



Constitutional Court finds Omnibus Law “conditionally unconstitutional”

Background

On 25 November 2021, Indonesia’s Constitutional Court decided on 12 separate challenges brought by different groups concerning the ground-breaking Omnibus Law on Job Creation (Law No. 11 of 2020) that significantly impacted some 78 different laws and came into force on 2 November 2020 (**Omnibus Law**). (For some background on the 1,187-page Omnibus Law and the extent of its controversial nature, please see our earlier [October 2020 Client Update](#) and [November 2020 Client Update](#).)

What did the Constitutional Court say?

The Constitutional Court (by a majority of five to four) rejected 11 of the 12 challenges and partially accepted certain challenges concerning the formation of the Omnibus Law, as set out in Decision Number 91/PUU-XVIII/2020 (**CC Decision**), resulting in the Constitutional Court declaring that:

1. the Omnibus Law “formation process” is contrary to the 1945 Constitution, but the Omnibus Law will continue to be valid and binding if the legislators can correct the formation process issue within two years of the CC Decision;
2. if the legislators fail to make the corrections within the two-year period (referred to above), the Omnibus Law will become permanently unconstitutional and therefore will have no legally binding force, and the laws that were revoked or amended under the Omnibus Law will be automatically reinstated;
3. the Government is not permitted to issue any new regulations in relation to the Omnibus Law; and
4. all “strategic and significant-impact actions/policies” in relation to the Omnibus Law are suspended.

How did the Government react?

In responding to the CC Decision, the Coordinating Minister for Economic Affairs in a [media report](#) published on the same day as the CC Decision indicated that the Government accepted the Constitutional Court’s above declarations and also stated that currently, the Omnibus Law and its implementing regulations remain valid.

What were the main issues?

The CC Decision essentially dealt with the following two main issues (for which evidence was provided) that were raised by various applicants:

1. the Omnibus Law did **not** follow the standard method and principles of law formation as contemplated under the 1945 Constitution (which is the foundation for Law 12/2011 on the Formation of Legislation), and the omnibus law format (i.e. one law to amend 78 laws) is not legally recognised (**Formation Issue**); and
2. substantial changes were made to the Omnibus Law Bill after it had been jointly approved by the House of Representatives and the President (and the published Omnibus Law itself still contained drafting errors) (**Procedural Issue**).

Conclusions

- The Constitutional Court's declarations appear to have reasonable justification based on the presented evidence.
- The good news is that the Omnibus Law and its implementing regulations remain valid as long as the legislators comply with the CC Decision by 25 November 2023 (two years after the CC Decision date).
- At this stage it is not clear to us what specific steps the legislators will need to take in order to correct the Formation Issue and Procedural Issue. However, there are indications in the CC Decision that the steps could include the amendment or issuance of a new law to accommodate the CC Decision.
- The implications of the Constitutional Court's declaration to suspend "all strategic and significant-impact actions/policies in relation to the Omnibus Law" are not clear and may become the source of some confusion without further guidance. One potential implication is that certain Government bodies (central and regional) could adopt a "wait and see" approach before issuing new permits or approvals relating to the Omnibus Law and its implementing regulations, which may lead to legal uncertainty.

We are closely monitoring the progress of the CC Decision implementation, particularly on how legislators will respond, and will issue further updates on this topic as more information becomes available.



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