



THE LEGAL POLITICS OF THE FORMATION OF JOB CREATION LAW WITHIN THE FRAMEWORK OF RESPONSIVE LAWS

POLITIK HUKUM PEMBENTUKAN UNDANG-UNDANG CIPTA KERJA DALAM KERANGKA HUKUM RESPONSIF

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Abstract

The introduction of the omnibus methodology to Indonesian lawmaking through the Job Creation Law has generated intense scholarly debate over the balance between regulatory efficiency and democratic legitimacy. Drawing on Nonet and Selznick’s responsive law theory, this study examines the legal politics underpinning the formation of Law No. 11 of 2020, PERPPU No. 2 of 2022, and Law No. 6 of 2023 within Indonesia’s civil-law framework. Using normative legal research methods including statutory interpretation, constitutional doctrinal analysis, and comparative legal study this article traces the procedural trajectory from initial draft to successive judicial reviews (Decision Nos. 91/PUU-XVIII/2020 and 168/PUU-XXI/2023). The findings reveal systemic procedural deficiencies: exclusion of affected stakeholders, lack of meaningful public participation, and executive reliance on emergency powers instead of mandated legislative revision. The Constitutional Court’s interventions have served as corrective “strange attractors,” introducing “meaningful participation” requirements (right to be heard, right to be considered, and right to explanation) and compelling the government to adopt legislative reforms. However, persistent executive resistance underscores enduring tensions between efficiency-oriented omnibus reforms and procedural legitimacy. The study concludes that forthcoming legislative efforts particularly the mandated separate Employment Law will determine whether Indonesia’s legal system advances toward genuinely responsive law or reverts to repressive practices. These insights hold broader significance for comparative constitutionalism and the global discourse on omnibus legislation in developing democracies.

Keywords : Omnibus Legislation, Responsive Law, Public Participation.

1. INTRODUCTION

Indonesia’s legal system, traditionally anchored in the civil law tradition inherited from Dutch colonial administration, experienced a paradigmatic transformation with the introduction of omnibus law methodology a legislative technique predominantly associated with common law systems. The omnibus law, as defined in Black’s Law Dictionary and cited



in Constitutional Court Decision No. 91/PUU-XVIII/2020, refers to legislation "relating to or dealing with numerous objects or items at once; including many things or having various purposes," fundamentally challenging conventional approaches to lawmaking in Indonesia (Sanders et al., 2024; Kususiyanah et al., 2024).

Recent bibliometric analysis examining 64 articles from Scopus databases reveals a global surge in omnibus law research, with publications increasing substantially post-2020, coinciding with Indonesia's controversial implementation of this methodology (Dwiono et al., 2024). The research demonstrates that 40.6% of academic articles support omnibus law adoption, while 37.5% oppose it, with 21.9% maintaining neutral positions, indicating significant scholarly division regarding this legislative approach (Dwiono et al., 2024).



Figure 1. Indonesia's Job Creation Law Timeline

The Job Creation Law's evolution from Law No. 11 of 2020 through PERPPU No. 2 of 2022 to its final form as Law No. 6 of 2023 represents an unprecedented legislative experiment that consolidated amendments to 79 existing laws within a single omnibus framework (Mochtar et al., 2024). This legislative innovation emerged from governmental policy agendas addressing "hyper-regulation" a condition characterized by overlapping, contradictory, and inefficient regulatory frameworks allegedly impeding economic development and investment climate (Balahmar, 2024).

The analytical framework examining Indonesia's omnibus law formation draws primarily from Philippe Nonet and Philip Selznick's seminal responsive law theory, which posits three evolutionary stages of legal development: repressive law, autonomous law, and responsive law (Adon et al., 2024). Responsive law emphasizes law's capacity to "respond to social needs and adapt according to the dynamics of society," positioning legal institutions as instruments of social transformation rather than mere instruments of social control.

Contemporary Indonesian legal scholarship demonstrates that responsive law theory provides frameworks for evaluating whether legislative processes genuinely accommodate public participation and address societal needs rather than serving narrow political or economic interests (Sudaryat, 2024). The responsive law paradigm becomes particularly relevant when analyzing Indonesian contexts where legal formation must navigate complex intersections of constitutional requirements, democratic participation, and socio-economic imperatives.

The Indonesian Constitutional Court's landmark Decision No. 91/PUU-XVIII/2020 introduced the revolutionary concept of "meaningful participation" in legislative processes, establishing three fundamental requirements: the right to be heard (*right to be heard*), the right to have opinions considered (*right to be considered*), and the right to receive explanations regarding submitted opinions (*right to be explained*). This decision emerged from formal



constitutional review challenges to the original Job Creation Law, which critics argued violated procedural requirements for democratic lawmaking.

The meaningful participation concept represents significant evolution in Indonesian constitutional jurisprudence, reflecting broader international trends toward participatory democracy and deliberative governance. Comparative analysis with democratic countries including the United States, Philippines, South Africa, and South Korea reveals that constitutional guarantees for public participation in lawmaking processes have become increasingly sophisticated, though Indonesia's normative framework arguably provides more comprehensive technical provisions for public involvement (Pahlevi et al., 2025).

International experience with omnibus legislation provides crucial contextual background for understanding Indonesia's adoption of this methodology. Comparative studies examining omnibus law implementation in the United States and Ireland demonstrate both potential benefits and significant democratic deficits associated with this approach (Antari, 2022). In the United States, omnibus legislation facilitates political consensus-building through logrolling mechanisms, while Ireland successfully streamlined over 18,000 pieces of legislation through omnibus reforms, establishing a world record for regulatory simplification (Sulaiman & Nasir, 2023).

However, scholarly analysis reveals substantial concerns regarding omnibus legislation's impact on democratic deliberation and legislative oversight. Canadian experience, particularly with Budget Implementation Acts, demonstrates how omnibus bills reduce transparency and limit meaningful parliamentary scrutiny, while Australian omnibus repeal initiatives raise questions about public interest protection (Dwiono et al., 2024). These international precedents provide crucial insights for evaluating Indonesia's omnibus law experiment within broader theoretical frameworks of democratic governance and rule of law.

The Job Creation Law's formation must be understood within broader contexts of legal politics in post-authoritarian Indonesia, where democratic consolidation remains an ongoing process fraught with institutional tensions and competing visions of state-society relations (Asa et al., 2021). The accumulation of executive power under the Joko Widodo administration, combined with limited horizontal accountability mechanisms, has created conditions that scholars characterize as "democratic deconsolidation" (Mainake, 2021).

This political context becomes particularly relevant when examining procedural irregularities and limited public participation characterizing the Job Creation Law's formation. The opaque legislative process excluded meaningful consultation with affected stakeholders including labor unions and civil society organizations, reflecting broader patterns of democratic deficit in contemporary Indonesian governance (Nonet & Selznick, 2017). The subsequent issuance of PERPPU No. 2 of 2022 as an emergency regulation further complicated questions regarding the appropriateness of emergency powers in non-crisis situations (Pahlevi et al., 2025).

This study employs a comprehensive theoretical framework integrating Hans Kelsen's legal positivism, John Rawls' theory of justice, and Lon Fuller's procedural natural law theory to evaluate the Job Creation Law's formation and implementation. Kelsen's emphasis on legal legitimacy through formal validity and hierarchical norm structures provides foundations for examining constitutional compliance and procedural regularity (Sukadi et al., 2024). Rawls' justice as fairness framework, particularly the difference principle and equal liberty principle, offers analytical tools for assessing distributive consequences and procedural fairness (Dermawan et al., 2024).



Fuller's eight principles of legal morality including requirements for generality, publicity, clarity, consistency, and possibility of compliance provide additional evaluative criteria for examining the Job Creation Law's formation process and substantive content (Hutchinson, 1979). The integration of these theoretical perspectives within Nonet and Selznick's responsive law framework creates comprehensive analytical lenses for examining whether Indonesia's omnibus law experiment represents genuine legal innovation or merely technocratic expediency masquerading as reform.

This analysis addresses two fundamental research questions: (1) How does the legal politics of Job Creation Law formation reflect broader patterns of democratic governance in Indonesia? and (2) How does the Job Creation Law respond to societal needs and social change when evaluated through responsive law theory frameworks?

The research employs normative legal research methodology, utilizing statutory interpretation, comparative legal analysis, and constitutional doctrinal examination to evaluate the Job Creation Law's formation within responsive law theoretical frameworks. The analysis draws extensively on constitutional court decisions, legislative documents, academic literature from Scopus databases, and comparative international experience to construct comprehensive evaluations of the omnibus law's democratic legitimacy and social responsiveness.

The significance of this analysis extends beyond Indonesia's specific case to broader questions about omnibus legislation's compatibility with democratic governance and rule of law principles. As developing countries increasingly adopt omnibus methodologies to address regulatory complexity and economic competitiveness concerns, understanding the democratic implications of these innovations becomes crucial for maintaining institutional legitimacy and social cohesion.

The Indonesian experience provides important insights into relationships between procedural democracy and substantive justice in contexts where rapid economic development creates pressure for regulatory streamlining. Ongoing constitutional challenges to various Job Creation Law provisions, with multiple articles declared "conditionally constitutional" by the Constitutional Court, demonstrate continuing tensions between efficiency-oriented legal reform and constitutional compliance.

This comprehensive examination contributes to understanding how legal systems in developing democracies can balance efficiency imperatives with democratic legitimacy requirements, offering valuable insights for comparative constitutional law, democratic theory, and responsive law scholarship. The analysis provides frameworks for evaluating whether legislative innovations genuinely serve public interests or merely facilitate concentrated political and economic power, making it essential reading for scholars and practitioners concerned with democratic governance and rule of law in transitional societies.

2. RESEARCH METHOD

This study employs a normative legal research methodology with qualitative analysis, designed to examine the legal politics underlying the formation of the Job Creation Law within the framework of responsive legal theory. The research adopts a multi-faceted approach comprising statute approach, historical approach, and conceptual approach to comprehensively analyze the legislative processes and legal implications. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law No. 11 of 2020 on Job Creation, Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation, Law No. 6 of 2023 on the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into



Law, Constitutional Court Decision No. 91/PUU-XVIII/2020, and relevant legislation formation laws. Secondary legal materials encompass academic literature, legal journals, scholarly articles, and expert commentaries on legislative formation and responsive legal theory. The analytical framework integrates Philippe Nonet and Philip Selznick's responsive legal theory to categorize the legal characteristics as repressive, autonomous, or responsive, while incorporating theories of justice, legal formation, judicial review, and legal chaos theory. Data collection utilizes library research and legislative document analysis, with qualitative content analysis applied to examine the constitutional compliance, procedural adequacy, and substantive responsiveness of the Job Creation Law formation process. The research methodology ensures systematic examination of the complex legislative journey from initial drafting through judicial review to final enactment, providing comprehensive insights into the responsive nature of Indonesian legal development.

3. RESULTS AND DISCUSSION

A. The Legal Policy of the Formulation of the Job Creation Law

The formation of Indonesia's Job Creation Law represents a paradigmatic case of legal politics in action, demonstrating the intersection of constitutional law, democratic theory, and legislative practice. Through multiple iterations from the original Law No. 11/2020, through PERPPU No. 2/2022, to Law No. 6/2023 this omnibus legislation has undergone unprecedented constitutional scrutiny, revealing fundamental questions about the balance between legal efficiency and democratic legitimacy in Indonesia's legal system (Sanders et al., 2024).

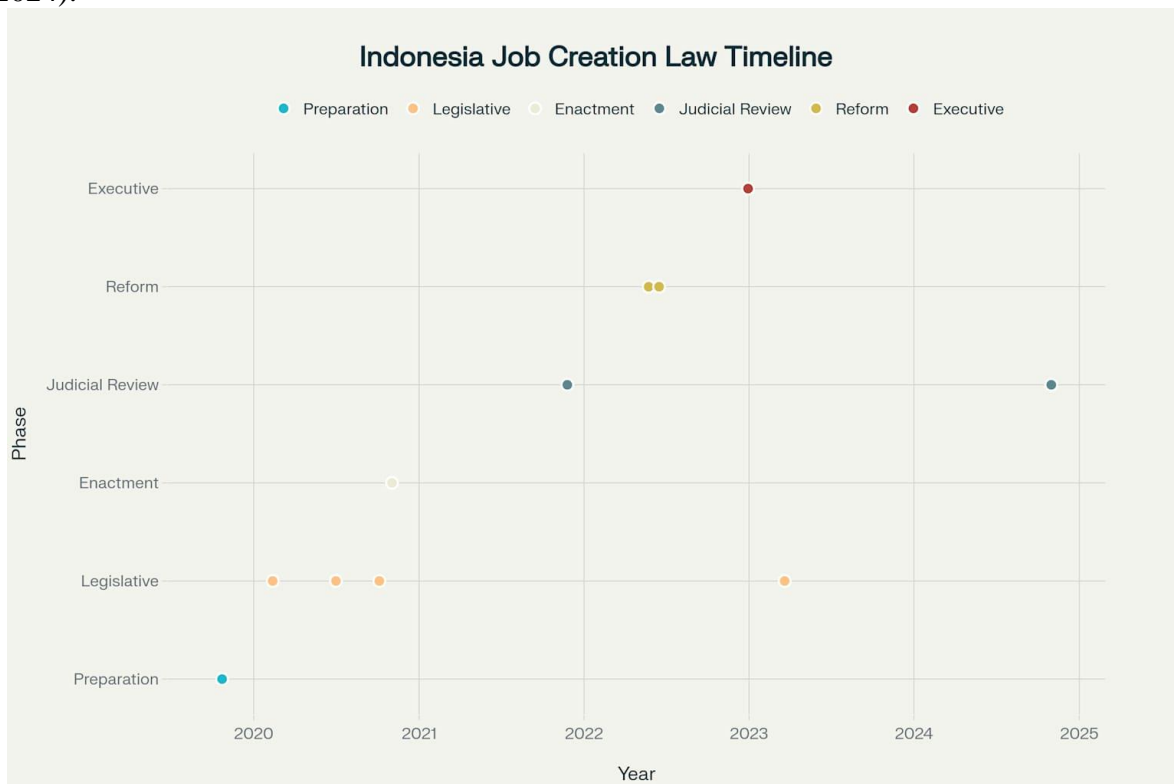


Figure 2. Indonesia Job Creation Law Timeline



Within the broader theoretical framework of the constitutional state (*rechtsstaat*), Indonesia functions as an entity capable of guaranteeing legal supremacy through its institutional architecture (Kususiyanah et al., 2024). The state, as Hans Kelsen's pure theory of law conceptualizes, represents a normative order a community created by national legal arrangements that manifest through hierarchical legal norms (Sajian et al., 2021).

The enforcement of law within a constitutional state constitutes an effort to maintain state existence. Legal supremacy becomes essential as long as state institutions and apparatus maintain their commitment to the rule of law. The creation of law through political processes definitively determines what applies, what will be created, what will be changed, or what will be abolished this process constitutes legal politics (Hadi et al., 2023).

Indonesia's constitutional objectives, as definitively stated in the fourth paragraph of the 1945 Constitution's Preamble, establish the framework for legal politics:

1. Protecting the entire Indonesian nation and homeland
2. Advancing general welfare
3. Enhancing national intellectual life
4. Participating in world order based on independence, eternal peace, and social justice

Legal politics (*politik hukum*) or legal policy represents the official direction concerning law to be implemented, whether through new law creation or replacement of existing law, aimed at achieving state objectives. As Mahfud MD articulates, legal politics encompasses three dimensions: first, official direction regarding law implementation; second, political background and other societal subsystems behind law creation; and third, law enforcement issues, particularly implementation of established legal politics (Fajar & Zaid, 2021).

The Formation Process: Legal Politics in Action

The preparation of the Job Creation Law draft commenced on October 23, 2019, under the coordination of the Ministry for Economic Affairs in collaboration with multiple ministries including Finance, Agrarian Affairs and Spatial Planning, Manpower, Law and Human Rights, and Environment and Forestry (Nugroho et al., 2024). This inter-ministerial approach reflected the omnibus law's comprehensive scope, affecting 78 existing laws across multiple sectors.

The planning phase notably circumvented the National Legislative Program (*Prolegnas*), which typically serves as the priority framework for law formation by the House of Representatives (DPR). This deviation was enabled by the revision of Law No. 15/2019 concerning Legislative Formation, which permitted law drafting outside Prolegnas under specific circumstances (Hadi et al., 2023).

The parliamentary deliberation process, spanning from April to October 2020, involved 64 meetings consisting of 2 working meetings, 56 working committee sessions, and 6 formulation and synchronization team meetings (Hadi et al., 2023). Despite this extensive deliberation, the process faced significant criticism regarding transparency and meaningful public participation (Kartika, 2020).

Constitutional Challenges and Judicial Review

On November 25, 2021, the Constitutional Court issued Decision No. 91/PUU-XVIII/2020, declaring the Job Creation Law "conditionally unconstitutional" due to procedural flaws in its formation (Sibuea, 2020). The Court identified several critical deficiencies:

1. Procedural violations: The law's formation failed to meet transparency and adequate public participation requirements



2. Formal defects: Substantial differences existed between the bill and the promulgated law
3. Democratic deficit: The formation process violated democratic principles and rule of law standards
4. Omnibus method legitimacy: Lack of formal legal basis for omnibus law methodology in Indonesian legislative system

The Court provided a two-year grace period for revision, mandating that without correction, the law would become permanently unconstitutional. This "conditionally constitutional" approach represented the Court's first formal review based on procedural rather than substantive grounds.

In response to the Constitutional Court's directive, the government and DPR enacted Law No. 13/2022 concerning the Second Amendment to Law No. 12/2011 on Legislative Formation (Firdaus, 2024). This legislation formally recognized the omnibus method within Indonesia's legislative framework, addressing the procedural legitimacy concerns raised by the Constitutional Court.

The omnibus method was defined as a compilation approach that: (1) contains new material content, (2) changes material content, or (3) revokes laws and regulations. This formalization aimed to provide legal certainty for future omnibus legislation while addressing the Court's procedural objections.

The PERPPU Alternative and Executive Authority

Rather than revising the original law within the Constitutional Court's timeline, the government chose to issue Government Regulation in Lieu of Law (PERPPU) No. 2/2022 on December 30, 2022 (Nugroho et al., 2024). This executive action utilized the President's constitutional authority under Article 22 of the 1945 Constitution to address "compelling urgency" (*hal ihwal kepentingan memaksa*) (Wardana et al., 2023). The PERPPU mechanism reflects Indonesia's constitutional design balancing executive efficiency with legislative oversight. The Constitution requires DPR approval for PERPPU validation, ensuring democratic control over executive emergency powers (Wardana et al., 2023). Law No. 6/2023 ratified PERPPU No. 2/2022 through a distinctive "establishment law" (*UU Penetapan*) rather than direct conversion to ordinary law (Nugroho et al., 2024). This procedural innovation, while constitutionally permissible, represented an unusual approach to PERPPU ratification that has attracted academic attention for its implications on legislative procedure (Dwiono et al., 2024).

Democratic Participation and Procedural Legitimacy

The Constitutional Court's emphasis on meaningful public participation reflects broader concerns about democratic governance in Indonesia. Comparative analysis with the United States, Philippines, South Africa, and South Korea reveals that while these countries constitutionally guarantee public participation in legislative processes, Indonesia relies primarily on statutory provisions and court interpretation (Mahy, 2022). The Court's Decision No. 91/PUU-XVIII/2020 mandated more meaningful public participation, recognizing such participation as a constitutional right. This jurisprudential development strengthens democratic legitimacy requirements for Indonesian law-making (Mahy, 2022).

Research indicates significant concerns about closed-door deliberations and bypassed public participation in recent Indonesian legislation, including the Job Creation Law³³. The



legislative process often lacks the transparency necessary for effective public oversight, contributing to democratic backsliding concerns (Tatawu & Tawai, 2023). The omnibus law's complexity, spanning multiple sectors and affecting numerous existing laws, exacerbated these transparency challenges. Public understanding and meaningful participation became more difficult when legislation encompasses such broad scope (Rodiyah & Utari, 2021).

Legal Hierarchy and Review Mechanisms

Indonesia's legal system reflects significant influence from Hans Kelsen's *Theorie Von Stufenbau Der Rechtsordnung* (theory of hierarchical legal order). The hierarchical structure places Pancasila as the *Grundnorm* (basic norm), followed by the 1945 Constitution, laws and PERPPU, government regulations, presidential regulations, and regional regulations (Firdaus, 2024). This hierarchy establishes review mechanisms at each level: constitutional philosophy for Pancasila, Constitutional Court review for constitutional compliance, judicial review for regulatory conformity, and administrative review for executive implementation (Sajian et al., 2021).

The Job Creation Law case demonstrates the Constitutional Court's critical role in maintaining constitutional order. The Court's willingness to declare major legislation conditionally unconstitutional reflects robust judicial independence and constitutional supremacy. However, the government's response through PERPPU rather than direct revision suggests ongoing tension between judicial mandates and executive preferences for legal continuity.

The 2024 Constitutional Review

On October 31, 2024, the Constitutional Court issued Decision No. 168/PUU-XXI/2023, partially granting petitions challenging various provisions of Law No. 6/2023. The decision mandated significant changes to labor law provisions, including:

1. Fixed-term employment limitations: Maximum five-year duration for specific work completion
2. Language requirements: Mandatory use of Bahasa Indonesia for employment contracts
3. Rest day provisions: Enhanced weekly rest requirements for workers
4. Foreign worker prioritization: Strengthened preference for Indonesian workers

The repeated constitutional challenges demonstrate ongoing tensions between economic liberalization objectives and social protection requirements. The Court's intervention reflects its role as guardian of constitutional values against potentially harmful legislative changes.

The legal politics of Indonesia's Job Creation Law formation reveals fundamental tensions within contemporary Indonesian constitutionalism. The case demonstrates how legal efficiency goals can conflict with democratic process requirements, creating constitutional crises that require judicial intervention.

Several key implications emerge from this analysis:

1. Procedural legitimacy matters: The Constitutional Court's emphasis on proper procedure reinforces that how law is made matters as much as what law is made
2. Democratic participation is constitutionally required: Meaningful public participation has evolved from administrative convenience to constitutional necessity



3. Omnibus methodology requires careful implementation: While now formally recognized, omnibus law requires enhanced attention to democratic process and constitutional compliance
4. Executive emergency powers have limits: PERPPU authority, while broad, cannot substitute for proper legislative procedure indefinitely
5. Judicial review remains robust: The Constitutional Court's willingness to challenge major legislation demonstrates continuing judicial independence

The Job Creation Law saga illustrates the ongoing evolution of Indonesian legal politics, where efficiency and democracy must find balance within constitutional constraints. This case will likely influence future legislative processes, establishing precedents for omnibus law methodology while reinforcing democratic participation requirements in Indonesia's continuing constitutional development.

The iterative process from law to constitutional challenge to PERPPU to new law to renewed challenge reflects the dynamic nature of legal politics in contemporary Indonesia, where constitutional courts play an increasingly central role in mediating between legislative ambition and constitutional constraint.

B. Study from the Perspective of Responsive Law

Responsive law theory represents a sophisticated approach to legal governance that emphasizes the law's capacity to adapt to social needs while maintaining institutional integrity. According to Nonet and Selznick, responsive law is characterized by several key features that distinguish it from both repressive and autonomous legal systems.

The theory posits that responsive law relies on two fundamental doctrines: first, that law must be functional, pragmatic, purposeful, and rational; second, that competence serves as the evaluative standard for all legal implementation. These principles manifest in several operational characteristics, including substantive justice as the basis for legal legitimacy, the subordination of regulations to principles and policies, and the encouragement of discretion in legal decision-making while maintaining orientation toward objectives.

Public participation emerges as a cornerstone of responsive law, requiring that legal institutions provide meaningful opportunities for community involvement in lawmaking processes. This participatory requirement reflects the theory's emphasis on accommodating social changes to achieve justice and public emancipation.

Indonesia's Job Creation Law, officially known as Law Number 11 of 2020, represents one of the most controversial pieces of legislation in Indonesian legal history. Passed during the COVID-19 pandemic on October 5, 2020, this omnibus law spans over 1,000 pages and simultaneously amends 77 existing national laws across multiple sectors.

The legislation aimed to simplify overlapping regulations and boost foreign direct investment by improving the ease of doing business. However, the law faced immediate and sustained opposition from various stakeholders, including labor unions, environmental activists, civil society organizations, and academic institutions.

The formation of the Job Creation Law exemplified several concerning departures from responsive law principles, particularly regarding public participation. Critics argued that the government adopted a closed approach that ignored meaningful public participation, despite claims of conducting various public consultations (Mochtar et al., 2024).

The task force composition revealed significant problems with stakeholder representation. Of the 127 individuals appointed through Ministerial Decree Number 378 of



2019 to provide input on the omnibus law, the overwhelming majority consisted of business representatives and politicians, with minimal academic participation and complete absence of directly affected groups such as workers, farmers, and fishermen.

The Constitutional Court later introduced the concept of "meaningful participation" in Decision Number 91/PUU-XVIII/2020, emphasizing three essential rights: the right to be heard, the right to have opinions considered, and the right to receive explanations regarding submitted opinions. This framework now serves as the constitutional standard for evaluating public participation in Indonesian lawmaking (Prastyo, 2022).

The Constitutional Court's response to challenges against the 2020 Job Creation Law marked a watershed moment in Indonesian constitutional jurisprudence. On November 25, 2021, the Court declared the law "conditionally unconstitutional," finding that its formation process violated constitutional principles.

The Court identified several formal defects in the law's creation process:

1. Unclear omnibus law methodology that failed to distinguish between creating new law versus revision
2. Violation of openness principles despite some stakeholder meetings
3. Lack of certainty, standard methodology, and proper systematic approach to legislation formation
4. Post-approval textual changes to substantial content after joint agreement between Parliament and President

Critically, the Court provided a two-year remedial period, requiring the government and Parliament to repair the law with meaningful public participation or face permanent invalidity.

Following the government's decision to issue Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 instead of undertaking meaningful repairs, and its subsequent ratification as Law Number 6 of 2023, the Constitutional Court faced another round of challenges.

On October 31, 2024, the Court issued Decision Number 168/PUU-XXI/2023, addressing 21 problematic provisions across seven major employment-related clusters:

1. Foreign Workers (TKA): Restored prioritization of Indonesian workers
2. Fixed-Term Employment Contracts (PKWT): Limited duration to maximum 5 years including extensions
3. Outsourcing (Alih Daya): Imposed restrictions to ensure fair legal protection
4. Leave Policies: Reinstated 5-day work week option
5. Wages: Clarified proportional wage scales and restored sectoral minimum wages
6. Termination: Required bipartite consultation through consensus
7. Severance: Enhanced protection for workers regarding compensation

Significantly, the Court also mandated the creation of a separate Employment Law within two years, requiring the removal of employment provisions from the Job Creation Law and emphasizing the need for active participation from labor unions and workers.

Hans Kelsen's Pure Theory of Law provides crucial analytical tools for understanding the Constitutional Court's interventions. Kelsen's framework separates law from justice while providing judicial review as a mechanism for addressing potentially unjust laws. His concept of justice emphasizes procedural fairness, requiring that similar situations receive similar treatment and that legal systems maintain internal consistency (Rigaux, 1998).

The dualism in legal approaches to emergency situations, as seen in the Job Creation Law's formation, represents precisely the type of anomaly that Kelsen's theory identifies as



leading to injustice. When different legal procedures apply to similar circumstances without clear justification, the legal system loses its claim to procedural justice.

Charles Sampford's chaos theory offers additional insights into the legal disruption surrounding the Job Creation Law. Sampford argues that legal reality is inherently asymmetric, filled with uncertainty and disorder reflecting the essential characteristics of social relationships.

The theory's key concepts illuminate the Job Creation Law controversy:

1. Power Relations: The complex power relationships that create situations where society cannot be viewed systematically, as evidenced by the unequal representation in the omnibus law task force
2. Legal Melee: The fluid, asymmetric nature of legal reality that emerges from complex social relationships
3. Communication Problems: The difficulty in translating legal texts into meaningful public understanding, exemplified by the massive scope and technical complexity of the omnibus law

Chaos as Natural State: Rather than representing failure, the legal chaos surrounding the Job Creation Law reflects normal tensions between dynamic society and static positive law. The Constitutional Court's interventions serve as "strange attractors" that restore order by bringing the legal system back toward constitutional principles (Syarifudin & Febriani, 2015).

The initial formation of the Job Creation Law in 2020 demonstrated several characteristics consistent with repressive governance as defined by Nonet and Selznick theory. The government's approach exhibited:

1. Exclusion of Affected Parties: The task force composition heavily favored business interests while excluding workers, farmers, and other directly affected groups
2. Rushed Timeline: President Jokowi's demand for 100-day completion despite the law's complexity and scope
3. Limited Transparency: Insufficient public access to draft materials and decision-making processes
4. Emergency Justification: Using economic emergency rationale without clear demonstration of necessity requiring expedited procedures

The government's response to Constitutional Court Decision 91/PUU-XVIII/2020 further demonstrated repressive rather than responsive characteristics. Instead of undertaking the mandated repairs with meaningful public participation, the government:

1. Circumvented Judicial Instructions: Issued Perppu Number 2 of 2022 with substantially similar content rather than conducting meaningful repairs
2. Avoided Public Participation: Failed to implement the meaningful participation framework established by the Constitutional Court
3. Maintained Rushed Timeline: Expedited the Perppu's ratification as Law Number 6 of 2023 without adequate deliberation

The Constitutional Court's 2024 decision in case 168/PUU-XXI/2023 presents an ongoing test of government responsiveness. The Court's requirement to create a separate Employment Law within two years, with active labor participation, provides a clear framework for measuring whether the government will adopt responsive or repressive approaches going forward.

True responsive law requires several characteristics that were largely absent from the Job Creation Law's formation and implementation:



1. Adaptive but Selective Nature: While the law aimed to adapt to economic challenges, it lacked the selective quality that responsive law requires careful consideration of competing interests and values
2. Substantive Justice Orientation: The law prioritized economic efficiency over substantive justice concerns, particularly regarding worker protections and environmental safeguards
3. Meaningful Public Participation: The formation process failed to meet even basic standards of meaningful participation, as subsequently established by the Constitutional Court
4. Institutional Integrity: The government's circumvention of judicial instructions demonstrated a lack of commitment to institutional integrity and rule of law

The Constitutional Court's interventions validate Hans Kelsen's framework for addressing legal injustice through judicial review. The Court's identification of formal defects and procedural irregularities aligns with Kelsen's emphasis on procedural justice and legal consistency.

The dualism problem that Kelsen identifies different legal approaches to similar situations manifested clearly in the government's varying approaches to emergency lawmaking, creating the type of systematic injustice that judicial review is designed to address²⁸.

Sampford's chaos theory proves particularly illuminating for understanding the broader implications of the Job Creation Law controversy³⁰³¹. The legal disruption reflects deeper social tensions between:

1. Economic Development Pressures: Demands for regulatory simplification and investment facilitation
2. Democratic Governance: Requirements for transparent, participatory lawmaking processes
3. Social Justice: Protection of worker rights and environmental standards
4. Constitutional Order: Adherence to established legal procedures and institutional roles

The Constitutional Court's role as a "strange attractor" becomes evident in its consistent efforts to restore constitutional order through judicial review, even when facing government resistance (Syarifudin & Febriani, 2015).

The Constitutional Court's establishment of the meaningful participation framework represents a significant advancement in Indonesian constitutional law. This concept, now codified in Law Number 13 of 2022 amending the Lawmaking Procedures Law, provides concrete criteria for evaluating public participation (Prastyo, 2022):

1. Right to be Heard: Genuine opportunities for affected parties to present their views
2. Right to be Considered: Serious governmental consideration of submitted input
3. Right to Explanation: Clear communication regarding how input was evaluated and incorporated

The Job Creation Law controversy highlights ongoing tensions in Indonesia's institutional balance between executive efficiency and democratic accountability. The government's preference for expedited procedures conflicts with constitutional requirements for deliberative lawmaking (Mochtar et al., 2024).

The Constitutional Court's decisions provide a framework for evaluating future legislative efforts against responsive law standards. Key indicators include:

1. Stakeholder Inclusion: Genuine representation of affected parties in drafting processes



2. Transparent Procedures: Clear, accessible information about proposed legislation and decision-making rationales
3. Adaptive Implementation: Willingness to modify approaches based on legitimate criticism and changing circumstances
4. Institutional Respect: Compliance with judicial instructions and constitutional requirements

The analysis of Indonesia's Job Creation Law through the lens of responsive law theory reveals significant deficiencies in the government's approach to this crucial legislation. Rather than demonstrating the adaptive, participatory, and substantively just characteristics of responsive law, the formation and implementation process exhibited predominantly repressive features.

The Constitutional Court's interventions, particularly the establishment of meaningful participation requirements and conditional constitutionality decisions, represent efforts to guide Indonesian lawmaking toward more responsive practices. However, the government's continued resistance to implementing these reforms suggests an ongoing preference for repressive over responsive governance approaches.

The Indonesian experience illustrates both the challenges of implementing responsive law principles in practice and the crucial role of judicial review in maintaining constitutional order. The ultimate test of Indonesia's commitment to responsive law will be the government's response to the Constitutional Court's latest requirements, particularly the mandate to create a separate Employment Law with meaningful worker participation. This ongoing case study will continue to provide insights into the evolution of responsive law theory in contemporary Indonesian constitutional practice (Saputra et al., 2024).

As Indonesia continues to develop as a democratic nation, the lessons from the Job Creation Law controversy underscore the fundamental importance of maintaining institutional integrity, respecting constitutional processes, and ensuring that legal development serves not only economic efficiency but also democratic governance and social justice. The path forward requires genuine commitment to the principles of responsive law: adaptive capacity balanced with institutional integrity, procedural fairness combined with substantive justice, and efficient governance that remains accountable to the people it serves.

4. CONCLUSION

In conclusion, the formation of Indonesia's Job Creation Law exemplifies the tensions between legal efficiency and democratic legitimacy inherent in omnibus legislation. While the omnibus method facilitated rapid regulatory streamlining across 79 statutes to address perceived hyper-regulation, the process repeatedly violated principles of transparency, meaningful public participation, and procedural regularity. The Constitutional Court's conditional unconstitutionality rulings (Decision No. 91/PUU-XVIII/2020 and Decision No. 168/PUU-XXI/2023) have underscored the necessity of procedural compliance and substantive justice, mandating remedial reforms and the eventual creation of a standalone Employment Law. Through the lens of responsive law theory, the Job Creation Law's initial enactment exhibited predominantly repressive features exclusion of affected stakeholders, rushed timelines, and executive circumvention of judicial directives rather than the adaptive, participatory, and equity-oriented characteristics of genuinely responsive governance. The Court's interventions have served as "strange attractors," restoring constitutional balance and reinforcing the rule of law. Going forward, Indonesia's legislative practice must integrate



meaningful stakeholder inclusion, procedural transparency, and institutional fidelity to align omnibus reforms with the core principles of responsive law and constitutional democracy.

5. REFERENCES

- Adon, M. J., Wotan, F. B., & Riyanto, E. A. (2024). Contextualizing God's Kenosis of the St. Montfort Theology in Relation to the Application of Omnibus Law in Indonesia. *Jurnal Lektur Keagamaan*, 22(1), 187–220. <https://doi.org/10.31291/jlka.v22i1.1041>
- Antari, P. E. D. (2022). The Implementation of Omnibus Law in Indonesia Law Making Process on Philosophy Review. *De Jure: Jurnal Hukum Dan Syar'iah*, 14(1), 179–194. <https://doi.org/10.18860/j-fsh.v14i1.15757>
- Asa, A. I., Munir, M., & Ningsih, R. S. M. (2021). Nonet and Selznick's Responsive Law Concept in a Historical Philosophy Perspective. *CREPIDO*, 3(2), 96–109. <https://doi.org/10.14710/crepido.3.2.96-109>
- Balahmar, A. R. U. (2024). The Impact of the Omnibus Law on Industrial Relations in Indonesia During the Covid-19 Pandemic: A Qualitative Analysis. *Asian Journal of Education and Social Studies*, 50(9), 345–357. <https://doi.org/10.9734/ajess/2024/v50i91593>
- Dermawan, D., Yaswirman, Y., & Eva, Y. (2024). Relasi Hukum dan Kekuasaan Analisis Pemikiran Nonet Selznick. *Jurnal Hukum Dan Pembangunan Ekonomi*, 12(1), 10. <https://doi.org/10.20961/hpe.v12i1.82118>
- Dwiono, S., Ja'far, A. K., & Haryadi, S. (2024). An Analysis on the Omnibus Law and Its Challenges in Indonesia: The Perspectives of the Constitutional and the Islamic Law. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 8(2), 706. <https://doi.org/10.22373/sjkh.v8i2.22720>
- Fajar, B. Y. N., & Zaid, Z. (2021). A Critical Review on The Job Creation Omnibus Law-Forming Process. *Syiah Kuala Law Journal*, 5(2), 195–211. <https://doi.org/10.24815/sklj.v5i2.21605>
- Firdaus, F. R. (2024). Public Participation in Law-Making Process: A Comparative Perspective of 5 (Five) Democratic Countries. *Jurnal Konstitusi*, 21(2), 203–225. <https://doi.org/10.31078/jk2123>
- Hadi, S. P., Hamdani, R. S., & Roziqin, A. (2023). A sustainability review on the Indonesian job creation law. *Heliyon*, 9(2), e13431. <https://doi.org/10.1016/j.heliyon.2023.e13431>
- Hutchinson, A. C. (1979). LAW AND SOCIETY IN TRANSITION: TOWARD RESPONSIVE LAW. By Philippe Nonet and Philip Selznick. New York: Harper and Row, 1978. *The American Journal of Jurisprudence*, 24(1), 207–212. <https://doi.org/10.1093/ajj/24.1.207>
- Kartika, S. D. (2020). Politik hukum undang-undang cipta kerja. *Pusat Penelitian Badan Keahlian DPR RI*, 1–6. https://berkas.dpr.go.id/pusaka/files/info_singkat/Info_Singkat-



[XII-20-II-P3DI-Okttober-2020-210.pdf](#)

- Kususiyanah, A., Chairul Huda, M., Sriwidodo, J., & Baharuddin, A. S. (2024). Trends and Landscape of Omnibus Law Research: A Bibliometric Analysis. *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 7(2), 219–243. <https://doi.org/10.24090/volksgeist.v7i2.9633>
- Mahy, P. (2022). Indonesia's Omnibus Law on Job Creation: Legal Hierarchy and Responses to Judicial Review in the Labour Cluster of Amendments. *Asian Journal of Comparative Law*, 17(1), 51–75. <https://doi.org/10.1017/asjcl.2022.7>
- Mainake, Y. (2021). Judicial review of labor cluster of Omnibus Law on Job Creation. *Research Center, Expertise Agency of DPR RI*, 1–6. https://berkas.dpr.go.id/pusaka/files/info_singkat/Info_Singkat-XIII-8-II-P3DI-April-2021-2047-EN.pdf
- Mochtar, Z. A., Arizona, Y., Rahman, F., Mubdi, U., Ruhpinesthi, G. E., & Wafi, M. A. (2024). From Meaningful to Meaningless Participation: The Tragedy of Indonesia's Omnibus Law on Job Creation. *Jurnal Media Hukum*, 31(2), 351–370. <https://doi.org/10.18196/jmh.v31i2.23557>
- Nonet, P., & Selznick, P. (2017). *Law and Society in Transition*. Routledge. <https://doi.org/10.4324/9780203787540>
- Nugroho, A., Ronaboyd, I., Rusdiana, E., Prasetyo, D. E., & Zuhuda, S. (2024). The Impact of Labor Law Reform on Indonesian Workers: A Comparative Study After the Job Creation Law. *Lex Scientia Law Review*, 8(1), 65–106. <https://doi.org/10.15294/lsr.v8i1.14064>
- Pahlevi, A. N., Permatasari, N., & Kania, D. (2025). Comparison of the Application of Responsive Legal Theory in Responding to Social Change in the Criminal Law and Civil Law. *Bengkoelen Justice: Jurnal Ilmu Hukum*, 15(1), 1–16. <https://doi.org/10.33369/jbengkoelenjust.v15i1.40023>
- Prastyo, A. (2022). Limitation of Meaningful Participation Requirements in the Indonesian Law-Making Process. *Jurnal Hukum Dan Peradilan*, 11(3), 405. <https://doi.org/10.25216/jhp.11.3.2022.405-436>
- Rigaux, F. (1998). Hans Kelsen on International Law. *European Journal of International Law*, 9(2), 325–343. <https://doi.org/10.1093/ejil/9.2.325>
- Rodiyah, R., & Utari, I. (2021). The Urgency of the Omnibus Law in Accelerating the Harmonization of Legislation in Indonesia. *Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia*. <https://doi.org/10.4108/eai.1-7-2020.2303659>
- Sajian, A., Perdana, I. T., Yudiantini, N. P. Y., Putra, I. H., & Wilandra, I. K. (2021). Pengaruh Politik Terhadap Pembentukan Rancangan Undang-Undang Cipta Kerja. *Journal Kompilasi Hukum*, 6(2), 143–149. <https://doi.org/10.29303/jkh.v6i2.81>
- Sanders, A., Khatarina, J., Assegaf, R., Toumbourou, T., Kurniasih, H., & Suwarso, R. (2024). The Omnibus Law on Job Creation and its potential implications for rural youth and future



farming in Indonesia. *Asia Pacific Viewpoint*, 65(2), 248–262.
<https://doi.org/10.1111/apv.12408>

Saputra, M. R., Wicipto Setiadi, & Thohari, A. A. (2024). Analisis Potensi Implementasi Sistem Politik Tanpa Partai di Indonesia dan Dampaknya terhadap Demokrasi dan Tata Kelola Pemerintahan. *Eksekusi : Jurnal Ilmu Hukum Dan Administrasi Negara*, 2(4), 204–222. <https://doi.org/10.55606/eksekusi.v2i4.1531>

Sibuea, H. Y. P. (2020). Considering the revision mechanism of Job Creation Law Number 11 of 2020. *Research Center, Expertise Agency of DPR RI*, 1–6.
https://berkas.dpr.go.id/pusaka/files/info_singkat/Info_Singkat-XII-21-I-P3DI-November-2020-215-EN.pdf

Sudaryat, S. (2024). Guarantee, Promotion and Ideas of Omnibus Law on Health in Indonesia Compared to Singapore and Taiwan. *JURNAL USM LAW REVIEW*, 7(3), 1374–1393.
<https://doi.org/10.26623/julr.v7i3.9728>

Sukadi, I., Harry, M., Setyobudi, T., Sinal, M., & As-Suvi, A. Q. (2024). Legal Politics Electronic Land Certificate in Indonesia. *JURNAL USM LAW REVIEW*, 7(3), 1323–1338.
<https://doi.org/10.26623/julr.v7i3.9625>

Sulaiman, S., & Nasir, M. (2023). Hukum Responsif: Hukum sebagai Institusi Sosial Melayani Kebutuhan Sosial dalam Masa Transisi. *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan*, 7(1), 94. <https://doi.org/10.35308/jic.v7i1.7570>

Syarifudin, A., & Febriani, I. (2015). Sistem Hukum dan Teori Hukum Chaos. *Hasanuddin Law Review*, 1(2), 296. <https://doi.org/10.20956/halrev.v1i2.85>

Tatawu, G., & Tawai, A. (2023). The Transformation of the Role of the Constitutional Court of Indonesia: From Negative Legislature to Positive Legislature in the Context of Judicial Review Authority (A Study of Decision Number 90/Puu-Xxi/2023). *Journal of Law and Sustainable Development*, 11(12), e2187. <https://doi.org/10.55908/sdgs.v11i12.2187>

Wardana, D. J., Sukardi, S., & Salman, R. (2023). Public Participation in the Law-Making Process in Indonesia. *Jurnal Media Hukum*, 30(1), 66–77.
<https://doi.org/10.18196/jmh.v30i1.14813>