

# INDONESIA: New Law on the Formation of Law and Regulations to Accommodate Omnibus Method

In 2021, the Constitutional Court in Decision No. 91/PUU-XVIII/2020 dated 25 November 2021 ("**CC Decision 91/2020**") declared that the formation of Law No. 11 of 2020 concerning Job Creation ("**Job Creation Law**") was procedurally flawed (*cacat formil*) and the Court declared that the Job Creation Law is '**conditionally unconstitutional**'. As a result, the CC Decision 91/2020 instructs the Government of Indonesia along with the the House of Representatives of the Republic of Indonesia (*Dewan Perwakilan Rakyat*) ("**House of Representatives**") to correct the drafting process of the Job Creation Law within two years from when the decision was uttered, failing which the Job Creation Law will be permanently deemed unconstitutional, losing all of its binding power.

In issuing such decision, the Court sets out the following key considerations:

- a. The formation of a new law, an amendment to an existing law, or the revocation of a law must adhere to Law No. 12 of 2011 concerning Enactment of Laws and Regulations as amended by Law No. 15 of 2019 ("**Law 12/2011**")
- b. A legal basis must be made to accommodate the omnibus method in the formation of any new law;
- c. Substantial differences between the bill (draft) and the promulgated Job Creation Law; and
- d. The formation of the Job Creation Law did not fulfill the principle of public participation.

After 7 months, the Government and the House of Representatives quickly carried out the order in CC Decision 91/2020 by issuing Law Number 13 of 2022 concerning the Second Amendment of Law No. 12/2011, which was enacted on 16 June 2022 ("**Law 13/2022**"). Dentons HPRP notes the key points of amendment in Law 13/2022 as follows:

## 1. Legal Basis for the Omnibus Method

Law 13/2022 accommodates the use of the omnibus method in drafting and enactment of statutory regulations, which was not previously mentioned in Law 12/2011. Law 13/2022 states that the omnibus method is a method of compilation which: (i) contains new material content, (ii) changes material content, or (iii) revokes laws and regulations, combining them into statutory regulations in order to achieve specific purposes.

Furthermore, the use of the omnibus method in the formulation of a law or regulation must be stipulated in the planning document, and the material regulated in a law or regulation can only be changed and/or revoked by changing and/or revoking such law or regulation.

The following are a number of new articles in Law 13/2022 that explain the use of the omnibus method:

- 1) The use of the omnibus method in the preparation of a Draft of Legislation must be specified in the planning document<sup>1</sup>;
- 2) The preparation of the Draft of Legislation referred to in paragraph (1) may use the omnibus method<sup>2</sup>; and
- 3) Content regulated in a statutory regulation using the omnibus method can only be changed and/or revoked by changing and/or revoking that statutory regulation<sup>3</sup>.

## **2. Strengthen the Involvement and Participation of the Public**

Law 13/2022 also regulates in more detail the involvement and participation of the public in the establishment of laws and regulations. Some points of involvement are as follows:

- 1) the public now has the convenience of being able to provide input online or offline;
- 2) apart from those who have an interest, the public who are directly affected can also provide input;
- 3) legislators must inform the public regarding the establishment of regulations;
- 4) additional scope of public consultation activities done through: (i) public hearings; (ii) work visits; (iii) seminars, workshops, discussions; (iv) other public consultation activities;
- 5) notification regarding the results of the discussion resulting from public input; and
- 6) easy access to the text of laws and regulations for the entire public, including persons with disabilities.

Further details on the mechanism of the involvement and participation of the public will be further regulated in its implementing regulations.

## **3. Mechanism of Law Correction**

Law 13/2022 also provides an opportunity to correct any bill that needs correction of technical errors in drafting after it has been approved by the House of Representatives and the President either prior to submission or after submission to the President for further enactment. Under the law, technical errors in a bill can be corrected only by involving the complementary organs (*alat kelengkapan*) of the House of Representatives and the relevant ministry, and thus does not necessarily require the direct involvement of the House of Representatives and the President.

## **Implementation of Job Creation Law after Law 13/2022**

It should be noted that while CC Decision 91/2020 declares **the formulation of the Job Creation Law as conditionally unconstitutional**, the Job Creation Law **is still valid**. It further stipulates that if the Job Creation Law is not corrected within the instructed timeframe, the Job Creation Law will not be binding and thus the previous stipulations amended by the Job Creation Law will be come back into effect. CC Decision 91/2020 further mandate the legislature to correct the Job Creation Law in accordance with the prevailing laws.

As a response, the Government did not directly amend the Job Creation Law as the first step, but, instead, the Government took the first approach to amend the mechanism of law formation by enacting Law 13/2022, which accommodates the Court's key consideration in CC Decision 91/2020 as reflected in the key points of Law 13/2022 described above. We view the enactment of Law 13/2022 serving as a legal basis for the Government and the House of Representatives in forming a law using the omnibus method which was previously not recognized **and hopefully the new law meets the direction of CC Decision 91/2020**.

---

<sup>1</sup>Article 42A of Law 13/2022.

<sup>2</sup>Article 64 paragraph (1a) of Law 13/2022.

<sup>3</sup>Article 97(a) of Law 13/2022.

While the legislators may still have to correct the formation of the Job Creation Law by among others using the tools and mechanism provided by Law 13/2022, we expect the changes made to the Job Creation Law to help uphold future legal certainty.

Last but not least, it is also interesting to note that the Indonesian Labour Party has formally filed an application to the Constitutional Court for judicial review, of the constitutionality of Law 13/2022, in particular, arguing that the Indonesian Labour Party, and the organizations which are members of the party, were not involved in nor given any chance by the lawmaker to provide their input into the contents of Law 13/2022 or into discussion of the omnibus method. We will issue another Client Alert on this subject once a decision is issued by the Constitutional Court.

-o0o-

*The article above was prepared by [Maurice Maulana Situmorang](#) (Partner), [Leonardo Richo Sidabutar](#) (Senior Associate), [Benny Sasmito](#) (Associate) and [Widiarahmi Afiandari](#) (Professional Support Lawyer).*

*This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions or matters. For more information, please contact us at [dentons.hprp@dentons.com](mailto:dentons.hprp@dentons.com) or Partners listed above.*

*No part of this publication may be reproduced by any process whatsoever without prior written permission from Hanafiah Ponggawa & Partners.*