






# Constitutional Transition in a Democratic State: A Critical View of the Omnibus Law Establishing Employment Copyright Law

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## Abstract

The debate regarding Omnibus Law as the main means for structuring legal regulations in Indonesia attracted a lot of public attention when the Omnibus Law method, which was previously little known in Indonesia as a country that adheres to the Continental European legal system, was used in the preparation of draft laws (RUU). How does the constitutional transition to the establishment of an omnibus law on copyright work in a democratic country? How do we review the constitutionality of the implementation of the Omnibus Law and the copyright mechanism in the formation of statutory regulations? This

research uses the concept of normative descriptive research, or what can be called normative juridical research. With this method, law is interpreted as what is written in legislation (law in a book), or law is interpreted as a legal rule, which is a standard for appropriate behavior. The Omnibus Law method practiced in the common law system is interpreted as a (new) law that regulates various kinds of regulations to simplify the various laws that are still in force. Constitutionally, the legal position of the omnibus law concept has not been regulated in the legal system or in the laws and regulations in Indonesia. Law No. 11 of 2020 concerning Job Creation, which was formed using the Omnibus method, is considered to be constitutionally contradictory because it does not have clear objectives and formulation, both in terms of the standard of formation, the systematics of its creation, and the process of changing its substance.

**Keywords** *Constitutional Transition, Democratic State, Omnibus Law*

## Introduction

The Constitution of the Republic of Indonesia (UUD 1945), specifically Article 1, paragraph 3, states that Indonesia is a state that maintains the rule of law. It is a state governed by laws, rather than by the exercise of authority.<sup>1</sup> Hence, as a nation that values legal principles, its objective is to provide a sense of organization, tranquility, and contentment in societal existence. The manifestation of upholding the law must be based on a strong, certain law and provide a sense of justice. Laws produced by the state are not only intended as a tool for social engineering; the law also functions to uphold justice and protect the human rights of its citizens.

Legislation is the supreme authority in Indonesian state life since the nation follows the legal system prevalent in continental Europe. State institutions or authorized authorities in Indonesia create or

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<sup>1</sup> Sholahuddin Al-Fatih et al., "The Hierarchical Model of Delegated Legislation in Indonesia," *Lex Scientia Law Review* 7, no. 2 (November 9, 2023): 635, <https://doi.org/10.15294/lesrev.v7i2.74651>.

establish statutory rules via the processes outlined in these documents. These regulations include legally binding standards and are a part of the rule of law in Indonesia.<sup>2</sup>

The discussion around the Omnibus Law as the primary mechanism for organizing legal provisions in Indonesia garnered significant public interest when the Omnibus Law approach was introduced.<sup>3</sup> Indonesia, previously unfamiliar with the Continental European legal system, used it in the development of draft legislation (RUU). The legislative program for 2020 has been designated as the top priority at the national level. The Omnibus Law is a novel legal idea used in the Indonesian legal system. This system is often known as the universal law since it has the capacity to substitute several legal standards with a single regulation. In addition, this notion is used as a goal to reduce certain conventions that are seen incongruous with present advancements and harmful to the country's interests.

The Job Creation Law is a legislation enacted by the Indonesian government within a tight timeframe,<sup>4</sup> Furthermore, the deliberation on this matter was very swift in comparison to previous legislations, such as the Bill on the Eradication of Sexual Violence (PKS) and the Bill on Household Employees.

The Job Creation Bill consists of many clusters, with one specifically focused on employment regulation.<sup>5</sup> Within the employment sector, the government is striving to synchronize these three laws in order to ensure consistency. This will create an environment where investors can easily navigate streamlined regulations without the risk of conflicting or redundant rules that might lead to financial losses for the investors. During the implementation of the Job

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<sup>2</sup> Redi Ahmad, *Hukum Pembentukan Peraturan Perundang-Undangan* (Jakarta: Sinar Grafika, 2018), 1.

<sup>3</sup> Anna Sanders et al., "The Omnibus Law on Job Creation and Its Potential Implications for Rural Youth and Future Farming in Indonesia," *Asia Pacific Viewpoint*, 2024, <https://doi.org/10.1111/apv.12408>.

<sup>4</sup> I. Made Sarjana et al., "Omnibus Law Employment Cluster: Is It A Form Of Labor Exploitation In The Indonesian Context?," *UUM Journal of Legal Studies* 14, no. 1 (January 1, 2023): 57–88, <https://doi.org/10.32890/uumjls2022.14.1.3>.

<sup>5</sup> Zainal Arifin Mochtar and Idul Rishan, "Autocratic Legalism: The Making of Indonesian Omnibus Law," *Yustisia* 11, no. 1 (April 1, 2022): 31, <https://doi.org/10.20961/yustisia.v11i1.59296>.

Creation Law, several legal issues emerged, including the presence of legal regulations that were seen to contradict the constitutional rights of people as protected by the 1945 Constitution of the Republic of Indonesia.

Ahmad Azharil (2021)<sup>6</sup>, “*Problematika Penerapan Sistem Omnibus Law Ke Dalam Sistem Hukum Nasional Indonesia Melalui Undang-Undang No. 11 Tahun 2020 Tentang Cipta Lapangan Kerja*”. The improvement of the national economic system and the building of investment attractiveness in Indonesia are the goals of constructing laws utilizing the omnibus legislation approach, which has always been hampered by a convoluted bureaucratic system and many licensing requirements for investment development. Basically, these countries apply the omnibus law concept, which aims to improve regulations in their respective countries in order to improve the investment climate. This arrangement was carried out in the form of trimming, simplifying, and aligning previously existing laws. The Omnibus Law aims to be a regulatory reform strategy so that structuring is carried out simultaneously on many laws and regulations.

Bobi Yusuf Noor Fajar (2021)<sup>7</sup>, “*A Critical Review on The Job Creation Omnibus Law-Forming Process*”, The process of enacting the job creation bill, also referred to as the omnibus law, has been very contentious in Indonesia. Several facets were compromised during the formulation of this legislation. Regarding legal politics, the process of enacting this statute is very difficult and characterized by procedural flaws. Hence, the implementation of the Omnibus Law on Job Creation fails to comply with the principles of good governance, including legitimacy, transparency, accountability, responsiveness, and the rule of law. The principles of effectiveness and efficiency described in this Law continue to be relevant in the context of good governance. According to this research, it is suggested that the Law on employment creation might be reassessed.

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<sup>6</sup> Ahmad Azharil, “Problematika Penerapan Sistem Omnibus Law Ke Dalam Sistem Hukum Nasional Indonesia Melalui Undang-Undang No.11 Tahun 2020 Tentang Cipta Lapangan Kerja,” *JOURNAL of LEGAL RESEARCH* 3, no. 1 (January 20, 2021): 47, <https://doi.org/10.15408/JLR.V3I1.19293>.

<sup>7</sup> Bobi Yusuf Noor Fajar and Zaid Zaid, “A Critical Review on The Job Creation Omnibus Law-Forming Process,” *Syiah Kuala Law Journal* 5, no. 2 (2021): 195–211, <https://doi.org/10.24815/sklj.v5i2.21605>.

Trisya Benazir Dewinagara (2022)<sup>8</sup>, “*The Omnibus Law Concept in the Job Creation Law and the Legal Consequences for Limited Liability Companies*”. Outcomes for Limited Liability Companies (LLCs) and the Job Creation Law's Omnibus Law idea are as follows: Initially, the idea of the Omnibus Law is a compilation of all rules pertaining to important subjects or themes, which stand in for the desired outcomes, and it incorporates all subthemes or clusters. Clustering laws from different sectors into a single law increases the likelihood of inconsistencies, the prevalence of unclear rules, and, ultimately, the inability of laws and regulations to guide people's behavior, hinder their implementation, and prevent them from achieving legal certainty. Secondly, in regards to the legal ramifications of LLCs, a new idea has emerged concerning micro and small businesses (SMEs) LLCs, also known as individual limited companies, which are susceptible to piercing the corporate veil due to the fact that there is only one shareholder. This concept arises from the fact that the Employment Creation Law and the Company Law have become inconsistent with one another.

The term “*omnibus law*” is comprised of two words: “*omnibus*” and “*law*”. The word “*omnibus*” is derived from the Latin word “*omnis*”, meaning “*all*”, while “*law*” refers to legal regulations.<sup>9</sup> An omnibus law is a comprehensive legislation that governs several topics. In this scenario, legal professionals often use the term “*omnibus law*” as a safeguard for legal provisions. As to Bryan A. Garner's Black Law Dictionary, the word “*omnibus*” refers to anything that is connected to or encompasses several things or items at the same time. It can also describe something that encompasses multiple things or serves various purposes. When used in conjunction with the term “*law*,” it may be described as a legal principle that pertains to several interconnected objects or entities.

The Omnibus legislation idea entails the creation of a single legislation that is designed to repeal or modify many existing laws. The

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<sup>8</sup> Trisya Benazir Dewinagara et al., “The Omnibus Law Concept in the Job Creation Law and the Legal Consequences for Limited Liability Companies,” *SASI* 28, no. 2 (July 3, 2022): 323–35, <https://doi.org/10.47268/sasi.v28i2.963>.

<sup>9</sup> Edy Ikhsan, “The Omnibus Law in Indonesia: Assessing Its Consequences on Environmental Sustainability and Land Rights,” *Journal of Human Security* 18, no. 2 (January 1, 2022): 47–53, <https://doi.org/10.12924/johs2023.19010036>.

notion of the Omnibus Law aims to streamline both the amount and complexity of laws and regulations, making them more focused and simplified. The ideal involves not only reducing the number, but also ensuring uniformity and a tidy organization. The Omnibus Law is a legal instrument that has the power to nullify or modify many existing laws, which may be divided into various regulations and then consolidated into a single law, therefore enhancing precision and legal certainty.<sup>10</sup>

According to Lawrence M. Friedman, while drafting rules, it is necessary to consider the legal content, legal structure, and legal culture of the legal system.<sup>11</sup> Exercising careful review of the current legislative framework within the state In Indonesia, the concept of Omnibus Law is seen as a viable solution to address the issue of numerous overlapping regulations that have been present in the country for a long time. This concept aims to simplify regulations by comprehensively regulating their interests and giving them authority over other regulations. While there have been modifications to rules in several sectors, there are some articles that seem to be advancing in Indonesia, but they still pose significant challenges in certain areas. Furthermore, please be attentive. Indonesia, following the civil law legal system, treats all laws as equal and does not strictly adhere to big laws that include several regulations.

Responsive law refers to the process of selectively adapting to new requires and constraints. It involves a change in focus from rigid rules to more flexible principles and aims. Additionally, it emphasizes the significance of both popular character and populist methods in achieving legal objectives. In order to establish this function as a crucial standard, a responsive legal system prioritizes: (i) the importance of substantive justice as the foundation for legal legitimacy; (ii) the notion that regulations should be secondary to principles and policies; (iii) the orientation of legal considerations towards societal goals and consequences; (iv) It is strongly recommended to exercise careful judgment when making legal decisions, while staying focused on the

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<sup>10</sup> Zico Junius Fernando et al., "Omnibus Law Sebuah Problematik Dan Paradigma Hukum di Indonesia," *Al Ijarah: Jurnal Pemerintahan Dan Politik Islam* 6, no. 1 (January 31, 2021): 95, <https://doi.org/10.29300/IMR.V6I1.2557>.

<sup>11</sup> Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: Raja Grafindo Persada, 1983), 35.

intended goals; (v) The system should be based on obligations rather than force; (vi) The importance of cooperation as a moral principle in implementing the law should be acknowledged; (vii) Power should be used to maintain the effectiveness of the law in serving the community. (viii) Rejecting the law might be seen as a challenge to the legitimacy of the legislation. (ix) Public engagement is readily available when it comes to combining legal and advocacy for social causes.<sup>12</sup>

This study employs the notion of normative descriptive research, often known as normative juridical research. Normative juridical research, as defined by Philipus M. Hadjon and referenced by Sodikin, is a kind of study that seeks to identify and articulate legal arguments by analyzing the central issue at hand. This technique interprets law as either the textual content of legislation or as a legal norm that sets the benchmark for permissible action.<sup>13</sup>

## **Constitutional Transition to the Establishment of the Omnibus Law on Job Creation in a Democratic Country**

The 1945 Constitution has established the validity of the Indonesian state by officially declaring it as a constitutional nation. Indonesia has a diverse array of laws and regulations that function as legal tools in the execution of its governmental structure. The purpose of these written regulations is to govern society in a manner that promotes orderliness and adherence to the law, ultimately resulting in societal well-being. The legislative body, with the power to enact laws, need a framework in order to generate effective legislation.<sup>14</sup>

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<sup>12</sup> Philippe Nonet and Philip Selznick, *Hukum Responsif, Pilihan Di Masa Transisi* (Jakarta, 2003), 146.

<sup>13</sup> Sodikin sodikin sodikin, "Paradigma Undang-Undang Dengan Konsep Omnibus Law Berkaitan Dengan Norma Hukum Yang Berlaku Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 1 (April 27, 2020): 143, <https://doi.org/10.33331/rechtsvinding.v9i1.393>.

<sup>14</sup> Ferry Irawan Febriansyah, "Konsep Pembentukan Peraturan Perundang-Undangan Di Indonesia," *Perspektif* 21, no. 3 (September 30, 2016): 220–29, <https://doi.org/10.30742/perspektif.v21i3.586>.

The creation of statutory rules encompasses more than just discussing the arrangements; it also requires adherence to standards about the substantive substance. Maria Farida Indrati states that the principles for creating statutory rules serve as recommendations or indicators in the development of effective legislative regulations. The presence of a legislative regulatory mechanism in this manner demonstrates the implementation of the welfare state legal paradigm. Bagir Manan argues that this idea assigns the state or government the role of not only being a night watchman, but also of being responsible for achieving social welfare and overall well-being for its citizens.<sup>15</sup>

Friedrich Carl Von Savigny (2020)<sup>16</sup> is a fairly popular legal figure, a follower of the historical legal school (historical jurisprudence), who formulated that law is actually a formulation of the values of social consciousness that grows and develops in accordance with the development of society. Von Savigny's thesis then resulted in the conclusion that law reflects the soul of a nation (*volksgeist*). Von Savigny's explanation at least provides the idea that the norming of a legal product that applies in a society or nation should at least reflect the living law values as ideological beliefs in the context of social life.

In this case, the concept of the rule of law can also be understood as a philosophy of political theory that determines a number of basic requirements for the law or as a procedural device required by those who govern based on the law.<sup>17</sup> Julius Stahl posits that the notion of a legal state, referred to as a *rechtsstaat*, has four crucial components: safeguarding human rights, implementing a separation of powers, establishing a government grounded in the rule of law, and ensuring administrative justice inside the state.

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<sup>15</sup> Syaqui and Habibullah, "Implikasi Undang-Undang Republik Indonesia Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah Dalam Penyelenggaraan Kesejahteraan Sosial," *Sosio Informa*, 2016, 23, <https://www.neliti.com/id/publications/52851/>.

<sup>16</sup> M. Zulfa Aulia, "Friedrich Carl von Savigny Tentang Hukum: Hukum Sebagai Manifestasi Jiwa Bangsa," *Undang: Jurnal Hukum* 3, no. 1 (July 7, 2020): 201–36, <https://doi.org/10.22437/UJH.3.1.201-236>.

<sup>17</sup> Putu Eva Ditayani Antari, "The Implementation of Omnibus Law in Indonesia Law Making Process on Philosophy Review," *De Jure: Jurnal Hukum Dan Syar'iah* 14, no. 1 (January 1, 2022): 181, <https://doi.org/10.18860/j-fsh.v14i1.15757>.



The norming of legal values that is formally legalized in written legal products, in principle, as stated by Peter Mahmud Marzuki, should be able to guarantee the existence of human life. 5 When formulating what is referred to as the norming of values that guarantee the existence of human life, of course there must be a benchmark for moral standards that apply as living values in society. From this point of view, the implementation of law, as Sudikno Mertokusumo said, must not ignore empirical values in the form of legal ideological values that apply in society.<sup>18</sup>

The norming of a legal product that is promulgated, as a form of accommodating the legal values that live in society as the living law, is very important to put the public's legal perception on the normative content of a written legal product that is enacted.<sup>19</sup> Legal perception, citing the views of Emile Durkheim, although it must not be based on the general opinion of society, must be based on the representation of the state where the society is built. However, in any case, the perception of law is actually equivalent to the legal ideology of society, which is crystallized both as customary law and in the constitution (*grundnorm*) and basic philosophy (*Philosopsche Grondslag*) of a country.

According to this explanation, legal perceptions are always related to legal beliefs and the public's legal views regarding the application of a legal product implemented by the government. Legal beliefs and views are also always linked to the benefits of justice provided by law. People think about rejecting a law if the law being implemented does not provide the benefits of justice, which is discriminatory and unjust. A law has positive value if its implementation can satisfy society's sense of justice, especially ensuring the economic welfare of society, regardless of the value of the ideological beliefs held by each member of society.

The process in transition is very complex and involves various challenges, such as the following discussions, namely; Conflict of interest: Interest groups, political elites, and civil society often have differing views on the ideal form of state. Legitimacy: The new regime

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<sup>18</sup> Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* (Liberty, 2000), 38.

<sup>19</sup> Fithriatus Shalihah, "Industrial Relations with Specific Time Work Agreements after the Decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-XVIII/2020 in The Perspective of Legal Justice," *Jurnal Hukum Novelty* 13, no. 1 (January 1, 2022): 68, <https://doi.org/10.26555/novelty.v13i1.a22545>.

must establish legitimacy in the eyes of the public through free and fair elections and transparent law enforcement. State institutions: It is necessary to rebuild or reform strong and independent state institutions, such as the judiciary, parliament, and supervisory bodies.

The Omnibus Law, which has been passed in several countries, including Indonesia, has sparked fierce debate, especially regarding its impact on workers' rights. One of the most controversial aspects is the changes in labor copyright law.

Potential Negative Impact: Weakening of workers' copyright protections: This law has the potential to weaken the protection of works produced by workers, especially in terms of copyright ownership and fair compensation. Increased exploitation: Companies can more easily exploit the works of their workers without providing proper compensation. Hindering creativity: Legal uncertainty and lack of copyright protection can hinder creativity and innovation among workers.

The enactment of Law Number 11 of 2020, which addresses employment creation, has caused social dissatisfaction among the Indonesian population, primarily due to the provisions within the law that pertain to the protection of the rights of employees. The Indonesian public's legal perception of the presence of this law has given rise to various objections with the view that Law Number 11 of 2020 concerning Job Creation,<sup>20</sup> especially regarding the protection of workers' rights, does not have a beneficial impact on the law, which is in favor of the interests of protecting rights. Indonesian workers or labors are in a contractual relationship with the employer.

In accordance with the official website of the nation-state of Indonesia's National Coordinating Ministry for the Economic Affairs, the Job Creation Law is acknowledged to exist,<sup>21</sup> is to gain the confidence of investors in entering Indonesia within the framework of Indonesia's economic recovery amid the threat of the COVID-19 pandemic. Of course, as an official statement that is expressed, at least

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<sup>20</sup> Desip Trinanda et al., "Maṣlahah and Justice in the Formulation of the Law: A Critic on the Formulation of Job Creation Law," *Juris: Jurnal Ilmiah Syariah* 21, no. 1 (June 1, 2022): 54, <https://doi.org/10.31958/juris.v21i1.4718>.

<sup>21</sup> Sigit Riyanto, *Kertas Kebijakan Catatan Kritis Dan Rekomendasi Terhadap RUU Cipta Kerja* (Yogyakarta: Fakultas Hukum Universitas Gadjah Mada, 2020), 9–10.

the statement is an extract from thinking about the nature of what is being presented. The Job Creation Law, which relies on investment principles as its fundamental basis.

From this point of view, philosophically and conceptually, Law No. 11 of 2020 on the Creation of Jobs, which previously sparked polemics in many circles, is actually based on a liberalistic economic foundation, which is the legal rationale for why this law was born. This is the reason why a number of normative problems increasingly fill the content of the provisions of Law No. 11 of 2020 pertaining to employment, which have the consequent effect of diminishing the fundamental economic privileges of employees and labors, which is precisely why this law holds greater bias for those who own capital or business.

The substantive philosophy in employment is governed by Law No. 11 of 2020, which is concerned with Job Creation. based on economic investment orientation, not professionalism and human resource development, so if you look closely at the revised and deleted articles, it appears that the spirit of the law does not at all touch on efforts to increase worker competency. On the contrary, worker protection is offered by this article. Regarding the development of jobs, Law No. 11 of 2020 truly may to marginalize employment articles, eroded by investment and economic needs. In fact, in Pancasila industrial relations, worker protection is a form of government responsibility.<sup>22</sup>

Significant support from the community is crucial to promote authentic public engagement and commitment. This enhanced community engagement satisfies three essential conditions: firstly, the entitlement to be listened to; secondly, the entitlement to have one's viewpoint taken into account (right to be considered); and thirdly, the entitlement to receive a clarification or response to the expressed opinion (right to be explained). Public engagement is largely targeted towards community organizations who are directly impacted by or have reservations about the draft legislation under consideration. A *Perppu*

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<sup>22</sup> Muh Sjaiful, "Problematisa Normatif Jaminan Hak-Hak Pekerja Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Media Iuris* 4, no. 1 (February 11, 2021): 57, <https://doi.org/10.20473/MI.V4I1.22572>.

that bypasses the legislative process would inevitably hinder substantial public involvement.

The formation of a law with a process and mechanism that actually closes or discourages community participation. When considering and arguing about its contents, it might be argued that the creation of this statute goes against the idea of popular sovereignty.<sup>23</sup> Public participation is not defined as simply inviting and attending meetings. However, public participation must be seen more meaningfully, namely considering public input in the draft law being discussed. Through this step, public participation is not used as just a formality to complete the requirements of the legislative process but rather becomes something that must be done and is fundamental in the formulation of laws.

According to judgment in case No. 91/PUU-XVIII/2020, the Constitutional Court (MK) has ruled that the Job Creation Law has formal mistakes and must be corrected within a two-year timeframe starting from the date of the judgment.<sup>24</sup> Constitutional Court has halted all strategic measures and plans with significant consequences and has forbidden the creation of recently enacted regulatory guidelines pertaining to the Job Creation Law. If the Job Creation Law is not rectified within a span of two years, it will forever violate the regulations.

The Constitutional Court (MK) deciding is paradoxical due to the inclusion of a conditional unlawful phrase and a limitation on the government from formulating and enacting regulations immediately upon the reading of the decision. Consequently, the restriction on formulating strategic strategies regarding the Job Creation Law based on rational thinking implies that the Job Creation Law is applicable only at a legislative level and not at a more specialized one.

The fulcrum of the solution to the problems regarding the legislation known as the Job Creation Law, which has generated polemics and controversy, is actually the most appropriate basis for

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<sup>23</sup> Muhammad Nurul Huda et al., "Muhammadiyah Constitution Jihad Movement: A Case Study of the Omnibus Law on Job Creation," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (January 1, 2021): 177–96, <https://doi.org/10.18326/IJTIHAD.V21I2.177-196>.

<sup>24</sup> Shalihah, "Industrial Relations with Specific Time Work Agreements after the Decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-XVIII/2020 in The Perspective of Legal Justice."

regulatory norms for the Indonesian nation, returning it to a national identity that reflects the values of Pancasila and fulfills the principles of democracy.

## Constitutionality of the Implementation of the Work Copyright Omnibus Law Mechanism in the Formation of Legislation

The rule of law has an interest in realizing legal construction that can provide certainty, usefulness, and legal justice, as well as guaranteeing the rights of every citizen. It is necessary to have regulations that serve as guidelines in drafting laws and regulations.<sup>25</sup> This guideline contains regulations for the formation of laws, starting from the first stage until the laws and regulations are implemented by the Executive Agency as the implementer.

Laws against society. The existence of these standard rules is used as a guideline in drafting regulations that can be implemented in definite, standard ways and methods that are binding on every agency with the authority to establish legal restrictions. The results of good legislative regulations will fulfill society's needs. The legislative framework for the process of establishing statutory rules in Indonesia is governed by Law Number 12 of 2011, which replaces Law Number 10 of 2004 on Legislative rules.<sup>26</sup>

According to Article 1, point 1 of the General Provisions, the production of legislation refers to the creation of legislative regulations. This process involves many processes, including planning, writing/drafting, debating/discussing, ratifying or enacting, and promulgating.<sup>27</sup>

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<sup>25</sup> Saru Arifin, "Illiberal Tendencies in Indonesian Legislation: The Case of the Omnibus Law on Job Creation," *Theory and Practice of Legislation* 9, no. 3 (January 1, 2021): 386–403, <https://doi.org/10.1080/20508840.2021.1942374>.

<sup>26</sup> Sopiani Sopiani and Zainal Mubaraq, "Politik Hukum Pembentukan Peraturan Perundang-Undangan Pasca Perubahan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia* 17, no. 2 (June 30, 2020): 146, <https://doi.org/10.54629/JLI.V17I2.623>.

<sup>27</sup> Muhammad Fadli, "Pembentukan Undang-Undang Yang Mengikuti Perkembangan Masyarakat," *Jurnal Legislasi Indonesia* 15, no. 1 (2018): 49–58,

*a. Planning*

Planning is the initial stage in compiling statutory regulations. The problems to be resolved, along with the background and objectives of drafting statutory regulations, are inventoried. Then an academic manuscript is created that contains these problems. Previously, this problem had gone through a review and alignment process. If the academic manuscript is ready, it is then proposed to be included in the regulatory drafting program called Prolegnas, or National Legislation Program.

Decision Number 1/DPR RI/II/2019-2020, which relates to the 2020 National Legislation Program, was reached during the DPR plenary meeting on January 22, 2020.<sup>28</sup> The Job Creation Bill, titled "*Draft Law on Field Creation Work*," contains the following documents: "*List of National Legislation Programs for 2020*," Number 40 (forty), Page 8 (eight), and suggestions from "*The Government of the Republic of Indonesia*." All of these documents are attached to the Decree.

According to Article 43 Paragraph (3) of the PPP legislation, each new draft legislation proposed by the "DPR, President, or DPD" must be supported by an academic document. Moreover, according to Article 45 Paragraph 1 of the aforementioned Law, "*Draft Laws, whether they come from the DPR or the President, or are submitted by the DPD to the DPR, are prepared based on Prolegnas*." The aforementioned configuration may be seen as indicating that both the scholarly paper and the draft legislation are simultaneously submitted to Prolegnas.

However, not submitting it to the 2020 Prolegnas after the agreement was not justified considering the condition that there was no legal vacuum. That can be seen within the "*President's Letter*" with the reference code "*R-06/Pres/02/2020*" issued on the 7th of February 2020. Therefore, the scholarly document of the Job Creation Bill, which was released in the 2020 Prolegnas, does not align with the regulations stated in the PPP Law.

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[http://www.bphn.go.id/data/documents/na\\_ruu\\_revisi\\_uu\\_no.\\_12\\_tahun\\_\\_\\_\\_2011.pdf](http://www.bphn.go.id/data/documents/na_ruu_revisi_uu_no._12_tahun____2011.pdf).

<sup>28</sup> Marilang et al., "Establishing Omnibus Law In Indonesia: Strict Liability In Environmental Law," *Journal of Legal, Ethical and Regulatory Issues* 24, no. Special (January 1, 2021): 1–9.

*b. Drafting*

The writing process varies when it comes to legislation and government rules,<sup>29</sup> and presidential directives. Secondly, preparation refers to the mastery of preparation strategies, namely the understanding of the methods involved in crafting titles, introductions, main sections, conclusions, explanations, and supplementary materials.

Moreover, Article 19 of the aforementioned Law provides a detailed explanation of the process involved in drafting the Law on the National Legislation Program. This includes specifying the title of the Draft Law, the subject matter it covers, and its alignment with other existing statutory regulations that have undergone thorough review and harmonization, as described in the Academic Paper. The aforementioned requirements stipulate that the foundation for creating a "Draft Law" in the National Legislation Program List must include the content specified in the academic paper. This clause is also enforceable in the "*Establishment of the Job Creation Law*".

However, the Job Creation Bill emphasizes Indonesia's Vision 2045 and/or the ideals of Indonesia 2045. The basis for writing this academic manuscript refers to Article 18 Letters d, e, and f of the PPP Law. Then it departs from Law Number 25 of 2004 concerning Planning Systems.

National Development has the scope of including development plans for the country's long-term and medium-term, and annual development plans. The periods regulated by the law are 20 years for the National Long-Term Framework for Development and five years for the Framework for Medium-Term Development. Meanwhile, the material contained in the Academic Paper of the Job Creation Bill repeatedly emphasizes "Indonesia's Vision and/or Ideals," whose regulatory period is not at all binding on the scope of Law Number 25 of 2004.<sup>30</sup>

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<sup>29</sup> Rini Astuti et al., "Making Illegality Visible: The Governance Dilemmas Created by Visualising Illegal Palm Oil Plantations in Central Kalimantan, Indonesia," *Land Use Policy* 114 (March 1, 2022): 5, <https://doi.org/10.1016/j.landusepol.2021.105942>.

<sup>30</sup> Abdurrahman Alhakim and Egia Ginting, "Analisis Pembentukan Undang - Undang Cipta Kerja Pada Tahapan Perencanaan Dan Penyusunan Berdasarkan Undang - Undang Pembentukan Peraturan Perundang - Undangan," *CoMBInES - Conference on Management, Business, Innovation, Education and Social Sciences* 1,

As regulated in Article 5 Letter f concerning Clarity of Formulation of the Technique for Preparing Legislative Regulations in Appendix II, there are provisions regarding the title "*Amendment Law*" in Chapter I Letter A Point 6 and provisions regarding "*Revocation Law*" in Chapter I Letter A Item 9. However, in reality, the phrases "*amendment*" and "*revocation*" are not included in the title "Job Creation Law."

Job Creation Law introduces amendments to numerous laws and repeals others, including the "*Staatsblad*" of 1926 Number 226 *jo* and the "*Staatsblaad*" of 1940 Number 450 related to the "Disruption Law" (*Hinderodonnantie*), as mentioned in Chapter VI Part Six Article 105 Letter e of the "Job Creation Law." Additionally, it repeals "Law No. 3 of 1982" regarding Mandatory Company Registration, as stated in Chapter VI Part Nine Article 105 Letter k of the Job Creation Law. These provisions indicate incorrect titles.

Next, "General Provisions" and "Criminal Provisions" are found in the body in the provisions of Appendix II, namely, respectively, Chapter I Letter C.1 Item 96 and Chapter I Letter C.1 Item 115. In fact, point 96, which implies general provisions are omitted in Chapter 1, is not realized in the Job Creation Law, which contains scattered general provisions, and point 115, which indicates that a whole chapter is devoted to criminal provisions. The closing provisions chapter was also not realized in the *a quo* law, which contains criminal provisions in Chapter III, even though there is still basic material that regulates other matters in subsequent chapters. Plus, considering the "*Transitional Provisions*" contained in Chapter XIV, the "*Criminal Provisions*" should be in Chapter XIII of the Law. The technique for drafting the Job Creation Bill, which is tied to the Technique for Preparing Legislative Regulations in Appendix II, violates the principle's requirement for clear expression in the policy of Forming Legislative Regulations referring to the PPP Law.

### c. Discussion

The bill is discussed in accordance with the regulations stated in Articles 66 and 67 of the PP Law. The discussion process consists of two



levels: Level I discussions take place in various meetings such as Gatherings of the Commission, the Joint Commission, the Legislative Body, the Budget Body, or Individual Committees. Plenary sessions are the venue for Level II debates. If the bill's content pertains to a certain NGO (Social Community Institution), then that NGO should be sent an invitation to participate in the debate.<sup>31</sup> Opinions issued by other institutions are very necessary so that they can bring benefits and prevent harm to society. Involving participation is important so that it can realize the goals of upholding justice and improving the welfare of people's lives.

*d. Validation*

The legislative rules, in the form of laws or drafts, that have received joint approval from the DPR and the President, are presented by the DPR leadership to the President for the purpose of being officially authorized and enacted into law. Statutory rules, as prescribed by the legislation, are presented to the President via the Ministry of State Secretariat or the Cabinet Secretariat, as directed by the Minister of Legislation and Human Rights. At the ratification stage, in the DPR Plenary Session meeting room, it was as if all political party factions approved the Job Creation Bill.<sup>32</sup> In fact, there is not the slightest difference of opinion about it. Differences of opinion are clearly visible when it comes to party fractions. Apart from that, the validity of the decision making in the DPR Determination to approve the Job Creation Bill at the Plenary Session is also in doubt. This is because the number of DPR members who attended the DPR Plenary Session to decide on the Job Creation Bill was not large. In this case, the DPR must be able to prove that its decision in the DPR Plenary Session to make a decision to ratify the Job Creation Bill has fulfilled the quorum.

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<sup>31</sup> Muhammad Eko Purwanto and Efridani Lubis, "Yudicial Review Omnibus Law Dalam Melindungi Pekerja Dan Mengembangkan Investasi Di Indonesia," *Veritas* 8, no. 1 (January 1, 2023): 49–66, <https://doi.org/10.34005/veritas.v8i1.1757>.

<sup>32</sup> Arifin, "Illiberal Tendencies in Indonesian Legislation: The Case of the Omnibus Law on Job Creation."

*e. Invitation*

Once enacted, laws are published in several official publications, such as the State Gazette of the Republic of Indonesia, Supplement to the State Gazette of the Republic of Indonesia, Regional Gazette, or Supplement to the Regional Gazette. This document is often referred to as an invitation. Promulgation serves the objective of informing the public about the substance of statutory rules and providing a reference for when such laws become effective and enforceable. The formal publication of the Job Creation Law in the state gazette is the responsibility of the Minister of Law and Human Rights. Thirty days after mutual assent, the agreement will be ratified regardless of whether the President signs it or not. With no exceptions, the Job Creation Law will be strictly enforced. The Republic of Indonesia's 1945 Constitution states in Article 20, paragraph (5) that a mutually agreed upon draft legislation would be considered final if the president does not sanction it within thirty days after ratification. This law has to be made public since it is binding on all parties.

First, Rules of law that are promulgated or acknowledged by the state are transparent, uniform, and readily available; Many people are against the restrictions that are part of the Job Creation Law. One of these regulations is Article 81 point 15, which takes the place of Article 59 paragraph (4) of Law Number 13 of 2003 regarding employment.<sup>33</sup> In accordance with government rules, the Job Creation Law revises Article 59 paragraph (4) of the Manpower Law, which sets further criteria for the kind and length of work, and the due date for extending the Specific Time employment Agreement (PKWT). Workers are obligated to take a one-day break every week after six consecutive days of labor, according per the Job Creation Law, Article 79, paragraph (2), letter (b). under addition, the requirement that employers grant a two-month sabbatical to workers who have served for six years is repealed under Article 79 of the Job Creation Law. Changes to pay rules are a result of the Job Creation Law. This clause is now governed by Article

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<sup>33</sup> Ana Fauzia et al., "Implementation of the Omnibus Law Concept and Consolidated Texts: Amalgamation of the Common Law and Civil Law Legal Systems," *Journal of Law and Legal Reform* 4, no. 2 (April 30, 2023): 237, <https://doi.org/10.15294/jllr.v4i2.68256>.

81, Number 24 of the Job Creation Law, which supersedes Article 88 of the Manpower Law.<sup>34</sup>

Second, Investors have faced challenges and barriers while attempting to invest owing to the overlapping problems in business licensing between central and regional authorities, as well as ministries and institutes (K/L), along with lengthy procedures. The purpose of the Job Creation Law is to facilitate investment by streamlining the process of obtaining business licenses for investors. Beyond that, BKPM's Central One-Stop Integrated Service (PTSP) is in charge of the government's Online Single Submission (OSS) system. By using this OSS system, all permits will be consolidated, hence eliminating any potential conflicts or duplications between the central authority and the regional entities.

Third, Generally, the majority of inhabitants agree with the content and thus conform their conduct to these norms. The Job Creation Law, enacted on November 2, 2020, elicited a strong negative reaction from the public, particularly from workers who were immediately impacted. The workers' refusal stems from the perception that the Omnibus Law on Job Creation is biased towards firms as the proprietors of the means of production. A social stratification developed among firms, with the aristocracy standing in for the well-off and the proletariat for the common folk. In addition, the Omnibus Law on Job Creation, aimed at enticing international investors, also leads to alienation.

Fourth, Unbiased and objective judges regularly implement these legal norms when they settle legal issues presented to them. The Job Creation Law, which has both advantages and disadvantages, has been formally presented to the Constitutional Court for legal examination. After reviewing many trial agendas, the Panel of Constitutional Judges ultimately determined that The Job Creation Law (Law No. 11 of 2020) suffered from grammatical errors.<sup>35</sup> Therefore, the Court ruled that the Job Creation Law was conditionally unconstitutional.

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<sup>34</sup> Hesty Kartikasari and Agus Machfud Fauzi, "Penolakan Masyarakat Terhadap Pengesahan Omnibus Law Cipta Kerja Dalam Perspektif Sosiologi Hukum," *Doktrina: Journal of Law* 4, no. 1 (April 30, 2021): 39–52, <https://doi.org/10.31289/doktrina.v4i1.4482>.

<sup>35</sup> Aristoteles et al., "Implementation of Cosine Similarity Algorithm on Omnibus Law Drafting," *International Journal of Advanced Computer Science and*

The Constitutional Court mandated the legislative body to implement enhancements within a prescribed timeframe of up to two years after the pronouncement of the verdict. If no enhancements are implemented during this specified timeframe, it will be irrevocably determined that the Job Creation Law is illegal. Furthermore, any implementing rules relevant to Law Number 11 of 2020 (Job Creation) must not include any strategic measures or policies with substantial and far-reaching repercussions that have not been validated by the Constitutional Court.

The Constitutional Court Panel of Judges is contemplating declaring the Job Creation Law to have conditional unconstitutional status in order to prevent legal ambiguity and mitigate its significant consequences. Subsequently, the Court acknowledged the need to strike a balance between the prerequisites for the creation of a law, which must be met in a formal manner to ensure that the resulting legislation upholds the principles of legal clarity, utility, and fairness. In addition, it is important to take into account the strategic goals behind the development of the Job Creation Law.<sup>36</sup> The Panel of Judges of the Constitutional Court carries out cases autonomously and remains impartial, refraining from aligning with either the government or individuals who see themselves as disadvantaged.

Fifth, Decisions made by judges are carried out efficiently. In a swift response to the Constitutional Court's decision that the Job Creation Law was conditionally unconstitutional, the administration, via the Coordinating Ministry for Economic Affairs, took three positions. The first thing to know is that the government would follow the ruling of the Constitutional Court. The government also points to the Constitutional Court's decision that upholds the Job Creation Law's ongoing legitimacy.

The Constitutional Court has imposed a 2-year deadline for implementing reforms, as per its verdict. Furthermore, the administration explicitly said that it would refrain from implementing any further regulatory actions related to the Job Creation Law, in

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*Applications* 15, no. 4 (January 1, 2024): 200, <https://doi.org/10.14569/IJACSA.2024.0150420>.

<sup>36</sup> Bayu Dwi Anggono and Fahmi Ramadhan Firdaus, "Omnibus Law in Indonesia: A Comparison to the United States and Ireland," *Lentera Hukum* 7, no. 3 (November 23, 2020): 330, <https://doi.org/10.19184/eljh.v7i3.19895>.

accordance with the Constitutional Court's decision. Hence, the government considers the rules and regulations implemented to enforce the job creation bill as still being legally binding.

## Conclusion

The process of constitutional change in a democracy is intricate and demanding. Possible significant changes to labor copyright law may result from the Omnibus Law, often known as the Job Creation Law. Hence, a thorough and exhaustive examination is required to ascertain that this policy does not compromise workers' rights and may actively contribute to sustainable development. The Omnibus Law, as implemented under the common law system, is a legislative approach aimed at consolidating and streamlining existing rules by enacting a comprehensive new legislation. Subsequently, the Indonesian legal system embraced this approach as a means of streamlining the complex web of rules that sometimes lead to legal ambiguity. By doing so, statutory regulations may promptly, effectively, and efficiently fulfill their intended purpose. The constitutional standing of the concept of omnibus law is unclear since it is not specifically specified in Indonesian law or the country's legal structure. However, both procedural and substantive rules for developing legal laws must be followed while legislation is being drafted. This Omnibus Law, No. 11 of 2020, Concerning the Creation of Jobs, is deemed to be constitutionally inconsistent due to its lack of clear objectives and formulation, including deficiencies in the standard of formation, the systematics of its creation, and the process of modifying its substance.

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