

Navigating Regional Regulatory Changes in Indonesia: An In-Depth Analysis of Post-Amendment Implementation of Law Number 12 of 2011 on Legislation Formation

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Navigating Regional Regulatory Changes in Indonesia: An In-Depth Analysis of Post-Amendment Implementation of Law Number 12 of 2011 on Legislation Formation

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ABSTRACT. In the context of Indonesia as a State of Law, the imperative role of the rule of law cannot be overstated in realizing the state's objectives. The formulation of Legislative Regulations, essential for upholding the rule of law, necessitates meticulous consideration of three fundamental principles: benefit, justice, and legal clarity. To ensure the effectiveness of these regulations in aligning with the direction and goals of national legal development, the process adheres to key principles, encompassing the clarity of objectives, appropriate institutional involvement, congruence among types, hierarchy, and material content, practicability, clarity of formulation, and transparency. This procedural framework is consistently implemented in a sustainable, coordinated, and integrated manner. The legal landscape in Indonesia underwent significant transformations with the enactment of Law Number 11 of 2020 on Job Creation, introducing the omnibus law technique. However, the subsequent Constitutional Court Decision Number 91/PUU-XVIII/2020 provisionally deemed this law unconstitutional. Responding to this decision, Law Number 12 of 2011 underwent a substantial amendment through Law Number 13 of 2022, specifically addressing the omnibus approach and enhancing meaningful public participation in statutory rule creation. This legal revision significantly influences the development of legal instruments at the regional level. Consequently, an examination of the implementation of regional legal product formation becomes imperative post the amendment of Law Number 12 of 2011 on the Formation of Legislative Regulations.

KEYWORDS. Legislative Regulations, Rule of Law, Legal Development, Omnibus Law, Regional Legal Formation

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Introduction

Article 1 paragraph (3) of the Republic of Indonesia's 1945 Constitution states that Indonesia is a lawful state. The achievement of governmental goals and the smooth operation of all administrative processes are predicated on the rule of law.² Statutory regulations are the means by which Indonesia attempts to actualize the rule of law. The concepts of justice, expediency, and legal certainty must be taken into consideration when creating legislative regulations. By adhering to the principles of effective statutory regulation formation, statutory regulations supporting the direction and objectives of national legal growth are formed in a planned, integrated,

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² Simamora, Janpatar. "Tafsir Makna Negara Hukum dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Jurnal Dinamika Hukum* 14, no. 3 (2014): 547-561.

and sustainable manner.³ The cornerstones of well-crafted legislative regulations include a clear objective, appropriate institutions or producing officials, suitability between type, hierarchy, and material content, implementability, efficacy and usefulness, clarity of formulation, and openness. Control Legislation is a written rule that is created by state institutions or authorized authorities using methods outlined in statutory regulations. It comprises generally binding legal standards. The process of creating statutory regulations, which comprises the steps of organizing, creating, debating, approving or deciding, and enacting, is known as the formation of statutory regulations.⁴

Indonesia's statutory regulations have changed since Law Number 11 of 2020 about Job Creation accommodated the omnibus law technique. In truth, Law Number 12 of 2011 does not support this method. Furthermore, Constitutional Court Decision Number 91/PUU-XVIII/2020 declared Law Number 11 of 2020 concerning Job Creation to be provisionally unconstitutional.⁵ To create ordered, integrated, and long-lasting legislative regulations, it is imperative to organize and enhance the process of creating new laws, from planning and preparation through discussion, ratification, or stipulation, to promulgation. Because of this, it is necessary to alter Law Number 12 of 2011 Governing the Formation of Legislative regulations in order to reorganize or reconsider the processes involved in developing statutory rules. Law Number 11 of 2020 concerning Job Creation has been brought to the Constitutional Court for formal assessment in part because it prohibits community input in the law's drafting process. The Constitutional Court's ruling Number 91/PUU-XVIII/2020 states that Law Number 11 of 2020 concerning Job Creation is conditionally unlawful and that it must be

³ Setiadi, Wicipto, and Beniharmoni Harefa. "Regulatory Reform: An Idea to Arrange Regulations in Indonesia." *Ist International Conference on Law and Human Rights 2020 (ICLHR 2020)*. Atlantis Press, 2021; Syahlan, Syahlan. "Effective and Efficient Synchronization in Harmonization of Regulations Indonesia." *Journal of Human Rights, Culture and Legal System* 1, no. 1 (2021); Setiadi, Wicipto. "Institutional Restructuring to Sustain Regulatory Reform in Indonesia." *Hasanuddin Law Review* 5, no. 1 (2019): 120-131.

⁴ Febriansyah, Ferry Irawan. "Konsep pembentukan peraturan perundang-undangan di Indonesia." *Perspektif* 21, no. 3 (2016): 220-229; Abdullah, Abdul Gani. "Pengantar Memahami Undang-Undang Tentang Pembentukan Peraturan Perundang-Undangan." *Jurnal Legislasi Indonesia* 1, no. 2 (2018): 1-10.

⁵ Putra, Satria Rangga, and Sujatmiko Sujatmiko. "Reviewing Constitutional Court Decision Number 91/PUU-XVIII/2020 Regarding Formal Review of Job Creation Act: A Progressive Law Perspective." *Jurnal Penelitian Hukum De Jure* 22, no. 2 (2022): 229-242.

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amended within two years. The ruling of the Constitutional Court affects both Law Number 12 of 2011 concerning the Formation of Legislative Regulations and Law Number 11 of 2020 concerning Job Creation. In addition to the omnibus method issue, which Law Number 12 of 2011 does not address, the word "*meaningful participation*" (meaningful community participation)⁶ in the creation of statutory rules was also introduced by the Constitutional Court's Decision Number 91/PUU-XVIII/2020.

The Panel of Constitutional Justices noted in its deliberations that meaningful community participation is necessary in order to achieve significant public involvement, in addition to what is specified in formal legal norms. Subsequently, it was mentioned that three conditions needed to be met in order for community participation to become more significant. These included the following: the right to be heard (the right to have one's opinion

⁶ Meaningful community participation in the creation of statutory laws in Indonesia is an essential aspect of a democratic and inclusive legislative process. This concept recognizes the significance of involving communities, organizations, and diverse stakeholders in the formulation of laws that directly impact their lives. To achieve this, inclusive consultation processes play a pivotal role, facilitating open dialogues through public hearings, town hall meetings, and other forums. These interactions allow for the exchange of ideas and ensure that the legislative process incorporates a wide array of perspectives, local knowledge, and addresses the unique needs of various communities. Ensuring accessible information is another key element in promoting meaningful community participation. Providing clear and comprehensible information about proposed statutory laws, including translations into accessible language, helps bridge the gap between legal language and public understanding. Widely disseminating relevant documents through various channels ensures that the community is well-informed, enabling them to actively engage in discussions and contribute meaningfully to the legislative process. Moreover, building the capacity of community members is crucial for their effective participation. Educational programs, workshops, and training sessions empower individuals and communities with the knowledge and skills needed to comprehend complex legal matters, fostering a more informed and engaged citizenry. Ultimately, these efforts not only enhance the transparency and legitimacy of the legislative process but also contribute to the creation of laws that genuinely reflect the diverse perspectives and needs of the Indonesian population. See Wafa, Muhamad Khoirul. "Peran Dan Partisipasi Masyarakat Dalam Pembentukan Undang-Undang." *Siyasah Jurnal Hukum Tatanegara* 3, no. 1 (2023): 85-100; Artioko, Fiqih Rizki. "Pengadopsian Partisipasi Masyarakat Yang Bermakna (Meaningful Participation) Dalam Undang-Undang Nomor 13 Tahun 2022tentang Perubahan Kedua Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan." *Al-Qisth Law Review* 6, no. 1 (2022): 52-83; Andriani, Henny. "Partisipasi Bermakna Sebagai Wujud Asas Keterbukaan Dalam Pembentukan Undang-Undang." *UNES Journal of Swara Justisia* 7, no. 1 (2023): 306-318; Nugroho, Wahyu. "Menyusun Undang-Undang Yang Responsif dan Partisipatif Berdasarkan Cita Hukum Pancasila (Drafting Responsive and Participative Regulation Based On Pancasila Law Idealism)." *Jurnal Legislasi Indonesia* 10 (2013): 209-218.

heard); the right to have one's view taken into consideration (the right to have one's opinion regarded); and the right to an explanation (the right to be explained) for the opinion expressed. Every proposed law that is being considered should have a specified community group as its target audience for public engagement.⁷

The restructuring and enhancements in this law are based on the Constitutional Court Decision Number 91/PUU-XVIII/2020 and several provisions of Law Number 12 of 2011 concerning the Establishment of Legislative Regulations, as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations. Some of the aspects that need to be improved are:

- a. added Omnibus Method;
- b. repair of technical errors after joint agreement between the DPR and the President in a plenary session and before ratification and promulgation;
- c. strengthening meaningful community involvement and participation (meaningful participation);
- d. formation of electronic-based Legislation;
- e. change of support system from researchers to other functional officials whose scope of duties is related to the formation of statutory regulations;
- f. Academic Manuscript preparation techniques; and
- g. techniques for preparing Legislative Regulations.⁸

The rearrangement of the provisions for the formation of statutory regulations was then realized through amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations. The promulgation of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, regulates several new provisions, for example

⁷ Astomo, Putera. "Pembentukan Undang-Undang dalam Rangka Pembaharuan Hukum Nasional di Era Demokrasi." *Jurnal Konstitusi* 11, no. 3 (2014): 577-599; Fajri, M. Nurul. "Legitimacy of Public Participation in the Establishment of Law in Indonesia: Legitimasi Partisipasi Masyarakat dalam Pembentukan Undang-Undang Di Indonesia." *Jurnal Konstitusi* 20, no. 1 (2023): 123-143.

⁸ Tyesta, ALW Lita, and Amalia Diamantina. "Implications of Amendment of Law Number 12 Year 2011 into Law Number 15 Year 2019 in the Process of Forming Regional Regulations." *International Conference on Community Development (ICCD 2020)*. Atlantis Press, 2020; Panjaitan, Marojahan. "Applicability of Law Number 11 of 2020 Concerning Job Creation After the Constitutional Court Decision Number 91/PUU-XVIII/2020." *Pandecta Research Law Journal* 17, no. 2 (2022): 216-228.

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regarding the use of the omnibus method and fulfilling meaningful participation in the formation of statutory regulations.

In accordance to Constitutional Court Decision Number 91/PUU-XVIII/2020, Law Number 12 of 2011 concerning the Establishment of Legislative Regulations was revised by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Legislation. The justification for this modification was that better planning, preparation, discussion, ratification, or stipulation of laws is necessary in order to truly produce legislative rules in a planned, integrated, and sustainable manner. Adding guidelines to the Omnibus Method in Formation of Legislative Regulations and fostering meaningful community input and participation are two ways to do this.

The "*principle of openness*" is defined as follows by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations: The process of creating legislative regulations starts with planning, then moves on to writing, debating, deciding, and enacting, which includes Monitoring and Review. At each stage, information is made available to the public, who have a direct interest in the matter, and they can offer feedback orally or in writing both online and/or offline. In general, Law Number 13 of 2022 promotes and develops community involvement by allowing meaningful participation in all phases of the creation of Indonesian laws and regulations.⁹

⁹ The principle of openness in the formulation of law in Indonesia embodies a commitment to transparency and inclusivity within the legislative process. At its core, this principle emphasizes the necessity of making the entire process accessible to the public, promoting a higher degree of transparency in legislative proceedings. Transparency entails the disclosure of information related to proposed laws, amendments, and accompanying documents. By providing easily accessible information, the legislative agenda becomes comprehensible to the public, fostering a deeper understanding of the proposed changes and their potential societal impacts. Central to the principle of openness is the promotion of public participation in the law-making process. This involves mechanisms such as public consultations, hearings, and other forums where citizens and stakeholders can actively engage, express their perspectives, and contribute to the decision-making process. Public participation not only ensures a more comprehensive consideration of diverse viewpoints but also enhances the legitimacy of the resulting laws, reflecting the values and concerns of the broader population. Moreover, the principle of openness emphasizes the need for accessible information, making legal language and documents understandable to a wider audience. This approach facilitates the engagement of citizens, including those without legal expertise, in the legislative discourse. Additionally, it encourages lawmakers to consult various stakeholders, including civil society organizations, experts, and affected communities. By incorporating these diverse perspectives, the legislative process

The new provisions addressing the use of the omnibus approach and completing meaningful involvement can of course be applied in every type of legislation, including regional legal products. As a subset of regional legal products, regional regulations must be carefully crafted in compliance with Law Number 13 of 2022. Regional Heads and the Regional People's Representative Council collaborate to develop regional regulations, which are statutory laws. Community involvement is essential for the establishment of regional rules since the community will be bound by the public policies that are formed. Apart from that, massive public participation in the formation of legislation also has a positive impact on public trust in the legal products or policies that are formed. However, there are still many regional regulations that do not fulfill the provisions for meaningful community participation.¹⁰

Building upon the aforementioned context, the authors have meticulously formulated the research problem with a dual-pronged approach. Firstly, the inquiry delves into discerning the provisions governing the formation of regional legal products subsequent to the amendments made to Law Number 12 of 2011 concerning the Formation of Legislation. This involves a comprehensive exploration of the legal landscape to unveil the

becomes more informed, balanced, and reflective of the complex realities within the society it seeks to govern. Furthermore, the publication of draft legislation for public scrutiny is a pivotal component of the openness principle. This pre-enactment disclosure allows interested parties to scrutinize, comment on, and contribute to the refinement of proposed laws. Such a transparent and participatory approach not only bolsters the democratic nature of the legislative process but also instills a sense of ownership, trust, and accountability in the legal system among the citizenry. Ultimately, the principle of openness underscores Indonesia's commitment to fostering a democratic, responsive, and accountable legislative framework. See Huzaeni, Mohamad Roky, and Wildan Rofikil Anwar. "Pelaksanaan Asas Keterbukaan Dalam Pembentukan Peraturan Daerah." *Jurnal Dialektika Hukum* 3, no. 2 (2021): 213-230. See also Wardana, Dodi Jaya, Sukardi Sukardi, and Radian Salman. "Public Participation in the Law-Making Process in Indonesia." *Jurnal Media Hukum* 30, no. 1 (2023): 66-77; Saputra, Bambang, et al. "The Contribution of Deliberations to the Establishment of Law in Indonesia in the Perspective of Political Legislation." *Journal of Namibian Studies: History Politics Culture* 33 (2023): 76-87.

¹⁰ Septihana, Anisa Ribut, and Luluk Lusiati Cahyarini. "Legal-Political Study of the Job Creation Law on Revocation of Article 20 of Law Number 13 of 2016 concerning Patents." *Borobudur Law Review* 4, no. 1 (2022): 13-23; Kurnia, Kana. "Problematika Hukum Pembentukan Undang-Undang Nomor 13 Tahun 2022 Tentang Pembentukan Peraturan Perundang-Undangan." *Jurnal Legislasi Indonesia* 20, no. 1 (2023): 123-135; Satresna, Dhezya Pandu. "Pengaturan Metode Omnibus Dalam Undang-Undang Nomor 13 Tahun 2022 Tentang Pembentukan Peraturan Perundang-Undangan." *JAPHTN-HAN* 2, no. 1 (2023): 63-80.

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intricacies and nuances in the process. Secondly, the investigation extends to identify and analyze the challenges encountered in tandem with the strategies employed during the implementation phase of regional legal product formation, post the aforementioned legislative modifications. This dual-pronged problem statement not only seeks to unravel the regulatory framework but also aims to shed light on the practical impediments and adaptive strategies in navigating the evolved legal terrain.

Method

In this research endeavor, the methodology selected has been meticulously crafted to furnish a comprehensive understanding of the practical implications stemming from regulatory adjustments at the regional level in Indonesia. Specifically, the research zeroes in on the nuanced aftermath of amendments made to Law Number 12 of 2011, addressing Legislation Formation. Employing a holistic approach, the study integrates rigorous document analysis, an extensive review of pertinent literature, and structured interviews with key stakeholders. These include representatives from local governance, legal experts, and practitioners actively engaged in the field. The methodical examination of the stipulations governing the genesis of novel regional legal frameworks aims to unveil pivotal dimensions of these legislative alterations. This comprehensive understanding is further enriched by a discerning scrutiny of the tangible challenges encountered during the implementation phase, coupled with an exploration of the adaptive strategies employed by stakeholders to navigate these intricacies.

Furthermore, the methodological framework incorporates field surveys designed to solicit firsthand data from the regional stratum. This approach facilitates a nuanced exploration of contextual divergences and variations in implementation dynamics across diverse regions in Indonesia. The selection of this methodological approach is grounded in the imperative to not merely comprehend the theoretical underpinnings of the updated legal framework but also to scrutinize its pragmatic ramifications. Consequently, this research aspires not solely to furnish a normative analysis but also to proffer a robust empirical narrative elucidating how these regulatory adjustments authentically reshape the operational landscape of legal frameworks at the regional level.

Provisions for the Formation of Regional Legal Products Post Amendment to Law Number 12 of 2011 concerning the Formation of Legislation

Indonesia is a legal state, according to Article 1 paragraph (3) of the Republic of Indonesia's 1945 Constitution. According to Plato, the rule of law is the foundation for achieving and implementing excellent state management. Astomo highlighted that enacting statutory regulations is one method of bringing the rule of law to Indonesia.¹¹ According to Maria Farida, legislation includes both the process of creating laws and their actual structure. Regulation law is defined as written rules with generally binding legal standards that are produced or specified by authorized officials or state entities through procedures delineated in statutory regulations. Statutory regulations must be created in a way that promotes advantages, justice, and legal clarity.¹²

By keeping in mind the guidelines for creating effective statutory regulations, the creation of regulations to assist in achieving the goals and direction of national legal growth is done in a planned, coordinated, and long-lasting manner.¹³ Since the public will be enforcing these laws, it is imperative that excellent laws and regulations be able to accept public participation in order to uphold the ideal of openness. According to Bagir Manan, a contemporary legal state that strives for the wellbeing of all citizens and justice for them must allow the public to voice their thoughts.¹⁴

The promulgation of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations governs a number of new provisions, including those concerning the use of the omnibus method and fulfilling meaningful participation in the formation of statutory regulations. This statute was created in response to a request for a formal review of statute Number 11 of 2020 concerning Job Creation, which was handled in the Constitutional

¹¹ Astomo, Putera. "Kedudukan dan Pengujian Konstitusionalitas Peraturan Desa dalam Peraturan Perundang-undangan." *Jurnal Konstitusi* 15, no. 2 (2018): 282-305.

¹² Indrati, Maria Farida. *Ilmu Perundang-Undangan: Jenis, Fungsi dan Materi Muatan*. (Yogyakarta: Kanisius, 2007).

¹³ Yani, Ahmad. *Pembentukan peraturan perundang-undangan yang responsif: Catatan atas UU No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan*. (Jakarta: Konstitusi Press, 2013).

¹⁴ Sinamo, Nomensen. *Ilmu Perundang-undangan*. (Jakarta: Jala Permata Aksara, 2016).

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Court's Decision Number 91/PUU-XVIII/2020. The justification for this modification was that better planning, preparation, discussion, ratification, or stipulation of laws is necessary in order to truly produce legislative rules in a planned, integrated, and sustainable manner. This can be achieved by, among other things, adding rules pertaining to the Omnibus Method in Formation of Legislative Regulations and enhancing significant community involvement and participation.

The following definition of the "*principle of openness*" is provided by Law Number 13 of 2022 concerning the modification to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, which is the second modification to that law. The process of creating legislative regulations starts with planning, then moves on to writing, debating, deciding, and enacting, which includes Monitoring and Review. Access to information and/or input is granted to the public at each stage of the process, whether it be done offline or online, both offline and online, by means of the network. In general, Law Number 13 of 2022 promotes and develops community involvement by allowing meaningful participation in all phases of the creation of Indonesian laws and regulations.

The new provisions regarding the use of the omnibus method and fulfilling meaningful participation can of course be applied in every type of legislation, including regional legal products. Regional regulations as a type of regional legal product need to be supervised in their formation in accordance with the provisions of Law Number 13 of 2022.

1. Use of the Omnibus Method

The omnibus method is a concept that focuses on simplifying the number of regulations because of its nature of revising and repealing many laws at once. The use of this concept is appropriate to overcome the problem of too much regulation (hyperregulation), disharmony, and overlapping legal and regulatory content material which is the impact of the sectoral ego of the forming institutions. Another statutory data portal source states that the number of Central Regulations is 3,849 (three thousand eight hundred and forty-nine), Ministerial Regulations are 16,741 (sixteen thousand seven hundred and forty-one), LPNK Regulations are 4,514 (four thousand five

hundred and fourteen), and 15,982 Regional Regulations (fifteen thousand nine hundred and eighty-two).¹⁵

Too many regulations have the potential to impact poor regulatory quality and lead to disharmony, overlap, and conflict between regulations. Bad regulations also make a negative contribution to the implementation of national and state life. Apart from the problem of hyperregulation which is raised in several of the tables mentioned above, the lack of uniformity in the existing data also shows that there is a need for an information data portal related to statutory regulations so as to provide certainty of information for the public.

The omnibus method has started to gain attention since the promulgation of Law Number 11 of 2020 concerning Job Creation. The Central Government has adopted strategic policies to create and expand jobs through increasing investment, encouraging the development and improvement of the quality of Cooperatives and Micro, Small and Medium Enterprises. To be able to increase job creation and expansion, stable and consistent economic growth is needed every year. The Job Creation Law synchronizes and harmonizes 79 laws with 1,209 articles. In addition, Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations regulates the omnibus technique. This law enhances significant community involvement and participation while regulating the Omnibus Method of Legislation. This Omnibus and Meaningful Participation method can be used for every type of statutory regulation, including regional regulations.

The administration of regional government is required by Article 18 paragraph 7 of the Republic of Indonesia's 1945 Constitution, and Law Number 23 of 2014 concerning Regional Government lays out the procedures and framework for carrying out this mandate. Apart from enhancing regional competitiveness by considering the principles of democracy, equality, justice, and a region's distinct position within the Unitary State of the Republic of Indonesia, regional government administration seeks to expedite the attainment of community welfare by means of improved services, empowerment, and social role.

¹⁵ Azhar, Muhamad. "Omnibus Law sebagai Solusi Hiperregulasi Menuju Sonkronisasi Peraturan Per-Undang-undangan di Indonesia." *Administrative Law and Governance Journal* 2, no. 1 (2019): 170-178; Alsyam, Alsyam. "Metode Omnibus Law Sebagai Upaya dalam Mengatasi Hyper Regulation di Bidang Perekonomian." *UNES Law Review* 6, no. 1 (2023): 547-555.

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The Republic of Indonesia's 1945 Constitution specifies in Article 18, paragraph 6, that "*Regional governments have the right to establish regional regulations and other regulations to carry out autonomy and assistance duties.*"

Moreover, Article 236 of Law Number 23 of 2014 about Regional Government declares:

- (1) *To carry out Regional Autonomy and Assistance Tasks, Regions form Regional Regulations.*
- (2) *The Regional Regulations as intended in paragraph (1) are formed by the DPRD with the joint approval of the Regional Head.*
- (3) *The Regional Regulations as intended in paragraph (1) contain content material:*
 - a. implementation of Regional Autonomy and Assistance Tasks; And*
 - b. further elaboration of the provisions of higher laws and regulations.*
- (4) *In addition to content material as intended in paragraph (3), Regional Regulations can contain local content material in accordance with the provisions of statutory regulations.*

From the provisions of the articles above, we can conclude that the Regional Government's authority to form regional regulations can come from attribution authority or statutory delegation authority.

Based on the information system managed by the Ministry of Law and Human Rights, currently there are 15,982 (fifteen thousand nine hundred eighty-two) 117 regional regulations in both provincial and district/city areas that are still in effect. The number of regulations shows the complexity and obesity of regulations in Indonesia, especially regulations at the regional level, and one of the contents of this bill is closely related to the formation of regional regulations and regional regulations. The use of the omnibus method is a solution to overcome legal problems in the form of an obesity in the number of regional regulations which has the potential to cause overlap and

legal uncertainty so as to create synchronization of regional regulations with regulations at the central level based on the RJPN and RPJMN.¹⁶

The problem of legislation in Indonesia is very complex, namely the lack of synchronization of legislative planning with development planning, hyperregulation, lack of effectiveness during the implementation of the law, no procedures for monitoring the law, and no special institution that handles all aspects of the legal regulation system. invitation. The omnibus law is not a solution to solve this problem, because the omnibus law is a short-term solution to the problem. Therefore, the Government needs to improve the legal and regulatory system first. Meanwhile, the omnibus law does not meet the requirements because it is not mentioned in the 1945 NRI Constitution and the P3 Law, so its existence is only attached to government policy which may not be continued if there is a change of government. The adoption of an omnibus law has the challenge of still accommodating the philosophical basis behind a law that only regulates one particular subject, where the omnibus law changing and loading multiple subjects.

The omnibus approach to statutory rule drafting in Indonesia is now legal thanks to Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the drafting of Legislative regulations. Article 1 of the General Provisions describes the Omnibus Method as a process for drafting Legislative Regulations that involves adding new content, changing content that is relevant and/or regulated by legal requirements in various Legislative Regulations, and/or revoking Legislative Regulations of the same type and hierarchy in order to achieve specific goals.

Availability more specifically, Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations employs the omnibus method in the following ways:

- a. Article 64 paragraph (1b) which explains that the omnibus method mentioned in paragraph (1a) contains:
 - 1) loading new cargo material;

¹⁶ See Anggraeni, Ricca, and Cipta Indra Lestari Rachman. "Omnibus Law in Indonesia: Is That the Right Strategy?." *International Conference on Law, Economics and Health (ICLEH 2020)*. Atlantis Press, 2020; Sihombing, B. F., and Adnan Hamid. "Impact of the omnibus Law/Job creation act in Indonesia." *International Journal of Scientific Research and Management (IJSRM)* 8, no. 10 (2020): 266-281; Hayati, Nyoman Nidia Sari, and Sri Warjiyati. "Analisis Yuridis Konsep Omnibus Law dalam Harmonisasi Peraturan Perundang-Undangan di Indonesia." *Jurnal Hukum Samudra Keadilan* 16, no. 1 (2021): 1-18.

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- 2) modifying content that is subject to legal requirements and/or relevance, as governed by different legislative regulations of the same kind and hierarchy; and/or
 - 3) revoke Legislative Regulations of the same type and hierarchy, by combining them into one Legislative Regulation to achieve certain goals.
- b. The content is further supported by article 97A, which states that changes to or revocations of content material governed by Legislative Regulations that employ the omnibus method may only be made by revising or repealing the Legislative Regulations. From the article above it can be said that the method must contain new content material, in this case if it only carries out codification without any changes in the content material it cannot be done using the omnibus method.

Changes and additions regarding the omnibus method were also made to the technique for drafting Legislative Regulations along with examples which are placed in Appendix II to Law Number 13 of 2022. The omnibus method was added to the process for creating legislative regulations in order to give precise, uniform, and understandable standards. requirements that all organizations with the authority to create legislative regulations must adhere to. Here are some overviews:

- a. The use of the omnibus method can use a new name that is not the same as the name of the legislation that is changed or revoked. However, the name (title) is made briefly using one word or phrase, but can reflect the contents of the statutory regulations made using the omnibus method.
- b. Precautions for Legislative Regulations that carry out orders or carry out Legislative Regulations that use the omnibus method only need to contain 1 consideration containing a brief description of the need to implement the provisions of the article or several articles of the Legislative Regulations that use the omnibus method and/or add other relevant considerations. contains the urgency or purpose of the Formation of Legislative Regulations.
- c. The Legislative Regulations that will be amended by the Legislative Regulations that use the omnibus method that will be formed, may not be included in the legal basis.
- d. The content material regulated in the Legislative Regulations other than the content material that has been amended by the

Legislative Regulations using the omnibus method is to be amended again, the Legislative Regulations whose content material has been amended by the Legislative Regulations using the omnibus method are included in the legal basis .

- e. Legislative Regulations that use the omnibus method that will be amended with Legislative Regulations that use the omnibus method that will be formed, are included in the legal basis.
- f. The technical writing of books, chapters, sections and/or paragraphs in the main material of Legislative Regulations using the omnibus method which has links consisting of: a) articles containing new content material; b) articles that alter information governed by different legislative regulations of the same kind and hierarchy that is relevant to the law or that meets certain conditions; and/or c) articles that repeal similar laws in the same hierarchy.
- g. Articles added to new content material using the omnibus method, formulated in short, clear and straightforward sentences.
- h. Changes to material content using the omnibus method which are related to other statutory regulations and are formulated briefly, concisely and straightforwardly by including the reasons for the changes and details of the title of the amended statutory regulations.
- i. The order of the books, chapters, sections, paragraphs, articles, verses, or points is still included with an explanation eliminated if regulations that employ the omnibus method erase any of the following: books, chapters, sections, paragraphs, articles, paragraphs, or points.

2. Meaningful Participation

Apart from regulating the omnibus method, one of the petitioms in Constitutional Court Decision Number 91/PUU-XVIII/2020 also highlights the direct violation of the process of forming the Job Creation Law. Violations in the process occur in at least three ways. Namely, discussions were carried out hastily, not transparently, and without participation. Ensuring public engagement in the legislative process through specific processes and arrangements is vital for effective governance and popular sovereignty. This should be ensured by either statutory regulations or the

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constitution. This assurance is required to demonstrate that the general public is given the chance to actively participate in all legislative processes. In the 1945 Constitution of the Republic of Indonesia, Article 28F relating to Human Rights explains that "*Everyone has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, obtain, possess, store, process and convey information using all types of channels. which are available*".¹⁷

Furthermore, the Constitutional Court's Decision No. 91/PUU-XVIII/2020 highlights the significance of community participation by stating that meaningful community participation is necessary for the realisation of serious public participation and involvement. At least three requirements are met by this deeper level of community involvement: the first is the right to be heard; the second is the right to have one's opinion taken into consideration; and the third is the right to an explanation or response to the opinion expressed (right to be explained). Public involvement is especially

¹⁷ The assertion underscores the universal entitlement of every individual to engage in communication and access information, thereby contributing to the development of both personal and social spheres. Central to this right is the freedom of expression and the ability to interact with others through various channels, fostering an environment conducive to personal growth and societal progress. This acknowledgment of the inherent right to communicate reflects the fundamental principle that open dialogue is not only a personal liberty but also a crucial driver of collective advancement. Moreover, the statement affirms an individual's right to seek, obtain, possess, store, process, and convey information through all available channels. This holistic approach recognizes the diverse ways in which information is acquired, processed, and disseminated. It upholds the autonomy of individuals in choosing the most suitable means of communication, whether through traditional methods like print or broadcast media or contemporary digital platforms. By encapsulating these rights, the statement encapsulates the dynamic nature of communication and information dissemination, adapting to the evolving landscape of technological advancements. At its core, the right to develop one's personal and social environment through communication and information signifies more than just access to data; it encapsulates the agency to actively contribute to one's immediate surroundings and the broader societal context. It acknowledges that an informed citizenry is pivotal for meaningful participation in societal processes and decision-making. Thus, this statement not only underscores individual freedoms but also reinforces the collective responsibility to create an inclusive and well-informed community. In essence, it upholds the principles of democratic societies that value the free flow of information and expression as fundamental pillars of civic engagement and societal progress. *See* Jayadi, Anbar. "What Constitutes as Limitation of (Human) Rights in Indonesian Legal Context?." *Hasanuddin Law Review* 3, no. 3 (2018): 290-306; Agustinus, Eko. "Individual Freedom in the Legal Discourse in Indonesia." *Indonesia Media Law Review* 1, no. 1 (2022): 41-62; Aditya, Zaka Firma, and Sholahuddin Al-Fatih. "Indonesian Constitutional Rights: Expressing and Purposing Opinions on the Internet." *The International Journal of Human Rights* 25, no. 9 (2021): 1395-1419.

encouraged for community organizations that stand to gain or lose from the proposed legislation under consideration. In the context of the formation of statutory regulations, of course it does not only include draft laws, but other regulations that are hierarchically below the law. With community participation, it is hoped that regulatory officials will adhere to the principles of accuracy and prudence in making policies and as a means of social control over every legal regulation that is drafted. Next, it relates to the stages of socialization/dissemination of statutory regulations. Dissemination is the process of making a draft legislative rule available to the general public. Spread across the whole process of creating statutory regulations, including the stages of planning, writing, discussion, ratification or stipulation, promulgation, monitoring, and review. Legislative regulations are disseminated by regulators in order to inform the public and solicit feedback from stakeholders, particularly community groups that may be directly impacted by proposed legislation or regulations that have already been implemented. Thus, dissemination is a necessity, because the formation of a statutory regulation is a process of forming legal norms whose validity will be binding on all Indonesian society.

Contentment community involvement is a sign that good rules and regulations have been created. Regional regulations, being a subset of statutory regulations, are subject to the material principles controlling the content of statutory regulations and the rules for developing statutory regulations, as confirmed in Law Number 12 of 2011 concerning the Formation of Legislative Regulations. The most recent amendment to this legislation was made by legislation Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations. This law has been changed several times.¹⁸

One of the guiding concepts for creating statutory rules is based on Article 5 of Law Number 12 of 2011 about the Formation of Legislative rules. The open-mindedness principle makes for a good invitation. This openness principle aims to provide transparency and openness throughout the entire process of creating statutory regulations, including planning, drafting,

¹⁸ Jati, Rahendro. "Partisipasi Masyarakat dalam Proses Pembentukan Undang-Undang Yang Responsif." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 3 (2012): 329-342; Saiya, Aprillia Jultje, Saartje Sarah Alfons, and Heillen Martha Yosephine Tita. "Partisipasi Masyarakat dalam Pembentukan Undang-Undang Cipta Kerja." *TATOHI: Jurnal Ilmu Hukum* 1, no. 6 (2021): 618-626; Nugraha, Muhyar. "Partisipasi Masyarakat dalam Pembentukan Peraturan Daerah." *YUSTISI* 3, no. 1 (2016): 31-31.

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discussion, ratification or stipulation, and promulgation. This gives society at all levels the greatest opportunity to contribute to the creation of laws and regulations. When a statutory regulation is being developed, a request for a formal review may be made if the transparency or public involvement criteria are not followed. petitions for formal review of laws are filed with the Constitutional Court; petitions for statutory rules under the law are filed with the Supreme Court.

The "*principle of openness*" refers to the notion that the Planning, Drafting, Discussion, Ratifying, Determination, and Promulgation stages are the initial in the Formation of Legislative Regulations process, as stated in Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations. Article 96 of this law states that the public has the right to be involved in the formulation of all legislative rules. The following clauses about community engagement are found in Article 96:

- (1) *The public has the right to provide oral and/or written input at every stage of the Formation of Legislative Regulations.*
- (2) *Providing public input as intended in paragraph (1) is carried out online and/or offline.*
- (3) *The public as referred to in paragraph (1) are individuals or groups of people who are directly affected and/or have an interest in the content of the Draft Legislative Regulations.*
- (4) *To make it easier for the public to provide input as intended in paragraph (1), every Academic Manuscript and/or Draft Legislative Regulation can be easily accessed by the public.*
- (5) *In implementing the rights as intended in paragraph (1), the legislators inform the public regarding the formation of the Legislative Regulations.*
- (6) *To fulfill the rights as intended in paragraph (1), the legislators can carry out public consultation activities through:*
 - a. public hearings;*
 - b. work visit;*
 - c. seminars, workshops, discussions; and/or*
 - d. other public consultation activities.*

- (7) *The results of public consultation activities as intended in paragraph (6) become material for consideration in planning, preparing and discussing Draft Legislative Regulations.*
- (8) *Makers of Legislative Regulations can explain to the public the results of discussions on public input as intended in paragraph (1).*
- (9) *Further provisions regarding public participation as referred to in paragraphs (1) to paragraphs (8) are regulated in DPR Regulations, DPD Regulations and Presidential Regulations.*

The community participation provisions should ideally satisfy the following requirements, which are based on Article 96 of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations described above:

- 1) Community participation is carried out at every stage of the formation of statutory regulations.
- 2) Community participation can be done online and/or offline.
- 3) Community participation is primarily for individuals or groups of people who are directly affected and/or have an interest.
- 4) Ease of information systems to access not only draft regulations but also ease of access to academic texts.
- 5) The formation of statutory regulations needs to be informed to the public so that the public knows and can participate in monitoring their formation.
- 6) Community participation can be carried out through various forms of public consultation such as focus group discussions, public hearings, opinion hearings, and so on.
- 7) The aspirations of the community regarding a legal regulation must be considered, not just fulfilling obligations.
- 8) The results of consideration of community aspirations need to be explained back to the community, which ones can be accommodated and which ones cannot.¹⁹

¹⁹ See also Manalu, Aimi Solidei, and Fitriani Ahlan Sjarif. "Urgency of Community Involvement in the Formation of Regulations to Create Responsive Policies." *Legal Standing: Jurnal Ilmu Hukum* 7, no. 1 (2023): 207-220; Dwiatmoko, Anang, and Harsanto Nursadi. "Problematika Dan Penataan Pembentukan Peraturan Daerah

Challenges and Strategies in Implementing the Formation of Regional Legal Products Post Amendment to Law Number 12 of 2011 concerning Formation of Legislation

The challenges and problems faced in implementing the formation of regional regulations using the omnibus law method and accommodating the fulfillment of meaningful participation in the formation of regional regulations include the following:

1) Implementing the Omnibus Method is not easy

Forming regional regulations using the omnibus law method is not easy. The use of this concept is appropriate to overcome the problem of too many regulations (hyperregulation), disharmony, and overlapping legal and regulatory content material which is the impact of the sectoral ego of the forming institutions. However, don't let regions become talkative or just follow the trend of using the omnibus law method in forming regional regulations.

Article 64 of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations must be satisfied by regional regulations formed under the omnibus law procedure. These conditions include:

- a) adding fresh freight materials;
- b) modifying content that is relevant to the law and/or requirements governed by different legislative regulations of the same kind and hierarchy; and/or
- c) repeal similar legislative regulations by merging them into a single legislative regulation in order to accomplish specific objectives..

2) Omnibus Law expert designer

Forming regional regulations using the omnibus law method is not easy. There is a need for designers who truly understand the omnibus law method, for this we need programs such as technical guidance or training for designers of the formation of regional regulations.

Melalui Harmonisasi Yang Sentralistik." *Jurnal Legislasi Indonesia* 19, no. 3 (2022): 292-306.

3) Implementing Regulations

The modifications to Law Number 12 of 2011 about the Formation of Legislative Regulations by Law Number 13 of 2022 not only offer new opportunities for meaningful engagement, but they also present obstacles in and of themselves. This is because Article 96, paragraph (9) of this law specifies that "DPR Regulations, DPD Regulations, and Presidential Regulations regulate further provisions regarding community participation as intended in paragraphs (1) to paragraph (8). Article 96 of this Law still has general provisions. It is still unclear to what extent secondary laws and regulations can be delegated. A Presidential Regulation governing the provisions pertaining to E-Legislation and Community Participation should be issued by the government.

4) Budget Availability

The biggest challenge will be obtaining the necessary funds to ensure meaningful participation, ideally in accordance with Law Number 13 of 2022's Article 96, which amends Law Number 12 of 2011 regarding the Formation of Legislative Regulations. More funding is required to enable the following initiatives to be carried out:

- a) Holding discussion activities that reach many levels of society through focus group discussions and public hearings.
- b) Develop a platform or application as a medium for disseminating information and a medium for electronic community participation starting from creation to operationalization of the platform.
- c) Collaborating with mass media, print and electronic media in attracting public participation.
- d) For people who cannot yet access electronic media, of course there needs to be a budget for programs such as direct visits to the community (eg Kundapil by the DPRD).

5) Time

In order to achieve meaningful participation, which includes the rights to have one's opinion heard (right to be heard), to have one's opinion considered (right to be considered), and to receive an explanation or response to the opinion given (right to be explained), the process of forming statutory regulations will inevitably take longer during the formation stage. Furthermore, groups directly impacted by or connected to the subject matter of the statutory regulations must be included in fulfilling meaningful involvement at every step of the creation of regional regulations.

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6) Information Technology Development

The initiative of the Government and Regional Government in building a platform as a medium for electronic community participation is indeed worthy of appreciation. Currently there are many media or applications developed by both the Central Government and Regional Governments such as E-Parliament, Legislative Information System, Legal Documentation and Information Network, E-Perda, and so on. However, the problem is, this platform has not been proven to function effectively in carrying out two-way communication with the public. It would be better if there were documents or reports that described the process of community participation in the formation of regional regulations. Apart from that, the large number of applications developed individually by each government agency can actually make people confused. It would be better if each region had just one system that could be utilized optimally.

7) More Commitment and Effort

Fulfillment of meaningful participation in every stage of formation Regional regulations certainly require high commitment and better efforts from the Regional Head and DPRD. The process of discussing Draft Regional Regulations, which have not yet become widely consumed by the public, requires commitment if they are to be opened to every level of society, for example broadcast live via YouTube or Parliamentary TV. Apart from that, it requires harder or extra effort to be able to capture the aspirations of all directly affected groups in a balanced manner, not just the dominant representatives.

8) Citizen's awareness

Expectations of fulfillment meaningful participation in every stage of formation Of course, regional regulations cannot be realized without public awareness to actively participate in government administration. Currently, public awareness of participating in the formation of laws and regulations is still quite low. Efforts are needed to increase public awareness through the dissemination of information, education on the importance of community participation, as well as through various applications or social media that adapt to the latest developments, especially in terms of information technology.

Conclusion

The newly instituted provisions, addressing the incorporation of the omnibus approach and fostering meaningful involvement, are universally applicable across various legislative categories, including regional legal products. To realize genuine participation, encompassing the entitlements to express one's views (right to be heard), to have those views taken into account (right to be considered), and to receive explanations or responses to voiced opinions (right to be explained), the statutory regulation formation process inevitably undergoes an extended duration during its developmental phase. Moreover, to ensure a comprehensive and inclusive approach to meaningful involvement, groups directly affected by or associated with the subject matter of statutory regulations must be intricately involved at each juncture of regional regulations creation. This deliberate and inclusive engagement is pivotal for upholding the principles of democratic governance and ensuring that the resulting regional legal framework is informed by diverse perspectives and stakeholders, thus fostering a robust and effective legislative landscape.

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*Injustice anywhere is
a threat to justice
everywhere*

Martin Luther King Jr.