

## INQUIRY OF LAW TO LAW NUMBER 11 YEAR 2020 CONCERNING COPYRIGHT IN PROTECTING THE RIGHTS OF WORKERS

SRI HARTINI,<sup>1</sup>ABDU RAHMAT ROSYADI,<sup>2</sup>DESTY ANGIE MUSTIKA<sup>3</sup>

Faculty of Law, Universitas Ibn Khaldun Bogor, Indonesia

Email: <sup>1</sup>Srihartinishmh.@gmail.com,<sup>2</sup>rahmat@uika-bogor.ac.id,<sup>3</sup>desty@uika-bogor.ac.id

**Abstract:** *This research will answer the lawsuit against Law Number 11 of 2020 concerning Job Creation, as part of the Omnibus Law which is considered not to meet the formal elements in the legal formation process based on Law Formal elements and the decision of the Constitutional Court on the application of the work copyright law which applies conditionally within 2 (two) years after the decision of the Constitutional Court to be corrected. If the copyright law is not amended during this time, it is considered unconstitutional. The problem that gives rise to lawsuits against the work copyright law is because there are changes to several articles that are considered detrimental to the legal rights of workers (laborers) in the event of unilateral termination of employment by employers without going through a process of dialogue and other conventions for the workers. The lawsuits were filed by the Petitioners with legal standing according to the law consisting of various elements of society, including the lawsuits from representatives of the workers. The lawsuit was submitted by the Petitioners to the Constitutional Court as the owner of the authority through Constitutional Court Decision Number 91/PUU-XVIII/2020. In the ruling, it is stated that Law Number 11 of 2020 concerning Job Creation is Contrary to the 1945 Constitution and does not have conditionally binding legal force. If within the time limit of 2 (two) work copyright laws and their articles or material content of the law are not processed in accordance with the principles of establishing laws and regulations, the work copyright law is declared permanently unconstitutional.*

**Keywords:** *Constitutional Court, lawsuits, job creation, workers' rights.*

### I. INTRODUCTION

After the inauguration of the President of the Republic of Indonesia on October 20, 2019, then in his inauguration speech President Joko Widodo conveyed the plan to implement the omnibus law with the House of Representatives of the Republic of Indonesia. In the speech, the President proposed two laws, namely the law on empowering micro, small and medium enterprises and the law on job creation. In the implementation of the omnibus law, especially those relating to the law on job creation, there have been many changes to articles that are considered to be detrimental to workers (laborers) because of the arbitrariness of employers in terminating employment relations without going through dialogue and other conventions. Changes to several articles in the work copyright law have led to demonstrations and a judicial review to the Constitutional Court.

In addition, there is also a misunderstanding in the community as if the terminology of omnibus law is something new in legal terms, even though in practice the laws and regulations in Indonesia have been applied under the name of legal codification. According to Jimly Asshiddiqie (2020: 15-16) that to reduce the potential for disharmony between laws and regulations, it can be done by making a codification system, omnibus law, or a statutory regulation that can amend other laws. This codification system or omnibus law is needed in the preparation of integrated legislation in order to harmonize with various other legal materials. In a unified state system, the law is always based on the constitution as the highest source of law. In Jimly Asshiddiqie's view, that the omnibus law is properly enacted in Indonesia, not only in the context of consolidating the rule of law in the business

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<sup>1</sup>Dr. Sri Hartini, SH, MH, Lecturer and Dean of the Faculty of Law – Ibn Khaldun University (UIKA) Bogor and the Bogor City Labor Consultancy.

<sup>2</sup>Dr. Drs. A. Rahmat Rosyadi, SH, MH, Postgraduate Lecturer at Ibn Khaldun University (UIKA) Bogor. Author of the book Formalization of Islamic Shari'a in the Perspective of Legal Order in Indonesia, published by Ghalia Jakarta..

<sup>3</sup>Desty Angie Mustika, SH, MH, Lecturer - Faculty of Law – Ibn Khaldun University (UIKA) Bogor. Doctoral Candidate in Legal Studies at the Doctoral Program in Legal Studies – Borobudur University, Jakarta.

sector, but also in the context of structuring the Indonesian legal system as a whole. This is because there is still a legal legacy from the Dutch East Indies era, for that normative consolidation of laws and regulations will be very helpful as an effort to reform national law.

In practice, the formation of laws and regulations in Indonesia so far, in fact, the omnibus law technique has been applied with the term codification. For example, in the practice of merging laws in Indonesia called omnibus law, with the enactment of Law Number 7 of 2017 concerning General Elections. This law is intended to amend and combine three laws at once, namely: 1) the Law on the Election of the President and Vice President; 2) Law on the Organization of General Elections; and 3) Law on the Election of Members of DPR, DPD, DPRD. In the preamble to the general election law, it is clearly stated that the three laws need to be unified and simplified into one law as a legal basis for simultaneous general elections in carrying out general elections. (Jimly Asshiddiqie, 2020: 69-70).

The legal lawsuit against Law Number 11 of 2020 concerning Job Creation is indeed not on the terminology of omnibus law but at the level of the process of forming a work copyright law that is not in accordance with legal principles with changes to articles that are detrimental to the workers and cause arbitrariness of the workers. employers in termination of employment. Until now, the execution of the decision on the work copyright law has not been completed, so it is feared that there will be a legal vacuum and stagnation in the judicial process if there is a legal dispute between the workers and employers. This research will focus on two questions. First, is the process of establishing a work copyright law in accordance with legal principles so that it is formally flawed? Second,

## II. RESEARCH METHODS

Research on changes to the job creation law is focused on two main issues as described in the questions in the introduction. This type of legal research is juridical-normative which places the law as the object of research. Juridical-normative research is also referred to by other terms as doctrinal research. Juridical-normative research is a legal research that examines library sources as the object of study or research target. In terms of binding strength, the library sources examined in a juridical-legal research are divided into three types of legal documents, namely primary legal sources, secondary legal sources and tertiary legal sources.

Primary legal documents have a stronger binding force than secondary law and tertiary law. Primary law is law in the form of statutory regulations established by the state or authorized law-forming bodies. The primary sources of law that become the object of research are: (i) the 1945 Constitution of the Republic of Indonesia; (ii) Law Number 13 of 2003 concerning Manpower; (iii) Law Number 12 of 2011 concerning the Establishment of Legislation; (iv) Law Number 11 of 2020 concerning Copyright; (v) Regulation of the Supreme Court Number 1 of 1999 concerning the Right to Test Materials; and (vi) Constitutional Court Number 91/PUU-XVIII/2020.

Secondary legal documents are law in the form of legal books and non-law books related to this research as well as written works in the field of law in the form of articles published in legal journals. Secondary law serves to explain the primary legal materials. While tertiary legal documents are laws in the form of legal dictionaries, legal encyclopedias and others. This tertiary legal document is a legal material that provides instructions and explanations for primary and secondary legal materials. Research data analysis is descriptive-qualitative to explain about Lawsuit against Law Number 11 of 2020 concerning Job Creation in protecting workers' rights.

## III. RESEARCH RESULTS AND DISCUSSION

### 1. The Process of Forming a Job Creation Law Has Formal Defects

The Continental legal system is a legal tradition that developed in Mainland Europe in the process of its formation, always prioritizing what is written in the form of statutory regulations as the main joint of the legal system, even the systematics that are attempted to be as complete as possible in a code of law/Codification. In the legal system there are legal principles in the formation of legislation that must be the attention of legislators, because legal principles are the heart of regulations. ( Bagir Manan, 1992: 6).

According to Satjipto Raharjo, the legal principle is the broadest basis for the birth of a legal regulation. This means that legal regulations can ultimately be returned to these principles, unless they are called foundations, legal principles deserve to be mentioned as reasons for the birth of legal regulations, or are ratio legis of legal regulations. The principle of law will not run out of power by giving birth to a legal regulation, but will still exist and will give birth to further regulations. (Satjipto Raharjo, 1986: 85).

According to Van der Vlies, various legal principles in the formation of laws, that legal principles consist of formal principles and material principles. The formal principles include: (i) The principle of clear objectives which includes three things, namely regarding the determination of the location of the legislation in the context of general government policies, the specific objectives of the regulations to be formed and the objectives of the parts to be formed; (ii) The principle of the right organ/institution, this is to confirm the clarity of the organ that stipulates the legislation; (iii) The principle of the need for regulatory arrangements. Is a principle that explains various alternatives as well as the relevance of the formation of regulations to solve government problems; (iv) The principle of enforceability is that the regulations made should be enforced effectively; and (v) the principle of consensus,

While the material principles include: (i) The principle of correct terminology and systematics, meaning that every regulation should be understood by the people; in obtaining legal services; (ii) The principle of equal treatment in law, this is to prevent unfair practices in obtaining legal services; (iii) The principle of legal certainty, meaning that the regulations made contain aspects of consistency even though they are implemented in different times and spaces; and (iv) The principle of implementing the law in accordance with individual circumstances, this principle intends to provide specific solutions for certain matters or circumstances concerning individual interests. (Sumali, 2002: 126-127).

The principles for the formation of laws according to Law Number 11 of 2012 concerning the Formation of Legislations, as stated in Article 5 as follows:

1. Clarity of purpose. The point is that every formation of legislation must have a clear goal to be achieved;
2. Appropriate institutions or forming organs. This means that every type of statutory regulation must be made by the authorized statutory-forming institution/official. Such laws and regulations may be canceled or null and void if they are made by officials/institutions who are not authorized;
3. Conformity between the type and the content of the content It means that in the formation of laws and regulations, it must really pay attention to the content of the right material with the type of legislation;
4. Can be implemented. Every formation of such laws and regulations in society, both philosophically, juridically and sociologically;
5. Usability and usability. That is, every statutory regulation is made because it is really needed and useful in the life of society, nation and state;
6. Clarity of formulation. That is, every statutory regulation must meet the technical requirements for the preparation of legislation, systematics and choice of words or terminology, and the legal basis is clear and easy to understand, so as not to cause various kinds of interpretations in its implementation;
7. Openness. That is, in the process of forming laws and regulations, starting from planning, preparation, preparation and discussions are transparent and open. Thus, all levels of society have the widest opportunity to provide input in the process of making laws and regulations.

Based on the principles of law formation as explained in Law Number 11 of 2012 concerning the Establishment of Legislations, it is stated in the decision of the Constitutional Court that the work copyright law is considered formally flawed because it is not in accordance with the principles in question. In the process of law formation through the omnibus law system, especially with regard to Law Number 11 of 2021 concerning Job Creation, has changed the articles contained in Law Number 13 of 2003 concerning Manpower. Likewise, the law has limited the determination of district/city

minimum wages and has been formulated based on inflation and economic growth. Substantial changes in the job creation law raise pros and cons from various circles of society, especially among workers (labor) which results in very high unemployment and layoffs.

The emergence of debates and sensitive issues by stakeholders, so this has led to demonstrations in various regions. This very basic change from the job creation law to the labor law has an impact on the lives of workers getting worse. Changes in Law Number 11 of 2020 concerning Job Creation, occur in Article 154 A paragraph (1) termination of employment may occur due to the following:

- a. The company merges, consolidates, takes over, or separates the companies and the worker/ laborer is not willing to continue the working relationship or the entrepreneur is not willing to accept the worker/ laborer;
- b. The company performs efficiency followed by closing or closing the company due to the company experiencing a loss;
- c. The company closed due to the company experiencing continuous losses for 2 (two) consecutive years;
- d. The company closed due to force majeure;
- e. The company is in a state of suspension of debt payment obligations;
- f. Bankruptcy company;
- g. There is a decision by the Industrial Relations Dispute Settlement Institution stating that the entrepreneur has not committed the act as referred to in letter g on the application submitted by the worker/laborer and the entrepreneur decides to terminate the employment relationship;
- h. The worker/labourer resigns of his own accord; and (i) The worker/labourer is absent for 5 (five) consecutive working days without a written statement accompanied by valid evidence and has been summoned by the employer 2 (two) times properly and in writing.

Changes to articles that are considered detrimental to workers and arbitrary actions on the part of employers that occur in the judicial process can be described in the legal standing for the constitutional losses of the claimants. The capacity of the applicant in accordance with Article 51 of the Law on the Constitutional Court states that the Petitioner is a party who considers his constitutional rights and/or authorities to be impaired by the enactment of the law, namely: (i) Individual Indonesian citizens; (ii) the head of the customary law community as long as it is still alive and in accordance with the development of society and the principles of the unitary state of the Republic of Indonesia as regulated in the law; (iii) Public and private legal entities; or (iv) State institutions.

The requirement to fulfill the legal position as an Petitioner is that the Petitioner in submitting an application to the Constitutional Court, must meet the requirements of Article 51 of the Law on the Constitutional Court, so that he is entitled as an Petitioner, in this case in accordance with the number registered with the Constitutional Court Number 91/PUU-XVIII /2020. Among them, there are 6 (six) representatives of the Petitioners as evidenced by the identities of various components of society who have complied with the legal provisions of the representatives: workers, students, lecturers, legal entities of labor organizations, legal entities of indigenous peoples associations, and legal entities of the Association of the Customary Court. .

The capacity of the Petitioners in submitting a judicial review of the Constitution, that the Petitioners' constitutional rights which could potentially occur in reasonable reasoning include:

- a. Article 28D paragraphs (1) and (2) of the 1945 Constitution: in paragraph (1): everyone has the right to recognition and fair and proper legal certainty in working relationships;
- b. Article 28C paragraph (1) of the 1945 Constitution: Everyone has the right to develop themselves through the fulfillment of their basic needs, the right to education and to benefit from science and technology, art and culture, in order to improve the quality of their life and for the welfare of mankind;
- c. Article 31 paragraph (1) of the 1945 Constitution: every citizen has the right to education;

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- d. The constitutional right to obtain the Job Creation Law must have legal certainty guarantees and receive fair and proper compensation and treatment in this employment relationship which is violated by the enactment of the Job Creation Act.

## 2. The Constitutional Court's Decision in Triing the Petitioners' Lawsuits

The decision of the Constitutional Court in adjudicating the lawsuits of the Petitioners against Law Number 11 of 2020 concerning Job Creation, is based on the authority of the Constitutional Court in adjudicating legal claims from the Petitioners who have legal standing as regulated in the following articles:

- a. Article 24 paragraph (2) of the 1945 Constitution states: judicial power is exercised by a Supreme Court and the Judicial Body under it in the General Courts, Religious Courts, Military Courts, State Administrative Courts, and by a Constitutional Court;
- b. Article 24C paragraph (1) of the fourth amendment to the 1945 Constitution states: The Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final to examine the Act against the Constitution, to decide on disputes over the authority of State Institutions whose authority is granted by the Constitution, to decide on political parties and to decide disputes regarding the results of the Constitutional Court. general election;
- c. Article 10 paragraph (1) letter 1 of Law no. 24 of 2004 concerning the Constitutional Court states: The Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final to examine the Act against the 1945 Constitution of the Republic of Indonesia.
- d. Article 29 paragraph 1 of Law no. 48 of 2009 concerning Judicial Powers states that the Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final to: (i) examine laws against the 1945 Constitution of the Republic of Indonesia; (ii) decide on disputes over the authority of State Institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia; (iii) decide on the dissolution of a Political Party; and (iv) decide on disputes over the results of the General Election.
- e. Article 51A paragraph (3) of the Constitutional Court Law states: in the event that the application for submission is in the form of a formal review request, the examination and decision made by the Constitutional Court is based on the laws and regulations governing the procedures for the formation of legislation.

Based on these facts, the Constitutional Court in prosecuting the Petitioners of the lawsuit against the Job Creation Act with the Constitutional Court Decision Number 91/PUU-XVIII/2020, as follows. The consideration of the Panel of Judges related to the applicant's argument has been considered by the Court in the previous legal considerations. 12 of 2020 concerning Job Creation does not meet the principle of clarity of purpose and the principle of clarity of formulation. Because of the norms of Article 5 letter a, letter e, letter f, and letter g of Law no. 12 of 2011 all principles are cumulative, so with only 1 (one) principle not being fulfilled, in the provisions of Article 5 of Law No. 12 of 2011 the process of establishing Law no. 11 of 2020. Thus,

With regard to the principle of openness in the trial, the facts revealed that the legislators did not provide maximum space for public participation. Even though various meetings with various community groups have been held in the minutes of the session on September 23, 2021, the intended academic text and material for changes to the Job Creation Law have not been discussed. Thus, the people involved in the meeting did not know for sure what changes to the law would be incorporated into Law 11 of 2020. Moreover, the Academic Manuscripts and the Draft Law on Job Creation could not be easily accessed by the public. Whereas Article 96 paragraph (4) of Law no. 12 of 2011 requires access to the Act to facilitate the public in providing input orally or in writing.

Based on all the legal considerations above, it can be stated that the procedure for the formation of Law no. 11 of 2020 as follows: (i) not based on definite, standardized, and standardized methods and methods, as well as the systematic formation of laws; (ii) there was a change in the writing of several substances after the joint approval of the DPR and the President; (iii) and contrary to the principles of the formation of laws and regulations. Inconsistency with these principles, the

Constitutional Court is of the opinion that the process of establishing Law no. 11 of 2020 does not meet the provisions based on the 1945 Constitution, so it must be declared formally disabled.

However, this does not mean that in order to achieve this goal, the applicable standard procedures or guidelines are ignored because the objectives and methods cannot be separated in principle in affirming the principles of a constitutional democratic rule of law. Because it has been legally proven that the requirements regarding the procedures for the formation of Law no. 11 of 2020, while there are big goals to be achieved with the enactment of the law. Thus, to avoid legal uncertainty and the bigger impact it has, according to the Constitutional Court, Law no. 11 of 2020 is declared conditionally unconstitutional.

The decision of the Constitutional Court in determining Law no. 11 of 2020 is declared conditionally unconstitutional, because it must balance the requirements for the formation of a law that must be met as a formal requirement in order to obtain a law that meets the elements of legal certainty, benefit and justice. Besides, it must also consider the strategic objectives of the enactment of the Law which is declared conditionally unconstitutional so as not to cause juridical consequences for the enactment of Law no. 11 Year 2020.

Based on these legal considerations, the Constitutional Court ordered that a standard legal basis be immediately established as a guide in the formation of laws using the omnibus law method which has specific duties and characteristics. The implementation of the work copyright law needs to be corrected in order to meet definite, standard and standard methods or methods, as well as the fulfillment of the principles of law formation in accordance with the mandate of Law no. 12 of 2011, especially with regard to the principle of openness must include maximum and more meaningful public participation which is a constitutional order in Article 22A of the 1945 Constitution. Thus, to fulfill this need, the Constitutional Court deems it necessary to give a time limit for the procedure for the formation of Law no. 11 of 2020 for 2 (two) years since the decision was made.

Based on the request from the public who objected to Law Number 11 of 2020 concerning Job Creation, the applicants, including representatives of the Workers/Labourers who submitted the application even though the decision stated that the application was not accepted, but in this case the worker/labourer received legal protection. Legal protection can be interpreted as an effort to protect the right of everyone to get the same treatment and protection by law and legislation. Every violation of the law that is alleged to him and the impact suffered by him is also entitled to the necessary legal protection in accordance with legal principles. (Desty Anggie Mustika, 2020: 1-3)

In the ruling for the other petitioners, it is stated that the process of establishing Law no. 11 of 2020 concerning Job Creation is stated to be contrary to the 1945 Constitution and does not have conditionally binding legal force as long as it does not mean "No repairs have been made within 2 (two) years since the decision was pronounced". Improvements starting from the plenary pronouncement of the Constitutional Court from November 4, 2021 to November 4, 2023 must have been repaired. If not corrected, then Law no. 11 of 2020 concerning Job Creation is declared to be permanently unconstitutional because it is contrary to the 1945 Constitution.

#### IV. CONCLUSION

Based on the results of the study, it can be concluded that the formation of Law Number 11 of 2020 concerning Job Creation by the Decision of the Constitutional Court, is as follows. First, it is declared that it does not meet the requirements based on the principles of regulation contained in Law Number 12 of 2011 concerning the Establishment of Legislation, so it is called a formal defect. Second, to avoid legal uncertainty and the bigger impact it has, according to the Constitutional Court on Law no. 11 of 2020 is declared conditionally unconstitutional until the procedures and procedures for the formation of laws and regulations are corrected within 2 (two) years and if they are not corrected then the law is declared to be permanently unconstitutional because it is contrary to the 1945 Constitution.

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