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## Constitutional Court Rejection on Omnibus Law: How to Understand After Submission

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**Abstract**--The purpose of this legal and constitutional study was to deeply understand the causes and impacts of rejection of the ratification of the Omnibus Bill and its derivatives of the Job Creation Bill by demonstrators consisting of students and laborers throughout Indonesia. To make it easier for us to understand the above problems, we have carried out a series of data collections since the Omnibus Bill was discussed until it was passed by Parliament and rejected by demonstrators. For data, secondary legal information in the form of legal publications, textbooks, journals, and court decisions related to the Omnibus Law and other information in the form of articles published in the mass media has also been used as data. Finally, we can conclude that the findings include: Several laws originating from the Omnibus law have legitimized environmental destruction, ignoring customary rights that are more environmentally friendly and sustainable. The majority of the Omnibus Law committee comes from the elite who do not think about the civilian element, including the new law derivative people. The Omnibus Bill is believed to have participated in enslaving workers under the pretext of legal flexibility through low wages, hourly wages, and the use of work contracts and outsourcing to win over companies. The government looks repressive towards its people through the Omnibus Law, which looks unique to business people so that rejection and predictions will lead to the Constitutional Court.

**Keywords**---constitution court, legal, omnibus law, rejection, understand.

### Introduction

After the People's Representative Council passed the Job Creation Bill, one of the Omnibus Law sections is now being rejected by more people, especially labor workers and students. As a result, the refusal action was carried out through mass demonstrations. They are the workers simultaneously in all Indonesia

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regions from 6 to October 08, 2020, and almost similar to previous bills passed since the era of the Jokowi Presidency. With the attention of national and international mass media, the protesters that mostly labors will continue to carry out national strikes and demonstrations, just one day after the problematic bill was passed on October 05, 2020. The national strike action carried out to urge the government to cancel legislation failed because it was considered a failure to provide legal justice to workers and other communities (Mattei, 1994). On the other hand, it is also assessed that this ratification is not transparent.

Meanwhile, such demonstrations and protests are viewed by the government as commonplace. However, the government advised those who refused to voice their aspirations through the law's judicial review mechanism in the Constitutional Court. On this basis, we conducted this research to understand the reasons and impacts of rejection of the Job Creation Law and the prediction of submitting a judicial review to the Constitutional Court (Stroud et al., 2002; Rohner & Rohner, 1980).

The action against the Omnibus Bill Law was driven by the Confederation of Indonesian Workers Unions (CIWU). They stated that demonstrations of workers against the Omnibus Law on the Job Creation Bill would be held simultaneously in their respective companies (Allen, 2018). The protest protests in the form of demonstration axes involved about two million workers. This a demonstration, not a strike, which will be carried out simultaneously on a national basis. If viewed from a legal point of view, this action is justified by Law Number 9 of 1998, namely the rules for express the opinion in public and the location of the respective companies where the workers work (Larsson et al., 1992). This action would automatically stop producing jobs affected by the national strike because it took place simultaneously for three days.

According to the chairman of CIWU Indonesia, at least 32 federations and confederations in Indonesia have decided to hold a simultaneous national demonstration or a national strike. Their protest was seven reasons for the Omnibus Law on the Job Creation Bill to be rejected by local and central labor unions (Allen & McNeely, 2017). According to the chairman, at least seven points of agreement between the legislative and executive branches, which, according to Indonesian workers, strongly rejected and did not accept the agreement's results. Seven points passed by the government with the House of Representatives, but they all are rejected by Indonesian workers include:

First, the conditional minimum wage and regional sector minimum wages are removed. The reasons for this change and ratification were rejected by the workers, who previously had no conditions, even though the value was different between workers' wages in big cities and regions. The labor association's reason is that if the average Minimum Wage for Work is taken nationally, Indonesia's wage rate is much lower than the minimum wage in ASEAN countries, say Vietnam, not with Malaysia, let alone the minimum wage for workers in Singapore (Yuen, 2013; van Grunsven & Hutchinson, 2016; Islam et al., 2017). Likewise, the irregularity in this provision is that the regional work wage standard must remain, namely the determination of the increase in value and the type of

industry that gets the regional minimum wage for work carried out at the national level for several regions and types of industry that meet the criteria.

The finding of [Oleszek et al. \(2015\)](#), has confirmed that the rejection and protests from workers and the wider community triggered the Omnibus Law's passing, especially the Job Creation Law marked by a controversial decision. This phenomenon often occurs in legal and judicial processes. This section also aims to determine the causes of controversy and inequality between the government, Parliament, demonstrators, and the wider community, particularly the workers. This controversy occurred because each party was trapped in their respective demands. For example, the government claims that the previous law articles overlap, so there needs to be a new legal umbrella called the Omnibus Law. One of them is the human resources sector, which will later revise several articles on Manpower. In human resources, the government plans to delete, amend and add articles related to the Manpower Law. For example, the government plans to change the reward scheme for laid-off workers. The amount of reward money is determined based on the length of time working in one company. However, [the public and protesters are compared to the current regulations, namely Law Number 13 of 2003 concerning Manpower, the Omnibus Law award scheme for the Job Creation Bill has decreased and even leads to elimination. To fulfill the controversy, the public and protesters need to immediately conduct a study and look for controversy with relevant and factual findings.](#)

[Samawati & Sari \(2020\)](#), revealed that [the draft of the Omnibus Law on Job Creation article 14 in Indonesian is full of interests of many parties. The public can now see how the Omnibus Law of the Job Creation Bill, the government, has planned to remove the employment termination scheme, where there is an elimination of workers' rights to file a lawsuit with an industrial relations dispute institution. Several articles in the Omnibus Law Bill are deemed by labor unions to be detrimental to workers' bargaining position. One of the highlights was eliminating the minimum wage scheme, which was replaced by the regional minimum wage, which could lower workers' wages. Then, workers also question Article 79, which states that there is only one day of rest per week. It means that employers' obligation to provide rest periods for workers or laborers decreases in the Omnibus Law on the Job Creation Bill \(Mahy, 2020; McKibbin & Fernando, 2021\). If it passed, the government considered providing legality for entrepreneurs who have applied a day off a week. Meanwhile, two days off a week is considered a company that is not regulated by the government. It considered weakening the position of workers.](#)

This paper aimed to understand labor rejection of the Omnibus Law, especially the Work Creation Bill articles, and predict what the protesters will have to do if submitting a judicial review to the Constitutional Court becomes an alternative solution, how the protesters come across to truth the Constitution Court as a fair solution ([Hartley et al., 2010](#); [Huda et al., 2021](#)). The results of this project will add new insights to the legal and sociopolitical understanding of a new constitutional order for the public, especially intellectuals, and a new understanding approach for the researchers themselves, particularly regarding constitutional law and the citizenship rights of Indonesian citizens as a country currently in the best democratic practices in the world ([Tomasello et al., 2003](#);

Zacharakis & Meyer, 1998). Thus state law understanding and citizen awareness will enhance both law and state justice (Isra et al., 2017; Yodha, 2018; Suhardjanto et al., 2018; Suyanto et al., 2018). Through the discussion of this study, it will be one way to find alternative solutions so that people, especially workers, do not feel cheated by the state elite's decisions (Shomirzayev, 2021). It hoped that this understanding would become the truth for citizens in their struggle to get the right to legal justice from the state through Parliament and the government. The national news media reported the most rejected Job Creation Bill passed consisting of 15 chapters and 174 articles, which regulate various revisions to regulations, from labor to the environment, and drawing protests from workers and students. Based on the national mass media analysis, all points of this law contain an element of controversy (Eshonkulov, 2021).

## Method

The paper aimed to understand the rejection of the Omnibus law on the Job Creation Law passed by the Parliament and the government. This study also wanted to predict this case's alternative resolution by submitting a Judicial Review of this controversial law to the Constitutional Court. We have conducted a series of data collection and analysis using normative juridical research methods using secondary data, especially the Omnibus law passed and labor laws to strengthen the national economy (Webley, 2010; LeBaron & Rühmkorf, 2017). Besides, secondary legal information is in the form of legal publications, textbooks, journals, and court decisions related to the Omnibus Law and other information in the form of articles published in the mass media. Furthermore, this presentation uses a conceptual and case-based, philosophical approach to address justice and legal certainty in omnibus law as a new legal umbrella in Indonesia.

## Discussion

### The government claim

The government claims that the Omnibus Law on the Job Creation Bill will encourage national economic recovery and bring Indonesia into a new global economic era. For example, the Job Creation Bill will encourage regulatory reform and bureaucratization so that Government services become more efficient, comfortable, and confident by implementing Norms, Standards, Procedures, and Criteria (NSPC) and the use of electronic systems (Widjaja, 2021). For other reasons, the problems that have often hampered the increase in investment and the creation of job opportunities include the complicated and complicated business licensing process, burdensome investment requirements, difficult land acquisition, to the sub-optimal empowerment of MSMEs and cooperatives. The government's next claim is that the slow administration process and the bureaucratic licensing hinder investment and job creation. The Job Creation Bill aims to solve various problems that hinder investment in increasing and creating jobs. Simplification of the bureaucratic and licensing systems facilitates business actors, especially MSMEs, a conducive investment ecosystem and job creation to respond to the ever-increasing demand for labor.

The government also conveyed that the benefits obtained after the enactment of the Work Creation Bill included small business actors in the form of support in the form of convenience and certainty in the licensing process through Online Single Submission. Besides, according to the government, there is convenience in registering Intellectual Property Rights (IPR), the ease of establishing an individual Public Company, to convenience with easy requirements and low costs. Hence, there is a certainty of legality for MSME business actors. Not only that, the government said, the Omnibus Law on the Job Creation Bill was also said to offer convenience in establishing cooperatives by setting a minimum number of the establishment of only nine people. Cooperatives provide a solid legal foundation for applying sharia business principles and ease of use of technology (Ramadani et al., 2021).

The Omnibus Law was widely rejected. However, the government claims that the Omnibus Law aims to overcome the problems of increasing the economy and business activities, especially the difficulty of providing jobs for productive citizens. Unexpectedly, after being passed by the legislature, this bill became a hot topic of discussion, especially its impact on society, especially workers. Even though the Omnibus law, especially the Job Creation Bill, has been passed into law, the wave of resistance from labor workers is getting out of hand. Despite the impact of this law on office employees, there has been no reaction from office workers (Widana et al., 2020).

### **The protesters claim**

The Omnibus Law and its derivatives of the Job Creation Law are seen as a red carpet for foreign investors and an entry point for massive foreign workers into Indonesia so that unemployment for local workers can be threatened. Because with articles and articles The Job Creation Bill, which seemed to facilitate foreign workers' entry with more professional skills, made no sense to demonstrators. Although some academics have rejected this opinion and opinion. However, many judgments support the demonstrators' opinion that the Job Creation Law makes it easier for the bureaucracy to allow foreign workers' entry. However, efforts to convince demonstrators that this new law only applies to foreign workers in the sector with specific skills required because local workers do not yet exist or do not have the level of expertise required. However, this law cannot convince demonstrators.

Nevertheless, the demonstrators remain unsure because of information from many parties to suspect that this new law will become a red carpet for foreign workers due to Article 89 of the Job Creation Bill, which changes or removes several provisions in Law / 2003 concerning Manpower. The information and the circulation of this understanding show that with the hasty amendment of the new Manpower Law, there is a concern that there will be an invasion of foreign workers so that Indonesia will be flooded with foreign workers who displace local foreign workers. Finally, the accumulation of all current developments in information makes it difficult for the demonstrators to believe the changes to the Omnibus Law's ratification, especially regarding articles on foreign labor in Indonesia. The reason is that, even without this new land administration law, the flow of foreign workers can no longer be stopped. This new change has obstructed

a meeting point between the government's demands and the demonstrators' demands, which consisted of various workers and students from all over Indonesia. Following are the articles of the Omnibus law of the Job Creation points that were rejected, mostly by labor and student groups:

### **Cut off leave articles**

The right to leave for employees to get two days off in one week was previously in the Manpower Act, trimmed. Article 79 paragraph (2) letter (b) regulates that workers are obliged to be given a weekly rest period of one day for six working days in one week. Subsequently, Article 7<sup>9</sup> also eliminates the company's obligation to provide a two-month<sup>7</sup>-long break for workers who have worked for six consecutive years and apply every multiple of the work period of six years. Furthermore, Article 79 paragraph (3) only regulates the granting of annual leave of at least 12 working days after the worker or laborer has continuously worked for 12 months<sup>10</sup>. Article 79 Paragraph (4) states that annual leave implementation regulates work agreement<sup>10</sup> company regulations, or collective working agreements. Article 79 (5) states that individual companies can provide long breaks regulated in work agreements, company regulations, or collective working agreements.

### **Employment agreement articles**

The Omnibus law eliminates the rules<sup>2</sup> regarding the period of a specific time work contract (STWC) or contract workers. Article 59 paragraph (4) of the Job Creation Law states a Government Regulation regulates further provisions regarding the type and nature or activity of work, the period and deadline for extension of the work contract<sup>2</sup> for a certain period. Previously, the Manpower Law stipulated that STWC could be held for a maximum of two years and could only be extended once for a maximum period of one year. These new provisions can increase employers' power and discretion to act at will on the status of unlimited workers contracts and agreements.

### **Removing sanctions articles**

<sup>2</sup> In Article 91 paragraph (1) of the Manpower Law<sup>3</sup> the wage determined by agreement between an entrepreneur and a worker may not be lower than the wage provisions stipulated in the prevailing laws and regulations. Article <sup>3</sup> paragraph (2) states, if the agreement as meant in paragraph (1) is lower or contradicts the statutory regulations, the agreement is null and void, and the entrepreneur is obliged to pay the worker/laborer wage according to the prevailing laws and regulations. Article 91 states that the prohibition of pay<sup>7</sup> the number of wages under the provisions explained in Article 90 of the Manpower Law. However, in the Job Creation Law, the provisions of the two articles in the Manpower Law are entirely abolished.

### **Severance pay articles**

<sup>11</sup> What causes problems in the Job Creation Law is the severance pay, which is reduced from 32 times wages to 25 times salary, with details of 19 times the

employer's wages and six times the wage<sup>6</sup> covered through the Job Loss Guarantee Program (LGP). According to the Secretary-General of the Indonesian Workers' Organization (OPSI), the severance pay is only for workers working hours over 24 years and for specific reasons. So, the amount of severance pay actually cannot be enjoyed by all workers in the company. Severance pays 32 times the wage is the highest severance pay and only obtained for workers who have worked 24 years and over. The reasons for laying off work are also specific, one because of death, two because of retirement, three because of efficiency, four because the merged company cannot join a new company, so not all workers who decided to work will get 32 times their wages.

### Environmental protection articles

The revised Article in the Job Creation Law is Article 29<sup>11</sup> of the Law on Environmental Protection and Management (LEPM)<sup>24</sup> known as the Article of Absolute Liability. Article 88 of the LEPM Law reads Every person whose actions, business, and activities use hazardous and toxic materials, produce or manage that waste, and who pose a severe threat to the environment are responsible for the losses that occur unnecessarily proof of the element of error. Then the draft Job Creation Bill, the article was changed to:

Anyone<sup>1</sup> whose actions, business, and activities use B3, produce and manage B3 waste, or pose a serious threat to the environment,<sup>13</sup> is responsible for the losses resulting from their business and activities—article Environmental Protection and Management. One of the Job Creation Law articles revises the Law on Environmental Protection and Management (LEPM), including the powerful article that traps forest burners.

### Foreign worker articles

It must be admitted, is one of the newest regulations that can encourage increased foreign investment. <sup>30</sup> the article governing entry permits for foreign workers is simplified. So that the Job Creation Law has changed and removed<sup>6</sup> several rules from the old law regarding foreign workers' entry permits in Law Number 13 of 2003 concerning Manpower. The employer requires foreign workers in the type of production machinery maintenance activities for emergencies, vocational, start-up, business visits, and research for a certain period. So with the issuance of Article 42 of the Job Creation Law, Article <sup>6</sup> of the Manpower Law Number 13 of 2003 requires foreign workers to obtain written permission from the minister or other appointed official.

According to Affan (2020), in Presidential Decree<sup>8</sup> Number 20 of 2018, foreign workers entering Indonesia must obtain some permits, including<sup>8</sup> Limited Stay Visas, Plans for the Use of Foreign Workers, and Permits to Use Foreign Workers. Every employer who employs foreign work<sup>23</sup> must have written permission from the minister or appointed official; this is Article 42 of Law Number 13 of 2003. With the enactment of the Job Creation Law, <sup>25</sup> foreign workers only need that document because they no longer need to write permission from the minister or appointed official. Foreign force worker entry permits have been trimmed and now

only need documents. It is one of the massive points that has generated widespread controversy and protests in many regions.

### **Judicial review of the omnibus law**

The best legal route is facing the Omnibus Law if it does not succeed with a protest action to file a judicial review to the country's Constitutional Court. The writers' observation that the solution is likely to be reached by workers related to how to thwart the Job Creation Law's ratification. The various predictions of the Constitutional Court's probability of being granted or not are still a legal dispute. Another way to fail the Omnibus Law The Employment Creation Law that has been passed does not exist. Because the decisions of some factions in the DPR can no longer be contested, if several parties refuse to reject this law, then a judicial review to the Constitutional Court is the most likely way to be achieved. It is what those who still refuse will likely do. Judicial review or judicial review's right is testing lower statutory regulations against higher-level regulations conducted by the judiciary.

<sup>5</sup> The rules of the judicial review by the Constitutional Court are the granting of court-authorized by law to review and decide actions of the legislative, executive, and state administration. After completing the examination, it is continued to determine whether the results are under the Constitution. If the action is deemed inconsistent with the law, then the Constitutional Court must say it is unconstitutional, then the Court can cancel it by law. In law, there are three principles of the review that can be carried out: the Constitution, which means the state's highest law. The Supreme Court has the highest authority in deciding constitutional matters. The judiciary must decide against the law that is against the Constitution.

Because the judicial review's power<sup>7</sup>s so great that it can decide that the government's flaws and mistakes are both at the central and regional levels, the Constitutional Court can say that the Omnibus Law is invalid if the stipulation process is against the Constitution. It also gives courts the power to declare executive or legislative action unconstitutional. Judicial review (JR) is a process that can not only challenge the validity of decisions by public authorities, which are usually carried out by the central or local government, but JR can cancel all executive and legislative actions. If in the future, if the Omnibus law is submitted to JR to the Constitutional Court, and JR is successful, then the ratification is canceled, or if it fails, then usually the Constitutional Court decision must be retaken, and the Omnibus Law becomes legal law to become the law of the new law in Indonesia.

<sup>4</sup> The section discusses the rejection of some derivative articles from the Omnibus law that has been ratified by the Parliament and the prediction of the scenario for submitting a juridical review to the Constitutional Court if the cancellation demands fail to be carried out by the community street parliament system. The community's rejection represented by the workers and academics was driven by a different perspective between the government's claim to the Omnibus Law's substance and the community's rejection. Michael (2020), examined the current model of government on the Omnibus law. The findings of his study have shown



that there are indications of limiting democracy by applying the Omnibus Law. From the beginning, as part of absolute state power, until this study is carried out, there is still a process of rejecting part of the democratic process of legal justice in Indonesia. He said about a merger of the democratic form between Plato and Polybius, which was adhered to by the current Indonesian government.

The incorporation or legal umbrella by the Omnibus Law must immediately become the basis for all legal products even though many are against democracy. According to Plato, the way to make the people prosperous is by receiving input from all people for their sustainability. Likewise, [Gultom & Reresi \(2020\)](#), wrote how the public can criticize the Omnibus Law Bill in the context of understanding critical legal studies as part of the duty of citizenship as the government is so offensive to any difference. Furthermore, [Busroh \(2017\)](#), in his study of the conceptualization of the Omnibus Law in solving land regulation problems, has explained that the theoretical basis of the Omnibus Law comes from a country that adheres to the standard law legal system. However, the existence of Omnibus Law in Indonesia is still less known among the public, especially the law faculty academic community. Therefore he studied to understand the Omnibus Law and its use to fix regulatory problems in Indonesia.

The resolution of the overall rejection of the Omnibus Law's contents by many workers and academics is so important to understand. Many labor associations will convey their attitudes and aspirations for rejection in various ways, including through mass actions since the Omnibus law was passed by the Parliament to hold a rejection hearing until submission to the Constitutional Court. Because they believe the role of the Constitutional Court is to guard all laws in Indonesia. [Azhar \(2019\)](#), study proves that the Constitutional Court's role is to guard the 1945 Constitution of the Republic of Indonesia. Likewise, [Harman \(2007\)](#), study states the Constitutional Court's role in realizing legal reform and maintaining all state constitutions' activities and actions. The prediction of reporting the rejection of the Omnibus Law to the Constitutional Court is very reasonable. For example, the [Tohadi \(2020\)](#), study critically examines the president's authority to cancel regional regulations by ratifying the Omnibus Law. The belief in the workers' success will still exist for example, by understanding the main study (2020) regarding the form of the authority of the Constitutional Court in guarding and maintaining the Constitution to remain in spirit.

[Burton \(2020\)](#), on the assessment of absolute justice through the Omnibus Law on taxation in Indonesia has been endorsed by Parliament to make laws that aim to increase investment, ensure business continuity, and create a fair business climate. The text of taxation in the omnibus of taxation law, which focuses on increasing investment and equalization of regulations, has attracted various social groups. However, if one day passes, the community will immediately reject the new law. It shows whether the community has sufficient understanding or not. That is important to note so that the government or Parliament must predict how the public will respond and respond in the future.

Furthermore, [Azhar \(2019\)](#), a year before it was passed, the Omnibus Law, which is a hyper regulatory solution to the synchronization of laws and regulations, but the public responded with rejection causing massive protests and

demonstrations. However, the Koeswahyonoa & Ulab (2020), study which examines the institutional policies of land acquisition in the Omnibus Law regime, is different. They said that legal culture procedures with sociology-legal analysis would answer fundamental questions in the practice of land acquisition in the public interest, particularly the issue of compensation. However, the crucial issue regarding compensation in implementation will be complicated if the Omnibus Law's legal umbrella has rejected the public and workers significantly affected groups.

### Conclusion

In this conclusion, the authors want to help readers understand the rejection by workers and demonstrators, generally students in higher education, about the passage of the Omnibus law and its derivatives of the Job Creation Law by the Parliament and the Indonesian government recently. Besides, this study will also try to predict what steps the demonstrators will take at the end of their demonstration period. We wish that if the rejection of the Omnibus Law Law finally, a judicial review must be taken to the State Institutional Court. We think the results of this study are significant in order to gain a new understanding of the rejection and prediction of the action of submitting this new law to the highest legal channels in order to obtain a win-win solution between demonstrators or the people and the government-assisted by Parliament from the majority of political party factions. The following are the main points from our study, which we summarize.

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