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Juridical Analysis of Constitutional Court Rulings Regarding Testing Legal Form

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Abstract

The legal consequence of this decision was that the Constitutional Court granted the lawmakers a two-year period to amend the Job Creation Law, following a process that adheres to a clear, standardized, and established method for creating omnibus laws. The Constitutional Court's Decision No. 91/PUU-XVIII/2020 was subsequently followed by the government issuing Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation, which contains similar content to the Job Creation Law. This has sparked controversy within the public. Therefore, the issue that will be further examined in this research is how the creation of the Job Creation Government Regulation In lieu of Law complies with the Constitutional Court's Decision No. 91/PUU-XVIII/2020, which declared the law conditionally unconstitutional, and how the harmonization between the Job Creation Government Regulation In lieu of Law and the legal reasoning in the Constitutional Court's decision is achieved. The research method used in this study is a normative juridical approach, which emphasizes library research. This study is descriptive-analytical, with the research stages focusing on secondary data analysis. Data collection techniques include library research and field research through interviews with relevant parties. The results of the study show that the lawmakers did not comply with the Constitutional Court's Decision No. 91/PUU-XVIII/2020, as they did not amend the Job Creation Law as required by the decision. Instead, they chose to issue the Job Creation Government Regulation In lieu of Law. Regarding the harmonization between the Job Creation Government Regulation In lieu of Law and the legal reasoning in the Constitutional Court's Decision No. 91/PUU-XVIII/2020, a lack of harmonization between the two was found.

Keywords

Constitutional Court; Legal System; Legislative Process; Omnibus Law.

1. Introduction

Theoretically, the existence of the Constitutional Court was first introduced in 1919 by Austrian legal scholar Hans Kelsen (1881-1973). Hans Kelsen stated that the effective implementation of constitutional legislation could only be guaranteed if an organ, other than the legislative body, is tasked with reviewing a legal product's constitutionality and invalidating it if this organ deems it unconstitutional. To this end, a special organ called the Constitutional Court (hereinafter referred to as MK) is necessary (Huijbers, 1982; Asshiddiqie, 2015; Darmadi, 2017). Furthermore, in the constitutional history of the Republic of Indonesia, the need for a judicial review mechanism has gradually become more pressing. This need was only fulfilled after the Reformation in 1998. The 1998 Reformation demanded changes in Indonesia's constitutional system, particularly the implementation of a clear separation of powers between the legislative, judicial, and executive branches. This was realized through the institutionalization of state organs that are equal and provide checks and balances on one another (Thalib & Sh, 2018; Kurniawati & Liany, 2019). In relation to the "check and balance" idea mentioned above, the need to regulate a mechanism for resolving disputes among state institutions, should they arise, became clear. Prior to the amendment of the 1945 Constitution, the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*/MPR) was the highest state institution, representing the entire people and fully embodying the sovereignty of the Indonesian people. The MPR held the highest power to resolve such disputes (Mkri.id, 2015; Sucipto, 2015). However, with the Third Amendment to the 1945 Constitution, a new institution was established within the judicial power system, known as the Constitutional Court (*Mahkamah Konstitusi*/MK), where the MPR is no longer regarded as the highest institution in all matters (Marzuki, 2004; Huda, 2007; Simamora, 2013).

The authority held by the MK should be recognized for the significant contributions it has made to improving Indonesia's constitutional and legal system (Yenny et al., 2020). Among the notable achievements in the development of the state administration is the performance, existence, and accomplishments of the MK as a new judicial institution. In the past, many laws were created unilaterally by the government (with the People's Representative Council (*Dewan Perwakilan Rakyat*/DPR) merely acting as a rubber stamp), and these laws could not be annulled, even if they were strongly suspected of violating the Constitution. Amendments to problematic laws in the past could only be made through a legislative review, which, in practice, was highly influenced by the government (Wantu, 2007; Mahfud, 2009; Syahuri & SH, 2011). However, since the establishment of the MK, any laws deemed to contradict the Constitution can be subject to judicial review, which may declare them in violation of the 1945 Constitution or unconstitutional, thereby rendering them legally non-binding. It can be argued that the MK has emerged as an independent state institution, significantly productive in issuing decisions that strongly support the democratic governance of Indonesia. Through its rulings, the MK has played a crucial role in strengthening the rule of law and ensuring that laws are in alignment with the Constitution, contributing to a healthier and more accountable system of governance (Asshiddiqie, 2020; Rishan, 2021). An example of a case related to the issue above is when the Constitutional Court issued its Decision No. 91/PUU-XVIII/2020 regarding the formal review of Law No. 11 of 2020 on Job Creation. This decision represents a ruling in which the Constitutional Court partially accepted the formal review of a law. The Constitutional Court panel emphasized that Law No. 11 of 2020 on Job Creation (hereinafter referred to as the Job Creation Law) was formally defective.

Based on the provisions above, the issue arises as to whether the enactment of the Job Creation Government Regulation in Lieu of Law (*Peraturan Pemerintah*

Pengganti Undang-Undang/Perppu) complies with the mandate of Constitutional Court Decision No. 91/PUU-XVIII/2020, which declared the Job Creation Law conditionally unconstitutional. This is particularly relevant given that the content of the Job Creation Perppu is not significantly different from the original Job Creation Law, which was drafted using the omnibus method. This issue also raises questions about the harmonization between the Job Creation Perppu and the mandate set out in Constitutional Court Decision No. 91/PUU-XVIII/2020. The core of the problem lies in whether the issuance of the Perppu truly addresses the formal defects identified by the Constitutional Court, and whether it aligns with the legal reasoning and instructions in the ruling. Given that the substance of the Perppu closely mirrors the original Job Creation Law, questions arise about whether the Perppu resolves the constitutional issues identified in the earlier decision, particularly those related to the formal legislative process and adherence to constitutional procedures. Furthermore, it challenges the relationship between the Perppu and the judicial review decision, as it seems to circumvent the required amendments to the law, potentially creating a legal tension between the Court's decision and the subsequent legislative actions. Based on the above description, the author is interested in discussing two main issues. The first is how the formation of the Job Creation Perppu complies with the Constitutional Court's Decision No. 91/PUU-XVIII/2020, which declared the Job Creation Law conditionally unconstitutional. The second is how the harmonization between the Job Creation Perppu and the legal reasoning in the Constitutional Court's Decision No. 91/PUU-XVIII/2020 is achieved.

2. Methods

This research is a normative juridical study (also referred to as doctrinal legal research), meaning it is based on legislation supported by relevant library studies related to the issues being discussed, which are then analyzed and concluded in the writing. The approach used in this research is both a case approach and a conceptual approach. This study also applies a case study approach to focus on the issues related to the position and authority of the Constitutional Court in conducting the formal review of laws against the 1945 Constitution and its implications for the enforcement of the principle of legal certainty in Indonesia. Regarding the nature of the research, this study is descriptive, which is a research method aimed at providing a deeper, more detailed, and broader description of the subject or object being studied. This method is commonly used to address or answer a problem by collecting data, conducting analysis, classification, making conclusions, and reporting findings. The literature used in this research consists of: 1) Primary Legal Materials, 2) Secondary Legal Materials, and 3) Tertiary Legal Materials. It also includes dictionaries, encyclopedias, and mass media related to the writing topic, which can be used as information for this research.

3. Discussion

3.1. Compliance of the Formation of the Job Creation Perppu with the Constitutional Court Decision

The enactment of the Job Creation Law has sparked controversy within society since its approval. This controversy stems from the use of the omnibus law method in its drafting, as well as the content and the legislative process, which some believe violated the Law on the Formation of Legislation (*Undang-Undang tentang Pembentukan Peraturan Perundang-Undangan/UU P3*). Some parties argue that the omnibus law method cannot be used in Indonesia, as Indonesia follows the Continental European legal system (Civil Law), while the omnibus law method is typically employed in countries with the Anglo-Saxon legal system (Common Law).

The concept of an omnibus law, as described in Black's Law Dictionary (Hamzah, 2010; Asy'Ari, 2013), refers to a legislative bill that combines various separate and distinct matters into a single act. This approach involves merging multiple subjects into one comprehensive measure, often compelling the executive authority to either accept the entire enactment, including provisions they may not fully agree with, or reject the entire bill. This legislative strategy is designed to address multiple issues simultaneously but can also raise concerns about clarity and compliance with established legislative procedures (Prayogo, 2016; Hardjasoemantri, 2017; Darma et al., 2022)

Based on the definition, omnibus law can be freely interpreted as a legislative regulation that amends and/or repeals several provisions of laws from different sectors to be unified into a single legislative regulation (Hadjar, 2003; Riyanto, 2023). Omnibus law is closely related to efforts to simplify regulations for the purpose of harmonizing legislation. The use of the omnibus law method as an effort to harmonize regulations can help reduce sectoral egos that sometimes cause conflicts between one regulation and another. The omnibus law method, which is formed through modification, allows legislation to adapt to real conditions in society. This aligns with the statement of Professor of Law at the Faculty of Law, University of Indonesia, Hamid S. Attamimi, that the lawmaking process needs to use a modification method so that the law can bridge the interests and needs of society (Panggabean, 2001; Ibrahim, 2008; Ismail, 2011). Conceptually, the omnibus law method is not a new concept in the formation/compilation of regulations. Looking at its historical development, the omnibus law emerged, developed, and was practiced in countries with an Anglo-Saxon legal system (Common Law System), such as the United States, Canada, the United Kingdom, Australia, Singapore, and others. In the United States, for example, one of the largest omnibus laws ever created was the Transportation Equity Act for the 21st Century (TEA-21). Another example of an omnibus law in the United States is the Omnibus Public Land Management Act of 2009.

However, this does not mean that the omnibus law method cannot be used in the Continental European legal system. Over time, the fundamental differences between the Continental European legal system and the Anglo-Saxon legal system have become increasingly blurred. In the Continental European system, jurisprudence (which is a key element of the Anglo-Saxon legal system) has gained importance as a source of law in countries that follow the Continental European legal system. Conversely, legislation (which is the cornerstone of the Continental European legal system) has also become increasingly significant in countries that follow the Anglo-Saxon legal system (Antari, 2021; Pratama et al., 2023). Given the importance of legislation in Anglo-Saxon legal systems, the issue of hyper-regulation has led to the widespread use of the omnibus law method to reform excessive and overlapping regulations. The use of the omnibus law method to address hyper-regulation has long been practiced in countries that follow the Anglo-Saxon legal system, and in countries with the Continental European legal system, which places written law (legislation) at the core of its legal framework, it is reasonable to apply the omnibus law method to reform problematic and excessive regulations (Palguna, 2001; Margono, 2019; Saputro, 2022).

Furthermore, regarding the use of the omnibus law method in drafting the Job Creation Law, this matter involves issues on the levels of *das sollen* and *das sein*. At the *das sollen* level, for instance, is President Jokowi's idea to use the omnibus law method in the drafting of laws to support his desire to improve the welfare of the people by fulfilling citizens' rights to secure decent employment and livelihood, through attracting investors to invest and create more jobs. The idea of using the omnibus law method as an instrument to support the goal of achieving the welfare of the people stems from the factual reality (*das sein*), namely the regulatory obesity

or hyper-regulation characterized by overlapping regulations, lack of harmonization, inconsistency, multiple interpretations, non-operational provisions, and insufficient legal certainty. All of these were seen as obstacles and barriers to achieving the goal of improving people's welfare. Based on this, and recognizing the nature of the omnibus law, legal transplantation, and the principle of modification, the omnibus law method was adopted in drafting the law that is now the Job Creation Law.

The enactment of the Job Creation Law, drafted using the Omnibus Law method, has sparked controversy within society. Critics argue that the procedural aspects of its creation were flawed, particularly because the Omnibus Law method is neither explicitly recognized nor regulated under the Law on the Formation of Legislation (UU P3). However, the Constitutional Court held a different view, emphasizing several points. First, UU P3 does not explicitly address or regulate the Omnibus Law method, allowing it to be interpreted as a gap or convention that supplements the existing legal framework. This interpretation acknowledges the method as a practical approach to address the evolving need for effective and efficient lawmaking, without undermining its role as a complementary convention rather than a regulated standard. The Constitutional Court also highlighted the primary goal of the Job Creation Law, which is to promote job creation and fulfill citizens' rights to a decent livelihood by facilitating investment. In this context, the effectiveness of laws and procedures is judged by their ability to achieve their intended goals. If existing laws and procedures fail to address contemporary societal needs, their relevance may be questioned. Therefore, the Job Creation Law, despite being drafted using an unconventional method, serves a crucial purpose that aligns with constitutional objectives (Harjono, 2003; Harruma & Nailufar, 2022). Two prior Constitutional Court decisions reinforce this perspective. Decision No. 27/PUU-VII/2009 clarified that the validity of a law should be tested against the Constitution rather than against procedural legislation like UU P3. A procedural deficiency under UU P3 does not automatically render a law invalid. Similarly, Decision No. 73/PUU-XII/2014 affirmed that noncompliance with procedural laws or parliamentary rules does not necessarily lead to unconstitutionality. Instead, procedural guidelines serve as benchmarks for good lawmaking, while material testing ensures that the content of a law aligns with the Constitution. These considerations collectively justify the Court's rejection of arguments that procedural flaws alone invalidate the Job Creation Law.

Based on the explanation above, it can be understood that although Omnibus Law has developed and is widely practiced in Common Law countries, it does not necessarily mean that it cannot be applied in Continental European Law countries. However, in the end, the MK declared the Job Creation Law to be conditionally unconstitutional, with the reasoning based on the need for the Court to balance the requirements for the formation of a law, which must meet formal requirements to produce a law that guarantees legal certainty, utility, and justice. At the same time, the strategic objectives behind the creation of the Job Creation Law also need to be taken into consideration. Therefore, by declaring the Job Creation Law conditionally unconstitutional, this leads to legal consequences regarding the validity of the law itself. The Constitutional Court has provided the legislature an opportunity to amend the law in accordance with the procedures for lawmaking that fulfill the clear, standardized, and accepted methods for creating Omnibus Laws, which must also comply with the established principles of law formation. The next issue is whether the Constitutional Court's decision was implemented by the Government in drafting the Government Regulation in Lieu of Law (Perppu) on the Job Creation Law. As stated above, through Constitutional Court Decision No. 91/PUU-XVIII/2020, the Court granted the legislature an opportunity to revise the Job Creation Law following the prescribed procedures for lawmaking that ensure a clear, standardized, and accepted method for drafting Omnibus Laws. Regarding the method for drafting

an Omnibus Law, in general, the creation of a law using this method is carried out through five stages: Planning, Drafting, Discussion, Ratification, and Enactment (Shah, 2022).

Based on the legal considerations from Constitutional Court Decision No. 91/PUU-XVIII/2020, it is clear that the formation of the Government Regulation in Lieu of Law (Perppu) on the Job Creation Law did not comply with Constitutional Court Decision No. 91/PUU-XVIII/2020, which stated that the Job Creation Law should be amended based on the procedures for lawmaking that meet clear, standardized, and accepted methods for creating Omnibus Laws that must also adhere to the established principles of law formation. It is said not to comply with Constitutional Court Decision No. 91/PUU-XVIII/2020 because the lawmakers did not amend the Job Creation Law through the standard legislative procedure, but instead by issuing Perppu No. 2 of 2022 on the Job Creation Law. As is known, in the hierarchy of regulations, a Perppu is on par with an Act of Law and holds the same legal status. The difference between a Perppu and an Act of Law lies in the process of its formation, where a Perppu is created by the President without involving the public and without the approval of the DPR due to the existence of "an urgent situation that necessitates" the issuance of such a regulation. Regarding the substance of the Perppu, Article 11 of the Law on the Formation of Legislation (UU P3) states that the subject matter of a Perppu is the same as the subject matter of an Act of Law. The similarity in the subject matter of a Perppu and an Act of Law means that the discussion of the Draft Perppu is like that of a Draft Law. Likewise, the legal drafting techniques or procedures for forming the content of a Perppu are the same as for an Act of Law. This means that the legal drafting techniques for a Perppu follow the procedures for drafting laws set out in UU P3.

The next issue concerns the compliance of the lawmakers with Constitutional Court Decision No. 91/PUU-XVIII/2020. Referring to that decision, the lawmakers should have first created a law regarding the formation of legislation using the Omnibus Law method, so that the formation of legislation using the Omnibus Law method would have a legal basis. However, the lawmakers first issued the Perppu on Job Creation, where the drafting technique is still the same as the Job Creation Law using the Omnibus Law method. Only later was Law No. 13 of 2022 enacted, which amended Law No. 12 of 2011 on the Formation of Legislation, and included provisions regarding the Omnibus Law method. This is clearly in contradiction with the Principle of Legality in Administrative Law. Regarding the Principle of Legality, this principle has a broad meaning. It is a principle that is upheld by every country that considers itself a rule of law state. Legality is a fundamental principle in a rule of law state, along with the principles of protection of freedom and human rights. In Indonesia, the principle of legality is based on Article 1, Paragraph (3) of the 1945 Constitution, which states that "The State of Indonesia is a legal state."

The Principle of Legality is indeed more commonly known as a principle in Criminal Law, as stated in Article 1, Paragraph (1) of the Criminal Code (KUHP), which reads, "An act may not be punished except based on the provisions of the existing criminal legislation." In Criminal Law, this principle is known through the phrase *nullum delictum sine praevia lege poenali* (no punishment without a prior law). However, this principle of legality is not only applied in Criminal Law. In any country, especially those that consider themselves a rule of law state, the first and foremost element is the principle of legality, because it serves as an essential foundation in the legal system of a country, and therefore, the principle of legality exists in all areas of law. The Principle of Legality in Administrative Law means *dat het bestuur aan de wet is onderwopen* (that the government is subject to the law) or *Het legaliteitsbeginsel houdt in dat alle (algemene) de burgers bindende bepalingen op de wet moeten berusten* (the principle of legality dictates that all provisions binding on citizens must be based on law). This principle is a fundamental element

of the rule of law, often formulated as *het beginsel van wetmatigheid van bestuur*, which refers to the principle of government legality (Asshiddiqie, 2005; Mertokusumo, 2010). Therefore, it can be concluded that the principle of legality in the realm of Administrative Law states that every government action must be based on existing laws or must comply with the applicable legislation.

Based on the legal considerations mentioned, it can be understood that the process of forming the Government Regulation in Lieu of Law (Perppu) on Job Creation does not fulfill the principle of clarity of purpose and the principle of clarity of formulation. This is because the title formulation of the Perppu on Job Creation does not reflect its intended purpose, as stipulated in the Law on the Formulation of Legislation (UU P3). As previously mentioned, a Perppu is equivalent to a law, so the process for forming a Perppu must adhere to the same procedures as those for forming a law under UU P3. In addition to the title of the Perppu on Job Creation being identical to the Job Creation Law, the contents of the Perppu on Job Creation are also relatively the same as those of the Job Creation Law. Despite being 70 pages shorter, it still consists of 15 chapters and 186 articles, which is relatively identical to the contents of the Job Creation Law. The difference lies in the fact that the Job Creation Law integrates provisions from 78 laws, while the Perppu on Job Creation incorporates provisions from 77 laws. Furthermore, there are slight rearrangements of articles in the last three chapters of the Perppu on Job Creation. Thus, it can be said that the Job Creation Law has merely been renamed as the Perppu on Job Creation. In addition to the title and contents being relatively like the Job Creation Law, the formation process is also relatively the same. Referring to the legal considerations in Constitutional Court Decision No. 91/PUU-XVIII/2020, which states:

“Regarding the principle of transparency, the trial revealed that the law-making process did not provide sufficient opportunity for public participation. Even though various meetings were held with different community groups, these meetings did not discuss the academic paper and the details of the amendments to the Job Creation Law. As a result, the public involved in these meetings did not fully understand which specific amendments to the laws would be integrated into the Job Creation Law. Furthermore, the academic paper and the draft of the Job Creation Law were not easily accessible to the public. This is contrary to Article 96 paragraph (4) of the Law on the Formulation of Legislation (UU P3), which mandates that access to laws should facilitate the public in providing oral and/or written input.”

Referring to the legal considerations in Constitutional Court Decision No. 91/PUU-XVIII/2020 mentioned above, it can be said that the same issues also occurred in the formation of the Perppu on Job Creation. Notably, the issuance of a Perppu does not require approval from the House of Representatives (DPR) or public participation, as a Perppu is issued in situations of compelling urgency. Returning to the substance of Constitutional Court Decision No. 91/PUU-XVIII/2020, which directed lawmakers to revise the Job Creation Law within two years, it is worth noting that there was no need for lawmakers to hastily issue a Perppu. This is because, during the revision process, the Job Creation Law remained in effect. In other words, lawmakers could have complied with the Constitutional Court's ruling by amending the Job Creation Law using clear, standard, and proper methods, in accordance with the Law on the Formulation of Legislation (UU P3), while allowing the Job Creation Law to remain in effect throughout the revision process (Mertokusumo, 2007; Sunarno, 2016).

Based on the explanation above, the issue does not lie in whether the issuance of the Perppu on Job Creation complies with the applicable legislation, particularly since this matter has been subject to both formal and material review by the MK. The MK stated that there were no issues with the Perppu on Job Creation. However,

the problem lies in the lawmakers' compliance with the MK's rulings, which are final and binding. After analyzing the Perppu on Job Creation, it can be concluded that the lawmakers did not adhere to Constitutional Court Decision No. 91/PUU-XVIII/2020. Therefore, it can also be said that the Perppu on Job Creation still has weaknesses in terms of format and technical legal drafting, as well as in the legislative process as outlined in the Law on the Formulation of Legislation (UU P3).

3.2. Harmonization Between Job Creation Regulations and Legal Considerations in Constitutional Court Decisions

In the previous section, the compliance of the issuance of the Perppu on Job Creation was reviewed considering Constitutional Court Decision No. 91/PUU-XVIII/2020, where the research findings indicated that lawmakers did not adhere to the ruling by issuing the Perppu on Job Creation with a title and content format that remains relatively like the Job Creation Law. By failing to comply with Constitutional Court Decision No. 91/PUU-XVIII/2020, it can be logically inferred that there is no harmonization between the Perppu on Job Creation and the decision itself. This can be observed from the title of the Perppu on Job Creation, which remains the same as that of the Job Creation Law. However, the legal considerations in Constitutional Court Decision No. 91/PUU-XVIII/2020 explain that under the Law on the Formulation of Legislation (UU P3), the title of legislation must reflect the purpose and intent of the regulation itself. According to UU P3, the title of legislation must meet the principles of clarity of purpose and clarity of formulation (Soeprapto, 2007; Jenderal, 2010; Rahardjo, 2016). Furthermore, the legal considerations in Constitutional Court Decision No. 91/PUU-XVIII/2020 also highlighted that of the 78 laws incorporated into the Job Creation Law, 77 are amendments to existing laws, and one is a repeal of a law. Regarding the repeal of a law as a standalone repealing law, it must refer to Appendix II, Section E of UU P3 on the "Format of a Draft Repealing Law," which stipulates that the title of repealing legislation must include the word "repeal" before the title of the law being repealed. Exceptions apply if the repeal is related to a new law being enacted, in which case the repeal clause should be placed in the "Closing Provisions" section of the new law's framework (Putranti et al., 2020).

Based on the above legal facts, the MK stated that the Job Creation Law does not align with the standardized formulation or principles in the drafting of legislation (Soekanto, 2006; Persada & Jakarta, 2007). This situation essentially creates the impression that the norms established by the law are as if they were new laws. However, most of the substance in the Job Creation Law is amendments to several existing laws. In its legal considerations, the MK also stated that if the action taken is an amendment to an existing law, there is no need to include general provisions containing new nomenclature, followed by the formulation of principles, objectives, and scope, unless the matters to be amended in the law include those elements. This is because, for the various laws amended by the Job Creation Law, the original laws remain in effect, even though the validity of the original laws is not explicitly affirmed in the Job Creation Law. Moreover, the older laws already contain their respective principles and objectives, which are elaborated in the articles of each law (see General Explanation of UU P3) (Asshiddiqie, 2006; Soeroso, 2011). Therefore, the formulation of principles and objectives in the Job Creation Law, intended to be elaborated upon in various amended laws, creates uncertainty regarding which set of principles and objectives should ultimately apply. This is because the principles and objectives of the original laws remain valid. In this regard, the Law on the Formulation of Legislation (UU P3) has established formal principles for drafting legislation, which must be adhered to in the creation of laws. However, these principles were not properly applied, leading to ambiguity in the methods or

approaches used in the Job Creation Law. This situation does not align with the principle of "clarity of formulation" in UU P3, which requires that all legislation meet technical requirements for drafting, systematic structuring, precise terminology, and clear legal language that is easily understood and does not lead to multiple interpretations during implementation (see Article 5(f) of UU P3 and its explanation).

Regarding the omnibus method used in drafting the Job Creation Law, the MK observed that the substance of the appendix to UU P3 represents an adaptation to the evolving dynamics of legislative needs, originally outlined in Law No. 10 of 2004 on the Formulation of Legislation, which has since been repealed by UU P3. Thus, if new needs arise in line with current developments in legislative processes, whether related to amendments or repeals, there is room to revise the appendix to UU P3. This means that the technical aspects or methods are designed to remain adaptive to changing needs, including the simplification of laws through any method, such as the omnibus law method. This approach ensures that standardized technical guidelines do not become obstacles in the legislative process, if the process adheres to established standards. This condition preserves order in the drafting of laws and regulations, in accordance with the principles outlined in UU P3 (see Article 5 of UU P3) (Asshiddiqie, 2006).

4. Conclusion

The Constitutional Court Decision No. 91/PUU-XVIII/2020 declared the Job Creation Law conditionally unconstitutional due to its formation using the omnibus method, which did not align with the procedures and principles of legislative drafting as mandated by the Law on the Formulation of Legislation (UU P3, Law No. 12/2011). Despite this, the Job Creation Law was aimed at achieving significant objectives, and numerous implementing regulations had already been issued and implemented. To prevent legal uncertainty and broader negative impacts, the Constitutional Court rendered the law conditionally unconstitutional, stipulating that lawmakers revise it to adhere to proper, standardized, and definitive methods for drafting omnibus laws. These revisions were also required to comply with the principles outlined in UU P3. However, lawmakers did not fulfill the Constitutional Court's directive. Instead of revising the Job Creation Law as instructed, they issued a Government Regulation in Lieu of Law (Perppu) on Job Creation. The Perppu was also drafted using the same omnibus method, which failed to comply with the legislative drafting procedures in UU P3, and its content remained largely identical to the Job Creation Law. This demonstrates that the Perppu on Job Creation perpetuates the same flaws identified in the Job Creation Law, reflecting a continued disregard for the Constitutional Court's ruling.

In terms of harmonization, there is a clear lack of alignment between the Perppu on Job Creation and the legal considerations of Constitutional Court Decision No. 91/PUU-XVIII/2020. The Court emphasized that the drafting of legislation must comply with the procedures and principles established in UU P3. However, the Perppu on Job Creation was drafted using the omnibus method, which remains inconsistent with the legislative drafting standards set forth in UU P3. Moreover, the Constitutional Court explicitly stated that the omnibus method could not be used without a legal basis regulating its application. Despite this, the Perppu on Job Creation continues to utilize the omnibus method, even though no legal framework has been established to legitimize this approach. Furthermore, the Court underscored that procedural shortcuts cannot justify bypassing the established legislative drafting requirements outlined in UU P3, which serves as the standard guideline for legislative processes. This principle applies equally to the drafting of a Perppu, as it is also a form of legislation governed by UU P3. Even under conditions

of compelling urgency, the drafting of a Perppu must adhere to UU P3 to ensure legal order and compliance in the legislative process.

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