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# Indonesian Law and Human Rights Expert's View on the Constitutional Court's Decision against the Manpower Law from the Omnibus Law

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**Abstract**--This legal paper aimed to discuss the various views of legal experts on the Constitutional Court's Decision on the Manpower Act and Law derived from the Omnibus Law, which is full of controversy. The authors believe that the success of this discussion is closely related to the contributions of legal scholars from various disciplines and practitioners. Therefore, we have conducted a series of data collection virtually on literature sources such as journal publications, books, proceedings, and several legal websites. Furthermore, an in-depth study effort involves data evaluation, data coding, data interpretation, and drawing conclusions which will be used as data findings supported by scientific evidence from several experts with valid and convincing data considerations. This qualitative study relies on secondary data or evidence from previous scientific studies. Based on the data exposure and discussion, we can conclude that most legal experts, especially independent ones, say that the Constitutional Court's decision issued in October 2021 regarding the Manpower Act Derived from the Omnibus Law is legally binding flawed. They believe the decision will reap prolonged controversy. Thus, these findings should be the subject of further studies in the future.

**Keywords**---constitutional court's decision, legal experts, manpower act, omnibus law, views.

## Introduction

The controversy over the legislative decision on the work copyright law derived from the Omnibus Law finally ended in the Constitutional Court of the Republic of Indonesia (Firmansyah et al., 2020). As has been reported by the media crew, the plan for an omnibus law on work copyright from the beginning has indeed

become a contentious issue, so that the public and many legal experts have rejected it (Choi & Lin, 2009). However, surprisingly, the bill referred to above continued to run until the House of Representatives finally passed it into Law in early October last year. It is believed that the rejection of the bill was due to differences of opinion between the Government and the People's Representative Council and several groups such as workers, student societies, and other legal experts (Pilling et al., 2010; Russo et al., 2019). When viewed from the objectives issued by the Government, namely wanting to simplify each regulation from some regulations that govern, it is considered not right on target (Roihan, 2021).

The regulations referred to by the Government are land licensing, application for investment, employment system, MSME law, rules for business support, research, and technology, governance of government administration, about sanctions for defense management, which makes it easier for the Government to implement programs and regulations for special economic zones (Sari, 2017; Revida et al., 2021). However, it is different from the understanding and perception of many people that the Government's aim to produce articles on the work copyright law is to eliminate workers' rights, but in Bali, the Law is considered to benefit entrepreneurs and investors (Smith, 1973; Mejia, 1981). A concrete example, for example, is found in the Law on unlimited contracts, namely in article 59 holidays which are deducted from article 79 the wage rules are also replaced in article 88 sanctions for non-payment of wages are removed in article 91, the rights of the layoff applicant are removed in article 169 and a series of articles that considered unfavorable to the general public (Muqsith, 2020; Simarmata et al., 2020; Jamaludin et al., 2021).

Another view is that this new Law will provide convenience for investors, especially regarding the AMDAL law, which hurts the environment, which is regulated in law number 23 of 2009 on protecting and managing the environment conservation (Orinaldi, 2020; Manullang, 2019; Manullang, 2020; Manullang, 2020).

To all the problems between the approval of the legislation and the rejection of many public circles, finally the constitutional Court, precisely on November 25, 2001, issued a constitutional guard to provide fresh air for the people by deciding Law Number 11 of 2020 concerning the copyright of unconstitutional works on a conditional basis. The constitutional Court considers that from a formal point of view or law-making alone, merging or omnibus Law in the work copyright law is not clear whether the method is making new laws or making revisions and improvements (Huda, 2021). In this case, the Constitutional Court honestly believes that the issuance of the work copyright law does not uphold the principle of openness to the community even though the community holds several meetings with several parties even though it is one of the rules in the process forming the Law (Allen & McNeely, 2017; Allen, 2018). On this basis, this Law continues to be a polemic, so it invites much controversy, both among the academic community and other legal experts (Amania & Mansuria, 2020; Muchsin et al., 2020; Wirawan et al., 2021).

On that basis, several considerations made this work copyright law unfit to become Law. The Constitutional Court decided it was conditionally

unconstitutional as long as it was not revised within two years after the Constitutional Court decided. For the public, this is an understanding that all laws contained in the work copyright law remain in effect until corrections and suspensions of all strategic and broad-impact policy actions are made in the Omnibus law. In addition, the Constitutional Court's decision on the new Law to be made into a new law is considered not to meet the requirements from a formal point of view, making the Law is quite problematic, what is more, later on in its application, it will also reap various problems that tell of difficulties and problems, especially for the community. As a citizen later ([Aldrin et al., 2021](#); [Manullang, 2020](#));

Ironically, the people's representative council, which should have been a vocal speaker rather than the public with aspirations and demands to convey to the Government for every policy and regulation issued by the executive, did not happen. In other words, many parties argue that in order to pass the copyright law, the legislative and the Government have agreed that the DPR should be the supervisor of the Government's work following the aspirations of the people who complained even to the point of demonstrations in the streets and uproar there. Suppose this condition continues to occur, disharmony and goodness for the Republic of Indonesia. On the one hand, society will become more volatile. Apart from that, the Government no longer functions as a protector, let alone the people's representative council, which has not yet shown how they can voice the people's voice ([Agung, 2021](#)).

However, the Constitutional Court's decision deserves to be appreciated by all parties at a time when there is very pessimism about justice in Indonesia and even wider farther from justice, and this is the spirit and step for the people that the judiciary in Indonesia can be trusted to get justice ([Muzakkir, 2020](#)). Due to judicial power as a way for the community to obtain justice so that it cannot be intervened, let alone included all political interests outside of justice because the judiciary must be a body that is free from political intervention but is a body that the Constitution mandates in providing legal decisions so that the goal of justice is a certainty and the benefits to the people must happen.

He added that the body of the Constitutional Court is a body that has judicial power in Indonesia in addition to the existing Supreme Court of Justice, which was born after post-reformation. What is the task and authority of the Constitutional Court is to examine the Law on the 1945 Constitution ([Fitria, 2021](#)). This means that the people have the right to conduct judicial review. Every Law that is considered impartial to the Indonesian people by applying all laws for this purpose, the People's Representative Council, as a legislative body that makes laws with the executive, must examine carefully formulate every word that does not cause problems in the future so that it is detrimental to the people so that the Law can be challenged in the Constitutional Court. Based on this controversy, after the constitutional Court stipulates the Law on the copyright of this study to gain a deep understanding, we try to thoroughly analyze experts' opinions and discuss them to gain a deeper understanding of legal knowledge so that this discussion forum becomes or obtains data. The latest findings will become understanding and knowledge for establishing legal education for academics and other practitioners ([Sumardjono et al., 2020](#)).

## **Method**

In this method section, we will explain again the implementation of legal review studies that aim to gain understanding from various legal expert views on the consequences of the Constitutional Court's decision on the labor law, which is still an issue and controversial news between the Government and the public (Muhdlor, 2012). To complete this discussion, search for data on several published literature sources, including public relations law journals, Google books, Emerald, and other legal, scientific publications (Adi, 2021), so that we can use evidence and expert opinions as answers to a series of studies we have carried out with a phenomenological approach, namely an attempt to explore several data to be used as evidence to answer study questions validly and reliably (Al-Munawwar & Fudhaili, 2017). We used omnibus law, job copyright law, controversy, legal experts, and several other keywords in searching the data. This study uses scientific evidence from previous studies or secondary data published between 2010 and 2021 to obtain more up-to-date data (Suriadinata, 2019; Handy et al., 2002). In designing the reporting format for this study, we chose a qualitative report data format following our goal of seeking in-depth understanding from various legal expert views on the constitutional Court's decisions on labor laws (Arham & Saleh, 2019). The format of our report follows the guidelines and similar studies on the design of literature review studies and legal discussions. So far, there is no primary data that remembers this incident to get the views and understanding of experts that have been published in both legal journals and data on various published expert opinions (Sgier, 2012; Rees, et al., 2004).

## **Discussion**

This section of the paper will explore the discussion of findings from a review of many literature sources discussing the decision of the Constitutional Court (MK), which granted part of the application for a formal review of the Manpower Law derived from the Omnibus Law (Aswindo et al., 2021). After the Panel of Constitutional Judges decided that Law Number 11 of 2020 concerning Job Creation was formally flawed, the Job Creation Law was enforced conditionally unconstitutionally by decree Number 91/PUU-XVIII/2020. The Constitutional Court partially granted the petition submitted by some traditional institutions and organizations and legal experts through the verdict (Huda et al., 2021). "Declaring the establishment of the Job Creation Law is contrary to the 1945 Constitution and does not have legally binding conditionalities as long as it does not mean 'no repairs have been made within two years since this decision was pronounced' (Asshiddiqie, 2021; Rinarta et al., 2018). In the decision on the Job Creation Law, which amounted to 448 pages, the Court also ordered the legislators to make improvements within a maximum period of two years after the decision was pronounced. If improvements are not made within the time limit, the Job Creation Law is declared permanently unconstitutional (Aprianti et al., 2021).

## **Suspend Policy**

After debate by many, the Constitutional Court suspended the Job Creation Law number 11 of 2020 until there was an improvement within two years. After a

judicial review submitted by six community and NGO groups, the postponement decision was taken. [Rasyid \(2020\)](#), assesses that this decision will automatically cancel all policies from the Copyright Act. "The most important thing is that strategic policies must be suspended. So when there are policies that are detrimental to workers who use the Job Creation Law, then everything should automatically be null and void, because the Court has already suspended it," In addition, the Constitutional Court also ordered the Government to suspend all strategic actions or policies that have a broad impact and are not justified in issuing new implementing regulations related to Law Job Creation. Considering this decision will invalidate all regulations of the Ministry of Manpower from the Ciptaker Law regarding labor ([Maknun, 2021](#); [Manullang & Satria, 2020](#); [Manullang, 2021](#); [Sholahuddin et al., 2021](#)).

The debate over the restrictions continues so that if there is a follow-up from here, the Ministry of Manpower should cancel all labor-related regulations created because of the Job Creation Law ([Pratama et al., 2021](#); [Manullang, 2021](#)). In response to the debate, the Constitutional Court ordered the House of Representatives to revise the Job Creation Law number 11 of 2020 or the Omnibus Law within two years ([Sihombing & Fatra, 2021](#)). [Chandranegara \(2020\)](#), said that if the legislators were unable to complete the revision of the Job Creation Law within two years, then the Law or articles or material content of the Law that had been revoked or amended by the Job Creation Act would be declared valid again ([Mulyani, 2020](#)). Since the formation of Law number 11 of 2020 concerning work creation (RI state institutions 2020 No. 245, an additional Sheet of the Republic of Indonesia number 6573. It remains valid until the formation is corrected following the deadline as determined in this decision. Then it was also stated that the Copyright Act was suspended in the sense that it was not allowed to issue derivative rules that were strategic—declaring to suspend all strategic and broad-impact actions or policies and not justify issuing new implementers related to Law Number 11 of 2020 concerning Job Creation ([Mulyani, 2020](#); [Manullang et al., 2020](#)).

### **Accommodate the interests of workers**

Some experts argue that the work copyright law can accommodate the interests of the community, especially workers ([Catur et al., 2020](#)). The reason is that this Law exists for the benefit of workers and at the same time solves labor problems that still require review and improvement here and there. Then the question is why the work copyright law is called a solution ([Putra, 2020](#)). So the answer is because the Law is very urgent, and it must be prioritized in its ratification due to Indonesia's economic condition, which is getting worse and is also followed by the worsening of world economic conditions ([Santosa, 2021](#)). So the Government's ability to generate employment and create a new economic cycle is a solution that can be solved by improving the work system law. For example, in 2020, statistical data recorded that unemployment in Indonesia reached 6.8 million, while the other numbers due to the impact of the pandemic since March also increased so that unemployment increased by around 3.1 million people ([Adhistianto, 2020](#)).

So the actual conclusion is that almost 10 million workers are unemployed today and need to find the solutions needed. After the Law on copyright is passed, it is

hoped that in 2022, unemployment will continue to fall (Prasetyo et al., 2019). So when this Law was passed, and this became a solution. It is admitted that during a surge in unemployment, weak economic growth and a state of economic instability will remain a challenge for Indonesia, so the Government needs to think about breakthroughs and innovations, both in terms of laws and employment itself (Khair, 2021). So with this new labor law, as mentioned above, it is the acceleration and ease of innovation and investment. Finally, it is hoped that in the future, this Law will be a solution that is ready to accommodate the interests of the community and, of course, also the interests of the Government.

According to Hanifah et al. (2017), unemployment, if left unchecked, will encourage an increase in crime rates and the potential for conflict to occur, resulting in national disintegration. In the context of finding a solution to the problem of the work copyright law, as the name implies, a law that the Government deliberately drafted was finally approved by the legislature last October, and in the end, the problem is expected to be a little more (Sultony, 2021). Another solution that this new Law can provide is a necessary government policy but understanding the problem in depth is a top priority because this nation has never been able to find a suitable solution. After all, the problems concerning the world of work and the laws regulating it require a revolution of reform and efforts to optimize the acceleration and convenience for workers and investors (Salamah, 2021).

### **Canceling the Omnibus law on works draft**

The Constitutional Court can constitutionally annul a lawsuit against the copyright law or the copyright law because this Court has the enormous legal power to cancel any controversial legal product in society (Pradhyksa, 2021). This is further strengthened because before being ratified by the Constitutional Court, the Law had already received much criticism and even demonstrations by the public, including workers and students who asked the President of the Republic of Indonesia to sue the Omnibus Law or the Job Creation Act could be brought to the Constitutional Court. It could be requested to be canceled (Scheler, 2017). This usually has to pass a material or formal test. Because the Constitutional Court has materially strong power and the code of initiative has researched that many of the decisions of the Constitutional Court itself are regulated by Law, so we work, and in other words, our laws work online can be overturned by the Constitutional Cour. For example, many local government authorities have been withdrawn to the Constitutional Court, violating Article 18 of the 1945 Constitution (Kurniawati & Liany, 2019).

Therefore, the legal issue conveys to the public that there were successful changes made after the work copyright law was passed, even though the House of Representatives claimed that the addition of pages occurred because of changes in words and typos. Silence is a sign that this Law is legal to be canceled (Saputra et al., 2017). At the same time, Munawar et al. (2021), say that the work copyright law has a severe legal flaw. In line with that, the demands of the demonstrators and community leaders need to also ask for a living. The President has signed it, and it is considered to have legal implications and shows a formal flaw in informing the Law (Wardhani, 2020). They proved that some of the provisions in

the Law, which were new, amounted to 1182 pages, included Article 64 concerning ecosystem improvement, investment, and business activities, the first general part of Law Number 11 of 2020 concerning Law ([Harjono, 2021](#)).

According [Pratama et al. \(2021\)](#), president also can cancel the law. This is referred to in article 151, chapter IX concerning Economic Zones, the third part of free trade zones from free ports, paragraph 1 page 77 29. The invitation is related to the previous article that article 151 S1 refers to 141 letter b; a closer look at Article 14 of the paper-printing Law has a descendant of letters and is different in context from Article 151. Based on these many mistakes and errors, the President can annul it, which is considered not to have been prepared thoughtfully. Meanwhile, the President himself, the palace, admitted an error in the Law signed by Jokowi, even though there was no improvement stating that it had been corrected. Meanwhile, the Ministry of State Secretary can also impose disciplinary sanctions on related officials who make mistakes in making the Constitution. However, again and again, this does not have a substantial effect on the creation of laws that must be forced to be passed ([Naniati et al., 2018](#)). Punctuation errors in a legal product are wrong; only the punctuation marks are left in conjunction with the Law, which is nothing but legal language ([Suryati et al., 2021](#)).

On that basis, many experts have criticized the Government's response, which states that heredity is only technical but not in substance. Likewise, legal experts who assess technical errors that have occurred with Indonesia illustrate that copyright law has been flawed in its process and substance. Lawsuits can be carried out on the contents of the Law after it is passed and handled by the President can become a lousy president who is flawed going forward anyone elements of the Law can criticize statements that take lightly is a mistake in the copyright law he added that the Government considers the power of table tennis to have intentionally and not belittle justice of the filtration process as if people are making papers and making mistakes ([Nuffuss & Rohaningsih, 2021](#)). Likewise, experts in constitutional law believe that writing or editorial errors cannot be justified legally. Because, in principle, a legal product is formed to provide legal certainty. For the sake of justice, legal certainty cannot be seen with errors from the beginning of the beginning.

Likewise, [Mardatillah \(2021\)](#), admits that we can only watch any form of profound error. It is unacceptable because it contradicts the principles of equality and prudence in law formation. Meanwhile, [Kurniawati & Liany \(2019\)](#), said that it is still possible if the constitutional Court cancels the rule if it is in percent of the process contrary to the 1945 constitution. So there is no need to be the judge to judge and say that such service is negligence that cannot be accepted politically and academically. Likewise, according to the Indonesian legal aid agency, the job creation law is a formally flawed rule because it contains various fatal errors and reckless discussions and rules. He added that the strangeness of the object, which was signed with errors and was fatal, was evidence of reckless law-making and coercion ([Fauzani & Rohman, 2019](#)).

### **The Constitutional Court's decision on the unusual**

Regarding the decision of the Constitutional Court, which issued a decision on lawsuit number 11 of 2020 regarding work creation submitted by applicants from among workers, this requires that after receiving the application and ordering the legislative and the Government to revise the Law during the year (Efferin, 2020). Nugraha et al. (2020), said the decision was unusual because it was not following the material object being tested from the work copyright law, namely a decision contrary to law number 12 of 2011, namely its amendment, not the substance of law 45. Huang (2010), question how can the object of the applicant's application be that there is a conflict between the copyright law and a law that is not law 45, but the Constitutional Court's decision is related to all articles of this Law, something that is impossible.

Kurniawan (2021), says that how can you refuse the applicant's application where there is a conflict between the work copyright law and a law that is not law 45, but the Constitutional Court's decision relates to all articles of law 45, which is a decision that is not. Furthermore, Wuisang (2019), can be used as a reference in responding to the Constitutional Court's decision, tantamount to stating that both the Government and the legislative do not understand the constitutional Law. This is because the Constitutional Court did not answer regarding the substance of the problem but only answered the technicalities of the Law. After all, the copyright law's intent, purpose, and context did not conflict with the contents of chapters and article 65, and the Constitutional Court should have rejected the petitioners from the start. That is how legal experts from various perspectives have assessed the Constitutional Court's decision on the work copyright law, which is still controversial by various groups (Antari, 2021).

### **Conclusion**

In this final section, the author will report the essence of the findings of the discussion study to explore the opinions of legal experts on the constitutional Court's decision on the copyright law for derivative works of the omnibus law. With the data exploration approach of the sections, we have obtained the data that we describe in the results and discussion section, and we believe that this presentation has been able to answer the problems of this study with high quality. However, we acknowledge that these findings certainly have weaknesses and limitations, considering that this data collection method focuses on secondary data from various sources of legal science literature. Thus, input and criticism for improvement are expected so that this study will get clarification and enlightenment to improve the quality of the findings of this study, as for the essential points that we got, among others, the controversy over the constitutional Court's decision so that this policy or decision can be rejected. Several rejections evidenced this and even demonstrations by many parties before the Constitutional Court decided.

Another point that we offer is how the decision of the Constitutional Court by some experts who stated that this was a decision that accommodated the interests of the workers, so with various pieces of evidence, the findings of the experts in addition to those who rejected it turned out to be in favor even though



they were part of the Government. The next point is that graph-based Law regarding copyright law works can be rejected and rejected from many circles. This reason is supported by existing laws in Indonesia so that this decision can be considered even by the Constitution, giving the President the authority to cancel it at once. Due to the complexity and complexity of the omnibus law issue, it continues to be a matter of debate and controversy by many parties. The Constitutional Court's decision is unusual. The expert's root is that it is sporadic for the Constitution of this highest state to provide a decision that is so contradictory to the public interest. Therefore, the existence of the Law can still be questioned, of course, based on the existing Law. Thus, the presentation of these findings and we believe that all explanations supported by scientific evidence will be valid findings and answer research questions validly and convincingly.

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