

# THE LEGAL FORCE OF THE JOB CREATION LAW IN CONDITIONAL UNCONSTITUTIONAL STATUS AFTER THE CONSTITUTIONAL COURT DECISION

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**Abstract:** The Job Creation Law is not only referred to as a law that has gone viral in various circles since it was enacted in 2020, but it also seems that the Job Creation Law continues to be a major star in the world of the Plenary State arena. Various kinds of arguments, assumptions, pros, and cons emerged and during the ratification, demonstrations were inevitable. The research uses normative legal methods related to literature studies and the latest news data with a philosophical approach or ideal values. The conclusion is that the Job Creation Law is still valid and has legal force even if it is stated to be formally flawed, where material defects are a certainty. The binding legal force of the Job Creation Law lasted for two years and there was no update on the implementation of the Job Creation Law.

**Keywords:** Law; Job Creation Law; Unconstitutional Status; Constitutional Court.



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## INTRODUCTION

According to the Constitutional Court (MK) if the benchmark for formal testing must always be based on the articles of the 1945 Constitution alone, then it is almost certain that there will never be formal testing because the 1945 Constitution only contains principles and does not regulate the formal aspects. The Job Creation Law is not only referred to as a law that has gone viral in various circles since its passage in 2020, the Job Creation Law continues to be the main star in the world of this Plenary State competition. All sorts of arguments, assumptions, pros, and cons have sprung up and at the time of its ratification, the demo was inevitable. Academics began researching the more than 1000-page law and observed and considered it for implementation and basic investment references (Soebagyo, 2021).

Lawsuits were filed by various groups and parties, one of which was the workers' party to the Constitutional Court (MK). Repulsion after repulsion was received with a reply that was quite difficult to make a decision. And the answer finally got a response that gave a glimmer of light. The labor lawsuit was granted even though not all complaints were accepted, but the Job Creation Law was declared defective and had to be corrected for two years and its status was conditionally unconstitutional.

A law is formed based on many considerations, if it is certain that the Job Creation Law will have problems, what are the underlying reasons that the Job Creation Law is still passed? The news speaks eloquently that the Job Creation Law was born to anticipate the economic

problems faced by the Indonesian nation when experiencing the Covid-19 pandemic and is President Jokowi's policy to improve the nation's economy. But does the law, which is often referred to as the Omnibus Law, also represent the voice of the people when the Covid-19 pandemic hits? Various kinds of lawsuits were filed, many considerations were granted and rejected, then the lawsuit was received because of formal defects, even though the basis for making laws in Law No. 12 of 2011 concerning the Establishment of Laws and Regulations (P3 Law), the Job Creation Law was not legally flawed. What is the Job Creation Law's authority and power when declared unconstitutional but conditional? Thus this paper seeks to dissect simply from the side of the philosophy of science.

## MATERIALS AND METHODS

This paper is made using normative legal research methods related to the study of literature and the latest news data with a philosophical approach or ideal values.

## RESULTS AND DISCUSSION

*Das sollen from the formation of the Job Creation Law is from the idea of Mr. President Jokowi to use the omnibus law method in simplifying the formation of law with the ultimate goal of improving the welfare of the people that is fulfilled. Increase investment in Indonesia and attract as many investors as possible to come in droves, create jobs for the people, and not cut off the people's economy in the midst of one of the brilliant thoughts and strategies during the Covid-19 pandemic to*

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make a difference. What is the process of drafting the OMNIBUS LAW, which according to data shows that in less than a year, a law that changes many articles can be born?

Unconstitutional according to the KBBI is not based on the constitution or the constitution; Contrary to (violating) the Constitution. Where this is of course when talking about what the Basic Law means from the preamble, torso, and all the articles in the 1945 NRI Constitution. But what is said to be unconstitutional here is that the process and its Law remain constitutional and in force. The stages for forming a law according to Law No. 12 of 2011 are (Tamin, 2021):

#### 1. Planning

Planning is the stage where the DPR and the President (as well as the DPD related to a particular bill) compile a list of bills that will be compiled in the future. This process is known as the preparation of the National Legislation Program (Prolegnas). The House of Representatives of the Republic of Indonesia (DPR RI) has determined the Job Creation Bill as a Priority Prolegnas for 2020 at the Plenary Meeting on January 22, 2020. Then on February 7, 2020, with Presidential Letter Number: R-06 / Pres / 02/2020, the Job Creation Bill was conveyed to the House of Representatives of the Republic of Indonesia.

#### 2. Drafting

The preparation of the bill is the preparation of draft regulations article by article by following the provisions in appendix II of Law No. 12 of 2011 which was discussed jointly between the DPR RI and the government. This joint discussion

has the following functions:

1. Ensure that the bill drafted is in line with:

a. Pancasila, the 1945 NRI Constitution, and other laws

b. Techniques for drafting laws and regulations

2. Produce an agreement on the substance provided for in the Bill.

The Job Creation Law, absorbs public consultations, public dialogues, and various public discussions in various academic circles.

#### 3. Discussion

The discussion of the bill material between the House of Representatives and the President was held at two levels of discussion, namely the commission meeting and the plenary meeting. Where there are always criticisms, opinions, and input from each question and answer from the DPR, the President, and the DPO on a particular topic.

#### 4. Attestation or assignment

Where after the approval between the House of Representatives and the President, the bill can be passed with the signature of the President or if for a maximum of 30 days, the President's signature has not been signed, the bill officially becomes a law and is immediately processed by the Secretary of State.

#### 5. Promulgation

By Law No. 12 of 2011 Article 1 (12) where the Promulgation is the placement of laws and regulations in the State Gazette of the Republic of Indonesia, Supplement to the State Gazette of the Republic of Indonesia, State Gazette of the Republic of Indonesia, Supplement to the State Gazette of the Republic of Indonesia, Regional

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Gazette, Supplement to the Regional Gazette, or Regional News.

The Job Creation Law was sentenced to formal defects, but according to data provided by the Coordinating Ministry for Economic Affairs of the Republic of Indonesia on the website: <https://maritim.go.id/tahapanpenyusunan-uu-cipta-kerja/>, this Omnibus Law obeys the procedure for promulgating a law. Meanwhile, the reason why the Constitutional Court has ruled that the Job Creation Law is flawed is that there was one argument by the applicant who protested about this OMNIBUS LAW, which the Constitutional Court considered related to the uncertainty of whether the Job Creation Law was in the form of a new law, a change law, or a repeal law. The Panel of Judges said that the biggest substance of the Job Creation Law was changed to several laws. There are at least 77 amendment laws and 1 amended repeal law in the Job Creation Law. Where according to Law No. 12 of 2011, neither the amendment law nor the repeal law must be accompanied by the words 'change' and 'repeal'. This is what is not in the title of the Job Creation Law so it is considered not to meet the standard standards (Pratama, 2021).

Because there is no longer a basis for closing various protests, the Constitutional Court seeks to balance various interests by adhering to structural functionalism and making the Job Creation Law flawed by the 1945 NRI Constitution. Even if the benchmark in the articles of the 1945 NRI Constitution Article 22 A then there will be no formal testing because the 1945 NRI Constitution contains only principles and there is no clear regulation in terms of

formal and procedural aspects.

2. A law has binding legal force from the moment it is promulgated. However, some provisions can be implemented immediately, but some require implementing regulations. The legal force of the Job Creation Law as long as its status is conditionally unconstitutional after the Constitutional Court decision can still be carried out by what is written in the Job Creation Law because what is declared defective is the process that must be corrected for two years within the time stipulated by the Constitutional Court.

The job creation law in its legal force remains constitutional and applicable and only the process where it is referred to formally is unconstitutional. To avoid a greater impact, both the progress of the Job Creation Law and protests from the public, the implementation of the Job Creation Law was overcome for a period of two years. All strategies and far-reaching implementations and the establishment of new implementing regulations are not allowed to be carried out during the 2 (two) year grace period. This is of course contrary to what was conveyed by the Legal Tribunal in the Main Case submitted by the Constitutional Court where if the Law is contrary to the 1945 NRI Constitution, the Law does not have binding legal force.

From the above, it can be known if a formal defect is possible for a material defect to exist in this Job Creation Law. The legal facts of the procedure for the establishment of Law No. 11 of 2020 are:

- does not meet the principle of clarity and clarity of formulation
  - The Provision of Space for the Participation of the Community is Not
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## Optimal

- academic manuscripts and the Job Creation Bill cannot be easily accessed by the public

- not based on definitive, standard, and standard ways and methods and systematics of law formation.

- provisions of the norms of the article that disappeared and replaced

From the above legal facts, if the process of making a law is problematic, the content and content of the law, both the provisions and the flexibility, must be problematic. However, by being declared conditionally unconstitutional, the Job Creation Law has legal force with binding but conditional force where if no improvement is made within two years of the Constitutional Court's decision is pronounced, this Job Creation Law becomes permanently unconstitutional

## CONCLUSIONS

The conclusion is that the Job Creation Law is still valid and has legal force even if it is declared a formal defect, which is a material defect and is also a certainty. The binding legal force of the Job Creation Law lasts for two years and there is no renewal of the implementation of the Job Creation Law. This is given time to bind and suspend the legal force of the Job Creation Law not only under the supervision of the Constitutional Court for the acceptance of this JR, but to contain the chaos in the Indonesian economy where the Job Creation Law also changes the Articles on manpower, land, investment, and so on as the main jockey in national development. And the formal defects of the Job Creation

Law are due to the unease of Government Institutions and the rush to follow up on a problem that has resulted in a domino effect in the Indonesian nation.

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