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Regulatory Arrangement in the Welfare Sector Using the Omnibus Law Method

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Abstract: Pancasila and the 1945 Constitution describe Indonesia as a welfare state. In order to cause this happen, many regulations have been formed, which to this date have not been able to bring comfort and splendor in implementing the welfare of the Indonesian people. The number of regulations has actually brought Indonesia to the brink of regulatory obesity and resulted in ineffective regulations in the welfare sector. This study aims to provide an overview of solutions to various welfare problems in Indonesia through regulatory arrangement using the omnibus law method. It represents a normative study using a legal approach and conceptual approach. The results indicate that the application of the omnibus law method can be an innovative alternative without violating the Indonesian legal system. It is because the application of the omnibus law method begins with a legal transplant, which comprises several provisions: The omnibus law approach pattern is limited per sector/theme; (2) simplification of law using the omnibus law method is carried out by measuring the relevance of a regulation with basic criteria; (3) the formation of regulations using the omnibus law method using comprehensive, multidisciplinary and multi-sector approach; (4) the application of the omnibus law method as a whole must be oriented to Pancasila, the 1945 Constitution and Law Number 12 of 2011. Regulatory arrangement with the omnibus law method can not only provide effectiveness but also overcome regulatory obesity for more satisfactory legal system and administration of welfare.

Keywords. Welfare State; Omnibus Law; Regulatory Arrangement.

INTRODUCTION

Creating a welfare state has developed the obsession of many new countries, especially in Asia, which became independent after World War II. Several countries, such as South Korea, Taiwan, and Singapore, have been reasonably successful in building their welfare states. Likewise, the Unitary Republic of Indonesia, as mandated in the 1945 Constitution, is designed as a welfare state. Based on Pierson's view, the term of 'welfare' contains at least three sub-classifications, namely: (1) Social welfare, which refers to the collective acceptance of welfare; (2) Economic welfare,

which refers to assurance of security through the market or formal economy; and (3) State welfare, which refers to assurance of social welfare services through agents from the state. A welfare state is simply defined as a state in which the state government is considered responsible for ensuring the minimum standard of living welfare for every citizen [3].

There is a plausible assumption that the Republic of Indonesia is designed as a welfare state. It can be traced from the sound of the preamble to the 1945 Constitution that "The government protects the entire nation and all spills of blood, advances public welfare and the intellectual life of the nation." Furthermore, several articles in the 1945 Constitution reflect the basic values of the welfare state, such as article 27 (2) "Every citizen has the right to work and a decent living for humanity"; Article 28A "Everyone has the right to live and has the right to defend his life and life; likewise in articles 28B, 28C, 28H, 31, 33, and articles 34[3][4].

Implementing prosperity and welfare for all Indonesian people is one of the ideals desired by the founders of the Indonesian state. The developmental process merely provides opportunities for a small part of society to enjoy the results of development and marginalizing other community groups neglects this ideal. Researchers in the populist economy consider that the process of economic development in Indonesia has increasingly shifted away from the ideals of social justice, prosperity, and welfare for all Indonesian people. This occurs because development policies do not take sides with the people and the tendency to a market economy so that the strong ones will be able to access more productive economic sources while the people are more considered as objects of development so that they are accustomed to being passive and yielding to the situation. The resulting consequences, poverty, and social inequality arise as a result of the developmental process as mentioned earlier.[3]

In fact, problems in the welfare sector are inseparable from the existing regulations. Admittedly, the regulations that have been implemented for so long have not been able to bring convenience and splendor in implementing the welfare of the Indonesian people. The number of laws and regulations in Indonesia illustrates the chaotic legal system itself. The formation of a large number of laws and regulations reflects many arising problems and require the presence of new regulations in their resolution. It indicates the ineffectiveness of the existing statutory regulatory system so that in dealing with the problem, laws and regulations must be formed, which in turn leads to obesity of legislation. In this case, it is important to have a progressive and effective legal development. One solution to implement is legal arrangement in the Welfare sector by using the omnibus law method.

Based on the background description above, the authors focus their research on two points of problem statement, namely: first, how is the conception of Indonesia as a welfare state based on Pancasila and the 1945 Constitution? Second, how are the efforts to strengthen the conception of Indonesia as a welfare state through regulatory arrangement in the welfare sector using the omnibus law method?

This research will take you from the Indonesia Welfare State Conception, to how reinforcement of the conception can be done through Regulatory Arrangement in the Welfare Sector Using the Omnibus Law Method.

METHOD

This research is a type of normative legal research, which uses the 1945 Constitution, Laws, Constitutional Court Decisions, and Supreme Court Decisions as the object of its study. It used a statutory approach and a conceptual approach to compile this research. It also used a descriptive analysis method that aims to discuss problems by collecting data, compiling, categorizing, and analyzing the reinforcement of the conception of Indonesia as a welfare state through regulatory arrangement in the welfare sector using the omnibus law method.

FINDING AND DISCUSSIONS

Indonesia Welfare State Conception

"Social Welfare" as the idea and ideals of the nation was first put forward by Soekarno in his speech on June 1, 1945. At that time, social welfare was introduced as the fourth principle of Pancasila. However, in the formulation of Pancasila, the term of "Social Welfare" was replaced by "Social Justice", which was the idea of Mohamad Hatta. However, according to Hatta, the term of social justice is explained as social welfare. The construction of social justice as referred to above, is not only interpreted as an economic foundation, but social justice directed by Pancasila is justice in all fields. This achievement of justice ultimately brought forth to a welfare state. In the concept of a welfare

state, everyone is equal before the law and more importantly the state must be run based on existing laws.[16] In this way, it can be interpreted that social justice is a principle that underlies social welfare. In this case, social justice can also be interpreted as "just and prosperous" or just prosperity.[12]

The precept of "Social Justice" is the most concrete manifestation of the values and principles of Pancasila. It is the core of divine morality, the basic foundation of humanity, the knot of unity, and the motto of people's sovereignty. On the other hand, the embodiment of social justice should reflect the ethical imperative of the other four principles.[11] It is because Pancasila from the first to fifth precepts are inseparable and taken only in part but is always united and treated as a unit that is related to one another.

In the life of the nation and the state, the determination of state goals is one of the most fundamental things. Setting the state goals means painting a big sketch of the state future. It becomes a guide that must be taken to achieve the maximum benefits for the life of the nation and state. The goals of the state that are deemed most compatible with the spirit of modern society are protecting human rights and advancing general welfare.[8] Protecting human rights means accommodating the human rights of each individual so that they are always well organized, fair and non-discriminatory. In such way, people can feel safe and at ease. Meanwhile, advancing the general welfare is part of the goals of the welfare state. Modern paradigm always connects the goals of the state with the state of society, namely the aspect of its welfare.[10] It means that the administration of welfare is not only regarded from an economic point of view, but from all sides. The state is also obliged to ensure the welfare of the people in various aspects of life such as health, education, social, culture, and religion.

Although in terms of age, the Republic of Indonesia is still relatively undeveloped compared to the countries of West Europe and the United States, the implementation of welfare principles in the Republic of Indonesia is gradually directed towards better development. Thus far, the implementation of welfare in Indonesia still requires the progressive improvement.[5]

In contrast to the welfare state system of western capitalist countries, which is based on liberal capitalism and does not prioritize genuine people's welfare and social justice, Indonesia implements a welfare state system based on political democracy and economic democracy that prioritizes the values contained in Pancasila and their elaboration in the 1945 Constitution.[12]

Even though it has a very great and crucial position and role, in fact, Pancasila needs a more concrete explanation as a form of embodiment of its values. The values in Pancasila are then embodied in the 1945 Constitution of the Republic of Indonesia, which is the Constitution of the Republic of Indonesia. The precepts in Pancasila then inspired and penetrated the body of the Constitution and became the highest reference in law enforcement in Indonesia.

The 1945 Constitution of the Republic of Indonesia requires the state to have the responsibility to protect the entire Indonesian nation and to act actively in advancing public welfare in an effort to achieve social justice for all Indonesian people.[19] The national leaders who drafted the 1945 Constitution held the belief that the dream of social justice could achieve equitable prosperity, in this case social justice for all Indonesian people. Therefore, Article 33 in Chapter XIV of the 1945 Constitution with the title "Social Welfare" was formed. It is the main foundation for the economy and social politics in Indonesia.[13]

The views on welfare that exist in the 1945 Constitution are not only spelled out in Article 33, but also in Article 34, which in the construction of the 1945 Constitution before the amendments are made in the same chapter with the title "Social Welfare". Based on its substance, Article 33 discusses the National Economy, while Article 34 deals specifically with social welfare. According to Mubryanto's view, these two articles have very close and inseparable causality relationship. The good and bad condition of the National Economy will also determine the level of social welfare. That is the reason why the two chapters are put in the same chapter.[20]

Apart from Articles 33 and 34, the state's contribution to welfare is also reflected in Articles 23,27,28 and 31 of the 1945 Constitution. These articles should be fully comprehended. Article 23 states that the management of the state budget and finances is prioritized for the welfare of the people. Article 27 regulates the right to livelihood and decent work. Article 28 states that the people have the right to fulfill their basic rights. Article 31 emphasizes the state obligation to provide education. If all the articles above are interpreted in their entirety, it can be seen clearly that the goal of the state is solely to prosper and thrive the Indonesian people.[10]

Reinforcement of Indonesia's Welfare State Conception through Regulatory Arrangement in the Welfare Sector Using the Omnibus Law Method

The formation of laws and regulations is one of the substantial things in a government, both at the national and regional levels, in response to the interests of the community. It is based on the idea that the Indonesian state represents

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a constitutional state. As a rule of law, all aspects of life in the social, national and state fields must be carried out based on the national legal system.[7]

As a rule of law, Indonesia maintains the obligation to carry out good national legal development. This legal development must be carried out in a planned, integrated and sustainable manner, in order to ensure the protection of the rights and obligations of all Indonesian people based on Pancasila and the 1945 Constitution. The development of a good national law is expected to prosper, impose order, provide legal certainty and justice for all people of Indonesia.[7]

However, as stated in the previous section, Indonesia is experiencing an increase in the number of regulations or is over-regulated. Based on the 4th National Conference on Constitutional Law (KNHTN), it is known that the over-regulation that has occurred so far has not only caused disharmony and inconsistency between regulations but also has an impact on overlapping regulations. As a result, it hampers the efforts to launch programs to accelerate development and increase welfare.[1] In addressing regulatory issues that have occurred to this date, it requires a stricter and more integrated effort and is capable of materializing legal unification to achieve a unified system that can sustain a profound impact on the welfare of society. The current system requires a fundamental and large-scale rearrangement, so that the agenda for legal development and welfare administration becomes effective and efficient.

Regarding the practice of legislation in Indonesia, the complexity of the problem of regulatory arrangement in Indonesia will take time and cost a lot if the arrangement process employs the method of changes that have been carried out so far. The issue of overlapping regulations can not only be resolved by harmonization, but requires a legal breakthrough. Resolving this problem requires a breakthrough, namely by simplifying the regulations and the revision process as well as the legislation.[9] It requires a pattern of substantive, constructive and transgressive drafting legislation that is with a broad material coverage of how many existing laws apply. Thus, the overall statutory order intended for the achievement of the state goals for the welfare of its people will be able to run effectively and efficiently.

Omnibus bills or better known in Indonesia as the omnibus law can be employed as a solution to regulatory problems that occur in Indonesia. Omnibus bills are efficient because they allow the bundling of enactments or a set of laws and regulations to be amended in one regulation. As Adam M. Dodek states, "The unifying purpose provides an imperative, normative justification for omnibus bills." The unifying objective contained in omnibus bills provides very important and worthy normative justification.[6]

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Even though it can be employed as a solution to existing regulatory problems, in fact, the omnibus law is regarded deviating from the norms for the formation of laws and regulations in Indonesia. It is not only considered from the public refusal to feel dissatisfied with the application of omnibus law concept in the Job Creation Law, which is still controversial even today. Some legal experts' postulate that the existence of omnibus law is against the provisions in Law Number 12 of 2011. In this regard, the author has a slightly different view. Based on the author's view, the omnibus law should be grasped as a method of drafting statutory regulations, rather than a type of statutory regulation. They are vastly dissimilar and should not be equated to provide negative justification for public dissatisfaction with the issuance of the Law on Job Creation.

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Globalization has opened up access to a variety of foreign legal institutions that adhere to the common-law system into the Indonesian legal system that applies the civil law system. One of them is the applied omnibus law method in the formation of legislation in Indonesia. The entry of the omnibus law requires some adjustments as a consequence of differences in legal systems and efforts to reform them. It often creates conflicts both among legal experts and the public in general. However, the inclusion of omnibus law should not be regarded as a legal deviation. In a finer way, the omnibus law should be considered as an alternative towards a better change in the Indonesian legal system.

It is unavoidable to come to terms with legal conflicts caused by the introduction of the omnibus law method into the statutory regulation formation system in Indonesia. The difference in the legal system is that Indonesia has its own legal structure, substance, and culture, which is clearly different from the common-law legal system. However, this inevitable conflict can basically be handled by legal changes and reforms in the common-law system transplant to the application of omnibus law method in Indonesia that adheres to the civil law legal system.[2]

Legal transplantation is considered as a political choice in accordance with the spirit, soul, and personality of the Indonesian nation along with the ideological-philosophical basis of Pancasila, which is the original paradigmatic value of Indonesian culture and society. It means that legal transplantation is a political choice in basic policy-making activities without having to disregard Indonesia's position and existence in the midst of international relations. Thus, the generated laws are expected to become laws that commit nationally, think globally, and act locally.[2]

Legal transplants carried out in order to apply the omnibus law to the maximum while still paying attention to the applicable legal order require that the omnibus law shall be implemented based on several adjustment criteria, including:

1) *The omnibus law approach pattern is limited per sector/theme.*

In harmonizing and revising several regulations at once, the application of the limited omnibus law is the safest choice and is in accordance with the legal and constitutional constellation in Indonesia. It is much safer and very possible in practice, considering that the executive branch has been divided into ministries/agencies, each of which has its duties and functions, and the DPR has also been divided into commissions. It facilitates the formulation and formation of laws and regulations using the omnibus law method. With the limited omnibus law approach, it makes possible to determine which ministry is the leader in the formation of regulations, as well as the determination of the commission in the DPR to handle.

2) *Simplification of law with the omnibus law method is carried out by measuring the relevance of a regulation with basic criteria.*

These criteria comprise aspects of legality, aspects of needs and aspects of ease/friendly procedure. The legality aspect relates to reviewing whether a regulation in its application does not include the potential for multiple interpretations in the formulation of its norms or potential conflicts, duplication, inconsistency, or even non-operational.[14] The aspect of needs relates to reviewing whether a regulation has clear objectives and is based on the basic needs of the community and state administrators. The aspect of convenience or friendly procedure is aimed at reviewing the ease with which a regulation is comprehended and observed so that its implementation does not impose excessive burdens on the directly affected parties.[2]

3) *The formation of regulations using the omnibus law method employs a comprehensive, multidisciplinary, and multisector approach.*

Regarding the magnitude of the impact that can be caused by regulations formed by the omnibus law method, it is very likely that one, two, or more existing laws are declared to be revoked and no longer valid, and there are also one, two, or more other laws that remain in effect but with changes to certain articles as regulated by the new law.[4] In this case, the provisions in the new law that revoke or amend several other laws must accommodate the aspects contained in the affected law. These aspects must be explored and carefully considered with a comprehensive, multidisciplinary, and multisector approach. For example, the formation of law on investment should not merely consider the investment aspect, but also consider other interests that are affected by the regulation such as environmental protection, labour rights, regional conditions, and other aspects of the affected regulations as philosophical considerations.

4) *The application of the omnibus law method as a whole must be oriented to Pancasila, UUD 1945 and Law Number 12 of 2011 on Laws and Regulations as amended by Law Number 15 of 2019 on Amendments to Law Number 12 of 2011 on the Formation of Laws and Regulations.*

Even though the omnibus law is a method commonly applied in countries with common-law systems, the process of transplanting this method into the system of constituting legislation in Indonesia must uphold the principles and values contained in Pancasila and the 1945 Constitution as fundamental norms and *grundgesetz* status of the Indonesian nation. Furthermore, the omnibus law method continues to use legal principles for the formation of legislation guided by Law Number 12 of 2011 on Laws and Regulations as amended by Law Number 15 of 2019 on Amendments to Law Number 12 of 2011 on Establishment of Legislative Regulations.

CONCLUSION

The conception of Indonesia as a welfare state can be found easily in Pancasila, UUD 1945, and some of its derivative regulations. The 1945 Constitution as the Indonesian constitution also states in its preamble that the goal of the Indonesian state is "to protect the entire Indonesian nation and all the blood of Indonesia and to promote public

welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace and social justice". Furthermore, discussion on welfare can be found in the body of the 1945 Constitution. It is not only used as a basic concept, but always tries to be embodied through all development sectors. One of the efforts to embody this concept is the establishment of many laws and regulations that can encourage progress in the welfare sector. However, the efforts as mentioned above have not shown significant effectiveness and progress in resolving welfare problems in Indonesia. The large number of regulations in the welfare sector represent an inhibiting factor in improving the quality of welfare in Indonesia. Efforts can be made to provide maximum effectiveness and solve welfare problems in Indonesia by structuring regulations in the welfare sector using the omnibus law method. The application of the omnibus law method must begin with a legal transplant and be adjusted to the provisions in Law Number 12 of 2011. Thus, regulations in the field of welfare become more focused and increase effectiveness in their implementation.

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