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## **Omnibus Law as Investment Law Reform in Indonesia Based on the Hierarchy of Legislation Principles**

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### **Abstract:**

This paper aims to describe, understand and analyze the omnibus law as an investment law reform in Indonesia based on the hierarchical principle of laws and regulations. As for writing this article using normative legal research. In addition, the writing of this article uses a theoretical and juridical approach. The results of this study indicate that in the formation of the omnibus law as a rule that facilitates Indonesian investment, the hierarchical principle of laws and regulations applies. Then there is some urgency to form an omnibus law in the investment aspect. One of the theories of the welfare state that applies to Indonesia is the role of increasing the economy in the investment sector through the omnibus law in order to realize the mandate of the Indonesian constitution, namely to promote general welfare and as much as possible for the prosperity of the Indonesian people.

**Keywords:** investment law, hierarchy of legislation, law reform, legislation principles, omnibus law

### **Introduction**

The Indonesian state has fundamental regulations regarding aspects of economic regulation.(Nagara et al., 2020) This can be seen in article 33 paragraph 4 of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) which states: "The national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental insight, independence, and with maintaining a balance of progress and national economic unity.(Soelistyo, 2019)

The mandate of the UUD above is a state obligation that is obliged to regulate the economy with several provisions listed in the legal basis above. All aspects that are elements of the state economy in the Constitution must be fulfilled in order to realize the maximum prosperity of the people in aspects of economic life that apply as ideals that need to be realized.(Sartono, 2018)

In order to realize the nation's ideals of the economy, there needs to be synergy between the government and investors as an aspect of togetherness. The government has a very big role as an economic regulator which makes it easier for investors so that investors are interested in investing their capital in order to improve the level of the economy which can have a good impact on society. So that the synergy between the government and investors goes well in the context of investment in Indonesia, several economic laws were issued to implement the mandate of the 1945 Constitution.(Gusman, 2019)

Responding to this problem, of course, the President of the Republic of Indonesia, Ir. H. Joko Widodo did not remain silent. In his first speech during the presidential inauguration for the 2nd (two) period, Joko Widodo had a plan to overcome investment problems through the Omnibus Law so that it would have the effect of facilitating investment permits for investors who wanted to invest their capital so that it would have an impact on increasing national development which could have a good impact on society.(Utomo, 2020)

The Omnibus law is one of the policies for issuing laws that has the effect of simply and quickly repealing overlapping laws and regulations. When the Omnibus Law is applied in the investment sector, a simple rule regarding investment will apply and will be repealed other investment rules that are not in accordance with the applicable the Omnibus Law.(Wijaya, 2021)

The problem is that when there is an issue of the Omnibus Law policy being issued, pros and cons emerge on this issue. If the Omnibus Law policy wants to simplify investment regulations by revoking some of the previous regulations regarding investment, it is necessary to look at aspects of statutory regulations so that they remain constitutional. Then you have to really see that the Omnibus Law is a solution as an investment law reform which has an impact on the investment licensing mechanism which makes it easier for investors to invest their capital as a medium for the country's development in the economic aspect.(Samawati & Sari, 2021)

Based on the problems described above, legal issues will be drawn which consist of 2 (two) problem formulations, namely: (1) What is the legal perspective on the principles of legislation on the application of the omnibus law which has implications for the revocation of several other legal regulations?, (2) What is the become an urgency for the omnibus law law as a solution to facilitate investment law regulation in Indonesia?

The purpose of this writing is to know, understand and analyze the legal perspective of the principle of legislation on the application of the omnibus law which has implications for the repeal of several other legal rules. In addition to knowing, understanding and analyzing the urgency of the omnibus law as a solution to simplify investment law regulations in Indonesia.

## **Literatur Review**

One of the applicable laws regarding the economy in Indonesia is Law Number 25 of 2007 concerning Investment (UU PM). The enactment of the PM Law as a basic legal certainty for investors who wish to invest in Indonesia. The PM Law does not only apply to Indonesian investors but also applies to foreign investors who are interested in investing. The purpose of the enactment of the UU PM is in order to realize national economic development that is just and based on prosperity for the people.(Rozikin, 2020)

The realization of the economy in accordance with the mandate of the 1945 Constitution experienced several obstacles which resulted in not being in accordance with the ideals. One of these obstacles stems from the enforcement of laws governing investment in Indonesia. This is because there are investment regulations that overlap with other regulations, which results in difficult investment licensing and discourages investors from investing in Indonesia.(Mz, 2020)

## **Research Method**

This research is qualitative using a normative juridical approach. Legal and non-legal materials are collected by legislation, books, journals, opinions of legal experts, and online articles. Then legal and non-legal materials in the next inventory are analyzed in detail, new conclusions are drawn.

## **Result and Discussion**

### **Legal Perspective Principle of Hierarchy of Legislation on the Implementation of the Omnibus Law which Has Implications for the Repeal of Several Other Legal Rules**

The rule of law has several different names- different. There is a legal state term called Rechtstaat which comes from Dutch. In the English term developed by AV Dicey, it can be associated with the principle of "rule of law" which developed in the United States into the jargon of "the Rule of Law, and not of Man". What really counts as a leader is the law itself, not the people. In Plato's book entitled "IRmRi" which was later translated into English under the title "The Laws", it is clearly illustrated how the idea of nomocracy has actually been developed for a long time from the time of Ancient Greece.(Lumbanraja, 2021)

Professor Utrecht distinguishes between the Formal Rule of Law or the Classical Rule of Law, and the Rule of Materiel or the Modern Rule of Law. The formal rule of law concerns the notion of law that is formal and narrow, namely in the sense of written laws and regulations. While the second, namely the more recent material rule of law state also includes the notion of justice in it. Therefore, Wolfgang Friedman in his book 'Law in a Changing Society'

distinguishes between 'rule of law' in the formal sense, namely in the sense of 'organized public power', and 'rule of law' in a material sense, namely 'the rule of just law'. This distinction is intended to emphasize that in the conception of a rule of law, justice will not necessarily materialize substantively, especially because people's understanding of the law itself can be influenced by formal legal notions and can also be influenced by material legal thoughts.(Schofield-Georgeson, 2021)

The State of Indonesia has the status mandated by the 1945 Constitution. This status becomes the identity of the state, namely a state of law. The legality is contained in article 1 paragraph (3) of the 1945 Constitution which states that "Indonesia is a country of law". When a country has the status of a rule of law country, it certainly has to prioritize legal aspects in the administration of good governance in any field, especially the economic sector, so that it becomes a good rule and has an impact on ease of investment for investors who will invest their capital in the context of participating in the nation's national development.(Siagian, 2021)

The implementation of a rule of law state certainly has concepts and theories that need to be considered. The concepts and theories are the basis of reference so that the manifestation of a rule of law can run well, especially in Indonesia. In the concept of a rule of law, it is idealized that what should be commander in chief in the dynamics of state life is law, not politics or the economy. Because of this, the jargon commonly used in The English language for referring to the rule of law is 'the rule of law, not of man'. What is called government is basically the law as a system, not individuals who only act as 'puppets' from the scenario of the system that governs it . This means that even though legal policy is in the economic aspect, that aspect is not the main reason as the basis for making the law. Rather, the economic law policy is part of the system of application to all Indonesian people.(Terjomurti & Sukarmi, 2020)

Idea Country Law That built with developing the legal instrument itself as a functional and just system, developed by organizing the superstructure and infrastructure of political, economic and social institutions in an orderly and orderly manner, and fostered by building a rational and impersonal culture and awareness of law in the life of society, nation and patriotic. In realizing legal policies in the economic field, there are several conditions that must be met. First in terms of rules then the implementers so that the economic goals contained in the substance of material law policies and realize the economic mandate of the constitution.(Umbara et al., 2020)

The concept of a rule of law state has characteristics that become the identity of the country. Several experts have given their views on the characteristics of a rule of law state in the theories that have been described. One of the experts who gives views on the rule of law is Fredish J. Stahl. According to him, the characteristics of a rule of law state are:(Taufiq, 2021)

1. There is recognition of human rights
2. There is a division of power
3. Government based on regulations
4. There is a state administrative court.

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We can see the characteristics of a rule of law state above, one of which is a government based on rules. This is known as the Supremacy of Law or the Supremacy of Law. The validity of the rule of law in a country is the limitation of the government's actions. The government should not act arbitrarily but on the basis of applicable regulations. This also cannot be separated when the government will carry out the wheels of the economy in Indonesia. The legal bases must be available which become economic regulations and become legal certainty which is useful and avoids aspects of government arbitrariness when it will run the wheels of the country's economy.(Zahra & Fauzi, 2021)

Return to the rule of law in Indonesia's economic policy. All matters concerning the economic aspects of the state must have legal certainty available and applicable. Beginning with the highest regulations and regulations in the lower realms, they are made as a form of state law supremacy in running the wheels of the country's economy. In these rules there are rules and theories that need to be followed so that the formation of regulations is in accordance with the rules without any interest from anyone. For example, when talking about economics in the legal aspect, you have to look at the fundamental legal basis of the 1945 Constitution. Then all the regulations below are made as a technical implementation of the implementation of the mandate of the Constitution and of course the rules that are in the lowest position cannot conflict with the rules above. This means that there is good synergy and correlation between laws and regulations without overlapping which can have a negative impact on legal ambiguity because formal legal rules have different mandates and deviate from the mandate of the basic rules. If this happens in the realm of economic policy, then there could be a potential decline in the level of the economy because the applicable legal basis is of poor quality. So that there needs to be a good synergy between the rules that are above and remain the guidelines for the rules that are underneath in order to create a good economy in the State of Indonesia.(Hepridayanti & Agus Machfud Fauzi, 2021)

Some of the rules that apply and become products of the rule of law are certainly very related with the formation of laws and regulations. Formation of laws and regulations is a systematic related to the basics and technically an appropriate rule formation especially in line with the hierarchical laws and regulations. This needs to be done so that there is no conflict with other regulations.(Zainuddin, 2020)

In the State of Indonesia the formation of statutory regulations has been regulated in the Act. No 12 of 2011. In Article 7 paragraph (1) has listed the hierarchical statutory regulations applies in Indonesia. The regulations consist of: (Farrisqi & Fauzi, 2021)

1. The Constitution of the Republic of Indonesia Year 1945
2. Decree of the Indonesian People's Consultative Assembly
3. Laws of the Republic of Indonesia/ Regulations Substitute Act
4. Government regulations
5. Presidential decree
6. Provincial Regulations
7. District/City Regional Regulations.

The regulatory hierarchy above is a level that applies in Indonesia. All of the above rules must synergize and have harmonization between enforcement so that conflicts do not occur which result in overlapping rules. If that happens then something needs to be corrected, especially in the systematic mechanism for forming laws and regulations whether they are appropriate or not.(Putra, 2021)

Maria Farida Indrati Soeprapto stated that the term legislation (legislation, wetgeving, or gesetzgebung) has two meanings:(Dinata, 2021)

1. Legislation is the process of formation/process of forming state regulations, both at the central and regional levels.
2. Legislation is all state regulations, which are the result of the formation of regulations, both at the central and regional levels.

Legal products that fall into the hierarchical category of laws and regulations are issued by institutions both at the central and regional levels. The 1945 Constitution to Presidential Regulations are the result of central institutional legal products. Then the Regional Regulations both at the provincial and district/city levels are legal products of regional level institutions.(Siagian, 2021)vv

In the formation of regulations, there are principles that apply in the hierarchy of laws and regulations. The principles will be explained below:

1. Higher laws override lower laws (*lex superiori derogate lex inferiori*). According to this principle, laws and regulations of a lower level may not conflict with higher laws and regulations in regulating the same matter. The legal consequences of the principle of *lex superiori derogate lex inferiori* are: a) laws made by higher authorities have a higher position; b) lower laws may not conflict with higher laws, c) laws and regulations can only be revoked, changed, or supplemented by or by laws and regulations that are equal or of a higher level. Failure to comply with this principle will result in disorder and uncertainty in the statutory system. It can even lead to chaos or confusion of legislation.
2. Laws that are specific override laws that are general in nature (*lex specialis derogate lex generalis*). According to this principle, if there are two kinds of statutory provisions that are of the same level or position and apply at the same time and conflict with each other, then the judge must apply or use the special as a legal basis, and set aside the general.
3. The law that was enacted later canceled the previous law (*lex posteriori derogate lex priori*). The point is that the previous (old) law or regulation becomes invalid if the competent authority enacts a new law or regulation in terms of regulating the same object, and the status of the law or regulation is equal.

In the administration of a rule of law in the economic sector, it is necessary to have basic rules as the basis for legal certainty for policies. The legal aspects of the country's economic policy are of course through legal products both at the central and regional levels. Starting from the hierarchical Constitution to regional regulations related to economic policies, both central and regional levels apply. All economic policy rules, from the Constitution to local regulations, need to be harmonized. This means the alignment of the mandate of the rules that must not

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conflict so that the synergy of the rules can run well and be kept away from certain interests because actually the rules are issued as the greatest interest of the people in the economic aspect.(Yasa et al., 2021)

The implementation of economic development in Indonesia has many problems that need solutions so that it can run according to the mandate of the goals of the economic constitution. Several problems exist from several aspects, one of which is the legal aspect. At present the issue that is being discussed is that the State of Indonesia has very excessive legal products or known as Hybrid Law. Too many laws certainly have an impact on enforcement that is not effective and efficient because there are too many provisions. This in the economic aspect will certainly be a problem because it can hinder economic policy, especially the difficulty for investors who will invest their capital because it is hampered by the many regulations that apply. And because there are too many of them, the potential for overlapping regulations also occurs because of the different institutional factors that have authority but differ in direction and region.(Rohmy et al., 2021)

Responding to these problems, President Joko Widodo is preparing a strategy to resolve problems that impede the running of the economy in the legal aspect. So during the President's State of the Union speech during the inauguration of the second period of his term of office, Joko Widodo wanted to realize his commitment to opening investment faucets that were easier without any obstacles that could attract investors. So in the future a regulation policy called the Omnibus Law will be issued. The legal product will become the main pillar on the basis of investment regulations that are not difficult and can work effectively, especially in the licensing mechanism for investors who will enter Indonesia.(Hamid, 2020)

The making of the Omnibus Law is planned to be made in the realm of law. So of course the making of these regulations is the authority of the House of Representatives. However, there still needs to be a contribution from the president because the proposed regulation comes from the president. This means that there needs to be a good relationship with constructive political synergy so that the making of this omnibus law becomes 1 (one) vision in the framework of good economics in the future.(Hasbullah, 2022)

The technical implementation of this omnibus law will be a simplification of the rules that are already quite a lot in Indonesia, both at the central and regional levels. If the Omnibus Law applies, it will have implications for other regulations, especially regulations in the economic sector. The legal implication is that it will cancel rules that are not in accordance with the substance of the Omnibus Law that will apply. That is, the enforcement of laws related to investment in the economic sector will only apply to the Omnibus law as a form of regulatory simplicity that can attract both domestic and foreign investors.(Koto & Hanifah, 2021)

However, the issue of making regulations on the omnibus law is of course an issue only for discussion in Indonesia. The many speculations about the responses, both the pros and cons, are an influence on the enforceability of the Indonesian democratic system, which has space to express opinions both orally and in thought. This is certainly a good democratic climate in order to absorb the aspirations of the people. Of course, the pros for making the omnibus law

will be moral support in making it happen. However, the counter opinions of other parties are also not necessarily the basis not the formation of these rules. Rather, it becomes a reference in making it to look for deficiencies so that it can become a good rule, especially good for the economy in Indonesia.(Putra, 2021)

The formation of an omnibus law so that there is no controversy in society needs to be made optimally, especially based on the formation of statutory regulations both in terms of aspects of legal theory and legal dogmatics. In Law no. 12 Years 11 Regarding the Establishment of Legislation, it is explained that the main source of law in Indonesia is Pancasila. So even though the Omnibus Law was made in the context of relaxing investment licensing which is easier, it must still follow the ideology of Pancasila. This ideology becomes the theoretical, philosophical, sociological aspects etc. In forming rules, especially in order to continue to guarantee the rights of the community without taking sides with certain interests.(Hintošová et al., 2021)

Then all theories for the formation of laws and regulations must become a guideline. As is the case with the principles of legislation in the hierarchical aspect of rules. Because the implication of the Omnibus Law is simplification, it is very synonymous with the enforceability of the hierarchical principles of laws and regulations. Of course, this must really be made correctly because the implications for repealing regulations are numerous but still constitutional and not violating theoretical, normative and legal philosophy principles.(Suhariwanto, 2021)

When talking about the principle of the hierarchy of laws and regulations, it cannot be separated from the several principles previously mentioned. Some of the principles that will apply are:(Sidharta, 2018)

1. Higher regulations will override lower regulations (*Lex Superiori derogat legi priori*). The Omnibus Law will apply this principle if there are government regulations to regional regulations that are not in accordance with the legal mandate. This means that the Omnibus Law is a law that has a higher position than the rules below it. So that all rules the existing regulations under the law must comply with the rules above it. If the rules below are not in accordance with the mandate of the rules above, then these rules do not apply because they conflict. This principle explains why the Omnibus Law will repeal the regulations under it. Especially in terms of the economy in the investment sector. The Omnibus law will have substance that makes investment easier. However, if it is felt that the technical regulations under it still have elements that complicate investment, then these rules will not apply.
2. The new regulations will override the older regulations (*Lex Post Teriori Derograt Legi Apriori*). This principle has a difference with the principle of more specific regulations that will override more general rules. The Omnibus Law is a general rule because it is a combined economic regulation. Of course the priority of this law will not apply if it uses this principle. Because economic rules already exist that are more specific. For example UU. No. 25 of 2007 concerning Investors, Law No. 20 of 2008 concerning MSMEs. Usually, this principle is used if it is a general rule from the start, but in the process it turns



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out that there is a need to regulate the substance of the general rule which only applies to certain circles, so a more specific law is made. For example UU. No. 8 of 1981 concerning the Criminal Procedure Code. However, this rule is not appropriate when applied to children. Then the presence of the law. No. 11 of 2012 concerning the Juvenile Criminal Justice System which applies to juvenile criminal procedural law.

So the right principle to use in the Omnibus law which can overrule regulations at the level of a law is the principle that the new regulations override the old rules. This principle also applies to laws. No 23 of 2014 concerning Regional Government. The application of this principle to the regulation is that the Regional Government Law revokes the authority of mayors and regents to grant mining business permits (IUP) which are regulated in more specific rules in the law. No. 4 of 2009 concerning Mineral and Coal Mining. This principle can be seen from the transitional rules which expressly state that the mayor or regent will revoke the authority of an IUP. This is the difference with the principle of special regulations overriding general rules where this principle does not need to be explicitly stated on the change of rules because it will automatically apply immediately while the principle of new regulations will overrule the old rules requiring confirmation from the rules regarding the change. (Sabbagh et al., 2013)

So if you want to repeal economic regulations at the level of a law that is deemed inappropriate, then the principle of the new regulations overrides the older regulations. However, in the transitional provisions, there needs to be confirmation of the mandate of the articles and paragraphs of regulations that state calls for changes to certain regulations. So this is the basic explanation why based on a hierarchical principle, the Omnibus Law constitutionally can be applied and in the context of improving the economy, this is an efficiency effort in the context of improving the economy through new rules that facilitate licensing in economic regulations.

### **The Urgency of the Omnibus Law as a Simplifying Solution Investment Law Regulations in Indonesia**

President Joko Widodo said that in period 2nd (second) in his presidential term will make efforts to reform the economy in Indonesia. Several steps will be taken from a legal aspect. Namely the reform of changes in economic regulations through the Omnibus Law. This was done because the President of the Republic of Indonesia wanted investment regulations for the Indonesian state to be simplified by facilitating permits so that investors would be interested in investing in Indonesia. (Kristiyanto, 2020)

There are so many benefits in opening investment faucets in Indonesia. The most important thing is that the Indonesian state cannot develop the country by itself, but investors are needed to participate in building the wheels of the economy so that it has an impact on improving the quality of the economy. Of course, things as a basis for realizing people's prosperity and general welfare such as opening jobs, improving the quality of the people's economy and for income by the state as income for further development both infrastructure development, economic development and better human development. (Rodiyah & Utari, 2021)

In realizing the provisions above, certain aspects are needed to support the embodiment that can occur. One of them is through the legal aspect. Because Indonesia is a constitutional state, it needs a good legal basis and makes it easier for investors but does not harm the state and society. Because its position is that the Indonesian state requires the presence of investors not only on a commercial basis. But more on cooperation in development that is mutually beneficial between the state and investors (feedback). If the rule of law is not good in investment licensing, investors will of course divert the direction of investment to other countries.(Lumbanraja, 2021)

The task of the Indonesian state in realizing the welfare and prosperity of the people which is the ideal of the 1945 Constitution cannot be separated from the position of a modern legal state. The classical rule of law only focuses on the state. However, the modern rule of law does not only focus on the state but also focuses on the welfare of the people within it. The modern rule of law is more on the concept of a welfare state in order to promote the quality of the state by empowering the people in the country. This is being pursued in Indonesia. Various policies and rules were issued to the public from the fields of education, culture, economy and others.(Wiryadi & Novendra, 2021)

The amount of attention to the issue of the welfare state, considering that the welfare state is considered the most appropriate answer to the form of state involvement in promoting the welfare of the people Building a welfare state has become the obsession of many new countries, especially in Asia which became independent after the World War II. Several countries such as South Korea, Taiwan, and Singapore are countries that have been successful enough to build a welfare state.(Aristeus, 2021)

Likewise, the unitary state of the republic of Indonesia, as mandated in the 1945 Constitution. It is designed as a welfare state. According to Pierson the word welfare (welfare) contains at least three sub-classifications, namely: (1) Social welfare, which refers to the collective acceptance of welfare; (2) Economic welfare, which refers to security guarantees through the market or the formal economy; and (3) State welfare, which refers to guarantees of social welfare services through agents from the state. The welfare state is briefly defined as a country where the state government is considered responsible for guaranteeing a minimum standard of living welfare for every citizen.(Samawati & Sari, 2021)

Indonesia as a country that is carrying the burden of the welfare state needs to have innovation and good policies in the economic sector. It is hoped that the issuance of the omnibus law in the economic field will have an impact on the objectives of the welfare state which will then affect the interest of investors in Indonesia. Of course if the interest of investors in Indonesia is very high, it can have an impact on state revenue from this investment. However, in realizing high investor interest there needs to be economic guarantees in terms of security so that the wheels of the economy run well for investors. If this goes well, then of course it can improve the economy to carry out the welfare state's duties to its citizens for the results of activities from an investor perspective in Indonesia.(Darmawan, 2020b)

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In a legal perspective, Wilhelm Lunistedt argues: law is nothing but the very life of mindkind in organized groups and the conditions which make possible peaceful co-existence of masses of individuals and social groups and the cooperation for other ends than more existence and propagation.(Fad, 2020)

In this understanding, Wilhelm Lunistedt seems to describe that to achieve Social Welfare, the first what must be known is what drives people who live in a certain level of civilization to achieve their goals. Lunisteds' opinion regarding social welfare is almost the same as Roscou Pound's opinion, however he wants to emphasize that in fact the desire of most humans is to live and develop it properly.(Darmawan, 2020a)

Looking at this view of social welfare, it can be concluded that the field of social welfare includes a general enthusiasm for trying with its arguments and the guarantee of security, so that it can be proven that law order must be based on a certain scale of values, which is not formulated by formulas which is absolute but by taking into account the changing interests of society following the changing times, circumstances, and changes in the beliefs of the nation.(Tarmizi, 2020)

The main key in the welfare state is the issue of guaranteeing people's welfare by the state. Regarding this, Jurgen Habermas argues that guaranteeing the welfare of all people is the main thing for a modern state. Furthermore, according to Habermas, the guarantee for the welfare of all the people referred to is realized in the protection of the risks of unemployment, accident, illness, old age, and death of the breadwinner must be covered in large part through the welfare provisions of the state.(Suriadinata, 2019)

Thus, in essence, the existence of a welfare state can be described as the influence of human desires that expect security, peace and prosperity to be guaranteed so as not to fall into misery. This reason can be described as a driving force as well as a goal for humans to always seek various ways to achieve prosperity in their lives. So that when this desire has been guaranteed in the constitution of a country, then this desire must be guaranteed and the state is obliged to realize this desire. In this context, the state is in the stage of being a welfare state.(Safitri, 2020)

The Unitary State of the Republic of Indonesia also adheres to the ideology of the Welfare State. This was emphasized by the Independence Pioneers and the Founders of the Unitary State of the Republic of Indonesia that the democratic state to be established would be a "Welfare State" (walvaarstaat) not a "Night Watching State" (nachtwachterstaat). In this choice regarding the conception of the Indonesian welfare state, Moh. Hatta used the term "Governing State". The details of the Welfare State principle in the 1945 Constitution can be found in several articles, especially those related to socio-economic aspects.(Busroh, 2017)

With the inclusion of welfare issues in the 1945 Constitution of the Republic of Indonesia, according to Jimly Asshidiqie the Indonesian Constitution can be called an economic constitution and even a social constitution as also seen in the constitutions of Russia, Bulgaria, Czechoslovakia, Albania, Italy, Belarus, Iran, Syria and Hungary. Furthermore,

according to Jimly, as far as the style of content regulated in the 1945 Constitution is concerned, it appears to be influenced by the style of constitutional writing that is commonly found in socialist countries.(Utomo, 2020)

The obligations, goals and duties of the state as a welfare state are of course enormous. The main thing for a welfare state is how to provide welfare to its citizens. Of course everything will be done so that citizens can still live and develop well. So the state must be able to maximize its potential both by maximizing domestic potential and also being able to increase economic value in certain aspects, especially in the context of making an offer to investors to invest their capital so that it can influence the improvement of the Indonesian economy.(Wole et al., 2021)

So once again in a rule of law is the legal policy that is considered. Currently, Indonesian investment law is still constrained by technical licensing by investors because they own long time. Of course this needs to be addressed immediately. The emergence of the idea of an omnibus law could be a solution so that our investment regulations run well and are in accordance with legal objectives so that the Indonesian economy has legal certainty, legal benefits and legal justice.(Haryanto & Resosudarmo, 2021)

Gustav Radbruch who argues that the law in its purpose needs to be oriented towards three things, 1). Legal certainty, 2). Justice, 3). Usability (usefulness) (doelmatigheid).

### *1. Legal Certainty*

The law must have certainty, for that reason The law must be a written regulation. However, it is very important to understand that the law cannot exhaust the law. Because even though the rule of law is formulated in legal texts, the words in the text cannot fully take into account the content and purpose of the rule of law. The more the law fulfills the requirement of "proper regulation", which removes as much as possible the element of uncertainty, the more precise and sharp the rule of law is, the more pressing is the need for justice. That is the meaning of *summum ius, summa iniura*, or more often we hear it with the phrase *The highest justice is the highest injustice*.(Muliadi, 2017)

Making an omnibus law into the text of a law is a form of legal certainty. Because it is formulated in the law, of course, the contents of strict rules are needed. Really avoid legal essences that conflict with one another. And avoid the content of multiple interpretations. However, the most important thing is that there is space for investors to facilitate their investment with fast and simple licensing through the omnibus law.

### *2. Expediency of Law (utilitarianism)*

The next opinion states that the purpose of law is expediency. That the law must be aimed at something that is useful or has benefits. Adherents of the utilitarian school pioneered by Jeremy Bentham said that the law aims to ensure the greatest possible happiness for humans in the best conditions (the greatest good of the greatest number) .(Pryima, 2020)

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Bentham applies one of the principles of utilitarianism to the legal environment, namely that humans will act to get the greatest "happiness" and reduce suffering. The size of the good and bad of a human action depends on whether the action brings happiness or not. Likewise with legislators who can reflect justice for all individuals. By adhering to the principles mentioned above, the law should be able to provide the greatest happiness for the majority of people. Then Bentham added that the duty of law is to preserve good and prevent evil. Strictly speaking, it has a usability value.

Bentham's view actually moved from his great concern for the individual. He wants that the law can first guarantee happiness to individuals, not directly to society directly as a whole. Bentham does not deny that apart from individual interests, the interests of society also need to be considered. In order to avoid clashes, it is necessary to limit individual interests in the pursuit of maximum happiness. If not, there will be what is called *homo homini lupus* (humans become wolves for other humans). To balance between interests (individuals and society), Bentham suggests that there is sympathy from each individual. Even so, the focus of attention must remain on the individual, because if each individual has obtained his happiness, the happiness (welfare) of society will be realized simultaneously.

The theory of utilitarianism emphasizes the importance of the good consequences of actions, in this case punishment. If the result of the punishment is good for the benefit of many people, then the punishment is also acceptable. Because punishment when seen as useful for deterring is seen as useful for preventing violations of citizens' rights, and thereby controlling crime, it is justified because it creates public safety and happiness.

Punishment is important to increase the protection of citizens' rights. In short, punishment from a utilitarian point of view is justified solely because it brings positive social effects to citizens' rights. The good consequences of punishment must always be a consideration in imposing punishment because any form of punishment and no matter how severe it will always be suffering for the convict. Punishment forcibly removes things deemed valuable by the convict. Punishment makes the convict lose freedom; he was placed in isolation. Suffering is something bad, and therefore needs to be accounted for even though the accused is deemed worthy of it. For utilitarianism,

prevent greater suffering or loss. Suffering from punishment is necessary to prevent further crimes and at the same time guarantee the public good . Thus, from the point of view of utilitarianism, there are two functions of punishment: first, punishment makes the convicted person or other person unable to commit a crime . Both rehabilitation functions.

The application of the Omnibus law as a solution to investment regulation has a fundamental objective set out in the 1945 Constitution. Benefit needs to be achieved because if benefit occurs there will be a benefit from the policy, especially in realizing people's prosperity. When the omnibus law is made and promulgated, it will certainly make it easier for investment permits. Easy permits will attract the attention of investors because it makes it easier to invest. This investment will have implications for improving the economy which will then

guarantee the realization of legal benefits for the implementation of the omnibus law for the community.

### *3. Legal Justice*

The next goal of law is justice, according to Radbruch that justice is sufficient if equal cases are treated equally. Meanwhile, according to Tegus Prasetyo that: "One could say that the purpose of law is justice alone, and that means that in justice there is certainty and benefits are always obtained." Geny is one of the experts who also supports that law aims to realize or realize justice. He argues as quoted by Van Apeldoorn thus:

"Geny teaches that the purpose of law is solely justice, but feels compelled to also include the interests of usability and expediency as an element of the notion of justice: *le juste continient dans ses flancs l'utile*".(Seng, 2021)

The sole purpose of law is none other than to bring about justice. Whereas the opinion which elaborates at length that the law aims for three purposes, namely justice, certainty and benefit, is the right rationalization that if justice is pursued, certainty and benefit will automatically materialize, because both benefit and certainty are part of justice itself. So basically, certainty and benefits are not placed in parallel with justice as the goal of law, but as a means to achieve justice itself.(Kasiyati, 2020)

Therefore, the purpose of law must be justice. Easy investment faucet opening not on a commercial basis. There are several parties that need to be maintained so that this policy continues to run well. Especially between the state and investors that the investment policy must be mutually beneficial. Without any interests between the state and investors. So that the impact will lead to society.(Doll & Walby, 2019)

There are many aspects to the rule of law that need to be considered. Because actually the rule of law is manifested into formal policies, the main goal is justice. At present there are many problems when viewed from the point of view of justice, of course, have contradictory values. When state policy is not in the interests of the people, then the impact will also be felt on the people, especially the bad effects. So that Indonesia as a rule of law must exercise the rule of law in the field of economic aspects.(Sauvant & Ortino, 2021)

The foundation is that apart from being a rule of law, the Indonesian state also carries out its duties as a welfare state. This means that the Indonesian state also has a responsibility to prosper its people. One of them is with running a good economy. Of course realizing the economic improvement sector has many strategies. One of them is to open an investment faucet so that there is investment as a state development in Indonesia. Therefore the omnibus law is a solution to investment problems because this regulation will be the ultimate weapon to attract investors with easier and simpler licensing.(Nadakavukaren, 2022)

## **Conclusion**

Based on the perspective of legislation, the application of the Omnibus law in the economic aspect will have the principle of *lex superiori derogat legi priori*. That is, the omnibus law becomes a law and if the regulations below are not in line with this omnibus law, it will be set aside (not implemented) because the omnibus law has a higher position. Then also applies the principle of *lex post posteriori derogat legi a priori*. That is, the omnibus law will become a new rule in the investment sector of the economy. If there is a previous law that is not in accordance with the mandate of this omnibus law, then the law is not used because it is an old rule. However, there needs to be confirmation within transitional and closing provisions in the Omnibus law.

The urgency of the omnibus law as a solution to investment regulation in Indonesia is because Indonesia is a legal state that has the role of a welfare state. With the establishment and promulgation of the omnibus law, it will facilitate investment for investors, which of course will have an impact on increasing the economy as a way of prosperity for the people. Omnibus law as a rule of law will realize the rule of law in the economic aspect as a form of legal certainty, usefulness and justice.

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