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The Dynamics of The of Job Creation Law (Case Study of The Constitutional Court's Decision Number 91/PUU-XVIII/2020 on The Formal Test Against Law Number 11 Of 2020 on Job Creation)

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Article

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Abstract

Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Omnibus Law) was enacted and signed by the President on November 2, 2020. The Omnibus Law aims to reform regulations by simplifying the legal framework to address the lack of synchronization among various laws and regulations, as well as eliminating overlapping rules that are considered to hinder the government's objectives. Constitutional Court Decision Number: 91/PUU-XVIII/2020 on the Formal Review of the Job Creation Law, issued by the Constitutional Court on November 4, 2021, granted the petitioner's request for a formal review of the Omnibus Law. On December 30, 2022, the Government issued Government Regulation in Lieu of Law (Perppu) No. 2 of 2022 on Job Creation as a follow-up to Constitutional Court Decision Number: 91/PUU-XVIII/2020. The research conducted in this study is normative, analyzing the judges' considerations in Constitutional Court Decision Number: 91/PUU-XVIII/2020, with a focus on the ambiguity/difference in interpretation among the nine judges regarding Law No. 12 of 2011 and the fulfillment of the urgency element in Perppu No. 2 of 2022. The author adopts a legal and case-based approach and utilizes primary and secondary legal sources to analyze the issues. The author employs a prescriptive method of analysis. In the decision, the judges did not consider the substantive principles of legislation and found that the element of urgent necessity, which compelled the issuance of the Job Creation Perppu, was not fulfilled.

INTRODUCTION

Law Number 11 of 2020 concercing Job Creation (hereinafter referred to as a Ciptaker Law) was enacted and signed by the President on November 2, 2020. This Ciptaker Law is present to reform regulations in simplifying laws and regulations from the existence of unsynchronized various laws and regulations and can cut several rules that are considered by the government goals, in this case relating to investment and

business licensing which are included as two clusters in the Ciptaker Law. This also resulted in the government using the *omnibus law* method (Irawan 2022).

The Ciptaker Law regulates 11 clusters of the law regulates 11 sectors, including (W. Finaka 2022) :

a. Licensing and Business Activites Sector;
b. Cooperatives and MSME's and Village-Owned Enterprises;
c. Investment;
d. Employment;
e. Fiscal Facilities;
f. Spatial Planning;
g. Land and Land Rights;
h. Environment;
i. Construction and Housing;
j. Economic Zone; and
k. Government Goods and Services

The Ciptaker Law regulates as many as 11 clusters that were regulates when it was passed, making the public and many legal experts criticize this law. This is because this law is seen as defective in terms of material and formal. This is evidenced by the number of people who submitted *judicial review* to the Constitutional Court. Rejection from various parties directly affected and legal experts had already occurred when the bill was set in the priority scale prolegnas, but problems arose due to the legislators and the community not finding agreement in the discussion.

The decision of the Constitutional Court (MK) of the Republic of Indonesia Number: 91/PUU-XVIII/2020 concerning the formal test of the Job Creation Law, which was decided by the Constituional Court on November 4, 2021, received a lot of attention from the people in Indonesia. Based on the verdict, the Constitutional Court granted the applicant's request for a formal test of the Ciptaker Law. The decision was not accompanied by a material test. This decision was criticized and consideres problematic because this conditional unconstitutional decision was adopted by providing a certain transitional grace period of two years and the legislature was given a second opportunity to improve in terms of form, so that permanent unconstitutionality was not imposed and the Ciptaker Law could still be valid (Haryono 2022).

Based on the decision, the judges argued that the legal reasoning used was essentially that the Ciptaker Law was formally flawed, so it was decided that it was unconstitutional with a 2-year conditional and the Law must be improved by the DPR and the government and this regulation is still running for two years since the Constitutional Court read out the decision. However, there were four Constitutional Judge who chose a *dissenting option*. They were Constitutional Judge Anwar Usman, and

Constitutional Judge Manahan Malontinge Pardamean Sitompul and Constitutional Judge Daniel Pancastaki Foekh argued that:

1. Indonesia is considered suitable for applying the *omnibus law* technique in the context of simplification and the absence of overlapping laws that are interrelated.
2. The *omnibus law* technique is a technique for forming laws in the *common law* system and can be adopted in harmony and can be used in preparing laws and regulations in Indonesia by taking into account the values that exist in the foundation of the Indonesian State, namely Pancasila and the 1945 Constitution of the Republic of Indonesia.
3. The PPP Law does not regulate the techniqeus that must be used in making laws.
4. The Ciptaker Law provides philosophical, sociological, and juridical considerations to realize the goals of the State in accordance with the 1945 Constitution which contains the goals that the State must realize.

Meanwhile, the other 5 Judges, namely, Constitutional Judge Saldi Isra, Constitutional Judge Wahiduddin Adam. Constitutional Judge Suhartoyo. Constitutional Judge Aswanto, and Constitutional Judge Enny Nurbaningsih agreed that the Ciptaker Law was formally defective in accordance with the decision which stated that it was contrary to Article 22A, Article 28D paragraph (1) and (2), Article 28C paragraph (1) and Article 31 paragraph (1) of the 1945 Constitution of the Republic of Indonesia so that it must be declared conditionally unconstitutional for two years and must first be corrected by the legislators.

In addition, the decision also raises questions due to the addition of a grace period in the decision, which is the first decision to decide that a law has been declared conditionally unconstitutional and a grace period of two years has been added. In addition, there are also inconsistencies in the decision related to the Constitutional Court stating that the Ciptaker Law remains in effect with a grace period of up to two years. But on the other hand, the Constitutional Court also suspended the issuance of regulations. There are inconsistencies in the decision related to the Constitutional Court stating that the Ciptaker Law is still valid with a maximum grace period of two years. But on the other hand, the Constitutional Court also suspended the issuance of implementing regulations from the Ciptaker Law which resulted in several provisions in the Ciptaker Law becoming dysfunctional, even though the Constitutional Court stated that the Ciptaker Law was still in effect.

Based on this decision, the legislature and the government are obliged to correct as read out in the decision and if it is not corrected within two years, then the law is null and void and the repealed law will take effect again. Based on the conditional unconstitutional decision, it certainly affects the existence of the implementing regulations of the Ciptaker Law. Not only does it affect the existence of the

implementing regulations of the Ciptaker Law, but it also greatly affects the implementation of the Ciptaker Law in the field. If the implementing regulations cannot be issued, there will be legal uncertainty regarding the content material in the Ciptaker Law which must be in the implementing regulations after the Constitutional Court reads the decision that the Ciptaker Law is conditionally unconstitutional for two years (Achmad, Mukhlis, and Huda 2022). The law, which should guarantee legal certainty and benefit for the community. has instead triggered the emergence of public uproar and confusion, which has resulted in the government being unable to carry out the mandate of the law (Palsari 2021).

According to Tjondro Tirtamulia, looking at the Government Regulation as an implementing regulation that was issued before this decision was read, it is still valid, but it is not allow to issue another Government Regulation before the improvement of the Ciptaker Law. A law should have a validity or binding force with its validity and effectiveness. The implementing regulations have not been fully owned by the Ciptaker Law, so it has not fully had the effectiveness (Sihombing 2022).

There are 2 (two) points of the judge's decision that lead to the existence of blurred legal norms. First, the judges decided that this law is conditionally unconstitutional with an additional two-year grace period where in previous decisions of the Constitutional Court there were no similar decisions. Second, there is a statement of "dissenting opinion: by 4 (four) Constitutional Judges which results in blurred legal norms and is very interesting to study (Kurniawan 2022).

METHOD

The type of research used in this study is normative legal research. According to Johnny Ibrahim and Jonaedi Efendi in their book explain that normative legal research or also called doctrinal legal research is a type of legal research that examines legal problems using written concepts in the law (Efendi and Ibrahim 2016).

This research approach method uses a statutory approach related to the formation of laws and regulations and a case approach related to the implementation of laws carried out by the government and lawmakers after the issuance of Constitutional Court Decision Number 91/ PUU-XVIII/2020 concerning the Formil Test of Law Number 11 of 2020 concerning Job Creation.

The legal materials used by the author consist of:

1. Primary Legal Materials

   Primary Legal Materials are legal materials consisting of regulations that can be sorted in accordance with the hierarchy of laws and regulations, including:

   a. Constitution of the Republic of Indonesia Year 1945;

   b. Law Number 24 of 2003 jo. Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court;

c. Law Number 12 Year 2011 jo. Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on the Formation of Laws and Regulations;
d. Law Number 6 of 2023 on Stipulating Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law;
e. Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Law Review Cases;
f. Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning the formal test of Law Number 11 of 2020 concerning Job Creation.

2. Secondary Legal Materials
Secondary Legal Materials, namely materials that provide explanations of primary law, such as draft laws, research results, works from legal circles, and opinions of legal scholars (Soekanto and Mamudji 2015). Secondary legal materials used by the author in this journal are as follows:
a. Legal books, especially Constitutional Law and Legislative Law relating to the Authority of the Constitutional Court and the Formation of Legislation, and others;
b. Legal journals whose research is like this research;
c. Legal theories and opinions of prominent legal scholars who argue about the material in this research journal.

RESULTS AND DISCUSSION

The Constitutional Court has exercised its authority and function as the guardian and guardian of the constitution in Indonesia. First, the Constitutional Court as a judicial body of the first and last level in the case of judicial review of laws against the Constitution of the Republic of Indonesia Year 1945. Second, as a judicial body in the judiciary that decides on disputes over the authority of State institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia. Third, the Constitutional Court has the authority to dissolve political parties where the Constitutional Court believes that political parties whose ideology is contrary to Pancasila and the 1945 Constitution will be dissolved. But in this case, it can only be submitted by the Government. Fourth, the Constitutional Court has the authority to decide disputes over general election results.

Based on Decision Number 91/PUU-XVIII/2020 concerning the formal testing of Law Number 11 of 2020 concerning Job Creation. 9 (mine) constitutional judges were not unanimous. Because 4 (four) constitutional judges, namely Constitutional Judge Arief Hidayat, Constitutional Judge Anwar Usman, and Constitutional Judge Manahan Malontinge Pardamean Sitompul, and Constitutional Judge Daniel

Pancastaki Foekh chose to dissent or also known as dissenting opinion. The 4 (four) judges basically argued that (Sihombing 2022):

a. Indonesia is considered suitable for applying the omnibus law technique in the context of simplification and the absence of overlapping laws that are interrelated;
b. The omnibus law technique is a technique of forming laws in the common law system and can be adopted in harmony and can be used in preparing laws and regulations in Indonesia by taking into account the values that exist in the foundation of the State of Indonesia, namely Pancasila and the 1945 Constitution of the Republic of Indonesia;
c. The PPP Law does not regulate the techniques that must be used in making laws;
d. The Ciptaker Law provides philosophical, sociological and juridical considerations to realize the goals of the State in accordance with the 1945 Constitution which contains the goals that the State must realize.

Meanwhile, the other 5 (five) judges, namely Constitutional Judge Saldi Isra, Constitutional Judge Wahiduddin, Adam, Constitutional Judge Suhartoyo, Constitutiona Judge Aswanto, and Constitutional Judge Enny Nurbaningsih agreed in one voice that the Ciptaker Law was declared formally defective so that it must be declared conditionally unconstitutional for 2 (two) years and must be corrected or revised by the legislators, namely the legislature together with the government. The 5 (five) judges who agreed that the Ciptaker Law was formally flawed argued that (Suhardin and Flora 2023):

a. The Ciptaker Law is declared conditionally unconstitutional because it does not meet the formal requirements for the formation of a law, particularly in terms of involving public participation (meaning of participations), and does not provide legal certainty, as well as not providing benefits and justice for the public;
b. The Ciptaker Law does not meet the standards for drafting legislation. Although the Ciptaker Law is titled as a new law, its content is an amendment. Therefore, it is unclear whether the Ciptaker Law is a new law or an amendment;
c. The drafter of the Ciptaker Law, the DPR, did not involve the participation of the community, especially the community that is directly affected. Namely, laborers and daily workers in the preparation of the academic paper, as well as the existence of new material included in the content of the Ciptaker Law after the ratification of the DPR together with the government;
d. The Academic Paper of the Ciptaker Law does not explain the amount of delegation to lower rules and the addition of 5 pages with a total of 375 pages within 16 days of ratification and this has never been discussed with the Tripatit Team.

In this discussion, the researcher positions himself on the opinion of the five constitutional judges who stated that the Ciptaker Law was formally defective. In the

author's opinion, the considerations of the five judges can be added that the Ciptaker Law also contradicts the principles of material content of Laws and Regulations in the principles of protection, humanitarian principles, family principles, principles of justice, principles of order and legal certainty, and principles of balance, harmony, and harmony as in Law Number 12/2011 on the Formation of Laws and Regulations Article 6 paragraph (1) letters a, b, d, g, i, and j, as well as related to the purpose of omnibus law to simplify and synchronize rules with one another so that there is no overlap between regulations that make meaningful participation in the participation in forming laws small. Meaningful participation is in the form of the public's right to be heard, the public's right to be considered, and the public's right to convey.

The principle of protection can be interpreted that the material of a law must aim to protect and provide peace in people's lives. The principle of humanity is a principle that explains that every material in a law must uphold the human rights and dignity of all citizens and residents in Indonesia. The principle of Kinship can be interpreted as a principle that explains that the material of a law must go through a process of deliberation to reach consensus. The principle of Justice is a principle that explains that a law must provide a sense of justice for all Indonesian people. The principle of order and legal certainty is a principle that explains that in a legislation the content material must realize order and legal certainty in society. The principle of balance, harmony, and harmony is a principle that explains that the content of a law must be balanced from the interests of individuals, groups, and groups.

Based on the definition of this principle, the following conclusions can be drawn. *First,* the Ciptaker Law only aims to protect and provide peace to employers and investors without paying attention to the lives of the Indonesian people in general, especially workers and laborers, which can be concluded that the Ciptaker Law is not in accordance with the principle of protection. *Second*, the Ciptaker Law is also not in accordance with the principle of humanity. The Ciptaker Law also does not uphold the human rights and dignity of all citizens and residents in Indonesia, especially the rights of workers and laborers who are directly affected by the Ciptaker Law.

Third, the Ciptaker Law does not reflect the principle of kinship because this law does not go through a process of deliberation to reach consensus with the community with the community due to the lack of public participation. *Fourth*, the Ciptaker Law also does not prioritize the principle of justice where the content material in the Ciptaker Law does not provide a sense of justice, especially for workers and laborers. *Fifth*, the content material in the Ciptaker Law lacks order and certainty for the community, especially for workers and laborers. *Sixth*, the material in the Ciptaker Law does not accommodate the interests of individuals or groups. The Ciptaker Law only accommodates the interests of the oligarchy to achieve the government's goal of increasing investment.

The Constitutional Court Decision Number 91/PUU-XVIII/2020 can be said not to be included as a test of the institution authorized to make decisions in the law formation process. The applicant in his petition emphasized the provisions of Article 22A of the 1945. Constitution of the Republic of Indonesia in relation to the provisions of Law Number 12 of 2011 concerning the Formation of Legislation as last amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation. In addition, the applicant also submitted the arguments of his petition stating that he also suffered a constitutional loss based on the provisions in Article 28D paragraph (1) and paragraph (2), Article 28C paragraph (1), and Article 31 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Wicaksono 2022).

This causes ambiguity that the panel of judges should have firmly decided that the Ciptaker Law should be declared unconstitutional. Because in the verdict itself the judge has stated that the Ciptaker Law is contrary to the 1945 Constitution and the Constitutional Court also suspends all strategic policies and is not allowed to issue implementing regulations from the Ciptaker Law. An unconstitutional decision can be considered ambiguous because on the one hand it is considered unconstitutional but on the other hand it is considered constitutional if it meets the conditions set by the Constitutional Court (MK) in its decision. Therefore, the decision is considered to have no legal certainty (Wardhani 2020).

In theory, if the formal process is unconstitutional, then the law should be declared null and void and the principles of protection, humanitarian principles, family principles, principles of justice, principles of order and legal certainty, and principles of balance, harmony, and harmony as in Law Number 12 of 2011 concerning the Formation of Legislation Article 6 paragraph (1) letters a, b, d, g, i, and j should also be declared null and void.

At the end of 2022, precisely on December 30, 2022, the government issued a Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation which was then submitted by the president to the DPR for approval in a plenary session. The government here argues that the Perppu was issued because Indonesia is currently in a state of emergency situation and as a follow-up to the Constitutional Court Decision Number 91/PUU- XVII/2020 in which the Constitutional Court decided that the Ciptaker Law was declared conditionally unconstitutional for 2 (two) years and had fulfilled the conditions for issuing a Perppu as stated in the Constitutional Court Decision Number 138/PUU- VII/2009 (Hipan 2023).

The Constitutional Court provides 3 (three) conditions or parameters if the government wants to issue a Perppu with a compelling urgency according to the interpretation of the president, namely (Constitution 2009) :

1. There is an urgent need to resolve legal issues quickly based on the law;

2. The required law does not yet exist, resulting in a legal vacuum, or there is a law but it is inadequate;
3. The legal vacuum cannot be overcome by making laws in the usual procedure because it will take a long time while the urgent situation needs certainty to be resolved.

The Constitutional Court provides 3 (three) parameters that must be met by the government in issuing a Perppu. First, there must be an urgent need to resolve legal problems that exist in Indonesia without going through the mechanism of issuing laws. Second, there is a legal vacuum or there is a law but it is not sufficient to solve the legal problem. Third, if using the law is considered too long and must force to immediately issue rules at the level of laws that need to bring legal certainty.

Law Number 12/2011 on the Formation of Legislation does not regulate the conditions that must be met for the government to issue a Perppu. Perppu in Law Number 12 of 2011 is only mentioned in CHAPTER I regarding general provisions Article 1 number 4. According to the opinion of legal experts According to Astomo, the meaning of state emergency has several important cumulative elements, namely (Putera 2018):

1. The element of a dangerous threat;
2. The element of necessity that requires;
3. The element of limited time available;

The element of a dangerous threat can be interpreted that the State is in a dangerous and urgent situation and requires rules that can solve legal problems quickly in accordance with the provisions of the legislation. The element of necessity that requires this is due to the existence of rules that do not yet exist so that there is a legal vacuum or there are laws but they are inadequate. The element of limited time available means that if it takes a long time and process to make a law that is equivalent to a law, the government can issue a Perppu.

The government argues that the objectives of the issuance of this Perppu on Job Creation are as follows (Rachman 2023):

1. To anticipate the rapid global changes;
2. The Covid-19 pandemic has caused employment to decline;
3. As a follow-up to the Constitutional Court Decision Number 91/PUU-XVII/2020;
4. The national economic fundamentals are weakening and causing competitiveness to also weaken;
5. The reserves of basic commodities in Indonesia are very limited due to the impact of Covid-19;
6. There is global inflation, especially from the United States and the United Kingdom;

In addition to the above opinions, the government also argues that the Perppu on Job Creation has improved some of the content material in the Ciptaker Law including (Sulistiono 2023):

1. Re-regulation related to outsourcing for several types of work that will be determined by the government. With this, not all work can be delegated to companies that use outsourcing. Other types of work that are outsourced will be further regulated in a Government Regulation;
2. Changing the phrase disabled people to disabilities;
3. Refinement of arrangements related to the determination of the minimum wage. The head of the region, in this case the governor, is obliged to set the Provincial Minimum Wage tariff and the Regency/City Minimum Wage can be set by the governor if the results of the calculation of the UMK are higher than the UMP;
4. Changing the Minimum Wage calculation formula with consideration of Economic Growth Variables, Inflation, and certain Indices will be further regulated in a Presidential Regulation;
5. Under certain conditions, the Government may establish a Minimum Wage calculation formula that is not the same as the usual Minimum Wage calculation formula (certain conditions can be extraordinary conditions influenced by the global and/or national economy, for example non-natural disasters):
6. Affirmation of the obligation to apply the structure and scale of wages by employers for workers/laborers whose working period is 1 year or more.

The issuance of Perppu No. 2 Year 2022 on Job Creation raises new problems because the issuance of this Perppu is not in line with the phrase "case of compelling urgency" because the content material in the Perppu is the incarnation of the Ciptaker Law which has been declared conditionally unconstitutional for 2 (two) years by the Constitutional Court, only the form of the regulation is different. In the consideration of the Constitutional Court judges, what needs to be improved from the Ciptaker Law is the formal process relating to public participation, which is an element that must be considered in the formation of laws because the public will also have a direct impact on the existence of these laws.

According to Zainal Arifin Mochtar's opinion, urgent 'matters of concern' are indeed the president's right to determine subjectively to issue a Perppu which will later be objectified by the DPR in order to make it from Perppu to law and will no longer apply as an urgent law while as a government regulation that is considered equivalent to a law but has become a law. With this, there is a debate about the 'case of compelling urgency'. Is it really just the subjective attitude of the president, in the sense that the president can issue a perppu only based on his subjective assessment. Or there must be an objective condition that is urgent and compelling (Mochtar 2023).

With the issuance of this Job Creation Perppu, there are several notes that can be described. The decision of the Constitutional Court Number 91/PUU-XVII/2020 questioned the Ciptaker Law as very minimal in involving participation from the community. Basically, the Ciptaker Law is substantially problematic from its upstream. This means that when the president had the desire to use the omnibus law method to form the Ciptaker Law at that time problems began to arise (Widodo 2023) . Coupled with the existence of political interests that are so thick that it makes the DPR automatically give approval after the president submits this Perpu Cipta Kerja to the DPR. If they really carry out the mandate of the Constitutional Court Decision Number 91/PUU-XVII/2020, the DPR should reject this Perppu and ask the government to sit together to make improvements by involving community participation.

The problem arises again when the Ciptaker Law has been declared conditionally unconstitutional in the form of a law and replaced with a government regulation in lieu of law, where the process of forming a perpu is only based on the subjective interpretation of the president without involving the role of the community in its formation. This is not in accordance with what was ordered by the Constitutional Court which ordered to involve the role of the community in the formation process. Indeed, the president has a subjective assessment in issuing a perppu but that does not mean that it fully depends only on the subjective assessment of the president (Cantik Nur Annisa 2023).

This can be seen as the urgency of studying the existence of the Constitutional Court Decision Number 91 / PUU-XVII / 2020 after the promulgation of Perppu No. 2 of 2022 concerning Job Creation as law is a relevant research in assessing whether the government's actions in issuing Perppu No. 2 of 2022 concerning Job Creation are appropriate and in accordance with the orders of the Constitutional Court in the Constitutional Court Decision Number 91 / PUU-XVII / 2020 and whether it is appropriate for the government and the DPR to enact this Perppu in response to the orders of the Constitutional Court.

The issuance of the Perppu on Job Creation was indeed issued to override the Constitutional Court Decision Number 91/PUU-XVII/2020 to find a shortcut so that the Ciptaker Law can be re-enacted and the pretext of a compelling urgency, so that the process of forming this law does not need to involve public participation. However, the Ciptaker Law is a law that regulates the rights and obligations of employers, workers, and other parties.

In accordance with what has been described, the president's subjective assessment must also be in accordance with objective circumstances, namely the existence of 3 (three) conditions that have been decided by the Constitutional Court. Although in accordance with the mandate of Article 22 of the 1945 Constitution of the Republic of Indonesia which mandates the president to have a subjective assessment, it must

also be tested, however, the subjective assessment of the president himself is a political attitude that must be framed by law (Suhardin and Flora 2023) . This aims to prevent abuse of authority if political power is given freedom to decide policies that are not in accordance with applicable legal provisions.

The issuance of this Perppu on Job Creation was indeed issued to override the Constitutional Court Decision Number 91/PUU-XVII/2020 to find a shortcut so that the Ciptaker Law can be re-enacted and the pretext of a compelling urgency, so that the process of forming this law does not need to involve public participation. However, the Ciptaker Law is a law that regulates the rights and obligations of employers, workers, and other parties.

Involving community participation cannot be ignored. Moreover, the Ciptaker Law concerns the livelihood of many people, especially for workers who are directly affected. In issuing this perpu, it is indeed on the pretext of overcoming global economic problems which, in the opinion of the government, can become a problem if not immediately handled by the issuance of the Perppu on Job Creation.

In the opinion of Allan Fatchan Gani Wardhana, the issuance of the Job Creation Perppu proves that the government, especially the president and the DPR, do not have good faith to fulfill the Constitutional Court Decision Number 91/PUU-XVII/2020. In its decision, the Constitutional Court gave a grace period of 2 (two) years to lawmakers to make improvements to the Ciptaker Law. This is a long time and is considered very sufficient if the government wants to improve it.

Based on these two parameters, the author argues that this Perppu on Job Creation does not fulfill the three elements stipulated by the Constitutional Court in Decision Number 138/PUU-VII/2009. Namely, First, the Job Creation Perppu itself does not reflect that the State is in a dangerous / urgent situation or that there is no compelling urgency to issue a Perppu. Second, the existence of a law but inadequate is also not fulfilled because the Ciptaker Law which was declared conditionally unconstitutional for 2 (two) years only needs to be improved in its formal process. The legal vacuum is also not fulfilled. Because in the Constitutional Court Decision Number 91/PUU-XVII/2020, the Ciptaker Law was declared to be still valid for 2 (two) years and only needed to be corrected in the formal process, so the element of legal vacuum was not fulfilled.

CONCLUSION

Conclusion contains a description that should answer the problem(s) raised and answer the objectives of research. Provide a clear and concise conclusion. Do not repeat the Abstract or simply describe the results of the research. Give a clear explanation regarding the possible application and/or suggestions related to the research findings.

Based on the description of the discussion in the previous chapter, the legal issues that are the subject matter of this study are the consideration of judges in Constitutional Court Decision Number 91/PUUXVII/2020 and the fulfillment of the element of compelling urgency in Perppu No. 2 of 2022, it can be concluded that:

1. The judges' considerations in Constitutional Court Decision Number 91/PUU-XVII/2020 include: not fulfilling formal requirements, not according to preparation standards, not involving public participation, and not explaining the amount of delegation to lower rules are considered incomplete in deciding that the Ciptaker Law is conditionally unconstitutional for 2 (two) years, in this decision the judge should also be able to consider Article 6 paragraph (1) of Law No. 12/2011 on the Formation of Regulations. 12/2011 on the Formation of Laws and Regulations which regulates the principles of protection, humanitarian principles, family principles, principles of justice, principles of order and legal certainty, and principles of balance, harmony, and harmony.
2. The substance of the fulfillment of the compelling urgency element of Perppu No. 1 of 2022 has not been fulfilled. This is based on the Constitutional Court Decision Number 138/PUU-VII/2009 which explains that 3 (three) cumulative elements must be fulfilled. This Perppu on Job Creation does not fulfill these three elements that have been determined by the Constitutional Court, including: the existence of a compelling situation, existing laws but inadequate, and a legal vacuum.

Suggestion

The government in issuing a Perppu must really pay attention to the 3 (conditions) set by the Constitutional Court, one of which is a compelling urgency. This Perppu is at the same level as the law, especially since the Job Creation Perppu concerns the livelihood of many people, especially laborers and workers. The government must also implement the Constitutional Court Decision in accordance with the ruling, namely improving the law instead of issuing a Perppu to find shortcuts and override the Constitutional Court Decision Number 91 / PUU-XVII / 2020 under the pretext of compelling urgency, so that the process of forming laws does not involve public

participation which the Constitutional Court ordered lawmakers to involve more public participation in the lawmaking process.

REFERENCES

Asshiddiqie, Jimly. 2005. *Models of Constitutional Testing in Various Countries*. Mold 2. Jakarta: Jakarta Constitutional Press.

Efendi, Jonaedi, and Johnny Ibrahim. 2016. *Normative and Empirical Legal Research Methods*. First. edited by E. Wahyudin. Depok: Prenadameida Group.

Ibrahim, Johnny. 2005. *Theory and Methods of Normative Legal Research*. Malang: Bayumedia Publishing.

Putera, Astomo. 2018. *Science of Legislation Theory and Practice in Indonesia*. First. Depok: Raja Grafindo Persada.

Achmad, Yodi, Kurniawan Mukhlis, and Al Huda. 2022. "Judicial Legal Politics in Constitutional Court Decisions (Case Study of Constitutional Court Decision Number 91 / PUU-XVIII / 2020 on Job Creation Law)." *Journal of Citizenship* 6(2): 4739- 51.

Beautiful Nur Annisa, Ollyvia. 2023. "Analysis of the Impact of Government Regulation in Lieu of Job Creation Law on Severance Pay Rights for Termination of Employment." *Journal Equitable* 8(1):129-43.

Hipan, Marno M. 2023. "Problems of the PERPPU on Job Creation in Legislation." Journal of Legal Media 11(11):24-35.

Irawan, Atang. 2022. "Job Creation Law in the Midst of HiIrawan, A. (2022). The Job Creation Law Amidst the Himpitan of the Constitutional Court Decision Number 91/PUU-XVIII/2020. Journal of Litigation, 23(1), 101-133. Retrieved from Https://Journal.Unpas.Ac.Id/Index.Php/Litigation/ Artic." Litigation Journal 23(1):101-33.

Kurniawan, I. Gede Agus. 2022. "The Constitutional Court's Decision on the Job Creation Law in the Perspective of Utilitarianism Philosophy." Journal of Usm Law Review 5(1):282. doi: 10.26623/julr.v5i1.4941.

Palsari, Cahya. 2021. "AN INTRODUCTORY STUDY OF LEGAL SCIENCE: THE PURPOSE AND FUNCTION OF LEGAL SCIENCE AS A FUNDAMENTAL BASIS FOR COURT DECISIONS." E-Journal Komunitas Yustisia Ganesha University of Education 4 (November): 1- 23.

Rachman, Muhammad Insany. 2023. "Review of the Stipulation of Perpu Number 2 of 2022 on Job Creation in the Perspective of Legal Sociology." Journal of Panah Keadilan 2(1):88-100.

Sihombing, Sihar. 2022. "The Legal Power of the Job Creation Law After the Constitutional Court Decision." Journal of Nalar Keadilan 2(1):1-14.

Suhardin, Yohanes, and Henny Saida Flora. 2023. "The Existence of the Constitutional Court Decision After the Enactment of the Job Creation Perpu Stipulation Law." Journal of USM Law Review 6(1):320-31.

Sulistiono, Sandy. 2023. "The Establishment of Perppu on Job Creation in the Perspective of Democratic Rule of Law." Al-'adalah Journal 1(2):250-69.

Wardhani, Dwi Kusumo. 2020. "Disharmony Between the Draft Bill on Job Creation in the Land Chapter and the Principles of Law Number 5 of 1960 on Basic Regulations of Agrarian Principles (UUPA)." Journal of Legal Communication 6(2):440-55.

Wicaksono, Dian Agung. 2022. "(Quo Vadis of the Constitutional Court's Standing in Reviewing the Law of Job Creation and Its Implications towards Regional Government's Confusion in Implementing Authority to Regulate)." RechtsVinding 11 (April): 77-98.

Government Regulation in Lieu of Law Number 2 of 2022. n.d. *Government Regulation in Lieu of Law Number2 of 2022 on Job Creation. Indonesia.*

Law Number 24 of 2003. n.d. *Law of the Republic of Indonesia Number 24 of 2003 Concerning the Constitutional Court. Indonesia.*

Law Number 11 of 2020. n.d. *Law of the Republic of Indonesia Number 11 of 2020 Concerning Job Creation. Indonesia.*

Law Number 13 of 2022. n.d. *Law of the Republic of Indonesia Number 13 of 2022 Concerning the Second Amendment to Law Number 12 of 2011 Concerning the Formation of Legislation.*

Law Number 24 of 2003. n.d. *Law of the Republic of Indonesia Number 24 of 2003 Concerning the Constitutional Court. Indonesia.*

Constitution, Court. 2009. Constitutional Court Decision Number 138/PUU-VII/2009. Indonesia.

Mochtar, Zainal Arifin. 2023. "Unconstitutionality of Job Creation Perppu." Media Indonesia. Retrieved June 9, 2023 (https://mediaindonesia.com/kolompakar/549640/inkonstitusionalitas-perppu-ciptakerja).

W. Finaka, Andrean. 2022. "11 Clusters of Regulations Implementing the Job Creation Law." One Year Ago. Retrieved September 22, 2022 (https://indonesiabaik.id/infografis/11-klasterperaturan-pelaksanaan-uu-cipta-kerja).

Widodo, Hananto. 2023. "Questioning the Perpu on Job Creation." Merah Putih Media. Retrieved June 9, 2023 (https://mediamerahputih.id/menyoal-perpucipta-kerja/).