# Legal Legality of the Job Copyright Law After the Ruling of the Constitutional Court

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**Abstract.** The Constitutional Court program has decided that the Job Creation Law Number 11 of 2020 is conditionally unconstitutional, which in the legal considerations of the Constitutional Court's decision explains that the process of forming the Job Creation Law is contrary to the 1945 Constitution. This research aims toknow how the Constitutional Court decides on the Job Creation Law and understand the legal implications of the enactment of the Job Creation Law. This type of research uses library research. The approach used is normative juridical. Data collection techniques use library research. The results of this research show that there is a need to improve the Job Creation Law through amendments or the formation of new laws involving active and substantial public participation. Based on the results of this research, it is hoped that it will become information and input for students, academics, practitioners, and all parties in need within the Faculty of Law, Pancasakti University, Tegal.

**Keywords:** Law, Legality, Job Creation.

**INTRODUCTION**

Government can run well and effectively if it is implemented in accordance with the principles and goals of the state. The aim of the Indonesian nation state is in accordance with the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. The aim of the Indonesian nation state is protection, prosperity, intelligence and peace. Protect the entire Indonesian nation and all of Indonesia's bloodshed, Promote general welfare, Make the life of the nation intelligent, Participate in implementing world order based on independence, eternal peace and social justice.

If the goals of the state have been achieved, government administration will run well. The implementation of a government has the aim of ensuring that the goals of national and state life can be carried out well, therefore legal certainty is very necessary to run the wheels of government in the constitutional system. For this reason, the government needs to focus on planning and forming laws and regulations that can create legal certainty and create justice for all citizens without discrimination.[[1]](#footnote-1)

The term omnibuslaw began to appear at the beginning of President Joko Widodo's inauguration for the 2019-2024 period, which was delivered during President Joko Widodo's inauguration speech before the People's Consultative Assembly of the Republic of Indonesia. President Joko Widodo at that time said that one of the work programs that the government would carry out was to simplify regulations. The simplification of regulations offered by the government is by using the omnibuslaw method, namely one law that simultaneously revises several laws.

The Omnibus Law on Job Creation. The government's proposed Job Creation Law has begun discussion since 17 December 2019. At that time, the Draft Job Creation Law was included in the 248 mid-term National Legislation Program for 2020-2024 which was passed by the House of Representatives. , the Government and the Regional Representative Council in the plenary session of the People's Representative Council.

At the same time, the Job Creation Bill was also passed in the 50 Priority National Legislation Draft Law for 2020.[[2]](#footnote-2)The process of designing and ratifying the Job Creation Bill was full of polemics and drew criticism from a number of groups. Some opposing groups are of the view that the substance of the Job Creation Bill has caused unrest, the formulation and discussion of the Job Creation Bill is considered not transparent and its ratification is considered too hasty.[[3]](#footnote-3)

In the midst of the pros and cons and various acts of rejection that are still taking place in society, the government together with the People's Representative Council of the Republic of Indonesia continue to ratify the Job Creation Bill in the plenary meeting of the People's Representative Council on Monday, October 5 2020, to become Law. Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law which is recorded as State Gazette of the Republic of Indonesia Number 245 of 2020.

The Constitutional Court has decided that the Job Creation Law Number 11 of 2020 is conditionally unconstitutional, which in the legal considerations of the Constitutional Court's decision explains that the process of forming the Job Creation Law is contrary to the 1945 Constitution. There are several important notes in the legal considerations of the Constitutional Mahamah's decision. First, there is the absence of meaningful community participation in the formation of the Job Creation Law. Second, the Job Creation Law is contrary to the procedures for the Formation of Laws regulated in Article 22A of the 1945 Constitution, which "delegates" the technical implementation to the Law on the Establishment of Legislative Regulations Number 12 of 2011 and Number 15 of 2011 In 2019, the Constitutional Court made history for the first time granting a request for formal judicial review of the 1945 Constitution.

After the Constitutional Court's decision, both the executive and legislative branches need to improve the process of public participation in the Job Creation Law. The public consultations that have been carried out to socialize the Job Creation Bill need to expand the reach of stakeholders and improve the methods. So that the public consultation runs effectively, and is able to absorb the aspirations of stakeholders, especially groups affected by the Job Creation Law.[[4]](#footnote-4)

Based on the concerns that have arisen among the public regarding the legislative process of the Job Creation Law, researchers are interested in conducting research entitled Legal Implications of the Legality of the Job Creation Law After the Constitutional Court Decision. Based on the background above, the author can formulate the problem as follows; How did the Constitutional Court decide that Job Creation Law Number 11 of 2020 was conditionally unconstitutional? What are the legal implications of the enactment of Job Creation Law Number 11 of 2020?

# Research purposes

 To find out how the Constitutional Court decided that the Job Creation Law Number 11 of 2020 was conditionally unconstitutional. To know and understand the legal implications of the enactment of the Job Creation Law.

# RESEARCH METHODS

The type of research used in this research is library research. Library research is data obtained through library research sourced from statutory regulations, books, official documents, publications and research results. This research is included as library research because the data used mostly uses secondary data in the form of legal documents.[[5]](#footnote-5)As well as the results of previous research from Surya Mukti Pratama, Adrian E. Rompis and R. Adi Nurzaman with the research title "The Authority of PTUN in Examining the President's Letter Regarding the Job Creation Bill and the Implications of Its Decision", Mailinda Eka Yuniza with the research title "Opportunities and Challenges in Implementing Fictitious Decisions Positive After the Job Creation Law Was Enacted” and Agus Suntoro with the research title “Progressive Implementation of Achievements in the Job Creation Omnibus Law”.

The problem approach is a process of solving or resolving problems through predetermined stages. The problem approach used in this research is normative juridical. The normative juridical approach is an approach through library research by reading, quoting and analyzing legal theories and statutory regulations related to the problems in the research.[[6]](#footnote-6)

The source and type of data used in this research is secondary data. Secondary data is data obtained by researchers through other parties or from existing sources. Secondary data is usually in the form of documentation data or report data that is already available. Examples of secondary data include legal documents, news publications, information media, reports from legal institutions, newspapers.[[7]](#footnote-7)

The data collection method used in this research is literature study. Literature study is a procedure carried out with a series of activities such as reading, studying and quoting from literature books as well as conducting a study of the provisions of laws and regulations related to the problem.[[8]](#footnote-8)

The analysis method used in this research is qualitative analysis. According to Soerjono Soekanto, qualitative data analysis is an analysis that produces descriptive analytical data, namely what is stated by respondents in writing or orally and also real behavior, what is studied is studied as a whole. This analysis emphasizes more on the process of deductive and inductive conclusions and analysis. towards the dynamics of the relationship between observed phenomena, with scientific logic. And emphasizes efforts to answer research questions through formal and argumentative ways of thinking.[[9]](#footnote-9)

**RESEARCH RESULTS AND DISCUSSION**

Constitutional Court Decision Regarding Job Creation Law Number 11 of 2020

In its implementation, the publication of the Job Creation Law received opposition from the public because the formation process was considered haphazard, for example the lack of public participation in drafting the Job Creation Law, technical administrative errors, errors in article references, differences in the number of articles and pages of the Law after passed by the House of Representatives, and is considered substantially detrimental to society, especially in relation to the employment sector.[[10]](#footnote-10)

In connection with this, the Job Creation Law has been reviewed several times by the Constitutional Court, both in the form of material and formal tests, including:[[11]](#footnote-11)

1. Constitutional Court Decisions Number 87/PUU-XVIII/2020, 101/PUU-XVIII/2020, 108/PUU-XVIII/2020, 3/PUU-XIX/2021, 5/PUU-XIX/2021, and 55/PUU-XIX /2021, is a material test;
2. Constitutional Court Decisions Number 91/PUU-XVIII/2020, 107/PUU-XVIII/2020, and 6/PUU-XIX/2021 are formal tests; And
3. Constitutional Court Decisions Number 103/PUU-XVIII/2020, 105/PUU-XVIII/2020, and 4/PUU-XIX/2021 which are material and formal tests.

 The review of the Job Creation Law was marked by various differences of opinion by the Constitutional Judges, so it is important to highlight several considerations of the Constitutional Court regarding the formal review case of the Job Creation Law as follows:[[12]](#footnote-12)

1. Regarding the deadline for submitting a formal review based on Constitutional Court Decision Number 27/PUU-VII/2009 which is also stated in Constitutional Court Decision Number 91, it is 45 (forty five) days after the law is published in the state gazette. Meanwhile, the Constitutional Court has a maximum time limit for conducting examinations of 60 (six) days after the case is registered in the constitutional case registration book based on Constitutional Court Decision number 79/PUU-XVII/2019.

 However, in the case of formal review of the Job Creation Law which was registered on 24 November 2020, the decision was only read out on 25 November 2021 because in its consideration the Constitutional Court was of the opinion that the Review of the Job Creation Law was still in the trial period at the time of Decision Number 79/2009 read so that these provisions are not yet binding on the Constitutional Court in examining the Job Creation Law, plus the Covid-19 pandemic has caused trials at the Constitutional Court to be temporarily stopped and there are cases of disputes over the results of regional head elections which require the Constitutional Court to temporarily stop all examinations of cases including cases a quo.

1. Regarding the use of the omnibus law method in forming the Job Creation Law, in its consideration the Constitutional Court is of the opinion that:
2. Apart from using the 1945 Constitution, the Law on the Establishment of Legislative Regulations must also be used as a basis for carrying out formal tests, as stated in the opinion of the Constitutional Court in Decision Number 27/PUUVII/2009. Therefore, the drafting of laws must be in accordance with definite, standard and binding procedures and methods that are binding on all authorized institutions.
3. The unclear form of the Job Creation Law is seen from the perspective of the title, where the procedure for giving the title has been regulated standardly in Attachment I to Law Number 12 of 2011, both in terms of new laws, amendments or revocations.
4. The formulation of the Job Creation Law creates confusion, because as a changing law, there is a separate formulation of principles, objectives and scope, which causes overlap which leads to ambiguity/confusion in reading and understanding the Job Creation Law. The Constitutional Court assessed that the principle of clarity of formulation required in the Law on the Establishment of Legislative Regulations was not fulfilled.
5. In the context of the Job Creation Law, it is not justified in the name of taking a long time to formulate the Law, to deviate from standard procedures and standards in order to achieve this goal. Because, in a constitutional democratic country, efforts to achieve goals cannot be made by violating certain, standard and standard procedures in the law formation process.
6. Regarding the omnibus law method which is not recognized in the Law on the Establishment of Legislative Regulations, the Constitutional Court emphasizes any technique or method that will be used by the legislators in an effort to simplify the Law, eliminate various overlapping laws, or Speeding up the process of forming laws is not a question of constitutionality as long as the choice of method is carried out within the corridors of definite, standard and standard guidelines and is stated in advance in the techniques for drafting statutory regulations so that they can serve as guidelines for the formation of laws that will use techniques or that method.

 This means that this method (omnibus) cannot be used as long as it has not been adopted in the law regarding the formation of statutory regulations. When comparing with Law Number 32 of 2004 concerning Regional Government and Law Number 7 of 2017 concerning General Elections, according to the Constitutional Court the character of the omnibus law method in the Job Creation Law is different from the establishment of Law Number 32 of 2004 and Law -Law Number 7 of 2017. This can be seen from the number of laws that were simplified, namely 78 laws with content that is different from each other and all the combined laws are still effective except for the amended articles. in Law Number 11 of 2020. By looking at these differences, the model for simplifying the law implemented by Law Number 11 of 2020 becomes difficult to understand whether it is a new law, an amendment law, or a repeal law.

1. Regarding changes in material content after approval of the Draft Law which were not merely technical in writing, including errors in quotations, the Constitutional Court was of the opinion that there were at least 8 (eight) articles spread across pages 151-152, 388, 390, 391, 374, 424, 492-494, which underwent substantial changes between the text before and after validation.

 Apart from that, the Constitutional Court also found that there was an error in referring to articles in the Job Creation Law, namely in Article 6 of the Job Creation Law which refers to Article 5 which should be used as a reference in Article 4 letter a. The Constitutional Court is of the opinion that this proves that there has been a citation error in referring to the article so that this is not in accordance with the principle of "clarity of formulation" which states that every statutory regulation must meet the technical requirements for the preparation of statutory regulations, systematics, choice of words or terms, as well as legal language that is clear and easy to understand so that it does not give rise to various kinds of interpretations in its implementation.

1. In relation to the Job Creation Law, it is contrary to the principle of clarity of purpose, the principle of efficacy and usefulness, the principle of clarity of formulation, and the principle of openness. The Constitutional Court is of the opinion that it has established legal facts that the procedures for establishing the Job Creation Law do not fulfill the principle of clarity of purpose and the principle of clarity of formulation.

Even though there are differences of opinion between the Judges, the opinion of the majority of Constitutional Court Judges determines that the Review of the Job Creation Law is declared conditionally unconstitutional as long as no changes are made for 2 (two) years.

Legal Implications of the Implementation of Job Creation Law Number 11 of 2020

Law Number 11 of 2020 concerning Job Creation has 11 clusters contained in it. The 11 clusters contained in the Job Creation Law are as follows:[[13]](#footnote-13)

1. Simplification of land permits
2. Investment requirements
3. Employment
4. Ease and protection of Micro, Small and Medium Enterprises (MSMEs)
5. Ease of doing business
6. Research and innovation support
7. Government administration
8. Imposition of sanctions
9. Land control
10. Facilitation of government projects
11. Special Economic Zone (KEK)

One of them regulates employment clusters. This cluster covers three laws which have been merged into one, namely Law Number 13 of 2003 concerning Employment. Law Number 40 of 2004 concerning the Social Security System and Law Number 24 of 2011 concerning the Social Security Administering Body. In these three laws, the Government is trying to align them so that they are in line so that in the future they can provide space for investors to review regulations that have been perfected so that investors do not need to worry about overlapping regulations which can cause losses and obstacles for investors themselves. .

Several things regulated in the Employment Cluster Job Creation Law are as follows:

1. Specific Time Work Agreement (PKWT)
2. Outsourcing of Work Agreements (Outsourcing)
3. Working time
4. Regency/City Minimum Wages (UMK) Remain Regulated
5. Job Loss Guarantee (JKP)
6. Foreign Workers (TKA)
7. Termination of Employment (PHK)

Employment Law is one of the clusters that attracts the government's attention because there are overlapping regulations regarding employment so that legal gaps often occur. There are many articles in Law Number 13 of 2003 concerning Employment which were revised through the Job Creation Law which has caused many parties to critically criticize the contents of the Job Creation Law. On the grounds that the rights of workers or laborers are harmed, however, deforestation actually increases, due to reduced environmental protection in Indonesia. In fact, as we know, there were massive demonstrations so that this law would be repealed.[[14]](#footnote-14)

In the Job Creation Law, there are several things that are rejected and have an impact on the welfare of workers/laborers, including: Wages, Outsourcing, Social Security for Workers (Jamsostek), Severance Pay, and Foreign Workers (TKA).

The following is a table of changes to the employment system in the Job Creation Law;[[15]](#footnote-15)

|  |  |  |
| --- | --- | --- |
| No. | Things that are rejected | Reason |
| 1. | Wages | The minimum wage system is eliminated, the wage system is hourly. if working hours are less than 40 hours/week then the wage is automatically below the minimum wage; |
| 2. | *Outsourcing* | There are no restrictions on outsourcing work, thus eliminating one's hope of becoming a permanent employee in the company; |
| 3. | Employment Social Security (Jamsostek) | Old age security and pension security are in danger of being lost; |
| 4. | Severance pay | Severance pay eliminated; |
| 5. | Foreign Workers (TKA) | Job opportunities in Indonesia have the potential to be filled by unskilled foreign workers. |

**CONCLUSION**

The position of the Job Creation Law remains in effect until improvements are made in accordance with a maximum time limit of (2) years, but the enactment of the Law (law in action) is of course through implementing regulations from the policies of the institutions authorized by the law.

Job Creation Law Number 11 of 2020, this Employment cluster is beneficial for all parties, namely for entrepreneurs, workers and more importantly for the Indonesian economy, but because of overlapping regulations regarding Employment, there are often legal gaps, there are many articles in Law Number 13 of 2003 concerning Employment which was revised through the Job Creation Law. In this case, there is a lot of resistance from workers or laborers so that the Employment Cluster Job Creation Law is revoked on the grounds that workers' or laborers' rights are being harmed.

Based on the explanation above, the Constitutional Court Decision Number 91/PUU-XVIII/2020 regarding the formal review of the Job Creation Law is final and binding on the community even though theoretically it contains a number of ambiguities and problems. Therefore, the House of Representatives needs to immediately make improvements to the Job Creation Law through amendments or the formation of new laws involving active and substantial public participation. Ineffective arrangements related to employment clusters need to be reviewed by prioritizing the interests of both parties. A regulation will not be possible if it does not reflect the legal needs of society.

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