

Review of Law Number 11 of 2020 on Job Creation: Constitutionality Test Based on Constitutional Court Decision Number 91/PUU-XVIII/2020

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ABSTRACT

This study conducts a normative legal analysis of Law Number 11 of 2020 on Job Creation (commonly referred to as the Omnibus Law), focusing on its constitutionality as assessed in Constitutional Court Decision Number 91/PUU-XVIII/2020. The research examines the legal and procedural foundations of the law's formation and evaluates whether it adhered to the standards set by the 1945 Constitution of the Republic of Indonesia. The Constitutional Court declared the law "conditionally unconstitutional," citing procedural violations such as insufficient public participation, lack of transparency, and post-ratification changes. This paper discusses the legal reasoning behind the Court's decision, the legislative implications of using the omnibus method, and the broader impact on Indonesia's legal and democratic processes. The findings emphasize the importance of constitutional compliance, legislative discipline, and meaningful public involvement in lawmaking to ensure legal certainty and democratic accountability.

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1. INTRODUCTION

Law Number 11 of 2020 concerning Job Creation, widely known as the Omnibus Law, represents one of the most ambitious legislative reforms undertaken by the Indonesian government in recent years. Enacted with the primary objective of stimulating investment, creating employment opportunities, and simplifying regulatory procedures, this law amends and combines provisions from dozens of existing laws into a single legal instrument. However, its formulation and implementation have been met with intense public criticism and legal

scrutiny, particularly concerning its constitutionality and democratic integrity. Critics argue that the legislative process was rushed and lacked transparency, raising questions about its adherence to democratic principles and legislative norms, which has resulted in widespread public protests and legal challenges questioning the law's legitimacy and impact on various sectors. Debates about the law's constitutionality have centered on the procedural soundness of its legislative process, including issues of transparency and representation [1], while legal hermeneutics analysis indicates that the law contradicts the philosophy of Pancasila

and the 1945 Constitution by prioritizing economic considerations over individual rights and dignity [2]. Although the law aims to enhance the investment climate by addressing regulatory bottlenecks and encouraging economic growth [3], it has also been criticized for diminishing labor protections, especially during the COVID-19 pandemic, by treating labor as a production factor rather than as individuals with inherent dignity [4]. Furthermore, the enactment has sparked substantial public unrest and demonstrations due to provisions seen as undermining workers' rights, social welfare, and environmental sustainability [5], with its implementation facing significant challenges across sectors such as investment, employment, and environmental governance [5].

The controversy surrounding the Job Creation Law reached a critical point with the submission of a judicial review to the Constitutional Court, resulting in the landmark Decision Number 91/PUU-XVIII/2020, in which the Court declared the law "conditionally unconstitutional" due to multiple procedural violations, particularly the absence of meaningful public participation and inconsistencies in the legislative drafting process [6]. This decision underscored the significance of constitutional compliance in the legislative process and introduced the concept of "conditional unconstitutionality," meaning the law remains in effect but must be revised within a specified timeframe to align with constitutional norms [7]. The Court mandated that the government and the House of Representatives amend the law within two years, signaling a push towards procedural accountability and democratic transparency. However, the ruling created legal ambiguities for lawmakers, as the law continued to apply despite its conditional status, requiring careful interpretation and implementation [7]. The decision emphasized the necessity of adhering to Law Number 12 of 2011, which governs legislative formation procedures, including transparency and public involvement [8]. Moreover, the ruling

brought attention to the legal and social repercussions of the law's formation, such as changes in severance pay and employment terms, which further ignited public protests and intense debates [8]. Despite these controversies, the Job Creation Law retained legal force during the two-year window provided for revisions, allowing the government time to address constitutional shortcomings [9].

This paper aims to review the constitutionality of Law Number 11 of 2020 through a normative juridical approach, focusing on the Constitutional Court's legal reasoning and the implications of its decision. The study explores whether the law's formation complied with the procedural and substantive requirements mandated by the 1945 Constitution of the Republic of Indonesia, particularly in light of the principles of transparency, accountability, and public involvement.

2. LITERATURE REVIEW

2.1 Normative Legal Analysis

Normative legal analysis is a key method for evaluating legal norms, statutes, and judicial decisions by assessing their alignment with higher legal standards, particularly constitutional principles, making it highly relevant for reviewing laws such as the Job Creation Law. According to Soerjono Soekanto and Sri Mamudji, normative legal research focuses on the study of written laws—including statutes, legal doctrines, and court rulings—to ensure they conform to established legal frameworks. This prescriptive approach outlines how laws should be applied and excludes non-legal materials from its analysis [10], using a doctrinal method to extract principles from legal texts [11]. Within this context, procedural norms refer to the fairness and due process of law-making [12], while substantive norms assess the law's content in light of constitutional values such as justice, equality, and public interest [12]. Applying this method to the Job Creation Law involves evaluating both its procedural validity and substantive

alignment with constitutional rights [13], allowing for a comprehensive review of its legal legitimacy and effectiveness.

2.2 The Concept of Constitutionality in Legislation

The constitutionality of a law is determined by its conformity to both the material and formal aspects of the Constitution, which includes ensuring that the law's content aligns with constitutional values and that its legislative process follows established democratic procedures. The material aspect pertains to the substance of the law, requiring alignment with constitutional norms such as democracy and human rights [14], while the formal aspect emphasizes the need for transparent, participatory, and democratic law-making processes to reflect the people's will [15], [16]. The Constitutional Court plays a critical role in assessing both these dimensions, evaluating laws based on their content, structure, and adoption procedures to ensure they meet constitutional standards, and it holds the authority to annul any legislation that contravenes the Constitution, with its decisions binding on all legal institutions [14]. Additionally, the principle of legal certainty is central to the rule of law, demanding that laws be clear, understandable, and predictable to ensure individuals can determine what is permitted or prohibited, thereby fostering public trust in the legal system [17].

2.3 The Omnibus Law Approach

The application of the omnibus law technique in Indonesia, particularly through Law Number 11 of 2020 on Job Creation, has generated considerable debate regarding its implications for democratic governance and legal certainty. While intended to streamline regulations and stimulate investment and employment, this legislative model has been criticized for procedural deviations and potential threats to constitutional safeguards. The constitutionality of the omnibus law has been challenged due to its departure from legislative procedures mandated by Law Number 12 of 2011 [18], with concerns over the lack of transparency and inadequate

representation in the law-making process, raising questions about its democratic legitimacy [1]. Substantively, the law amended 81 existing laws and repealed 2, resulting in 47 Government Regulations and 4 Presidential Regulations [19]. However, critics argue that instead of simplifying regulation, the omnibus method complicates legal harmonization and may increase the regulatory burden [19]. From a philosophical perspective, legal positivism requires formal legal recognition of the omnibus approach, while legal realism justifies its use to resolve overlapping regulations [20]. In comparative contexts such as the United States and Canada, the omnibus method underscores the necessity of public participation to prevent undemocratic outcomes [21], further emphasizing the importance of transparency and inclusivity in Indonesia's legislative processes.

2.4 Constitutional Court and Judicial Review

The Constitutional Court of the Republic of Indonesia plays a crucial role in upholding constitutional supremacy by reviewing laws for compliance with the 1945 Constitution, as outlined in Article 24C [22], [23]. This was evident in Decision Number 91/PUU-XVIII/2020, which declared the Job Creation Law conditionally unconstitutional due to procedural flaws, especially the lack of meaningful public participation and adherence to legislative norms [6]. The Court ordered revisions within two years while allowing the law to remain temporarily effective, balancing urgent legal needs with long-term constitutional alignment. This decision marked a significant step in reinforcing procedural integrity, transparency, and public involvement in legislation, while also advancing the protection of procedural rights and the rule of law [6]. By ensuring legal certainty and due process, the Court helps prevent violations of constitutional rights [24], reaffirming its role as guardian of the Constitution and protector of citizens' rights against unconstitutional state actions [22], [23].

2.5 Previous Studies

The Job Creation Law in Indonesia has been the center of intense debate, particularly regarding its formal constitutionality and consistency with Constitutional Court rulings. Although the law was introduced to boost economic growth and reduce unemployment, it has faced criticism for allegedly bypassing constitutional procedures and neglecting fundamental rights. The Constitutional Court Decision No. 91/PUU-XVIII/2020 declared the law conditionally unconstitutional, mandating revisions with meaningful public participation. However, the subsequent issuance of Government Regulation in Lieu of Law (PERPU) No. 2 of 2022—later enacted as Law No. 6 of 2023—was criticized for failing to fulfill this requirement [25], [26]. While the PERPU was justified on grounds of economic urgency due to COVID-19, many questioned its necessity, as it did not resolve the substantive justice concerns previously identified by the Court [26], [27]. Economically, the law supports national development by targeting unemployment and investment, yet its implementation has been seen as favoring economic agendas at the expense of environmental sustainability and labor protections [28], [29]. As a result, the law's adoption through what is perceived as a legal shortcut has raised serious concerns about its adherence to the rule of law and the constitutional integrity of Indonesia's legislative process [25], [27].

2.6 Conceptual Framework

Based on the literature reviewed, this study is grounded in three interrelated concepts: (1) the constitutional principles governing legislative processes, (2) the doctrinal limits of the omnibus legislative technique in Indonesia, and (3) the judiciary's function as the guardian of the Constitution. These frameworks guide the normative analysis in evaluating the Job Creation Law's validity and broader implications for constitutionalism in Indonesia.

3. METHODS

This research adopts a normative legal approach, which focuses on the study of legal norms and principles found in legislation, legal doctrines, and jurisprudence. As explained by Peter Mahmud Marzuki (2005), normative legal research does not examine empirical data but instead relies on library materials such as legal literature, statutory regulations, and court decisions to build legal arguments and interpretations. The study employs two main approaches: the statute approach and the case approach. The statute approach (*pendekatan undang-undang*) involves examining the vertical and horizontal harmonization of Law Number 11 of 2020 on Job Creation with the 1945 Constitution and other relevant statutes, especially in light of the procedures outlined in Law Number 12 of 2011 on the Formulation of Laws and Regulations (as amended by Law Number 15 of 2019). The case approach (*pendekatan kasus*) includes a detailed analysis of Constitutional Court Decision Number 91/PUU-XVIII/2020, focusing on the Court's legal reasoning, its interpretation of constitutional norms, and the decision's implications for Indonesia's legislative process.

The research utilizes three types of legal materials. Primary legal materials include the 1945 Constitution, Law Number 11 of 2020, Law Number 12 of 2011 (as amended), and Constitutional Court Decision Number 91/PUU-XVIII/2020. Secondary legal materials consist of scholarly articles, textbooks, legal commentaries, and academic writings discussing constitutionality, judicial review, public participation, and the omnibus law technique. Tertiary legal materials, such as legal dictionaries, encyclopedias, and indexes, are used to support the understanding of legal terminology and concepts. These materials are gathered through a literature study (*studi kepustakaan*), involving systematic documentation and analysis of legal texts and jurisprudence from authoritative sources, including government publications, academic

journals, and Constitutional Court databases. The analysis combines prescriptive and interpretative methods: the prescriptive aspect constructs legal arguments on appropriate responses to constitutional deficiencies identified by the Court, while the interpretative aspect explores the meaning of legal provisions in the context of constitutional principles like the rule of law, public participation, and checks and balances. The overall normative analysis highlights the need for legislative consistency with the Constitution and identifies deviations or contradictions in the law-making process of the Job Creation Law.

4. RESULTS AND DISCUSSION

4.1 Procedural Flaws in the Formation of Law Number 11 of 2020

Law Number 11 of 2020 was enacted using the omnibus legislative technique with the intention of streamlining regulatory frameworks to attract investment and enhance the ease of doing business in Indonesia. However, the law's formation process faced intense criticism for allegedly bypassing standard legislative procedures and lacking public transparency. The Constitutional Court, upon review, identified several procedural violations that ultimately led to the law being declared conditionally unconstitutional. Chief among these was the failure to ensure meaningful public participation, as required by Law Number 12 of 2011, where public hearings were limited, rushed, and did not adequately represent key stakeholders such as labor unions and environmental groups [8], [30]. The Court also found that there were textual changes made to the law after its ratification, which were neither disclosed to the public nor subjected to further legislative deliberation, violating the principle of legal certainty [18]. Additionally, the structure and language of the law were deemed inconsistent and unclear, due to the merging of various legal provisions from different sectors, which created legal ambiguity and uncertainty [18].

These findings underscored fundamental flaws in the legislative process and highlighted a broader concern regarding the erosion of constitutional values such as transparency, accountability, and democratic participation. The lack of genuine public involvement weakened the legitimacy of the law and deprived affected groups of a platform to voice their concerns [8]. The undisclosed post-ratification modifications further exacerbated perceptions of opacity and weakened public trust in the legislative process. Moreover, the legal incoherence stemming from the omnibus format posed challenges for interpretation and implementation, undermining the law's intended effectiveness [18]. Collectively, these procedural and substantive deficiencies not only reflected poor legislative practice but also served as the basis for the Constitutional Court's ruling that the enactment of the Job Creation Law failed to align with core constitutional principles, thus mandating revisions within a specified timeframe.

4.2 Constitutional Court's Legal Reasoning in Decision Number 91/PUU-XVIII/2020

The Constitutional Court's decision to declare Law Number 11 of 2020 "conditionally unconstitutional" reflects critical constitutional concerns regarding procedural justice and the integrity of the legislative process. While the law remains temporarily valid, the Court mandated that it must be revised within a two-year period; otherwise, it will be deemed permanently unconstitutional. This ruling was grounded in the Court's interpretation that the Job Creation Law violated the public's constitutional right to meaningful participation, as guaranteed by Articles 28C and 28D of the 1945 Constitution [6]. The Court emphasized that lawmaking must uphold not only substantive results but also procedural fairness, marking a significant advancement in the protection of procedural rights and democratic values in Indonesia. Additionally, the Court found that the law's formulation failed to comply with the systematic principles and hierarchical structure mandated by Law Number 12 of

2011, further undermining its formal validity [31].

Beyond addressing the immediate flaws in the Job Creation Law, the Court's decision serves as a broader constitutional directive for legislative reform. It highlights the necessity for more transparent, inclusive, and accountable legislative practices in the future [7]. Moreover, the ruling introduced an important legal precedent by stating that any adoption of the omnibus legislative technique must be explicitly regulated by statute. This led to the revision of Law Number 12 of 2011 and the enactment of Law Number 13 of 2022, which formally accommodates the omnibus method within Indonesia's legal drafting framework [32], [33]. Thus, the Court's decision not only addressed specific procedural violations but also initiated a structural correction within the national legislative system, signaling a commitment to upholding constitutional norms and reinforcing the rule of law.

4.3 Implications of the Decision on Legal Certainty and Democratic Governance

The Constitutional Court's decision carries far-reaching implications for legal certainty, legislative discipline, democratic participation, and the framework surrounding the omnibus law technique. Legal certainty, a core tenet of the rule of law, ensures that individuals and businesses can understand, anticipate, and rely on the legal environment, which is essential for fostering business confidence and regulatory compliance [34], [35]. The Court's ruling exposed the dangers of undermining this certainty through a rushed and opaque legislative process, which can deter investment and complicate legal planning [36], [37]. Furthermore, the verdict calls for greater legislative discipline by urging lawmakers to improve internal procedures and strictly adhere to the constitutional and statutory framework, thereby reducing risks associated with ambiguous or inconsistent lawmaking practices [36], [38].

Equally important is the Court's reaffirmation of democratic participation as a substantive—not merely procedural—

requirement in lawmaking. Public involvement must be meaningful, inclusive, and transparent to ensure that legislation reflects the will of the people and maintains legitimacy in the eyes of civil society [36]. This strengthens democratic governance and reinforces public trust in legal institutions. Lastly, the decision provides a framework for the continued use of the omnibus law technique, stating that while the method may be retained, it must rest on a clear legal foundation and incorporate procedural safeguards to ensure alignment with constitutional norms [36]. This balances the need for efficient and comprehensive legislative reforms with the imperative of upholding legal certainty, transparency, and the principles of constitutional democracy.

4.4 Government's Response and Revisions

In response to the Constitutional Court's ruling, the government enacted Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011, which formally recognizes the use of the omnibus legislative method. This amendment was intended to address one of the Court's key criticisms by providing a clear legal foundation for drafting laws that consolidate multiple regulations. The omnibus method, previously foreign to Indonesia's civil law tradition, is aimed at increasing legislative efficiency by merging overlapping statutes [39], [40]. However, while the formalization of this method represents a structural shift in the legislative framework, it has also raised concerns over the need for continued oversight to ensure alignment with constitutional principles and to prevent misuse [40]. Despite these reforms, the legislative process still struggles with meaningful public engagement. Law Number 13 of 2022, although recognizing public participation, tends to treat it as a right rather than an obligation, thereby failing to institutionalize genuine civic involvement [41].

To comply with the Court's mandate, the government and legislature also revised and re-promulgated the Job Creation Law through Law Number 6 of 2023. While the

revision was presented as a corrective measure, it has been widely criticized for not fully addressing the Constitutional Court's requirements—particularly with regard to the standard of meaningful public participation. Critics argue that the process remained rushed and opaque, lacking the transparency and inclusivity emphasized by the Court [42]. Many stakeholders, especially labor and environmental groups, felt excluded from substantive deliberations. Moreover, the revised law has sparked concern over the continued reduction of workers' rights, suggesting that the amendments did not sufficiently protect labor interests or ensure substantive justice [26], [42]. As a result, despite the formal adjustments, the legitimacy of the revised Job Creation Law remains contested in both legal and public domains.

4.5 Academic and Public Reactions

Academics and civil society organizations remain divided over the revised Job Creation Law. While some consider it a step toward legal refinement, others contend that core procedural and substantive deficiencies remain unaddressed. Key concerns include the limited consultation with labor unions and environmental organizations, the persistence of ambiguous and investor-centric provisions, and the lack of transparency in both the drafting and dissemination of the revised version. These criticisms highlight the ongoing tension between Indonesia's economic policy objectives and the need to uphold constitutional-democratic processes.

5. CONCLUSION

Law Number 11 of 2020 on Job Creation, while aimed at promoting economic growth and regulatory simplification, was enacted through a legislative process that failed to meet essential constitutional standards. The Constitutional Court, in Decision Number 91/PUU-XVIII/2020, declared the law conditionally unconstitutional due to procedural flaws, notably the lack of inclusive public participation and violations of established legislative norms. This ruling underscores the fundamental principle that legislative processes must uphold not only substantive outcomes but also procedural justice. The study concludes that the government and legislature must reinforce their commitment to procedural integrity, transparency, and public involvement throughout all stages of lawmaking. Furthermore, if the omnibus legislative method is to be continued, it must be grounded in a clear legal framework and applied with caution to prevent erosion of democratic principles and legal certainty. Moving forward, the lessons from this case should serve as a guide for reforming Indonesia's legislative practices, ensuring that all laws—regardless of their economic or political relevance—are developed in full alignment with constitutional mandates and the principles of the rule of law.

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