

OMNIBUS LAW IN INDONESIA: A COMPARATIVE STUDY WITH OTHER COUNTRIES – THE MALAYSIAN EXPERIENCE

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الجامعة الإسلامية العالمية ماليزيا
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
يُونِيسْكَو: اِسْتِزَارًا اِبْتِغَاءًا لِجَنَّةِ مِلْدِسِيَا

Garden of Knowledge and Virtue



Agenda

01

Meaning and Scope of Omnibus Law

02

Pro's and Cons about Omnibus Law

03

Malaysian Experience in Omnibus Legislation

04

Lessons Learnt

05

Conclusion

A close-up photograph of a hand holding a black and yellow pen, signing a document. The word 'SIGNATURE' is printed in blue on the document. The background is slightly blurred, showing some text from the document.

A legislation that "packages together several measures into one or combines diverse subjects into a single bill." – US Congress Glossary

Legislations "that bring together many different subjects, depart from conventional process in multiple ways, often comprise "mini-bills"- separate pieces of legislation, or separate topics within a single subject, drafted by different committees and linked together." – Gluck, O'Connell, & Po (2015)

What is Omnibus Legislation?

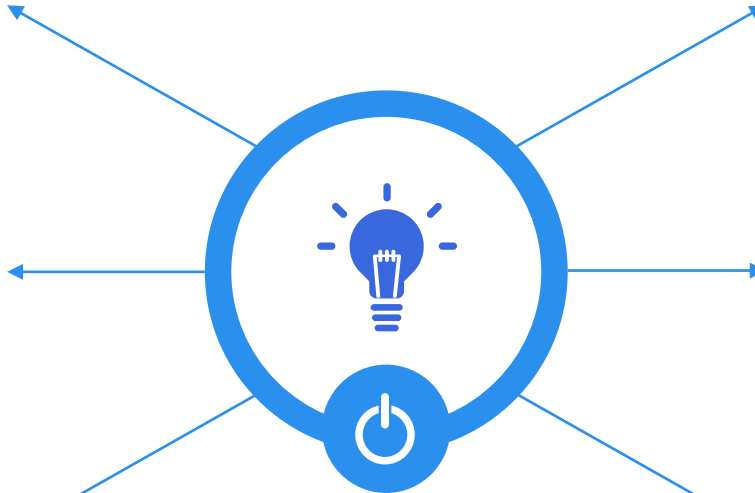
Why Opting for Omnibus Approach



To infuse one big system thinking on the subject matter

The best way to collaborate on the overarching common agenda

Faster process, as long as it is supported by the increasing capacity (HR, Data, Technology, etc.)

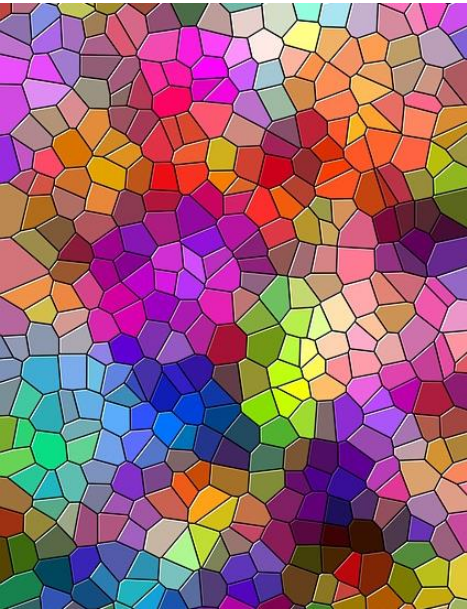


Alignment into a highly complex and politicized subject matter

Easier to reach binding legislative bargains > obtaining compromise, avoiding controversies

Providing “add-ons” and goodies beside the major subject matter

The Problem with Omnibus Legislation

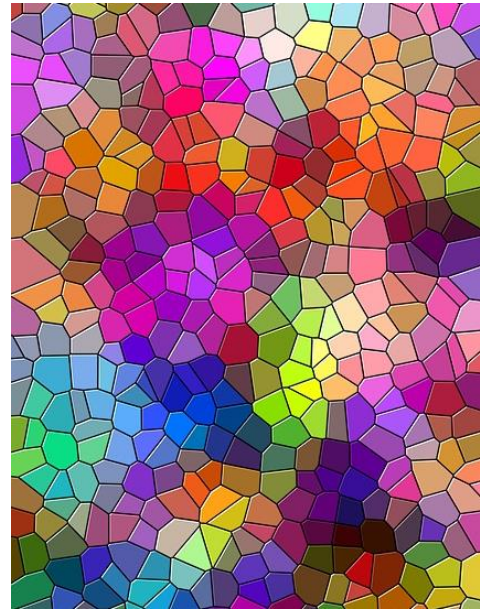


**“UNORTHODOX
LAWMAKING”**

**“SEEKING FOR
COMPROMISE”**

**“AGENDA HIDDEN IN
GOODIES”**

**“INVITES FUTURE
PROBLEMS”**



The Problem with Omnibus Legislation

Your Text Here

**Gluck, et.al
(2015)**

Legislations “that bring together many different subjects, **depart from conventional process in multiple ways**, often comprise “mini-bills”- separate pieces of legislation, or separate topics within a single subject, drafted by different committees and linked together.”

Your Text Here

**Barbara Sinclair
(2000)**

“As an unorthodox law making, Omnibus bill has a tendency to **limit the ability of individual members of Congress** to understand and influence the contents of legislation.”

Your Text Here

**Gluck, et.al.
(2015)**

From a **statutory interpretation** standpoint, omnibus bills pose particular challenges: often long and messy bills. They may have errors or linguistic inconsistencies that statutory interpretation doctrine does not usually tolerate.

The Problem with Omnibus Legislation

Your Text Here

**Margaret Sova
McCabe, (2018)**

Simply represents a classic case of logrolling that **does little to promote a deeply coordinated, systematic approach** to an important subject matter which is a component of a stable democracy and economy.

Your Text Here

**Margaret Sova
McCabe (2018)**

Omnibus legislation may **worsen the already politically divisive issue and society** due to a lack of transparency during lawmaking process and the increasing contentious political wrangling

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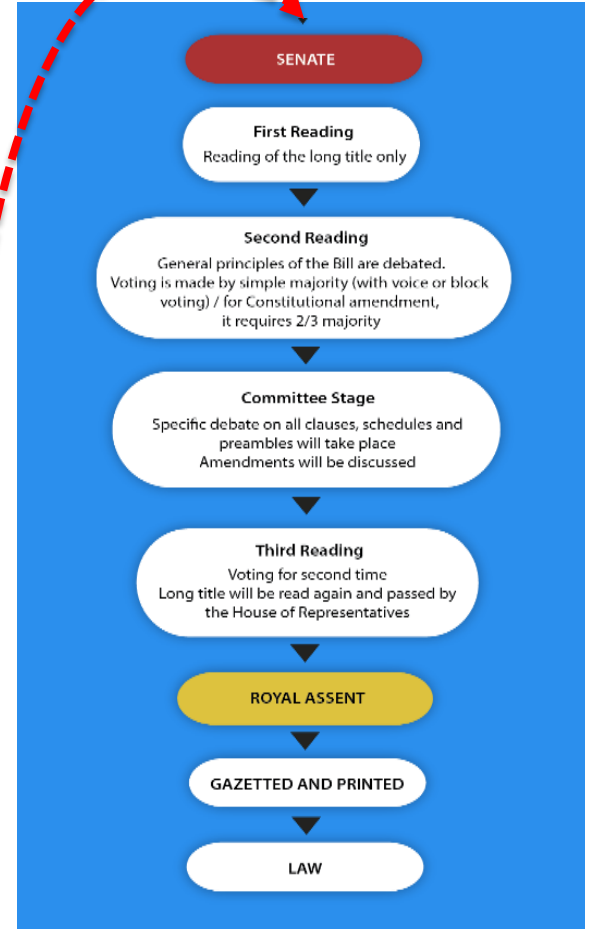
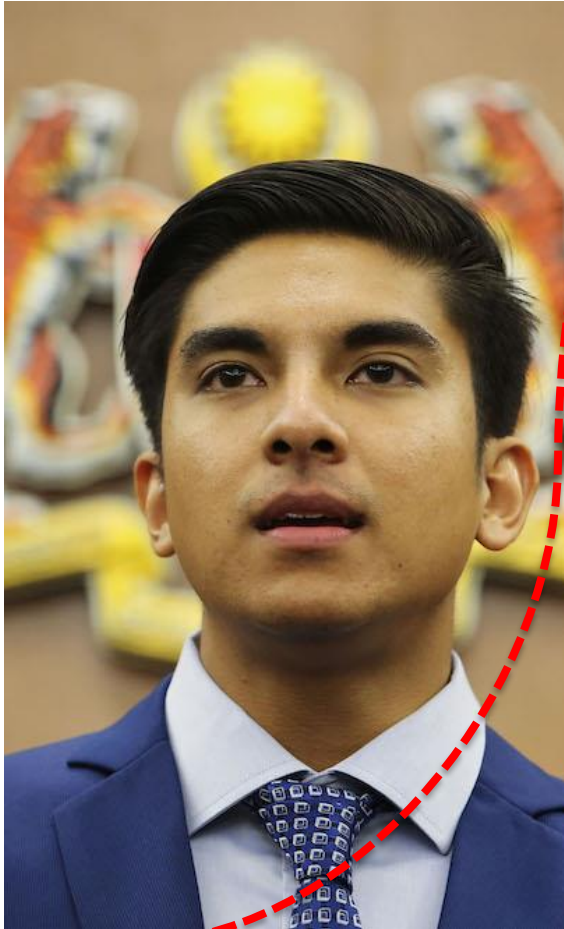
**Margaret Sova Mc
Cabe (2018)**

Usually drafted in this way **to force the executive** either to accept all the unrelated minor provisions or to veto the major provisions. By definition it produces a compromise.

Legislative Process in Malaysia



- Malaysia practices bicameral chamber legislative.
- Two chambers exist: The Senate (Dewan Negara) and The House of Representative (Dewan Rakyat).
- A bill in Malaysia might come from anybody, the citizen, legislative or the executive.
- The Bill must go several reading procedures before getting passed by the parliament



Omnibus Legislation in Malaysia

(Few Examples)

1998

Communications and Multimedia Act 1998

The CMA was legislated to consolidate, converge and repeal several laws such as Broadcast Act, Press Act, and the Telecommunications Act

2010

Labuan Islamic Financial Services and Securities Act 2010

The Act codified the maze of guidelines, directives and ruling s over the years to ensure Shariah-compliance.

2013

Islamic Financial Services Act 2013

Consolidates and repeals Islamic Banking Act 1983 and the Takaful Act 1984. it also accommodates new emerging instruments such as Guidelines on the Disclosure of Reports and Financial Statements of Islamic Banks and the Shari'ah Governance Framework

2013

Financial Services Act 2013

Consolidates and repeals the Banking and Financial Institutions Act 1989, the Payment Systems Act 2003, the Insurance Act 1996 and the Exchange Control Act 1953. Strengthening oversight and consumer protection.

2020

The Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (Covid-19) Act 2020

Making temporary modifications on **16 other Acts**



IMF Country Report no 14/80 on the Legislation

“The regulatory and supervisory framework for the financial sector was **strengthened** with the coming into force of the FSA and IFSA on 30 June 2013. This ensures that laws governing the conduct and supervision of financial institutions in Malaysia continue to be relevant and effective in maintaining financial stability, supporting a sustainable, balanced and inclusive growth of the economy, as well as providing adequate protection for consumers”.

Lesson Learnt

From the experience of Malaysia:



Infusion into a single system thinking

e.g. CMA 1998 to outline the modern telecommunications as a new system thinking.



Increasing efficiency

e.g. the FSA 2013 was introduced to strengthen the Central Bank, extend corporate accountability and consumer protection



Accommodating new needs, rulings etc.

e.g. the IFSA 2013 enhances the Islamic financial system with emerging Guidelines and Rulings



Budget bill

Budget bill has been traditionally an overarching legislation on many subject matters.



Speedy solution

e.g. the Covid-19 Act 2020 was passed by Parliament within less than two-month



Avoiding injustices

e.g. the Covid-19 Act 2020 eliminates anomalies, harshness and injustices

Conclusion



- Omnibus legislation as an unorthodox law-making product will remain to be there due to the **efficiency, subject-matter complexity, and technological convergence**.
- The lawmakers' **increasing capacity and capability** will further make it a norm than an exception: sources availability, staff education, research and big data.
- Due to its “unorthodoxy” Omnibus legislation will **remain controversial**, and may interrupt the political stability. Omnibus legislation will remain as a product of **political negotiation**.
- Controlling the downside of Omnibus legislation can be done through several ways including putting **the limit on the law-making** itself (e.g. the States in the US restricts legislation only for a specific subject matter).
- Eventually, the courts would still have the control over **the interpretation** and the **constitutionality of the law**.



References

Abbe R. Gluck, Anne Joseph O'Connell, and Rosa Po. "Unorthodox Lawmaking, Unorthodox Rulemaking," *Columbia Law Review* 115 (2015): 1789.

Barbara Sinclair, *Unorthodox Lawmaking: "New Legislative Processes in the U.S. Congress"*. (1st ed. 1997)

Daniel Alati, "Current National Security and Human Rights Issues in the United Kingdom, Canada and Hong Kong," *22 ILSA Journal of International and Comparative Law* (2015): 91.

Glen Krutz, "Tactical Maneuvering on Omnibus Bills in Congress" *American Journal of Political Science*, no. 45(1) (2001): 210.

Glen Staszewski, "The Bait-and-Switch in Direct Democracy," *Wisconsin Law Review* 2006, no. 1 (2006): 17-74.

Margaret Sova McCabe, "Cooperation Or Compromise: Understanding the Farm Bill as Omnibus Legislation," *14 Journal of Food Law and Policy*, no. 1 (Spring 2018): 1-11.



THANK YOU

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