PAPER NAME
BJLP_The Concept of Omnibus Law.pdf

AUTHOR
Rudy Rudy

WORD COUNT
7605 Words

CHARACTER COUNT
42973 Characters

PAGE COUNT
18 Pages

FILE SIZE
235.3KB

SUBMISSION DATE
Mar 31, 2023 1:56 PM GMT+7

REPORT DATE
Mar 31, 2023 1:57 PM GMT+7

19% Overall Similarity

The combined total of all matches, including overlapping sources, for each database.

- 14% Internet database
- 13% Publications database
- Crossref database
- Crossref Posted Content database

Excluded from Similarity Report

- Submitted Works database
- Bibliographic material
- Quoted material
- Cited material
- Small Matches (Less then 8 words)
- Manually excluded sources

BALTIC JOURNAL OF LAW & POLITICS
A Journal of Vytautas Magnus University
VOLUME 15, NUMBER 3 (2022)
ISSN 2029-0454

Cite: *Baltic Journal of Law & Politics* 15:3 (2022): 844-861
DOI: 10.2478/bjlp-2022-002061

The Concept of Omnibus Law in The Indonesian Legislation System: Is Integration Possible?

Rudy
Researcher and Lecturers in Faculty of Law, Universitas Lampung, Bandar Lampung, Indonesia, Email: rudy.fh1981@gmail.com

Ketut Dharma Putra Yoga
Indonesian lawyer who is currently pursuing a master's degree in International Shipping, Queen Mary University of London, London, United Kingdom, Email: i.yoga@chevening.org

Robi Cahyadi Kurniawan
Researchers and Lecturers in Faculty of Social and Political Sciences, Universitas Lampung, Bandar Lampung, Indonesia, Email: roby_ck@yahoo.com

Aristoteles
Researchers and Lecturers in Faculty of Mathematics and Natural Sciences, Universitas Lampung, Bandar Lampung, Indonesia, Email: aristotele.1981@fmipa.unila.ac.id

Chaidir Ali
Student Master Degree in Faculty of Law, Universitas Lampung, Bandar Lampung, Indonesia, Email: chaidir.ali@student.unila.ac.id

Ryzal Perdana
Researchers and Lecturers in Faculty of Teacher Training and Education, Universitas Lampung, Bandar Lampung, Indonesia, Email: ryzalperdana@fkip.unila.ac.id

Received: August 28, 2022; reviews: 2; accepted: November 26, 2022

Abstract

Indonesia's legislative development has been characterised by hyperlegislation and, in some cases, a lack of coordination. As a result, Indonesia is incorporating an Omnibus Law method into its legislative system in an effort to increase legislative efficiency. President Jokowi launched this initiative in early 2020, when he included two

Omnibus Law draughts, which were enacted as Law No. 11 of 2020 on Job Creation, and as Law No. 7 of 2021 on Harmonization of Tax Regulations in his National Legislation Program. However, there is some debate over the Omnibus Law's incorporation into the Indonesian legislation system, as it is based on common law, whereas the Indonesian legal system is based on civil law. Therefore, the purpose of this study is to examine how the concept of the Omnibus Law is integrated into the Indonesian legal system. This study, conducted by adopting a normative research method with a conceptual approach, found that it is possible to integrate the Omnibus Law legislative method into the Indonesian legal system. However, the implementation of the Omnibus Law on Job Creation has made insufficient progress due to extensive use of delegated authority, which has resulted in the emergence of 493 government regulations, trapping Indonesia in a coordination failure state or even overregulation. Finally, our findings imply that Indonesia's legislative system should consider special provisions for the Omnibus Law method, which may be challenged in a preview system and may even fall under the doctrine of non-delegation. This system will ensure law coherence and legal certainty in the application of the Omnibus Law, as well as the efficacy of legislation development and the quality of the Omnibus Law's draft. Such an idea could only be implemented through legislative amendments, as required by Law No. 12 of 2011 on Legislation Making and the 1945 Constitution.

Keywords

Omnibus law, civil law, common law, legal system, legislation, Indonesia

Introduction

It is widely known that Indonesia has had three distinct leadership eras since independence: The Old Order (1945–1955), the New Order (1966–1998), and the Reforms Era (1999 – present) (Fogg, 2019; Herlambang et al., 2019; Prahmana et al., 2021). These periods also have had an impact on Indonesia's legislative system (Fogg, 2020; Stefanus, 2018; Turner et al., 2019). Indonesia, for instance, has enacted 1,687 laws (Harahap et al., 2020; Setiadi, 2021; Setiawan et al., 2021), all of which remain in force. The legislative development in terms of law enactment was significantly increased during Indonesia's infant statehood, when the country enacted 661 laws, and then significantly decreased during Soeharto's regime, also known as the New Order Period, when only 384 laws were enacted during Soeharto's 32-year leadership period. Nonetheless, legislative activity has increased significantly in terms of law enactment during the Reforms Era, with 642 laws enacted to date. Figure 1 depicts the growth of legislative activity in Indonesia.

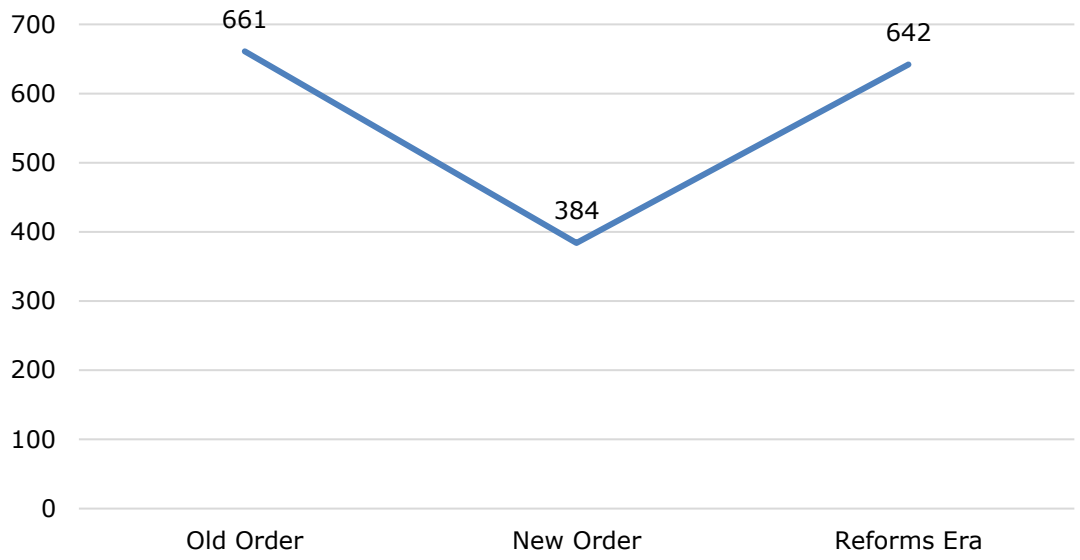

Figure 1. The growth of law enactment in Indonesia
Source: (Ministry of Law and Human Rights, 2022)

This phenomenon is understandable in light of Indonesia's legislative system, which is based on the European-Continental Tradition, also known as civil law (Halim et al., 2019; Shubhan, 2020). Indonesia's legislative development and system are heavily influenced by Hans Kelsen's Stufenbau des Rechts theory, which draws on Immanuel Kant's transcendental conception of law development (Rochman et al., 2019). Kelsen established grundnorm as the supreme source of law that influences the enactment of another legal norm, referred to today as a law or regulation.

Kelsen's argument about law development will have ramifications for the plethora of emerging standards. However, such consequences are already ingrained in the civil law tradition of the Roman Empire. Numerous written regulations were viewed as a sign of civilization in Roman Law, particularly in the Justinian Code. Later in the twentieth century, this perception trapped a specific law-based state rooted in the civil law tradition in a form of mechanism syndrome (Voermans, 2015). Voermans coined the term "mechanism syndrome" to describe how the enactment of one regulation necessitates the enactment of another to implement, coordinate, detail, and even update the original regulation (Voermans, 2015).

Indonesia, as a law-based state rooted in the civil law tradition (Halim et al., 2019; Shubhan, 2020), also suffers from the mechanism syndrome (Voermans, 2015). To date, Indonesia has enacted 1,687 laws, 4,578 government regulations, 2,069 presidential regulations, 14,986 ministerial regulations, 4,398 non-ministerial State Council regulations, and 15,967 regional regulations.

Regrettably, the numerous laws and regulations frequently clash or contradict one another. For example, between 2003 and 2019, the Indonesian Constitutional Court conducted constitutional reviews of over 500 significant laws.

As a result, Indonesia requires specific innovation to boost the country's legislative efficiency. President Jokowi has then proposed an Omnibus Law method as a new approach for the development of Indonesian legislation in order to achieve such efficiency. In early 2020, President Jokowi proposed a game-changing innovation by including two Omnibus Law draughts on Job Creation and General Tax Principles in the 2019 – 2024 Indonesia National Legislation Program. On the other hand, the Omnibus Law has never been recognised by the Indonesian legal system, despite the fact that Indonesia implemented it at least twice to annul the People's Consultative Assembly Decision, via People's Consultative Assembly Decision No. V/1973 on Review of the Provisional People's Consultative Assembly Decision and People's Consultative Assembly Decision No. I/2003 on Review of the People's Consultative Assembly Decision from 1960 – 2022 (Arinanto, 2019). That is why the debate over how to incorporate the concept of the Omnibus Law into the Indonesian legal system is critical. Therefore, the purpose of this study is to examine how the concept of the Omnibus Law is integrated into the Indonesian legal system, given that it is based on common law and the Indonesian legal system is based on civil law.

Methods

This research adopted a legal normative method based on a conceptual approach (Al Amaren et al., 2020; Bhat, 2019; Taekema, 2018), in which the conceptual nature of Omnibus Law as a method of legislation development was discussed. Following that, an explanation of how the Indonesian legal system worked was provided, as well as an assessment of the feasibility of transplanting the Omnibus Law method to the Indonesian legal system. That clarification did not omit an assessment of the benefits and drawbacks of such legislation method transplantation. Thus, it would be possible to determine how the Omnibus Law method should be implemented into the Indonesian legal system while minimising its disadvantages.

Results

A. What is Omnibus Law?

In general, Omnibus Law is a method of developing legislation that is used in states founded on the common law system, as opposed to the civil law system, which promotes codification or law consolidation in order to formulate regulation and legislation (Aswindo et al., 2021; Setiawati et al., 2021). Numerous eminent scholars of law have advanced numerous arguments in support of its definition. Barbara Sinclair argues that because an omnibus law is a legislative product that addresses a number of unrelated programmes, issues, and subjects, it typically results in a complicated and lengthy written law (Gluck, 2021; Nightingale, 2016). On the other hand, it is stated that Omnibus Law is a method of enacting legislation

in which an enacted Omnibus Law supersedes another legal standard that is spread across multiple laws or regulations, and once enacted, the Omnibus Law supersedes any other laws or regulations that regulate the same subject (Aulianisa, 2019).

In a nutshell, the Omnibus Law was enacted to combine numerous subjects and issues into a single piece of legislation (Meßerschmidt, 2021). The Omnibus Law would be an ideal regulatory structure for assessing and regulating a wide range of issues (Krutz, 2021), including macroeconomics, crime and family issues, defence, health care, and foreign affairs (Nightingale, 2016). Typically, legislation addressing those issues is enacted as distinct individual statutes, especially in a law-based state rooted in the civil law tradition. For instance, as Indonesia has done with its family law legislation, the Marriage Law is adopted separately from the Domestic Violence Law. This trend will pave the way for the possibility of a law-enforcement conflict.

By allowing the legislator to divide the content of a single law into multiple issues, law subjects, and even law objects, the omnibus law promotes legislative efficiency (Krutz, 2021; Meßerschmidt, 2021). The Omnibus Law method has been successfully applied in a number of instances. The United States of America recently enacted the Transportation Equity Act of the Twenty-First Century (TEA-21), which contains 9.012 sections divided into nine chapters (Fitryantica, 2019). Then, in 2015, Australia enacted the Civil Law and Justice (Omnibus Amendments) (Duncan et al., 2020; Qurbani & Zuhdi, 2020), which amended sixteen separate statutes. Between 1960 and 2002, Indonesia used this method to reduce People's Consultative Assembly Decisions through People's Consultative Assembly Decision I/MPR/2003 on the Substance and Legal Status Review of the Tentative People's Consultative Assembly and People's Consultative Assembly Decision I/MPR/2003 on the Substance and Legal Status Review of the Tentative People's Consultative Assembly.

Although the Omnibus Law is rarely used in the Indonesian legislative system, it has been used at the People's Consultative Assembly Decision level in Indonesia through the promulgation of People's Consultative Assembly Decisions No. V/1973 and I/2003 (Arinanto, 2019). However, because the Omnibus Law method was never formally adopted into the Indonesian legislative system, that experience cannot be classified as a failure, as those People's Consultative Assembly Decisions merely stipulated the annulment of Provisional People's Consultative Assembly Decisions and People's Consultative Assembly Decisions, and were not intended to create or amend new norms or stipulations. As a result, it is impossible to determine whether the promulgation of those People's Consultative Assembly Decisions was successful, as there are no conditions supporting an assessment of the coordination failure caused by the promulgation of those People's Consultative Assembly Decisions. That is, the Omnibus Law could be adopted as a new method for developing legislation, thereby alleviating Indonesia's current state of hyperlegislation. Additionally, it is based on the experience of several states that have already incorporated this method into their

legislative development processes. Israel, for example, has reaped the benefits in the economic sector, where they consistently enact the state budget law alongside the economic arrangement law in a single proposal each year (Roznai & Volach, 2018).

The Omnibus Law's efficiency, both in terms of reducing the number of laws or regulations and in terms of coordinating several issues, whether they were related directly or indirectly, or even if they were unrelated at all, enabled the law or regulation that applied to achieve its optimal goal to be coordinated. The Omnibus Law, on the other hand, is not a foolproof procedure. Numerous disadvantages may occur during the drafting of an Omnibus Law. For example, Israel's Parliament (Knesset) is frequently unable to adequately study the issues regulated or contained in the enacted Omnibus Law on State Budget and Macroeconomic Policy (Bar-Siman-Tov, 2015). Due to the Omnibus Law draught's complexity and length, studying it will require considerable time. Regrettably, due to the legislative process's time constraints, one of the consequences of the Omnibus Law's drafting process was a dearth of critics that addressed the draught itself. Similarly, as Indonesia experienced with the formation of Law No. 11 Year 2020 on Job Creation, which was declared unconstitutional by the Indonesian Constitutional Court due to a lack of meaningful participation in the law's drafting process. The lack of meaningful participation was caused by the fact that the draught Law No. 11 Year 2020 is lengthy and complex, involving a variety of stakeholders, but must be completed in a short period of time. As a result, meaningful participation by stakeholders involved in the formation of Law No. 11 Year 2020 on Job Creation was not possible.

A single legislation has a higher deliberative quality than a large number of Omnibus Bills, because the proposal will receive less scrutiny if it is included in the massive Omnibus Bill than if it is included in a single piece of legislation (Mucciaroni & Quirk, 2010). Additionally, it is argued that utilising the Omnibus Law method is an abuse of power because it conflicts with another law that is not repealed by the Omnibus Law (Cormacain, 2015). This occurred as a result of the legislator's lack of time, ability, or even assistance in reviewing, criticising, or even harmonising the Omnibus Law draft's contents with respect to one another or with another law. This is the "human limited power problem" (Nightingale, 2016), as well as the "substance" of the Omnibus Law (Mor & Jasper, 2019).

While implementing the Omnibus Law method is challenging, this does not preclude Indonesia from adopting it into its legal system. Additionally, as mentioned previously, Indonesia has faced hyperlegislation. It is worthwhile to experiment with the Omnibus Law method in order to reform the existing regulations (Putra, 2020) and to reduce the large number of legislation products that are ineffective or even detrimental to Indonesia's development.

B. Indonesia's Legislative System: How Does It Work?

In this context, the legal system refers to the collection of legislation and regulatory standards (in Indonesia), as well as their application (Hildebrandt, 2018;

Yeung, 2018). Additionally, it discusses Indonesia's legal challenges to enacted laws and regulations. To begin, the discussion will examine Indonesia's legislative system through the lens of a constitutionalist. Second, a discussion of the legislative system would highlight the technical difficulties inherent in the formulation and enactment of legislation in Indonesia.

The Indonesian constitutionalism recognises several distinct types of law or regulation. This recognition is based on the 1945 Constitution's provisions, numerous laws and regulations enshrined in it, and the state organ charged with drafting it. The President (Article 5 Section 1 of the 1945 Constitution), the House of Representatives (Articles 20 and 21 of the 1945 Constitution), or the Regional Representative Council may initiate the legislative process (Article 22D of the 1945 Constitution). The House of Representatives, on the other hand, retains legislative monopoly authority (Article 20A section 1 of the 1945 Constitution). Thus, a law is valid as long as both the House of Representatives and the President concur (Article 20 of the 1945 Constitution). Additionally, the Regional Representative Council's legislative authority is limited in the following areas: regional autonomy; the relationship between the central and local governments; the formation, expansion, and merger of regions; natural and other economic resource management; and the financial balance between the central and local governments (Article 22D section 1 of the 1945 Constitution). Furthermore, the Regional Representative Council's participation in the discussion of law draughts is limited to proposing their review of those draughts, not to giving joint approval (Article 22D section 2 of the 1945 Constitution).

In addition, the President has the authority to draught and enact Executive Orders in lieu of Laws (Article 22 section 1 of the 1945 Constitution). That authority, however, applies only in emergency situations, most notably when no specific or sufficient regulation exists to address a particular issue or circumstance that requires law. The President is empowered to draught and enact Government Regulations necessary to carry out the provisions of laws (Article 5 section 2 of the 1945 Constitution). Government Regulations, on the other hand, should be enacted only when a delegated-norm requires it. If no such delegated-norm exists, the President may determine whether government regulations are necessary to carry out the enacted law. For example, while the stipulation of village-owned enterprises in Law Number 6 of 2014 on Village does not specify a delegative-norm for a subsequent stipulation in Government Regulation, Government Regulation Number 43 of 2014 on Village Implementation Regulations contains the stipulation of village-owned enterprises.

Furthermore, the 1945 Constitution recognises the authority of Local Government to enact regional and other regulations (Article 18 section 6 of the 1945 Constitution). These regulations are intended to assist local governments in exercising their autonomy authority and compliance with their assistance obligations. The law's enactment is insufficiently detailed for implementation by the region's local governments. As a result, local governments have enacted regional

regulations and other regulations to carry out the general provisions of that law in their jurisdiction.

The authority to challenge the validity of Indonesian laws and regulations is then exercised by two distinct judicial organs, each with its own function. To be more precise, the Supreme Court has the authority to review ordinances and regulations that violate Law against Law in a hierarchical manner (Article 24A section 1 of the 1945 Constitution). On the other hand, there is the Constitutional Court, which has the authority to review legislation found to be unconstitutional (Article 24C section 1 of the 1945 Constitution). Thus, the fact that the Indonesian legal system recognises only the law or regulation review system, not the preview system, can be simplified. This is critical, as the Omnibus Law requires the polar opposite.

Reflecting on the constitutionalist perspective in Indonesia, the Indonesian legal system recognises a variety of regulatory types, including laws, government regulations in lieu of laws, government regulations, regional regulations, and other regulations. Additionally, the 1945 Constitution delegates the authority to regulate legislation to the legislature (Article 22A of the 1945 Constitution). That provision has sparked the creation of Law No. 10 of 2004 and Law No. 12 of 2011 on Legislation Making.

Both of these Laws on Legislation Making include a slew of provisions critical to the development of Indonesia's legal system. The most significant issue addressed in Law No. 10 of 2004 on Legislation Making is the requirement for all legislators to develop a plan for legislation making as part of a National Legislation Program. Its objective is to systematise the legislative process and establish legislative priorities in the development of Indonesian legislation. However, as detailed in a large number of constitutional review challenges filed with the Constitutional Court, this innovation has resulted in Indonesia becoming a hyperlegislation state with a dearth of high-quality legislation. Nonetheless, the establishment of the National Legislation Program is a watershed moment because it provides legislators with a prioritised scale for enacting the most critical laws first, followed by the less critical ones.

Additionally, Law No. 12 of 2011 on Legislation Making was enacted to clarify the configuration and technical provisions governing legislation making and to replace Law No. 10 of 2004 on Legislation Making, which retained technical and substantive shortcomings such as the absence of a People's Consultative Assembly Decision in the Indonesian legislative configuration. However, the People's Consultative Assembly Decision was a method of developing legislation that was used from the Old to the New Order, and at some point, the provision stipulated in it had significant effect. Regrettably, the People's Consultative Assembly has lacked the authority to enact or repeal such a decision since the Reforms Era. This circumstance has created legal uncertainty regarding the implementation of the People's Consultative Assembly Decision, which is not recognised by the Indonesian legal system.

The Law No. 12 of 2011 contains legitimization provisions for the Indonesian legislative hierarchy and incorporates the People's Consultative Assembly Decision into the Indonesian legislative system configuration to ensure its application is legally sound. The Indonesian community accepted this stipulation because the People's Consultative Assembly Decision's content is still not specified in other forms of legislation. However, if legislation is enacted on the same subject or issue as the People's Consultative Assembly Decision, the enacted legislation will take precedence over the People's Consultative Assembly Decision. Additionally, Indonesia's legislative hierarchy is established by Law No. 12 of 2011 as follows.

Figure 2. Indonesia Legislation Hierarchy
Source: Law Number 12 of 2011

The legal force of each legislative form was also affected by the legislative hierarchy established by Law No. 12 of 2011 on Legislation Making. The supreme document of the Republic of Indonesia is the 1945 Constitution. As a result, all subsequent legislation must adhere to the 1945 Constitution's provisions. The legislative hierarchy of the People's Consultative Assembly Decision was established solely to ensure the legal force implementation of numerous decisions in cases where no other stipulation in another legislative form exists. At least five People's Consultative Assembly Resolutions remain legally binding and active, namely Resolution XXV/MPRS/1966 on the Dissolution of the Indonesian Communist Party, Resolution XVI/MPR/1998 on Economic Politics in Economic Democracy, Resolution VI/MPR/2001 on National Living Ethics, Resolution

VII/MPR/2001 on the Future Indonesia Vision, and Resolution IX/MPR/2001 on Agriculture Renewal and Natural Resource Management.

The law was enacted to clarify certain provisions of the 1945 Constitution, particularly those that delegated certain powers to the law. On the other hand, the President may enact Government Regulation in Lieu of Law in order to compel the state, and if the regulation is insufficient, it may be used to overcome an emergency circumstance. These are classified as primary legislation, except for Government Regulation, Presidential Regulation, Provincial Regulation, and Regency or Municipal Regulation, which are classified as subordinate legislations. Subordinate legislation is enacted to specify the application or implementation of a provision or stipulation in primary legislation (Asshiddiqie, 2014).

As previously stated, the Kelsen theory has had a significant influence on Indonesia's legal system. As can be seen, the 1945 Constitution serves as a transcendental source, sparking the birth of the law and then of its subsidiary legislation, in accordance with Article 8 of the Law No. 12 of 2011 on Legislation Making. Additionally, regulations that are not referenced in the legislative hierarchy are recognised if their emergence is justified by a superior legislative order or authority virtue. This provision plays a significant role in Indonesia's current state of hyperlegislation.

Fortunately, the Law No. 12 of 2011 on Legislation Making includes technical guidance on proper legislative drafting technique. The legislation drafter may intend to enact a new law, amend an existing law, or repeal an existing law, as specified in Annex II of Law No. 12 of 2011 on Legislation Making. Additionally, the option exists to draught transitional and concluding provisions necessary for the Omnibus Law's incorporation into the Indonesian legal system.

The transitional provision was intended to provide legal certainty and avoid a legal vacuum, to protect those impacted by a law's amendment, and to specify temporary matters. Additionally, the concluding provision may specify a number of things, including the appointment of a state organ or multiple state organs to carry out the legislation, the legislation's abbreviated name, the legislation's status in light of the new legislation, and the legislation's enactment date.

However, as specified in Law No. 12 of 2011 on Legislation Making, it was intended to accommodate legislative drafting techniques rooted in the civil law tradition that emphasise law consolidation or codification as the primary method of legislation development. Nonetheless, those provisions may be used to implement the techniques for drafting Omnibus Laws that Indonesia is attempting to incorporate into its legislative system.

Discussion

The Omnibus Law should be viewed as a legislative expedient (Bar-Siman-Tov, 2021). It is impossible to regard the introduction of the Omnibus Law method into the Indonesian legal system as a mistake, given that codification is not the only method for developing legislation for a law-based state with a civil law tradition

(Indrati, 2007). States founded on the civil law tradition are permitted to modify or even adopt a method not recognised by the civil law tradition (Merryman & Pérez-Perdomo, 2018). Transferring specific methods from the common law to the civil law or even to another jurisdiction is a common occurrence and is also regarded as a form of innovation (Buana, 2017; Tetley, 2000). Israel, for example, combined its legislative development methods by enacting an Omnibus Budget and Macroeconomic Policy Bill while also codifying its Civil Law provisions (Bar-Siman-Tov, 2015).

Indonesia has also incorporated the Omnibus Law method into its legislative system, most notably in the formation of Law No. 11 Year 2020 on Job Creation and Law No. 7 Year 2021 on Harmonization of Tax Regulations. Indonesia's legislators believe that such transplantation is not only permissible, but also feasible without further harmonisation or modification of the country's legislative system to accommodate the Omnibus Law method of transplantation. The Indonesian legislators appear to support Watson's proposal for legal transplantation, in which Watson asserts that legal transplantation from one legal system to another is a common social phenomenon (Frankenberg, 2010). Indeed, Watson believes that legal transplantation may be a source of legal development. It is diametrically opposed to the Legrand perspective, which proposes that legal transplantation should be followed by changes to the legal system to facilitate the transplantation itself (Frankenberg, 2010)..

Indonesia's legislators drafted Law No. 11 Year 2020 on Job Creation and Law No. 7 Year 2021 on Harmonization of Tax Regulations without amending Law No. 12 Year 2011 on Legislation Making, even though the Omnibus Law method is clearly not recognised in the Indonesian legislative system as a method for enacting legislation. Indonesia's legal system recognised only codification, amendment, annulment, or the formation of new individualistic laws as legitimate legislative methods. Then, the title of the Law would reflect the method by which it was drafted in Indonesia. For example, if the legislative process intended to use the annulment method, the title of the enacted law would be Law No... Year... on the Annulment of (the Law title that will be annulled).

However, rather than amending Law No. 12 Year 2011 to include the transplantation of Omnibus Law as a method for legislation making, Indonesian legislators combined all of the methods specified in Law No. 12 Year 2011 for Legislation Making in the formation of Law No. 11 Year 2020 on Job Creation and Law No. 7 Year 2021 on Harmonization of Tax Regulations. Indonesia's legislators appear confident that those Laws will be successful, given Indonesia's prior experience with the Omnibus Law method, as evidenced by the promulgation of People's Consultative Assembly Decision No. V/1973 and People's Consultative Assembly Decision No. I/2003.

Unfortunately, Indonesia's legal transplantation practises have not yielded positive results. For example, the creation of Law No. 11 Year 2020 on Job Creation was met with incoherent stipulations that were difficult to read. Apart from that,

the development of Law No. 11 Year 2020 on Job Creation was not aided by meaningful participation of stakeholders who would be impacted by its enactment. The unsystematic stipulation and difficulty in reading Law No. 11 Year 2020 on Job Creation resulted from the fact that the title does not correspond to the method used to create the Law. Normally, when drafting Law No. 11 Year 2020 on Job Creation, codification or individualistic legislation should be used.

Rather than that, the content of Law No. 11 Year 2020 on Job Creation mandated the amendment of related laws that could support job creation, and the abolition of several provisions of related laws that could support job creation in the minority. Specifically, there are at least 79 distinct laws that will be impacted by the passage of Law No. 11 Year 2020 on Job Creation, which can be classified into 11 clusters.

As a result of this situation, three (three) Indonesian citizens, namely Hakiimi Irawan Bangkit Pamungkas, Ali Sujito, and Muhtar Said, as well as civil society organisations such as Migrant Care, Badan Koordinasi Kerapatan Adat Nagari Sumatera Barat, and Mahkamah Adat Alam Minangkabau (both are indigenous people communities in West Sumatera), filed an application for a formal constitutional review of the formation of the Law No. 11 Year No. 2020 on Job Creation on October 15th, 2020 to the Indonesian Constitutional Court. That formal constitutional review of the enactment of Law No. 11 Year No. 2020 on Job Creation resulted in the Indonesian Constitutional Court issuing Verdict No. 91/PUU-XVIII/2020. The Indonesian Constitutional Court ruled that the formation of Law No. 11 Year 2020 on Job Creation was unconstitutional on a conditional basis. As long as the verdict of the Indonesian Constitutional Court is read within two (two) years, Law No. 11 Year 2020 on Job Creation should be revised in accordance with the technique/method set forth in Law No. 12 Year 2011 on Legislation Making. That is to say, combining various methods provided by Law No. 12 Year 2011 on Legislation Making in the formation of Law No. 11 Year 2020 on Job Creation is a mistake from the standpoint of the legislative process. As a result, the legislative process in the Indonesian legal system could only use one specific method when drafting a particular law without combining it with another. Thus, there should be a specific modification and a clear intention regarding how the Omnibus Law should be enacted in order to address the hyperlegislation problem in the Indonesian legislative system.

This modification is necessary because the implementation of the Omnibus Law method will result in more than just legislation simplification. However, it will also affect the reduction of coordination failures caused by the stipulation of indirectly related topics such as job creation through a single Omnibus Law. For instance, (Riyanto, 2020) stated that the Omnibus Law on Job Creation will have an effect on the legal force of 79 distinct laws addressing the following major issues: (1) procedure for obtaining a business licence, which currently encompasses 52 distinct laws; (2) requirements for investment, which are governed by 13 distinct laws; (3) employment that is governed by 3 distinct laws; (4) the convenience and

protection of small, medium-sized, and independent businesses, which are accomplished through 3 distinct laws; (5) the ease with which a business can be established, as regulated by 9 distinct laws; (6) support for research and innovation, which is governed by 2 distinct laws; (7) government administration that is governed by 2 distinct laws; (8) imposition of sanctions (criminal sanctions eradication), which encompasses 49 distinct laws; (9) land acquisition, which is governed by 2 distinct laws; (10) the ease with which government projects are implemented, which is governed by 2 distinct laws; and (11) the economic area, which is governed by 5 distinct laws.

Despite the fact that it contains numerous articles, the Omnibus Law on Job Creation contains more than 1,000 supported by both theoretical and empirical evidence. After all, a theoretical framework can be used to constrain how public policy is developed (Adams, 1994; Gislain, 2003; Morel, 2010). Regrettably, the draught of the Omnibus Law on Job Creation repeals only 2 Laws and modifies the content of the remaining 77 Laws (Pradipto, 2020). Nonetheless, the Omnibus Law's applicability is contingent on the passage of 493 Government Regulations implementing its provisions. Rather than pursuing precise regulation in accordance with the Omnibus Law's draught, the legislator continues to rely on its applicability to the emergence of Government Regulations, which are unlikely to delegate additional stipulations to other subordinate legislations.

This fact will have a significant impact on the efficacy with which legislation is developed with the Omnibus Law method in mind if those auxiliary statutes are not drafted concurrently with the primary statute, the Omnibus Law. As a result, legal development will fall short of its efficiency goals. Rather than that, it will trap Indonesia in such coordination failures and also contribute to the overregulation that has resulted from the lack of synchronisation and harmonisation of subordinate legislation with one another and even with primary legislation (Prasetyo, 2020). In the literature it is stated that non-delegation is a means of resolving this issue; its application will strictly prohibit the formulation of delegative standards in primary legislation (Prasetyo, 2020). However, under Indonesian law, such doctrine is not recognised. Thus, the only way to resolve this issue is to encourage legislators to introduce concurrently with the Omnibus Law, subordinate legislation. Then, any subordinate legislation that results from the delegation provision of the Omnibus Law should be limited to a specific form to avoid overregulation and coordination failure.

Additionally, the preview system should validate the draught Omnibus Law's validity. Legislators may implement the preview system in collaboration with higher education institutions and possibly non-governmental organisations. Even though this concept is not recognised by the Indonesian legal system, it is necessary for the efficacy of meaningful participation and the deliberations involved in the formation of specific laws using the Omnibus Law method. Given the Omnibus Law's complexity and length, additional assistance should be provided to legislators to ensure that the law is perfectly drafted before it is enacted. Additional assistance could be provided by disseminating the Law draught prepared using the Omnibus

Law method to higher education institutions and non-governmental organisations. Then, they are permitted to submit a list of problems with the law's content or even the legislative process. Following that, the legislators should provide pertinent responses to those issues; this will demonstrate that the legislators made an attempt to ensure meaningful participation and deliberation in the formation of the law by utilising the Omnibus Law method.

Nonetheless, Indonesia's legislative system should consider the constitutional and validity preview provisions. Due to the fact that the Omnibus Law method is different from the standard legal development method used in the Indonesian legislative system, the Indonesian legislative review system should also be modified to allow the Omnibus Law method to be applied appropriately in light of its goal of reducing and optimising legislative efficiency and avoiding hyperlegislation, overregulation, and even coordination failure in Indonesia.

Conclusion

The method of legislation development used in the Omnibus Law could be considered a viable option as long as the methods used to draught the law are consistent with the principles outlined in Law No. 12 of 2011 on Legislation Making. However, based on the progress of its implementation via the Omnibus Law on Job Creation, it has made insufficient progress due to the extensive use of delegated authority, which results in the emergence of 493 Government Regulations, trapping Indonesia in a coordination failure state or even overregulation.

Therefore, the Omnibus Law should be drafted or enacted explicitly as a law without delegated norms or provisions. Thus, efficiency in the legislative process may be achieved. Additionally, the lawmakers should consider applying for or conducting an examination of the draught Omnibus Law's constitutionality or validity. It may be accomplished through collaboration between legislators and higher education institutions, as well as non-governmental organisations. Due to the Omnibus Law's complexity and length, it will require additional hands to examine it and provide deliberative quality.

Indonesia's legislative system, on the other hand, should consider special provisions for the Omnibus Law method, which could be challenged in a preview system and may even be subject to the doctrine of non-delegation. That system will ensure law harmonisation and legal certainty in the Omnibus Law's application, as well as the efficiency of legislation development and the quality of the Omnibus Law's draught. Such an idea could only be implemented through amendments to the legislative system, as required by Law No. 12 of 2011 on Legislation Making and the 1945 Constitution.

Acknowledgements

We would like to express our gratitude to the reviewers for their insightful comments on the earlier version of this article.

References

Adams, J. (1994). Economy as Instituted Process: Change, Transformation, and Progress. *Journal of Economic Issues*, *28*(2), 331–355. https://doi.org/10.1080/00213624.1994.11505550

Al Amaren, E. M., Hamad, A. M. A., Al Mashhour, O. F., & Al Mashni, M. I. (2020). An introduction to the legal research method: To clear the blurred image on how students understand the method of the legal science research. *International Journal of Multidisciplinary Sciences and Advanced Technology*, *1*(9), 50–55.

Arinanto, S. (2019). *Reviving omnibus law: Legal option for better coherence*. The Jakarta Post. https://www.thejakartapost.com/academia/2019/11/27/reviving-omnibus-law-legal-option-for-better-coherence.html

Aswindo, M., Ras, A. R., Simon, A. J., & Hanita, M. (2021). Omnibus Law on Job Creation and Resilience Prospects of Indonesian Migrant Workers. *Journal of Social and Political Sciences*, *4*(4).

Aulianisa, S. S. (2019, October). Menakar Kompabilitas Transplantasi Omnibus Law dalam Konteks Peraturan Perundang-undangan dengan Sistem Hukum Indonesia. *Konferensi Ilmiah Pemikiran Kritis Dan Strategi Pembaruan Hukum, Badan Penelitian Dan Pengembangan Hukum Dan HAM*.

Bar-Siman-Tov, I. (2015). Mending the legislative process – the preliminaries. *The Theory and Practice of Legislation*, *3*(3), 245–256. https://doi.org/10.1080/20508840.2015.1136118

Bar-Siman-Tov, I. (2021). *An Introduction to the Comparative and Multidisciplinary Study of Omnibus Legislation* (pp. 1–31). https://doi.org/10.1007/978-3-030-72748-2_1

Bhat, P. I. (2019). *Idea and methods of legal research*. Oxford University Press.

Buana, M. S. (2017, November). Menakar Konsep Omnibus Law dan Consolidation Law untuk Harmonisasi Peraturan Perundang-undangan Indonesia: Pendekatan Perbandingan Hukum Tata Negara. *Konferensi Nasional Hukum Tata Negara Ke 4: Penataan Regulasi Di Indonesia*.

Cormacain, R. (2015). Burrows and Carter Statute Law in New Zealand. *The Theory and Practice of Legislation*, *3*(3), 373–377. https://doi.org/10.1080/20508840.2015.1129179

Duncan, J., Punch, R., Gauntlett, M., & Talbot-Stokes, R. (2020). Missing the mark or scoring a goal? Achieving non-discrimination for students with disability in primary and secondary education in Australia: A scoping review. *Australian Journal of Education*, *64*(1), 54–72. https://doi.org/10.1177/0004944119896816

Fitryantica, A. (2019). Harmonisasi Peraturan Perundang-Undangan Indonesia melalui Konsep Omnibus Law. *Gema Keadilan*, *6*(3). https://doi.org/https://doi.org/10.14710/gk.6.3.300-316

Fogg, K. W. (2019). Making an Indonesian National Hero for Lombok. *Indonesia and the Malay World*, *47*(137), 1–22. https://doi.org/10.1080/13639811.2019.1560710

Fogg, K. W. (2020). Indonesian socialism of the 1950s: from ideology to rhetoric. *Third World Quarterly*, *42*(3), 465–482.

Frankenberg, G. (2010). Constitutional transfer: The IKEA theory revisited. *International Journal of Constitutional Law*, *8*(3), 563–579. https://doi.org/10.1093/icon/moq023

Gislain, J.-J. (2003). L'institution des relations industrielles : le cadre analytique de J. R. Commons. *Économie et Institutions*, *2*, 11–59. https://doi.org/10.4000/ei.720

Gluck, A. R. (2021). Unorthodox lawmaking and legislative complexity in American statutory interpretation. In *Comparative Multidisciplinary Perspectives on Omnibus Legislation* (pp. 195–225). Springer.

Halim, Y., Sudewo, F., & Justian, J. (2019). Transformative-Participatory Legal Research Method for Harmonizing The Existence of The Living Law in Indonesia. *Jurnal Media Hukum*, *26*(2), 146–157.

Harahap, H., Sihombing, B. F., & Hamid, A. (2020). Impact of the Omnibus Law/Job Creation Act in Indonesia. *International Journal of Scientific Research and Management*, *8*(`10), 266–281. https://doi.org/10.18535/ijsrm/v8i10.lla01

Herlambang, S., Leitner, H., Tjung, L. J., Sheppard, E., & Anguelov, D. (2019). Jakarta's great land transformation: Hybrid neoliberalisation and informality. *Urban Studies*, *56*(4), 627–648. https://doi.org/10.1177/0042098018756556

Hildebrandt, M. (2018). Law as computation in the era of artificial legal intelligence: Speaking law to the power of statistics. *University of Toronto Law Journal*, *68*(supplement 1), 12–35. https://doi.org/10.3138/utlj.2017-0044

Indrati, S. M. F. (2007). *Ilmu Perundang-Undangan*. Kanisius.

Krutz, G. S. (2021). *Omnibus Legislating in the U.S. Congress* (pp. 35–51). https://doi.org/10.1007/978-3-030-72748-2_2

Merryman, J. H., & Pérez-Perdomo, R. (2018). *The Civil Law Tradition*. Stanford University Press. https://doi.org/10.1515/9781503607552

Meßerschmidt, K. (2021). *Omnibus Legislation in Germany: A Widespread Yet Understudied Lawmaking Practice* (pp. 115–137). https://doi.org/10.1007/978-3-030-72748-2_6

Ministry of Law and Human Rights. (2022). *Data Peraturan Perundang-Undangan*. Direktorat Jenderal Peraturan Perundang-Undangan. https://peraturan.go.id/peraturan/jenis.html?id=11e449f35c25e4d0b18e313231373039

Mor, G., & Jasper, A. (2019). Parliamentary arbitrage and the case for regulatory policy in parliament. *The Theory and Practice of Legislation*, *7*(3), 283–305. https://doi.org/10.1080/20508840.2020.1730096

Morel, S. (2010). Employment and Economic Insecurity: A Commonsian Perspective. *Studies in Social Justice*, *3*(2), 213–230. https://doi.org/10.26522/ssj.v3i2.1016

Mucciaroni, G., & Quirk, P. J. (2010). Rhetoric and Reality: Going beyond Discourse Ethics in Assessing Legislative Deliberation. *Legisprudence*, *4*(1), 35–52. https://doi.org/10.1080/17521467.2010.11424700

Nightingale, R. L. (2016). How to Trim a Christmas Tree: Beyond Severability and Inseverability for Omnibus Statutes. *The Yale Law Journal*, *125*(6), 1672–1743. https://www.yalelawjournal.org/note/how-to-trim-a-christmas-tree

Pradipto, R. (2020, March). Ketika Perbaikan Kelembagaan Dilupakan: Catatan terhadap Naskah Akademik Omnibus Law Cipta Kerja. *Universitas Gajah Mada*.

Prahmana, R. C. I., Hartanto, D., Kusumaningtyas, D. A., Ali, R. M., & Muchlas. (2021). Community radio-based blended learning model: A promising learning model in remote area during pandemic era. *Heliyon*, *7*(7), e07511. https://doi.org/https://doi.org/10.1016/j.heliyon.2021.e07511

Prasetyo, D. E. (2020). *Overdelegasi Kuasa Legislasi Presiden*. https://www.researchgate.net/publication/340526043

Putra, A. (2020). Penerapan Omnibus Law dalam upaya reformasi regulasi (The implementation of Omnibus Law as a means of regulatory reform). *Jurnal Legislasi Indonesia*, *17*(1), 1. https://doi.org/10.54629/jli.v17i1.602

Qurbani, I. D., & Zuhdi, M. R. (2020). Analysis of the Energy and Mineral Source Regulation in the Formulation of Job Creation Law (Omnibus Law). *Administrative and Environmental Law Review*, *1*(2), 83. https://doi.org/10.25041/aelr.v1i2.2117

Riyanto, B. (2020, January). Omnibus Law sebagai Solusi Penyelesaian Permasalahan Hukum dan Peran Notaris dalam Mendukung Reformasi Regulasi. *Badan Pembinaan Hukum Nasional*.

Rochman, S., Wardiono, K., & Dimyati, K. (2019). The Ontology of Legal Science: Hans Kelsen's Proposal of the 'Pure Theory of Law.' *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, *5*(3), 543–557. https://doi.org/10.22304/pjih.v5n3.a8

Roznai, Y., & Volach, L. (2018). Law reform in Israel. *The Theory and Practice of Legislation*, *6*(2), 291–320. https://doi.org/10.1080/20508840.2018.1478330

Setiadi, W. (2021). Regulatory Reform in Support of Indonesia Advancement. *I T A L I E N I S C H*, *11*(1), 180–189. https://doi.org/https://doi.org/10.1115/italienisch.v11i1.83

Setiawan, A., Saputra, H. A., & Fridayani, H. D. (2021). Political communication and public sphere democracy (An analysis: The hastags usage of rejection the Omnibus Law 2020 on Twitter. *Profetik: Jurnal Komunikasi*, *14*(1), 51. https://doi.org/10.14421/pjk.v14i1.2106

Setiawati, D., Praja, C. B. E., Hakim, H. A., & Boy, M. B. (2021). *Indonesian Model*

Foreign Direct Investment (Omnibus Law): Learning from China.

Shubhan, M. H. (2020). Legal Protection of Solvent Companies from Bankruptcy Abuse in Indonesian Legal System. *Academic Journal of Interdisciplinary Studies*, *9*(2), 142. https://doi.org/10.36941/ajis-2020-0031

Stefanus, H. (2018). *Law and politics of constitutional courts: Indonesia and the search for judicial heroes*. Routledge.

Taekema, S. (2018). Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice. *Law and Method*. https://doi.org/10.5553/REM/.000031

Tetley, W. (2000). Mixed Jurisdictions: Common Law v. Civil Law(Codified and Uncodified). *Louisiana Law Review*, *60*(3).

Turner, M., Prasojo, E., & Sumarwono, R. (2019). The challenge of reforming big bureaucracy in Indonesia. *Policy Studies*, 1–19.

Voermans, W. (2015). To measure is to know: The quantification of regulation. *The Theory and Practice of Legislation*, *3*(1), 91–111. https://doi.org/10.1080/20508840.2015.1041706

Yeung, K. (2018). Algorithmic regulation: A critical interrogation. *Regulation & Governance*, *12*(4), 505–523. https://doi.org/10.1111/rego.12158

19% Overall Similarity

Top sources found in the following databases:

- 14% Internet database
- 13% Publications database
- Crossref database
- Crossref Posted Content database

TOP SOURCES

The sources with the highest number of matches within the submission. Overlapping sources will not be displayed.

1	Agnė Limantė, Rūta Vaičiūnienė, Tautvydas Žėkas. "Accessibility of Le... Crossref	3%
2	peraturan.go.id Internet	1%
3	Naswar, Maskun, Achmad, Hasbi Assidiq, Siti Nurhaliza Bachril, Nurul ... Crossref	<1%
4	rianasusmayanti.lecture.ub.ac.id Internet	<1%
5	ypfsresourcelibrary.blob.core.windows.net Internet	<1%
6	irep.iium.edu.my Internet	<1%
7	scholarhub.ui.ac.id Internet	<1%
8	repository.lppm.unila.ac.id Internet	<1%
9	journal.umy.ac.id Internet	<1%

10	kas.de Internet	<1%
11	media.neliti.com Internet	<1%
12	scirp.org Internet	<1%
13	Vivi Oktaviani Pulukadang, Novendri M. Nggilu, Fence M. Wantu. "Regu... Crossref	<1%
14	ojs.iainbatusangkar.ac.id Internet	<1%
15	Muhammad Nabil Mabdaunni'am. "The Authority of Legislative Instituti... Crossref	<1%
16	Zainal Arifin Mochtar. "A Notion of Regulatory Reform", Fiat Justisia: J... Crossref	<1%
17	ohiolink.edu Internet	<1%
18	Lauddin Marsuni, Salle Salle, Syarifuddin Syarifuddin, La Ode Husen. "L... Crossref	<1%
19	ejournal.balitbangham.go.id Internet	<1%
20	pshk.or.id Internet	<1%
21	ijssrr.com Internet	<1%

22	mafiadoc.com Internet	<1%
23	iiste.org Internet	<1%
24	jurnal.kemendagri.go.id Internet	<1%
25	legalpowers.wordpress.com Internet	<1%
26	cbs.gov.il Internet	<1%
27	Henry Lbn Toruan Donald. "Problems of Harmonization on The Post-Es... Crossref	<1%
28	bhl-jurnal.or.id Internet	<1%
29	Rahmat Saputra, Rama Dhianty. "Investment License and Environment... Crossref	<1%
30	search.oecd.org Internet	<1%
31	Farah Syah Rezah, Andi Tenri Sapada. "The Independence and Account... Crossref	<1%
32	e-journal.unmas.ac.id Internet	<1%
33	Saptono Jenar. "Definition of The “Minister” in Government Regulation ... Crossref	<1%

34	ejournal.umm.ac.id Internet	<1%
35	Abdul Hakim Siagian. "Omnibus Law Draft in the Perspective of Constit... Crossref	<1%
36	Maskun, Hasbi Assidiq, Nurul Habaib Al Mukarramah, Siti Nurhaliza Ba... Crossref	<1%
37	berkas.dpr.go.id Internet	<1%
38	ejournal.bbg.ac.id Internet	<1%
39	ejournal.undiksha.ac.id Internet	<1%
40	en.unionpedia.org Internet	<1%
41	ijmmu.com Internet	<1%
42	jurnal.fh.unila.ac.id Internet	<1%
43	ncbi.nlm.nih.gov Internet	<1%
44	"Litigating the Rights of Minorities and Indigenous Peoples in Domesti... Crossref	<1%
45	Achmad Miftah Farid Farid, Nanik Prasetyoningsih Nanik. "Legal Reaso... Crossref	<1%

46	Gaza Carumna Iskadrenda, Edward Omar Sharif Hiariej. "Problems with... Crossref	<1%
47	Petra Mahy. "Indonesia's Omnibus Law on Job Creation: Legal Hierarc... Crossref	<1%
48	Yoyon Mulyana Darusman. " The Position of President and Vice Presid... Crossref	<1%
49	adoc.pub Internet	<1%
50	citeseerx.ist.psu.edu Internet	<1%
51	digilib.uinsby.ac.id Internet	<1%
52	dokumen.pub Internet	<1%
53	link.springer.com Internet	<1%
54	uitmiclas.com Internet	<1%
55	unramlawreview.unram.ac.id Internet	<1%
56	rechtsvinding.bphn.go.id Internet	<1%

Excluded from Similarity Report

- Submitted Works database
- Quoted material
- Small Matches (Less then 8 words)
- Bibliographic material
- Cited material
- Manually excluded sources

EXCLUDED SOURCES

versita.com
Internet

81%