

Juridical Analysis Of The Establishment Of Job Creation Law According To Legal Theory

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Abstract

The principles that make up laws and regulations, both formal and material, are usually ignored when making the Job Creation Law. The focus of this research is whether the Job Creation Law is in accordance with being carried out transparently and whether the legislative process of the Job Creation Law is considered too fast and ignores democratic principles. Normative juridical legal research, or research on legal standards, is used as a research methodology. Secondary data are obtained by combining data from primary, secondary, and tertiary legal materials. The results showed that Law Number 11 of 2020 concerning Job Creation has no legal force at the drafting stage, violating the NRI Constitution of 1945 and the principles of Law Number 12 of 2011 as amended by Law Number 15 of 2019 concerning the Establishment of Laws and Regulations. Adolf Merkel's double-faced theory and Hans Nawiasky's level theory meet the Job Creation Law. Here, the highest standards are Pancasila and the Indonesian Constitution of 1945, which are the basic standards of the country. According to Hans Nawiasky's theory, the Job Creation Law is considered a formal, gesetz, or formal law.

Keyword: *Job Creation, Omnibus Law, Regulation.*

A. INTRODUCTION

1. Background

Indonesia has many laws. 42,000 rules have been achieved in 2017. The government has enacted 74 laws in the field of economics and investment that can hinder investment and the economy. The government will make two main laws to increase competitiveness and encourage investment in Indonesia out of 74 (seventy-four) laws, namely the Job Creation Bill and the Micro, Small,

and Medium Enterprises (MSMEs) Empowerment Bill.¹ The Omnibus Law is a law that largely revises and/or repeals many other laws. The United States, Belgium, the United Kingdom, and Canada are some of the common law countries with the Anglo-Saxon legal system that developed this idea.

The Omnibus Law offers a solution to the problem caused by too many or overlapping regulations. If this fight were to be completed conventionally, it would take a long time and cost a lot of money. Not only that, the process of designing and forming laws and regulations is often delayed or not in accordance with needs.² Actually, the concept of the Omnibus Law can be considered as a solution to simplify many regulations, as is happening in Indonesia today. Bappenas reported that from 2000 to 2015, the central government has issued 12,471 regulations, with ministries issuing 8,311 regulations, which is the second most type of regulation, with 2,446 government regulations. Meanwhile, as many as 25,575 district/city regulations and 3,177 provincial regulations are the largest number of local government regulations.³

In addition to too much regulation, there are several other important issues. The first is the planning of laws and regulations that are not synchronized at the central and regional levels. Second, the similarity of the law deviates from the material that should be regulated. Third, non-compliance with such materials leads to "hyper-regulation" problems, and fourth, the effectiveness of the law is often a problem when implemented. Things are made worse because there are no procedures to monitor and assess the law. In addition, there is no specific agency responsible for every aspect of

¹ Fitra Moerat Ramadhan, "For the sake of investment and global competitiveness, Jokowi proposes an omnibus law - Tempo.Co graphics," accessed May 2, 2022, <https://grafis.tempo.co/read/1864/demi-investasi-dan-daya-saing-global-jokowi-usulkan-omnibus-law>.

² Firman Freaddy Busroh, "Conceptualization of Omnibus Law in Solving Land Regulation Problems," *Arena Hukum* 10, Number 2 (2017): 227-50.

³ G Kartiko, L Djanjanto, and R A P Zandra, "... In the field of investment as an effort to complete licensing regulations and harmonize laws and regulations in Indonesia," *the Multi ...*, September Number (2020).

the legal system. On February 12, 2020, the government submitted the Job Creation Bill to the House of Representatives. At the beginning of 2020, the government is preparing the Job Creation Bill using the concept of *the Omnibus Law*, to be used as a scheme to shape the economy in order to be able to attract investors to invest in Indonesia. The Job Creation Bill is needed to be able to create a flexible, simple, competitive, and responsive law for the realization of social justice for all Indonesia society as mandated by the Constitution, and create a conducive legal system by synchronizing laws through only one law using the concept of *Omnibus Indonesia Law*.⁴

The concept of Omnibus Law is a new idea used in Indonesia's legal system. This system is often referred to as the "sweep law" because it has the ability to change several legal standards at once. In addition, this idea is intended to cut some standards that are considered not in accordance with the development of the times and detrimental to the interests of the state. The question is whether a lot of regulation is the problem or is there something else, such as inconsistent regulation, that is actually the problem. The Omnibus Law is very good for overcoming the problem of too many regulations because of its nature that revises and repeals many laws at once. Therefore, the Omnibus Law must simplify many regulations. However, in the preparation of the draft Law, there needs to be harmony with the principles/principles of drafting the Law. In the preparation of the Job Creation Bill, there are still some doubts from several parties about the alignment of the law-making process with the principles/principles of law drafting.

2. Problem Formulation

The government has further passed the Job Creation Law, raising the question of whether the law is considered a bad legislative practice because it is not implemented transparently and is included in the legislative process. Is

⁴ Ima Mayasari, "Regulatory Reform Policy through the Implementation of Omnibus Law in Indonesia," *Journal of Rechtsvinding: Media Development of National Law* 9, Number 1 (2020), <https://doi.org/10.33331/rechtsvinding.v9i1.401>.

the process of forming the Job Creation Law too fast and ignoring democracy? To answer this problem, this study uses deductive normative law research that uses literature data that refers to documented materials. The procedure for studying data is by studying documents in the form of books, reports of previous research results, seminar papers, writings by experts, and journals related to research materials. The literature data obtained from literature research was then analyzed qualitatively. The results of the analysis are presented in a descriptive manner so that a clear picture of the inconsistency of the Job Creation Law is obtained based on the basic legal principles in the principles/principles of making the Law.

B. DISCUSSION

1. Transparency in the Formation of the Job Creation Law

Indonesia is indeed a country that has a lot of regulations. In fact, the number in 2017 has reached 42,000 (forty-two thousand) laws. In terms of economy and investment, the Government has mapped out 74 (seventy-four) laws that have the potential to disrupt the economy and investment. As long as the 74 (seventy-four) laws were written, the government would draft 2 (two) major laws, namely the Bill on Job Creation and the Empowerment of Micro, Small, and Medium Enterprises (MSMEs) in order to increase competitiveness and encourage investment in Indonesia.⁵ *The Omnibus Law* in choosing the government is the right method in compiling the umbrella of licensing business process rules in Indonesia because through *the Omnibus Law* method it can produce a regulation covering more than one substantive material, or several small things that have been combined into one law, which aims to build order, certainty of rules and benefits.

Omnibus Law is a law that focuses on simplifying the number of regulations, *Omnibus Law* is a legal product concept that functions to

⁵ El Malika Nadisha, "Job Creation Law Don't Trigger New Layoffs - Jurnal Gaya," accessed May 2, 2022, <https://jurnal gaya.pikiran-rakyat.com/bizz/pr-80804247/uu-cipta-kerja-jangan-sampai-picu-phk-baru>.

consolidate various kinds of themes, materials, subjects, and laws and regulations in each different sector as a grand and overall legal product. *The Omnibus Law* is a step to issue a law that is able to improve many laws that have been considered overlapping and damage the process of ease of doing business.⁶ This concept is used by countries that use the Anglo Saxon Common Law rule system. Several countries such as the United States, Canada, Ireland, and Suriname have used the *Omnibus Law* or *Omnibus Bill* approach in their legislation.

In Southeast Asia, *the Omnibus Law* was first practiced by the country of Viet Nam, which at that time was about to adopt the results of accession using the WTO in 2006. To implement this, the Prime Minister instructed the Ministry of Local Regulation to conduct a study related to the possibility of implementing the *Omnibus approach* in Viet Nam.⁷ The Omnibus Law has certain features that can threaten democracy. This concept may be difficult to implement due to its many interests. Therefore, the House of Representatives and the government must provide information that is easily accessible and involves everyone, as indicated in Article 96 of Law 12 of 2011 concerning the Establishment of Laws and Regulations. In this case, the state must create a container to accommodate and flow so that public participation is clear. So far, the mechanism of public participation is unclear, so public participation is only considered a formal requirement for the formation of laws and regulations.

The public is often forgotten in the formation of laws that cause a law to accept the rejection of the people. The public is the subject of the enactment of the mandatory law to participate in it. The people must participate in determining the direction of the priority policy for the preparation of laws and regulations, without the involvement of citizens in their formation, it is

⁶ Antoni Putra, "The Application of Omnibus Law in Regulatory Reform Efforts," *Journal of Legislation Indonesia* 17, Number 1 (2020), <https://doi.org/10.54629/jli.v17i1.602>.

⁷ Sholikin M Nur, "Why We Should Be Careful with Jokowi's Plan to Issue an 'Omnibus Law,'" accessed May 2, 2022, <https://theconversation.com/mengapa-kita-harus-berhati-hati-dengan-rencana-jokowi-mengeluarkan-omnibus-law-126037>.

impossible for a law and regulation to be accepted and implemented properly.⁸ The importance of community participation in the formation of legal products must be seen in the participatory formation process using the participation of as many elements as possible, both from the individual and community groups, besides that it must also be aspirational which comes from the hope or will of the people. When referring to the 1945 Constitution, public participation is also guaranteed. Article 28D paragraph (3) reads: "Every citizen has the right to equal opportunities in government".⁹ Rejection of a law will not occur if the aspirations of the people are accommodated in the formation. When a policy is not aspirational, suspicions can arise about the criteria in determining who gets what. On the contrary, the policy-making process that is carried out using an open method and supported by adequate news, will give the impression that there is nothing hidden.

In realizing its ideals, the government applies the concept of *the Omnibus Law* to revise and/or revoke many laws that are evaluated as hindering the economy and investment. No matter how good the concept is offered, but without public participation, the resulting rule product will still be difficult to accept. Especially if we refer to the development of the times, the provision of public space or the participation of the people means that absolute demands are efforts to democratize.

The House of Representatives held a meeting to be able to draft this Job Creation Bill. On October 3 at 22.00 WIB, the House of Representatives has held a level I decision *on the Omnibus Law* on the Job Creation Bill which has been approved by 7 out of 9 factions, except for the Democrats and PKS. Then continued the discussion of level II in the plenary meeting scheduled for October 8, 2020. However, on the way, suddenly the plenary meeting was advanced and held on the afternoon of October 5, 2020. This law was approved

⁸ Yuliandri, "Final Report," n.d.

⁹ Republic of Indonesia, "Constitution of 1945," 4 § (1945).

by 6 factions, the PAN faction agreed with a note, only two factions refused, namely the Democratic faction and the Prosperous Justice Party (PKS).¹⁰

There are several Principles / Principles for the Preparation of the Job Creation Law related to the Preparation of Norms.¹¹

1. Prinsip *good governance*
2. The Principle of Legal Certainty
3. Principle of Benefit
4. The Principle of Non-Alignment
5. The Basics of Meticulousness
6. The principle of not abusing authority
7. The Principle of Openness
8. The Principle of Public Interest
9. Principle of Good Service
10. Prinsip *Most-Favoured-Nation* (MFN)
11. Prinsip *National Treatment*

Each of these principles/principles should be a guideline in the preparation of a law, without violating the principles/principles of Law Drafting. From the pattern of drafting and ratifying laws, it should not be done in a hurry or even to the point of violating existing laws. In recent years, the House of Representatives (DPR) together with the government have drafted many laws in a hurry, one of the most attention-grabbing changes is the amendment to the Corruption Eradication Commission (KPK) Law, followed by the amendment to the Mineral and Mineral Law, and most recently, the amendment to the Constitutional Court (MK) Law. According to many people, the drafting and ratification of the law is very important. The rushed drafting

¹⁰ "Initiative Code: Ratification of the Job Creation Bill is Non-Participatory, Violates Principles, and is Unconstitutional," accessed May 6, 2022, <https://www.hukumonline.com/berita/a/kode-inisiatif--pengesahan-ruu-cipta-kerja-tidak-partisipatif--langgar-asas--hingga-inkonstitusional-lt5f7b4692c4104>.

¹¹ Ministry of Law and Human Rights, "Academic Manuscript of the Bill on Job Creation – Official Portal of the Job Creation Law – Information about the Job Creation Law," accessed May 6, 2022, <https://uu-ciptakerja.go.id/naskah-akademis-ruu-tentang-cipta-kerja/>.

process for the Job Creation Law has given rise to a lot of speculation, especially about who designed it. By continuing to discuss this regulation in the midst of the current pandemic, at least this is strengthened. Refer to the general principles of Good Governance (AAUPB) if needed.¹² The speed at which laws are drafted can at least violate the principle of prudence. In practice, violations based on these principles will at least lead to the emergence of a gulf of rules, or a gulf of law. Simple patterns are used to handle the differences in rules that actually occur. This process begins with the availability of positive laws waiting to be activated through a shift using real events. When this shift occurs, it is possible that the positive law will not be able to meet the needs of real events.¹³

The process of drafting non-participatory laws is also a public concern. The discussion of the Job Creation Bill may not be participatory, it may even be limited. It seems that the House of Representatives is trying to gather all parties to hear their statements on the Public Hearing Plan (RDPU). Instead, using the Indonesia Chamber of Commerce (KADIN), the Legislative Body (Baleg) does not conduct RDPU with workers or worker organizations. However, the RDPU should be carried out together with the labor union so that the important articles in the employment cluster of the Job Creation Bill can meet the wishes of interested parties.

2. Job Creation Law Legislation Process

The government simplifies regulations by using the omnibus law method, which is a single law that revises several laws at once. One of the new concepts in Indonesia's legal system is the omnibus law, also known as the "sweep law". The Omnibus Law, consisting of about 76 laws and 1,200 articles,

¹² Sadhu Bagas Suratno, "The Formation of Policy Regulations Based on the General Principles of Good Governance," *E-Journal Lentera Hukum* 4, Number 3 (2017), <https://doi.org/10.19184/ejlh.v4i3.5499>.

¹³ Satria Sukananda, "Progressive Legal Theory Approach in Answering the Problem of Legal Gaps in Indonesia," *Journal of Sharia Economic Law* 1, Number 2 (2018), <https://doi.org/10.30595/jhes.v1i2.3924>.

is designed to facilitate investment and avoid overlapping regulations, so that the House and the government only need to create new laws rather than revise each law. It is considered effective in Indonesia due to the many complex legal procedures. Indonesia reorganized its laws and regulations to improve legal standards. All new laws must comply with Regional Regulation Law No. 12 of 2011 as amended by Law No. 15 of 2019 or Law Amendment Law No. 12 of 2011. In the process of forming laws, the legal omnibus method must be adjusted to several theories, such as the theory of legal dualism and the theory of legal transplantation. However, during the process of drafting laws in Indonesia, there are several contradictions in people's lives. The city government immediately considered an omnibus law. President Joko Widodo hopes that the draft omnibus law will be completed within one month. The main goal of the Omnibus Law, however, is to make the life of investors in Indonesia easier and more enjoyable¹⁴.

In addition, the Job Creation Law does not involve environmental activists, labor unions, and other community groups that have a direct relationship with the Omnibus Law's products. Basically, political action must be based on the legitimacy of the people or democracy. As a result, every legislative policy and development must meet the objectives of the three basic laws. The law has three reasons: justice, convenience, and certainty (Poerwadarminta, 1986). The entire community must be involved when the bill is made to create jobs. In addition, in accordance with Article 96 of Law Number 12 of 2011, the state must create a path to communicate the involvement of its people and the platform it ¹⁵chooses. Because the mechanism is unclear, public participation is only considered a legal

¹⁴ M. Munawar, M. Marzuki, and I Affan, "Analysis in the Process of Forming the Job Creation Law from the Perspective of Law Number 12 of 2011 concerning the Formation of Laws and Regulations," *Scientific Journal of Metadata* 3, Number 2 (2021): 452-68.

¹⁵ I. K. S. Atmika, I. N. Budiarta, and I A. P. Widiathi, "Juridical Analysis of Omnibus Law in the Preparation of the Job Creation Bill," *Journal of Legal Construction* 2, Number 3 (2021): 622-27.

requirement. As the main subject of law, the community must be involved. The community must be involved in setting policies before there is legislation.

When drafting the Job Creation Bill, it is necessary to keep in mind Law Number 12 of 2011, which regulates the formation of laws. Due to unusual writing techniques in Indonesia, the preparation process caused a lot of chaos in the social order. Regulation Number 12 of 2011 concerning planning, preparation, discussion, endorsement, and publication regulates the process of making products regulated in the law. The Job Creation Law was made to avoid a technocratic process because it is very closed and made without public participation. Instead, it relies more on the involvement of politicians and businessmen. Nonetheless, planning and preparation are essential in the making of regulations and laws because the drafting and planning of these laws are technically based on specific political and legal objectives¹⁶.

The Constitutional Court has determined the Job Creation Law as partially formally and unconstitutionally flawed. The process of making the Job Creation Law, which began with a discussion of mutual agreement and ended with the ratification of the President on November 2, 2020, was assessed by the panel of judges of the Constitutional Court for violating the principle of good law-making and Article 20 Paragraph 4 of the 1945 Constitution. An example is Legislation Number 12 of 2011, which was amended by Regulation Number 15 of 2019, concerning Laws and Regulations required by Article 22A of the 1945 Constitution. These factors include ease, usability and efficiency, clarity of design, transparency and changes to the Employment Law, and the number of pages and content mentioned here.

One of the reasons for the public movement against the Omnibus Law is that the provisions in it are detrimental to workers. The drafting and ratification of the Job Creation Law has experienced many controversies and criticisms. According to the opposition, the content of the Job Creation Law

¹⁶ F.A. Sikumbang, S.M., Sjarif and M.Y. Salampessy, *Introduction to Legal Science*, 2013.

raises concerns, the formulation and discussion process is considered not transparent, and its ratification is considered too fast. The government did nothing because of the many rejections in the community. Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation, published in the Statute Book of the Republic of Indonesia Number 245 of 2020, was approved by the House of Representatives of the Republic of Indonesia on Monday, October 5, 2020.

Because of its non-transparent and inclusive implementation, the Job Creation Law is considered a bad legislative practice and violates democracy. Although the DPR faction at that time had not yet completed the Problem Inventory List (DIM), the DPR immediately formed a committee after the debate on the Job Creation Law at the first working meeting. This is a terrible and cruel precedent in the Job Creation Law. According to article 151 (1) of the DPR regulations, a working committee (Panja) is formed after the working meeting ends. In addition, in accordance with Article 154(1) of the agenda of the DPR, the bill material discussed in the working meeting must be in accordance with the work procedures of each DPR or DPD faction if the bill is related to their expertise.

Article 5 of Law Number 12 of 2011, as amended by Law Number 15 concerning Good Legislative Principles, and Article 6 of Law Number 12 of 2011, as amended by Law Number 15 of 2019 in conjunction with Amendments to Law Number 12 of 2011, states that the basic principles of law are protection, humanity, citizenship, family, archipelago, balance, harmony, and order and legal certainty. In reality, the principles underlying formal and substantive laws were ignored when the Job Creation Law was implemented. An example is the principle of conformity of type, hierarchy, and content¹⁷.

Not only are laws considered good because they meet the basic requirements and procedures for the formation of laws, but also because they

¹⁷ Atmika, Budiarta, and Widiati, "Juridical Analysis of Omnibus Law in the Preparation of the Job Creation Bill."

meet the theoretical standards of law-making. Two categories of theories that are good for the preparation of laws and regulations are Adolf Merkel's two-faced theory and Hans Kelsen and Hans Nawiasky's tiered norm theory. This two-faced theory argues that the legal norms above create the legal norms below; Instead, the legal norms under it create legal norms on them. This results in a situation where a previously applicable rule determines the currently applicable rule. Basically, the rules that follow it will also be removed. The theory developed by Hans Nawiasky and Hans Kelsen is known as the theory of the hierarchy of laws and regulations.

The two-faced theory put forward by Adolf Merkel¹⁸, that higher standards form the standards below him, has been applied in the Job Creation Law. This is shown in the Job Creation Law, which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia. This is also the basis for regulations under it, such as ministerial regulations, presidential regulations, and regional regulations (provinces, districts, cities). Although the Job Creation Law is largely based on the 1945 Constitution of the Republic of Indonesia, there are still inconsistencies with Article 20 paragraph (4) of the 1945 Constitution and the constitutional principles outlined in Articles 5 and 6 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, as amended by Law Number 15 of 2019 concerning the Law on the Formation of Laws and Regulations Therefore, The Job Creation Law is considered a formal defect and is conditionally unconstitutional.

Hans Kelsen proposed the theory of tiered norms, which states that norms are hierarchical, with lower norms forming the basis and prevailing on the basis of higher ¹⁹norms. Up to the top level, which cannot be explored further, is hypothetical, fictitious, and is known as the basic norm or grundnorm. This norm is expected to be created by the community

¹⁸ Sikumbang, S.M., Sjarif and Salampeppy, *Introduction to Legislation*.

¹⁹ Sikumbang, S.M., Sjarif and Salampeppy.

collectively. In contrast, Hans Nawiasky found that theories about the level of national standards are divided into the following groups:

1. Group I: State Fundamental Standards, also known as State Fundamental Standards.
2. Group II consists of Staatsgrundgesetz, or basic rules of the state, and Group III consists of formal, statute, or formal statutes.
3. Group IV: Autonomous Rules and Regulations, or Autonomous Implementing Regulations and Rules

Hans Nawiasky's Theory of Stages focuses on the legal norms of the state; As a result, the Job Creation Law fulfills this theory. Here, the highest standards are Pancasila and the 1945 NRI Constitution, which is the basic standard of the state. According to Hans Nawiasky's theory, the Job Creation Law belongs to group III, which consists of formal laws, laws, or gesetz.

Due to its nature to revise and repeal various laws at once, it can be concluded that the Omnibus Law is a concept of rules that focuses on simplifying the number of laws. Nevertheless, regulatory disputes are a complex problem because not only are they excessive in number, but also due to the insynchrony of content materials, sectoral interests, and inconsistent public participation. The concept of Omnibus Law has the ability to change and delete various laws into a single law that can cover all aspects. The short formation process has the ability to replace dozens of laws with corresponding laws. Law number 12 of 2011 concerning the formation of legislation so far does not provide clear regulations. The principles of participation, transparency, and accountability must be put forward. To ensure that these principles are applied, Law No. 12 of 2011 concerning the Formation of Legislation must be revised. Then, the purpose of implementing the Omnibus Law is not only to boost the economy and encourage investment. Other sectors must be considered, especially the issue of corruption eradication and human rights. This is because economic and investment feuds are the sectors most

vulnerable to corruption and are most often involved in conflicts using the interests of the people.

One of the most controversial regulations in the Job Creation Law is Article 81 number 15 which amends article 59 paragraph (4) of Law Number 13 of 2003 concerning Manpower, which regulates further provisions on the type and nature of work, the period, and the deadline for the extension of the Fixed-Time Work Agreement (PKWT) which is regulated by regulations. Article 79 paragraph (2) letter (b) of the Job Creation Law stipulates that workers must be given one day of weekly rest for six working days in one week. Article 79 also eliminates the company's obligation to provide a two-month long-term break to workers who have worked for the company for six years. The worker wage policy was changed by the Job Creation Law. Article 81, number 24, the Job Creation Law replaces Article 88 of the Labor Law²⁰.

The number of workers in Indonesia increased both before and after the COVID-19 pandemic. The Indonesia government is attracting as many investors as possible into the country to overcome this problem. The more investment is invested by investors, the more jobs the community needs. This is in accordance with the statement made by Bahlil Lahadalia, Head of BKPM.

So far, investors who want to invest face many challenges and difficulties due to overlapping authorities in business licensing between the central and regional governments, as well as Ministries/Institutions (K/L), and the long process. As a result, the Job Creation Law was created to encourage investment by providing investors with the convenience of obtaining a business license. In addition, the government has implemented the Online Single Submission (OSS) system, which is managed by the One-Stop Integrated Service Center (PTSP) at BKPM. This system will eliminate the overlap between the central and regional governments because all licensing will be integrated.

²⁰ Hesti Kartikasari and Agus Machfud Fauzi, "Public Rejection of the Ratification of the Omnibus Law on Job Creation in the Perspective of Legal Sociology," *Doktrina: Journal of Law* 4, Number 1 (2021): 39–52, <https://doi.org/https://doi.org/10.31289/doktrina.v4i1.4482>.

Many people, especially those directly affected, reject the content of the Job Creation Law which was promulgated on November 2, 2020. In fact, a large number of community members and social groups staged demonstrations against this law. Workers reject the Omnibus Law on Job Creation because they are considered more on the side of companies as owners of production tools. There is a difference in social class between the proletarian worker and the bourgeois enterprise. In addition, the Omnibus Law on Job Creation, which aims to attract foreign investors, also causes divisions. Investors are considered to have the ability to acquire anything and have a big role in the economy because money shows a sense of human alienation. Since workers do not have the opportunity to make a lot of money, financially helpless workers will not have a major impact on economic activity.

After much controversy, the Job Creation Law was finally submitted for legal review to the Constitutional Court. The Panel of Constitutional Judges ultimately decided that Law Number 11 of 2020 concerning Job Creation (Job Creation Law) was legally flawed. This decision was made after various trial agendas. Thus, the Court determined that the Job Creation Law was unconstitutional because it was conditional. The Constitutional Court asked the legislature to make improvements within 2 (two) years from the decision. If no improvements are made within that period, the Job Creation Law will be declared permanently unconstitutional. In addition, the Constitutional Court asked the Government to suspend significant strategic policies and actions²¹.

They also asked that the Government not make new implementation regulations related to Law Number 11 of 2020 concerning Job Creation. The Constitutional Court Panel of Judges considered the Constitutional Court's decision to designate the Job Creation Law as conditionally unconstitutional to avoid legal uncertainty and greater consequences. Then, the Court considers how to balance the formal requirements for making a law that meets the

²¹ Chamdani Chamdani et al., "Analysis of the Position of the Job Creation Law after the Constitutional Court Decision Number 91/PUU-XVIII/2020," *Journal of Legal Panorama* 7, Number 1 (2022): 48-57, <https://doi.org/https://doi.org/10.21067/jph.v7i1.6963>.

elements of justice, legal certainty, and utility. In addition, it is important to consider the long-term goals of the establishment of the Job Creation Law. The trial was conducted by the Constitutional Court Panel of Judges independently and did not side with the government or the community who felt aggrieved.

After the Job Creation Law was ruled conditionally unconstitutional by the Constitutional Court, the government, through the Coordinating Ministry for Economic Affairs, immediately responded with three attitudes. First, the government respects and will comply with the Constitutional Court's decision. Second, the government refers to the Constitutional Court's decision which states that the Job Creation Law remains constitutionally valid until the two-year deadline given by the Constitutional Court. Third, the government emphasized that it will not issue new regulations of a strategic nature related to the Job Creation Law as decided by the Constitutional Court. As a result, the government believes that the regulations that have been made to implement the Job Creation Law remain valid.

C. CONCLUSION

According to the two-pronged theory put forward by Adolf Merkel, the Job Creation Law is related to the 1945 Constitution of the Republic of Indonesia and is the source of legal regulations such as ministerial decrees, presidents, and regional regulations. (City/Province/State). Hans Nawiasky's hierarchy theory was accepted by the Job Creation Law. The highest state standards are Pancasila and the 1945 Constitution of the Republic of Indonesia. Hans Nawiasky's theory states that the Job Creation Law belongs to group III, which means formula, law, or formal law.

According to the General Principles of Proper Government Implementation (AAUPB), haste in drafting the Job Creation Law may violate one of the normative principles, namely the principle of prudence. In practice, violations based on this principle will at least lead to a legal gap. The debate on the Job Creation Law appears to be exclusive rather than open. In short, the

process of drafting and ratifying Law Number 11 of 2020 concerning Job Creation, not Law No. 12 of 2011, as amended by Law Number 15 of 2019 Perppu, does not have legal force at the initial stage because it does not have a title, general provisions, and criminal provisions, which is also not in accordance with the method of drafting the law. It is also mentioned that the 1945 State Law of the Republic of Indonesia and Law Number 12 of 2011 are the basis of the Job Creation Law.

REFERENCE

Book

Sikumbang, S.M., Sjarif, F.A., and M.Y. Salampessy. *Pengantar Ilmu Pengetahuan Perundang-Undangan*, 2013.

Journal

Atmika, I. K. S., I. N. Budiarta, and I A. P. Widiati. “Analisis Yuridis Omnibus Law Dalam Penyusunan Rancangan Undang-Undang Cipta Kerja.” *Jurnal Konstruksi Hukum* 2, Nomor 3 (2021): 622-27.

Busroh, Firman Freddy. “Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan.” *Arena Hukum* 10, Nomor 2 (2017): 227-50.

Chamdani, Chamdani, Budi Endarto, Sekaring Ayumeida Kusnadi, Nobella Indradjaja, and Syafii Syafii. “Analisis Kedudukan Undang-Undang Cipta Kerja Setelah Putusan MK Nomor 91/PUU-XVIII/2020.” *Jurnal Panorama Hukum* 7, Nomor 1 (2022): 48-57. <https://doi.org/https://doi.org/10.21067/jph.v7i1.6963>.

Kartikasari, Hesti, and Agus Machfud Fauzi. “Penolakan Masyarakat Terhadap Pengesahan Omnibus Law Cipta Kerja Dalam Perspektif Sosiologi Hukum.” *Doktrina: Journal of Law* 4, Nomor 1 (2021): 39-52. <https://doi.org/https://doi.org/10.31289/doktrina.v4i1.4482>.

Mayasari, Ima. “Kebijakan Reformasi Regulasi Melalui Implementasi Omnibus

Law Di Indonesia.” *Jurnal Rechtsvinding: Media Pembinaan Hukum Nasional* 9, Nomor 1 (2020).

<https://doi.org/10.33331/rechtsvinding.v9i1.401>.

Munawar, M., M. Marzuki, and I Affan. “Analisis Dalam Proses Pembentukan Undang-Undang Cipta Kerja Perspektif Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan.” *Jurnal Ilmiah METADATA* 3, Nomor 2 (2021): 452–68.

Nur, Sholikin M. “Mengapa Kita Harus Berhati-Hati Dengan Rencana Jokowi Mengeluarkan ‘Omnibus Law.’” Accessed May 2, 2022.

<https://theconversation.com/mengapa-kita-harus-berhati-hati-dengan-rencana-jokowi-mengeluarkan-omnibus-law-126037>.

Putra, Antoni. “Penerapan Omnibus Law Dalam Upaya Reformasi Regulasi.” *Jurnal Legislasi Indonesia* 17, Nomor 1 (2020).

<https://doi.org/10.54629/jli.v17i1.602>.

Republik Indonesia. Undang-Undang Dasar 1945, 4 § (1945).

Sukananda, Satria. “Pendekatan Teori Hukum Progresif Dalam Menjawab Permasalahan Kesenjangan Hukum (Legal Gaps) Di Indonesia.” *Jurnal Hukum Ekonomi Syariah*, Nomor 2 (2018).

<https://doi.org/10.30595/jhes.v1i2.3924>.

Suratno, Sadhu Bagas. “Pembentukan Peraturan Kebijakan Berdasarkan Asas-Asas Umum Pemerintahan Yang Baik.” *E-Journal Lentera Hukum* 4, Nomor 3 (2017). <https://doi.org/10.19184/ejhl.v4i3.5499>.

Paper

Kartiko, G, L Djanjanto, and R A P Zandra. “... Di Bidang Investasi Sebagai Upaya Penyelesaian Regulasi Perizinan Dan Harmonisasi Peraturan Perundang-Undangan Di Indonesia.” Seminar Nasional Multi ..., Nomor September (2020).

Kemenkumham. Naskah Akademis RUU Tentang Cipta Kerja – Portal Resmi UU Cipta Kerja – Informasi Seputar UU Cipta Kerja. Accessed May 6, 2022. <https://uu-ciptakerja.go.id/naskah-akademis-ruu-tentang-cipta-kerja/>.

Yuliandri. “Laporan Akhir,” n.d.

Internet

“Kode Inisiatif: Pengesahan RUU Cipta Kerja Tidak Partisipatif, Langgar Asas, Hingga Inkonstitusional.” Accessed Dec 21, 2023.

<https://www.hukumonline.com/berita/a/kode-inisiatif--pengesahan-ruu-cipta-kerja-tidak-partisipatif--langgar-asas--hingga-inkonstitusional-lt5f7b4692c4104>.

Malika Nadisha, El. “UU Cipta Kerja Jangan Sampai Picu PHK Baru - Jurnal Gaya.” Accessed Dec 21, 2023. <https://jurnalgaya.pikiran-rakyat.com/bizz/pr-80804247/uu-cipta-kerja-jangan-sampai-picu-phk-baru>.

“PSHK Sampaikan Masukan Prolegnas Dan Omnibus Law - Pshk.or.Id.” Accessed Dec 21, 2023. <https://pshk.or.id/aktivitas/pshk-sampaikan-masukan-prolegnas-dan-omnibus-law/>.

Ramadhan, Fitra Moerat. “Demi Investasi Dan Daya Saing Global, Jokowi Usulkan Omnibus Law - Grafis Tempo.Co.” Accessed Dec 21, 2023. <https://grafis.tempo.co/read/1864/demi-investasi-dan-daya-saing-global-jokowi-usulkan-omnibus-law>.