

## Constitutional Dynamics of Employment Copyright Law in a Legal Sociology Perspective

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### Abstract

The Constitutional Court on November 25 2021 in its decision stated that Law Number 11 of 2020 concerning Job Creation must be declared conditionally unconstitutional. The government then made improvements through Government Regulation Number 2 of 2022 concerning Job Creation which was then promulgated with Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Law Number 2 of 2022 concerning Job Creation into Law. In principle, the existence of law is to create order and order in society, this is in direct contrast to the process of drafting the Job Creation Law which was filled with various criticisms and efforts to prevent a quo Law from being passed by the Government and the House of Representatives. Sociology of Law views that society must have access to justice. Law refers to a rule of life that is in accordance with the ideals of living together, namely justice. An order in which only the public interest takes priority, namely the participation of everyone in the idea of justice will be achieved perfectly.

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## 1. INTRODUCTION

The Indonesian Constitution expressly states in Article 1 paragraph 3 that Indonesia is a country based on law. The law as the supreme commander is basically created to create order and regularity in the life of society, nation and state. Law as a system should operate like a series of social organs that must complement each other and have a high awareness of the applicable laws.

In Weber's view, law is an order that is coercive because the establishment of that legal order (different from other social orders and norms that are not law) is fully supported by the coercive power possessed by the state. Humans who live in society, inevitably, in their developmental stages of life, will always be faced with applicable rules or laws. Existing norms in society include norms of politeness, decency, religion and law.

The thing that becomes a reference in the objective reality of society which originates from the creation of applicable rules or sanctions from the State or government is at the legal level. The law is firm and coercive when it aims to create order and peace in the social order. The laws that exist in society are laws that are used to regulate cases of rationality, that is, they are empirical, not speculative. If the law is enforced with justice, the law will be upheld in society. The law does not look at social classes, it is society's awareness of law that will determine the course of law enforcement in Indonesia.

Next, statutory regulations as one of the legal norms in the process of their formation, when examined in the concept of a rule of law, are based on several reasons, namely, first, one of the elements of a rule of law is that every action of the government/administration must be based on the applicable laws and regulations. The state is not organized based on the sole will of the ruler, but the state is governed based on laws that have been made and

provided previously and the ruler is subject to these laws.(Rahardjo, 2009)This is emphasized that Indonesia is a country based on *rechstaat*, not *machstaat*.

Second, the Government has broad authority to actively participate and intervene in all socio-cultural and economic fields. With such broad government authority, if it is not protected by good and fair legal rules, as well as strict monitoring of the use of authority, it could lead to arbitrariness by the government.(Jalaluddin, 2011)Thus, the existence of laws will prevent this arbitrariness from occurring.

Third, in general, the purpose of forming legislation is to regulate and organize life in a country so that people governed by law obtain certainty, usefulness and justice in state and social life. Therefore, one of the main pillars in the administration of a rule of law state is the formation of laws and regulations that are good, harmonious and easy to implement in society.(S, 2007)

Recently, it appears that the crucial problem faced by the Indonesian nation is the low level of public trust in the government and the People's Representative Council in terms of making laws and regulations. People from various elements often take to the streets to carry out demonstrations to prevent the passing of laws and regulations that are being discussed by the Government and the House of Representatives, such as during the ratification of the Job Creation Law.(Amindoni, 2024), Sexual Violence Elimination Act(CNN Indonesia, "PKS Bill, Women Demonstrate DPRD in Bandung and Palembang. , 2023), Criminal Code(Tempo, "Chronology of Student Demonstrations at the DPR Rejecting the Criminal Code Bill". , 2023), to the point that various implementing regulations are also often the target of criticism from community groups and their ratification is opposed.

Of course, then, the fundamental issue that must be answered is how to create laws and regulations that reflect the will of the people, the need for a sense of justice and legal certainty for society. This is important to pay attention to so that the legislation that is born can create order and regularity in the life of society, nation and state. Without support from the community, the law's implementation will be ineffective, and will even result in the emergence of resistance from the community, both through constitutional channels and other channels permitted by the Constitution as a form of freedom to express opinions and community control over the actions of the parties involved. powerful.

The constitutional route that can be taken for laws that are deemed not to be in accordance with the Constitution is through Judicial Review at the Constitutional Court. A judicial review was carried out on the Omnibus Law or Law Number 11 of 2020 concerning Job Creation. As a result, the a quo law was declared by the Panel of Judges as a conditionally unconstitutional legal product through Decision Number 91/PUU-XVIII/2020.(Constitutional Court of the Republic of Indonesia., nd)The Assembly stated that the formation of Law Number 11 of 2020 concerning Job Creation is contrary to the 1945 Constitution and does not have conditionally binding legal force, as long as it is not interpreted, improvements are not made within two years of this decision being pronounced. Thus, if a quo Law is not revised within two (2) years from the decision, then the Law will be declared unconstitutional and no longer valid. Based on this decision, the government then made improvements through Government Regulation Number 2 of 2022 concerning Job Creation which was then promulgated with Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.

Based on the background description above, the author will examine two (2) main issues, namely first, what are the constitutional dynamics of the Job Creation Law after it was declared conditionally unconstitutional by a Constitutional Court Judge through Decision Number 91/PUU-XVIII/2020, secondly what are the dynamics? constitutionality of the Job Creation Law in terms of legal sociology.

## 2. RESEARCH METHOD

This research is normative research, namely legal research that places law as a building block of a norm system. The norm system in question is about principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). (Achmad, 2010) The normative legal research that the researcher conducted in this research aims to provide legal arguments as a basis for determining whether an event is right or wrong and how the event should be according to the law. Normative legal research only stops at the scope of legal conceptions, legal principles and regulatory rules, not reaching the human behavior that applies these regulations. (Achmad, 2010)

In this writing, the paradigm used is a descriptive paradigm with a qualitative approach. The author will analyze using Habermas's theory, namely public space theory. This paper is a literature study type using references from national journals and using technical media literacy theory to support the results of the analysis. The data used in this research is secondary data. Secondary data used in this research was obtained from various written documentation such as journal articles, books, newspapers, or various internet information which had similar themes related to the Omnibus Law and the public's response to the Omnibus Law (Job Creation Law).

## 3. RESEARCH RESULTS AND DISCUSSION

### 3.1. Constitutional Dynamics of the Job Creation Law After It Was Declared Conditionally Unconstitutional by Constitutional Court Judges Through Decision Number 91/PUU-XVIII/2020

The fourth amendment to the Constitution of the Republic of Indonesia marked the birth of the Constitutional Court in Indonesia, which then initiated the birth of Law Number 24 of 2003 concerning the Constitutional Court. The existence of the Constitutional Court as the guardian of democracy, protector of the constitution and guardian of human rights is the final gateway for the Indonesian people to fight for justice. With such high expectations, a Constitutional Court judge is required, apart from having the ability to study law and integrity in enforcing it, to also be a statesman, namely a person who manages the country with authority and wisdom.

The specialty of the Constitutional Court as a court institution is that its decisions are final and binding. The final and binding nature means that the Constitutional Court's decision is the first and last decision and there is no legal space to review it again. The main function and role of the Constitutional Court is to safeguard the constitution in order to uphold the principle of legal constitutionality.

In order to protect the constitution, the function of reviewing laws can no longer be avoided in the Indonesian state administration because the 1945 Constitution emphasizes that the basis of the system is no longer the supremacy of parliament but the supremacy of the constitution. The Constitutional Court was formed with the function of ensuring that no more legal products will come out of the corridors of the constitution so that the constitutional rights of citizens are maintained and the constitutionality of the constitution itself is protected.

To test whether a law conflicts with the constitution or not, the agreed mechanism is a judicial review, which is one of the powers of the Constitutional Court. If a law or one part of it is proven to be inconsistent with the constitution, then the legal product will be cancelled. So that all legal products must refer to and must not conflict with the constitution. (Constitutional Court of the Republic of Indonesia, 2021)

Since the establishment of the Constitutional Court, the number of cases relating to judicial review that have been and are being heard in the period from 2003 to 2021 is

1,493 cases with decisions granting 278 cases, rejecting 529 cases, not accepting 482 cases, withdrawing as many as 147 cases, 23 cases failed and 10 cases were not authorized. The total number of cases that have been decided is 1,469 cases. (Constitutional Court of the Republic of Indonesia, 2021)

One of the cases that has really attracted the public's attention is the judicial review of Law Number 11 of 2020 concerning Job Creation or what is known as the Omnibus Law. Since the discussion process, the Job Creation Law has received a lot of criticism and rejection from the public, however, the Government and the House of Representatives have continued to pass the Job Creation Law. Since the passing of the Job Creation Law, the Government has completed 51 derivative regulations which are divided into on 47 government regulations and 4 presidential regulations. (Constitutional Court, 2021)

*Judicial Review* carried out after the passing of the Job Creation Law by 5 principals as plaintiffs, namely Hakiimi Irawan Bangkid Pamungkas, Ali Sujito, Muhtar Said, Migrant CARE, the Nagari West Sumatra Traditional Meeting Coordinating Board, and the Minagkabau Natural Customary Court on October 15 2020. Case This was decided by the Panel of Judges of the Constitutional Court with decision number 91/PUU-XVIII/2020 on November 25 2021.

In the lawsuit, the principal or applicant explains the legal standing and losses caused by the enactment of the Job Creation Law. In its considerations, it was stated that there was an unclear attitude of the legislators regarding the Job Creation Law, whether the Law was a New Law or an Amendment Law, then there was a quotation error as stated in Chapter VIII A concerning Fiscal Policy relating to taxes and levies. In the formulation of the article, the principle of "clarity of formulation" which states that every statutory regulation must meet the technical requirements for drafting statutory regulations, systematics, choice of words or terms, as well as legal language that is clear and easy to understand so as not to give rise to various interpretations, is not fulfilled.

Next, related to the principle of openness, during the trial it was also revealed that there were facts where the legislators did not provide maximum space for participation by the public. Academic texts cannot be easily accessed by the public.

Based on these considerations, the Assembly then firmly stated that the process of establishing the Job Creation Law did not comply with the provisions under the 1945 Constitution and therefore had to be declared formally defective.

Even though it was stated that the formation process was formally flawed, in subsequent considerations, the Assembly decided that the Job Creation Law was conditionally unconstitutional with the consideration that the Court had to balance the conditions for establishing a law with the strategic objectives of establishing the Job Creation Law. The Court is of the opinion that if the Job Creation Law is declared unconstitutional it will result in legal uncertainty in society because many implementing regulations have been issued and have been implemented in practice.

The verdict of the panel of judges in a quo case is as follows:

Judge

In the main application:

1. ...
2. ...
3. Declare that the establishment of Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to State Gazette of the Republic of Indonesia Number 6573) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding

- legal force as long as not interpreted as "no improvements have been made within 2 (two) years since this decision was pronounced";
4. Declare that Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to State Gazette of the Republic of Indonesia Number 6573) remains in effect until revisions are made in accordance with the time limits as determined in this decision;
  5. Order the legislators to make improvements within a period of no more than 2 (two) years from the pronouncement of this decision and if within this time period no improvements are made then Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement 417 to the State Gazette of the Republic of Indonesia Number 6573) becomes permanently unconstitutional;
  6. States that if within the 2 (two) year grace period the legislators cannot complete improvements to 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) then the law or articles or legal content that have been revoked or amended by Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to State Gazette of the Republic of Indonesia Number 6573) are declared to be valid again;
  7. Declare to suspend all actions/policies that are strategic in nature and have a broad impact, and that it is not justified to issue new implementing regulations relating to 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);

In its development, on March 21 2023, the legislators got around the Constitutional Court Decision No. 91/2020 by issuing Perppu Ciptaker which was then promulgated into Law no. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into law (the latest Ciptaker Law). The issuance of the Ciptaker Perppu is considered to be far from what the public expects, especially regarding meaningful participation as ordered by Constitutional Court Decision No. 91/2020.(Irawan, 2022)In fact, this decision should have strengthened the meaning of community participation in the formation of laws. In a democratic country, the most important thing is how to ensure wide participation space for all people in the formation of laws so that they are legitimate and get a positive response in their implementation.

Prior to the decision, the results of Saifudin's research were quoted by Siti Hidayati(Hidayati, 2019)shows that community participation is more often done in writing than orally in meetings. From this form of participation, it can be seen that there has not been a synergistic two-way communication between legislators and the public. The parties involved in the meeting are more closed in nature because they are not publicly published so that only interested parties who are invited are present at the Public Hearing/Hearing Meeting. Meanwhile, there are no provisions regarding what the interested parties will understand.

Law no. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into law and then declared constitutional by the Constitutional Court after a judicial review was carried out through MK Decision No. 40/PUU-XXI/2023, 41/PUU-XXI /2023, 46/PUU-XXI/2023, 50/PUU-XXI/2023, and 54/PUU-XXI/2023. Based on this test, the Job Creation Law was declared not to be in conflict with the 1945 Constitution of the Republic of Indonesia

### 3.2. Constitutional Dynamics of Job Creation Laws Viewed from Legal Sociology

The study of statutory regulations is a matter of written law. Sociological thinkers about law consider that written law contains many weaknesses, especially in terms of keeping up with current developments. Apart from that, written law only pursues certainty and ignores society's sense of justice which grows along with the development of society itself.

In contrast to the sociological thinking mentioned above, written law (legislative regulations) has advantages over unwritten law, because apart from the expected changes/behavior, it can be planned through the formation of statutory regulations. Also the changes/behaviors that are expected can be carried out quickly.

In essence, legislation aims to create order and peace for society. The essence of law is as it is, as stated by thought experts including:

1. Socrates argued that the essence of law (legislative regulations) is justice. Law functions to serve the needs of justice in society. Law refers to a rule of life that is in accordance with the ideals of living together, namely justice. In line with Socrates' opinion, Plato proclaimed an order in which only the public interest is prioritized, namely the participation of everyone in the idea of justice will be achieved perfectly. (Socrates, 1958)
2. Plato argued that law exists because of an agreement or contract. This agreement occurs solely because humans are social creatures, so there is always a desire to live in society. Law and state aim at order and security. Thus, according to them, the essence of law can be said to be for order and security. (Socrates, 1958)
3. Rousseau, the figure who put forward the theory of popular sovereignty, argued that the essence of law is the embodiment of the will or wishes of the people. Rousseau began his explanation by saying that the goal of the state is to uphold the law and guarantee the freedom of its citizens, in the sense of freedom within the limits of legislation. In this case, the formation of laws is the right of the people themselves to form them, so that the laws are an incarnation of the will or wishes of the people. (Socrates, 1958)

Based on a study of the nature of the existence of law as stated by the experts above, it is very clear that the birth of the Job Creation Law, the drafting process of which was full of arbitrariness, is a real violation that has been committed by the state against its people and is a form of arrogance of power. (Fauzi, 2021) This arrogance ultimately received a negative response from the public and the Constitutional Court as the guardian of the constitution in Indonesia.

If the principles for the formation of statutory regulations are accommodated properly and completely in the formation of statutory regulations, especially in the process of drafting the Job Creation Law, then the statutory regulations in question contain 3 (three) philosophical aspects, social aspects and juridical aspects. then the legislation in question will embody the essence of law (legislation) and get a positive response from the public.

Effective law is law that is in accordance with the regulations that have been made in law and law that is in accordance with the hopes or ideals of society. The existence of this law will create social order in society. Talking about law is very complicated, there is a measure of legal reality and legal ideal. Sometimes what has been stipulated in a law is not in accordance with the wishes of the community, or vice versa, the community wants a new law.

Changes in law in society can occur because it is felt to be very necessary, namely by the presence of regulations or norms that are appropriate to current conditions.

However, it is important that the legal changes do not conflict with the principles in the formation of statutory regulations so that their application will be legitimate in society.

#### 4. CONCLUSION

Based on the discussion above, the following conclusions can be drawn: first, in the process of forming laws, especially job creation laws, it is important to fulfill the principles of forming statutory regulations. It is important to accommodate community participation so that the law, once promulgated, gets support from the community so that it is effective. This can be seen, for example, from the formation of Law Number 11 of 2020 concerning Job Creation which was declared by the Panel of Judges to be a Conditionally Unconstitutional Legal Product through Decision Number 91/PUU-XVIII/2020. The government then made improvements through Government Regulation Number 2 of 2022 concerning Job Creation which was then promulgated with Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.

*Second*, from a legal sociology perspective, the Government and the People's Representative Council have failed to form laws that are ideal and in line with the hopes and ideals of society. The existence of the Job Creation Law has caused turmoil in society because the content and process of its preparation do not comply with the principle of transparency in drafting statutory regulations. After the constitutional court decision, community involvement in the formation of Law no. 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law also received a response from the public who then carried out a judicial review again, even though the Constitutional Court later declared a quo law constitutional.

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