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Rethinking Indonesia's Legislative Drafting Style: Codification, Omnibus Legislation, and the Limits of the Guide of Legislation

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Article

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Abstract

Indonesia's legislative drafting framework requires all laws and regulations to comply with the Guide of Legislation because non-compliance may result in judicial invalidation. Although legislative drafting is expected to adhere to these formal standards, recent codification and omnibus law-making have introduced new drafting techniques that are not expressly accommodated within the existing framework. Despite extensive discussion of codification and omnibus legislation, limited attention has been paid to their compatibility with Indonesia's legislative drafting rules and the consequences for legal certainty and legislative validity. This article examines whether the 2023 Penal Code and the Job Creation Law conform to the drafting standards outlined in Law Number 12 of 2011 and explores the implications of any deviations. The study employs doctrinal legal research, using statutory and case analyses of the 2023 Penal Code, the Job Creation Law, and relevant legislative drafting principles. The findings reveal that both legislative models create tensions with the prescribed drafting framework. The Penal Code departs from the required structure of general provisions, while omnibus legislation obscures amendment history and adopts purposive naming that may diminish legislative transparency. The article argues that every legislative drafting innovation should first be formally institutionalised within the Guide of Legislation before its implementation to safeguard clarity, legal certainty, and the constitutional validity of enacted laws.

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INTRODUCTION

The drafting style of legislation plays an important role in delivering clear and concise law. The style should present a law that could communicate its contents well to many, particularly lay users of legislation, non-legally trained professional users of legislation, and legally trained lawyers and judges.[1] This challenging role, however, becomes difficult when the law itself is complex and extensive in its provisions or articles. Therefore, the drafting style, such as its

[1] Helen Xanthaki, Thornton's Legislative Drafting, Sixth Edition, (Bloomsbury Professional, 2022): 55-56.

organisation (*grouping of provision*s), should help the reader navigate such a sizeable law.[2] Indonesia recently saw a large amount of legislation consolidated into a single law. To name, the prominent ones are an omnibus law of Job Creation Law and a codification of the Penal Code of 2023. Both carry different purposes yet came in sizeable articles.

The drafting of legislation must be conducted in accordance with the law. Law-making should comply with an official guide, namely drafting style and its procedural rules. Article 22A of Indonesia's 1945 Constitution is the legal basis for the guide of Indonesia's legislation. This constitutional provision mandates that law-making (eg. g., the drafting process and drafting style) is guided by the law.[3] That law is Law Number 12 of 2011, as amended twice to date. According to the said law, certain basic principles of Indonesian drafting, namely the General Provision and the law-amends-only-one-law practice, must be adhered to. The current drafting style, especially on the omnibus law of the Job Creation Law and the codification of the Penal Code of 2023, lacks compliance with both principles. In other words, the law is made without compliance with the legal basis as mandated by the Constitution.[4] This will eventually provide grounds for judicial invalidation through constitutional review.

In 2020, a thousand-page law amending 78 existing laws was passed to ease business and attract more Investment to Indonesia.[5] That law is called the Job Creation Law of 2020 and uses an omnibus approach to law-making, making it the first of its kind in Indonesia's legislative drafting. The binding guidance on law-making style says nothing about omnibus style. Hence, the Job Creation Law indeed changes the course of Indonesia's law-making style. That is to say, the lawmakers who made the omnibus Job Creation Law did not take into account the guiding principles of legislation. The drafting technique used in the Job Creation Law had not been adopted from Indonesia's Official Guide to Legislation at the time of enactment. Therefore, there was an apparent lack of a normative basis for using an omnibus drafting style.

The adoption of the Penal Code of 2023 also revealed another practice in drafting style regarding the conduct of codification. While an omnibus had no legal basis until 2022, the drafting style for codification has been in place in the law, though with minimal guidance. Over the last five years, not only has the Job Creation Law shaped the law-making style, but the Penal Code of 2023 also demonstrates its significance. The story of having old, colonial-inherited criminal law finally came to an end when the legislature adopted the Penal Code of 2023. The significance of the Penal Code of 2023 is that the law affirmed a civil law legal tradition of making a massive, single law containing basic principles of an area of law. Indeed, principles contained in the Penal Code of 2023 are always being referred to by other laws, for instance, anti-corruption law, human trafficking law, and money laundering law.[6] Like the Job Creation

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2 Ann Seidman, Robert B. Seidman, and Nalin Abeyesekere, Legislative drafting for democratic social change (Kluwer Law International BV, 2001): 208-209.

3 Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi. (2010). *Naskah komprehensif perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar belakang, proses, dan hasil pembahasan 1999–2002* (Edisi revisi, Buku II: *Lembaga Permusyawaratan dan Perwakilan*, Jilid 2). Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, page 1016 and 1028.

4 Constitutional Court Decision Number 27/PUU-VII/2009, page 83.

5 Kementerian Koordinator Bidang Perekonomian Republik Indonesia. (2020, December 2). *Pemerintah turun ke daerah sosialisasikan UU Cipta Kerja: Bahas sektor pertanian, kelautan & perikanan, LHK, dan ESDM*. Kementerian Koordinator Bidang Perekonomian Republik Indonesia.

6 Thea, A. (2024, September 24). *4 misi penting diterbitkannya KUHP Nasional*. Hukumonline.

Law, the Penal Code of 2023's law-making style has its own significance, particularly in its codification.

The word codification is familiar to many in the legal circle, but concrete examples of its drafting style are rare. Besides its practice, the guide on codification drafting style is also minimal, as mentioned earlier. The passing of the Penal Code of 2023 serves as a real example of what codification drafting style looks like. As far as the guide to legislation is concerned, the guide for codification is only differentiated by its grouping organisation. A typical organisation of law would divide the provisions into chapters, articles, and paragraphs.[7] Considering its sizeable content, a codification also uses grouping of "book" (*buku*).[8] That is the only distinction the legislation guide states, based on Law Number 12 of 2011. In other words, to identify whether a law is a codification in a drafting style, there must be a grouping of books. Many laws have been passed, but few actually use the grouping of books. The Penal Code of 2023 is organised into books due to its complex and extensive provisions. Apart from the *grouping of books,* the Guide of Legislation does not further differentiate between a typical law and a codification law. Although the only distinction between regular law and a codification is the use of a grouping of *books,* the Penal Code 2023 does not follow the other drafting style mandated by the Guide of Legislation, namely the general provision (*ketentuan umum*).

Balancing the need for clear, communicative legislation with normative requirements is essential in legislative drafting. The organisation or grouping of a law's provisions should serve the communicative purpose of legislation. This means that the law should be readable to the layperson and the user of the legislation. This challenging purpose should also be based on normative mandate. Experience has shown that a law could be invalidated or at risk of invalidation on the grounds of non-compliance with the normative mandate on the guidance of legislation as provided by Law Number 11 of 2011. Therefore, this article is intended to dissect the importance of drafting style and its development, and to show how it can be adopted to create readable law and prevent such law from being judicially invalidated.

Existing scholarship on omnibus legislation in Indonesia has primarily examined the method as a response to regulatory proliferation, its transplantation from other jurisdictions, and its compatibility with Indonesia's law-making system. Anggono and Firdaus compare Indonesian omnibus legislation with practice in the United States and Ireland[9], while Fajar and Zaid focus on defects in the formation of the Job Creation Law from the perspectives of legal politics and good governance.[10] Mahy, in turn, analyses legal hierarchy and judicial review in the labour cluster.[11] More recent work by Putra and colleagues evaluates the post-2022 statutory recognition of the omnibus method and concludes that its regulation remains incomplete and may itself

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7 Ulya, F. N. (2022, September 7). *RKUHP dikemas jadi 2 buku, kejahatan dan pelanggaran digabung di Buku II*. *Kompas.com*. Kompas.com

8 Elucidation II Law Number 12 of 2011.

9 Bayu Dwi Anggono and Fahmi Ramadhan Firdaus, "Omnibus Law in Indonesia: A Comparison to the United States and Ireland", 7 Lentera Hukum, (2020): 319–336.

10 Bobi Yusuf Noor Fajar and Zaid, "A Critical Review on the Job Creation Omnibus Law-Forming Process", 5 Syiah Kuala Law Journal, (2021): 195–211.

11 Petra Mahy, "Indonesia's Omnibus Law on Job Creation: Legal Hierarchy and Responses to Judicial Review in the Labour Cluster of Amendments", 17 Asian Journal of Comparative Law, (2022): 51–75.

generate legal uncertainty.[12] These studies illuminate the concept, process, and constitutional controversy surrounding omnibus legislation. However, they do not closely assess the textual architecture of an omnibus statute against the detailed drafting prescriptions in Indonesia's Guide of Legislation.

A separate body of literature addresses the renewal and codification of Indonesian criminal law. Octora examines the proposed recodification of criminal law mainly in relation to substantive harmonisation between the Code and offences regulated outside it.[13] Butt analyses the 2023 Penal Code as an effort to indigenise and democratise Indonesian criminal law, with emphasis on the Code's substantive orientation and political development.[14] Broader codification scholars likewise explain codification as a project of systematisation, accessibility, legal unification, and reform.[15] Nevertheless, this literature generally treats codification as a substantive or historical project rather than asking whether the enacted Code's internal organisation, particularly its treatment of general provisions, conforms to Indonesia's legally binding drafting rules.

This article differs from those published works in two respects. First, it places codification and omnibus legislation in a single analytical framework as distinct drafting styles that must both operate within Law Number 12 of 2011 and its Guide of Legislation. Second, instead of concentrating primarily on the policy substance, political process, public participation, or sectoral effects of the statutes, it examines concrete drafting features: the organisation of general provisions in the 2023 Penal Code; the omnibus departure from the conventional one-law-amends-one-law model; the preservation of amendment history; and the use of purposive legislative titles. By connecting those drafting choices to clarity, legal certainty, and the possibility of judicial invalidation, the article bridges scholarship on legislative technique and on Indonesia's two most significant recent models of large-scale legislation.

Overall, this paper examines the role of Indonesia's legislative drafting guide in ensuring the validity and consistency of the law-making process, with particular attention to the challenges made by the adoption of the omnibus law technique. It addresses three main research questions: (1) who the lawmakers under Indonesia's constitutional and legislative framework are; (2) how Indonesia's legislative drafting guide provides the preparation, codification, and amendment of legislation; and (3) whether the legislative drafting process of the omnibus law complied with these established drafting requirements and the legal implications of any non-compliance with them. By analysing Indonesia's codification tradition alongside the enactment of the omnibus law, this paper argues that adherence to the legislative drafting guide is not only procedural but

[12] Marsudi Dedi Putra, Tunggul Anshari Setia Negara, Aan Eko Widiarto, and Indah Dwi Qurbani, "Legislative Formation Design Using the Right Omnibus Law in Indonesia", 6 International Journal of Social Science Research and Review, (2023) : 119–129.

[13] Rachel Octora, "Renewal of Criminal Law: Draft of Indonesian Criminal Code, Spirit of Codification and Its Effects on Law Harmonization", 46 Jurnal Hukum & Pembangunan, (2016).

[14] Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?", 32 Griffith Law Review, (2023): 190–214.

[15] See also Jean Louis Bergel, "Principal Features and Methods of Codification", 48 Louisiana Law Review, (1988): 1077–1092 and Gunther A. Weiss, "The Enchantment of Codification in the Common-Law World", 25 Yale Journal of International Law, (2000): 455–520.

also is critical to ensuring legal certainty and decreasing the risk of judicial invalidation through constitutional review.

RESEARCH METHOD

This study employs doctrinal legal research to examine whether the drafting styles in codification and omnibus methods conform to Indonesia's legally binding framework for the formation of legislation. It applies statutory, conceptual, and case approaches. The primary legal materials consist of the 1945 Constitution, Law Number 12 of 2011 and its amendments, the Guide of Legislation contained in its appendix, the 2023 Penal Code, the Job Creation Law, and relevant decisions of the Constitutional Court and the Supreme Court. Secondary legal materials include books, journal articles, and scholarly commentary concerning legislative drafting, codification, omnibus legislation, legal certainty, and judicial review.

The legal materials were collected through document and literature review by identifying, classifying, and cross-referencing the provisions, drafting rules, judicial decisions, and scholarly works relevant to the research questions. They were analysed qualitatively using interpretive and comparative legal analysis. First, the study identifies the drafting standards prescribed by the Guide of Legislation. Second, it compares those standards with the structure, amendment technique, legislative naming, and treatment of general provisions in the two statutes under examination. The resulting conformity or deviation is then evaluated against the principles of clarity, accessibility, legal certainty, and legislative validity to formulate prescriptive conclusions on the institutionalisation of future drafting innovations.

ANALYSIS AND DISCUSSION

Introduction to Indonesia's System of Government and Guide of Legislation

Introduction to Indonesia's Law-making

Based on the 1945 Constitution of the Republic of Indonesia, the law-making power lies with the directly elected House of Representatives. Presidential approval remains indispensable for the enactment of a bill. Unlike the doctrine of parliamentary sovereignty in Westminster systems, where Parliament alone possesses ultimate legislative authority, Indonesia's legislative process requires the joint approval of both the House of Representatives and the President. Consequently, compliance with the legislative drafting guide is essential, as the enactment of legislation is not solely a parliamentary function but a shared constitutional responsibility of both institutions.

Any bill may be proposed by any member of the House of Representatives or by the President. The bill will be debated within parliamentary stages (i.a., committee, subcommittee, and plenary session). The President, usually represented in practice by ministers, also takes part in that debate and session. To pass the bill into law, not only should the bill secure the House's approval, but also the President's approval.[16] Otherwise, the bill fails to be enacted and may not be promulgated. Therefore, the House's and the President's law-making power are equal.[17]

[16] Saldi Isra, Pergeseran Fungsi Legislasi, Ed. Ke-2, Cet. Ke-4, (Depok: Rajawali Pers, 2018), hlm. 201 and 245-246.

[17] Saldi Isra, Sistem Pemerintahan Indonesia Pergulatan Sistem Ketatanegaraan Menuju Sistem Pemerintahan Presidensial, (Rajawali Pers, 2019): 257- 258.

Some bills on certain subject matter need to be debated not only by the House and the President but also by the legislature's second chamber. Besides the House, there is a second chamber representing every province, named the Regional Representative Council. The Council is meant to represent Indonesia's 38 provinces, with each province represented equally by four members, elected directly, regardless of population. Certain subjects of the bill that require debate and discussion with the Council are regional autonomy, central-regional government relations, central-regional fiscal balance, and natural resources management.[18] To pass, the bill containing that subject need not secure the Council's approval. The Council, unlike the House and the President, does not hold approval power over a bill. Thus, the Council's power is limited to only debating and discussing the bill. It is up to the House and the President to decide whether the Council's input will be incorporated into the final version of the bill. After securing joint approval, the bill will be promulgated in the state gazette upon the President's signing.

Law Number 12 of 2011: Indonesia's Guide of Legislation

The 1945 Constitution of the Republic of Indonesia says nothing on the drafting style and guide. In its first phase, the President issued a drafting guide by delegation of authority under a law that remained in effect until 1999. The drafting style then evolved and became more important after it was explicitly stipulated by law in 2004. The 2004 law was replaced by Law Number 12 of 2011, serving as the most recent version of Indonesia's Guide of Legislation, which was amended once in 2022.

The idea of having an Indonesian Guide of Legislation dates back to 1950, under the 1950 law, which delegated and authorised the President to prepare it. In 1970, the President issued an instruction that set out the layout of law and the Government Regulation[19]. Hence, the other type of regulation, including at the regional level, is left without a drafting guide. Pursuant to the 1950's law delegation, the Directorate General of Legislation of the Law Ministry issued the guide on the Technique of Legislation and Regulation Drafting ("Drafting Guide") in 1987.[20] Unlike the 1970's guide issued under the President's instruction, Indonesia's Guide of Legislation not only sets out the layout but also language style and diction. Indonesia's Guide of Legislation governs the formation of law at both the national and regional levels; at the regional level, it is subject to the law on regional government, which may otherwise provide the same.

Indonesia's Guide of Legislation evolved and developed exponentially under the newer guide in 1999.[21] This newer version brought a more complete layout and language style than the 1987 version. Further, the technique of legislative drafting took a significant step when it was directly regulated by law, placed higher in the hierarchy than any President-issued legal

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[18] Majelis Permusyawaratan Rakyat Republik Indonesia, "Undang-Undang Dasar Tahun 1945," (1945).

[19] Indonesia's hierarchy of law is as follows, from the highest to the lowest: the Constitution of 1945, law, Government Regulation, Presidential Regulation, Provincial Regulation, and Regency or Municipal Regulation. The Government Regulation and the Presidential Regulation, primarily and generally, with some caveats, serve as delegated regulations to the law.

[20] The 1987 version is the earliest the author could find through an online search. The 1987 version seems to have been regularly updated, as the Directorate General of Legislation of the Law Ministry also issued the 1993 and 1997 versions.

[21] Presiden Republik Indonesia, "Keputusan Presiden (KEPPRES) No. 44 Tahun 1999 Tehnik Penyusunan Peraturan Perundangundangan Dan Bentuk Rancangan Undang-Undang, Rancangan Peraturan Pemerintah, Dan Rancangan Keputusan Presiden," 44 § (1999).

instrument, as in previous practice. The said law is Law Number 10 of 2004 on the Formation of Law and Regulation, which included the technique in its Schedule. Then, the 2004 version was replaced by Law Number 12 of 2011, which has the same title as the 2004 law. The 2011 law was then amended in 2019 and 2022. The latest amendment in 2022 surprisingly introduced a new drafting style into Indonesia's omnibus practice. Based on the 2022 amendment, the omnibus drafting style refers to amending multiple existing laws to which the provision connects, repealing other law or regulations of the same hierarchy, and even inserting new provisions into a single law to pursue certain objectives.[22]

The drafting style guide has legal force in the making of law and regulations; thus, incompatibility with the guide will result in invalidity and inoperability as determined by a competent Court. The development of the technique was concurrent with a series of amendments to the 1945 Constitution from 1999 to 2002 that established the new Constitutional Court, empowered to invalidate law on the ground of non-compliance with the drafting-style technique.[23] Because of the Constitution's amendments, the Supreme Court was also empowered to invalidate the regulation[24] which, in contrast to the previous regime, resulted in it being inoperative immediately[25] without relying on its lawmaker to repeal it, thereby rendering the invalidated regulation inoperative.[26] Therefore, the role of drafting-style techniques has never been more substantial and central than it was until the development of judicial review. The nullification of the omnibus technique-law has evidenced the said significance, the Job Creation Law

Principle of Clear Formulation

Several principles govern Indonesia's drafting style, one of them is the principle of clear formulation. Compliance with that principle is fundamental, preventing any judicial review made against a law. The competent Court has, on many occasions, nullified and declared unconstitutional laws or regulations that fail to meet the principle of clear formulation. What is clear formulation in legislative drafting, and to what extent? Since the principle is stipulated in Law Number 12 of 2011, we first examine its meaning as set out in the statutory source. The law defines clear formulation as a satisfaction of 'the technical requirements in its preparation, systematics, choice of words or phrases, and clear and simple legal language[27] so that it does not

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[22] Presiden Republik Indonesia, "Undang-Undang Nomor 13 Tahun 2022 Perubahan Kedua atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan," 13 § (2022).

[23] Before the series of Constitutional amendments from 1999 to 2002, there was no mechanism for a judicial body to review the law. Judicial review was only applied to regulations below the law. The establishment of the Constitutional Court in 2004 was a turning point, as it was meant to check and balance the law-making power and to review the law against the Constitution of 1945 on both substantive incompatibility and formal grounds, including adherence to the drafting-style technique.

[24] A regulation means any regulation made under a law delegation by an agency established by law or by state organs. Presiden Republik Indonesia, "Undang-Undang Nomor 12 Tahun 2011 Pembentukan Peraturan Perundang-Undangan," 12 § (2011).

[25] If a law were held to be unconstitutional by the Constitutional Court, then the said law would automatically and immediately be invalid and inoperative.

[26] Under the 1984 law, the Supreme Court was empowered to review the regulation, not the law, and declared it invalid. However, it was not until the 2004 amendment to the 1984 law, which expanded the Supreme Court's judgment, that the law became immediately inoperable without any prior repeal.

[27] The term 'legal language' (in Indonesian, *'bahasa hukum')* warrants a separate discussion. Linguists argued that if legal language, as defined by Law Number 12 of 2011, is referred to as having its own characters, separate from ordinary rules and grammar, then such a definition is just a form of disobedience to the Indonesian

create different interpretations in its implementation.'[28] The law seems to emphasise preventing ambiguity in drafting that may be interpreted differently from the drafter's intention. To prevent ambiguity, the drafter is required to select and use the correct word or phrase and a clear, simple sentence to represent the exact meaning the lawmakers intend.

Furthermore, a clear formulation means the absence of incorrect references, discrepancies between the approved and promulgated bills, and harm to people's rights. Both the Constitutional Court and the Supreme Court have addressed their interpretations of the clear formulation in several decisions. As the Constitutional Court has affirmed in the Job Creation Law's judicial review decision, an incorrect reference to an article with the actually intended reference constitutes a violation of the principle of clear formulation.[29] Further, if there is any difference in terms of the modification to reference, word omission between the bill versions that just acquired joint approval and the bill promulgated in the state gazette, that also does, in the Constitutional Court decision, not satisfy the principle of clear formulation.[30] On the other hand, the Supreme Court emphasised the effect of 'unclear formulation', which allows for multiple interpretations of the law. Pursuant to the Supreme Court's opinion, a regulation that the Court deems to have more than one interpretation and harms the people's rights will be declared in violation of the principle of clear formulation.[31] Therefore, under the Court's understanding, a clear formulation includes the absence of incorrect references, the distinction between the approved bill and the promulgated one, and the avoidance of harm to the people's rights.

Law Reform Through Codification

Indonesia's approach to legal reform has been shaped by both its historical experience and its socio-legal diversity. Indonesia is not only a former colony of European powers but also has diverse cultures and belief systems scattered across its 17,000 islands.[32] Hence, each culture brings its own legal system, especially in private and land law. Those facts make it challenging to conduct law reform to solidify law that would accommodate such pluralism. Law reform is not limited to enacting new legislation to replace obsolete laws. It also requires reconciling diverse unwritten legal traditions, particularly hukum adat (customary law), and translating them into a codified legal framework that accommodates the plurality of Indonesia's legal systems..

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language's grammar and rules. Sry Satriya Tjatur Wisnu Sasangka, "Problematika Bahasa Perundang-Undangan," Jurnal Kajian No. 16 Vol. 4 (2011): 629.

28 Presiden Republik Indonesia, "Undang-Undang Nomor 12 Tahun 2011 Pembentukan Peraturan Perundang-Undangan," 12 § (2011).

29 The Job Creation Law has been found to reference an article incorrectly, rather than the intended one. *See* The Constitutional Court Decision Number Nomor 91/PUU-XVIII/2020, page 414.

30 One of the Constitutional Court's reasons for nullifying the Job Creation Law is that the said law drafting process appears to have made an incorrect reference to another article in the law. *See* the Constitutional Court Decision Number, pages 407-414.

31 Under the 1945 Constitution, any person has the right to legal certainty. The Supreme Court held that a regulation with more than one interpretation violates the right to legal certainty. *See* Supreme Court Decision Number 11 P/HUM/2014 and 22 /P/HUM/2022, Year 2022.

32 BPS - Statistics Indonesia, "Luas Daerah dan Jumlah Pulau Menurut Provinsi, 2023," https://www.bps.go.id/id/statistics-table/3/VUZwV01tSlpPVlpsWlRKbmMxcFhhSGhEVjFoUFFUMDkjMw==/luas-daerah-dan-jumlah-pulau-menurut-provinsi--2021.html.

Accordingly, legal reform in Indonesia involves more than replacing colonial legislation with new statutes. It also requires reconciling competing legal traditions by translating diverse customary norms into national legislation that can serve a pluralistic society. In this context, codification should not be understood merely as the systematic compilation of existing legal rules. Rather, it is also an instrument of legal reform through which legislators harmonise, modernise, and, where necessary, transform legal principles to reflect contemporary constitutional values and societal needs. A codified statute therefore performs a dual function: it consolidates legal norms that have gained broad acceptance while simultaneously articulating the normative direction that the legal system seeks to achieve. In this sense, codification is not only descriptive of the law as it exists but also prescriptive of how the law ought to develop.[33]

Substantive and Formal: Codification's Characters

Before examining the practice of codification, it is necessary to define codification. The concept of codification possesses distinctive characteristics that reflect the legal tradition in which it operates, whether civil law or common law. If we want to distinguish types of codification, it is reasonable to have two: substantive codification and procedural codification. This type of codification occurs when there are significant changes in a country or a given territory. The changes can be political and social (e.g. post-colonial society).[34] The French Revolution could be good evidence that not only political but also social changes are leading to a new legal practice: the formation of the French Civil Code. As we will discuss below, Indonesia's codification of land law is also driven in part by political and social changes amid post-independence euphoria and the spirit of nation-building. The newly independent Indonesia is determined to depart from colonial influences (i.e., decolonisation in the field of law) and adopt its own original legal system (i.e., Customary law). In contrast, a prerequisite for the existence of social or political changes is something that the common law United States lacks, which thus leads them nowhere near a substantive codification. The absence of revolution and the need to replace or insert certain other legal systems explain the disfavour toward codification in the US.[35]

The 'real' or substantive codification is meant to revisit previous law and insert the particular aspiration or value of law into a positive, formal form. Yes, codification is also about technicalities, such as drafting style, precise legal terms, and specific layout. The apparent character of a codification, however, is not only about that. A future-shaping, complete, and long-lasting normative rule is what a substantive codification is. What we mean by future-shaping is

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[33] A prominent Indonesian scholar on legislation, Prof Hamid S. Attamimi, argued in his writing dated 1988 that a modern country needs law reform that could lead the country so that the law would shape the country's future. Therefore, the law does not exist alongside society; rather, it leads society toward welfare. In describing his idea, he used the term 'modification' rather than 'codification'. A modification literally means a change or revision, meaning that the law could change the existing, living laws so that society can thrive (i.a., law as social engineering). *See* Hamid S. Attamimi, "*Mana Yang Primer Dewasa ini, Kodifikasi atau Modifikasi?" published in Kompas newspaper* on March 22, 1988 and reprinted and republished in Maria Farida Indrati, Kumpulan Tulisan A. Hamid. S. Attamimi: Gesetzgebungswissenschaft Sebagai Salah Satu Upaya Menanggulangi Hutan Belantara Peraturan Perundang-Undangan, (Badan Penerbit Fakultas Hukum Universitas Indonesia, 2021) : 395-399.

[34] Jean Louis Bergel, "Principal Features and Methods of Codification", 48 Louisiana Law Review, (1988): 1077.

[35] Weiss, Gunther A. "The enchantment of codification in the common-law world." Yale Journal Of International Law 25 (2000): 510.

that a codification aims to restore the legal order or even to create a new one coherently.[3637] Within a codification, an innovation could be expected to be included, not just a compilation of law.[38] Completeness is detrimental but rarely leads to a uniform understanding. In the words of French Civil Code architect Portalis, a codification should be broad enough to contain the principles and general spirit of the laws, but endure in various applications so that it allows judges to put the law into effect, diversify, and extend it with wise and reasoned application.[39] Completeness could be deemed to have broad coverage in a field of law,[40] but still tolerating and even intentionally making gaps in order to make room for judges to apply it in the face of infinite life changes.

Further, the substantive codification shows a degree of systematisation in its provisions, which set out basic principles, elements, and orders in a particular area of law. In achieving that function, a codification is structured first by drafting generality, then by details contained in divisions and subdivisions (e.g., book, chapter, part, article, paragraph, etc.).[41] Broad coverage of a codification eventually brings more subjects under a single law, requiring said division and subdivision. The style of grouping or ordering technique[42] (classification and clusterisation) as well as structuring the provision in chronological sequence of events play a key role.[43] One division and its subdivision are interconnected. Altogether, they create a sense of well-structured coherence in demonstrating systematisation.[44]

The inclusion of varied divisions, such as books rather than just chapters, in Indonesia's codification drafting style tells us how different it is from non-codified law. General provisions, containing principles of an area of law, are always provided within the first book. The Penal Code of 2023 followed this style. As to systematisation, this first division establishes fundamental principles for the said area of law that ultimately govern the rules and interpretation of the remaining provisions of that law. In addition, the first book's provisions serve as a basis for rules when making provisions within a special law.

A crucial function of substantive codification is its authority and unity. A modern codification is, in fact, a work of drafting written law that is then enacted by a formally competent body, the legislature. This legislatively made law is preferable to an unwritten one, even though

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36 Tallon, D, "Codification and Consolidation of the Law at the Present Time," Israel Law Review, 14 No. 1 (1979): 5.

37 Jean Louis Bergel, "Principal Features and Methods of Codification," Louisiana Law Review 48 (1988): 1078.

38 Gunther A. Weiss, "The enchantment of codification in the common-law world," Yale Journal of International Law 25 (2000): 466–467.

39 Jean Louis Bergel, "Principal Features and Methods of Codification," Louisiana Law Review 48 (1988): 1082-1083

40 Gunther A. Weiss, "The enchantment of codification in the common-law world," Yale Journal of International Law 25 (2000): 462-463 and 459.

41 Jean Louis Bergel, "Principal Features and Methods of Codification," Louisiana Law Review 48 (1988): 1083.

42 Ann Seidman, Robert B. Seidman, and Nalin Abeyesekere, Legislative drafting for democratic social change (Kluwer Law International BV, 2001): 215-220.

43 Jean Louis Bergel, "Principal Features and Methods of Codification," Louisiana Law Review 48 (1988): 1085-1087.

44 Gunther A. Weiss, "The enchantment of codification in the common-law world," Yale Journal of International Law 25 (2000): 466.

the former has primacy over the latter as a source of law.[45] With the growth of politically independent nation-states, a legislature becomes the representation of the general will of a given area's population. Since one of the reasons, as discussed above, for codification is the departure of colonial power towards independent countries, codification serves the role of unification.[46] The role that is more crucial within a diverse, but racially classed colony's society. Prior to its independence, Indonesia was ruled by a race-based three-class population system that subjected people to different legal systems respective to the class to which they were assigned. The system that makes original Indonesian law (i.e. customary law) inferior to the coloniser-made law (i.e. *Burgerlijk Wetboek*[47] and *Wetboek van Strafrecht voor Nederlandsch-Indië*[48]). Independence, in a spirit of equality and national identity-building, led to efforts to abolish class-based law and establish national law that corresponds to national interests and identity.[49] Some codifications made since independence prove that these efforts are gaining momentum.

A unification function is exactly what Indonesia's Penal Code of 2023 is meant for: a single, new criminal law. In its official elucidation, the Penal Code of 2023 is intended to renew criminal law, mark a decolonisation in criminal law, and uniformly apply a single criminal law to almost 300 million people from 1300 different ethnic groups living across 17.000 islands.

After discussing the substantive codification, we move to the next type of codification; a formal codification is a compilation. Codification is not exclusive to civil law countries. However, the difference is that codification in common law countries becomes one of the sources of law, but it is still possible to be superseded by judicial decisions under the doctrine of *stare decisis.* Unlike the civil-law countries that intend to truly establish a new, renewed, and coherent legal system in a code, codification in a formal sense is instead an effort of collecting existing law (acts enacted by the legislature) to be gathered together[50] into a single organised law.[51] Therefore, that codification will not replace or even supersede the pre-existing law (i.e., common law and judicial precedent).[52] The idea is thus that, instead of tracing multiple acts enacted by the legislature, legal players could refer to a single, in-code, voluminous compendium, like the

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45 Gunther A. Weiss, "The enchantment of codification in the common-law world," Yale Journal of International Law 25 (2000): 456.

46 Gunther A. Weiss, "The enchantment of codification in the common-law world," Yale Journal of International Law 25 (2000): 467-468.

47 *Burgerlijk Wetboek* is a Dutch private law of 1834 that was applied to Dutch or their descendants who lived in the East Indies (then modern Indonesia). The law has been in effect since then, even after Indonesia's independence, by virtue of the Transitional Provision of Indonesia's Constitution of 1945. *Burgerlijk Wetboek* is literally translated into Indonesian as "*Kitab Undang-Undang Hukum Perdata* or The Law Book of Private Law."

48 Contrary to private law, Indonesia's legislature just passed the Penal Code of 2023 that repealed the Dutch-made criminal law of 1917, *Wetboek van Strafrecht voor Nederlandsch-Indië.* The passage of a decade-old bill in the Code is accompanied by controversy and spans multiple parliamentary terms, as well as committee and plenary sessions.

49 Tallon, D, "Codification and Consolidation of the Law at the Present Time," Israel Law Review, 14 No. 1 (1979): 5.

50 Peter De Cruz, Comparative Law in a Changing World, 2nd ed.,(Cavendish Publishing Limited, 1999): 46.

51 Jean Louis Bergel, "Principal Features and Methods of Codification," Louisiana Law Review 48 (1988): 1091.

52 Varga, Csaba, Codification As a Socio-Historical Phenomenon, (Budapest: Szent István Társulat 2011): 160.

US Code.[53] Such practice in the United States is popularly referred to as a compilation[54] and restatement which in practice is found to be really accessible thanks to its layout, precision, and regular updating.[55]

First Attempt of Codification: Agrarian Law of 1960

The practice of codification in Indonesia spans from the early 1960s, when it gained independence, to the codification of criminal law in 2023. As mentioned above, colonial power implemented a racial classification of people in the Dutch East Indies (then modern Indonesia) and corresponding laws for each class. One of the most fundamental areas of law that is still regulated under colonial law is agrarian law. Arguably, the agrarian sector is fundamental because of its role and identity within Indonesia's agrarian society. Societies in Indonesia have developed their own unwritten law, known as customary law *(hukum adat*), governing family law, succession law, and, particularly, the agrarian sector. Therefore, the need to reform agrarian law is more crucial than ever. The reform entails leaving the colonial past behind and defining the national identity based on customary laws in newly independent Indonesia.

The Agrarian Law of 1960 becomes the first post-colonial Indonesia's codification[56], shaping agrarian law and shows civil-law tradition in Indonesia. The Agrarian Law of 1960 contains numerous fundamental provisions governing and defining Indonesia's agrarian law. For example, its first chapter, the Agrarian Law of 1960, sets out the principles and basic rules of agrarian law. There are provisions on the philosophy of how the land should be managed, its limitations and social benefits and the rejection of the colonial-made agrarian law. Some compromises between customary law-based agrarian law and the interest of a nation's economic development. The maker of the Agrarian Law is well aware of the need for development in modern Indonesia while inserting the unwritten law of customary law into independent Indonesia's written law.

As it repealed and replaced the colonial practice and shaped the future of agrarian law, the Agrarian Law of 1960 seems complete, containing transitional provisions for further law reform. The colonial-inherited land rights were converted into rights subject to and regulated by the new Agrarian Law of 1946, under Book Two of the Land Rights Conversion Provision. The conversion provisions signify Indonesia's departure from its colonial past and define its own agrarian law, compatible with the nation's identity and spirit of independence. In addition to the colonial-era land rights, several feudal land rights are directed to be terminated and transferred to state control. Because republicanism and equality define the character of the independence movement, feudal practices are no longer compatible with Indonesia's independent values. Lastly, many colonial regulations on agrarian laws are repealed by the law. The repeal and

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53 Gunther A. Weiss, "The enchantment of codification in the common-law world," Yale Journal of International Law 25 (2000): 517.

54 One of the main objectives of compilation is to improve access to the law. *See* Karpen, Ulrich, and Helen Xanthaki, Legislation in Europe: a comprehensive guide for scholars and practitioners (Bloomsbury Publishing, 2017): 224.

55 Jean Louis Bergel, "Principal Features and Methods of Codification," Louisiana Law Review 48 (1988): 1092.

56 We use the Agrarian Law of 1960 as an example because it is the first codification in the early independence period. The law is, to this day, central to the making and governing of land law and other subjects related to the land, such as mining, forestry, natural treasure beneath the land, and spatial matters above the land.

replacement make the Agrarian Law become the single authoritative law governing uniformly throughout Indonesia.

The Agrarian Law of 1960 was enacted during a period when Indonesia's drafting style was not yet established. First feature, like the typical codification style, the Agrarian Law of 1960 is divided into books and chapters, indicating that, due to its systematisation and completeness, the contents need to be divided into many parts. However, such division does not mean that there are voluminous provisions since it merely contains 67 articles within 20 pages. Second feature: it is unusual in recent practice for the repeal clause to be placed within the Opening (Introductory) part of a law, contrary to the recent drafting style, which places it in the last chapter or part of a law. The law repealed prior laws, but the repeal clause is placed where it should not be. The repealed law was tabulated and provided in the Opening (Introductory) Part, where the reasons for making the law or its legal basis are usually placed, and not the norm. Arguably, therefore, one could dispute that due to its placement in the Opening (Introductory) Part, the repealed clause of Agrarian Law has no legally binding effect because the binding part is stipulated in an article in the Body of the law. The latter is the drafting style now being used in Indonesia.[57]

In terms of clarity, the Agrarian Law of 1960 itself does not provide a definition, nor does it clarify what agrarian law means or to what extent. It is common for a law to have a definition part for many purposes, namely for limitation, extension, or abbreviation of an intended or specific term.[58] The need to define a term becomes compelling if the term is used repeatedly throughout the law and has an important meaning.[59] A law is expected to define something on which the law provides.[60] Therefore, it is unfortunate that Agrarian Law does not define the term "agrarian law," given that the term is the law's main subject and is used repeatedly throughout it.

Regardless of the absence of a definition of agrarian law, the law, to some extent, has applied the correct verb in constructing the definition. For example, in defining the types of names for land rights, the law used the verb "means" or "is" (in Indonesian, "*adalah*").[61] When it comes to extending the meaning of a defined term, the law uses the verb "includes" (in Indonesian, "*termasuk*").[62] However, the use of the correct verb for definition is not always consistent.

The Agrarian Law of 1960 shows the characteristics of codification, specifically the substantive one. It defined national law and reformed the law because it repealed the former law (i.e., colonial law and feudal rights) and replaced it with new rules based on its own post-colonial political aspirations. The Agrarian Law of 1960 ensures uniform application of agrarian law throughout Indonesia because it was enacted as a legislative framework. The law is intended to unify agrarian law nationwide and provides legal certainty, which is important to national

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57 The repealed clause refers to an article that contains the repeal of a law, especially the one being replaced by the repealing law. The repeal clause is included in the Closing Provision section. Indonesia's Guide of Legislation Number 138

58 Indonesia Indonesia's Guide of Legislation Number 98. *See* Appendix, Presiden Republik Indonesia, "Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan," 12 § (2011).

59 Indonesia's Guide of Legislation Number 102 and 105. *See* Appendix, Presiden Republik Indonesia, "Undang-Undang Nomor 12 Tahun 2011 Pembentukan Peraturan Perundang-Undangan," 12 § (2011).

60 Helen Xanthaki, Thornton's Legislative Drafting, Sixth Edition, (Bloomsbury Professional, 2022): 183.

61 Presiden Republik Indonesia, "Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria," 5 § (1965): Article 20,28, 35, and 41.

62 Presiden Republik Indonesia, "Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria," 5 § (1965): Article 2 (1).

economic development, through the registration of land tenure. In addition to that, the Agrarian Law seems not to have met the expected drafting style to ease reading and prevent ambiguity by showing certain clarity on what some important and repeatedly used words mean.

Most Recent Attempt: Penal Code of 2023

When Indonesia became independent in 1945, criminal law, named *Wetboek van Strafrecht voor Nederlandse Indie*, inherited from the colonial Dutch East Indies was still in operation since then with some subsequent amendments. The said law was a minor revision of the Dutch Penal Code of 1881, which was then adopted and enforced in the Dutch East Indies in 1915.[63] The colonial criminal law was still in operation by virtue of the Transitional Provision of Indonesia's 1945 Constitution and Law Number 1 of 1946, which made the law in force for some part of Indonesia until it became in force for the entire territory of Indonesia in 1958.[64] However, that was no longer the case because in 2023 Indonesia's legislature passed the Penal Code of 2023, replacing and repealing the previous colonial-era Penal Code. That passage has been long overdue, as the work of preparing the Penal Code bill began in the 1980s, more than 40 years ago.[65]

The passage of the Penal Code of 2023 marks an effort of decolonisation, codification, and reform in the field of criminal law. The Code decolonised the field of criminal law by replacing the colonial penal Code. The Code is also an ambitious project to systematise the principles of independent Indonesia's criminal law, which, to some extent, have already been regulated under separate but scattered laws. Hence, there is a need to compile those in one systematic, codified law. The Code introduces reforms to address the rise in crime, especially in the financial sector, white-collar crime, corporate liability, restorative justice, and punishment reform, and so on.[66] Lastly, the Code also ensures uniform rules and application of criminal law throughout Indonesia because it also harmonises[67] with existing special law on certain crimes, such as money laundering, human trafficking, and corruption.[68] Therefore, the Penal Code of 2023 will unify the criminal law system.

The structure of the Penal Code of 2023 does not adhere to Indonesia's Guide to Legislation, which is already set by law. When the Agrarian Law was enacted in 1960, there was no established drafting style to adhere to. That is not the case for the Penal Code. In 2011, Indonesia renewed its drafting style and layout by enacting Law Number 12 of 2011, which made it mandatory for any law or regulation enacted thereafter to adhere to the drafting style and layout. One of the structures of drafting styles concerns how and where General Provisions should appear (order of drafting). The guide does not direct any law to have a General Provision, but if certain conditions, which the Penal Code seems to have met, exist, then the General Provision chapter is a must. What conditions? First,, if there is a certain word that is important and used repeatedly

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63 Topo Santoso, Principles of Indonesian Criminal Law, (Bloomsbury Publishing, 2023): 23.

64 The criminal law was originally applied only to the islands of Java and Madura in Indonesia in early 1946. Then, in August 1946, the criminal law was put into force on the island of Sumatra.

65 Topo Santoso, Principles of Indonesian Criminal Law, (Bloomsbury Publishing, 2023): 40.

66 Presiden Republik Indonesia, "Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana," 1 § (2023): General Elucidation.

67 The Penal Code of 2023 harmonises the reference styles of 20 existing laws by adopting a new order of articles. Because the said 20 laws referred to the repealed criminal law's order.

68 The Penal Code repealed all or some articles of 29 existing law that had already stipulated certain crimes outside the repealed Criminal Code.

throughout the law, or even referred to by others. Further, it is common for a law to have a definition part for many purposes, namely for limitation, extension, or abbreviation of an intended or specific term.[69]

In practice, an article that contains a definition of a word within a law becomes the first article of a law (i.e. Article 1) in the General Provisions chapter. Even when the General Provision contains more than one article, the definition part will precede the other articles within said General Provision. Given that the definition of "word" in the Penal Code was not framed in accordance with that structure. The drafter reasoned that such an order was made to enable the definition to be applied not only to the Penal Code but also to other law and future law.[70] Based on Indonesia's Guide of Legislation, a definition of a word within the General Provision is bound to and made solely for the law in which such definition is placed. Therefore, for the reasoning of 'generality and authority' of the Penal Code, the definition of certain words was placed last in the General Provision article's order.

The article placement in such order seems to be unnecessary because it has been explicitly provided by an article within the Penal Code that the definitions of the law bind also to any crime regulated outside the Penal Code. Further, the article even states that, under a law, such a definition may otherwise be provided. The basic rule is that the definition binds other laws, but if such a law wants to deviate from it, the law is allowed to and may do so. Therefore, the said article has correctly delivered the drafters' goal to make definition in Penal Code be binding to other criminal law or coming law. Moreover, it has also correctly permitted the coming law to deviate from the Penal Code if the latter desires to define differently, corresponding to the context or need

Non-compliance with Indonesia's Guide of Legislation may lead to the nullification of a law. Besides ensuring the compatibility of a law's contents with the higher law or Constitution, the maker of a law must, in making such a law, adhere to the procedure set out in Indonesia's Guide of Legislation. Therefore, it complies not only with substance but also procedurally. Several judicial decisions showed that the competent Court could make a judicial review[71] on the ground that the law made did not comply with the procedure for its passage and Indonesia's Guide to Legislation style. The Court has decided on such grounds and declared the disputed law invalid.[72]

Omnibus Law: A New Development of Indonesia's Drafting Style

As this article's background already suggested, economic and infrastructure development and Investment drive significant changes in drafting style. In lawmakers' view, Investment does not proceed as quickly as it should because of numerous regulatory and unnecessary licensing

[69] Indonesia Indonesia's Guide of Legislation Number 98. *See* Appendix, Presiden Republik Indonesia, "Undang-Undang Nomor 12 Tahun 2011 Pembentukan Peraturan Perundang-Undangan," 12 § (2011).

[70] Presiden Republik Indonesia, "Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana," 1 § (2023): General Elucidation.

[71] There are different competent courts to petition between law and regulation. The Constitutional Court is competent to review the compliance of law to the Constitution of 1945 and Indonesia's Guide of Legislation. For a regulation, the Supreme Court is the competent Court. *See* Majelis Permusyawaratan Rakyat Republik Indonesia, "Undang-Undang Dasar Tahun 1945," (1945).

[72] In 2021, the Constitutional Court decided that, because the drafting style was not regulated when the law was enacted, the omnibus-style Job Creation Law is invalid. *See* The Constitutional Court Decision Number Nomor 91/PUU-XVIII/2020 Year 2021.

burdens. To address and even eliminate said burdens, laws and regulations related to investment need to be revised, repealed, and improved. Therefore, to achieve those objectives, given the massive number of related laws on Investment and licensing, in President Jokowi's view, the existing technique of amending one bill to amend one law would not satisfy the said objective. That is why, in his Second Term Inauguration Speech in 2019, the omnibus law was introduced.

The President Jokowi's Initial Understanding of Omnibus Drafting Style

Indonesian legislation has adopted a new drafting technique that has historically never been practised in Indonesia's law-making and drafting. In his 2019 second-term inaugural speech, President Jokowi proposed an omnibus bill to revise many, if not dozens, of existing laws. His idea was to 'cut' dozens of laws that, in his view, 'hinder job creation and SMEs development.'[73] In amending and cutting (repealing) the laws, it would be made within just a single law, instead of having an amending bill for every single existing law that was intended to be amended.[74] Further, President Jokowi explained that his intention in introducing the omnibus law is to 'simplify licensing and bureaucracy,' which will eventually expedite public services and attract Investment.[75] The introduction of the omnibus law by President Jokowi is actually an investment-driven legislative initiative. Thus, in the framers' understanding, an omnibus law is a technique for amending and repealing multiple existing laws by consolidating them into a single amending law, rather than having as many laws as there are existing laws to be amended.

First Criticism: A Practice Against Longstanding Rule of One Amending Bill Amended Only One Law

Not until 2022 did Indonesia's drafting style adopt a layout guide and form to accommodate amendments to multiple existing laws within a single law (i.e., an omnibus style). For example, the name or title of an amending law should be "Law Number… of …. On Amendment to…" which will be filled with the name of the amended law.[76] A repeal can be made by having a law that exclusively repeals just a law, and its name should be as follows: "Law Number… of …. on The Repeal of…" The other way to repeal a law is by enacting an entirely new law that replaces the law to be repealed; the repeal clause will simply be included in the new law.[77] Accordingly, a statute should not combine newly enacted provisions with provisions amending existing

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[73] Mochamad Januar Rizki, "Menyoal Ide Omnibus Law dalam Pidato Pelantikan Jokowi," https://www.hukumonline.com/berita/a/menyoal-ide-omnibus-law-dalam-pidato-pelantikan-jokowi-lt5dadb8e0be9fc/?page=all.

[74] Pursuant to drafting style and established drafting practice, an amendment to a law is always made only by a law. Even if laws are closely related and regulated under different laws, a single amending bill will revise a single existing law. For example, in 2004 and 2009, there were amendments to the organisation of courts in Indonesia, under which a single law regulated each Court, and a single bill amended each law. The amendments concern the organisation of the Supreme Court, the General Court, the Administrative Court, and the Religious Court. Thus, it has never been a practice or an official guide until 2020 for amending multiple existing laws

[75] BBC News Indonesia," Omnibus Law: Jokowi teken UU Cipta Kerja - hal-hal yang perlu Anda ketahui dan beberapa kontroversinya," https://www.bbc.com/indonesia/indonesia-51542411

[76] Indonesia's Guide of Legislation Chapter IV. *See* Appendix, Presiden Republik Indonesia, "Undang-Undang Nomor 12 Tahun 2011 Pembentukan Peraturan Perundang-Undangan," 12 § (2011).

[77] Indonesia's Guide of Legislation Number 225. *See* Appendix, Presiden Republik Indonesia, "Undang-Undang Nomor 12 Tahun 2011 Pembentukan Peraturan Perundang-Undangan," 12 § (2011).

legislation in the same legislative text.These drafting requirements were not merely matters of legislative formality. They served an important constitutional function by preserving the identity and legislative history of each statute. Whenever a law was amended, the title, structure, and drafting format immediately informed legislators, courts, legal practitioners, and the public which statute had been modified and how that modification related to the existing legal framework.

Street protests were sparked across major Indonesian cities, denouncing the passage. The protests focused primarily on how the law would negatively affect labour welfare and employment law.[78] The legal dispute arising from the passage, however, has its own view that it instead raises concerns on the absence of a prior-set drafting style guide on omnibus style. The petitioners invoked such absence as the ground for applying judicial review of the Job Creation to the Constitutional Court, and the Court decided in the petitioners' favour. The Court reasoned that law-making should be an orderly process, subject to a prior-set, definitive, and standardised drafting style.[79] This highlights the importance of pre-established legislative drafting rules in ensuring legal certainty and minimising the risk of judicial invalidation through constitutional review.In conclusion, because the Job Creation Law appears to combine all forms of amendment, repeal, and replacement, whereas the drafting style had not been so until the law's promulgation, the Job Creation Law was declared unconstitutional based on the principle of drafting clarity.[80]

While the Job Creation Law was enacted prior to the inclusion of the omnibus technique in Indonesia's official Guide of Legislation, through a 2022 amendment to Law Number 12 of 2011, the Financial Sector Development and Strengthening Law was enacted in 2023 after that amendment. Unlike the Job Creation Law, which was met with backlash, the FSDS Law seems to have public favorability because it has a narrower scope that addresses the conduct and administration of financial regulatory bodies. There is, in fact, a constitutional challenge to the FSDS Law, but the challenge is rather about the substance of the law,[81] not about the drafting style and technique.[82] Therefore, the FSDS Law is generally accepted by the public, although it uses the omnibus approach.

Although the initial intention of omnibus law, as per President Jokowi's speech, is to be a law that would amend several existing laws and repeal the same, Indonesia's Guide of Legislation on omnibus law seems to define omnibus law to include a massive repeal of many existing laws. The provisions of the repealed laws will then be gathered, restructured, rearranged, reordered, and regrouped into a single, entirely new law. However, they will not preclude revision, reform, and innovation of the newly gathered provisions. In 2023, Indonesia's legislature just passed the Law on Health, which covers subjects ranging from health service administration and governance

[78] CNN Indonesia, "Buruh Kembali Demo UU Ciptaker Serentak di 18 Daerah Besok CNN Indonesia," https://www.cnnindonesia.com/nasional/20201228120009-20-586930/buruh-kembali-demo-uu-ciptaker-serentak-di-18-daerah-besok.

[79] Constitutional Court Decision Number Nomor 91/PUU-XVIII/2020, page 396.

[80] Constitutional Court Decision Number Nomor 91/PUU-XVIII/2020, page 398-399.

[81] CNBC Indonesia, "Setahun UU PPSK, OJK Kehilangan Kuasa Penyidik Tunggal," https://www.cnbcindonesia.com/market/20231223134733-17-499934/setahun-uu-ppsk-ojk-kehilangan-kuasa-penyidik-tunggal.

[82] Mahkamah Konstitusi Republik Indonesia, "Dosen dan Mahasiswa Persoalkan Intervensi Politik Kepada LPS," https://www.mkri.id/index.php?page=web.Berita&id=21374&menu=2.

to health facilities, doctors, nurses, and other health-related human resources, as well as health outbreaks. The Health Law also repealed many existing laws that previously governed the said subjects; in total, there are 10 laws that the Health Law has repealed. The law's drafters intended and explicitly argued that the Health Law is omnibus, as it repealed many existing laws. The law gathered provisions into a single entirely new law.

Second Criticism: Purposive-style Law Titling and Naming

Current practices of naming law in Indonesia tend to base a law's name on the purpose of the enactment and to include political statements. Indonesia's official Indonesia's Guide of Legislation only directs the drafter to pick a name for a bill that reflects the substances of such a bill. The title[83] of a law should thus be a plain description and identification of what the bill is about rather than a political statement. From the perspective of legislative drafting, the title of a statute is not merely a political slogan or a statement of legislative aspiration. Rather, it serves as an essential interpretive aid that should accurately and objectively reflect the statute's subject matter and scope. A legislative title should therefore be plain, descriptive, and representative of its substantive provisions, enabling legislators, legal practitioners, and the public to identify the law's content without ambiguity. [84]

Purposive-style naming is when a bill is named not for its contents or substance, but for its purpose, which implies a political statement. For instance, the US Inflation Reduction Act is a budget allocation and tax reform policy law funding projects that promote clean energy.[85] and lowering drug and insulin prices.[86] For example, the Inflation Reduction Act does not primarily regulate inflation itself. Instead, it contains a broad range of provisions concerning federal spending, taxation, energy policy, and healthcare. Its title therefore reflects the legislation's overarching policy objective rather than its specific regulatory content. A similar naming practice has recently emerged in Indonesia. In 2020 and 2023, the legislature enacted the Job Creation Law and the Financial Sector Development and Strengthening Law (PPSK Law), respectively. Rather than describing the substantive subject matter or legislative scope of these statutes, both titles emphasise the policy goals that the laws seek to achieve. This purposive approach to legislative naming represents a departure from the traditional Indonesian drafting practice, under which a statute's title is expected to be descriptive, plain, and representative of its actual provisions. The former is an omnibus bill in form that sought to amend and repeal various existing laws, and even insert new subjects (i.a., Investment and business licensing, standards, requirements, and governance reforms to ease business) into a single law. In the drafter's logic, easing licensing and eliminating unnecessary regulatory burdens would drive Investment and business growth, eventually creating jobs.[87] Meanwhile, the latter consists of reforms to the roles

[83] Indonesia's drafting style does not use long titles or introductory text, opting instead for short titles. It is simply referred to as a title or name, which is equivalent to a short title. Thus, the terminology of short or long titles is irrelevant to Indonesia drafting practice.

[84] Helen Xanthaki, Thornton's Legislative Drafting, Sixth Edition, (Bloomsbury Professional, 2022): 497.

[85] The White House, "Building A Clean Energy Economy: A Guidebook to The Inflation Reduction Act's Investments in Clean Energy And Climate Action," (January 2023, Version 2), https://www.whitehouse.gov/cleanenergy/inflation-reduction-act-guidebook/.

[86] US Department of Health and Human Services (HHS), "Inflation Reduction Act of 2022," https://www.hhs.gov/inflation-reduction-act/index.html.

[87] Presiden Republik Indonesia, "Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja," 11 § 2020.

and authorities of financial sector agencies that regulate banking, capital markets, digital currencies, the SME sector, insurance, and even pension plans. The Financial Sector Development and Strengthening Law thus was named after its purpose of strengthening the financial sector.

Such purposive naming could create a misleading impression of the law's content, particularly where the statute amends numerous, diverse legal regimes extending far beyond the objective expressed in its title. As a result, the title no longer functions as a reliable guide to the statute's contents, undermining legal certainty and accessibility. Individuals consulting the legislation may reasonably expect its provisions to correspond to its title, only to discover that it regulates a much broader range of matters. A descriptive and representative title is therefore not merely a matter of drafting aesthetics; it is a requirement of good legislative practice that promotes transparency, facilitates legal research and interpretation, and enables the public to understand the law without being misled by its name.

CONCLUSION

The recent practice of legislation-making entails two major occasions: codification and omnibus law. Although the legislative guide only differs in codification drafting style by the use of grouping by *book,* the Penal Code of 2023 does not adhere to the guide in its use of general provisions. Any provision that means a definition or a limitation toward a word being used within the law should be grouped under the chapter of general provisions, which is generally placed in the first article of a law. The Penal Code of 2023 instead placed the provision intended as a general provision under Book One. This is arguably influenced by the way the previous Penal Code is organised, where general provisions are absent within a single chapter (*i.e.,* Book One: General Provisions). A drafting style that is not recognised by Indonesia's Guide of Legislation under Law Number 12 Year 2011.

On omnibus law, the practice has changed a longstanding principle: one law amends only one law, not others. It also adds to the purposive naming of law. A law amending numerous existing laws poses a risk of losing legislative history. Legislative history is an important aid to statutory interpretation and an essential element of legal certainty. It enables courts, legal practitioners, and the public to understand when a provision was introduced, modified, or repealed and to interpret statutory developments coherently. When numerous amendments are consolidated into a purposively titled omnibus statute, the connection between the amended statute and its amendment history becomes less visible. The legislative record therefore becomes more difficult to follow, reducing the transparency that Indonesia's established drafting rules were designed to ensure. On the other hand, purposive naming style also poses its own problem. From the perspective of legislative drafting, a statute's title should be plain, descriptive, and representative of its subject matter and substantive provisions, serving as an interpretive aid that enables legislators, legal practitioners, and the public to identify the law's content without ambiguity accurately. Therefore, although legal reform through codification or omnibus legislation may be both necessary and desirable, the process must remain consistent with Indonesia's Guide of Legislation. Compliance with established legislative drafting rules minimises the risk of judicial invalidation through constitutional review and, in turn, strengthens legal certainty regarding the substantive law itself. Because legislative drafting serves not only

institutional actors but also the public as users of the law, legislators should ensure that statutes are drafted in a manner that is clear, transparent, and consistent with prescribed drafting standards. If a new legislative drafting technique is considered necessary, it should first be formally incorporated into Law Number 12 of 2011 before being employed in legislative practice. The enactment of the Job Creation Law demonstrates the risks of reversing this sequence, as the omnibus drafting technique was used before it had any legal basis in Indonesia's legislative drafting framework.

Thus, Indonesia needs a mechanism whereby every new drafting technique is first institutionalised in the Guide of Legislation before it is adopted in legislative practice. Given that Law Number 12 of 2011 has already been amended to accommodate the omnibus law drafting style, the provisions on this still need improvement. One that could be considered is a concept of single subject. That is important to prevent an omnibus law from becoming too broad in its scope. It ensures that the name of an omnibus bill is plain and representative of its provisions, thus preventing it from being in a purposive style.

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