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JURIDICAL ANALYSIS OF THE DECISION OF THE CONSTITUTIONAL COURT NUMBER 91/PUU-XVIII/2020 ON LAW NUMBER 11 YEAR 2020

Yunita Syofyan[1], Didi Nazmi[2]
[1] Faculty of Law, Andalas University, Padang, Indonesia
Email: yunitasyofyan@law.unand.ac.id
[2] Faculty of Law, Andalas University, Padang, Indonesia
Email: didinazmi@la.unand.ac.id

***Corresponding Author*: Yunita Syofyan**

ABSTRACT

The interest of the people is the formation of rules that are able to accommodate the eye of the law. Article 20 paragraph (1) of the 1945 Constitution states that "The House of Representatives holds the power to make laws. The formation of a regulation carried out by the parliament is a manifestation as a state of law, the state is obliged to carry out the development of national law which is carried out in a planned, integrated and sustainable manner in the national legal system that guarantees the protection of the rights and obligations of all Indonesian people based on the Constitution of the Republic of Indonesia in 1945. This research is a normative law (doctrinal research), namely. In normative legal research, research is carried out through library research. The results of this study indicate that the Implications of the Constitutional Court Decision Number 91 of 2020 have the consequence of a formation of legislation without reflecting the principle of legal certainty and the principle of openness must be declared procedurally flawed in order to protect the public from the interests of legal product makers. The follow-up to the Constitutional Court Decision Number 91 of 2020 that tolerance for a legally defective product must not be re-applied even though the constitutional judge provides conditions as long as it is repaired for 2 (two) years, especially the Job Creation law. Thus, legal products must have concrete legal force in order to obtain legal certainty .

Keywords : Legal Certainty, Constitutional Court Decision .

INTRODUCTION

Indonesia is a state of law (*supremacy of law*) by prioritizing the freedom of democracy legally by upholding the values of Pancasila. A rigid definition of the rule of law has been regulated in Article 1 paragraph (3) of the 1945 Constitution that " *Indonesia is a state of law* ". Countries in the world have used the principle of the rule of law (*rechtstaats*) where all actions

or deeds must be based on legal permission and are legally recognized (*legally*). It is undeniable that the development of law in the world has gone through a long transformation [1]. The rule of law has legal provisions, both rigid and non-rigid. Indonesia is a legal state with a civil law legal system, where the characteristics of the rules are rigid and written. Talking about the rule of law will not avoid the historical development of the term rule of law. The fastest legal developments occurred in the 18th to 20th centuries where the colonizers forced each of their colonized countries to use the legal system of the colonizing country. Indonesia is an archipelago that was colonized by the Dutch as a European country of origin with a modern legal system for its time. Then, after Indonesia became independent from the colonialists, the legal system used Dutch heritage with a civil law. The existence of law has a purpose as in justice, certainty, and benefits of the law. All good actions are carried out by natural persons (humans) and rechtpersoons (legal entities). The order created by the law includes an order in the fields of: economy, trade, road traffic, work environment, family environment and so on [2].

The regulation of Law Number 11 of 2020 concerning Job Creation has been ratified 1 (one) year ago by the legislature and the government. In the formation of Law No. 11 of 2020 concerning Job Creation, it was quite controversial in the public sphere due to the inconsistency in the process of forming the rules. In Article 5 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations that "In forming laws and regulations, it must be carried out based on the principles of the formation of good laws and regulations, including:

1. Absolutely of purpose;
2. Institution or government who as designed by procedure;
3. Clearly as specification, hierarchy, and substantial material;
4. It can be implemented on public;
5. fullness;
6. Clearly o formula;and
7. transparency

In the formation of a statutory regulation in Indonesia that the Formation of Legislation is the formation of Laws and Regulations which includes the stages of planning, drafting, discussing, ratifying, or stipulating, and enacting. In the formation of Law Number 11 of 2020 concerning Job Creation, there was an incompatibility and the method of formation was an omnibus law. *Theoretically, the omnibus law is a method or technique of making regulations from which a regulation is formed in order to amend, repeat, or enact many regulations simultaneously* [3]. In that language, the technique of the omnibus law is a unification of other regulatory provisions into a single unit in the form of a law to create harmonization and make it easier for investors to quickly process investments with permits or procedures applicable in a

[1]Ahmad Irwan Hamzani, " *Initiating Indonesia As Country Law Which Make people happy"* . Yustisia Journal of Law Vol.3 No. 3 (2014): Pg. 136-142, https://jurnal.uns.ac.id/yustisia/article/view/29562

[2]Setiati Widihastuti. " *Module 1 The Nature and Characteristics of the Legal System in Indonesia"* . The Open University, (2010): 1-43 http://repository.ut.ac.id/3859/1/PKNI4207-M1.pdf

[3]Helmi, " *Regional Arrangement with the Omnibus Law Method"* . Urgency and Mechanism Vol.4 No. 2 (2010):441-472, https://ujh.unja.ac.id/index.php/home/article/view/431

country. In general, countries recognize the supremacy of the constitution over all other laws and regulations, which proves how to change it which requires procedures that are more severe than making laws [4]. Indonesia, which adheres to the Civil Law based on written legal provisions that are not flexible if there is a change in a regulation and instead, the Government or the legislature will form a new rule. This step can result in a disorganization of the policies that have been issued if there are other regulatory provisions that have sectoral interests. The Indonesian government established Law Number 11 of 2020 concerning Job Creation through the Omnibus Law to provide a rigid and be integrated into the purpose of the regulation. Regarding the plan for the formation of omnibus law, Maria Farida, professor of legislation at the Faculty of Law, University of Indonesia and Constitutional Court Justices for the period 2008-2018, conveyed several critical notes, first, every statutory regulation must be formed based on the principles of the formation of appropriate laws and regulations (beginselen van behoorlijke regelgeving) and is also based on philosophical, juridical, and sociological foundations which are of course different for each statutory regulation [5]. Through the Decision of the Constitutional Court Number 90/PUU-XVIII/2020 concerning Formal Examination of Law Number 11 of 2020 concerning Job Creation, the applicants have been harmed by several provisions on the norms in the work copyright rules. The petitioners see that there has been uncertainty, openness, irregularities in regulation and the absence of public participation as public participation regarding the need for legal products. Article 10 of Law Number 12 of 2011 concerning the Formation of Laws that "The content that must be regulated by law contains:

1. Futher regulation regarding the provisions of the 1945 Constitution of the Republic of Indonesia;
2. Orders a Law to be regulated by law;
3. Ratification of certain international agreements;
4. Follow up on decisions of the Constitutional Court and/or;
5. Fulfillment of legal needs in society

However, in the provisions contained in the Job Creation Law, the community assesses that there is no visible justice for the parties (stakeholders) based on the rules of community needs. In a lexical perspective, the notion of omnibus law is a law that regulates various different things or it can be one law that is directed even at one alternative [6]. By law, the Job Creation Law is still part of the hierarchy of laws as determined by Article 7 paragraph (1) of Law Number 12 of 2011 concerning Laws. The point of the public problem with this Law on Job Creation is that there are provisions for norms that only prioritize investment matters rather than the common interests of the Indonesian people, especially workers and ownership of indigenous peoples in Indonesia . Therefore, the Constitutional Court Decision Number 90/PUU-XVIII/2020

[4]Hasanuddin Hasim. " *Hierarchy of Legislation of the Republic of Indonesia as a System"* . Madani Legal Review Vol.1 No. 2 (2017): Pg. 120-130. https://doi.org/10.31850/malrev.vl12.32

[5]Bayu Dwi, " *Adoption and Challenges in the Indonesian Legislative System"* . Journal of Rechts Vinding: Media for Development of National Law, Vol. 9 No. 1 (2020): Pg. 17-37. https://doi.org/10.33331/rechtsvinding.v9i1.389 ,

[6]Nano Tresna Arfana." *The Omnibus Law Method is a Success* . The Constitutional Court of the Republic of Indonesia (2021). Mkri.Id.https://www.mkri.id/index.php?page=web.Berita&id=17531&menu=2,

concerning the Formal Examination of the Job Creation Law looks at the implications of the decision after it was declared unconditionally unconstitutional by a Constitutional Court Judge.

RESULTS AND DISCUSSION

Implication of Constitutional Court Number 91/PUU-XVIII/2020 Against Rule of Law Principle

The implication of a judge's decision (jurisprudence) is a part of a legal source that can be used as a reference in solving a legal problem. Talking about the implications of a legal event can create legal certainty as the goal of justice in society. The decision of the Constitutional Court Number 91/PUU-XVIII/2020 is a judicial review and formal test of Law Number 11 of 2020 concerning Job Creation where the result of the decision is conditionally unconstitutional. The Panel of Judges of the Constitutional Court considered that in the formation of a Law Number 11 of 2020 concerning Job Creation, it violated the provisions of Article 5 letter g of Law Number 12 of 2011 which stated that;

In forming laws and regulations, it must be carried out based on the principle of the formation of good laws and regulations, which:

1. *Clarity of objectives;*
2. *Institutional or appropriate forming officials;*
3. *Conformity between types, hierarchy, and content material;*
4. *Can be implemented;*
5. *Usability and efficiency;*
6. *Clarity of formulation; and*
7. *transparency*

Based on the procedure in the formation of a statutory regulation that the community as a party must be included in the order to produce a legal product that can accommodate all the interests of the community when enacted. In forming Law Number 11 of 2020 concerning the omnibus law, which is an amalgamation of other regulatory products that are united by law so as to create harmony and do not result in conflicts with other rules based on the integration of the application of rules in society. According to the Duhaime Legal Dictionary (The Duhaime Legal Dictionary) defines omnibus law as“ *A draft law before a legislature which contains more than one substantive matter, or several minor matters which have been combined into one bill, obstensibly for the sake of convenience* [7]. Indonesia does not usually form a legal product using the omnibus law method, but only forms one legal product without the incorporation of other legal rules. This provision is based on Article 1 number 13 of Law Number 12 of 2011 which states that; *based on the provisions of Article 1 number 13 of Law Number 12 of 2011 that in forming a legal product based on type, function, substance, it is based on a single. According to*

[7]Duhaimen.org, Omnibus Bill Definition, https://www.duhaime.org/LegalDictionary/O/OmnibusBill.aspx , accessed 28 September 2022

A. Ahsi Thohari interpreting omnibus law as an integrated law-making technique (omnibus law-making technique)[8]

However, from the technical point of view of law formation, the amendment or revocation of a law that has been commonly carried out in Indonesia is by using the method of one proposed amendment to the law to amend or revoke another law. The public considers that after Law Number 11 of 2020 concerning Job Creation is implemented, it seems as if there is no participation, that it looks bad because there are many regulations that take away the rights of the Indonesian people, especially labor regulations. The author considers that in the absence of openness and public participation there will be potential for legal uncertainty as the material content of the legislation. In the content of the content of the legislation, it must reflect the principles of;

1. Shelters;
2. humanity;
3. Nationality;
4. Kindship;
5. Archipelago;
6. Unity in Diversity;
7. justice.
8. Equality in law and government
9. Order and legal certainty; and/or
10. Balance and Harmony

The implications of not fulfilling the content material in the formation of legislation can be said to be procedural defects. An important indicator of a legislator that is not in accordance with the material content, if the role of the community is not involved, it can be said to be a procedural defect. This provision is regulated through Article 96 paragraphs (1) and (3) of Law Number 12 of 2011 which states that: the community *as referred to in paragraph (1) is an individual or group of people who have an interest in the substance of the Draft Legislation.*

According to Adam M. Dodek, the advantage of using the omnibus law technique is that the formation of laws becomes more efficient [9]. It would be possible if the formation of the Job Creation Law was not rushed and provided a wide space for the community in the formation process, it would be more perfect for legal certainty. The consequences of the formation of laws and regulations without reflecting the principles of legal certainty and the principle of openness must be declared procedural defects in order to protect the public from the interests of legal product makers. Even if the creation of the job creation law was formed based on openness, it would bring benefits and prevent legal uncertainty that arose after the formation of a law that only contained one particular material due to potential conflicts with other laws [10]. Ekawestri

[8]A. Ahsin Thohari, Measuring the Omnibus Law", Koran Sindo, 30 October 2019, https://nasional.sindonews.com/berita/1453665/18/menakar-omnibus-law , accessed on 28 September 2022

[9]*Ibid* ,.Hal..25

[10]Barbara Sinclair in Glen S. Krutz, Hitching a Ride: Omnibus Legislating in the US Congress, ohio state university Press, 2001.Hal..141

Prajwalita Widiati said that OL is a design technique that combines several laws in one and regulations [11]. The legal product has the same form as other laws [12]. Based on the decision of the Constitutional Court Number 91/PUU- XVIII/2020 that states; *During these 2 (two) years, the Court also stated that the implementation of Law 11/2020 relating to matters of a strategic nature and having a broad impact should be suspended in advance, including the prohibition of forming a new implementing regulation and also the prohibition of finalizing it. state budgets carry out strategic policy making that can have a broad impact based on the norms of Law 11/2020 which has been formally declared conditionally unconstitutional.*

Based on legal considerations, the MK panel stated that in order to create legal certainty, Law Number 11 of 2020 concerning Work Creation could be suspended for 2 (two) years without forming a new implementing regulation or being suspended. The author considers that although Law Number 11 of 2020 is declared conditionally unconstitutional, it can still be applied, that it will result in ambiguity to the community., the Constitutional Court's decision, when the application is granted, where the article is applied for by the the applicant is true, it turns out to be in violation or not in accordance with the 1945 Constitution [13]. Unconstitutional to the old rules where the same setting governs it. However, the implications for the Constitutional Court's decision number 91/puu-xviii/2020 the assembly stated that Law Number 11 of 2020 can still be valid until it is revised for 2 (two) years. This impact results in legal uncertainty and even hinders the implementation of legal objectives, namely legal certainty for justice seekers.

On the other hand, the implications of the spirit of utilitarianism in Constitutional Court Decision No. orderliness of the Job Creation Law [14]. One form of utilitarianism in this Constitutional Court Decision is the cancellation of the regulation regarding the abolition of positive fictitious authority from the State Administrative Court based on the provisions of Article 175 number 6 of the Job Creation Law. In fact, this procedural flaw in the Job Creation Law is a legal protection for the community from legal losses. This is because this norm has eliminated the authority of the court to give a decision on an application that is considered legally granted [15]. Thus, this has created a legal vacuum and legal uncertainty because the application submitted by the Petitioner I was not answered and has passed the 10-day deadline based on Article 53 of the Law. AP or deadline of 5 days as amended to Article 175 number 6 of the Job Creation Law. In the discussion of the Job Creation Bill, it is considered that it does not

[11]Supriyadi and Andi Intan Purnamasari, 2021, "The Idea of Using the Omnibus Law Method in Forming Regional Regulations". Scientific Journal of Legal Policy. Vol.15. Number 2. Pg..259

[12]Ekawestri Prajwalita Widiati, 2013. "Local Legislative Drafting In The Unitary States: A Comparison Between Indonesia And Philippines," Yuridika

[13]Siti Faridah, 2021, "Various Constitutional Court Decisions: Conditional Unconstitutional and Conditional Constitutional Decisions", heylawedu.id, https://heylawedu.id/blog/decision-inconstitutional-berconditional-dan-constitutional-conditional , accessed on September 28, 2022

[14]I Gede Agus Kurniawan, 2022, "Constitutional Court Decision Against the Job Creation Law in the Perspective of Utilitarianism Philosophy, Journal of USM Law Review. Vol.5. Number 1. p. 282

[15]Sri Pujianti, 2022, "Provisions of the AP Law in the Job Creation Law Are Considered Eliminating the Authority of the Court", mkri.id, https://www.mkri.id/index.php?page=web.Berita&id=17969 , accessed on September 28 2022

apply the principle of openness, so it does not have the maximum participation space for the community to participate in discussing academic texts and the materials for the Job Creation Bill [16]. Although the Job Creation Law through Decision Number 91 of 2020 was declared conditionally unconstitutional and still valid within 2 (two) years of improvement, its implementation in the community has the weakness that hinders the fulfillment of the law owned by citizens. According to Article 87 of Law Number 12 of 2011 concerning Legislation that " *Legislations come into force and have binding force on the date of promulgation, unless otherwise stipulated in the relevant Legislation ".* Enactment of a statutory regulation is based on formal legitimacy [17]. Legal validity , if translated into English it will read Legal Validity.In the Oxford Dictionary Legal Validity is interpreted as follows; *For a rule to become a legal rule, it has to be legally valid.For a law to become a legal law, it has to be legally valid.Similiarly, a valid rule and an invalid rule is not a rule.This chapter discusses the legal validity of rules.The first section explains the nature of legal validity and the validity of rules.The chapter also discusses system validity, wherein it is showm that the justification view of legal validity is compatible with the dependence on factual sources.It further examines the other difficulties of the justification view found in the interpretation of detached legal system, and includes a discussion of legal validity within the context of positivism*

The law based on the provisions of Article 6 paragraph (1) of Law Number 12 of 2011 states that[18]

The content of the Laws and Regulations must reflect the principles: Shelter; humanity; Nationality; Kindship; Archipelago; Unity in Diversity; Justice; Equality in law and government; Order and legal certainty; and/or Balance and Harmony.

The most important indicator in the validity of a legal product must reflect the principle of " *law order and certainty* ". This means that a legal product will have a fair impact if the procedure for its formation is based on the good faith of the legislature as intended for the benefit of the Indonesian people. Based on the information obtained in the Draft Law on Job Creation, the public does not get transparency regarding the academic text. According to one witness from the review of the Job Creation Law that Saldi Isra as a Constitutional Court Judge questioned the implementation of the Forum Group Discussion (FDG) to Rodiyah once testifying that “the witness revealed to the FDG that the full Academic Manuscript and the Job Creation Bills were not shown [19]. This testimony proves that the material content in the formation of statutory regulations does not reflect the principles of justice and balance, harmony and harmony.

[16]Noverdi Puja Saputra, 2021, "The Impact of the Constitutional Court Decision Number 91/PUU-XVIII/2020 Regarding Testing the Job Creation Law". Research Decision of the Expertise Body of the Secretariat General of the DPR RI. https://dpr.go.id/puslit/files/isu_sepekan/Isu%20Sepekan---IPUSLIT-Desember-2021-2046.pdf accessed on 30 September 2022

[17]Fitriani Ahlan Sjarif, 2022, "How to Interpret the Applicability of the Job Creation Law After the Constitutional Court's Decision" . verdict-mk-c11703 , accessed September 30, 2022

[18]Joseph Raz, Legal Validity, Oxford Scholarship online, www.OxfordScholarship.com , accessed on 30 September 2022

[19]Nano Tresna Arfana, 2021, "Constitutional Judges Question the Academic Paper on the Job Creation Law". mkri.id, https://www.mkri.id/index.php?page=web.Berita&id=17612&menu=2 , accessed on the 30th September 2022

Therefore, statutory regulations are written regulations that contain legally binding norms in general and are established or determined by State Institutions or authorized officials through the procedures stipulated in the legislation [20]. The public and the essence of community involvement in the drafting process are less than optimal, resulting in rejection from various circles of society [21]. Future solutions in the formation of legal products, in the formation of this statutory regulation should not be arbitrary in the procedure for its formation, which technique and format comes first in the process [22]. The second amendment to Law Number 12 of 2011 to Law Number 13 of 2022 concerning the Establishment of Legislation has regulated the omnibus law mechanism which is regulated through Article 64 paragraph (1) states that; *The Drafting of Legislation is carried out in accordance with the technique of drafting Laws and Regulations*

Anticipation of law, even though the mechanism for the formation of laws and regulations has already regulated the preparation of a legal product through the omnibus law method. The principle of openness and public participation is an important indicator that must be carried out as stipulated in Article 6 paragraph (1) and Article 96 paragraph (1), (2), (3), and (4) Law Number 12 of 2011 concerning laws and regulations. invitations. So in this case, the formation of legislation in the work copyright law should look at the principles in the formation of legislation so that the law can be well received and run jointly without harming either party or the other party [23].

Legal Follow-up of Constitution Court Decision Number 91/PUU-XVIII/2020 Against Conditional Inconstitutional of Regulation of 11 Year 2020 About Job Creations

The legal understanding of a statutory regulation must be easily understood by all Indonesian people [24]. This includes regulations in the form of amendments and omnibus laws which require the Indonesian people to open the main law and juxtapose the amendments to the law [25]. PUU-XVIII/2020 the Job Creation Law is conditional with 2 (two) years of revision. In laws and regulations that a legal product is declared to be formally defective, it is still valid as stipulated in Article 87; *The laws and regulations come into force and have binding force on the date of promulgation, unless otherwise stipulated in the relevant laws and regulations.*

The legal certainty status of the Job Creation Law is temporary within a period of 2 (two) years of revision. The author considers that there is a legal product that is still legally valid for a temporary period, this is a legal issue that must be avoided in the future. The Constitutional Court's decision Number 91 of 2020 is a reference for lawmakers not to carry out law formation based on procedures that are contrary to Law Number 12 of 2011 concerning laws and

[20]Ahmad Redi, Law of Formation of Legislation, Sinar Graphic, East Jakarta, 2018, Hal.1
[21]Sundari and Zulfatul Amalia, 2020, "Formation of the Job Creation Law in a Democratic Perspective", Rechten Journal: Legal and Human Rights Research. Vol. 2 Number 3. Pg.22
[22] *Ibid*
[23] *Ibid* ,.p.29
[24]Gede Agus Kurniawan, 2022, "Constitutional Court Decision on the Job Creation Law in the Perspective of Utilitarianism Philosophy", Journal of USM Law Review Vol.5 Number 1. Pg.283
[25]Edy Sujendro, 2020, "Ideas for Regulating Codification and Unification of Regulations for Changes and Changes to the Omnibus Law, Journal of USM Law Review Vol.3 Number 2, https://doi.org/10.26623/julrv3i2.2727

regulations. In legal theory according to Lawrence M. Friedman, the legal system is a legal entity consisting of three elements, namely legal structure, legal substance, and legal culture [26]. In the three elements of a single legal entity, both legal structure, legal substance and legal culture are components that must be fulfilled.

In an effort to improve the legal system in Indonesia, it can be seen in the national medium-term development plan (RPJM 2004-2009) based on Presidential Regulation Number 7 of 2005 it is stated that reforming the legal system and politics in the next five years is directed at policies to improve legal substance (material), structure (institutional) law, and culture (culture) law, through efforts [27].

1. Reorganizing the legal substance through review and rearrangement of laws and regulations to create an orderly legislation by taking into account general principles and the hierarchy of laws; and respecting and strengthening local wisdom and customary law to enrich the legal and regulatory system through the empowerment of jurisprudence as part of efforts to reform national legal materials;
2. Revamping the legal structure through institutional strengthening by increasing the professionalism of judges and judicial staff as well as the quality of an open and transparent judicial system; simplify the judicial system; increase transparency to make the judiciary accessible to the public and ensure that the law is applied fairly and impartially; strengthening local wisdom and legal adaptation to enrich the legal and regulatory system through empowering jurisprudence as part of efforts to renew national legal materials;
3. Improving legal culture, among others, through education and socialization of various laws and regulations as well as exemplary behavior from the State and its staff in obeying and obeying the law and upholding the rule of law

These three elements in the legal system became the initial source in reforming the law so that there were no deviations in the formation of defective legal products based on procedural. If it is related to the legal structure with the unconstitutional Job Creation Law, it is conditional that the institutional weakness is seen in the professionalism of the legislators so that it does not reflect transparency and does not show injustice and is still in favor of elite interests in the formation of the legal product. In the National Medium-Term Development Plan (RPJMN) IV 2020-2024 that the main focus is;

1. National Medium Term IV development plan 2020-2024;
2. Strengthening economic resilience for quality growth;
3. Develop areas to reduce inequality and ensure equity;
4. Improving quality and competitive human resources;
5. Mental revolution and cultural development;
6. Strengthening infrastructure to support economic development and basic services;
7. Building the environment, increasing disaster resilience and basic services;

[26]Lawrence M. Friedman, 1975, “The Legal System, Asocial Science Perspective, Russel Sage Foundation, New York

[27]Azmi Fendri, 2007, "Improvement of the Legal System in Legal Development in Indonesia", Journal of Legal Studies. Vol.2 Number 2.p. 4

8. Strengthening political, legal and security stability and public service transformation ;
9. The state must continue to be present in protecting the entire nation, providing a sense of security and quality public services to all citizens and upholding state sovereignty.

The RPJMN IV 2020-2024 that there is a strengthening of legal political stability and security and the transformation of public services where in the legal field there is an increase in the rule of law and the upholding of human rights. Ideally, if RPJMN IV 2020-2024 strengthens legal stability, one of which is the upholding of human rights, then the problem of the noise on the Job Creation Law will not occur. However, it can be followed up on the Constitutional Court Decision Number 91 of 2020 by deciding to be conditionally unconstitutional. According to Mahaarum Kusuma Pertiwi revealed that there were 3 projected scenarios after the Constitutional Court's decision No. 91/PUU-XVIII/2020 regarding the case of formal review of the First UUCK [28]. The DPR and the government can "carelessly" correct the UUCK formally without actually responding in substance. public debate on UUCK UUCK [29]. The Second, if the DPR and the government really take 2 years to revise the UUCK not only formally (the regulation formation stage), but also substantially by taking into account the public's aspirations, it is very likely that the rules in amending this Law will no longer be valid. accordance with derivative regulations and policies that are currently in effect [30]. Third, the DPR and the government have not made improvements to the UUCK [31]. Even though the Constitutional Court's Decision Number 91 of 2020 has made repairs for 2 years due to formal defects, it is possible that the repairs are carried out carelessly or left alone until the 2 year repair period is over.

There is no legal guarantee for the correction of a formally flawed Job Creation Law on a conditionally unconstitutional basis. An anticipatory step in the process of improving the Job Creation Law by the community, the DPR has adopted a Regulatory Impact Assessment.is a form of study in the preparation of Academic Papers and Draft Laws to examine the impact of a policy chosen by various parties , both those that will have a direct or indirect impact [32]on RIA aspirations, but in particular is the study of the preparation of Academic Papers and Draft Laws. With the job creation law still legally valid but suspended, the position of the job creation law can be said to be in the process of drafting a law (RUU). By analyzing the concept of the principles of legality, Fuller wants to provide an overview of the aspects that may need to be

[28] Mahaarum Kusuma Pertiwi, 2022, "Formation of good laws (Learn from Constitutional Court Decision Number 91/PUU-XVIII/2020'. Policy Paper: MK Decision Regarding the Job Creation Law. Law.ugm.ac.id, https: / /law.ugm.ac.id/policy-paperjuangan-mk-terkait-uu-cipta-kerja/ accessed on 30 September 2022

[29] *Ibid*

[30] *Ibid*

[31] *Ibid*

[32] House of Representatives, 2021, "DPR Secretariat General Launches Guidelines for "Regulatory Impact Analysist" dpr.go.id, https://www.dpr.go.id/berita/detail/id35354/t/Setjen+DPR+Luncurkan+Pedoman+%27Regulatory+Impact+Analysis%27 accessed on 30 September 2022

strengthened when facing obstacles in the process of implementing a policy [33]. The eight principles include [34];

1. The law must be general or general;
2. Good publicity aspect;
3. Set the conditions that will occur;
4. Have a clear material content;
5. Must not contain contradictory content;
6. Not ask the impossible;
7. Have consistency of material load;
8. Have a match between the promulgated material and its enforcement

Eight principles in implementing a policy are indicators that a legal product has implications for legal certainty in society. If any of the principles are not met then automatically procedural defects. The importance of public participation in the formation of legislation aims to be able to have a complete understanding of the provisions that are enacted [35]. As is the goal of morality of duty and morality of law, the rule of law is promulgated so that society can obey it. By analogy, the government requires the public to obey a legal product that has been declared by the state. However, the government or parliament did not give the public the opportunity to participate in the formation of the legal product. An example of the case contained in the Job Creation Law through Article 175 number 6 regarding the abolition of the PTUN's authority in handling positive fictitious applications is part of the not ask the impossible principle. In this context, the government may not make a provision that requires someone to do something that is impossible to do. Therefore, the decision of the Constitutional Court regarding the conditional unconstitutionality of the Job Creation Law is in accordance with the failure of the legality principle according to Fuller. With the decision of the Constitutional Court there is a necessity for the government to instruct the Minister of Law and Human Rights to revise the Job Creation Law so that its formation is in accordance with Law No. 12 of 2011 [36]. The presence of the Job Creation Law in the investment sector is an effort to overhaul the articles in various laws through 1 (one) law. legislation, with the capacity to regulate cross-sectoral arrangements under the affairs of various agencies or ministries [37]. The purpose of the omnibus law concept or method through the Job Creation Act is to accelerate the consolidation of conflicting regulations simultaneously, and become a reference for all regulations for the related sector [38]. Although the

[33]Verido Dwiki Herdhianto, et al, 2022, "Omnibus Law Within the Framework of Legality Principles", Research Innovation Journal. Vol.2 Number 10. Pg.3474

[34] *Ibid*

[35] *Ibid* ,.p.3476

[36]Chamdani, et al, 2022, "Analysis of the Position of the Job Creation Law after the Constitutional Court Decision Number 91/PUU-XVIII/2020". Journal of Panorama Hukum. Vol.7 Number 1. https://ejournal.unikama.ac.id/index.php/jph/issue/view/51 , Hal.48

[37]Dewi Sukma Kristianti, 2021, "The Principle of Togetherness in Investment Law Law Number 11 of 2020 Concerning Job Creation: Political Law of Investment Interests or Public Welfare". Journal of Pattimura Magister Law Review. Vol.1 Number 2. Pg.92

[38]Jaja Ahmad Jayus, 2015, "The Concept of an Investment Legal System in Guaranteeing Legal Certainty", Journal of Litigation. Vol.16 Number 2. Pg.2917

Job Creation Law has a good purpose, but in its formation and content it is not in accordance with the laws and regulations, so its application is not legally valid In appropriate rules as law [39]. Re-emphasized the expert opinion of Jeremy Bentham through his book entitled "Introduction to the morals and legislation" that the law aims to realize solely what is useful or beneficial to people. This problem has caused the public to be angry and propose a formal or material review because it does not realize the benefits of the Job Creation Act and is impressed by certain interests, especially investors or the elite.

According to Bivitri Susanti said; *This decision states that a legislative process is unconstitutional which means that in fact a product produced from an unconstitutional is also unconstitutional so it does not apply* . based on his das sollen not in accordance with the ideals of the formation of the legal product. The author considers that a legal product that is already unconstitutional based on the Constitutional Court's decision cannot be implemented without exception. Even though the implementation of the Job Creation Law was within a period of 2 (two) years on the basis of legal certainty, the government still failed to implement a legal product to the public. Not only that, the legal certainty of the role of the decision of the Constitutional Court becomes doubtful, which is a final and binding decision[40]

Legal certainty after the Constitutional Court's decision Number 91/PUU-XVIII/2020 regarding conditionally unconstitutional is still a problem for researchers or academics in Indonesia. The existence of the principle of legal certainty is due to the concrete power of the law concerned [41]. Emphasis on a concrete power in legislation is the basis of the principle of legal certainty of a legal product so that the application of the law can be felt by many people, especially the protection of the law. The existence of the principle of legal certainty is important as a protection for everyone who seeks justice and certainty against arbitrary action [42].

The Constitutional Court Decision Number 91/PUU-XVIII/2020 which was read out on Thursday, November 25, 2021 essentially states that the Job Creation Law is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it does not mean "no repairs have been made within 2 (two) years since the decision was pronounced". The author considers an emphasis on the phrase "no repairs are made within 2 (two) years since the decision is pronounced" is a government offer to the public for a legal product that has been procedurally flawed. According to the legal consequences of a formal defect of a law is the cancellation of the law as a whole. Therefore, considering the formal violations of the Copyright Act regarding the fundamental aspects of law formation (meaning public participation aspects, transparency aspects, legal form aspects, clarity of purpose principles, principles of clarity of formulation and methods of formation), the Constitutional Court should not argue with amar " conditionally unconstitutional" and expressly cancels the

[39]L. Benar L. Tanya. 2006, "Legal Theory: Human Orderly Strategies across Space and Generations. Our CV: Surabaya. p.106

[40]Sinar Sihombing, 2022, "The Legal Strength of the Job Creation Law after the Constituent Court's Decision", Journal of Justice Reason. Vol.2. Number 1.hal.68

[41]Weppy Susetiyo, et al, 2022, "Legal Certainty of the Job Creation Law in the Health Sector After the Constitutional Court Decision Number 91/PUU-XVIII/2020". Supremacy Journal. Vol.12. Number 2. Pg.32

[42] *Ibid* ,.p.32

entire law [43]. Based on the above provisions, the follow-up to the Constitutional Court Decision Number 91/PUU-XVIII/2020 on the Job Creation Law should not be re-enacted with the condition that it should be corrected for 2 (two) years.This is a legal product that has functioned in the community and already has legal power that is able to fully protect the public interest.Therefore, tolerance for a legally defective product must not be re-applied even though the constitutional judge provides conditions as long as it is repaired for 2 (two) years.

CONCLUSION

The decision of the Constitutional Court Number 91/PUU-XVIII/2020 is a judicial review and formal test of Law Number 11 of 2020 concerning Job Creation where the result of the decision is conditionally unconstitutional. The implication of a legal product that is formed will result in public applicability and the essence of community involvement in the drafting process is less than optimal, resulting in rejection from various circles of society. Based on the procedure in the formation of a statutory regulation that the community as a party must be included in the order to produce a legal product that can accommodate all the interests of the community when enacted. The consequences of the formation of laws and regulations without reflecting the principles of legal certainty and the principle of openness must be declared procedural defects in order to protect the public from the interests of legal product makers. The formation of laws and regulations in the work copyright law carried out by the government does not see the principles in the formation of legislation so that the law is not well received and even harms one party or the other.

There is no legal guarantee against correction of a formally flawed Job Creation Law on a conditionally unconstitutional basis. Legal certainty after the Constitutional Court's decision Number 91/PUU-XVIII/2020 regarding conditionally unconstitutional is still a problem for researchers or academics in Indonesia. The existence of the principle of legal certainty is due to the concrete power of the law in question. Emphasis on a concrete power in legislation is the basis of the principle of legal certainty of a legal product so that the application of the law can be felt by many people, especially the protection of the law. tolerance for a legally flawed legal product must not be re-applied even though the constitutional judge provides conditions as long as it is repaired for 2 (two) years, especially the Job

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[43]Irwan Syambudi, 2021, "Half-Hearted M's Decision: The Smallpox Job Creation Law is Still In effect", tirto.id. https://tirto.id/juangan-mk-sepuh-hati-uu-cipta-kerja-cacat-tapi-masih-berlaku-gLJY accessed on 2 October 2022

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