

**EXAMINING THE PRINCIPLE OF OPENNESS IN THE IMPLEMENTATION OF  
THE LAW-MAKING PROCESS IN INDONESIA  
(LEGAL STUDY OF PERPPU NUMBER 2 OF 2022)**

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***Abstract***

*The Job Creation Law ultimately gave rise to a statement that it did not fulfill the principle of openness in the law formation process. The replacement regulation, namely "Perppu Number 2 of 2022 concerning Job Creation" also still does not apply the principle of openness even in the process of its formation and ratification. This is the basis for writing this research by discussing the implementation that should be carried out if it is connected to the principle of openness that exists in the process of forming and ratifying laws. This research uses a juridical-normative type with a statutory approach. The author uses primary and secondary legal materials originating from statutory regulations, doctrine, legal articles, and several previous studies that are relevant to the research topic. The conclusion that the author conveys is that it is important to place society at the top of the constitution where they have the right to know and take part in the process of making legal products.*

***Keywords: Principle of Openness; Perppu; legal products, Job Creation.***

**INTRODUCTION**

The State of Indonesia is a country that in the mechanism of forming a legislative system or the formation of legislation seeks to consistently place Indonesian citizens as the pinnacle of sovereignty. This gives the right for citizens to give their ideas or ideas related to legal products that will be born. This right is given because the Indonesian state is a democratic country and does not place the leader as the only rule maker. Of course, it is necessary to provide a proper mechanism so that the democratic system taken does not stain the legal products that will later be formed (Zainudin Ali, 2017).

The mechanism referred to by the author is that the creation of the People's Representative Council (DPR) is one of the right means by which the aspirations and ideas of the community can be conveyed. The DPR occupies the legislative part in the state hierarchy. This legislative section has functions including the legislative function related to the topic of discussion, namely the function that guarantees responsibility for the formation of rules or legal products in accordance with the needs of the community, the budget function, and the supervisory function (Muchlisin, 2020). The functions carried by the House of Representatives will run in accordance with the will of the President. So that in the creation of legal products, the role is the legislative and executive parts.

The formation of a suitable legal product becomes important when the legal product is created in accordance with the will and needs of the community. Evidenced by not suffering any layer of society so that all citizens feel the impact of the establishment of a legal product. It is the legislative and executive institutions that then have the responsibility to ensure that the legal product is a viable legal product. Therefore, in the formation of a viable product, a correct system and mechanism are also needed. One of the principles upheld in the formation of legal products is the principle of openness. This principle provides an understanding that ease of access must be provided to the community in order to close the possibility of fraud or inequality that will occur in the process of forming legal products. In addition, the community can also monitor and supervise indirectly the developments made by the state apparatus in creating a constitutional rule and system.

The principle of openness in question is not only related to the formation process, but also related to the ratification process which must be known in detail by the community. The problem that arises is that it is known that the actualization of these two actions has found a point of incompatibility. One example is in the process of forming "Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation" into "Law Number 6 of 2023 concerning Stipulation of Government Regulations in Lieu of Law on Job Creation" which is felt to have experienced incompatibility with the legal system.\

It is said that a discrepancy is when the urgency of the issuance of the Job Creation Perppu is a response to Constitutional Court Decision Number 91 / PUU-XVIII / 2020 with content material that Law Number 11 of 2020 has a conditional unconstitutional nature so as to force the legislature to revise with the given period of 2 years from the issuance of the decision (Kadek, 2023). Thus, the government should immediately revise the laws and regulations. However, the situation that occurred was that the legislature chose to revise "Law Number 12 of 2011 concerning the Establishment of Laws and Regulations" by planning and making changes to manufacturing techniques or manufacturing mechanisms using the Omnibus Law which was known that previously there was nothing in the rules of the Law. Then the government issued the Job Creation Perppu using the new Omnibus Law technique.

The unconstitutional position of the Job Creation Law is on the efforts of meaningful participation in the process of forming the law. What the government should do is to revise and add aspects of public participation to the law. Referring to Article 22 of the 1945 Constitution which allows the formulation of Perppu is that if something urgent occurs, then the making of the Perppu is invalid because it does not meet the requirements of the matter,

namely the critical situation. The process of drafting the Perppu is also considered not to involve the community in the drafting process.

Basically, the making of "Law Number 11 of 2020" does not necessarily have to be discussed openly. However, of the articles that should involve some elements of society such as workers, it is still very minimal and even considered non-existent. Several amendments to the articles in it to replace the provisions in Law Number 18 of 2017 concerning the Protection of Migrant Workers are also considered very non-participatory where migrant worker community groups do not take part in making decisions or expressing their opinions.

Therefore, the Job Creation Law was declared not to meet the principle of openness in the process of forming laws. The replacement regulation, namely "Perppu Number 2 of 2022 concerning Job Creation", also does not apply the principle of openness even in the process of its formation and ratification. Absolute making is also carried out by the President in a relatively short time so that it does not allow public participation. The urgency of its formation is also invalid because the Perppu can only really be issued when the country is going through a critical period. The content material between the two is also considered the same because only one article is removed from the draft Omnibus Law (Handriana, 2023).

Based on the reference from the background writing, the author formulates the limitations of the problem in this study, namely related to How is the implementation of the principle of openness in the process of forming and ratifying Perppu Number 2 of 2022 concerning Job Creation?

## **RESEARCH METHODS**

The research that the author writes uses a type of juridical-normative research in which it contains discussions about doctrines and principles of legal science that are in accordance with the topic being discussed. The reference in writing this research is to laws and regulations and some appropriate court decisions. So that this writing approach method uses a statutory approach or statue approach. The author uses primary and secondary legal materials including the 1945 Constitution, Law Number 12 of 2011 jo. Law Number 13 of 2022 concerning the Establishment of Laws and Regulations, and Law Number 11 of 2020 concerning Job Creation. In addition, it also uses judges' rulings that are relevant to the study. The author uses a data collection method, namely identification and review results from library materials including scientific journal articles, books, and previous research results (Dhezya, 2023).

## **RESULT AND DISCUSSION**

### **Recognizing the principle of openness in the mechanism of law formation**

The principle of openness is considered one of the important principles to understand in terms of application and theory. The form of implementation given if this principle is carried out properly, all laws and regulations will not have the opportunity to harm the community. The goal of realizing rules that are true, honest, and do not discriminate against some parts will soon be realized. This is motivated by the fact that the principle of openness has 2 points of view, first that the implementation of the principle of openness makes the fulfillment of constitutional rights of every level of Indonesian society. It is important because the community is an object that will be subject to the law so that a large contribution should be given to the community to know what things should be regulated and become special rules. Second, if a legal product does not have the principle of openness in the process of formation and ratification, the objectives conveyed by the author above and all the things that accompany it will be ineffective. The impact is that the state is considered to have failed to create laws that protect society.

With regard to the constitutional rights possessed by citizens in the formation of laws and regulations, it is known that the holder of the highest sovereignty in drafting rules is by citizens. The statement will run well and efficiently if the principle of openness is applied in the process of its formation. The potential caused related to the loss of legal products will be minimized properly. Public trust in the government and law-forming apparatus will also increase. This is because the public can follow from the beginning how the legal product is formed until it is passed (Prastyo, 2020)

The enactment of the principle of openness will provide a definition that the community has equal opportunities in terms of participation in the manufacture of state legal products broadly and has no restrictions. So that the level of public concern about misappropriation that occurs against legal products will be reduced. If people feel worried, then what will happen is the occurrence of demonstrations both on a large and small scale. Efforts to form good legal products in accordance with the principle of openness can suppress things like these demonstrations.

## **The Principle of Openness in the Establishment and Ratification of Perppu Number 2 of 2022 concerning Job Creation**

A principle is the rationale or initial concept of thought that should be possessed by the law-forming apparatus in creating a legal product. The thinking referred to in this case is the thinking of forming appropriate and efficient legal products in dealing with problems that have arisen or that will arise in the future. Therefore, please note that it is important to pay attention to whether a legal product has been made in accordance with existing provisions and principles.

The 1945 Constitution regulates the rights obtained by citizens contained in the material Human Rights constitutionally. It contains related to the right to obtain information that must be obtained by all citizens in any case. Thus, the government has a responsibility to grant this right both explicitly and implicitly. The acquisition of information as one of the fulfillment of human rights can be fulfilled if the principle of openness in the formation of laws is also fulfilled. This principle of openness is regulated in Article 5 letter (g) of Law Number 12 of 2011 jo. Law Number 13 of 2022 concerning the Establishment of Laws and Regulations which then means that in the process, the laws and regulations from the beginning, namely the process of planning, drafting, discussing content materials, determination, until then the promulgation must be carried out openly and accessible to the entire community without exception. This is in line with the urgency of its formation, namely to support developments in people's lives and the statement that the highest holder of sovereignty is the community (Nurjaman, 2021).

Not only that, the process of formulating Perppu must always be carried out with the right mechanism. It will be a problem if the process of ratification and formation raises doubts for the community until the question arises, "is it true that the rules contained in it are rules that provide welfare for the community?". Until then this happened and a statement arose that the ratification of the Job Creation Perppu was calm with the constitution. The statement of the Constitutional Court's decision on the conditional unconstitutionality of the Job Creation Law should provide an opportunity for the state apparatus to correct the wrong parts or revise the law. However, the action taken is just the opposite, namely changing the mechanism for forming laws so that the Job Creation Law is not revised in terms of the substance it contains.

The mechanism change made is to switch the order using the omnibus law system whose provisions are included in "Law Number 13 of 2022 concerning the Establishment of Laws and Regulations". After that, the government issued the Job Creation Perppu. The

peculiarities that occur in the mindset and problem solving of the legislature are what then raise a big question mark. The Job Creation Law, which should have been amended based on the Constitutional Court ruling, which is conditionally unconstitutional, was actually passed from revision by changing the mechanism using the omnibus law and the issuance of the Job Creation Perppu. When examining using the point of view of the principle of openness, it will be found that the process described above does not at all reflect the principle of openness itself. Community participation, which should be the main point in solving problems, is ignored and tries to create new forms that are irrelevant. Public participation, which is the basis for the conditional unconstitutionality of the Job Creation Law, is actually not well realized ((Handoyo, 2014).

Relating to community rights associated with unfulfilled community participation, it is explained in Article 96 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. The affirmation in the article is that the right of the public to know and obtain information related to the process of forming legal products is absolute and mandatory to obtain. The responsibility for this matter lies with the government, if the government does not provide realization related to this, then the government has been considered to have violated legal and constitutional ethics.

The first thing to note is the actions of the DPR-RI which seemed too hasty in responding to existing issues by issuing the Job Creation Perppu. So that makes doubts arise from the community regarding the substance contained in the legal product that transports. With the knowledge of the issuance of the Job Creation Perppu in a short time and without involving the community, it can be concluded that the Perppu favors private or group interests rather than the public interest as a whole.

## **CONCLUSION**

Based on the author's explanation, the author comes to the conclusion that the process of forming the Job Creation Law and the Job Creation Perppu cannot be seen as an effort for the benefit of the community or in other words not in favor of the community. This can be seen from the non-involvement of the community in the process of formation and ratification so that doubts arise from the community whether the law has harmful substance or actually provides legal protection. Regarding the preparation of the omnibus law which was carried out in a very short time and again did not use public participation, it gives one more belief that the formation of this legal product is not in accordance with the applicable principles of

openness and must be applied in the process of forming and drafting laws. The unconstitutional statement from the Constitutional Court to the Job Creation Law did not meet a solution with the revision of the material content of the law.

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