THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

THE SUMMARY OF THE DECISION OF CASE NUMBER 91/PUU-XVIII/2020

Concerning

Formal Review of Job Creation Law

Petitioner	**:**	**Hakiimi Irawan Bangkid Pamungkas, et al**
Type of Case	**:**	Review of Law Number 11 of 2020 concerning Job Creation (UU 11/2020) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
Subject Matter	**:**	Formal Review of Law 11/2020 against the 1945 Constitution
Verdict	**:**	**On Preliminary Injunction**: 1. To declare that the petition for Preliminary Injunction by Petitioner I and Petitioner II is inadmissible; 2. To dismiss the petition for Preliminary Injunction by Petitioner III, Petitioner IV, Petitioner V, and Petitioner VI. **On the Merits**: 1. To declare that the petition of Petitioner I and Petitioner II is inadmissible; 2. To grant the petition of Petitioner III, Petitioner IV, Petitioner V, and Petitioner VI in part; 3. To 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 the State Gazette of the Republic of Indonesia Number 6573) is in contrary to the 1945 Constitution of the Republic of Indonesia and it does not have conditionally binding legal force as long as it is not interpreted as "no corrections have been made within 2 (two) years since this decision was declared"; 4. To declare that 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) is still in effect until corrections are made to the establishment in accordance with the time limit as determined in this decision; 5. To order the legislators to make corrections within a maximum period of 2 (two) years since this decision is declared and if within that time limit no corrections are made then 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) shall become permanently unconstitutional;

6. To state that if within a period of 2 (two) years the legislators cannot complete the corrections of 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 material contained in the law which 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 the State Gazette of the Republic of Indonesia Number 6573) shall be declared as valid again;
7. To suspend all strategic and broad-impact actions/policies, and it is also not permissible 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);
8. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate;
9. To dismiss the Petitioners' petition for the rest/remainder.

Date of Decision **:** Thursday, November 25, 2021
Overview of Decision **:**

Whereas Petitioner I is an individual Indonesian Citizen (*Warga Negara Indonesia* or WNI) who has worked as a Certain Time Contract Worker (*Pekerja Kontrak Waktu Tertentu* or PKWT) who feels that his constitutional rights have been impaired by the enactment of Law 11/2020, namely Article 81 which abolishes the rules regarding the period of PKWT or Contract Workers as regulated in Article 59 paragraph (4) of the Manpower Law. Petitioner II is an individual Indonesian citizen who is currently studying at the College of Teacher Training and Modern Education who feels that his constitutional rights have been impaired to obtain fair legal certainty guarantees to develop themselves through fulfilling their basic needs and the rights to obtain education. Petitioner III is an individual Indonesian citizen who works as a lecturer who teaches courses in Constitutional Law and State Administrative Law who feels that his constitutional right to obtain legal certainty has been impaired due to the process of establishing Law 11/2020 which violates the provisions for the establishment of laws and regulations, so that it becomes a constitutional practice which cannot be explained academically to the students on campus. Petitioner IV is a legal entity in the form of an association named the Indonesian Association for Sovereign Migrant Workers-Migrant CARE, represented by the Chairman and Secretary, who have concerns regarding the protection of Indonesian Migrant Workers, they feel impaired because Petitioner IV was not involved in the discussion process for the establishment of Law 11/2020. Petitioner V is a legal entity in the form of an association named the West Sumatra Nagari Customary Density Coordinating Board (Bakor KAN West Sumatra) represented by the General Chairman and General Secretary. Petitioner VI is a legal entity in the form of an association named the Minangkabau Customary Court (MAAM) located in West Sumatra, represented by its Chairman. Petitioner V and Petitioner VI did not receive information regarding the abolition of criminal sanctions for the use of customary land rights by business actors without obtaining the approval of indigenous people because the establishment of Law 11/2020 was not open and did not involve the indigenous people, thus harming the constitutional rights of Petitioner V and Petitioner VI.

Whereas the Petitioners filed a petition for preliminary injunction which in essence appeal to the Court to impose an Interlocutory Decision by delaying the enactment of Law 11/2020 until a final decision was made on the subject matter of the *a quo* petition, on the grounds that according to the Petitioners there are normative provisions that cannot be implemented due to reference errors in the *a quo* Law. In addition, the Petitioners also requested that the Court prioritize the completion of the process of reviewing the Petitioners' case within 30 days so that it is decided before the handling of the Regional Head Election Results Dispute. Then in the main petitum of the petition, the Petitioners appealed to the Court to declare that Law 11/2020 is in contrary to the 1945 Constitution and has no binding legal force, and to declare that the provisions of the norms in the Law that have been amended, deleted and/or that have been declared to have no binding legal force in Law 11/2020 to be re-applied.

Whereas according to the Court, because of the *a quo* petition is a formal review of the law, *in casu* Law 11/2020 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition. Because Law 11/2020 was promulgated on November 2, 2020, the time limit for submitting a petition is December 17, 2020. The Petitioners' petition was received by the Court on October 15, 2020 based on the Deed of Receipt of the Petition Document Number 203/PAN.MK/2020, which was later corrected by the Petitioners with a revised petition dated November 24, 2020 and received at the Registrar's Office of the Court on November 24, 2020. Thus, the petition of the Petitioners is still within the time limit for submitting a request for a formal review of a law.

Whereas in relation to the legal standing of the Petitioners, according to the Court, to Petitioners I and Petitioners II, because they cannot explain the reasons for the loss of their constitutional rights in the process of establishing Law 11/2020, according to the Court, Petitioners I and Petitioners II do not have the legal standing to file *a quo* petition. Furthermore, in relation to Petitioner III, Petitioner IV, Petitioner V, and Petitioner VI, the Court considers that Petitioner III, Petitioner IV, Petitioner V, and Petitioner VI have been able to describe their position and activities to be closely related to Law 11/2020 so that there is a linkage relationship between Petitioner III, Petitioner IV, Petitioner V, and Petitioner VI with the Law for which formal review is petitioned. Therefore, regardless of whether or not the argument regarding the unconstitutionality of the establishment of Law 11/2020 which does not meet the provisions under the 1945 Constitution is proven, Petitioner III, Petitioner IV, Petitioner V, and Petitioner VI (hereinafter referred to as the Petitioners) have legal standing to file the *a quo* petition.

Regarding the petition for preliminary injunction by the Petitioners, according to the Court, the reason for the petition for preliminary injunction filed by the Petitioners is closely related to the content of Law 11/2020 so that it is not appropriate to use it as the reason for the petition for a formal review. As for the appeal for priority review, when the *a quo* petition was submitted, the Court is faced with a national agenda, namely the settlement of the 2020 Regional Head Election Results Dispute which has been accepted by the Court since December 2020 and has a time limit of 45 (forty five) business days since the receipt of the petition, so that at that time the Court temporarily suspended all case reviews, including the case of the *a quo* Petitioners [vide Article 82 of Constitutional Court Regulation Number 2 of 2021 concerning Proceedings in Cases of Judicial Review, hereinafter referred to as PMK 2/2021]. In addition, at the same time during the process of reviewing the *a quo* case*,* most countries around the world, including Indonesia, are facing the threat of the Covid-19 pandemic which has been declared by the President as a non-natural national disaster [vide Presidential Decree of the Republic of Indonesia Number 12 of 2020 concerning Determination of Non-Natural Disasters the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster]. Furthermore, to prevent the relatively rapid spread of the virus with a high fatality rate, the government has set the Enforcement of Community Activity Restrictions (*Pemberlakuan Pembatasan Kegiatan Masyarakat* or PPKM) since January 2021. Because preventing the spread of the virus is important for all parties, including the Constitutional Court, the trial at the Court was suspended for some time, including the trial for the *a quo* case*.* Accordingly, the Petitioners' petition for preliminary injunction is unreasonable according to law.

Whereas according to the Petitioners, the establishment of Law 11/2020 with the omnibus law method has caused uncertainty about the type of law that was established, whether as a new law or an amendment law or a revocation law. Therefore, this is contrary to the technical provisions for the establishment of new laws, revocation and/or amendment to laws as regulated in Attachment II to Law Number 12 of 2011 concerning the Establishment of Legislations (UU 12/2011). According to the Petitioners, the omnibus law method is not recognized in neither Law 12/2011 nor Law Number 15 of 2019 concerning Amendment to Law Number 12 of 2011 concerning the Establishment of Legislations (Law 15/2019), so the omnibus law method has led to unclear and uncertain and non-standard manners or methods, which means that they are contrary to the considerations given in letter b of Law 12/2011. According to the Petitioners, there has been an amendment in the material content of Law 11/2020 after the joint approval of the DPR (House of Representatives) and the President which is not only a technical writing, but also a substantial change, including errors in citation. According to the Petitioners, the establishment of Law 11/2020 is in contrary to the provisions of Article 22A of the 1945 Constitution and the principle of the establishment of laws and regulations as regulated in Article 5 letters a, e, f and g of Law 12/2011, namely the principle of clarity of purpose, the principle of efficiency and usability, the principle of clarity of formulation, and the principle of openness.

Whereas according to the Court, in adjudicating cases of formal judicial review, apart from basing it on the 1945 Constitution, the Court shall also be based, among other things, on Law 12/2011 as amended by Law 15/2019 as the law that regulates the procedure for establishing statutory regulations. Each legislator, *in casu* the legislators, must use definite, standardized manners and methods that have been determined, both related to the preparation of academic texts and bills.

Whereas according to the Court, with the new naming of a law, namely the Law on Job Creation which is then in the General Provisions Chapter followed by the establishment of the basic norms, objectives and scopes which are further elaborated in chapters and articles related to the scopes [vide Article 6 to Article 15 of Law 11/2020], then Law 11/2020 is not in line with the standard formulation or standards in the establishment of laws and regulations because such thing actually shows the established norms as if they were new laws. However, the biggest substance in Law 11/2020 has turned out to be amendment to a number of laws. If Law 11/2020 is intended as the establishment of a new law, then the format and systematics of its establishment must be adapted to the format of the establishment of a new law. If it is intended as amendment to the laws, the format of the amendment should follow the format that has been determined as a normative or standard guideline in amending the legislation as stipulated in Attachment II of Law 12/2011. The Court can understand the important objective of formulating a strategic policy for job creation and its regulation, by making changes and improvements to various laws. However, the problem is that it cannot be justified that in the name of the length of time it takes to establish a law, so the legislators deviate from the procedures that have been determined in a normative and standard way in order to achieve this important goal. Because, in a constitutional democratic country it is impossible to separate the goals to be achieved and the right way in achieving the goals. In this case, efforts to achieve the goals cannot be carried out by violating definite, normative and standard procedures in the process of establishing laws.

Whereas according to the Court, the obligation to comply with technical provisions or procedures does not mean that the Court does not attach importance to the substance aspects that have been compiled in the norms of Law 11/2020, because in principle in the establishment of the Law between technical and substance (formal and material) cannot be separated from each other. The existence of problems in the technical aspects or procedures for the establishment will have an impact on not realizing the legal order for the establishment of a regulation which in the end will also have an impact on not being able to implement the substance of the regulations that have been established. Whatever technique or method will be used by the legislators in an effort to simplify laws, eliminate various overlapping laws, or speed up the process of establishing laws, it is not a matter of constitutionality as long as the choice of the method is carried out within the corridor of definite, normative and standard

guidelines and first set forth in the technique of drafting the laws and regulations so that they can be used as guidelines for establishing the laws that will use these techniques or methods. The need for clear and standard procedures in the establishment of laws and regulations is in principle a constitutional mandate in regulating the design of the establishment of laws. This means that this method cannot be used as long as it has not been adopted in the law on the establishment of legislation.

Whereas in relation to Law Number 7 of 2017 concerning General Elections (UU 7/2017) which according to the statement from the Government and the DPR has use the omnibus law method, the Court is of the opinion that, the simplification character of the Law adopted, both in the establishment of Law Number 32 of 2004 concerning Regional Government (UU 32/2004) as regulated in Law Number 10 of 2004 concerning the Establishment of Legislative Regulations (UU 10/2004) and the establishment of Law 7/2017 as regulated in Law 12/2011, is still within the legal corridor of the procedures for establishing laws and regulations. Meanwhile, the character of the omnibus law method in Law 11/2020 is different from the establishment of Law 32/2004 and Law 7/2017. This can be seen from the number of laws that have been simplified, which are 78 laws with various different content from each other and all of the combined laws are still effective except for the articles that are amended in Law 11/2020. Therefore, it is not apple to apple when compared with the simplification of the Law done in Law 32/2004 and Law 7/2017. By considering these differences, the model of simplification of the law carried out by Law 11/2020 becomes difficult to understand whether it is a new law, an amendment law, or a revocation law.

Whereas according to the Court, after carefully examining the evidence presented by the parties and the facts revealed in the trial and by comparing the texts of the Bills on Job Creation which had been jointly approved by the DPR and the President before being ratified and promulgated into law, with a text that has been ratified into Law, without the intention of assessing the material constitutionality of Law 11/2020, in relation to the petition for a formal *a quo* review, the Court found a legal fact that there was a substantial change in the content of the Job Creation Law after the joint approval of the DPR and the President, which was not only technical in nature, but also contained errors in citations.

Meanwhile, with regard to the principle of openness, according to the Court, in the trial it was revealed the fact that the legislators did not provide maximum space for public participation. Even though various meetings have been held with various community groups, these meetings have not discussed academic texts and materials for amendment to the *a quo* law. So that the people involved in the meeting do not know for sure what material amendment to the law will be incorporated into Law 11/2020. Moreover, academic texts and job creation Bills pare not easily accessible to the public. Whereas based on Article 96 paragraph (4) of Law 12/2011 access to the law is required to facilitate the public in providing input verbally and/or in writing.

Whereas according to the Court, since the procedure for the establishment of Law 11/2020 was not based on definite, normative, and standard manners and methods, as well as the systematic establishment of laws; there is a change in the writing of several substances after the joint approval of the DPR and the President; and contrary to the principles of establishing laws and regulations, the Court is of the opinion that the process of establishing Law 11/2020 does not meet the provisions based on the 1945 Constitution, so it must be declared formally flawed. Because it has been legally proven that the requirements regarding the procedures for the establishment of Law 11/2020 have not been met, while there are also big goals to be achieved with the enactment of Law 11/2020 and many implementing regulations have been issued and have even been implemented at the practical level. Therefore, in order to avoid legal uncertainty and the greater impact it will have, in this regard, according to the Court, Law 11/2020 must be declared conditionally unconstitutional.

Whereas the Court's choice to determine Law 11/2020 was declared conditionally unconstitutional, because the Court had to balance between the requirements for the establishment of a law that must be met as a formal requirement in order to obtain a law that meets the elements of legal certainty, expediency and justice. In addition, it must also consider

the strategic objectives of the establishment of the *a quo* Law. Therefore, in enacting Law 11/2020 which has been declared conditionally unconstitutional, it has juridical consequences for the enactment of *a quo* Law 11/2020, so that the Court provides the opportunity for legislators to make corrections to Law 11/2020 based on the procedures for the establishment of laws that meet definite, normative and standard manners and methods in establishing the omnibus law which must also comply with the fulfilment of the requirements for the principles of the establishment of the law that have been determined.

Whereas the Court ordered that a standard legal basis be immediately established to serve as a guideline in the establishment of any laws using the omnibus law method which has a certain specificity. Therefore, based on the established legal basis, the correction to *a quo* Law 11/2020 shall be made to comply with definite, normative and standard manners or methods, as well as the fulfilment of the principles of law establishment, as mandated by Law 12/2011, particularly with regard to the principle of openness, it must include a maximum and more meaningful public participation, which is the embodiment of the constitution order in Article 22A of the 1945 Constitution. Therefore, to fulfil this need, the Court considers it necessary to give a time limit for the legislators to revise the procedures in the establishment of Law 11/2020 for 2 (two) years since this decision was pronounced. If within 2 (two) years, Law 11/2020 is not corrected, then the Court declares that Law 11/2020 shall be permanently unconstitutional.

Whereas if within a period of 2 (two) years the legislators are unable to complete the correction of Law 11/2020, for the sake of legal certainty, especially to avoid a legal vacuum over the law or articles or the material content of the Law that has been revoked or amended, they must be declared as valid again.

Based on all of the above legal considerations, the Court is of the opinion that the arguments of the Petitioners' petition are legally grounded in part, and the Court has subsequently issued a decision which verdicts declare as follow:

On Preliminary Junction:

1. To declare that the petition for Preliminary Injunction by Petitioner I and Petitioner II is inadmissible;
2. To dismiss the petition for Preliminary Injunction by Petitioner III, Petitioner IV, Petitioner V, and Petitioner VI.

On the Merits:

1. To declare that the petition of Petitioner I and Petitioner II is inadmissible;
2. To grant the petition of Petitioner III, Petitioner IV, Petitioner V, and Petitioner VI in part;
3. To 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 the State Gazette of the Republic of Indonesia Number 6573) is in contrary to the 1945 Constitution of the Republic of Indonesia and it does not have conditionally binding legal force as long as it is not interpreted as "no corrections have been made within 2 (two) years since this decision was declared";
4. To declare that 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) is still in effect until corrections are made to the establishment in accordance with the time limit as determined in this decision;
5. To order the legislators to make corrections within a maximum period of 2 (two) years since this decision is declared and if within that time limit no corrections are made then 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) shall become permanently unconstitutional;
6. To state that if within a period of 2 (two) years the legislators cannot complete the corrections of 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 material contained in the law which 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 the State Gazette of the Republic of Indonesia Number 6573) shall be declared as valid again;
7. To suspend all strategic and broad-impact actions/policies, and it is also not permissible 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);
8. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate;
9. To dismiss the Petitioners' petition for the rest/remainder.

Whereas in relation to the *a quo* decision of the Constitutional Court, there are dissenting opinions from Constitutional Justice Arief Hidayat, Constitutional Justice Anwar Usman, Constitutional Justice Manahan M.P. Sitompul, and Constitutional Justice Daniel Yusmic P. Foekh.

I. Dissenting Opinions from Constitutional Justice Arief Hidayat and Constitutional Justice Anwar Usman

Whereas *in the context of progressive law*, the method of establishing the law through the omnibus law method does not consider good or bad. Because it is a value-free method. Therefore, the method of law establishment with the omnibus law method can be adopted and suitable to be applied in the conception of the Pancasila legal state as long as the omnibus law is made in accordance with and does not conflict with the values of Pancasila and the principles contained in the 1945 Constitution. Moreover, Law Number 12 of 2011 concerning the Establishment of Legislations *junto* Law 15 of 2019 concerning Amendment to Law Number 12 of 2011 concerning the Establishment of Legislations (Law 12/2011 *jo.* Law 15/2019) does not explicitly specify what method must be used in the establishment of a law so that the practice of making laws using the omnibus law method can be done. This is in accordance with the rules in jurisprudence which state, *"The original law of something is permissible, until there is a proposition that shows its prohibition"*. Although this fiqh rule is not necessarily in accordance with the problem of applying the omnibus law method as discussed, but the philosophical values contained in these fiqh rules can at least be used as a basis for assessing the use of the method in question. Therefore, using the omnibus law method in the process of establishing the law is a legal breakthrough that can be done because the Law on the Establishment of Legislation does not explicitly regulate, allow or prohibit it. That way, although there are no prior amendment to the Law on the Establishment of Legislation, but basically the law in using the omnibus law method is allowed and not prohibited. Basically the omnibus law method is not a new thing applied in the establishment of laws in Indonesia. It is just that the nomenclature *"omnibus law"* has only became popular when the Job Creation Law was established. Therefore there is no reason to reject the application of the omnibus law method although it has not been explicitly regulated in the law for the establishment of legislation.

Whereas in terms of legal-formal, the establishment of laws using the omnibus law method although it has weaknesses in terms of format and technical the legal drafting or procedures for the establishment of laws, but currently there is an urgent need to make cross-sectoral laws using the omnibus law method. Because, if the legislators do not use the establishment of the Job Creation Law by using the omnibus law method then there are approximately 78 laws that must be made at the same time and certainly take a relatively long time, while the need for a comprehensive regulation is very urgent. The legislators expect that by applying the Omnibus Law method in the Job Creation Law, it can resolve conflicts (disharmonization) of laws and regulations quickly, effectively, and efficiently; licensing management is more integrated, effective, and efficient; improve coordination relations between related agencies; uniform government policies at the central and regional levels to support the investment climate; able to break the convoluted bureaucratic chain; guarantee legal certainty and legal protection for policy makers; and address the law in question, as well as being able to synchronize and harmonize 78 laws with 1,209 affected articles into a single

substance contained in the Job Creation Law.

Whereas in the context of Law 12/2011 *jo.* Law 15/2019, the format for the establishment of the Job Creation Law, of course, has followed the format for the establishment of a law as stipulated in Law 12/2011 *jo.* Law 15/2019, although there are things that are not commonly done because of the waiver of several materials in the guidelines for the establishment of laws which are attached to Law 12/2011 *jo.* 15/2019, for example in relation to the mechanism for revocation and amendment to the law. However, the guidelines that are attached to Law 12/2011 *jo.* 15/2019 is only guiding in nature and does not need to be understood stiffly and rigidly. This is because the guidelines for the establishment of laws contained in Attachment II are prepared based on practices and habits that have been carried out so far and are then set forth in a written rule. These guidelines are subject to change so that new constitutional convention and constitutional practice is formed as legal basis equivalent to the statute for further practice. Let alone Law 12/2011 *jo.* Law 15/2019, even the 1945 Constitution as the highest law can also be amended to adapt to the needs of the community and the development of the times, one of which is through judicial interpretation, namely the Constitutional Court. This causes the 1945 Constitution to be transformed into the living constitution because it is adaptive and responsive to the needs of the society and the development of time. This is where the progressive law is important and not always only adopt the positivist-legalistic formal opinion. Because, law is for man and not man for law.

II. Dissenting Opinions from Constitutional Justice Manahan M.P. Sitompul and Constitutional Justice Daniel Yusmic P. Foekh

Whereas the term omnibus law or omnibus bill or omnibus legislation actually refers to methods, techniques, or ways of drafting or formulating laws and regulations that develop in countries that adhere to the common law legal system. The main characteristics of the use of the omnibus method in the preparation of legislation is multi-sectoral (cluster) and involves many articles or regulations with the same theme or at least still have a close correlation that is compiled in a regulation. With these characteristics, there are several advantages of the omnibus method, among others, simplifying the number of overlapping laws and regulations (over-regulated), accelerate the legislative process which usually takes a very long time, and encourage the harmonization and synchronization of all laws and regulations based on the National Long-Term Development Plan (*Rencana Pembangunan Jangka Panjang Nasional* or RPJPN) and the National Medium-Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional* or RPJMN).

In the context of Indonesia, according to a Government Expert, Prof. Dr. Satya Arinanto, S.H., M.H., the implementation of the establishment of omnibus law is not a new thing, and has been done several times, even during the Dutch East Indies government. In the historical record of law, in the span of 1819-1949 (about 130 years), the Dutch government enacted around 7000 (seven thousand) laws and regulations in the Dutch East Indies region or what is now known as the territory of the Republic of Indonesia. These around 7000 (seven thousand) regulations have gone through at least 5 periods of enactment of Dutch laws in the territory of the Dutch East Indies. The mechanism for reforming and/or developing laws to reduce the number of around 7000 (seven thousand) to the remaining around 400 (four hundred) laws and regulations from the colonial period imposed by the Dutch Government in the Dutch East Indies, among others, was carried out through the establishment of omnibus law or omnibus bill.

Whereas some examples of the application of the omnibus method that have been carried out in the period after Indonesia's independence, including the following. First, the establishment of the MPR Decree Number V/MPR/1973 concerning the Review of Products in the Form of Provisions for the Provisional People's Consultative Assembly of the Republic of Indonesia, which was stipulated on March 22, 1973. The 1973 MPR (People's Consultative Assembly) General Assembly was the first General Assembly held during the New Order era. This opportunity was used by the MPR during that period to review various legal products in the form of Provisional People's Consultative Assembly Decrees which were products of the previous MPR. Thus the MPR Decree Number V/MPR/1973 has become something of resembling the omnibus law which reviewed various MPRS Decrees that have been in effect since 1960; Second, the establishment of the MPR Decree Number I/MPR/2003 concerning

the Review of the Material and Legal Status of the Provisional People's Consultative Assembly Decree and the Decree of the People's Consultative Assembly of the Republic of Indonesia from 1960 to 2002; Third, Law Number 32 of 2004 concerning Regional Government, which content is to unite/combine regulations regarding 3 (three) matters, namely regional government; village administration; and the election of regional heads and representatives to the regions (Pilkada); Fourth, the establishment of Law Number 7 of 2017 concerning General Elections. This law is an example omnibus law which corresponds to the second meaning described by the Black's Law Dictionary above, which unites several laws regarding general elections which were previously scattered in several laws, namely Law Number 42 of 2008 concerning the General Election of the President and Vice President; Law Number 15 of 2011 concerning General Election Organizers; and Law Number 8 of 2012 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council.

Provisions of Law Number 12 of 2011 concerning the Establishment of Legislations *junto* Law Number 15 of 2019 concerning Amendment to Law Number 12 of 2011 concerning the Establishment of Legislations (UU PPP) does not explicitly mention certain methods that must be used in drafting laws and regulations. In contrast to the concept of criminal law which emphasizes *lex scripta*, *lex certa*, and *lex stricta*, something that is not explicitly regulated in law (which is procedural-administrative in nature) does not necessarily be interpreted as a prohibition or a taboo to do. After all, the Job Creation Law remains a law in general even though it is drafted using the omnibus method. Therefore, the Job Creation Law can also revoke the law and amend the provisions of the law. In addition, throughout the history of the establishment of the Court, there has been no juridical assessment regarding what methods are standard and in accordance with the 1945 Constitution. That means, other methods in the preparation of laws and regulations, including the omnibus method, is possible to be adopted into the national legal system when it is deemed more effective and efficient to accommodate several content items at once, and it is really needed in overcoming legal impasse.

With regard to the principle of clarity of purpose, this can be seen from the General Elucidation which outlines the background, intent, and purpose of drafting the law. The enactment of the Job Creation Act basically aims to create and expand employment opportunities evenly, increase investment and ease of doing business, as well as encourage the development and improvement of the quality of the Cooperatives and the Micro, Small, and Medium Enterprises. To support the implementation of these objectives, it is necessary to amend and improve various related laws in a comprehensive, effective and efficient manner which cannot be done through conventional means by amending the laws one by one as has been done so far. With regard to the principles of efficiency and usability, it is difficult to deny that the Job Creation Law ignores this because the preamble section which contains philosophical and sociological foundations as well as the General Elucidation section of the Job Creation Law has considered the needs and benefits of the existence of the *a quo* Law. The existence of the Job Creation Law is really needed and useful in the midst of increasingly competitive competition and the demands of today's economic globalization. With regard to the principle of clarity of formulation, this matter must be explored further article by article which if according to the Petitioners it is unclear or has a different or contradictory interpretation of its contents between one article and another, it is advisable to conduct a material review at the Constitutional Court. This means that the petition of the principle of clarity of formulation concerns the entire legal norms which if deemed detrimental to the constitutional rights of the Petitioners due to a conflict of norms, are multi-interpretive, or not operational, then a material review can be carried out, not through a formal review. With regard to the principle of openness, which in this case is closely related to people/public participation in the establishment of the Job Creation Law, there has been evidence that negates the arguments of the Petitioners. Based on Article 88 of the PPP Law, the dissemination of the preparation of the National Legislation Program, the preparation and discussion of bills, and the enactment of laws carried out by the DPR and the Government shall disseminate information and/or obtain input from the public and stakeholders. Furthermore, based on the provisions of Article 96 of the PPP Law, the public has the right to provide input verbally and/or in writing in the establishment of legislation through public hearings (*Rapat Dengar Pendapat Umum* or RDPU), working visits,

socialization and/or seminars, workshops, and/or discussions.

The process of establishing the Job Creation Law has been carried out openly and involves public participation in accordance with the provisions of Article 88 and Article 96 of the PPP Law. Meanwhile, the provisions of Article 96 of the PPP Law do not specify a minimum or maximum limit for the number of community participation *in casu* the stakeholder groups who can provide input. During the trial it was revealed that there were trade unions/labour unions that walk out when invited to the process of making the *a quo* law. This action actually harms the trade unions/labour unions who have the opportunity to provide input in drafting the *a quo* law, but did not take advantage of the opportunity. In the process of making the laws, walk out is often conducted by the faction at the plenary meeting of decision-making at the second level in the DPR when the approval of a Bill will be made. The walk out action by the faction in the DPR, in fact, does not affect the validity of a Bill that is approved into law. Even if there is a desire of a certain group of people or parties that is not stated in the legislation policy, this does not necessarily mean the absence of public participation. Because, it is impossible for every desire of a certain group of people or parties to always be accommodated in official state policies, *in casu* Job Creation Law.

The Court must also consider the steps taken by legislators with the aim desired to be achieved through the establishment of the Job Creation Law. The legislators have attempted to make legal breakthroughs in the midst of acute problems in the field of legislation, such as the increasing number of regulations that do not support the ease of doing business and the absence of a single institution that manages data on official laws and regulations. In fact, the Government has established more than 50 (fifty) implementing regulations for the Job Creation Law and has established a Task Force for the Acceleration of Socialization of the Job Creation Law. If the Court considers this proportionally, then the public interest is guaranteed and protected by the existence of the *a quo* Law in a greater proportion than the perceived violation of the law-making procedure as argued by the Petitioners.