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The Influence of Development of Constitutional Law in Indonesia in the Application of the Omnibus Law Technique in the Establishment of Legislation

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ABSTRACT
The current development of the state administration system cannot be separated from the development of society in an effort towards a more democratic society. However, the rapid development of state administration has a significant influence on the state administration of a country. Therefore, Constitutional Law in this case plays a role in providing a theoretical basis for various constitutional developments in Indonesia. Will the omnibus law method remain in line with the point of view of knowledge of laws and regulations because seeing this method will include many laws that are considered problematic and must be changed into a law and because of the application of the omnibus law method as a regulation carried out by the government as a the form of arrangement of laws and regulations that are mutually disharmony. Based on the background mentioned above, the researcher is very interested in studying about: 1. What is the history of the development of Constitutional Law in Indonesia? and 2. How is the influence of the development of the constitutional legal system in Indonesia in the establishment of laws and regulations? The type of research that researchers applied is normative legal research. The regulation of the Omnibus Law method was due to the issuance of the Constitutional Court [MK] Decree No. 91/PUU-XVIII/2020 regarding the review of Law No. 11 of 2020 concerning Job Creation which was declared conditionally unconstitutional because the Omnibus Law method was not regulated formally in Law No. 12 2011 and in the first amendment of Law No. 15 of 2019.

KEYWORDS
constitutional law, omnibus law, legislation establishment

Introduction

The current development of the state administration system cannot be apart from the development of society in an effort towards a more democratic society. However, the rapid development of state administration has a significant influence on the state administration of a country. Therefore, Constitutional Law in this case plays a role in providing a theoretical basis for various constitutional developments in Indonesia. The Indonesian state succeeded in proclaiming itself on August 17, 1945 which was born from the long struggle of the Indonesian people, making the beginning of the constitutional system in Indonesia fluctuated from time to time in accordance with the conditions the nation and state faced at that time. Fluctuations in Indonesia's state administration can be seen since the beginning of independence and after the amendments to the 1945 Constitution of the Republic of Indonesia. (Hayati et al., 2017) Indonesia has experienced at least four amendments to the constitution, both in terms of name and substance. The initial 1945 Constitution text did not explain in detail regarding the formation of laws in Indonesia, but only stated laws with the approval of the House of Representative (referred to as DPR), and bill (referred to as RUU) that were not approved by the House of Representative could not be submitted again at subsequent trials. Accompanied by the change of the Old Order period to reform, the constitutional reform (the 1945 Constitution) was an extraordinary achievement for the Indonesian people. Before the amendment to the 1945 Constitution, it was considered that it was not enough to regulate and direct the administration of the state according to the expectations of the people, did not support the formation of good governance, and did not guarantee the upholding of democracy and human rights (Wijayanta, 2014)

In carrying out four amendments with the first amendment (1999) it resulted in a decision in the form of limiting the powers of the president and strengthening the position of the DPR as a legislative institution, then in the second amendment (2000) in general it resulted in a formulation of changes to articles discussing state territory and the division of local government, improvement of the first amendment by detailing the provisions regarding human rights. The third amendment (2001) generally results in amendments and additions to articles concerning the basic principles of the state, state institutions and their relations, as well as provisions regarding general elections and while the fourth amendment (2002) produces provisions concerning institutions and relations between state institutions, abolition of the Supreme Council of Representatives (referred to as DPA) and produce provisions on education, culture, economy, welfare, social, and transitional rules and additional rules. Quoting from online legal articles, Maria Farida Indrati as a Professor of Legislative Science at the Faculty of Law, University of Indonesia said that recognizing the origins of the Law for Forming Legislation (UU-P3) started with Presidential Instruction No. 15 of 1970 concerning Procedures for Preparing Draft Laws and Government Drafts (Online, 2022) After the amendments to the 1945 Constitution in 2000 were formulated in Article 22A which states "Further provisions regarding procedures for forming laws are regulated by law" and Law Number 10 of 2004 was born which regulates principles, hierarchies, types of content material and statutory mechanisms. underwent the first change in 2011 and the second change in 2019 and the third change contained in Law no. 13 of 2022 concerning

Formation of Legislation, the second amendment was made because Indonesia accommodated the omnibus law model currently applied to Law no. 11 of 2020 concerning Job Creation.

Fachri Bachmid's view "Omnibus Law" is a legal product concept that functions to consolidate various themes, materials, subjects, and laws and regulations in each different sector to become a large and holistic legal product. (Fitryantica, 2019) The term "omnibus" is widely known and then used in the United States and Canada with the meaning of "for all" or "covers all". (Book Review: Omnibus Law and Its Application in Indonesia By Yessi Nadia Giatma Saragih - Faculty of Law, University of Indonesia, n.d.)

Indonesia, which uses a civil law system, wants to adopt the omnibus law method, which was originally introduced in the speech of the President of the Republic of Indonesia, Mr. Joko Widodo at the inauguration of the President of the Republic of Indonesia for the 2019-2024 period, after the speech of the president regarding the omnibus law, this has become a topic of discussion among academics in the field of law and among the general public and this discourse raises questions from various parties where it is known that the omnibus law is a type of legislation which is a sweeping law or known as a superpower law or can be interpreted as a method of forming statutory regulations that combine several rules from different substances into one complete regulation.

Based on the background mentioned above, the researcher is very interested in studying about: 1. What is the history of the development of Constitutional Law in Indonesia? and 2. How does the development of the constitutional legal system in Indonesia affect the formation of laws and regulations?

Research Method

The type of research that researchers use is normative legal research. According to Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles and legal doctrines to answer the legal issues at hand. (Mahmud Marzuki, 2019) As for this research, it uses a statutory approach, and a conceptual approach. The statutory approach is used to examine the contents of the legal provisions in Article 1 point 2 of Law no. 15 of 2019 concerning the Formation of Legislation and Article 1 number 3 of Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislation, a conceptual approach is used to examine the concepts of statutory regulations formed by the Council Representatives of the People with the approval of the President. The law is the legal basis that forms the basis for the implementation of all policies made by the government "legal policy" which is set forth in the law, becomes a means of social engineering, which makes the policies that the government wants to achieve, to direct people to accept new values . Legal material analysis techniques in normative legal research, legal materials that have been collected are analyzed through the steps of description, systematization and explanation. (Suandi, 2003)

Result and Discussion

The History of Constitutional Law Development in Indonesia

Constitutional law from a scientific point of view in Dutch is known as staatsrecht or state law which includes 2 (two) meanings, namely in a broad sense (staatsrecht in ruimere zin), and in a narrow sense (staatsrecht in engere zin). (Ridlwan, 2020) The term State Law is synonymous with "Constitutional Law" as a translation of Constitutional Law. After the enactment of the 1945 Constitution, making the proclamation the first norm in Indonesian Constitutional Law, means that this norm is the first existing norm and will then be used for the formulation of other norms. This norm is sociological and political in nature, therefore in order to give juridical power it is necessary to formulate a basic norm (staat fundamental norm). related to this, the 1945 Constitution was created which was written based on sociological conditions which later became the staat fundamental norm.

From the perspective of constitutional law, the announcement of the Proclamation of Independence in 1945 meant that the Indonesian people had broken ties with the previous legal order, both the Dutch East Indies order and the Japanese population's legal order. The Indonesian nation through the proclamation declared independence. Merdeka means that since then the Indonesian people have been able to determine their fate and that of their homeland in every aspect of implementing the new legal order. The proclamation is the basis or view of the law for the enactment of national law. As a complement to the implementation of state administration and the implementation of the government, the Central Indonesian National Committee (referred to as KNIP) was formed which has a function as an assistant to the President in carrying out the tasks of implementing people's sovereignty and the duties of other high state institutions.

After the Proclamation, the development of changes in the constitutional structure and system was experienced for the first time in November 1945 which changed the position of Ministers with the task of assisting the president (Article 17 of the 1945 Constitution) to become Ministers who were responsible to the president. Furthermore, changes to both the composition and constitutional system of the Republic of Indonesia occurred in 1949, namely the formation of the RIS based on the RIS Constitution. After 8 (eight) months of the formation of the RIS, Indonesia returned to being a Unitary State with the 1950 UUDS. At the time of the UUDS, a parliamentary system of government also applied. Because the constitutional arrangements based on the 1950 Constitution were seen as no longer in accordance with the needs of the times. Because of this, the government finally suggested drafting a new Constitution and for this purpose a Constituent Assembly was formed. This body failed to draw up a new constitution because, the constitutional way to declare the return of the 1945 Constitution was also experiencing difficulties.

The Indonesian constitutional system in its development has undergone very fundamental changes since the amendments to the 1945 Constitution by the MPR from 1999 to 2002. These changes were motivated by the desire to build a democratic government with equal and balanced checks and balances between the branches of power, realizing the rule of law and justice, as well as guaranteeing and protecting human rights. Since it was officially promulgated in 1945 (the 1945 Constitution before amendments) Indonesia has declared

itself as a rule of law state. As stated in the interpretation of the 1945 Constitution "Indonesia is a state of law, not a mere state of power". Since the amendment to Article 1 paragraph (3) states that "Indonesia is a rule of law state", the 1945 Constitution also emphasizes the concept of the rule of law of Indonesia (Hayati et al., 2017).

The rule of law state is essentially a state that refuses to let go of power without control, namely that the state patterns its life based on fair and democratic laws. The power of the state in it must be subject to the "rules of the game" in which the principle of a rule of law is built on 4 (four) pillars, namely:

a. The state is built based on the constitution

b. Transparency and public accountability for every state policy

c. Guarantee of a free and independent judiciary

d. Human rights protection.

Entering the post-independence New Order period or known as the Old Order, that the New Order period held 6 (six) general elections to produce members of the People's Representative Council, general election results were produced from a proportional general election system but for 4 (four) times As a result of the general election, the composition of the People's Legislative Assembly always raises complaints from the people stating that the institution is not carrying out its duties as it should. Of the several problems during the New Ordrr era that became serious problems, namely human rights issues that were never resolved, so that in this case constitutional reform was needed, which was originally repressive in character to become responsive in character.

At the end of the New Order period, the reformation period was born as a reflection of the nation's attitude to return to the constitutional system in accordance with the constitution which was constructed as the highest agreement or even as a social contract for all the people in the state. The 1945 Constitution of the Republic of Indonesia has been amended four times, making it the supreme leader who is the guideline in the administration of national and state life for all Indonesian citizens, therefore the 1945 Constitution of the Republic of Indonesia must maintain its authority from all aspects.

The Influence of the Development of the Constitutional Law System in Indonesia in the Formation of Legislation

Formation of laws and regulations is the process of making laws and regulations which basically starts from planning, preparation, technique, establishment, formulation, discussion, approval, promulgation, and dissemination. In connection with the form and type of laws and regulations in Indonesia, there have been several changes, the form or type of laws and regulations. Regarding the form or type of laws and regulations that have been officially regulated by the government, namely in the President's letter to the Chair of the DPR-GR Number 2262/HK/59 dated 30 August 1959, while regarding the order of laws and regulations officially regulated for the first time in the Decree the Provisional People's Consultative Assembly of the Republic of Indonesia Number XX/MPRS/1966 concerning

the DPR-GR Memorandum concerning the Sources of the Republic of Indonesia's Legal Order and Order of the Republic of Indonesia's Legislation.

With the enactment of Law number 10 of 2004 concerning Formation of Legislation, the types, sequence and formation of statutory regulations must be based on the provisions contained in the said law. Where Law Number 10 of 2004 serves as a guideline in the process of forming legislation in the context of developing national law which can only be realized if it is supported by definite manner and standards method that bind all institutions authorized to make statutory regulations. The Law on Formation of Legislation underwent its first amendment because it was felt that there were still deficiencies and had not been able to accommodate the development of community needs regarding the rules for forming good statutory regulations so that they needed to be replaced by forming an Act concerning the Formation of Legislation.

Refinement of Law Number 12 of 2011 concerning the Formation of Legislation on the grounds that it is a form of certainty about the continuation of the Formation of Legislation where there is new material content, including setting the mechanism for discussing the bill which has been discussed by the DPR and the President in a period to be discussed again in the next period to ensure continuity in the formation of laws and regulations regarding monitoring and review of laws and regulations as an integral part in the process of forming laws and regulations so that Law no. 15 of 2019 concerning Formation of Legislation as the first amendment to Law no. 12 of 2011. Then two changes were made to focus on setting the omnibus law method, this was due to the issuance of the Constitutional Court (MK) decision no. 91/ PUU-XVIII/2020 regarding the review of Law no. 11 of 2020 concerning Job Creation which was declared conditionally unconstitutional because, formally the omnibus law method is not regulated in Law no. 12 of 2011 and the first amendment in Law no. 15 of 2019.

Quoting Achmad Baidowi's statement from the online legal page, it was stated that “specified 15 materials which were important points in the second Amendment to the Law on the Formation of Legislation. first, changes to Article 1 of the Bill by including the definition of the Omnibus Law” (These are 15 Points of Amendment to the Law on Formation of Legislation, n.d.) contained in Law no. 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning Formation of Legislation, namely "The Ombinus Law Method is a method for preparing Legislation by adding new content material, changing content material that has relevant and/or different legal requirements regulated in various Laws and Regulations, and/or revoke Legislation of the same type and hierarchy, by combining them into one Legislation to achieve certain goals”.

Omnibus law grew in common law countries with the Anglo Saxon legal system with the concept of offering remedial problems caused by too many and overlapping regulations. In his book Jimly Asshiddiqie entitled "Omnibus Law and Its Application in Indonesia" states the benefits of the practice of forming laws through omnibus laws. First, in terms of time, this method is considered more effective and efficient because it can solve many needs for new policies through regulation in a single process of forming laws. (Jimly Asshiddiqie, 2020) Second, laws and regulations can be arranged to be more harmonious

because every opportunity to make changes to one law, the substance contained in many other laws can be integrated into a new law at the same time. (Jimly Asshiddiqie, 2020) Asshiddiqie, 2020) Third, with the omnibus law method, state and government policies that apply are binding because they are formally stated in the form of laws and regulations that can be easier to understand, so that they are easier to implement or carry out as they should in practice in the field. (Jimly Asshiddiqie, 2020)

Reviewing the challenges that will be faced in implementing the omnibus law in Indonesia, Novianto Murti Hartono stated that looking at the technique of statutory regulations where one of the principles of statutory regulations states that a regulation can be changed and revoked by a higher or equal regulation, it can be interpreted that it is possible for a law to revoke other laws which do not regulate the same matter or title, it's just that the technique of changing a law that has never happened or rarely occurs is the abolition of provisions in dozens of laws with one law; faced with the legal principle of the new laws and regulations overriding the old laws and regulations and this means that it does not rule out the possibility that the provisions in the omnibus law can also be deleted or revised so that legal chaos can occur if these laws are deleted and set aside one another . (Jimly Asshiddiqie, 2020) In theory, the legislation in Indonesia, the position of the law from the omnibus law concept has not been regulated, but rational legitimacy can be found if you look at the legal system in Indonesia. If you consider that the omnibus law is a product of statutory regulations similar to a law, then in fact there is no problem because the law is included in the hierarchy of regulations regulated by Law no. 12 of 2011 concerning the Establishment of Legislation.

Conclusion

The history of constitutional law in Indonesia has gone through many things, starting with Indonesia's self-proclaimed independence on August 17, 1945, followed by the promulgation of the 1945 Constitution of the Republic of Indonesia as the head of the legal constitution of the Republic of Indonesia during the Old Order era. This was followed by the New Order period, during which there were problems related to human rights to the distrust of the people towards the DPR so that the amendments to the 1945 Constitution of the Republic of Indonesia were carried out in stages, which were carried out four times, resulting in a decision to make it a guideline for the life of the Indonesian nation by regulating several things considered can be perfected and further explained in legislation.

The formation of laws and regulations in Indonesia has gone through many changes both in terms of the process of making laws and regulations which basically starts from planning, preparation, technique, preparation, formulation, discussion, ratification, promulgation, and dissemination. It is known that the formation of statutory regulations was first officially regulated in Law no. 10 of 2004 was further refined by Law no. 12 of 2011 made Law no. 10 of 2004 is no longer valid. Furthermore, regarding monitoring and review of Legislation as an integral part of the process of Forming Legislation so that the government issues Law no. 15 of 2019 as the first change from Law no. 12 of 2011. It is inseparable from that with the government's policy of wanting to apply the omnibus law

method which previously did not exist at all contained in the Law on the Formation of Legislation, therefore a second change was made to contain the omnibus law method which was the beginning of the technique of making laws in Indonesia after the issuance of the Job Creation Law which uses the concept of the omnibus law

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