

The Impact of Constitutional Court Decision No. 168/PUU-XXI/2023 on The Employment Cluster in The Job Creation Law: Implications for The Use of Foreign Workers in National Strategic Projects

Fitri Estiwardani

Master of Law, Faculty of Law, Universitas Indonesia, E-mail: estiwardani@yahoo.com

Abstract. *The ratification of Law No. 11 of 2020 on Job Creation, using the omnibus law concept, marks a new beginning in the legislative process, including in the employment sectors. This law consists of 11 clusters, one of which is the Employment cluster. While the Job Creation Law has undergone changes due to judicial review, it has also faced significant debate and controversy. The omnibus concept aims to simplify, synchronize, and streamline regulations that hinder the goals of job creation and investment in the real sector. National strategic projects supported by the Job Creation Law have led to an influx of foreign workers. If the foreign worker licensing process is simplified, especially to support these national strategic projects, it must still consider that the positions filled by foreign workers cannot be filled by Indonesian workers. The debate and rejection of the Job Creation Law, culminating in the filing of a judicial review request to the Constitutional Court regarding the employment cluster (Decision 168/PUU-XXI/2023), suggests that the omnibus law concept may not be the appropriate approach for the formation of Employment Law, as there are norms that conflict with the 1945 Constitution of the Republic of Indonesia.*

Keywords: *Foreign; Job; Omnibus; Worker.*

1. Introduction

On March 31, 2023, Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation was officially enacted as Law No. 6 of 2023, affirming its status as the **Job Creation Law**. This legislation emerged in response to Constitutional Court Decision No. 91/PUU-XVIII/2020, which mandated revisions to Law No. 11 of 2020 on Job Creation. Previously, on November 25, 2021, the Constitutional Court ruled in favor of a formal review of Case No. 91/PUU-XVIII/2020, declaring certain provisions of the Job Creation Law conditionally unconstitutional. The ruling emphasized that if the government and the House of Representatives (DPR) failed to implement the required amendments within two years, the law would be deemed permanently unconstitutional (Arizona, 2024).

The term conditionally unconstitutional appeared for the first time in a ruling, namely in Decision Number 10/PUU-VI/2008 concerning the review of Law No. 10 of 2008 concerning the Election of Members of the DPR, DPD and DPRD. "Conditionally unconstitutional" means that the legal norms under review are considered to contradict the 1945 Constitution unless the conditions set by the Constitutional Court are fulfilled. When the decision was pronounced, this norm was proven to be inconsistent with the 1945 Constitution and would become a constitutional norm if the conditions set were met.

The omnibus concept implemented in the Job Creation Law aims to simplify, synchronize and cut regulations on the many rules and regulations (hyper-regulation), which hinder the achievement of the goal of creating jobs. What is interesting is that during President Joko Widodo's administration, the approach to drafting regulations using the omnibus law method became an option that was considered able to harmonize various overlapping and inconsistent regulations (Dewinagara et al., 2022a). Since assuming the presidency in 2014, President Joko Widodo has made regulatory simplification a key priority. This program is driven by various regulations that are perceived as hindering different aspects of bureaucracy, particularly those related to the economy and investment. In its implementation, efforts to simplify regulations are executed through various policies oriented towards reducing the number and improving the quality of laws and regulations to support the economy (Fahrurrozi Muhammad, 2022) ease of doing business.

While some experts view regulations as solely for economic purposes, termed "economic regulation," the discipline of regulation is now much broader. As Tony Prosser notes in his book *Law and Regulation*, regulations do not only cover the economy, but there are also social regulations, the rationale for which goes beyond solely economic considerations and is tied to the concept of public services (Al'afghani, 2021). *"... there is social regulation where the rationale is not primarily economic but is linked to notions of public service. Examples include ensuring the provision of universal service and some environmental regulation."* For example, ensuring universal service provision and some environmental regulations.

What is meant by Job Creation in the General Provision of the Job Creation Law is "efforts to create jobs opportunity through facilitation, protection and empowerment of cooperatives and micro, small and medium enterprises, improvement on the investment ecosystem and ease of doing business and Central Government investment and acceleration of national strategic projects". The Job Creation Law categorizes its provisions into several clusters, including: (i) Business Licensing Simplification, (ii) Investment Ecosystem Enhancement, (iii) Employment, (iv) Micro, Small, and Medium Enterprises (MSMEs) and Cooperatives, (v) Research, Innovation, and Business Facilitation, (vi) Economic Zones and Land Acquisition, (vii) Government Administration, (viii) Government Investment and National Strategic Project Facilitation, and (ix) Sanctions Implementation.

Less than two years after the enactment of the Job Creation Law, which aimed to address and implement Constitutional Court Decision No. 91/PUU-XVIII/2020, a judicial review of the law was proposed once again in relation to the Employment Cluster. On October 31, 2024, the Constitutional Court, through Decision No. 168/PUU-XXI/2023, partially granted the judicial review request submitted by the Labor Party, the Federation of Indonesian Metal Workers Unions (FSPMI), the Confederation of All Indonesian Trade Unions (KSPSI), the Confederation of Indonesian Labor Unions (KSPI), and others (hereinafter collectively referred to as "**The Applicants**").

The Petitioner has submitted an application which was accepted at the Registrar's Office of the Constitutional Court on December 1 2023 based on the Deed of Petitioner Application No. 167/PUU/PAN.MK/AP3/12/2023 and was recorded in the Constitutional Case Register Book on December 4 2023 with No. 168/PUU-XXI/2023, which basically requests the Constitutional Court to review the material constitutionality of the Employment Cluster articles in the Job Creation Law. There are 7 arguments put forward by the Petitioner, namely (i) the use of foreign workers (TKA), (ii) Fixed Time Work Agreements (PKWT), (iii) manpower outsourcing, (iv) leaves, (v) wages, (vi) termination of employment (PHK) and (vii) arguments regarding severance pay, compensation for rights and gratuity for long service.

Concerning the regulation of foreign worker recruitment and placement in Indonesia, the Petitioner argued that there was a constitutional loss resulting from the implementation of Article 81, number 4 of the Job Creation Law, which amended Article 42 of Law No. 13 of 2003 on Employment. This amendment simplifies the recruitment and placement process for foreign workers in Indonesia, potentially infringing upon the Petitioner's constitutional rights to employment, a decent standard of living, and other rights guaranteed under Article 27, paragraph (2), Article 28D, paragraph (2), and Article 28D, paragraph (1) of the 1945 Constitution, which the State is obligated to protect.

2. Research Methods

The author employed normative legal research, which, according to Soerjono Soekanto and Sri Mamuji, is a type of legal research conducted by analyzing library materials or secondary data. The main sources of research are (i) books, (ii) journals, (iii) papers or writings, (iv) statutory regulations, (v) court decisions and (v) online information and documents including news, data and publications.

3. Result and Discussion

3.1. The Concept of Omnibus Law in The Formation of Job Creation Law & Its Comparison in The United States

The Omnibus Law concept is regarded as an effective and efficient solution to address conflicting norms, enabling the achievement of the primary objectives across various

regulatory areas. Its implementation in Indonesia reflects the dynamic interaction between regulations and parliament within the constitutional system. This concept is seen as essential to resolving issues of inconsistency and overlapping legal provisions. The Omnibus Law was explicitly designed with a paradigmatic approach to promote the development of the economic ecosystem. It represents the government's initiative to sustain economic growth, aligning with the Indonesia 2045 vision, which aims to position Indonesia as one of the world's top five economic powers with high income (Dewinagara et al., 2022b). There are three main steps recommended to overcome the problem of hyper-regulation in Indonesia. First, prioritizing consistency and regularity in drafting simplified laws and regulations. Second, harmonization is needed between central and regional government policies. Third, it is necessary to simplify regulations so that they are more targeted (Anggono & Firdaus, 2020a).

The omnibus law approach has generated significant debate since the government announced plans to utilize it in the legislative process. This debate arose because the omnibus law method tends to be applied more by countries with a common law legal system. However, along with developments over time, several countries that adhere to a civil law legal system have also begun to adopt the Omnibus law concept as an alternative in legal reform efforts, including Indonesia (Dewinagara et al., 2022b).

Interestingly, the implementation of the Omnibus Law concept does not only occur in Indonesia, but also in several other countries. Countries that adopt the Omnibus Law concept generally have a Common Law legal system, such as the United States, the Philippines and India. In the United States, the Omnibus Law concept is applied to provide a solution to the complexity and overlapping of existing regulations.

Similar approaches are also found in common law legal systems, such as "consolidation statutes" or "codification", where several related laws are combined and simplified into one comprehensive regulation. The aim is to increase efficiency and reduce legal complexity. For example, in the UK some laws in certain areas, such as company law or criminal law, have been consolidated. Furthermore, the practice of "omnibus spending bills" in the United States also reflects the Omnibus Law approach. This regulation combines budget allocations for various government programs in one law. Even though it focuses on the budget, this approach is similar to the Omnibus Law in terms of combining several things in one regulation (Siregar, 2022).

The government and the House of Representative (DPR) encounter both advantages and challenges when drafting laws using the omnibus law method. Vietnam has faced similar issues, as seen in the overlapping regulations and lengthy legislative processes for amending laws. Since the omnibus law is not restricted by Vietnam's constitution, the country could potentially adopt this approach. On the other hand, Patrick Keyzer, a Professor of Law at La Trobe University, pointed out that the omnibus law presents significant challenges. These include the difficulty of drafting laws, as well as the limitations it imposes on opportunities for

public input, oversight, and consultation. Furthermore, implementing laws based on the omnibus law concept is complex and could lead to even more complicated regulations. If numerous new provisions need to be created, the process could be lengthy. While the goal is for the omnibus law to consolidate various regulations into one law and be enacted quickly, it raises the question of whether the fast-tracked drafting process truly reflects public aspirations and accommodates their interests. This issue remains under ongoing discussion.

The primary feature of the omnibus law in the United States is its role in helping lawmakers reach a consensus. Each member of parliament has the right to include or attach their bill to the omnibus law. The use of the omnibus law is largely driven by political strategies or motives aimed at easing the passage of legislation. The omnibus law method has also been successfully applied in several states within the U.S., guided by the principle of a single subject clause (single-theme law) (Suriadinata, 2019).

3.2. Regulations on The Use of Foreign Workforce in Employment Clusters n The Ciptaker Law and Its Implementation to Support National Strategic Projects

a. Employment Cluster in the Job Creation Law

In order to enhance protection for workers and improve their role and welfare within the investment ecosystem, the Job Creation Law modifies, removes, or introduces new provisions for several previously existing regulations, including: (i) Law No. 13 of 2003 concerning Employment (“UU No. 13/2003”), (ii) Law No. 40 of 2004 concerning the National Social Security System, (iii) Law No. 24 of 2011 concerning Social Security Administration Bodies, and (iv) Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers.

Provisions in the Employment Cluster that amend provisions in several Employment-related laws include, among others, (i) Fixed Time Work Agreements, (ii) Outsourcing, (iii) Minimum Wage, (iv) Plans for the Use of Foreign Workers, (v) Severance Pay, (vi) Job Loss Guarantee and (vii) Working Time.

b. Regulations on the Use of Foreign Workers in the Job Creation Law

Article 81 point 4 of the Job Creation Law amends the provisions of Article 42 of Law no. 13/2003. The spirit of Article 81 of the Job Creation Law is to encourage investment and provide easy access to permits including the recruitment and placement process for foreign workers to encourage investment (ease of doing business). In Article 81 of the Job Creation Law, employers who employ foreign workers are no longer required to have a permit, namely written permission from the Minister or an appointed official, but only need to have a Plan for the Use of Foreign Workers (RPTKA), but there is no mention of the criteria that must be mentioned in the RPTKA, as previously stated expressly in Law no. 13/2003.

The criteria to engage foreign workers under Law No. 13/2003 include, among other, (a) the justification for such engagement, (b) the position and/or role of foreign workers within the

company's organizational structure, (c) the duration of the employment, and (d) the requirement to appoint Indonesian workers as partner to foreign workers. However, in Article 81 of the Job Creation Law, the regulations regarding the positions and competency standards for foreign workers, such as qualifications in knowledge, expertise, skills in specific fields, and understanding of Indonesian culture are no longer specified. To implement Article 81 of the Job Creation Law, Government Regulation no. 34 of 2021 concerning the Use of Foreign Workers which regulates matters previously regulated at the higher level of regulation, namely Law no. 13/2003.

c. National Strategic Projects and Man Power Utilisation Opportunity

National Strategic Projects (PSN) are key infrastructure initiatives in Indonesia deemed crucial by President Joko Widodo's government to drive economic growth, promote equitable development, enhance community welfare, and foster regional development. PSN is governed by a Presidential Regulation, with its implementation managed by the central government, regional governments, and/or business entities, alongside Government-Enterprise Cooperation, with an emphasis on using domestic components. The legal framework for PSN is provided by Presidential Regulation No. 3 of 2016, along with its amendments in 2017, 2018, and 2020.

Refer to one of the publicity on electronic media, based on data from the Coordinating Ministry for Economic Affairs, a total of 190 national strategic projects to be completed in 2023 are worth IDR 1,515.4 trillion, and around 80 other projects are still in process. These projects are able to absorb as many as 2.71 million workers (Annasa Rizki Kamalina, 2024). In total, according to the Regulation of the Coordinating Minister for Economic Affairs No. 8/2023 on Amendments to the List of National Strategic Projects, there are 204 projects and 13 programs categorized as PSN, with an estimated total investment value of IDR 5,918.86 trillion.

In its execution, the National Strategic Project also necessitates and creates opportunities for foreign workers to be employed in Indonesia. According to data from the Ministry of Manpower, the majority of foreign workers in Indonesia originate from China. Many of them were placed in Morowali, Central Sulawesi, to work on smelter and coal mining projects (Arfyana Citra Rahayu & Herlina Kartika Dewi, 2022). Most of the foreign workers who work in Morowali are placed mainly at PT Indonesia Morowali Industrial Park which is intensively developing mining processing and refining factories, especially nickel smelters, in the area. As of September 2024, there are 7 National Strategic Projects located in Morowali Regency, Central Sulawesi Province.

The influx of foreign workers in national strategic projects is also inseparable from Indonesia's background as a developing country which requires the presence of foreign capital, technology and expertise to encourage the development of national infrastructure and industry. However, the increment of the number of foreign workers in national strategic projects, especially in the

construction and industrial sectors, shall also be the concern for the government to continue giving assurance for employment opportunities to the local workers including the transfer of knowledge and skills (Handayani & Karjoko, 2021). According to data recorded at the Ministry of Manpower, the number of foreign workers throughout Indonesia in 2019 was 109,546 people, in 2020 lowering to 93,761 people, in 2021 became 88,271 people and in 2022 lowering again to 70,571 people.

3.3. Constitutional Judges' Views on The Decision of The Constitutional Court Through Ruling No. 168/PUU-XXI/2023 Specifically Relating to Regulations Regarding The Use of Foreign Workforce in The Job Creation Law

a. Basis for Applications Regarding the Use and Placement of Foreign Workers in the Job Creation Law

The Petitioner conveyed the argument that the Petitioner's constitutional loss was due to the implementation of Article 81 point 4 of the Job Creation Law which changed the provisions of Article 42 of Law no. 13 of 2003 concerning Employment. According to the Petitioner's argument, removing the requirement for written permission and replacing it with only a Plan for the Use of Foreign Workers creates a reasonable suspicion that employers may massively employ unskilled foreign labor. This could potentially reduce job opportunities for local or Indonesian workers in their own country.

Meanwhile, in its legal considerations, the Constitutional Justice stated that in relation to the RPTKA assessment, one of the criteria for examining RPTKA applications is national market conditions. As a result, the RPTKA assessment is conducted selectively, taking into account the requirements and limitations for foreign workers to be employed. This includes specifying certain positions and timeframes that foreign workers can occupy, as well as evaluating the potential for employing Indonesian workers. The Constitutional Justices view that the form of ratification of the RPTKA is approval of the use of foreign workers who will be employed in accordance with the provisions. The Constitutional Justices are of the view that even though the Permit to Employ Foreign Workers is no longer regulated in the Job Creation Law but has been replaced with RPTKA, this does not mean that there is no supervision in the use of foreign workers as argued by the Petitioner.

In other legal considerations, the norm of Article 42 paragraph (4) (Employment Clusters) in Article 81 point 4 of the Job Creation Law which states, "Foreign Workers can be employed in Indonesia only in an Employment Relationship for a certain position and a certain time and have competence in accordance with the position to be occupied" which does not regulate strict and rigid restrictions and only uses the phrase "only within" is a norm formulation that creates uncertainty (multiple interpretations) as is concerned by the Petitioners.

Therefore, in order to avoid irregularities in its implementation, it is important for the Court to declare that Article 42 paragraph (4) (Employment Clusters) in Article 81 paragraph 4 of Law

6/2023 is contrary to the 1945 National Constitution of the Republic of Indonesia as long as it is not interpreted as *"Foreign workers can be employed in Indonesia only in employment relationships for certain positions and certain times and have competencies in accordance with the position they will occupy, taking into account the priority of using Indonesian workers.."*

b. Assurance of Citizens' Constitutional Rights in Article 28 of the 1945 National Constitution of the Republic of Indonesia and Employment Regulations

In Decision No. 168/PUU-XXI/2023, the Constitutional Justices considering the employment regulations which are currently regulated in Law no. 13/2003 as partly amended by the Job Creation Law. In fact, some of the material/substance of Law no. 13/2003 has been amended by the Job Creation Law. However, not all material/substance of Law No. 13/2003 was changed. As a result, currently, employment regulations are regulated in two laws, namely Law No.13/2003 and the Job Creation Law. With regard to this fact, the Constitutional Justices saw that there was a possibility of disharmony between the material/substance of the two laws in effect.

The Constitutional Justices, in their analysis, have closely examined the implementing regulations of the Job Creation Law, particularly those related to the Employment Cluster, as well as other relevant laws and regulations. Upon reviewing these regulations, the Constitutional Justices discovered that several government regulations were enacted without clear delegation from the Job Creation Law. Furthermore, the Court identified that these government regulations contained a significant amount of matters that should be considered to be governed under higher hierarchy of regulations, rather than being regulated in the lower level/implementing regulations. For instance, matters regarding limitations on the rights and obligations of citizens, including the rights and obligations of workers and employers. The 1945 Constitution of the Republic of Indonesia, specifically Article 28J, stipulates that such restrictions can only be established through higher-level legislation

The overlap between the norms regulated in Law no. 13/2003 and the Job Creation Law, as described, could potentially threaten fair legal assurances and certainty for citizens, especially for workers and employers, as mandated in Article 28D of the 1945 Constitution of the Republic of Indonesia.

Article 28D of the 1945 Constitution of the Republic of Indonesia affirms the fundamental rights of all individuals to receive recognition, guarantees, protection, and fair legal certainty, ensuring equality before the law. This includes the right to work and to receive fair and just compensation and treatment in employment. Furthermore, all citizens are entitled to equal rights in participating in government affairs and in citizenship.

c. Omnibus Concept in Employment Law

What is interesting about the thoughts of the Constitutional Justices is that apart from the issue of potential overlap in the norms in question, the formulation of the norms in the Job Creation Law related to the norms in Law no. 13/2003 as amended is difficult to be understood, including for the workers and common people. The continued existence of these issues without prompt resolution poses a serious risk, as labor governance and legislation face the peril of devolving into legal ambiguity and protracted unfairness.

The paper begins by explaining the background and initial objective of the Job Creation Law, which was enacted to simplify, synchronize, and streamline regulations that hinder the goals of job creation and investment in the real sector. However, after its implementation, the author notes that the law appears contradictory and not in line with the spirit and initial objectives of the omnibus concept. Furthermore, the Constitutional Justice has demanded the Government to promptly draft a new employment law, separate from the regulations in the Job Creation Law i.e Law No. 6/2023. This new Employment Law would provide an opportunity to review, reorganize, and promptly resolve the issues of material/substance disharmony and lack of synchronization.

d. Constitutional Judge's Decision

In Constitutional Court Decision No. 168/PUU-XXI/2023, the Constitutional Court highlighted several important legal considerations. First, regarding the Employment Law, both Law No. 13/2003 and Law No. 11/2020 have been the subject of 37 constitutional trials at the Constitutional Court. Based on the Constitutional Court's review, of the 36 applications that had been decided, 12 were granted, either in whole or in part. This means even before some materials/substances of Law No. 13/2003 were amended by the Job Creation Law, there were a number of substances in Law No. 13/2003 which has been declared in conflict with the 1945 Constitution of the Republic of Indonesia and holds no legal binding, both for all norms being tested and those declared unconstitutional or conditionally constitutional.

Second, The Constitutional Court has determined that the substance of Law No. 13/2003 has been partially changed by the enactment of the Job Creation Law. However, not all of the provisions in Law No. 13/2003 have been amended by the Job Creation Law. Consequently, employment regulations are currently contained in both Law No. 13/2003 and the Job Creation Law. Additionally, some employment-related matters also reference various Constitutional Court decisions. Not only the provisions in Law No. 13/2003 that were ruled unconstitutional by the Constitutional Court, but also a number of norms in the Job Creation Law were determined to lack binding legal force. This situation raises the possibility of overlap between the norms that have been declared unconstitutional in these two laws.

Third, even though the petitioners primarily questioned norms in the employment cluster of the Job Creation Law, the Court conducted a comprehensive review of all the norms under

scrutiny. This involved examining the implementing regulations of the Job Creation Law, including relevant statutory regulations. The Court found that numerous government regulations had been enacted without proper delegation from the Job Creation Law. Furthermore, these government regulations contained a significant amount of material that should have been addressed through higher-level legislation, such as limitations on the rights and obligations of citizens, including the rights and responsibilities of workers and employers. Article 28J of the 1945 Constitution of the Republic of Indonesia stipulates that such restrictions can only be established through the Laws. Upon further examination, Article 28J implies that in social, national, and state life, every individual has a duty to respect the human rights of others. Additionally, when exercising their rights and freedoms, individuals are required to adhere to limitations that ensure the recognition and respect of others' rights and freedoms.

In its decision, the Constitutional Court declared 20 articles in the Job Creation Law conditionally unconstitutional and declared the word "can" in Article 79 paragraph (5), in Article 81 paragraph 25 of the Job Creation Law unconstitutional. The Constitutional Court is of the opinion that lawmakers need to immediately form a new Employment Law and separate or exclude it from what is regulated in the Job Creation Law. With the new law, the problem of threats of disharmony and un-synchronization of the substance of the Employment Law can be resolved, reorganized and immediately resolved.

Specifically related to the provisions in the Job Creation Law regarding foreign workers, the Constitutional Justices consistently implemented human rights protection for Indonesian citizens, particularly as regulated in Article 28D of the 1945 Constitution of the Republic of Indonesia, which states that "everyone has the right to work and receive fair and decent remuneration and treatment in employment." The Constitutional Court, in its decision, stated that Article 81 paragraph 4 of the Job Creation Law, which allows "Foreign workers to be employed in Indonesia only in an employment relationship for a certain position and for a certain time and have competencies in accordance with the position they will occupy," contradicts the 1945 Constitution of the Republic of Indonesia and has no binding legal force unless it is interpreted as, "Foreign workers can be employed in Indonesia only in employment relationships for certain positions and certain times and have competencies in accordance with the position they will occupy, taking into account the priority of using Indonesian workers." The addition of "by paying attention to prioritizing the use of Indonesian workers" indicates that there are rules or restrictions on the use of foreign workers, such as considering national market conditions, a selective process, and taking into account the requirements and limitations for foreign workers. This involves specifying certain positions, skills, and timeframes that foreign workers can occupy.

4. Conclusion

Through Constitutional Court Decision No. 168/PUU-XXI/2023, regarding the regulations on employing foreign workers in the Job Creation Law, the Constitutional Court judges found that several provisions do not align with the 1945 Constitution of the Republic of Indonesia, specifically Article 28D paragraph 2, which assure "everyone the right to work and receive fair and decent compensation and treatment in employment relationships." The decision states that the Job Creation Law's provisions allowing "foreign workers to be employed in Indonesia only in certain positions and for a specified time, with competencies corresponding to the position they will occupy," contradict the 1945 Constitution and have no binding legal force unless interpreted as "foreign workers can be employed in Indonesia only in employment relationships for specific positions and timeframes, with competencies matching the role, while prioritizing the use of Indonesian workers." The decision emphasizes that even when employing foreign workers for National Strategic Projects, the priority should be given to Indonesian workers. Foreign workers can only occupy specific positions for a limited period, subject to approval through the Plan for the Use of Foreign Workers, which serves as a form of oversight rather than just an administrative requirement. The enactment of the Ciptaker Law represents a significant political milestone in the evolution of national law following the reform era. As a civil law country, Indonesia has adopted the omnibus law concept in recent legal developments. This is evidenced by President Jokowi's 2019 speech to the House of Representatives, where he stated that Indonesia would implement this concept to address issues related to overlapping and inconsistent laws and regulations. In this speech, the President explained that Indonesia would apply a legal concept unfamiliar to other civil law countries: the omnibus law method in the creation of statutory regulations. Through this Decision the Constitutional Court, in its role as instigator of social change encouraged the Government to make changes to the regulations on the Employment Law. Reflecting on the Constitutional Court Decision No. 168/PUU-XXI/2023, it is time for the government to look again and consider whether the omnibus law concept is in accordance with the character and conditions of law in Indonesia as well as the direction of future legal political policy by considering broader national interests.

5. References

- Al'afghani, M. M. (2021). Konsep Regulasi Berbasis Risiko: Telaah Kritis dalam Penerapannya pada Undang-Undang Cipta Kerja Risk Based Regulation: Critique to Its Adoption in the Job. *Jurnal Konstitusi*, 18, 68.
- Anggono, B. D., & Firdaus, F. R. (2020a). Omnibus law in Indonesia: A comparison to the United States and Ireland. *Lentera Hukum*, 7, 319.
- Anggono, B. D., & Firdaus, F. R. (2020b). Omnibus law in Indonesia: A comparison to the United States and Ireland. *Lentera Hukum*, 7, 319.

- Annasa Rizki Kamalina. (2024). *Proyek PSN Serap 2,71 Juta Tenaga Kerja sepanjang 2016-2023*.
- Arfyana Citra Rahayu, & Herlina Kartika Dewi. (2022). *Kemenaker: Tenaga Kerja Asing dari China Paling Banyak Bekerja di Morowali*. *KONTAN.CO.ID*.
- Arizona, Y. (2024). *Legal Policy of President Joko Widodo and the Independence of Constitutional Court: Politik Legislasi Presiden Joko Widodo dan Independensi Mahkamah Konstitusi*. *Jurnal Konstitusi*, 21(1), 35–61.
- Dewinagara, T. B., Handayani, I. G. A. K. R., & Purwadi, H. (2022a). *The Omnibus Law concept in the Job Creation Law and the legal consequences for limited liability companies*. *Sasi*, 28(2), 323–335.
- Dewinagara, T. B., Handayani, I. G. A. K. R., & Purwadi, H. (2022b). *The Omnibus Law concept in the Job Creation Law and the legal consequences for limited liability companies*. *Sasi*, 28(2), 323–335.
- Fahrurozi Muhammad. (2022). *Manifesto Simplifikasi Regulasi Dan Persetujuan Presiden Terhadap Peraturan Menteri/Kepala Lembaga: Studi Terhadap Peraturan Presiden Nomor 68 Tahun 2021 Tentang Pemberian Persetujuan Presiden Terhadap Rancangan Peraturan Menteri/Kepala Lembaga (Regulation Simplification Manifest And President's Approval Of Ministerial/Head Of Agency Regulation: Study On Presidential Regulation No. 68 Of 2021 On Presidential Approval Issuance Of Ministerial/Head Of Agency Regulation)*. Fakultas Hukum Universitas Indonesia. <https://doi.org/10.1787/9789264029798-en>
- Handayani, I. G. A. K. R., & Karjoko, L. (2021). *Dysfunction of foreign worker employment regulation to prevent xenophobia*. *International Conference on Environmental and Energy Policy (ICEEP 2021)*, 14–17.
- Prosser, T. (1997). *Law and the Regulators*. Oxford University Press.
- Siregar, A. A. (2022). *Legal Studies on Omnibus Law Issues in Indonesia*. *International Asia Of Law and Money Laundering (IAML)*, 1(4), 270–278.
- Suriadinata, V. (2019). *Penyusunan undang-undang di bidang investasi: Kajian pembentukan omnibus law di Indonesia*. *Refleksi Hukum: Jurnal Ilmu Hukum*, 4(1), 115–132.