legislative Drafting for Democratic Social Change: A Manuel for Drafters*, Kluwer Law International, London.

Seidman, A., Seidman, R., Abeyserkere, N. (2003). *Assessing Legislation – A Manual for Legislators*, Boston University School of Law's Program on Legislative Drafting for Democratic Social Change, Massachusetts.

Siagian, A. H. (2021). Omnibus law in the perspective of constitutionality and legal politics. Jambura Law Review, 3(1), 93-111.

Simanjuntak, S. H., & Priyono, F. D. (2022). Legal Pluralism as Pancasila's Reflection to Realize Substantive Justice in Law Enforcement and Law-Making, Pancasila: Jurnal Keindonesiaan, 2(1), 37-48, DOI: https://doi.org/10.52738/pjk.v2i1.88.

Spranz, R., Lenger, A., Goldschmidt, N. (2012) The relation between institutional and cultural factors in economic development: the case of Indonesia *Journal of Institutional Economics* doi: 10.1017/S1744137412000124

Surahno, S. (2023). Institusionalisasi Pancasila dalam Pembangunan Karakter Perancang Peraturan Perundang-Undangan, Pancasila: Jurnal Keindonesiaan, 3(2), 191-203, DOI: . https://doi.org/10.52738/pjk.v3i2.162.

Tamanaha, B.Z. (2011) The Rule of Law and Legal Pluralism in Development *Hague Journal on the Rule of Law* 3, 1-17, doi: 10.1017/s1876404511100019.

Tamanaha, B.Z. (2015) The Knowledge and Policy Limits of New Institutional Economics on Development *Journal of Economic Issues* 49(1), doi: 10.1080/00213624.2015.1013881.

Usfunan, J.Z. (2015). Pancasila as the Guidelines in the Legislation in Indonesia, Academic Research International, 6(1), 272–281.

Wiratmadinata. W. et al. (2020). Construction of Legal Paradigm of Pancasila: A Conceptual Perspective, Journal of Legal, Ethical and Regulatory Issues, 23(1s), 1–7.

van Gijssels, J. & van Hoecke, M. (1982). *Wat is Rechtstheorie?*, Eerste Edition, W.E.J. Tjeenk-Willink Zwolle, Antwerpen.

van Hoecke, M. (1984). *Methode van de Rechtsdogmatiek*, Rechtsfilosofie & Rechtstheorie, no. 3.

Wintgens, L.J. (2006). Legisprudence as a New Theory of Legislation *Ratio Juris* 19(1), 1-25.