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THE INFLUENCE OF POLITICAL INSTITUTIONS ON JOB CREATION LAW IN INDONESIA

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Article	Abstract
<p>Keywords: Job Creation Law, Omnibus Law, Political Institutions, New Institutionalism, Public Participation.</p> <p>History of Article Received: February 10, 2024; Reviewed: February 15, 2024; Accepted: February 20, 2024; Published: February 22, 2024</p> <p>DOI: 10.56282/slr.v2i3.542</p>	<p>The Job Creation Law (<i>Undang-Undang Cipta Kerja</i>) was introduced and passed in Indonesia as an omnibus law, amending over seventy existing laws to streamline regulations and promote economic growth. However, its drafting and approval process raised significant concerns, particularly regarding the lack of transparency, limited public participation, and its potential adverse impact on labor rights and environmental protection. This paper examines the role of political institutions in shaping the law, utilizing the new institutionalism framework to analyze the influence of formal and informal rules on policymaking. The analysis reveals that the President's strong political influence, combined with a dominant coalition in the House of Representatives (DPR), expedited the legislative process at the expense of democratic norms. Civil society, media, and global actors played crucial roles in contesting the law through protests, social media campaigns, and judicial reviews. The Constitutional Court's ruling, which deemed the law conditionally unconstitutional, further underscores the complex interplay of institutional power in Indonesian lawmaking. Ultimately, this study highlights how institutional dynamics and political power affect policymaking, often sidelining democratic principles in favor of efficiency and economic agendas.</p>

A. INTRODUCTION

On 5 October 2020, the Indonesian House of People's Representatives (*Dewan Perwakilan Rakyat* – DPR) passed the Indonesian first Omnibus Law: the Job Creation Law (*Undang-Undang Cipta Kerja*). President Joko Widodo initiated this Law as one of the main agendas in his second ruling period. It was first mentioned in his inauguration speech at People's Consultative Assembly (*Majelis Permusyawaratan Rakyat Republik Indonesia* – MPR-RI) plenary meeting on 20 October 2019 after being reelected as president. The President wanted to boost economic growth, and the Job Creation Law was one of the tools. It worked by deregulating red tape in doing business in Indonesia. This Law used a form of omnibus law, a type of law that can amend many laws at a

time. It amended more than seventy laws. However, the Job creation law was considered controversial since it arguably liberalised the wage for labourers and was not aligned with environmental policy (Roosinda and Istiyanto 2022). Moreover, it was also considered as an 'illiberal turn' due to the problematic drafting process (Mahy 2022). Many parties criticised the process as 'rush' and 'non-participatory', which was considered less democratic. The bill has passed without sufficient public consultation, especially the labourers as the most negatively impacted parties by this Law. This paper will discuss the processes of creating the Job Creation Law and the contribution of political institutions in shaping this Law. The new institutionalism will be used to analyse this case since it gives a broader understanding of what is happening in institutions beyond just formal institutions. This paper argues that the Job Creation Law-making process ignored some legislation norms in a democratic country: openness principle and public participation, resulting in civil society and media protesting the Law. This problem hinders the policy goal of Job Creation Law from being achieved.

B. LITERATURE REVIEW

New institutionalism is a concept that sees the institutions beyond just the formal structure institutions. Under the old institutionalism, institutions may be understood as organisations such as executives, legislative, and the courts. New institutionalism broader this concept and conceptualises institutions as regular patterns of behaviour shaped by rules, norms or practices (Cairney 2012). The rules can be formal, such as constitutions, operating procedures or public services provision, and informal such as habits, norms or practices not being regulated in the written law.

In Indonesia, political institutions within political actors play their own roles and shape the policy-making process. Indonesia is considered a liberal democratic country with a separation of power between the executive, legislature and judiciary. It uses the presidential in the executive system. The president might be considered quite a dominant political actor and freely choose the cabinets, usually from political party leaders within the government coalition and technocrats. The president is also a powerful actor in policy-making since the president mostly sets the agenda. The cabinet ministers lead departments that manage the bureaucratic system to help the president to implement policy. Indonesia's bureaucracy is also considered powerful and might involve in the policy-making process by influencing the president's decisions. The legislature uses a unicameral system and has the power to draft and amend the Law. However, the legislation draft should also be approved by the president. The president might also draft a bill and submit it to the house of representatives. The judiciary system is considered independent even though its budget is still under the approval of the executives. It has a constitutional court that conducts a trial on problematic law against the constitution and settles the election dispute. The political actors outside the formal body also actively engage in politics and shape the policy-making process. The media has the freedom that the law protects. Social media also significantly influence and might create political discourse within society. Civil society also considers active, and the law protects their freedom of voice. In the next paragraph, this paper will discuss the detailed role of policy actors in shaping policy in the Job Creation Law case.

C. ANALYSIS AND DISCUSSION

The President might be considered a central actor in the Job Creation Law case. He was the one that put this policy on the agenda in his inauguration speech in front of MPR-RI when he was reelected as president for the second period (Mahy 2022). The actual policy was not immediately created job as the name of the Law; instead, the purpose was to boost economic growth in specific periods so that by 2045 Indonesia could achieve its target of being a developed country (Lane 2021). He emphasised Indonesian competitiveness problems, which was shown by the low in Indonesia's ease of doing business indicator. Due to this, his primary strategy was to reduce red tape in business bureaucracy to incentivise investors to invest and do business in Indonesia (Lane 2021). This strategy was not easy since business red tape in Indonesia involves many laws, and according to the Indonesian constitution, a law must also be changed by another law in the same hierarchy level at a minimum. So the president picked omnibus law which could amend many laws as tools to conduct this policy. Yet, omnibus law is not common in Indonesia since Indonesia use a Civil Law system. The rules constrain it in legislation establishment. To address this, the president also initiated to amend Law Number 11 of 2011 which was lastly amended by Law Number 12 of 2012 about Legislation Establishment (Kaharudin et al. 2021).

Despite some obstacles in the legislation establishment process, and considering that this Law might be very complex since it will amend so many other laws, the President sounded quite optimistic could finish this Law fastly (BBC News Indonesia 2020). Rational choice institutionalism might explain this case. This concept acknowledges unequal power within the key actors and gives solutions regarding collection action problems, transaction cost and instability (Carney 2012). In this second ruling period, the President might be considered very powerful since most prominent political parties were incorporated in the government coalition called '*Koalisi Indonesia Maju*' (Forward Indonesian Coalition). Even his former rival party in the presidential election, the Gerindra party, also joined the government coalition. The government coalition held 81.9% chair in the DPR compared to just 37.14% chair in the first period in 2014 (even though it later became 60.17% since several political parties joined the government coalition) (Pahlevi 2022). The big and strong coalition of the Government could create stability and reduce transaction costs in policy making. The President could use this strong coalition to control the other vital actors so they can support the President in the policy-making process. This might be why the President is optimistic that the Job Creation Law could be processed smoothly and quickly in the DPR.

There was also an indication that the president wanted to change the rules of the game by shifting several rules to be regulated in the lower hierarchy of law (Mahy 2022). For instance, several parts of the formula can be regulated by Government Regulation (*Peraturan Pemerintah*) instead of the law in formulating labour salary. This change might benefit the Government by giving more power to control the formula. The other example was during the deliberation process; there was a controversial term that Government Regulation can amend a law (Mahy 2022). This term became controversial and was removed and said as a 'typing mistake'. These show that the president also exercised his power trying to change the institutions.

The next central actor in this case is the DPR since the primary tool of this policy is a law. DPR is the policy actor responsible for the legislative process of law. After the president set the agenda, he proposed to put this Law in the National Legislation

Program (*Program Legislasi Nasional – Prolegnas*) of DPR on 17 December 2019, so it can be discussed and processed by the DPR within this period (DPR n.d.). The President then started to create the draft and sent the draft to the DPR on 7 February 2020, three months after the inauguration speech, when the President first mentioned the Job Creation Law. However, due to the covid 19 pandemic, the DPR just started the legislation process on 2 April 2020 by discussing the draft in the 13th DPR's plenary meeting. DPR's Legislation Body (*Badan Legislasi – Baleg*) then continued to discuss this draft and created Working Committee (*Panitia Kerja – Panja*) to process the draft further. This *Panja*, which consists of thirty-five members and five DPR's *Baleg*, then intensively discussed the draft with experts, academics, and all the stakeholders that this Law might impact.

The strong President's political power might affect the legislation process. Overall legislation process of Job Creation Law was quite fast considering the complexity of the draft, which had a considerable 1187 pages and simultaneously amended 77 laws. This fact contradicts the previous legislation's performance in Indonesia, which often was a slow process (Mahy 2022). DPR usually fails to meet their legislation targets due to several interacting factors such as the multi-party structures, long deliberative process, and 'money politics'. Moreover, the omnibus law has several weaknesses, such as the difficulty in checking the detail, low-quality in detail discussions, low-quality debate in public interest and difficulty in directing the focal point of public discourses (Kaharudin et al. 2021). The DPR must already understand these drawbacks, but they still process all the discussions quickly without a careful process. The legislation process also lacked the principle of open Government due to issues such as the unavailability of the draft for the public and minimum public participation (Khozen 2021). These facts might show that the DPR was in a rush to process this Law as targeted by the President. This show that the President's political power affected the quality of debate in the deliberation process of the Job Creation Law in the DPR (Arifin et al. 2022). There likely was a pre-determined consensus on agreeing with the Job Creation Law under the President's influence.

Civil society also actively contributed to shaping the Job Creation Law. Civil society refers to autonomous groups, such as business or interest groups, which are independent from the Government and have their own missions (Heywood 2013). Non-government organisations (NGOs), civil society organisations (CSOs), social movements, and socially-based organisations are the common form of civil society. In the case of Job creation law, most civil societies argued that Job Creation Law was unfair since it negatively impacted the labours and the environment. They also criticised the process as not transparent (Khozen et al. 2021). However, their willingness to revoke the Law was constrained by the institutions which not allow them to do that directly. Instead, they conducted several actions to influence and shape this Law. First, civil society conducted mass demonstrations to protest the Law. After the draft first being discussed by DPR, many mass mobilisation protests occurred in Indonesia (Lane 2020). The demonstration was attended by many elements in civil society, which generally can be divided into two major groups: the worker union groups and the environmental groups. Both groups criticised the Job Creation Law as eroded their rights. The level of demonstration can be considered massive, yet it is not enough to block the Law since the majority of parliamentary parties supported the Law.

Second, civil society also campaigned for the rejection of the Job Creation Law in social media using hashtags such as #BatalkanOmnibusLaw (withdraw omnibus law), #uucilaka (Law of disaster), #CabutOmnibusLaw (revoke omnibus law), and #GagalkanRUUCiptaker (thwart the job creation draft law) (Roosinda and Istiyanto 2022, Sutan et al. 2021). This campaign in social media, especially on Twitter, was massive and became trending at that time. The campaign and social media discussion contributed to framing how people view the Job Creation Law, which also put more pressure on the Government (Sutan et al. 2021). This framing created an alternative public discourse within society. The campaign movement in social media might succeed in providing alternative information sources, giving alternative mass communication tools and reducing the cost of political participation (Sutan et al. 2021). Yet, irresponsible parties also used social media to spread the hoax effectively (Febriansyah and Muksin 2021). This might be due to a lack of digital media literacy among most Indonesian internet users.

Third, civil society also used their citizen right to submit for the judicial review of Job Creation Law in the Constitutional Court. Several civil society organisations, such as labour parties, submitted for judicial review of the Job Creation Law (Mashabi 2020). Yet, mostly their application was rejected due to formal reasons. However, one application submitted by six applicants consisting of a worker, a student, a lecturer and three civil society organisations who called themselves '*Gerakan Masyarakat Pejuang Hak Konstitusi*' (Constitutional Rights Fighting Society Movement) was partially accepted by the Constitutional Court. This decision later made significant progress regarding protests against the Law.

Judiciary had a significant role in the Job Creation Law case since its decision later created a significant change. After the Law was employed on 5 October, many commentators, media and civil society criticised the Law, especially the labour and environmental parts. Furthermore, as mentioned before, many parties use their constitution right by submitting for judiciary review for Job Creation Law. The judiciary played its role as the check and balance system of the Law to the Indonesian Constitution. One of the applications by '*Gerakan Masyarakat Pejuang Hak Konstitusi*' was partially accepted, as mentioned in the Decision of Constitutional Court number 91/PUU-XVIII/2020. The decision said that the Job Creation Law was formally flawed, so the Court declared that the Job Creation Act was conditionally unconstitutional. The Court ordered the legislators to fix the Law within two years after the decision was pronounced. This decision can be considered a significant influence on the policy-making of the Law (Pertiwi 2022). First, this decision not only reviewed whether the Law was aligned with the Indonesian Constitution, but also gave a strategic suggestion to fix the Law within the amount of time. In this case, arguably the Constitutional Court already exceeded its authority. Second, the Constitutional Court put itself as if it was higher than other state institutions by giving orders to them (the Government and the Legislature). Anyhow, this decision was essential and had a significant impact on shaping the Law.

Mainstream media also have a significant role in the Job Creation Law case by creating and shaping public discourse and framing the problems to create public opinion. Evidence has shown that mainstream media mostly created positive dominant discourse on Job Creation Law by giving more space to elites or businessmen in public discussion (Santosa et al. 2022). They framed the Law as essential to improve the economy and investment, which was necessary due to the pandemic. On the other

hand, negative sentiment, which usually was voiced by activists, labourers or academics, was rarely given space by the mainstream media.

Global actors also contributed to shaping the discourse in the Job Creation Law case, even though the role might consider not really significant. The World Bank showed its support for the Job Creation Law by making an official statement on its website. It said that the Job Creation Law could make Indonesia more competitive and support long-term development (World Bank 2020). Several business consultants, such as Greenhouse, support the Job Creation Law by saying that, finally, the Indonesian Government listens to foreign investors (Greenhouse 2021). However, some global actors also criticised the Job Creation Law. Thirty-six multinational companies sent an open letter to the Indonesian Government to express their concern that the Job Creation Law might have a detrimental effect on the environment. Companies that commit to protecting society and the environment might be difficult to compete under the Job Creation Law.

To sum up, the Job Creation Law case has shown that institutions and actors interact with each other, shaping the policy-making process. The President and House Representatives might be the main actors since the primary tool was Law. The President put the agenda and then drafted the Law as the policy-making tool. The House of Representatives then conducted the Law's legislation process. However, the legislation process might be under the President's influence since he had considerable political power. About 81.9% of House of Representative members were under the government coalition parties, which was very likely to be under the President's influence. Due to this influence, the House of Representatives has ignored some democratic norms in the absence of the openness principle and public participation in the law-making process. It then led to the Law as the policy tools became controversial and triggered protests from the public. This problem then hindered the policy goals from being achieved. The judiciary also played an important as the check and balances function. Its decree gave a vital impact to the law. Other actors outside the government bodies also play an essential role. Civil society, media and global actors shaped the discourse and influenced the policy outcome.

D. CONCLUSION

The enactment of the Job Creation Law demonstrates how political institutions and actors interact to shape policy outcomes. The President, as the key agenda-setter, leveraged his political influence and a strong government coalition in the DPR to accelerate the legislative process. However, this rapid approach neglected fundamental democratic norms such as transparency and public participation, leading to widespread criticism and protests from civil society. The role of media, both mainstream and social, further influenced public discourse, with varying degrees of support and opposition. Meanwhile, the judiciary played a crucial role in maintaining institutional checks and balances, with the Constitutional Court ruling that the law was conditionally unconstitutional. Despite the law's intended goal of enhancing economic competitiveness, the problematic legislative process hindered its acceptance and effectiveness. This case highlights the tension between efficiency-driven policymaking and democratic principles, emphasizing the need for more inclusive and transparent legislative practices in Indonesia.

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