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OMNIBUS LAW IN NATURAL RESOURCE MANAGEMENT: CHALLENGES AND THE FUTURE PROSPECT

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ABSTRACT: Currently, the arrangements of natural resource management are very numerous and complex. In Indonesia, there are nine laws governing the substance of natural resource management. In order to regulatory structuring, those laws must make the laws of Spatial Planning, the Environmental Protection and Management and the Regional Government as main reference in the sense that the law is not merely a supplement, but rather on the contrary, the law becomes the main reference in formulating norms. The regulatory structuring can be done by using the concept of omnibus law. Omnibus law in the field of natural resource management must consider main references, and even important to be mentioned in the clauses of regulation. The idea of Natural Resource Management Acts that refers to the Spatial Planning Acts and the Environmental Protection and Management Acts and suitable with the concept of environmentally- and investment-friendly natural resource management needs to be considered for its arrangements.

KEYWORDS: Omnibus law; Management; Regulation; Natural Resources

I. INTRODUCTION

In order to actualize the welfare of the people, the government needs to maximize every effort in order to meet the needs of the peoples, both through legislation instruments and also through good natural resource management activities. Legislation instruments are needed to reduce the dominance of certain groups or even foreign parties in the use of land and natural resource management. In the natural resource management activity, the government must actively involve the community so that natural resource management is more participatory. In Indonesia, the natural resources management is based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which regulates that "*the earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people*". On the basis of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, then several laws and regulations that govern natural resource management are issued. The law referred to in its implementation becomes a sector law that regulates individually and creates its own law. Then, the issuing of sector laws was assessed as a tool to meet pragmatic needs to accommodate economic growth.

In principle, natural resource management in Indonesia is exercised by using permit instruments. Various laws and regulations that were issued in the field of sector that regulates natural resources in Indonesia causes disharmony of laws and regulations due to the unequal principles used in its formation which then have implications for licensing natural resource management. The disharmony has an impact on the existence of legal gap that allow the exploitation of natural resources and deterioration in the quality of natural resources, injustice in the form of marginalization of the rights of people whose lives depend mainly on access to natural resources such as farmers, fishermen, and others.

One of the crucial problems that have occurred in Indonesia in terms of natural resource management arrangements is the revision of Act No. 4 of 2009 concerning Mineral and Coal Mining into Act No. 3 of 2020 concerning amendment to Act No. 4 of 2009 concerning Mineral and Coal Mining. There are 2 (two) important points in the revision of the law which shows disharmony with other laws, it is not sync and disharmony with Act No. 23 of 2014 concerning Regional Government which regulates governmental authority. In addition, Act No. 3 of 2020 has also eliminated the authority of the provincial government in Mineral and Coal Management. It shows that the drafting of Act No. 3 of 2020 does not considers to Act No. 23 of 2014 as main authority of government.

Maria S.W. Sumardjono on 28 November 2019 wrote an article about the *Omnibus Law*for Natural Resources. In her writings,she stated that the government was trying to improve Indonesia's investment ranking from 73 to

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50 by 2021. This was done by simplifying regulations on investment. According to her, at least the omnibus law will cut 72 regulations that impede investment. In addition, she also emphasized that one of the inhibiting factor for investment in the field of natural resource management is overlapping of sector laws so that regulatorystructuring of natural resource management is needed. Even in 2003 Academic Texts and the Draft Bill of Agrarian Resources and Natural Resource Management which function as *lex generalists*, but for one reason or another it has not continued. For this reason, it is time to re-arrange regulations related to natural resource management in Indonesia.

The trending of omnibus law in Indonesia will certainly have an impact on regulations in the regions, especially regarding natural resource management. For this reason, at the regional level, both provincial and district/city are also needed effort to arrange regulations related to natural resource management with reference to governmental authority as regulated in Act No. 23 of 2014 concerning Regional Government. Based on this background, the question then is how should the structuring of regulation related to natural resource management in Indonesia?

II. METHOD OF RESEARCH

The method of research used is a normative-juridical legal research by using a statute and conceptual approaches. The legal material used is primary legal material consisting of legislation related to the research issue, while secondary legal material is obtained from literature, magazines, and information, both print and electronic media that supports this research.

III. TRANSPLANTATION OF OMNIBUS LAW IN NATURAL RESOURCE MANAGEMENT: IS THAT POSSIBLE?

Balanced and integrated development between economic, social, and environmental aspects become principle of development which always becomes the main consideration for all sectors and regions to ensure the sustainability of the development process itself. Improvement of natural resource management and preservation of environmental functions is directed at improving natural resource management systems so that natural resources are able to provide economic benefits, including environmental services in the long-term while still ensuring its sustainability. Thus, natural resources are expected to continue to support the national economy and improve the welfare of the community without sacrificing the carrying capacity and function of the environment so that it can continue to be enjoyed by future generations. In this regard, sustainable development continues to be pursued as the main stream of national development in all fields and regions.

According to Muhammad Ilham Arisaputra, human relations need natural resources to be processed and utilized in maintaining their lives. Although, sometimes human over-exploit natural resources so that the environmental balance is disrupted. Theoretically, natural resources are divided into 2 (two), namely renewable and non-renewable natural resources. Renewable natural resources include water, soil, flora and fauna. This type of natural resources, if scarce due to overexploitation, the balance of the ecosystem will be disrupted. While, non-renewable natural resources, for example, mining products in the earth such as oil, coal, tin, nickel, and others. Humans must be able to use these natural resources as efficiently as possible because these resources will only re-form after millions of years later.

Natural resources are something in nature and useful and has value in the conditions where we find it. It cannot be natural resources if something found has no known its use so that it has no value, or something that is useful but is not available in large quantities compared to the request so that it is considered worthless. Briefly, something is said to be natural resources if it meets 3 (three) conditions namely (1) something exists, (2) it can be taken, and (3) it is useful. Thus, the understanding of natural resources has a dynamic nature, in the sense that the opportunity for something to become a resource is always open. Understanding of natural resources will be clearer if seen by type. Based on its physical form, natural resources can be divided into 4 (four) groups, namely Land Resources, Forest Resources, Water Resources, and Mineral Resources. Meanwhile, based on its recovery process, natural resources can be divided into 3 (three) groups, namely:

a. Inexhaustible natural resources, such as air, solar energy, and rain water.
b. Renewable natural resources, such as water in lakes/rivers, soil quality, forests, and wildlife.
c. Non-renewable natural resources or irreplaceable or stock natural resources, such as coal, petroleum, and metals.

Natural resources have an important role in human life. Natural resources for various communities in Indonesia not only have economic value but also social, cultural and political. Natural resources play an important role in the formation of civilization in human life, so that each culture and ethnicity has its own conception and worldview about the control and management of natural resources. The concept of cosmology and the worldview of natural resources, especially land in several ethnic groups in Indonesia have in common, namely land as an integral entity or as an ecosystem

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In the context of omnibus law, studies of omnibus law are still very rarely found. In Balck's Law Dictionary, it is explained about the omnibus law that:

1. *A single bill containing various distinct matters, usu. drafted in this way to force the executive either to accept all the unrelated minor provisions or to veto the major provisions*.
2. *A bill that deals with all proposals relating to a particular subject, such as an 'omnibus judgeship bill' covering all proposals for new judgeships or an 'omnibus crime bill' dealing with different subjects such as new crimes and grams to states for crime control.*.

Also, Briana Bierscbach explained that: *Just like a standard bill, omnibus bills are formal proposals to change laws that are voted on by rank and file lawmakers and sent off to the executive branch for final approval. The difference with omnibus bills is they contain numerous smaller bills, ostensibly on the same broad topic. Take the omnibus tax bill as an example: It may include changes on everything from income, corporate, and sales taxes, but all of those issues can fit under the large umbrella of taxes.*

As described above, it can be explained simply that the omnibus law or omnibus bill is a law that can change many laws. SofyanDjalil once brought up the concept of the omnibus law. This concept is also known as the omnibus bill which is often used in countries that adopt a common law system, such as the United States in making regulations. The regulation in this concept is to make a new law to amend several laws at once.

The existence of omnibus law can even provide a number of advantages. In this context, the concept of omnibus law can be used by the Indonesian government to solve 2 (two) things, namely, *the first;* the problem of criminalization of State officials. During this time, many government officials are afraid to use discretion in making policies related to the use of the budget because if proven to suffer losses, they can be charged with corruption. *The second;* the omnibus law can be used in Indonesia to harmonize central and regional policies in supporting the investment climate. In this regard, the omnibus law can be a concise solution to conflicting laws and regulations, both vertically and horizontally.

Indonesia can adopt the omnibus law to create harmonization of laws and regulations. Omnibus law can be the answer to the chaotic nature of several laws in Indonesia. Omnibus law is not something new and strange in Indonesia, it is a technique for drafting a law that is more efficient and effective. Certainly, this technique can form a consensus between the government and parliament when a deadlock occurs.

The existence of omnibus law will not interfere with the hierarchy of laws and regulations as regulated in Article 7 of Act No. 12 of 2011 *jo*Act No. 15 of 2019 concerning the Establishment of Laws and Regulations. In fact, *omnibus law* is a technique and what was issued from this technique is a law that is actually a legal product that has been around for a long time.

IV. PREDICTING THE READINESS OF INDONESIA IN IMPLEMENTING OMNIBUS LAW IN THE FIELD OF NATURAL RESOURCE MANAGEMENT

Humans need natural resources to be processed and utilized in maintaining their lives. Although, sometimes human over-exploit natural resources so that the environmental balance is disrupted. Theoretically, natural resources are divided into 2 (two), namely renewable and non-renewable natural resources. Renewable natural resources, if experiencing scarcity due to over-exploitation, the balance of the ecosystem will be disrupted. While, non-renewable natural resources must be used as efficiently as possible because these new natural resources will be re-formed after millions of years later.

Also, natural resources have limitations in many ways, namely limitations regarding availability according to quantity, quality, space, and time. Therefore, natural resource management must be regulated and controlled by the government, both central and regional through government instruments based on the authority they have.

Currently, the arrangements of natural resource management are very numerous and complex. At legislation level, the author has inventoried several laws governing the natural resources management in Indonesia, namely:

1. Act No. 32 of 2009 concerning Environmental Protection and Management;
2.
3. Act No. 5 of 1990 concerning Natural Resources Conservation;
4. Act No. 31 of 2004 *jo*. Act No. 45 of 2009 concerning Fisheries;
5. Act No. 27 of 2007 *jo*. Act No. 1 of 2014 concerning Coastal Areas and Small Islands Management;
6. Act No. 4 of 2009 *jo*. Act No. 3 of 2020 concerning Minerals and Coal;
7. Act No. 39 of 2014 concerning Plantations;
8. Act No. 22 of 2001 concerning Oil and Gas;
9. Act No. 41 of 1999 *jo*. Act No. 19 of 2004 concerning Forestry;
10. Act No. 21 of 2014 concerning Geothermal Energy; and
11. Act No. 17 of 2019 concerning Water Resources.

Based on the laws as mentioned above, it can be analyzed that the authority of natural resources management can become the authority of the central and/or regional government. But specifically regarding natural resources which are very strategic, the tendency must be made by the central government because it has a very large impact and controls the lives of many people.

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The interrelation between laws that are sector causes the closed access of the community to manage natural resources. In practice, the presence of sector laws also creates new legal conflicts in the field of natural resource management. It impacts on the statutory regulations which become the provisions of the implementation of the sector laws, even at the regional level (in these case regional regulations) both provincial and district/city. Disharmony and asynchronous arrangements ultimately create conflicts of authority and conflicts of interest. Often the law in the field of natural resource management cannot be applied consistently which then affects the quality of legal certainty guarantees and legal protection.

Harmonization in law started from the concept of law as a system. In this case, the system is defined as a set of elements that occupy a tight relationship between each other and relations with their environment. So as a system, law as part of a single law or the entire legislation is a single entity that is related to one another. In order to organize a comprehensive and integrated national legal system, it is important to harmonize the law with the aim of structuring and adjusting elements of the national legal order by laying out a mindset that underlies the preparation of a national legal system framework that is imbued with Pancasila and sourced in the 1945 Constitution. Therefore, the harmonization of the law is intended to be coherent with the target of the formation of laws and regulations, namely "the creation of harmonization of laws and regulations in accordance with the aspirations of the people and development needs".

Harmonization of natural resource management policies is needed to avoid overlapping authority and differences in resolution mechanisms. The presence of Act No. 23 of 2014 concerning regional government seems to be trying to reveal the chaos of natural resource management by mapping the authority of natural resource management. In the appendix of Act No. 23 of 2014 it appears that the legislators mapped the authority of the government which was divided between the central government, provincial governments, and district/city governments. This mapping and distribution of governmental authority has an impact on the loss of some district/city government authority in natural resource management.

According to the author, mapping the authority of government as referred to above is actually one of the steps that is good enough to reveal the "*tangled threads*" of government authority that clash with each other in sector laws which then have an impact on regulations at the regional level, such as regional regulations issued later. This means that with the mapping of governmental authority in Act No. 23 of 2014, the implementation of the authority of the central- and regional governments is adjusted to the respective governmental authorities that have been determined. The drafting of regional regulations governing natural resource management cannot deny the existence of Act No. 23 of 2014, even this law becomes the main reference in outlining the authority of local governments regulated in a regional regulation. Thus, sector laws are not the main reference for determining what can and may not be done by local governments as outlined in local regulations.

The discussion regarding the source of authority can be elaborated in the perspective of Act No. 23 of 2014 concerning regional government (and its amendments) because the laws is the legal basis for the administration of government because it has governed the distribution of authority of government affairs in various fields, including natural resources.

For natural resource management is divided into 2 (two) groups, namely the main/sector group and reference group. The main/sector group is referring to all main natural resource elements, such as mining, agriculture, plantation, forestry, and forestry. Whereas,the reference group is referring to supports natural resources, such as permits, environment, and spatial planning.

The trending of *Omnibus Law* as a form of the concept of structuring and simplifying regulations becomes a new breakthrough to maintain the harmonization, synchronization, and synergy of laws and regulations. As shown, there are 9 (nine) laws governing the substance of certain natural resources management and there are 4 (four) laws that become supporting regulations or as their main reference outside Act No. 23 2014 concerning regional government. Regulatory structuring efforts can be made by establishing clusters or groups from each sector to be synchronized, harmonized, and synergized with the reference groups. The reference group referred does not mean that the law is only a mere supplement, but on the contrary that the law included in this reference group becomes the main reference in the formulation of sector group article clauses, especially those relating to governmental authority. The sector groups in question can be divided into 4 (four) clusters (Chart 1).

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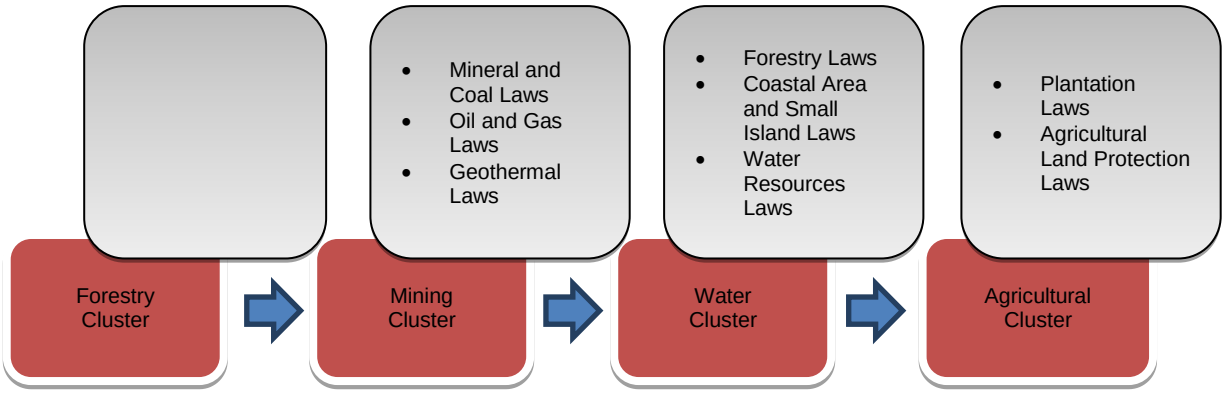
Chart 1. Regulatory structuring



Regulatory structuring for four clusters as shown in Chart 1 is harmonized with the law which becomes the main reference. This means that the structuring and simplification of laws governing natural resource management begins with determining the reference clusters of laws. The referred reference cluster can be divided into 3 (three), namely the Authority Cluster, Environmental Cluster, and Spatial Cluster.

Therefore, regulatory structuring is needed to be able to simplify, harmonize and synchronize, as well as synergize between one lawand another by using the concept of the omnibus law. Put simply, an omnibus law or omnibus bill is a law that can change many laws. Omnibus law is a method or concept of making rules that combines several rules with different regulatory substance, into a large regulation that functions as an*umbrella act*.

As explained before that the existence of omnibus law can provide a number of advantages. In this context, the concept of omnibus law can be used by the Indonesian government to solve 2 (two) things, namely, *the first*, the problem of criminalization of State officials. *The second;* the omnibus law can be used in Indonesia to harmonize central and regional policies in supporting the investment climate. In this regard, the omnibus law can be a concise solution to conflicting laws and regulations, both vertically and horizontally.

In the field of natural resource management, the omnibus law must consider its main references, even as much as possible to be mentioned in the regulation clause. As study in its academic paper, the laws of Environmental Protection and Management and Spatial Planning are main study materials in the preparation of the norms. By making the las of Environmental Protection and Management and Spatial Planning as the breath of its drafting, it is expected to produce laws concerning the management of natural resources that are both environmentally friendly and investment friendly.

One of the important things in the natural resources management is the intersection between environmental sustainability itself and economic benefits that can benefit from the exploitation of natural resources. In other words, the mutual relationship between economic aspects and natural resources and the environment becomes very important. If both are balanced, it will provide benefits. Conversely, if an imbalance occurs, it will harm the nation and future generations. In terms of preserving the environment, it is generally understood that natural resource management is closely related to the concept of sustainable development. Sustainable development with an environmental perspective can improve the quality of life of present and future generations.

Article 33 paragraph (4) of the 1945 Constitution stipulates that the national economy is based on several principles, including the principle of sustainability and the environmentally-sound. The recognition of the principle of sustainability and environmental insight shows that the Indonesian constitution has expressly made sustainable development the principle of its economic system. In addition, the concept of sustainable development has also animated the legislation governing the environment, both old and new regulations.

Natural resources management by the public or private sector requires definite legal instruments and good governance so that they are able to attract investors to invest. The strong determination of the government to provide investment ease for the improvement of the economy has been outlined in several policies, one of which is by issuing Government Regulation No. 24 of 2018 concerning *Online Single Submission*. This OSS platform is to simplify the management of investment licensing into one stop. In addition, the government has also issued Government Regulation No. 24 of 2019 concerning the provision of incentives and ease of investment in regions which is an order of Article 278 of Act No. 23 of 2014 concerning regional government.

The spirit of investment ease shows the government's good intentions to strengthen the economy. However, in relation to natural resource management, the ease of investment must be accompanied by a good licensing system as well. Simplification and acceleration of licensing through a one-stop integrated service as one form of granting investment facilities must be in harmony with other regulations on natural resource management. Thus, the idea of Natural Resource Management laws that refers to the laws of Spatial Planning and Environmental

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Protection and Managementand in line with the concept of natural resources management that are environmentally-friendly but also investment-friendly need to be considered for its drafting. This idea will also be able to reduce the sector ego that exists today and can realize the harmonization, synchronization, and synergy of natural resource management in Indonesia.

V. CONCLUSION

The arrangements of natural resource management are very numerous and complex. The interrelation between sector laws causes the closed access of the community to manage natural resources. Also, the presence of sector laws in practice creates new legal conflicts in the field of natural resource management. Harmonization of natural resource management policies is needed to avoid overlapping authority and differences in resolution mechanisms. This natural resource management should be divided into 2 (two) groups, namely the main/sector group and the reference group. The main group is all major natural resource elements, such as mining, agriculture, plantation, forestry, and fishery. While, the reference group as supporting elements of natural resources management such as authority and permits, environment, and spatial planning.

Regulatorystructuring is intended to make rules simpler, harmonious and synchronous, and synergize between one law and another by using the concept of omnibus law. Omnibus law in the field of natural resource management must consider its main references, even as much as possible to be mentioned in the regulation clause. The idea of natural resource management laws that refers to the laws of Spatial Planning and Environmental Protection and Management and in line with the concept of natural resources management that are environmentally- and investment-friendly needs to be considered for its drafting. This idea will also be able to reduce the sector ego that exists today and can realize the harmonization, synchronization, and synergy of natural resource management in Indonesia.

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