

Applicability of Law Number 11 of 2020 Concerning Job Creation After The Constitutional Court Decision Number 91/PUU-XVIII/2020

Marojahan JS Panjaitan¹✉

Sekolah Tinggi Hukum Bandung, Indonesia

DOI: <http://dx.doi.org/10.15294/pandecta.v17i2.36222>

Article Info

Article History:

Received: April 4th 2022

Accepted: December 29th 2022

Published: December 29th 2022

Keywords:

omnibus law;

legal purposes;

legal benefits

Abstract

With the issuance of the decision of Constitutional Court Number 91/PUU-XVIII/2020, the DPR and the government, as lawmakers, are obliged to comply with it. Because the decision of the Constitutional Court is a legal decision that all parties must obey without exception, it is necessary to obtain an assessment, first, of how the law applies. No. 11 of 2020 after the decision of Constitutional Court Number 91/PUU-XVIII/2020. Second, how are the DPR and the government's efforts to respond to changes in Law no. 11 of 2020 after Constitutional Court Decision Number 91/PUU-XVIII/2020? The research method used is normative legal research, namely library research, whose sources use secondary data in the form of primary, secondary, and tertiary legal materials. The results of the study on the Constitutional Court Decision Number 91/PUU-XVIII/2020, that Law No. 11 of 2020 is still valid. However, the House of Representative/DPR and the Government are given time to fix it within a period of two years. If corrections are not made within this time period, the law will become permanently invalid. In fulfilling this, first amendments were made to Law Number 12 of 2011, so that it became Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning Formation of Legislation. The amendment has included the omnibus method as the basis for forming laws and regulations. Based on Law Number 13 of 2022, the DPR and the Government made improvements to Law Number 11 of 2020. The results of the study show that by the decision of the Constitutional Court Number 91/PUU-XVIII/2020, which grants the applicant's request conditionally, the DPR and the government are obliged to amend Law no. 11 of 2020 concerning Job Creation since the decision of the Constitutional Court aquo was read. If, within 2 (two) years, the DPR and the government cannot make improvements to Law No. 11 of 2020, the law becomes permanently unconstitutional. On that basis, law. No. 11 of 2020 after the decision of the Constitutional Court Number 91/PUU-XVIII/2020 is still valid unless the DPR and the government do not make improvements to Law No. 11 of 2020 within 2 (two) years, then the law becomes permanently invalid. Therefore, in response to the Constitutional Court's decision, the DPR and the government are currently trying to amend Law no. 12 of 2011 concerning the Establishment of Legislation. In this change, the omnibus law method is explicitly mentioned as one of the methods for forming laws.

A. Introduction

Jokowi, in his inauguration speech as president of the Republic of Indonesia before the People's Consultative Assembly, on October 20, 2019, proposed the omnibus law

method in overcoming hyper regulations, which have so far been seen as hindering the development of national development. Regarding Jokowi's suggestion, it turned out that many people and legal experts were surprised



Address : Cihampelas No. 8 Kota Bandung, West Java, Indonesia 40116

E-mail : marojohanpanjaitan541@gmail.com

ISSN 1907-8919 (Cetak)

ISSN 2337-5418 (Online)

to hear it because the omnibus law method is not well known in legal politics as in Law no. 12 of 2011 concerning the Formation of Legislation. In addition, some think that the omnibus law is adhered to in countries adhering to the "common law" tradition, while Indonesia adheres to the "civil law" tradition. Indonesia is a follower of "civil law." The omnibus law method is not suitable to be used to form laws. Therefore, it must be rejected.

This rejection was evident when the government submitted the Job Creation Bill to the People's Representative Council (abbreviated DPR), which changed 76 laws to become one law using the omnibus law. Among those who refused were the All Indonesian Workers Union (SPSI), the Action Unit for Saving Indonesia (KAMI), the Democratic Party, the Prosperous Justice Party, and other elements of society. This rejection can also be seen from the submission of a formal review of Law No. 11 of 2020, as stated in the Constitutional Court Decision Number 91/PUU-XVIII/2020, November 25, 2020. Where the applicant submitted a formal review based on the procedure for establishing Law No. 11 of 2020 needs to follow the procedures referred to in Article 22A of the 1945 Constitution. The Petitioners stated this in their petition, which, among other things, on pages 28-29 of the Constitutional Court Decision Number 91/PUU-XVIII/2020, November 25, 2020.¹

Based on the arguments stated above, it is clear that the formal review was carried out due to the formation of Law no. 11 of 2020 not following Article 22A of the 1945 Constitution. The request was then accompanied by various pieces of evidence, expert statements, and other evidence submitted as evidence before the court. Regarding the Petitioner's argument, the Respondent, namely the DPR and the President, denied this, accompanied by evidence, expert testimony, and other evidence before the court. Then, in its decision, the Panel of Judges of the Constitutional Court considered all of evidences, expert testimony, and other evi-

1 Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning Review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia, 25 November 2020, 28.

dence presented by the Petitioner and the Respondent before the trial as a basis for deciding the case.²

What is interesting about the verdict, as stated above, among other things, is the clause in verdict number 3, which states "the formation of Law Number 11 of 2020 concerning Job Creation, is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it does not mean "revisions have not been made within 2 (two) years since this decision was pronounced". The sub-clause in the ruling which, among other things, states "that Law No. 11 of 2020 becomes invalid because the procedure for its formation is said to be contrary to the 1945 Constitution, "the meaning becomes blurred when it is linked to the next clause which states, that: "... and does not have conditionally binding legal force as long as it does not mean "no correction is made within the 2 (two) years since this decision was pronounced. The problem is increasing with the existence of a decision in number 4, which states, among other things, that "...Declares Law Number 11 of 2020 concerning Job Creation is still valid until repairs are made following the time limit specified in this decision. The Constitutional Court Decision Number 91/PUU-XVIII/2020, 25 November 2020, is interesting to study because, on the one hand, it states that law No. No. 11 of 2020 was declared invalid because the procedure for its formation was declared contrary to the 1945 Constitution. However, on the other hand, it is still valid, with the condition that the DPR and the President are given time to amend Law no. 11 of 2020 within 2 (two) years. If there is no improvement within 2 (two) years, Law no. 11 of 2020 becomes "permanently unconstitutional." Based on this, the question arises, first, how is the law enforceable? No. 11 of 2020 after the decision of Constitutional Court Number 91/PUU-XVIII/2020? Moreover, how are the DPR and the government's efforts to respond to changes to Law No. 11 of 2020 after Constitutional Court Decision Number 91/PUU-XVIII/2020? These two issues need to be studied to understand the

2 *Ibid*, 416.

applicability of Law no. 11 of 2020 after Constitutional Court Decision Number 91/PUU-XVIII/2020.

Based on the description above, the authors identify this study's problems, namely, how the law applies. No. 11 of 2020 after the decision of the Constitutional Court Number 91/PUU-XVIII/2020?; and second, How are the efforts of the DPR and the government to respond to changes in Law no. 11 of 2020 after the Constitutional Court Decision Number 91/PUU-XVIII/2020?

B. Method

Following the identification of the problem as stated above, the research specification is descriptive research, and the type of research is normative legal research. The data studied were secondary in the form of primary, secondary, and tertiary legal materials, which were analyzed qualitatively.

C. Results and Discussion

1. Applicability of the Law. No. 11 of 2020 after the decision of the Constitutional Court Number 91/PUU-XVIII/2020

The applicability of Law no. 11 of 2020 after the decision of the Constitutional Court Number 91/PUU-XVIII/2020 became a serious debate among the people. Because on the one hand, some are of the view that with the issuance of the Constitutional Court decision Number 91/PUU-XVIII/2020, Law No. 11 of 2020 has been postponed until what was stated in the decision order can be fulfilled by the DPR and the President. However, on the other hand, the government continues to enforce Law no. 11 of 2020 and various regulations issued to implement it. Therefore, in response to these two views, I will first be stated the legal benefits of the applicability of Law No. 11 of 2020 at the implementation level.

Etymologically, legal expediency consists of two words: "benefit" and "law." In the Big Indonesian Dictionary, "benefit" comes from the word "benefit," defined as one use; avail; the donation is a lot for the poor; 2 profits; profit: - sales of cattle multiplied. *Expediency* is defined as «useful»; or «utility.»

The word «useful» is defined as «there are benefits; useful; beneficial: sport is for health»; Based on the meaning of the word «benefit,» the word «benefit» is generally defined as «useful» or «beneficial.»³ Based on the meaning of the word "usefulness," it can be said that "usefulness" is the use of something that can be felt. For example, "exercise is beneficial to health."

Usually the word benefit is often used in economics. However, along with the rapid progress of science and technology and the development of a fast-moving global economy without boundaries, as well as the emergence of Covid-19, the mindset of legal experts has changed from normative to innovative, creative, and comprehensive.

It was related to "law," generally interpreted as a rule containing what can and cannot be done. In law, it is imprinted about the purpose of law formation: order and security, justice, truth, and expediency. So, with the existence of law, people can be free and feel comfortable in acting, creative, and protected in carrying out every activity.⁴ However, several discussions also mentioned that there are three legal objectives, namely justice, benefit, and legal certainty.

Based on the opinion stated above, without neglecting other legal purposes, one of the legal objectives that have an essential meaning is the benefit of the law. This is following what Supriyono said, that expediency is an essential thing for a legal purpose.⁵ In addition, Raju Moh. Hazmi said that expediency is the basis for finding justice. Justice is measured by expediency itself. The measure of justice is unfair to actions based on the principle of expediency.⁶ In this case, Raju Moh. Hazmi sees the benefit when the law

3 Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, Edisi Ketiga (Jakarta: Balai Pustaka, 2005), 710.

4 Marojahan JS Panjaitan, *Pembentukan & Perubahan Undang-Undang Berdasarkan UUD 1945* (Bandung: Pustaka Reka Cipta, 2017), 233.

5 Supriyono, "Terciptanya Rasa Keadilan, Kepastian Dan Kemanfaatan Dalam Kehidupan Masyarakat," *Jurnal Ilmiah Fenomena* XIV, no. 2 (November 2016): 1572.

6 Raju Moh. Hazmi, "Konstruksi Keadilan, Kepastian, dan Kemanfaatan Hukum Dalam Putusan Mahkamah Agung Nomor 46P/HUM/2018," *Jurnal RES JUDIKA* 4, no. 1 (2021): 31.

is adequately enforced. Because as stated by Oksidelta Yanto, that law enforcement is a task carried out by law enforcement officials that must be carried out.⁷ Although there is no single measure that can be used to measure this justice. However, justice is something that is pursued in law enforcement.⁸

At the implementation level, in administering justice, the word justice is combined with legal protection so that the term "legal protection and justice" appears. This is, for example, mentioned in Article 24, paragraph (1) of the 1945 Constitution, which says that the court functions to uphold law and justice. Therefore, judges based on the provisions of the 1945 Constitution in adjudicating are enforcers of law and justice. As enforcers of law and justice, judges act independently or independently in carrying out their functions. The principle of independence or independence of judges in adjudicating cases must be adhered to and realized by judges in examining and deciding the cases they face.⁹ Thus, the decision reflects legal protection and justice for all parties involved in the case. However, as stated by Romli Atmasasmita, that justice will not be realized if there is no legal certainty, and legal certainty will not be absolute if the law fails to function as a regulator of public order.¹⁰ Romli Atmasasmita's opinion was inspired by Mochtar Kusumaatmadja's opinion, which essentially stated that law consists of principles, rules, processes, and institutions, which are the driving force for law in society to achieve the three objectives of the law.¹¹ In this case, Romli Atmasasmita emphasized that law enforcement must be carried out according to law. This opinion follows what was said by Oksidelfa Yanto, that laws and legal norms serve as guidelines

in carrying out the law and processing a legal event.¹² For this reason, Jimly Asshiddiqie said later that in the law, there should be no reduced rights of the people except by law or based on law, and there should be no obligations imposed on the people except by law or based on a law act.¹³ On that basis, H. Aziz Syamsuddin then said that the rule of law confirms that the resulting legal products, laws, for example, not only have formal legitimacy but also substantially bind the public to submit to and obey the rules in the law (substantive legitimacy).¹⁴ This opinion further emphasizes that the laws formed are the basis for society and state administrators to carry out various social and state life activities so that they do not clash with one another. However, for the law to be felt by the community, the law must be adequately enforced and correctly. This is what is then called the benefit of the law.

Related to the benefits of the law, Jeremy Bentham said that "*By the principle of utility is meant that principle which approves or disapproves of every action whatsoever...*".¹⁵ Jeremy Bentham's thoughts, as stated above, according to Romli Atmasasmita, stated that obtaining justice focuses more on the benefit of most people even though other people/groups have to be sacrificed/harmed. The morality of justice is utility, which is often misused to become a reality that is often called, or applied utilitarianism, which is incompatible and even opposed to the principle of togetherness or mutual benefit.¹⁶

What Jeremy Bentham and Romli Atmasasmita said above is the truth in the law. Where the benefit of the law is substantively regulated, it is essential to uphold it to give happiness to as many people as possible.

7 Oksidelfa Yanto, *Negara Hukum Kepastian, Keadilan dan Kemanfaatan Hukum Dalam Sistem Peradilan Pidana Indonesia* (Bandung: Pustaka Reka Cipta, 2020), 28-29.

8 Marojahan JS Panjaitan, *Membangun Badan Peradilan yang Beradab, Berbudaya, dan Berkeadilan Menurut Teori, Praktik dan UUD 1945* (Bandung: Pustaka Reka Cipta, 2018), 10.

9 Marojahan JS Panjaitan, *Ibid.*, 65.

10 Romli Atmasasmita, *Teori Hukum Integratif Rekonstruksi Terhadap Teori Hukum Pembangunan dan Teori Hukum Progresif* (Yogyakarta: Genta Publishing, 2012), 24.

11 *Ibid.*, 25.

12 Oksidelfa Yanto, *loc.cit.* 29.

13 Jimly Asshiddiqie, *Teori Hierarki Norma Hukum* (Jakarta: Konstitusi Press, 2020), 261.

14 H. Aziz Syamsuddin, *Proses & Teknik Penyusunan Undang-Undang* (Jakarta: Sinar Grafika, 2011), 4.

15 Jeremy Bentham, *The Principle of Morals and Legislation* (Amherst, New York: Prometheus Book, 1988), 2.

16 Romli Atmasasmita, *Moral Pancasila, Hukum, dan Kekuasaan* (Bandung: PT. Refika Aditama, 2020), 71. lihat pula Romli Atmasasmita, *Analisis Ekonomi Mikro Tentang Hukum Pidana Indonesia* (Jakarta: Kencana, 2017), 6-8.

As stated above, the mindset of legal benefits is to be realized through the issuance of Law no. 11 of 2020. Especially with the rapid progress of science and technology at this time, the emergence of a fast-moving global economy without boundaries, as well as the emergence of Covid-19 which not only caused a health crisis but also caused an investment, economic and other social crises, Renewable legal institutions are needed which are truly capable of creating happiness for the community and can be used as guiding principles in solving various problems and problems caused by this development.¹⁷ In response to this, the omnibus law method was used¹⁸ in forming Law no. 11 of 2020. This method was used in forming Law no. 11 of 2020, hoping that Law no. 11 of 2020 would provide the community with as much happiness as possible by creating more jobs. This is following what is said in the general explanation, which, among other things, says that:

*"The Central Government has made various efforts to create and expand employment to reduce the number of unemployed and accommodate new workers and encourage the development of Cooperatives and Micro, Small, and Medium Enterprises to boost the national economy, improving people's welfare."*¹⁹

In addition to the objectives stated above, further in the general explanation, it is also said that:

*"To support the Job Creation strategic policy, arrangements are needed regarding administrative arrangements, which aim to facilitate the granting of business licenses in Indonesia."*²⁰

Through the general explanation above, the purpose of establishing Law no. 11 of 2020 said. So, in the following general explanation, it is said that:

*In order to support the implementation of the strategic job creation policy and its regulations, it is necessary to amend and improve various related laws. Changes to the law cannot be carried out through conventional means by changing the law one by one, as has been done so far. This method is certainly not very effective and efficient and takes a long time.*²¹

Through the general explanation, as stated above, the purpose of establishing Law no. 11 of 2020 is to support investment and economic growth, which has slumped in Indonesia. Through Law no. 11 of 2020, there is a new paradigm in the legal politics of business licensing, which used to be challenging to obtain. However, with Law no. 11 of 2020, it is easy to obtain business licenses to support investment and economic growth in Indonesia. Because as stated by Ali Akbar Septiantoro et al., economic growth, which is more supported by investment than consumption, is considered to increase the productivity of a country.²² This opinion shows the importance of investment in supporting the country's economic growth. However, at the implementation level, many domestic and foreign investors were disappointed due to the difficulty in obtaining business permits. As a result, many of these investors left or wanted to avoid investing in Indonesia. Hilda Swandani Prastiti said that the large number of foreign investments leaving Indonesia was proof that the label was not investment friendly for Indonesia.²³ Hilda Swandani Prastiti gave the example of Nissan Motor Co. Ltd, which closed its company in Indonesia and moved its factory to Thailand as Nissan's sole production center for the ASEAN market. Likewise, China in 2019 expanding its business outside of China, but none of them entered

17 Marojahan JS Panjaitan, *Politik Hukum Membangun Negara Kebahagiaan Pada Era Revolusi Industri 4.0 dan Society 5.0* (Bandung: Pustaka Reka Cipta, 2020), 24-25.

18 Henry Campbell Black, *Black's Law Dictionary*, Abridged Sixth Edition, (St. Paul, Minnesota: West Publishing Co., 1991), 750.

19 See General Explanation of Law Number 11 of 2020 concerning Job Creation.

20 See General Explanation of Law Number 11 of 2020 concerning Job Creation.

21 See General Explanation of Law Number 11 of 2020 concerning Job Creation.

22 Ali Akbar Septiantoro, Heni Hasanah, Muhammad Findi Alexandi, dan Sri Retno Wahyu Nugraheni, "Apakah Kualitas Institusi Berpengaruh Pada Arus Masuk FDI di ASEAN?", *Jurnal Ekonomi dan Pembangunan Indonesia* 20, no. 2 (July 2020): 197, <https://doi.org/10.21002/jepi.v20i2.1132>.

23 Hilda Swandani Prastiti, "Membedah Parameter Berusaha Dalam Upaya Meningkatkan Kemudahan Berinvestasi di Indonesia (Studi Komparasi Indonesia dan Vietnam)," *DHARMASISYA Jurnal Program Hukum Fakultas Hukum Universitas Indonesia* 1, no. 3 (March 2021): 1260, <https://scholarhub.ui.ac.id/dharmasisya/vol1/iss3/13>.

Indonesia.²⁴ In his research, Teguh Tresna Puja Asmara said that based on the Doing Business 2019 report, the ranking for the ease of doing business in Indonesia was in position 73 (seventy-three), which was still far from the target of being ranked in the top 40 (forty) in the world.²⁵ Thus, Bahir Mukhammad then said that the complexity of licensing regulations and inconsistent licensing regulations caused obstacles for investors to establish businesses in Indonesia and caused economic development in Indonesia to be hampered.²⁶ The problem becomes even more complicated because unscrupulous policymakers use this situation to extort investors. However, it is no longer a secret that business permits can be easily obtained if entrepreneurs give state administrators money. This is evidenced by the existence of several state officials, regional heads, BUMN leaders, political elites, members of the DPR, business people, and members of the public who were caught red-handed by the Corruption Eradication Commission (KPK), the Attorney General's Office, and the Indonesian National Police during transactions related to obtaining permits. For example, the Bekasi Regent and eight other suspects were caught red-handed by the Corruption Eradication Commission when they received bribes concerning obtaining permits for the Meikarta development project in Bekasi. Hopefully, through the issuance of Law no. 11 in the Year 2020, things like this do not happen anymore. Because through Law no. 11 of 2020, economic activity can develop appropriately so that jobs can be created in large numbers, poverty can be reduced, and state revenue from the taxation sector, which will be used to finance development, can increase.

The explanation above shows the

²⁴ *Ibid.*, 1260.

²⁵ Teguh Tresna Puja Asmara, Isis Ikhwanayah, dan Anita Afriana, "Ease Of Doing Business: Gagasan Pembaruan Hukum Penyelesaian Sengketa Investasi di Indonesia", *Univeristas of Bengkulu Law Journal* 4, no. 2 (October 2019): 127, <https://ejournal.unib.ac.id/index.php/ubelaj/article/view/7458/5022>.

²⁶ Bahir Mukhammad, "Pelaksanaan Perizinan Berbasis Resiko Pasca Undang-Undang Cipta Kerja", *Jurnal Nalar Keadilan* 1, no. 2 (November 2021): 15, <https://jurnal.universitaskarta.ac.id/index.php/jurnal-fh-unija/article/view/21>.

legal benefits of the issuance of Law no. 11 of 2020 in Indonesia. Many rejected it even when the omnibus law method was used in forming Law no. 11 in the Year 2020. Against the mindset that refuses to use the omnibus law method to be used to arrange regulations, constitutionally and democratically cannot be blamed. If you change Law No. 12 of 2011 in conjunction with Law no. 15 of 2019 before forming Law no. 11 of 2020, of course, it will take a long time, cost money, and collide with political constellations. The author agrees with Yustinus Prastowo, who said that with the Omnibus Law, the government and parliament do not need to revise laws one by one but instead make a new law that amends the articles in several laws at once.²⁷ Yustinus Prastowo further said that as long as it is preceded by a comprehensive identification and mapping of problems, the Omnibus Law scheme creates efficiency and effectiveness because it combines several rules with different regulatory substances into one significant regulation.²⁸ This is the basis for using the omnibus law method to overcome hyperregulation, which is then used as the basis for issuing Law no. 11 of 2020. However, as previously stated, the use of the omnibus law method to arrange hyper-regulation at an implementation level received a reaction from the public, which led to a formal review of Law no. 11 of 2020 as in the decision of the Constitutional Court Number 91/PUU-XVIII/2020. The reasons for the Petitioners to carry out a formal review of Law No. 11 of 2020, as contained on page 28 in the "Basic Reasons for the Petition" of the Constitutional Court's decision a quo, which among other things, says, that "...then the benchmark for the formal examination of the aquo case apart from basing it on the touchstone/benchmark of the 1945 Constitution, also uses Law 12 /2011".²⁹ Then, on page 33

²⁷ Yustinus Prastowo, "Mujarabkah Omnibus Law sebagai Obat Lesu Ekonomi," Paper presented at a seminar organized by the Indonesian Institute of Accountants in collaboration with CITA, (Jakarta, 2019), 32.

²⁸ Yustinus Prastowo, *Ibid.*, 32.

²⁹ After the Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning Review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of

of the Constitutional Court's decision a quo, it is even more emphatically stated that: "THE WORK CREATION ACT DOES NOT COMPLY WITH THE PROVISIONS FOR FORMULATION OF LAWS BASED ON THE 1945 CONSTITUTION AND LAW 12/2011 (FORMAL/PROCEDURAL DEFECTS)."³⁰

Concerning all arguments, evidence, expert statements, and other evidence presented by the Petitioner before the trial, which was held open to the public, all of them were denied by the Respondent, namely the DPR and the Government (President). Based on the main reasons for the examination as stated above, the Petitioners further submit all evidence, expert statements, and other evidence related to their formal examination before the court to strengthen all the arguments mentioned in their petition. This can be seen on page 147 of the Constitutional Court's decision a quo, the DPR in point 3 of its petite states, among other things:

"...that the process of establishing Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) is following the 1945 Constitution of the Republic of Indonesia and has complied with the provisions of the regulations legislation as stipulated in Law Number 12 of 2011 concerning Formation of Legislation (State Gazette of the Republic of Indonesia of 2011 Number 82, Supplement to State Gazette of the Republic of Indonesia Number 5234) as amended by Law Number 15 of 2019 concerning Amendments On Law Number 12 of 2011 concerning Formation of Legislation (State Gazette of the Republic of Indonesia of 2019 Number 183, Supplement to the State Gazette of the Republic of Indonesia Number 6398): and Ordering the loading of this decision in the State Gazette of the Republic of Indonesia as appropriate"³¹.

Then, on page 248, the Government, among others, in its response to all of the Petitioners' arguments, stated the following:

Indonesia, 25 November 2020, 28.

30 After the Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning Review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia, 25 November 2020, 33.

31 After the Ruling of the Constitutional Court Number 91/PUU-XVIII/2020 concerning Review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia, 25 November 2020, 147.

"...so in terms of the Petitioners' argument, which states that the process of drafting the Job Creation Law has violated the principles of forming good laws and regulations as stipulated in Law 12/2011, according to the Government, it is very wrong, incorrect and has no legal basis."³²

The government, in point 4 of its Petition, page 248, also stated emphatically:

"Declaring that Law Number 11 of 2020 concerning Job Creation is not contrary to the 1945 Constitution of the Republic of Indonesia."³³

Regarding all the arguments, both those put forward by the Petitioners and the Respondent (DPR and the Government), accompanied by evidence, expert statements, and other evidence, all of them were considered by the Constitutional Court in its decision. Based on these legal considerations, the Constitutional Court in numbers 3 to 7 orders its decision as mentioned in the previous discussion,³⁴ becomes questionable about the applicability of Law no. 11 of 2020 after the aquo Constitutional Court decision came into effect. It is said so because if you only read the clause as referred to in the decision letter number 3, for example, it can be said that Law No. 11 of 2020 is no longer valid because the process of forming it was declared by the Constitutional Court to be contrary to the 1945 Constitution. However, if you read the following clause, which states that: "...and does not have binding legal force conditionally as long as it does not mean "no improvement is made in within 2 (two) years since this decision was pronounced", then Law no. 11 of 2020 is still valid. This is known from the fourth decision, which sta-

32 After the Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning Review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia, 25 November 2020, 248.

33 After the Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning Review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia, 25 November 2020, 416-417.

34 Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning Review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia, 25 November 2020, 416.

tes, among other things, that "Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) shall remain valid until repairs are made establishment following the time limit specified in this decision". Thus, in the fifth decision it is said: "Order the legislators to make improvements within a maximum period of 2 (two) years from the pronouncement of this decision and if within this timeframe no corrections are made, then Law Number 11 the Year 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) to be permanently unconstitutional". That means that Law no. 11 of 2020 since the decision of the Constitutional Court aquo was read, will still be valid from the time it was read until a limit of 2 (two) years in the future. However, if within 2 (two) years, the DPR and the government are unable to make improvements to Law no. 11 of 2020, then Law no. 11 of 2020 becomes permanently invalid. In this case, the legislators are given 2 (two) years to amend Law no. 11 of 2020.

Based on the abovementioned verdict, the Constitutional Court did not expressly state that Law No. 11 of 2020 does not apply. However, the DPR and the government are given 2 (two) years to fix it, and if within 2 (two) years the DPR and the government cannot fix it, then Law No. 11 of 2020 becomes permanently unconstitutional. However, the enactment of Law No. 11 of 2020 is biased by verdict number 7, which states "... suspending all actions/policies that are strategic and have wide-reaching impacts, and it is also not justified to issue new implementing regulations related to Law Number 11 of 2020 regarding Job Creation". That means, as long as it is being repaired, the government may not issue strategic policies to implement the provisions of Law no. 11 of 2020. Normatively, the values in law that are still valid must be implemented as long as the law has never been declared invalid or revoked. In the decision, there was no prohibition against carrying out all the implemen-

ting regulations of Law no. 11 of 2020 before the Constitutional Court aquo decision was issued. Therefore, all the implementing regulations issued before the Constitutional Court decision aquo was issued are still valid and can be implemented. This is because there is nothing in the ruling of the Constitutional Court that states, "Revoke and declare as null and void all regulations that have been issued to implement Law No. 11 the Year 2020".

2. Efforts of the House of Representatives (DPR) and the President to Respond to Amendments to Law No. 11 of 2020 After the Constitutional Court Decision Number 91/PUU-XVIII/2022

As stated in the previous discussion, normatively, the decision of the Constitutional Court aquo is a legal decision that must be obeyed and implemented by all parties without exception, including the Petitioner and the Respondent (DPR and Government). In the sense that the decision of the Constitutional Court aquo is a legal decision that must be obeyed and carried out by all parties without exception because the Constitutional Court decides on an application for judicial review based on the authority based on 1945 Constitution and the implementing regulations. The provisions as stipulated in the 1945 Constitution became the basis for the Constitutional Court in carrying out its duties and authorities to conduct formal and material reviews of laws in the Constitutional Court. Therefore, compliance with the implementation of the Constitutional Court's decision aquo is also an integral part of complying with and implementing the rule of law principles as referred of the 1945 Constitution. Based on this, the DPR and the Government, in their petition, have stated that "the issuance of Law Number 11 of 2020 concerning Job Creation is not contrary to the 1945 Constitution of the Republic of Indonesia."³⁵ However, in its ruling, the Constitutional Court stated, among other things, that "the legislators are given 2 (two) years to

³⁵ After the Ruling of the Constitutional Court Number 91/PUU-XVIII/2020 concerning Review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia, 25 November 2020.

amend Law No. 11 of 2020” the DPR and the Government are obliged to comply with this ruling. This is because what is stated in the Constitutional Court’s decision is a legal provision that the DPR and the Government must comply with. On that basis, the Minister of Law and Human Rights of the Republic of Indonesia, Yasonna H. Laoly, in a scientific oration commemorating the Anniversary of the Faculty of Law, University of North Sumatra, emphasized that the Government and the Indonesian Parliament, respect, comply with, and will implement the Constitutional Court’s Decision on the Copyright Law Do your best.³⁶

What Yasonna H. Laoly said in his scientific oration was an attitude of statesmanship in complying with the Constitutional Court’s decision. Therefore, in complying with the aquo MK decision, Yasonna H. Laoly further said three points need to be carried out by the government, namely:

- a. Legislators are ordered to accommodate the omnibus law method in amending Law Number 12 of 2011 concerning Formation of Legislation as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning Formation of Legislation;
- b. Procedurally, the formation of the Job Creation Law must be corrected within two years of the Constitutional Court’s Decision being pronounced; and
- c. The government must suspend all strategic policies/actions based on the Job Creation Law.

In this case, the DPR and government as legislators, according to Article 5 paragraph (1) of the 1945 Constitution in conjunction with Article 20 of the 1945 Constitution, are allowed to amend Law No. 11 of 2020 within 2 (two) years. The three points, as stated by Yasonna H. Laoly above, are the DPR and

³⁶ Yasonna Laoly, “Pemerintah Patuhi Putusan MK tentang UU Cipta Kerja Demi Kepastian Hukum” (Scientific Oration Delivered in Commemoration of the 68th Anniversary of the Faculty of Law, University of North Sumatra). <https://bpsdm.kemenumham.go.id/berita-utama/yasonna-pemerintah-patuhi-putusan-mk-tentang-uu-cipta-kerja-demi-kepastian-hukum> (accessed 22 March 2022).

the government’s efforts in carrying out what is stated in the Constitutional Court’s decision aquo. All mentioned in the Constitutional Court ruling aquo must be obeyed and carried out by the DPR and the government in making improvements to Law no. 11 of 2020. Because if the decision is not complied with and implemented by the DPR and the government, then as later stated in the ruling which states emphatically, “within 2 (two) years the legislators are unable to make improvements to Law No. 11 of 2020, the law is not permanently valid.

It is true if you look at the 2 (two) year grace period given by the Constitutional Court to the DPR and the government to amend Law No. 11 in the Year 2020 is too short. However, as a legal decision, whether we like it or not, the DPR and the government, as the legislators according to the 1945 Constitution, are obliged to comply with and implement the aquo Constitutional Court decisions carefully. Apart from complying with the Constitutional Court’s decision, the DPR and the government are also required to socialize the aquo Constitutional Court’s decision in educating the public so that the public understands the existence of Law no. 11 of 2020 after the MK decision aquo.

Along with implementing the aquo MK decision, it turns out that the DPR and the government did not immediately change Law no. 11 of 2020, but first amending Law no. 12 of 2011 in conjunction with Law no. 15 of 2019, as the basis for forming laws in Indonesia. It is said so because the provisions referred to in Article 22A of the 1945 Constitution are carried out by issuing Law No. 12 of 2011 in conjunction with Law no. 15 of 2019. This opinion follows one of the Petitioner’s arguments in his petition, page 33, which among others, stated that:

“THE EMPLOYMENT CREATION ACT DOES NOT MEET THE PROVISIONS FOR FORMATION OF LAWS BASED ON THE 1945 CONSTITUTION AND LAW 12/2011 (FORMIL DISABILITY/PROCEDURAL DEFECTS”).³⁷

³⁷ Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning Review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia, 25 November 2020, 33.

Based on the Petitioner's argument as set out above, the burden of duty delegated by the Constitutional Court to the DPR and the Government is not only to amend Law No. 11 of 2020 but also must make changes to Law no. 12 of 2011 as amended by Law no. 15 of 2019. On that basis, the DPR took the initiative to amend Law No. 12 of 2011 by initiating the formation and finalization of the Academic Paper Draft and the Draft Law on the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation. Draft Academic Papers and Draft Laws, which were prepared based on operational standards that have been enforced by the Expertise Body of the DPR RI as stated in the foreword.³⁸The foreword above indicates that preparing the Draft Academic Paper and the Draft Law on the Second Amendment to Law Number 12 of 2011 is an implementation of the Constitutional Court Decision No. 91/PUU-XVIII/2020. This is also expressly stated in the background of the academic manuscript draft, which among other things, says that:

"In practice, the PPP Law is a law that is affected by the Constitutional Court Decision Number 91/PUU-XVIII/2020 regarding the formal test of Law Number 11 of 2020 concerning Job Creation (MK Decision No. 91/PUU-XVIII/2020)".³⁹

Based on what was stated in the preamble and the background draft of the academic paper above, Law no. 12 of 2011 does not find the omnibus law method used in forming Law No. 11 of 2020. So, if you use the omnibus law to improve Law No. 11 of 2020, changes must first be made to Law NO. 12 of 2011 by explicitly stating the use of the omnibus law method to form laws. This is then explicitly stated in letter b. The basis for consideration is the DRAFT LAW OF THE REPUBLIC OF INDONESIA NUMBER ... YEAR ... CONCERNING THE SECOND AMENDMENT TO LAW NUMBER 12 OF 2011 REGARDING THE ESTABLISHMENT OF LEGISLATION REGULATIONS, it says:

b. "that in order to realize the formulation of

38 Draft Academic Papers and Draft Law on the Second Amendment to Law Number 12 of 2011 concerning Formation of Legislation.

39 *Ibid.*

laws and regulations that are planned,..".⁴⁰

Furthermore, in Article 1 point 2a of the Bill, it is stated that:

The Omnibus Method is a method for compiling Legislation by adding new content material, changing content material that has relevant or legal requirements regulated in various Legislation, or repealing Legislation of the same type and hierarchy by combining them into one Legislation to achieve specific goals.

Then in Article 42A, it is stated that:

- 1) The use of the Omnibus Method in preparing a Draft Legislation, as referred to in Article 7 paragraph (1) and Article 8 paragraph (1), must be stipulated in the planning document
- 2) Article 64 is also amended so that it reads as follows: (1) Preparation of Draft Legislation is carried out following the techniques for preparing Legislation.
- 3) Preparation of the Draft Legislation, as referred to in paragraph (1), may use the Omnibus Method.
- 4) Provisions regarding the techniques for drafting Legislation, as referred to in paragraph (1), are listed in Appendix II, which is an integral part of this Law.
- 5) Provisions regarding changes to the technique for drafting Legislation, as referred to in paragraph (3), are regulated by Presidential Regulation.⁴¹

If the DPR and the government approve the Bill on Amendments to Law NO. 12 of 2011 to become a law, the omnibus law method can be used to improve Law no. 11 of 2020 as stated in the MK decision aquo.

The DPR and the government's efforts to make changes to Law no. 12 of 2011 are also within the framework of affirming the use of the omnibus law method to change and shape future laws. This opinion is to answer one of the reasons for filing a formal review of Law no. 11 of 2020, namely: that in Law no. 12 of 2011, there are no rules regar-

40 *Ibid.*

41 Draft Academic Papers and Draft Law on the Second Amendment to Law Number 12 of 2011 concerning Formation of Legislation.

ding the use of the omnibus law method to form laws and regulations in Indonesia. Thus, with the strict regulation of the omnibus law method in the law on the Formation of Legislation, the DPR and the Government will not hesitate to use the omnibus law method in completing hyper regulations. This is because the omnibus law method has been textually referred to or is in the law on the Formation of Legislation.

The problem is what if the regulation regarding the use of the omnibus law method in the deliberations of the Bill on Formation of Legislation needs to receive approval from the DPR and the government. Because if you follow the aquo Constitutional Court ruling, what if within 2 (two) years, the DPR and the government cannot amend Law No. 11 of 2020, the law becomes permanently unconstitutional? Likewise, with the time given to the DPR and the government to amend Law no. 12 of 2011 not achieved, Law No. 11 of 2020 becomes permanently invalid. This is indeed a challenge for the DPR and the government in pursuing 2 (two) years to improve Law no. 12 of 2011 as a basis for improving Law no. 11 of 2020.

In facing this time limit, currently, the DPR is actively socializing the Academic Paper Draft and the Draft Law on the Second Amendment to Law Number 12 of 2011. The socialization was carried out through webinars held at several universities and in various social organizations in Indonesia, as well as holding various discussion group forums. However, is the socialization sufficient to fulfill the provisions referred to in Article 5 letter a, letter e, letter f, and letter g of Law no. 12 of 2011, as stated on page 29 of the Constitutional Court's decision aquo.⁴² As referred to in Article 5 of Law no. 12 of 2011, the provisions need attention in making changes to Law no. 12 of 2011 so that it will not be questioned again after the amendments to the two aquo laws are completed later.

Likewise, the representation of the

people in the changes to the two Laws aquo really must be considered, even though determining the representation of the people in the formulation of the law is very difficult, and there is no measure. However, substantially the representation of the community needs special attention so that it will not be questioned in the future. On this basis, the parties genuinely affected by the issuance of a law need to be asked for their opinion so that in the future, they will not be harmed by the issuance of a law.

Likewise, with the time the law was formed, in the law, there is also no benchmark for how long it takes for a law to be made and discussed until it is passed into law. However, even though there are no benchmarks, the DPR and the government need to do some testing on several things for the issuance of a law. For example, it is necessary to measure the losses caused to the surrounding community from development for the public interest so that the parties involved in providing compensation in the development of the public interest are not harmed.

In addition, it is also necessary to state clearly the use of the omnibus law method to form which type of legislation, as referred to in Article 7, paragraph (1) of Law no. 12 of 2012. In this case, it is necessary to confirm whether the omnibus law method can be applied to change and form all types of laws and regulations as referred to in Article 7 paragraph (1) of Law no. 12 of 2011. For this reason, the authors propose that the omnibus law method is only used to amend and form the law as referred to in Article 7, paragraph (1) of Law No.12 of 2011. This is because the law was issued jointly between the DPR and the government to carry out the core contents contained in Pancasila and the 1945 Constitution at an implementation level which is used as a guiding principle (foundation) for the government in administering government. The law embodies people's sovereignty in implementing Pancasila and the 1945 Constitution in administering government. When the government implements the law, it must issue several regulations, starting with government regulations down.

42 Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning Review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia, 25 November 2020, 29.

Following the order, regulations starting from PP downwards are the law's implementation. So, the substance of the regulation is the implementation of the law. Thus, changes and formation may not use the omnibus law method as forming laws. That is where the need for confirmation in the amendment to Law no. 12 of 2011 concerning the use of the omnibus law method, which is only used to amend and form laws while amending and forming Government Regulations, Presidential Regulations, Provincial Regional Regulations, and Regency/City Regional Regulations the omnibus law method cannot be used. Likewise, in amending and forming the Constitution and MPR Decrees, you cannot use the omnibus law method because the changes are not made by law but are strictly regulated in the 1945 Constitution. These matters must be considered by the DPR and the government in making changes to the law. No. 12 of 2011, so that in the future, it will not cause any more legal problems.

D. Conclusion

Based on the Constitutional Court Decision Number 91/PUU-XVII/2020, that Law No. 11 of 2020 is still valid. However, the House of Representative/DPR and the Government are given time to fix it within a period of two years. If corrections are not made within this time period, the law will become permanently invalid. In fulfilling this, first amendments were made to Law Number 12 of 2011, so that it became Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning Formation of Legislation. The amendment has included the omnibus method as the basis for forming laws and regulations. Based on Law Number 13 of 2022, the DPR and the Government made improvements to Law Number 11 of 2020.

E. References

Asmara, Teguh Tresna Puja, Isis Ikhwanasyah, dan Anita Afriana. "Ease Of Doing Business: Gagasan Pembaruan Hukum Penyelesaian Sengketa Investasi di Indonesia." *Univeristas of Bengkulu Law Journal* 4, no. 2 (October 2019): 118-136. <https://ejournal.unib.ac.id/index.php/ubelaj/article/view/7458/5022>.

Asshiddiqie, Jimly. *Teori Hierarki Norma Hukum*. Jakarta: Konstitusi Press, 2020.

Atmasasmita, Romli. *Analisis Ekonomi Mikro Tentang Hukum Pidana Indonesia*. Jakarta: Kencana, 2017.

Atmasasmita, Romli. *Teori Hukum Integratif Rekonstruksi Terhadap Teori Hukum Pembangunan dan Teori Hukum Progresif*. Yogyakarta: Genta Publishing, 2012.

Atmasasmita, Romli. *Moral Pancasila, Hukum, dan Kekuasaan*. Bandung: PT. Refika Aditama, 2020.

Bentham, Jeremy. *The Principle of Morals and Legislation*. Amherst, New York: Prometheus Book, 1988.

Black, Henry Campbell. *Black's Law Dictionary*. Abridged Sixth Edition. St. Paul, Minnesota: West Publishing Co., 1991.

Departemen Pendidikan Nasional *Kamus Besar Bahasa Indonesia*. Edisi Ketiga. Jakarta: Balai Pustaka, 2005.

Draft Naskah Akademik dan Draft Rancangan Undang-Undang tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

Hazmi, Raju Moh. "Konstruksi Keadilan, Kepastian, dan Kemanfaatan Hukum Dalam Putusan Mahkamah Agung Nomor 46P/HUM/2018." *Jurnal RES JUDIKA* 4, no. 1 (2021): 23-45.

<https://jurnal.universitajakarta.ac.id/index.php/jurnal-fh-unija/article/view/21>.

Laoly, Yasonna. "Pemerintah Patuhi Putusan MK tentang UU Cipta Kerja Demi Kepastian Hukum" (Scientific Oration Delivered in Commemoration of the 68th Anniversary of the Faculty of Law, University of North Sumatra). <https://bpsdm.kemenkumham.go.id/berita-utama/yasonna-pemerintah-patuhi-putusan-mk-tentang-uu-cipta-kerja-demi-kepastian-hukum> (accessed 22 March 2022).

Mukhammad, Bahir. "Pelaksanaan Perizinan Berbasis Resiko Pasca Undang-Undang Cipta Kerja." *Jurnal Nalar Keadilan* 1, no. 2 (November 2021): 14-27.

Panjaitan, Marojahan JS. *Membangun Badan Peradilan yang Beradab, Berbudaya, dan Berkeadilan Menurut Teori, Praktik dan UUD 1945*. Bandung: Pustaka Reka Cipta, 2018.

Panjaitan, Marojahan JS. *Pembentukan & Perubahan Undang-Undang Berdasarkan UUD 1945*. Bandung: Pustaka Reka Cipta, 2017.

Panjaitan, Marojahan JS. *Politik Hukum Membangun Negara Kebahagiaan Pada Era Revolusi Industri 4.0 dan Society 5.0*. Bandung: Pustaka Reka Cipta, 2020.

Prastiti, Hilda Swandani. "Membedah Parameter Berusaha Dalam Upaya Meningkatkan Kemudahan Berinvestasi di Indonesia (Studi Komparasi Indonesia dan Vietnam)." *DHARMASISYA Jurnal Program Hukum Fakultas Hukum Universitas Indonesia* 1, no. 3 (March 2021): 1259-1274. <https://scholarhub.ui.ac.id/dharmasisya/vol1/iss3/13>.

- Prastowo, Yustinus. "Mujarabkah *Omnibus Law* sebagai Obat Lesu Ekonomi." *Paper presented at a seminar organized by the Indonesian Institute of Accountants in collaboration with CITA*. Jakarta, 2019.
- Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020 perihal Pengujian Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 25 November 2020.
- Septiantoro, Ali Akbar, Heni Hasanah, Muhammad Fin-di Alexandi, dan Sri Retno Wahyu Nugraheni. "Apakah Kualitas Institusi Berpengaruh Pada Arus Masuk FDI di ASEAN?." *Jurnal Ekonomi dan Pembangunan Indonesia* 20, no. 2 (July 2020): 197-211. <https://doi.org/10.21002/jepi.v20i2.1132>.
- Supriyono. "Terciptanya Rasa Keadilan, Kepastian Dan Kemanfaatan Dalam Kehidupan Masyarakat." *Jurnal Ilmiah Fenomena* XIV, no. 2 (November 2016): 1567-1982.
- Syamsuddin, H. Aziz. *Proses & Teknik Penyusunan Undang-Undang*. Jakarta: Sinar Grafika, 2011.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja.
- Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan dan Perubahan Peraturan Perundang-Undangan.
- Yanto, Oksidelfa. *Negara Hukum Kepastian, Keadilan dan Kemanfaatan Hukum Dalam Sistem Peradilan Pidana Indonesia*. Bandung: Pustaka Reka Cipta, 2020.