

JUDICIAL REVIEW OF LABOR CLUSTER OF OMNIBUS LAW ON JOB CREATION

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Abstract

The Omnibus Law on Job Creation received many rejections, especially the existence of a labor cluster which eventually led to judicial review to the Constitutional Court. This brief info analyzes the petition for judicial review submitted by the applicant to the Constitutional Court regarding the labor cluster in the Omnibus Law on Job Creation. The petition is a formal test and a judicial review. If the formal test is granted by the Constitutional Court, the Omnibus Law on Job Creation will be declared completely null and void. To fill the legal vacuum, the President can issue a Perppu (government regulation as a substitute for law) related to the content of the Omnibus Law on Job Creation. Meanwhile, if the petition for judicial review is granted by the Constitutional Court, the legislators will have the opportunity to choose a policy and formulate a proper legal policy related to the provisions of labor law in Indonesia. Currently, the petition is included on the file correction hearing agenda. The Legislative entity needs to explain that the legal policy choices taken do not contradict the 1945 Constitution. Academic papers, Bill, the instruction of the President represented by the Minister, and the statement of factions are an important part of providing information at the Constitutional Court.

Introduction

The Omnibus Law on Job Creation which was approved by the House of Representatives of the Republic of Indonesia (DPR RI) at the Plenary Session of 5 October 2020 was signed on 2 November 2020 by President Joko Widodo and take effect ever since. The Omnibus Law on Job Creation aims to encourage increased investment so that it can create employment opportunities for the Indonesian people under

the provisions of Article 3 of the Job Creation Law (dslalawfirm.com, April 16, 2021).

Since the Omnibus Law on Job Creation was enacted, many parties have criticized the existence of the Law, especially due to the labor clusters listed in Chapter IV of the Omnibus Law on Job Creation. The criticism came from labor unions, and other parties such as students and academics. One of these criticisms was raised by the labor



unions, namely, the Confederation of All Indonesian Workers Unions (KSBSI), which submitted a plea for a judicial review to the Constitutional Court (MK) (national.kontan.co.id, April 16, 2021). The application for material and formal test of the Omnibus Law on Job Creation is registered on November 12, 2020, with Case Number: 103/PUU-XVIII/2020. Regarding the formal test, KSBSI argued that in the formation of the Job Creation Law, the Government and the Indonesian Parliament did not involve labor unions, did not fulfill the principle of forming good legislation, and the Omnibus Law on Job Creation was made hastily which caused controversy (mkri.id, April 16, 2021).

Regarding the judicial review, KSBSI questioned several articles. "Whereas the entry into force of the Omnibus Law on Job Creation, either directly or indirectly, is very detrimental to the constitutional rights of workers and labor unions as regulated in the 1945 Constitution," (national.kompas, 24 April 2021).

The first virtual trial on the judicial review of the Omnibus Law on Job Creation which was submitted to the Constitutional Court on November 24, 2020, has only examined the files submitted by the applicant. Subsequently, the second trial was held again for the revision of the applicant's file on April 19, 2021. (Media Indonesia, April 20, 2020). This paper analyzes the plea for judicial review submitted by the applicant to the Constitutional Court concerning the labor cluster in the Omnibus Law on Job Creation.

Formal Test Suit of Labor Cluster

Article 4 paragraph (3) of the Constitutional Court Regulation No: 06/PMK/2005 concerning Guidelines for Proceedings in Judicial Review Cases states that formal testing is a judicial review concerning the process of constituting laws. If the Constitutional Court grants a formal review of the drafting of the law, the law can be completely annulled.

The formal review does not specifically state that the material of the law is contrary to certain articles in the Constitution of 1945, but only based on existing processes and procedures. If we look closely at the petitum submitted by KSBSI in a formal test, it is for the Constitutional Court in its decision to state that the process of establishing the Job Creation Law, particularly Chapter IV concerning Manpower, does not meet the provisions of Law no. 15 of 2019 concerning Amendments to Law No.12 of 2011 concerning the Formation of Legislative Regulations (UUP3) and the principles for the formation of statutory regulations.

There are several reasons for the applicants to test the formality of the Omnibus Law on Job Creation: First, in the formation of the Job Creation Law, the Government and the DPR RI as the creators of the Job Creation Law did not involve labor unions as interested parties. Second, Article 13, Article 14, and Article 37 Part Two Chapter IV of the Job Creation Law, and Article 1, Article 51, Article 53, Article 57, and Article 89A Part Five Chapter IV of the Job Creation Law has never been in the draft of the Job Creation Bill, it was

never discussed by the Tripartite Team on 10-23 July 2020, nor was it ever discussed by the Government and the Indonesian Parliament, but it is contained in the Job Creation Law. Third, the formation of the Job Creation Law does not fulfill the principles of forming good legislation. Fourth, the Job Creation Law was drafted hastily which caused controversy, such as Article 6 referring to Article 5 paragraph (1) letter a, but in the Job Creation Law it is not found where the existence of Article 5 paragraph (1) letter A in the Job Creation Law; The government is still abolishing and/or changing the norms or articles of the bill that have been agreed with the DPR RI and the Government; Number of manuscript pages The Job Creation Bill that was passed by the Indonesian Parliament and the Government into the Omnibus Law on Job Creation is still changing; The discussion and ratification of the joint agreement between the Indonesian Parliament and the Government, which should have been carried out until 8 October 2020, was accelerated to 5 October 2020.

In its implementation, throughout the establishment of the Constitutional Court, not a single petition regarding formal review has been granted and has an impact on the loss of legal power to bind a law. This can be seen from several decisions made by the Constitutional Court, including Decision 27/PUU-VII/2009 regarding Law no. 4 of 2009 concerning the Supreme Court, Decision 79/PUU-XII/2014 concerning Law 17 of 2014 concerning MD3, and the Constitutional Court Decision No. 001-020-021/PUU-I/2003 concerning Electricity in which the formal test

decisions were completely rejected by the Constitutional Court (news.detik.com, April 24, 2020).

The rejection of the Constitutional Court in several of these decisions should be considered. There are several logics of rejection of the Omnibus Law on Job Creation which only relies on the legislative process under the P3 Law, whereas based on the Constitutional Court Decision No.27/PUU-VII/2009, in the first formal review, the Constitutional Court considered the need to provide a time limit or deadline for a law can be tested formally. Second, the Constitutional Court believes that the DPR RI's Standing Orders are a very important part of conducting formal testing of the 1945 Constitution. Third, the Constitutional Court believes that judicial review is carried out between laws against the 1945 Constitution, not being tested by equivalent laws or others, in this case, UUP3. The material of UUP3 is intended to regulate the procedures for the formation of good laws.

If the formal test suit is granted, the Omnibus Law on Job Creation will be completely annulled. The government and the DPR RI can discuss and ratify the Omnibus Law by adjusting the preparation and discussion with the formal procedures in the P3 Law. To fill the legal vacuum, the President can form a Perppu related to the Omnibus Law on Job Creation following the existing authority of Article 22 of the 1945 Constitution.

Material Test Suit of Labor Cluster

Apart from submitting a formal test, the Applicant also submitted a request for a judicial

review. Article 4 paragraphs (2) of the Constitutional Court Regulation No: 06/PMK/2005 concerning Guidelines for Proceed the Judicial Review Cases states that material review is a judicial review that is deemed to be contrary to the 1945 Constitution. The material test will not invalidate a law in its entirety; only state some articles, paragraphs, or phrases that are contrary to the 1945 Constitution. The material examination focuses on the articles that were tested by considering the constitutional impairment of the applicant, whether they are contradictory or not.

The labor cluster judicial review lawsuit is filed against 22 articles of Part Two Chapter IV of the Job Creation Law, namely Article 42 paragraph 3 letter C, Article 57, Article 59, Article 61 Paragraph 3, Article 61A paragraph 1, Article 89, Article 90B, and Article 154A. Then, Article 156, Article 161, Article 162, Article 163, Article 164, Article 165, Article 166, Article 167, Article 168, Article 169, Article 170, Article 171, and Article 172 second part. Apart from that, Article 51, Article 53, Article 57, Article 89a part 5 of Chapter IV of the Omnibus Law on Job Creation.

The reasons the applicants tested the material on the Job Creation Law, among others: First, the 26 articles in Part Two and Part Five of Chapter IV of the Job Creation Law which regulate or are related to the regulation of Foreign Workers (TKA), oral work agreements, Specific Time Work Agreements (PKWT), outsourcing, layoffs and severance pay, as well as migrant workers are against the 1945 Constitution because: 1) The content of the Work Creation

Law reduces (degrades) and even removes the constitutional rights of workers and labor unions from what has been provided and guaranteed by the 1945 Constitution based on Law no. 13 of 2003 concerning Manpower; 2) The content of the Job Creation Law is contrary to the philosophy of Pancasila; 3) Sociologically, the content of the Job Creation Law is not following the needs of the working community; 4) Juridically, the content of the Job Creation Law does not solve labor problems and industrial relations, but it actually adds the problem, such as a legal vacuum; 5) The content of the Job Creation Law is contrary to the principle of the formation of laws and regulations which mandate the Government to further regulate several norms in the level/hierarchy of Government Regulations; 6) The content of the Omnibus Law on Job Creation contradicts human rights and contradicts many international legal instruments, such as the 1948 Universal Declaration of Human Rights (UDHR) and the ILO Convention 105/1957 on the Elimination of Forced Labor (mkri. id, 16 April 2020).

The articles in the labor cluster are prepared with the logic of flexibility that does not pay attention to the sociological-empirical conditions of the working relationship, namely the imbalance of the position of workers and employers so that many articles are deemed contrary to the 1945 Constitution. The Omnibus Law on Job Creation did not finish critical problems which exist in Law No. 13, 2003, concerning Labor; the revision of the Labor Law through Omnibus Law actually raises new problems that have an impact on worker protection: First, the loss of the maximum deadline provision in the PKWT. Second, no

more phrase "the need for a decent life" as a reference for calculating the minimum wage, which has an impact on the broader shift in the concept of wage protection. Third, removing restrictions on the work types which can be outsourced. Fourth, the shift in the paradigm of dismissal is easier because it opens the possibility of layoffs only through notification from employers to workers without prior negotiation.

If the judicial review lawsuit against the labor cluster in the Job Creation Law is granted by the Constitutional Court, the legal provisions related to employment will return to using Law No.13 of 2003 concerning Labor. This condition enables the Government and the DPR RI to determine policy options and formulate a better legal policy on labor issues in Indonesia. In the material review, the DPR RI Legislation Entity as the Apparatus of the DPR RI which discusses the Omnibus Law on Job Creation with the Government is the party that provides technical information regarding the discussion mechanism and treatises, administrative evidence, academic papers, Bill, the instruction of the President represented by the Minister, and the statement of factions are an important part of giving statements at the Constitutional Court. The statement of the DPR RI must be prepared transparently and rationally so that it can convince the nine judges of the Constitutional Court to give the fairest decision against the lawsuit.

Closing

The Omnibus Law on Job Creation aims to encourage increased investment so that it can create the widest possible job opportunities for the Indonesian people. It is conceptually considered inappropriate. As a result, many articles in the labor cluster are considered

contrary to the 1945 Constitution, which is compiled based on the logic of flexibility that does not pay attention to the sociological-empirical conditions of work relations, namely the inequality of the position of workers and employers.

Concerning the petition for formal testing, the rejection of the Constitutional Court in several decisions deserves to be considered and studied to find out how the Constitutional Court conducted formal testing. Meanwhile, the plea for a judicial review of the formation of law provides room for policy choices and to formulate a legal policy. In the case of judicial review of the 1945 Constitution, the Legislation Entity is the party that provides information for the QA process in court. Legislation Entity must compile the information of the DPR RI transparently and rationally to convince the nine judges of the Constitutional Court. They need to explain legal policy choices and needs to ensure that the legal policies taken do not conflict with the 1945 Constitution. Academic papers, Bill, the instruction of the President represented by the Minister, and the statement of factions are an important part of giving testimony at the Constitutional Court. The author thought that the submission of a judicial review by KSBSI is an appropriate and democratic legal step.

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