STRUCTURING LEGISLATION THROUGH OMNIBUS LAW: OPPORTUNITIES AND CHALLENGES IN THE INDONESIAN LEGAL SYSTEM

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ABSTRACT

The government's efforts to submit a bill with the Omnibus Law method reaped a public backlash. This is because Indonesia adheres to the civil law system, while the omnibus law of the common law system. In addition, each law has different philosophical, juridical and sociological foundations. The formulation of the problem is what ratio legis the formation of legislation with the Omnibus Law method, and how the juridical consequences of the system of the formation of legislation in Indonesia. This writing is normative juridical, with a philosophical, statutory and conceptual approach. The legis ratio of omnibus law implementation is to simplify regulation and in order to organize legislation. The advantage is that it can solve the need for new policies through a single regulation. But the juridical consequences, there are irregularities with the system of the formation of legislation in Indonesia. Requirements in the use of omnibus law method that is necessary to fulfill the principles of openness, prudence, and community participation, and should be made changes in advance to law number 12 of 2011 on the Establishment of Legislation.

Keywords: Omnibus Law, Legis Ratio, Juridical Consequences.

INTRODUCTION

The 3rd amendment of the 1945 Constitution passed on November 10, 2001, in Article 1 paragraph (3) states, that the State of Indonesia is a State of Law. As a consequence of the principle of the State of Law, every motion and step and discretion that will be taken by every organizer of the State, citizens and other legal subjects must always be based on the law. In other words, all aspects of life in the field of society, nationality, and statehood including government must be based on the law.

One of the most important elements in a country of law is the prevailing system of legislation. Legislation must be able to create conditions that support the achievement of community welfare. In other words, the laws and regulations must prosper the common life. Therefore, legislation must be in a good and quality system (Astawa 2012).

The existence of legislation in a country has a very important and strategic position, both seen from the conception of the state of law, the hierarchy of legal norms, and seen from the function in general. In that context Paul Scholten, states that the law exists in the legislation, so

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one must give him a high place (Rosyid, 2015). The very close relationship between the legislation and the achievement of this national goal demands a good system of legislation. The quality of legislation and good system will support the implementation of national development. Conversely, if the quality and system of legislation is not good, it will be an obstacle to the efforts to achieve national goals. This is in line with what Jeremy Bentham has said about good laws, that the law should be known to everyone, consistent, its implementation clear, simple and firmly enforced. But the most important requirement is that the law should be based on the principle of benefits to the community (Bentham, 2010).

The problem of legislation that has been raised lately is the overlap of legislation equivalent to other laws and regulations both at the central and regional levels (Minister of Law and Human Rights of the Republic of Indonesia, 2020). In addition, developments to date show many laws and regulations deviate from the content material that should be regulated. Disobedience to the material of the content raises the issue of "*hyperregulation*". Similarly, the effectiveness of the implementation is often an issue that arises at the level of implementation (PSHK, 2019). This is due to the many intersecting laws and regulations that govern the same thing and have not been done in a complete synchronicity with each other. This happens among others because the formation of legislation is sometimes not due to the needs of the community alone because of the need for the fulfillment of political will, so it often seems to distort the procedures of the formation of legislation as stipulated in Law No. 12 of 2011 on the Establishment of Legislation as amended by Law No. 15 of 2019 on Amendments to Law No. 12 of 2011 on the Establishment of Legislation (UU P3).

The guaranteed quality of the principles of the state law is strongly influenced by the condition of the laws and regulations in Indonesia. Ineffective legislation will have a negative influence on the existence of the state law. In situations like this, the public will take a distance from the law. The level of trust and dependence of the community on the law will also decrease. However, until now the problem of legislation is still one of the problems that have not been resolved, both at the central and regional levels.

Various efforts have been taken by the government in improving the legal system. Policy tightening of planning and downsizing and harmonizing efforts have been carried out. But the policy has not had a significant impact on the fundamental problems in the legal system. Therefore, the President of the Republic of Indonesia (2019) initiated a new breakthrough called omnibus law aimed at combining all materials and substances contained in various laws in one law to support economic growth, overcome the problems of legislation, which causes the investment climate in Indonesia to move slowly, and simplification of bureaucratic constraints.

For most indonesians, the term omnibus law has not been popular, because the Indonesian legal system that adheres to the Civil Law system is one of the reasons for the concept. While law P3 has not included the concept of omnibus law as its content material that can be used as a legal basis in the formation of legislation. Therefore, the concept of omnibus law continues to be debated among legal experts, especially related to the Omnibus Law on Copyright Work, which has now been established by the government. Omnibus law is referred to as sweeping legislation. The concept of Omnibus Law is also considered contrary to the principles of democracy and also contrary to the basic principles stipulated in the P3 Law.

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Therefore, the application of Omnibus Law in Indonesia needs to be studied in depth in the perspective of Law No. 12 of 2011 on the Establishment of Legislation (UU P3).

Based on the background of the above problems, the juridical problems that will be answered are, first: what is the legislative ratio of the formation of legislation through the Omnibus Law, second: how the juridical consequences of the application of omnibus law to the system of the formation of legislation in Indonesia.

METHOD

This writing is a normative legal research, which examines legal materials, primary, secondary, and tertiary, with a philosophical, statutory and conceptual approach.

DISCUSSION

Legis Ratio of Law Formation Through Omnibus Law

One of the efforts made by the government in law reform is to use the omnibus law method in the formation of legislation. This method is expected to be more effective in simplifying the law that has been experiencing many problems. But before further discussing about what ratio legis formation legislation with omnibus law method will first be outlined about what the definition of omnibus law.

Etymologically, omnibus law comes from the Latin word "omni" and English "bus". In the Duhaime Legal Dictionery of the United States "Omnibus Bill" is defined as "Adraft law before a legislature which contains more then one substantive metter, or several minor metters who have been combined into one bill, onstensibly for the sake of convenience" (Duhaime Legal Dictionery, 2020)

Audrey O'Brien and Marc Bosc define the omnibus law as a bill that seeks to amend, repeal, or enact some provisions in various laws (O'Brien 2009). Furthermore, according to Audrey O'Brien through the omnibus law, several amendments to the law are made through one law in order to facilitate one particular policy taken by the state.

Maria Farida Indrati defines omnibus law as a (new) law that contains or regulates various substances and various subjects for the simplification of various laws that are still in force (Anggono, 2020). A Ahsin Thohari defines omnibus law as an omnibus law−making technique (Thohari, 2019). This technique allows one integrated bill (omnibus bill) containing changes or even replacement of several laws at once submitted to parliament to obtain approval in one decision-making opportunity. What is conveyed by A Ahsin Thohari wants to limit the understanding of omnibus law just as a technique of law formation that concerns the choice of mere methods.

Regardless of the pros and cons, since it began to be discussed as a legal and statutory term, Omnibus Law is understood as a method or technique of the formation of legislation with a view to making changes at once to some existing laws and in force before. Therefore, the term Omnibus Law has always been associated with and even more widely understood as the Omnibus Bill or Omnibus Bill which later after being approved together and passed has only changed to Omnibus Law, that is, if later the bill is already valid into law, then the term omnibus

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is actually not very important anymore or even no longer needed, because its status has officially become law as other laws in general. Thus there is no specific need to distinguish between omnibus law and ordinary law, as both are laws. However, the mention of the Omnibus Bill is important to illustrate his idea to change several laws at once (Asshiddiqie, 2020).

Therefore, a more appropriate term to use is not the Omnibus Law but the "*Omnibus Bill"*. In the context of Indonesia discussed this is also about the Omnibus Bill, not the Omnibus Law. But in practice, the use of these two terms is often mixed up. Everyone uses all they want for the same purpose, namely Omnibbus Bill where it was originally practiced in Canada and the United States sometimes some also use the term omnibus law, but the commonly used term omnibus bill. Thus, the Omnibus Bill or Omnibus Bill is nothing but a technique of the formation of legislation to change and integrate arrangements on matters considered interrelated derived from several laws at once in one law.

Based on the understanding as described above, it can be known that there is a difference between the law-forming techniques used in Indonesia and the techniques of law formation with the omnibus law method. Some of these differences are: First, in terms of regulated/loaded substance; so far the customary law in Indonesia is to contain one particular material/substance, while omnibus law contains many different materials / substances and can even be not interconnected. Second, in terms of law-forming techniques; the change or repeal of a law that has been common in Indonesia is to use the method of one proposed change in the law to change or repeal one law only and not to change the substance of another law. While omnibus law uses the technique of changing, repealing, or enforcing some provisions in various laws only through one proposed formation of legislation to Parliament. Third, in Indonesia is known the concept of codification law; between omnibus law and codification also have different meanings. Omnibus law does incorporate or collect provisions from many laws, but the provisions collected are various legal topics and often do not relate to each other. Law is the bookkeeping of the law in a set of laws in the same material (Soeroso, 2011).

The formation of legislation using the Omnibus Law method is new in the system of the formation of legislation in Indonesia, therefore it must be done for clear and transparent reasons. In this context there are several reasons for the application of omnibus law in Indonesia, among others:

Regulatory Simplification

One of the reasons that the government makes laws by omnibus law method is because there are too many regulations made. Not infrequently, one regulation with another regulation overlaps and hinders access to public services, as well as ease of doing business. Thus making the program of accelerating development and improving the welfare of the community difficult to achieve.

The Indonesian Center for Legal and Policy Studies (PSHK) noted that in the period 2014 to October 2018, the government has issued 8,945 regulations, consisting of 107 Laws, 452 Government Regulations, 765 Presidential Regulations, and 7,621 Ministerial Regulations.

With such regulation it will be difficult to synchronize and harmonize, so it is very vulnerable to the possibility of overlap between each other. The problem, according to PSHK, the main problem that hinders the success of government programs so far, one of which is

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precisely chaotic and overlapping regulations. The impact is that various accesses to public services, including facilities related to ease of business, are increasingly becoming hampered. The government has increasingly piled up homework to harmonize and synchronize existing regulatory products.

The same criticism also appeared at the 4th National Conference on Constitutional Law (KNHTN) held in Jember, East Java on 10–13 November 2017, which noted that the establishment of uncontrolled regulation has not only caused disharmony and inconsistency between regulations, but also resulted in overlap between regulations. The fact about the condition of this regulation also has implications on the hampering efforts to launch programs to accelerate development and improve the welfare of the community. This forum issued Jember Recommendations on Regulatory Arrangements in Indonesia.

The existence of various norm conflicts, distortions of norms, contestation of norms, interpretation conflicts, and obisitas of legislation/regulation caused by 4 (four) main problems, namely: law making process problame; interpretation problame, implementation problame, and capacity problame (Ahmad, 2020).

This regulatory issue is also often addressed by President Joko Widodo on various occasions, so there should be efforts to simplify. Therefore, the purpose of making omnibus law according to the President of the Republic of Indonesia is to overcome all forms of regulatory constraints that are being experienced by Indonesia so that regulations must be simplified, cut and trimmed in number (kompas.com).

What president Joko Widodo said about the simplification of regulation has actually been often said during the first period of his term of office 2014-2019. Recorded in March 2016 when giving directions at the Presidential Government Working Meeting stated that there are 2 priority things that the focus wants to be done in the next five years, namely deregulation and acceleration of infrastructure development. On that occasion, the President also highlighted the existence of 42 thousand regulations at the central level and 3 thousand regional regulations that could impede development (setkab.go.id).

Next in January 2017 the President launched a phase II legal reform policy, one of which is regulatory arrangements. Through regulatory arrangements the President emphasizes that the Government will evaluate a number of regulations that are out of sync and that can lead to multi-interpretation. This is important considering that multi-interpretation regulation can have an impact on Indonesia's weak competitiveness on the global stage (hukumonline.Com).

The strong political will that has been shown by President Joko Widodo has been followed up by several relevant ministries, one of which is the Ministry of Law and Human Rights which has the task and function of organizing government affairs in the field of legislation (Presidential Decree No. 44 of 2015). Several policies have been taken ranging from tightening new regulatory proposals, strengthening harmonization of draft regulations including Ministerial/Institutional Regulations, reviewing draft regulations before they are enacted, evaluating regulatory enforcement and mediating in the event of disputes or conflicts between regulations (Permenkumham No. 22 of 2018).

Technical ministries such as the Ministry of Energy and Mineral Resources (ESDM)

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have cut a number of regulations that are authorized (Liputan6.Com). Ministry of Energy and Mineral Resources as announced in March 2018 stated that it has revoked 90 regulations and 96 certifications, recommendations and licensing.

In its development, what the President said began to take place on January 30, 2020 when Finance Minister Sri Mulyani who represents the President submitted a Presidential Letter (Surpres) related to the omnibus law of the Tax Bill to the House of Representatives (DPR). This was followed on February 12, 2020 Coordinating Minister for Economy Airlangga Hartarto handed over the Supres and omnibus law of The Copyright Work Bill to the House of Representatives (CNNIndonesia.Com). Especially regarding the empowerment and development of MSMEs in the end does not become a separate bill but rather becomes part of the Bill cipta Kerja (Kompas.id).

Structuring Legislation

Given the production of regulations, starting from the level of legislation along the independence of Indonesia has accumulated and gave rise to the phenomenon of "hyper regulation", then every government organizer intends to make innovations or breakthroughs that can certainly clash with the legislation, it could even be that the action has not been strictly regulated in the legislation. While in the State Administrative Law is known the existence of azas Rechtmatig, which requires that any state administrative action or act of extortion must be based on the law (Kaharudin, 2016). If the revision of the legislation is to be done conventionally, then it can be expected that it will take a very long time to harmonize and synchronize many existing regulations.

At the same time, the challenges of the digital society ecosystem era are already in sight. Indonesia cannot linger by formal procedures. Therefore, policy breakthroughs in the process of drafting laws must be born immediately, so that the many laws and regulations in Indonesia can be reorganized properly. Based on this urgency, the only way to simplify and homogenize regulation quickly is through the Omnibus Law scheme or method.

Currently Omnibul Law becomes the official policy of the government with the establishment of various bills that become instruments for the resolution of national and state issues. Furthermore, it is said, that the draft law made contains the spirit of goodness, such as job creation, taxation, and the relocation of the nation's capital (Redi, 2020).

Rationally and objectively, some advantages and advantages of the omnibus bill or omnibus bill can be applied (Jimly Asshiddiqie, 2020). First, in terms of time it must be more efficient because it can solve many of the needs of new policies through regulation in a single process of law formation; Second, the laws and regulations can be arranged to be more harmonious because on each occasion make changes with one law, the substance contained in many other laws can be simultaneously integrated into the new law. Third, for the business world, the world of work, and society in general, with the integrated and harmonious system of prevailing laws and regulations, guarantees of legal certainty and legal benefits are considered more guaranteed. Fourth, with the omnibus method, state and government policies that apply

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binding because it is poured officially in the form of legislation can be easier to understand, so it is easier to be implemented or implemented as it should be in practice in the field.

There are at least three benefits from the implementation of omnibus law, as follows:

1. Eliminate overlap between laws and regulations.
2. Efficiency of the process of change / revocation of laws and regulations.
3. Eliminate the sectoral ego contained in various laws and regulations.

Louis Massicotte explained that there are 2 advantages or benefits obtained from the adoption of technical omnibus law in the formation of the Law, namely: First, omnibus law techniques save time and shorten the process of legislation because there is no need to make changes to many laws that will be changed but simply through a draft law that contains many material changes from various laws (Anggono, 2020). By only through one Law that contains a lot of material changes from various laws, it can be avoided the length of debate of legislators against each Law if changes are made in the usual way. Second, making the relationship of opposition parties (minorities) and majorities in parliament which is customary is the principle of winning and losing in the discussion of the draft law, then with the omnibus law equally become a chance. Given the substance of the omnibus law is very much then make the rejection of the entire contents of a Law by the opisisi party becomes inevitable because the opposition party becomes having the option of rejecting a substance but on the other hand approves the other substance (Anggono, 2020). The advantage of using omnibus law technique is the formation of the Law to be more efficient. This is because many amendments to the Law can be done only through one Law or a Single Law (Dodek, 2017).

In Krutz's view, omnibus law brings the benefit of preventing legal uncertainty that arises after the formation of one Law that contains only one particular material due to potential opposition to other Laws. Another benefit of the use of omnibus law is to increase productivity in the formation of the Law. The argument is that when there is no dominant majority in government so that decision-making is often jammed due to differences in interests, the omnibus law technique allows it to be a solution because it can accommodate many interests so that the Law can be approved by all parties (Sinclair, 2001).

Based on the views of these academics, there are at least 4 benefits from the use of legislation techniques with the omnibus law model, namely: (i) shorten the process of legislation in terms of the need to change many provisions in various laws because there is no need to make proposed changes one by one to the Law that wants to be changed; (ii) preventing deadlock in the discussion of the Bill in Parliament as a result of much substance contained in the omnibus law then Lawmakers have the opportunity to make compromises because they can exchange interests; (iii) the cost efficiency of the legislation process considering if with the usual law change techniques must prepare costs for the change of each Law, while if with omnibus law it is no longer necessary; and (iv) harmonization of arrangements will be maintained given the changes to many provisions spread across various laws carried out at one time by the omnibus law.

In addition to the advantages, there are also some drawbacks in the use of Omnibus Law.

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One of the disadvantages of this omnibus law is its very fast formation process while the material is very much content. In fact, the quantity of content and the complexity of conflicting interests that invite substantive debate, he wants to be formulated, discussed, and ratified as soon as possible to pursue the demands of accelerating economic progress. The idea of an omnibus developed like this inevitably invites widespread pro-cons reactions in the community (Sinclair, 2001).

In addition, the weakness of the omnibus law was also put forward by Aaron Wherry, who stated, that omnibus law is a pragmatic and less democratic practice of law. The reason is because the omnibus law replaces and changes the norms of some laws that have different political initiatives. So with the issuance of the omnibus Law, parliament or legislative institutions are considered insensitive to the complexity of the interests and aspirations of the factions that have compiled and compromised the interests of the Law that have been removed by the omnibus Law (Buana, 2017).

Another drawback is also according to Adam M Dodek, that the omnibus law makes it difficult for parliament to check the contents of the Law correctly. The existence of omnibus law is also very vulnerable to erode the function of the real parliament in the formation of the Act, this is because citizens choose MPs is in order for members of the parliament to consider all points of view in the discussion of the Law, argue and observe the contents of the Law carefully, which is the desire of this constituent is difficult to realize if the parliament must discuss and examine the omnibus Law containing many unrelated subjects (Dodek , 2017).

Thus, it can be concluded that with the practice of omnibus bill, it does contain many weaknesses that harm the democratic process and the state of law, especially with regard to the principle of due process of law making. The negative impact of the omnibus bill's practice is (I) the discussion process in the parliamentary forum in the technical sense of declining quality and reliability, (II) the quality of public participation decreases; (III) the quality of substantive debate in parliamentary forums on any policy issues related to the public interest of the people is also greatly decreased, (IV) debate in public discourses becomes a focal point and is not directed. In fact, the role of free media and political and academic forums are very important as a medium of socialization and education for the wider community. All of these are factors that determine the democratic process evolving from formalistic and procedural democracy to subtantive democracy that is more frozenality and intergritas.

Juridical Consequences of the Implementation of Omnibus Law on the System of the Formation of Legislation in Indonesia

As outlined above, that the system of the formation of legislation has been stipulated in Law No. 12 of 2011 concerning the Establishment of Legislation as amended by Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 on the Establishment of Legislation (UU P3). Thus, any formation of legislation must not be contrary to the P3 Law.

The system of the formation of legislation known in the P3 Law is a single system, meaning that one law regulates one particular thing. This is because every law requires certain foundations, such as philosophical foundations, sociological foundations and juridical

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foundations. Each of these foundations must synchronise with each other and lead to the same point of mind which is why the law needs to be made.

In contrast to the formation of legislation with the Omnibus law method, this requires the incorporation of arrangements of various points of mind and material content that are different in the same law. This will complicate the synchronization between the foundations such as philosophical, sociological and juridical foundations with a variety of points of mind set forth in one law, because each point of mind that needs to be regulated will always have a different philosophy from one to another, as well as sociological factors will certainly differ from one another.

In this context, Maria Farida Indrati expressed her criticizy towards the formation of the bill by omnibus law method, because it is feared that it will cause new problems. According to him, the formation of legislation through omnibus law is commonly applied in countries that adhere to the common law system. If the omnibus law is implemented it will cause new problems in the system of drafting legislation and there will be uncertainty of the law (hukumonline.com).

In the formation of legislation by omnibus law method, Maria delivered several critical notes, first, every legislation must be established based on the principles of the establishment of appropriate legislation (beginselen van behoorlijke regelgeving) and also based on philosophical, juridical, and sociological foundations that are certainly different for each legislation. Second, regarding the existence of various laws that some articles are repealed (transferred) and put in the omnibus law, because each law in addition to regulating different content material also regulates different subjects (adressat) (Anggono, 2020).

Meanwhile, Jimly Asshiddiqy suggested that the establishment of omnibus law is directed more broadly, thoroughly, and integratedly in the framework of structuring the legal system and legislation based on Pancasila and the 1945 Constitution. Because, during this time often between the law and other legal products (below) regulate similar content material/equal (overlapping arrangements). This leads to incompatibility which ultimately complicates the application in the field. "The application of the idea of omnibus law should not only be limited to the issue of licensing and ease of business (Asshiddiqie, 2020).

Looking at the example of the application of the Omnibus Law method in the Copyright Act that has been created by the current government, Jimmy Zefarius Usfunan, gave a note, First, the repeal of the rule must be careful. The closing provisions of the omnibus law must affirm the revocation of the articles of the affected legislation. Otherwise there will be a conflicting debate over legal norms. Instead of being a solution, there is a problem in its implementation. Second, each law has a different philosophical, sociological, and juridical basis. Consideration of philosophical, sociological, juridical aspects of the rules to be repealed must be careful. Moreover, when it comes to the constitutional rights of citizens, for example when eliminating a type of permit, do not just focus on facilitating investment only. It could be vulnerable to judicial review to the Constitutional Court. Third, carefully identify the problem. Whether the problem is at the level of legal substance, application, or precisely the legal culture of society. It is only a matter of the state of legal substance that requires alteration or revocation. However, if in terms

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of the application or legal culture of the community, it is necessary to change the implementation of the policy (Usfunan, 2020).

If the Omnibus Law Cipta Kerja is seen from the perspective of Law No. 12 of 2011 on the Establishment of Legislation as amended by Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Establishment of Legislation (Uu P3), then there are some errors or violations in the system of the formation of legislation in Indonesia, among others do not pay attention to the principle of openness, prudence , community participation and other principles in the formation of laws and regulations. Even according to Arif Maulana "Omnibus law has no legal basis," because law P3 as a technical basis for the formation of legislation in Indonesia does not regulate the mechanism of omnibus law, and if this omnibus law method is still applied it will potentially add new problems in the Indonesian legal system and potentially violate the rights of citizens, especially workers and their families who are guaranteed the constitution (Maulana , 2020). Thus, the juridical concurrency is that the law can be said to be formally flawed or procedurally flawed and can be submitted judicial review to the Constitutional Court.

SUGGESTION

Based on the findings of the research, it can be suggested, among others: The use of omnibus law method in Indonesia should pay attention to the principles of openness, prudence, community participation, and other principles in the formation of legislation and before the omnibus law method is applied, it should first be made changes to law number 12 of 2011 on the Establishment of Legislation.

CONCLUSION

There is a difference between the usual law formation techniques used in Indonesia and omnibus law, among others in terms of regulated/loaded substance, and the method of law change. The reason for the implementation of omnibus law is to simplify regulation because too many regulations overlap and conflict with each other so as to slow down the development process, and in order to organize legislation. The advantage of omnibus law, can solve many of the needs of new policies through regulation in a single process of law formation. Legislation can be arranged to be more harmonious and integrated, so that it is easier to be socialized and understood by the public. However, the juridical consequence is that there are irregularities or conflicts with the system of the formation of legislation in Indonesia.

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