

**MECHANISM FOR THE ESTABLISHMENT OF LAW NO.11 OF 2020 ON
WORK COPYRIGHT IN ACCORDANCE WITH THE RULES OF THE
ESTABLISHMENT OF GOOD LAWS AND REGULATIONS**

THESIS

BY :

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NIM: 17230079



STUDY PROGRAM OF CONSTITUTIONAL LAW (SIYASAH)

SYARIAH FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM

MALANG

2021

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MALANG**

2021

THESIS STATEMENT OF AUTHENTICITY

In the name of Allah,

with awareness and responsibility for the development of science, the author states that the thesis is entitled:

MECHANISM FOR THE ESTABLISHMENT OF LAW NO.11 OF 2020 ON WORK COPYRIGHT IN ACCORDANCE WITH THE RULES OF THE ESTABLISHMENT OF GOOD LAWS AND REGULATIONS

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 1 Juni 2021

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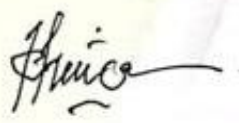
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MOTTO

فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ - ٧

"So whoever does the good as great as zarah, he will see it."

QS. Az-Zalzalah: 7

مَنْ سَلَكَ طَرِيقًا يَلْتَمِسُ فِيهِ عِلْمًا، سَهَّلَ اللَّهُ لَهُ طَرِيقًا إِلَى الْجَنَّةِ . رَوَاهُ مُسْلِمٌ

"Whoever takes one way to gain knowledge, Allah will make it easy for him to make it easy for him to go to heaven." (HR. Muslim)

فَإِنَّ مَعَ الْعُسْرِ يُسْرًا

"And with difficulty there is ease."

QS. AL-INSYIRAH : 5

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Thank God, who has given grace and assistance in writing a thesis entitled: **MECHANISM OF ESTABLISHMENT OF LAW NO.11 OF 2020 ON COPYRIGHT WORK IN ACCORDANCE WITH THE RULES OF THE ESTABLISHMENT OF GOOD LAWS AND REGULATIONS.** Our prayers and greetings go out to the Prophet Muhammad Shalallahu Alaihi Wassallam who has given us the uestration of hasanah in living this life. By following Him, may we be among those who believe and accept His intercession on the Day of Resurrection. Aamiin.

Of all the teaching, advice, guidance, and ministry assistance for us to complete this thesis, it is with all humility that the author will express incomparable gratitude for:

1. Prof. Abdul Haris, M.Ag, as Rector of Maulana Malik Ibrahim State Islamic University Malang.
2. Prof. Dr. H. Saifullah, S.H.M.Hum, as Dean of the Faculty of Sharia of Maulana Malik Ibrahim State Islamic University Malang.
3. Dr. H.M. Aunul Hakim, M.H, as Chairman of the State Law Study Program, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang.
4. Mr. Teguh Setyo Budi, S.HI., M.H, as a Lecturer pembimbing writer who has devoted time to providing direction and motivation in completing the writing of this thesis.
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Malang. The author would like to thank those who have provided guidance, advice, and motivation during college.

6. All lecturers of the Faculty of Sharia of Maulana Malik Ibrahim State Islamic University Malang who have taught us all. With sincere intentions, may their worship be part of worship to get the pleasure of Allah SWT.
7. Myself, thank you for being strong and fighting to this point. You're great. Never doubt yourself again, for God will always make way for His servants who always try.
8. My parents who always loved, loved, gave me a lot of attention, gave me a lot of knowledge, cared for me from childhood, gave encouragement and financed my school from kindergarten to college, forgive me if I still often upset mom and dad. In particular, Mom is the greatest mother I have. Hopefully with the new titles I get, I can make them even more proud.
9. My 3 sisters who always give full support and are always there if I need it, I can finally attend this semester. You should be proud of my achievements.
10. My grandparents, aunts and uncles who always gave me support and attention, I finally got to this point.
11. It was Budhe Min's family who gave me support and shelter from when I was in college until I graduated.
12. Nadia, Zahro, Mingwa, Febriana, Bety, Faruq, Hussein, Yuby and Nazila who always gave me support, support and listened to my grievances to this point.
13. My psikologit who always gives me the spirit to want to rise from adversity thanks to consultation with you is able to reach the point of love on your own.

14. To all sides that I cannot name one by one who has helped the author during the process until the end of this thesis.

With the completion of this thesis report, the hope that the knowledge we have gained during our studies can provide the benefits of living in the world and the hereafter. As a human being who never escapes mistakes, the author is eager for forgiveness, criticism and advice from all sides for future improvement efforts.

Malang, 30 October 2021

Writer,



Fadhila Rahma Radieanto Putri
NIM : 17230079

PEDOMAN TRANSLITERASI

A. General

Transliteration is the transfer of Arabic writing into Indonesian (Latin) writing, not Arabic translation into Indonesian. Included in this category are Arabic names from Arabs, while Arabic names from nations other than Arabic are written as the national language spelling, or as written in the reference book. Writing book titles in footnotes and bibliography, still uses this transliteration provision. There are many options and transliteration provisions that can be used in writing scientific papers, either with international or national standards or provisions specifically used by certain publishers. Latin Arabic Transliteration Guidelines which are the result of a joint decision (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia Number: 158 of 1987 and Number: 0543b / U / 1987.

1. Konsonan

The list of Arabic letters and their transliteration into Latin letters can be seen in the following:

ا = Not symbolized

ض = Dl

ب = b

ط = th

ت = t

ظ = dh

ث = tsa

ع = ‘ (comma facing upwards)

ج = j

غ = gh

ح = h	ف = f
خ = kh	ق = q
د = d	ك = k
ذ = dz	ل = l
ر = r	م = m
ز = z	ن = n
س = s	ه = h
ش = sy	و = w
ص = sh	ي = y

Hamzah (ء) is often symbolized by alif, when located at the beginning of a word, transliteration follows vowels, not symbolized, but when located in the middle or end of the word, it is symbolized by comma ('), reversed by comma (') to replace symbolع".

1. Long And Difong Vowels

Each Arabic writing in the form of vocal fathah is written with "a", kasrah with "i", dlommah with "u", while the long reading is written in the following way
 Vocal (a)panjang=âmisalnya قال menla qâla Long vowel (i) =î for example قبل be qîla Long vowel (u) = ûmisalnya دون become dûna.

B. Ta 'Marbuthah (ة)

Ta 'marbûthah Transliterated with "t" if it is in the middle of a sentence, but if *ta' marbûthah* is at the end of a sentence, it is transliterated using "h" e.g. الرسالة للمدرسة
 maka into *ar-risâlat li al-mudarrisah*, or if it is in the middle of a sentence consisting of *mudlâf* and *mudlâf ilayh arrangements*, then

transliterated by using "t" which is associated with the next sentence, for example in the mercy of God *fi rahmatûllah*.

C. Said Sandang and Lafdz al-Jalâlah

The word clothing is "al" (ال) written in lowercase letters, except it is located at the beginning of the sentence, while "al" in *lafadh jalâlah* which is in the middle of the *supported sentence (idhafah)* is then removed.

D. Indonesian - Arabic Names and word

In principle, any word derived from Arabic must be written using a transliteration system. If the name is the Arabic name of an Indonesian or arabic that has been Indonesian does not need to be written using the transliteration system.

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ABSTRAK

Fadhila Rahma Radieanto Putri, 17230079, **MEKANISME PEMBENTUKAN UNDANG-UNDANG NO.11 TAHUN 2020 TENTANG CIPTA KERJA MENURUT KAIDAH PEMBENTUKAN PERATURAN PERUNDANG-UNDANGAN YANG BAIK**. Program Studi Hukum Tata Negara, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing : Teguh Setyo Budi, S.HI, M.H

Undang-undang No.11 Tahun 2020 saat ini tengah menjadi sorotan dikalangan masyarakat Indonesia. Salah satunya dikarenakan oleh proses pembentukan undang-undang tersebut yang terkesan terburu-buru dan sangat tertutup. Akan tetapi saat pembuatan naskah akademik dan pembuatan rancangan undang-undangnya tidak ada saran dan masukan dari masyarakat. Isu hukum yang akan dibahas adalah apakah UU No.11 Tahun 2020 ini sudah sesuai dengan pembentukan peraturan perundang-undangan yang baik dan juga dianalisis dari konsep mashlahah. Pembentukan peraturan perundang-undangan yang baik ini demi selaras dengan Undang-undang No.12 tahun 2011 tentang Pembentukan Peraturan Perundang-undangan.

Skripsi ini menggunakan metode penelitian hukum Normatif dengan pendekatan konseptual dan pendekatan perundang-undangan. Sumber bahan hukum terdiri dari primer, skunder dan tersier. Bahan hukum yang didapatkan diolah dengan menggunakan metode analisis yuridis normative.

Hasil yang didapatkan dari penelitian ini adalah 1.) undang-undang tersebut masih belum memenuhi asas-asas yang ada didalam peraturan perundang-undangan yang baik secara asas formiil maupun asas materiil dikarenakan didalam proses pembentukannya yang dimulai dari perancangan, perencanaan, pembahasan, pengundangan dan penyebarluasannya undang-undang Cipta Kerja ini terdapat beberapa poin yang tidak sinkron dengan asas formiil, dikarenakan pembahasannya yang sangat cepat dan tertutup bahkan terkadang pembahasannya diadakan pada malam hari dan hari libur. Hal tersebut juga menjadikan cacat dalam asas kejelasan rumusan dimana undang-undang yang tekni pembahasannya dilakukan secara terburu-buru padahal peraturan yang dibahas didalamnya sangat banyak sehingga menjadikan undang-undang tersebut banyak kecurigaan di banyak 2.) Dalam perkara mashlahah UU Cipta Kerja, kondisi itu menjadi sangat mungkin terjadi oleh karena memang tidak ada pembagian draft RUU bagi para anggota DPR, juga tak ada mekanisme formal untuk tersedianya waktu membaca dan mengontrol substansi RUU, serta ketidakjelasan naskah RUU yang disahkan di paripurna. Didalam konsep mashlahah Disini UU Cipta Kerja adalah undang-undang yang tidak mendesak untuk dibuat dan tidak menimbulkan permasalahan serius jika tidak disahkan dimana sesuai dengan konsep masalah Hajiyat.

Kata kunci : Undang-undang; Mekanisme; Cipta Kerja.

ABSTRACT

Fadhila Rahma Radieanto Putri, 17230079, **THE MECHANISM FOR THE ESTABLISHMENT OF LAW NO.11 OF 2020 ON COPYRIGHT WORK ACCORDING TO THE RULES OF THE ESTABLISHMENT OF GOOD LAWS AND REGULATIONS.** Study Program of Constitutional Law, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang. Guide: Teguh Setyo Budi, S.HI,M.H

Law No.11 of 2020 is currently in the spotlight among the people of Indonesia. One of them is due to the process of forming the law that seems hasty and very closed. However, when making academic manuscripts and drafting laws there is no advice and input from the community.

The legal issue that will be discussed is whether Law No.11 of 2020 is in accordance with the establishment of good laws and regulations and also analyzed from the concept of mashlahah. The establishment of this good legislation in order to be in accordance with Law No.12 of 2011 concerning the Establishment of Laws and Regulations. This thesis uses Normative legal research methods with a conceptual approach and a statutory approach. Sources of legal materials consist of primary, skunder and tertiary. The legal materials obtained are processed using normative juridical analysis methods.

The result of this study is 1.) The law still does not meet the principles contained in the laws and regulations that are both fundamentally formiil and material principles because in the process of formation that starts from the planning, planning, discussion, promulgation and dissemination of this Copyright Law there are some points that are not in sync with the formiil principle for example, when the process of law formation takes place in violation of the principle of openness because The discussion is very fast and closed even sometimes the discussion is held at night and holidays. It also makes a flaw in the principle of clarity of formulation where the law that is discussed in a hurry even though the regulations discussed in it are very much so that it makes the law a lot of suspicion in many when viewed from the process of proposing and planning Law No.11 of 2020 is actually originally to bring benefits to the government and the people of Indonesia. 2.) In the case of the Work Copyright Law, the condition becomes very likely because there is no division of the draft bill for members of the House of Representatives, nor is there a formal mechanism for the availability of time to read and control the subtansi of the bill, and the vagueness of the text of the bill passed in plenary. In the concept of mashlahah Here the Copyright Law is a law that is not urgent to be made and does not cause serious problems if it is not passed which is in accordance with the concept of Hajiyat masalah.

Keywords: Law; Mechanism ; Job Creation.

نبذة مختصرة

فضيلة رحمة رديانتو بوتري ، 17230079 ، دراسة معيارية لتشكيل قانون رقم 11 لسنة 2020 بشأن خلق فرص العمل .برنامج دراسة القانون
Teguh Setyo Budi, S.HI, M.H: الدستوري ، كلية الشريعة ، مولانا مالك إبراهيم الدولة الإسلامية جامعة مالانج .المشرف

القانون رقم 11 لعام 2020 هو حاليا في دائرة الضوء بين شعب إندونيسيا. واحد منهم يرجع إلى عملية تشكيل القانون الذي يبدو متسرعاً ومغلقاً جداً. ومع ذلك، عند إعداد المخطوطات الأكاديمية وصياغة القوانين لا توجد مشورة ومدخلات من المجتمع.

والمسألة القانونية التي سيتم مناقشتها هي ما إذا كان القانون رقم 11 لسنة 2020 يتوافق مع وضع قوانين ولوائح جيدة ويتم تحليله أيضاً من مفهوم المشعلة. وضع هذا التشريع الجيد بما يتوافق مع القانون رقم 12 لسنة 2011 بشأن وضع القوانين واللوائح. تستخدم هذه الأطروحة أساليب البحث القانوني المعيارية مع نهج مفاهيمي يتم عندما لا ينتقل الباحثون من سيادة القانون القائمة ، لأنه لا توجد أو لا توجد سيادة القانون للمشاكل التي تقتصر علاناروتستستخدم نَحْجاً قانونياً.

والنتيجة التي تم الحصول عليها من هذا البحث هي أن القانون لا يزال لا يفي بالمبادئ الواردة في القوانين والأنظمة التي هي في حد ذاتها مبادئ أساسية و مادية لأنه في عملية التشكيل التي تبدأ من تصميم وتخطيط ومناقشة وإصدار ونشر قانون حقوق الطبع والنشر هذا ، هناك بعض النقاط التي لا تتوافق مع مبدأ على سبيل المثال عندما تتم عملية تشكيل القانون. انتهاك مبدأ الانفتاح لأن المناقشة سريعة جداً ومغلقة حتى في بعض الأحيان يتم إجراء المناقشة ليلاً وعطلات. كما أنه يشكل عيباً في مبدأ وضوح الصياغة حيث القانون الذي يناقش في عجلة من أمره على الرغم من أن اللوائح التي نوقشت فيه هي إلى حد كبير بحيث يجعل القانون الكثير من الشكوك في العديد من الدوائر. P ستة إضافات بعد جلسة في قانون حق المؤلف. وفي حالة قانون حق المؤلف، يصبح الشرط مرجحاً جداً لأنه لا يوجد تقسيم لمشروع القانون لأعضاء مجلس النواب، كما لا توجد آلية رسمية لتوافر الوقت لقراءة ومراقبة النصوص الفرعية لمشروع القانون، وغموض نص مشروع القانون الذي تم تمريره في الجلسة العامة. في مفهوم المشعلة هنا قانون حق المؤلف هو قانون غير ملح ولا يسبب مشاكل خطيرة إذا لم يتم تمريره وهو ما يتفق مع مفهوم حجيات مسلحة.

الكلمات الرئيسية: .دستور؛ آلية ؛ خلق العمل

CHAPTER I

DISCUSSION

A. Background

The process of drafting a bill in Indonesia is very much reaping pro and con conflicts from the wider community. Moreover, currently being hotly debated is Law No.11 of 2020 on Copyright Work. ¹In the 2nd period Joko Widodo served as President of the Republic of² Indonesia,he had a big goal in running his government, one of which is job creation that will later be in sync with the human resource development program (SDA).³The law uses the concept of omnibus law. The concept of omnibus law is also often referred to as the Omnibus Bill which is characterized by the technique of forming laws with the intention to make changes at once to some existing and previous laws. This Copyright Law uses omnibus law techniques because the formation technique makes a new law that was initially associated with the need to make changes to several existing laws at once.⁴

The Law on Copyright work, it also contained the purpose to simplify the number of rules that are considered to inhibit the speed of investment in order to spur the acceleration

¹Muhammad Irham Roihan, 'OMNIBUS LAW IS REVIEWED FROM THE PERSPECTIVE OF THE LEGISLATIVE SYSTEM IN INDONESIA (Study of Law No. 11 of 2020 on Copyright Work). (Faculty of Law, Universitas Islam Indonesia, 2021). 20

² Ir. H. Joko Widodo is the 7th President of the Republic of Indonesia who took office on October 20, 2014. Born in Surakarta, Central Java, on June 21, 1961, Joko Widodo first jumped into government as Mayor of Surakarta (Solo) from July 28, 2005 to October 1, 2012. Quoted from the website of the President of the Republic of Indonesia, <https://www.presidentri.go.id/presiden-joko-widodo/>

³Lukas, 'Four Presidential Instructions related to Job Creation Efforts', in *President of The Republic of Indonesia*<<https://www.presidentri.go.id/siaran-pers/empat-instruksi-presiden-terkait-upaya-penciptaan-lapangan-kerja/>> [accessed 2 January 2021]

⁴Jimly Asshiddiqie, *Omnibus Law and Its Implementation in Indonesia* (Jakarta: Constitution Press, 2020). 5-6

of economic growth in the country, and used to reduce non-essential rules. UU Cipta Kerja directly contains various provisions that result in very thick pages, integrating material derived from 82 laws into a new legal unit accompanied by a 2,500-page academic manuscript. The number of articles that were repealed, revised or amended from the 82 laws amounted to 2,512 articles combined into a single law that only contained 174 articles. UU Cipta Kerja is also made to overcome regulations that overlap with central regulations so as to inhibit investment that will enter.⁵ UU Cipta Kerja is entering the annual priority prolegnas⁶ of DPR-RI in 2020.

The manufacturing process began from the discourse on October 20, 2019 President Jokowi in his first speech while serving as Head of State for the 2nd period he said that whatever becomes a regulatory obstacle must be trimmed. The government will submit to the Dpr to issue two major laws, namely the Work Copyright Law and the MSME Empowerment Law. Simplification of bureaucracy and lengthy procedures must be done in a big way so that investment for job creation can be prioritized.⁷ The Work Copyright Law was discussed again by President Joko Widodo on Monday, December 16, 2019 at the National Development Planning Conference (Musrenbangnas) of the National Medium Term Development Plan (RPJMN) 2020-2024 at the State Palace. Then

⁵Jimly Asshiddiqie, *Omnibus Law and Its Implementation in Indonesia* (Jakarta: Constitution Press, 2020). 220-225

⁶ The Annual Priority Prolegnas is a list of bills drafted for a period of 5 (five) years within 1 (one) period of membership of the House of Representatives. Quoted from Article 1 paragraph 3 of the Regulation of the House of Representatives of the Republic of Indonesia Number 2 of 2016 on Procedures for the Preparation of National Legislation Program, State News of the Republic of Indonesia, Year 2016

⁷Speech of the First Term of President Joko Widodo's Term as President of the Republic of Indonesia Term 2019-2024', in *President of The Republic of Indonesia* <https://www.presidentri.go.id/transkrip/pidato-masa-awal-jabatan-presiden-joko-widodo-sebagai-presiden-republik-indonesia-masa-jabatan-2019-2024/> > [accessed 20 December 2020]

on December 27, 2019 President Joko Widodo held a limited meeting to discuss the Work Copyright Law at the Presidential Palace of Bogor, West Java.

The Copyright Law was officially submitted by the government to the Dpr in mid-February 2020 precisely on the 13th, as the government's initiative law to the House of Representatives (DPR). The Copyright Law which in technical preparation uses the Omnibus Law model includes eleven policies as follows: Simplification of Licensing; Investment Requirements; Employment; Facilities, Empowerment, and Protection of UMK-M and Operation; Ease of effort; Research and Innovation Support; Administration of Government; Implementation of sanctions; Land Procurement, Transfer of Agricultural Land, Land, and Other Related Issues; Investment and National Strategy Projects; Economic Area.⁸ Then on April 2, 2020 at the 13th plenary meeting began the assignment of the Copyright Law to the legislative body. In the DPR website there are a total of 53 meetings to discuss the Work Copyright Law from the beginning of assignment to endorsement in the plenary meeting on October 5, 2020.⁹

The parties involved with the establishment of the Copyright Law are the most important is the government (executive institution). The executive institute in this case the Coordinating Minister for Economic Affairs issued decree No. 378 of 2019 on the Joint Task Force of the Government and kadin for Omnibus Law Public Consultation. After the formation of the task force, Minister of Economy Airlangga Hartarto, accompanied by Minister of Manpower Ida Fauziyah, Minister of Finance Sri Mulyani,

⁸Riyanto Sigit, Sulistiowati and et al, *Critical Note Policy Paper and Recommendations Against The Work Copyright Bill* (Yogyakarta: Faculty of Law, Gajah Mada University, 2020). 4

⁹ 'Omnibus Law Bill', in the *House of Representatives of the Republic of Indonesia* <https://www.dpr.go.id/uu/detail/id/442> > [accessed 23 November 2020]

Lhk Minister Siti Nurbaya, Minister of ATR Sofjan Djalil, to Minister of Law and Human Rights Yasonna Laoly delivered the presidential letter and draft omnibus law bill.¹⁰ Then the legislature as the institution that drafts national legislation, and discusses the draft law, discusses the bill suggested by the president, establishes legislation with the president, accepts the bill submitted by the DPD and approves or does not approve government regulations in lieu of the Law (submitted by the President) to be set into law. Furthermore, political parties and businessmen are as one of the tools of the state to become political control.¹¹

Demi realizes the goal of forming an Indonesian state government and realizing a prosperous, fair, and prosperous Indonesian society based on Pancasila and the constitution of the Republic of Indonesia in 1945, the state needs to make various efforts to fulfill the right of citizens to jobs and livelihoods that are worthy of humanity through work copyright law. This copyright law is also expected to attract as many Indonesian workers as possible amid highly competitive economic competition and the demands of economic globalization. Then for the realization of work creation, adjustment of various aspects of regulation related to the ease, protection, and empowerment of cooperatives and micro, small, and medium enterprises, the improvement of the investment ecosystem, and the acceleration of national strategic projects, including increased protection and welfare of workers. So this Work Copyright Law was formed due to the

¹⁰ Nicha, M. *Finally the Draft Omnibus Law Copyright Work Bill Submitted to the House.* (<https://kumparan.com/kumparanbisnis/akhirnya-draf-ruu-omnibus-law-cipta-kerja-diserahkan-ke-dpr-1spGYvTxtZx/full>. Retrieved October 10, 2020, 2 p.m.)

¹¹ Fakhrur, Razy Muhamad and Fedryansyah Muhammad, 'Conflict of Civil Society Movement and Government In Government Process of Drafting Omnibus Law', *Journal of Conflict Resolution Collaboration*, III (2020), 78-79.

adjustment of various aspects of arrangements related to aspects that already exist in the previous Law has not been able to meet the acceleration of work copyright.¹²

Proses drafting this law a lot of opinions from the public including researchers who do not agree with the existence of this law because the number of drafts circulating to the public is unclear and different from the original. The number of opinions from the public is none other than because the work is in *the deadline* in just 100 days of work by President Jokowi and in the manufacturing process does not involve many parties. Whereas at this time also our country is experiencing the Covid-19 pandemic, but the government seems to be in a hurry to complete the Copyright Law so that it causes many things that want to be researched.¹³ Its endorsement in the midst of the Covid-19 pandemic is so inappropriate that it caused a lot of controversy and led to a demonstration of the rejection of the controversial law openly in various regions of the country. Thousands of people from various circles such as students, workers and civilians held simultaneous demonstrations on Tuesday, October 6, 2020. The action they do in several major cities including DKI Jakarta, Banten, Surabaya, Malang, Bandung, Bekasi, Solo, Jogjakarta etc. There was a lot of chaos between the demo period which was allegedly infiltrated by certain parties who became chaos at the demo point.¹⁴

¹² 'Undang-undang Nomor 11 Tahun 2020 tentang Cipta Kerja'.(Lembaran Negara Tahun 2020 Nomor 6573)

¹³Fajar Kurniawan, 'Problematika Of The Establishment of Work Copyright Bill With Omnibus Law Concept on Employment Cluster Article 89 Number 45 On Granting Severance to Peers Who are laid off', *Journal of Panorama Law*, 5 (2020). 64

¹⁴ 'Demo Reject Omnibus Law: Hot in The Region, Adem in Jakarta', in *CNN Indonesia* "<https://www.cnnindonesia.com/nasional/20201007064929-20-555237/demo-tolak-omnibus-law-panas-di-daerah-adem-di-jakarta> " [accessed 15 October 2020]

This Work Copyright Law is based on its academic arguments on economic development approaches that cause harm in development practices that have been running using inclusivity with sustainable development models. Then for the sake of accelerating investment this law ignores public participation. This happened throughout the process of making this law. Then from the beginning public participation is considered an obstacle that should be avoided. Then, for the sake of the creation of easy investment, the licensing processes that should exist in the area are returned to the central government. This causes the authority of autonomous regions to be reduced, even though autonomous power is a way to bring the government closer to the community in making decisions so that its decision-making becomes democratic and participatory. The Copyright Act also hints at the existence of about 500 derivative rules that fear it will have the potential to give birth to hyper-regulated and much more complex arrangements.¹⁵.

The focus of this research lies in the process of forming legislation up to the process of establishing it. This Copyright Law is very interesting discussed by researchers because the formation process seems not *to make sense* of the considerations that exist in the philosophical, sociological and juridical foundations of the Copyright Law as described above. Then the thing that is very disturbing again is the Work Copyright Law when it was passed during the plenary meeting on October 5, 2020 is still changed editorially because *typo* in several words. Though it should not be done considering the draft Work

¹⁵ Riyanto Sigit, Sulistiowati and dkk, *Kertas Kebijakan Catatan Kritis Dan Rekomendasi Terhadap RUU Cipta Kerja* (Yogyakarta: Fakultas Hukum Universitas Gajah Mada, 2020).5-6

Copyright Law at that time was not open access to the public from the official website of the government or dpr. Article 5 letter g of Law No.12 of 2011 concerning the Establishment of Laws and Regulations which reads "In forming laws and regulations must be based on the principle of the establishment of good laws and regulations, one of which is openness". Then explained again that the principle of openness in question is in the process of establishing laws and regulations ranging from planning, preparation, preparation, and discussion should be transparent and open to the public. So all levels of society have the widest opportunity to provide input in the process of forming laws and regulations¹⁶.

The Copyright Law if correlated with Islamic law is not in harmony with the concept of Maslahah. A controlled maslahah that considers something according to reason is good and controlled by nash syara'. Like Ulil Amri who upholds justice among his people, it is a good and mashlahat act. ¹⁷ Here the government as ulil amri should be fair to listen to the aspirations of its people. But the fact that at the demonstrations that took place the government and the Dpr seemed indifferent and did not want to meet directly the demonstrators. Many of the activists were arrested for unclear reasons. Where is our justice as a people? Is not the laws and regulations made in the interests of many people, not just a few people. Then it needs to be studied through the concept of good law and mashlahah. Therefore, the researcher took the title of the Copyright Law in

¹⁶ Maria Farida Indrati S, *Science of Legislation (Type, Function and Content Material)* (Yogyakarta: PT Kanisius, 2007).

¹⁷ Amir Syarifuddin, *USHUL FIQH 2*, 4th edn (Jakarta: Kencana Prenadamedia group, 2008). 241

perspective of the Rules of The Establishment of Good Laws and Regulations and the Concept of Mashlahah.

B. Problem Formula

1. How to establish Law No.11 of 2020 on Copyright Work according to the principles of forming good laws and regulations?
2. How mashlahah review of the establishment of Law No.11 of 2020 on Copyright Work?

C. Research objectives

1. To analyze the establishment of Law No.11 of 2020 on Copyright work according to the principles of the establishment of good laws and regulations.
2. To analyze Mashlahah's review of the establishment of Law No.11 of 2020 on Copyright.

D. Benefits of Reasearch

The usefulness or benefits of research to be achieved in general in a study can be distinguished in 2 (two) aspects, namely *theoretic* aspects and practical aspects. In connection with this research, the expected benefits of this thesis research are as follows:

1. Theoretical Benefits: This paper is expected to fill and expand the treasures of science in the field of legal science. Especially the governance of the State in its study related to the establishment of laws and regulations in general and the process of harmonization of a bill carried out by the Government together with

the House of Representatives.

2. Practical Benefits: The results of this study are expected to contribute thought to academics as well as practitioners and the general public at large, related to the Bill.

E. Operational Definition

1. Principles of The Establishment of Good Law Regulations.

Principles that are based on Asas (truth that is the basis of acting, thinking) or basis. Formation that is the process; the way; the manufacture. Laws are state rules and regulations made by the government. ¹⁸Rules are orders (instructions, rules, provisions) made to regulate things. Legislation is the process of establishing or the process of making state regulations, both at the central and regional levels. In Law No.12 of 2011, it is explained that the establishment of laws and regulations is the process of making laws and regulations that basically start from planning, preparation, preparation techniques, formulation, discussion, endorsement, promulgation, and dissemination. ¹⁹ The establishment of the Law is a natural thing for the State of law. Normatively, the Act is defined as a law established by the House of Representatives by the joint consent of the President. The establishment of laws and regulations is the creation of laws and regulations

¹⁸ Ministry of Education and Culture of the Republic of Indonesia', in *KBBI Daring* <<https://kbbi.kemdikbud.go.id/>> [accessed 30 January 2021]

¹⁹ Maria Farida Indrati S, *Science of Legislation (Type, Function and Content Material)* (Yogyakarta: PT Kanisius, 2007). 10-11

that include the stages of planning, preparation, discussion, endorsement or determination, and promulgation. Considering that the law is a law, the formation of legislation can be interpreted as the making of legislation that includes the stages of planning, drafting, discussion, ratification or determination, and promulgation.²⁰

2. Mashlahah

Mashlahah comes from the word shalaha with the addition of "alif" in the beginning which if interpreted in a word is "good" acronym with the word "bad" or "broken". It is a mashdar with the meaning of the word shalah, i.e. "benefit" or "regardless of damage. So ²¹Mashlahah is something that brings benefits (benefit) and keeps away mudarat (damage). Maslahah in this title means that the theory in this study will be used as a basis to determine the good or bad of a rule of law based on or without a proposition that supports or rejects it.

F. Research Methods

1. Type of research

This research uses a type of normative juridical legal research, Normative Legal Research is legal research conducted by examining library materials or secondary data. ²² The study discusses doctrines or principles in the science of law. Normative Juridical research is theoretically rational so its disclosure is

²⁰ Pasal 1 Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan (Lembaran Negara Tahun 2011 Nomor82)

²¹ Amir Syarifuddin, USHUL FIQH 2, 4th edn (Jakarta: Kencana Prenadamedia group, 2008). 366

²²Sri Mamudji Soejono Soekanto, *Normative Legal Research: A Brief Review* (Jakarta: Rajawali, 2003). 13

bound to methods based on deductive logic requirements²³. Legal research as such, does not know field research (*field reaserch*) because the researched is legal materials so it can be said as *library based, focusing on reading and analysis of the primary and secondary materials*. Therefore, it is more appropriate to use the study of legal science as can be found in the legal literature in the Netherlands. The term "study" is similar to the Dutch term *bedrijven* or *beoefening*²⁴. As a normative science, the science of law shows its reflection on basic norms that are given concrete forms in the norms specified in certain fields. Jadi can conclude that normative legal research method is a scientific research procedure to find the truth based on the logic of legal science from the normative side.

2. Research Approach

The scientific value of a discussion and problem solving of the legal issues studied depends largely on the way *the approach* will be used. If the approach is not right then, the value of a study is inaccurate and the truth can be overturned. Such a problem is greatly avoided by researchers. Similarly, in a normative legal study, which uses a different approach, the conclusion will be different as well. Therefore, it is very important to know and understand the approach required in a normative legal research. The approach that will be used by researchers in normative legal research is 2 (two) namely :

²³Johnny Ibrahim, *Normative Legal Research Theory and Methodology*, ed. by Setiyono Wahyudi, 4th edn (Malang: Bayumedia Publishing, 2008). 46

²⁴J.J.H Bruggink, *Rechtsreflecties, grondbegrippen uit de rechtstheorie, Indonesian translation: Reflections on the Law by Bernard Arief Sidharta* (Bandung: Citra Aditya Bakti, 1999). 138

- a. The research approach used by researchers is the *Conceptual Approach*. The conceptual approach is carried out when the researcher does not move away from the existing rule of law, because it has not been or the absence of the rule of law for the problem at hand. To build a concept, the researcher not only fantasizes, but the first thing he must do is depart from the views and doctrines that develop in the science of law..
- b. Statutory approach. A normative research must certainly use the restriction of legislation, because what will be studied is the rule of law that is the focus as well as the central theme of a research. Legal analysis produced by a normative legal study that uses a statutory approach will be more accurate if assisted by one or more suitable approaches, in order to increase appropriate legal considerations to deal with the legal problems faced.²⁵

3. Source Legal Materials

In legal research there is no known data, because in legal research, especially normative juridical sources of legal research obtained from literature not from the field, for that the term known is legal material. In normative legal research literature materials are the basic material that in research science is generally called secondary legal material. However, it does not rule out the possibility that the author can take a sample of data from some cases that occur in Indonesia. In

²⁵ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, ed. by Setiyono Wahyudi, 4th edn (Malang: Bayumedia Publishing, 2008).305

secondary legal research is divided into 3 legal materials, namely primary, secondary and tertiary.²⁶

a. Primary Legal Materials

It is an authoritarian legal material, meaning it has authority. Primary legal materials consist of laws and regulations, official records or treatises in the making of legislation or judge's rulings.²⁷ Like :

- 1.) Constitution of the Republic of Indonesia 1945
- 2.) Law No.12 of 2011 on the Establishment of Laws and Regulations;
- 3.) Law No.11 of 2020 on Copyright Work.

b. Secondary Law

Secondary legal material is all publications about the law that are unofficial documents. Such publications are instructions or explanations of primary legal material.²⁸ Among the secondary legal materials in this study are books, thesis, documents and other journals related to the concept of omnibus law, good legislative theory and mashlahah concept. Like :

- 1.) Book of Science 1 (Type, Function, and Content Material);

²⁶Soejono Soekanto and Sri Mamudjdi, *Normative Legal Research Brief Review* (Jakarta: Rajawali Press, 2006).24

²⁷Peter Mahmud Marzuki, *Legal Research* (East Jakarta: Prenada Media Group, 2005).181

²⁸Sri Mamudji Soejono Soekanto, *Normative Legal Research: A Brief Review* (Jakarta: Rajawali, 2003). 33-37

- 2.) Book of Laws and Sciences 2 (Process and Techniques of Its Formation);
 - 3.) Normative Legal Research Methods;
 - 4.) Indonesian E-Book: The Study of The Science and Theory of Legislation;
 - 5.) Ushul Fiqh's book discusses Mashlahah;
- c. Tertiary Legal Materials.

It is a legal material that is helpful or supporting primary legal materials in research that will strengthen the explanation in it about the Work Copyright Law that uses the concept of Omnibus Law, such as KBBI and English Dictionary, as well as Research Journals, encyclopedias and articles that contain about the Copyright Law.

4. Data Collection Techniques

So to further refine and obtain the materials for writing this research proposal, the following data collection methods have been carried out :P umuman data beginning with the activity of tracing laws and other positive legal sources of the legal system that are considered relevant to the subject of the legal issues being faced. If relevant legal sources are obtained as fully as possible, the activity continues with an assessment of the relevance and impact of the application of

such legal sources on the position of the matter and the status of the case . So, the things that are important to note are²⁹ :

- a. The process of analyzing laws and regulations, including international treaties deemed relevant to the subject;
- b. The process of analyzing court decisions that already have permanent power on cases similar to those faced;
- c. The process of analyzing documents, contracts that contain rights and obligations that bind the parties in the matter;
- d. Based on these three points, there will be a legal opinion or legal opinion and be used as a conclusion of analysis of laws and regulations.³⁰

5. Data Processing Methods

After the analysis process is carried out, then the steps that must be done by legal researchers are :

- a. Identify legal facts and resolve irrelevant matters to establish the legal issues to be solved;
- b. The collection of legal materials that must have relevance also from non-legal materials;

²⁹ Sri Mamudji Soejono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali, 2003).33-37

³⁰ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2018).110

- c. Conduct a review of the issues to be discussed that are submitted based on the materials that have been collected.;
- d. Draw conclusions in the form of arguments in answering existing problems;
- e. Provide a prescription in the argument that has been built in the conclusion.

From these steps, the author will conduct a review of legal issues that have been poured into the formulation of the problem to draw conclusions based on legal materials that have been collected through a conceptual approach.

G. Previous Research

To prove the originality of research from other studies that discuss similar things, but have a variety of slacks or concentrations that are different from this study, the slackness or concentration of the field on previous research will be presented below:

1. Previous Research Journal entitled Policy Paper: Critical Notes and Recommendations against the Work Copyright Bill conducted by Prof. Dr. Sigit Riyanto, S.H., LL.M. Prof. Dr. Maria S.W Sumardjono, S.H., MCL, MPA., et al as lecturers of the law faculty of Gajah Mada University, was made on November 6, 2020. The result of the research is that the Copyright Bill has crucial problems when viewed from methodological aspects, paradigms and regulatory substances in policy areas. There is a contradiction that on the one hand this Law was made with the intention to overcome the problem of *over-regulated* and *over-lapping* field arrangements related to development and investment, but on the other hand, the Copyright Law requires the existence of about 500 derivative rules so as to potentially give birth to *hyper-regulated* and a much more complex arrangement.

Then participation is an important aspect in the preparation of laws and regulations that concern the interests of the wider community.

2. Previous Research Journal with the title of Drafting Law in the Field of Investment: Study of The Establishment of *Omnibus Law* conducted by Vincent Suriadinata published by the Faculty of Law of Satya Wacana Christian University was made in October 2019. The result of the research is that it is necessary to conduct a comprehensive and in-depth inventory of investment-related problems. This is done so that in drafting the investment law in the future, all aspects related to investment have been understood. So that in the future there is no confusion or even legal vacuum because there is no legal instrument that regulates certain problems. Then, it is necessary to socialize to the government, members of the House of Representatives, legal practitioners and academics and the wider community about *omnibus law* and its purposes and benefits so that when *omnibus law* is applied it is familiar.
3. Previous Research Journal with the title Problematika Of The Establishment of Work Copyright Bill With *Omnibus Law* Concept in Employment Cluster Article 89 Number 45 On Granting Severance to Workers Who Are Laid Off by Fajar Kurniawan Postgraduate Faculty of Law, University of Surabaya, was made in June 2020. The results of the journal research are in essence Rancangan Undang-Undang Cipta Kerja is a regulation used as a regulation by the government to build the Indonesian economy to be even more. But it should be in substance the Government and the Dpr should not forget the interests of the workers who in fact are our own people. But on the other hand there must also be

other ways to be able to attract investors to invest in Indonesia without having to sacrifice the interests of the community.

4. Previous Research Journal with the title of Draft *Omnibus Law Copyright Work* In Perspective of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations conducted by Yhannu Setyawan as a lecturer at the Faculty of Law, University of Lampung was made in March 2020. The result of the research is that the Draft *Omnibus Law Copyright Work* is not in accordance with Law No. 12 of 2011 on the Establishment of Laws and Regulations, because in Law No. 12 of 2011 does not recognize the grouping of Chapters in chapters and Articles in articles as stated in the *Omnibus Law Copyright Bill*.

Here is a table that distinguishes between previous research and research that will be conducted by researchers:

No	Heading	Legal Issue	Research Result	Difference	Novelty
1.	Policy Paper: Critical Notes and Recommendations against the Work	Executive summary, Review of policy areas and paradigms.	The result obtained from this study is that the law still does not meet the principles contained in the regulations, Good legislation formil	Research conducted by previous research focuses on the content of the Law Copyright	The novelty in this research is the focus on the establishment of Law No.11 of 2020 on The Perspective of

	<p>Copyright Bill conducted by Prof. Dr. Sigit Riyanto, S.H., LL.M.Prof. Dr. Maria S.W Sumardjono, S.H., MCL, MPA. , et al. faculty of law, Gajah Mada University 2020.</p>		<p>and material principle because in the process of its formation starting from the design, planning, discussion, promulgation and dissemination of the Copyright Law.</p>	<p>work and its fields.</p>	<p>the establishment of good laws and regulations and the concept of mashlahah.</p>
2.	<p>Drafting laws in the field of investment : The</p>	<p>Comparison of <i>Omnibus Law</i> in 3 (three) countries,</p>	<p>The difference between this research and my research is that it focuses more on</p>		

	<p><i>Omnibus Law</i> Establishment Study conducted by Vincent Suriadinata was published by the Faculty of Law of Satya Wacana Christian University 2019.</p>	<p>Characteristics of <i>Omnibus Law</i> as well as Projections and challenges of its implementation in Indonesia</p>	<p><i>omnibus law theory..</i></p>	
3.	<p>Problematika Of The Establishment of Work Copyright Bill With <i>Omnibus</i></p>	<p>Omnibus Law Concept in The Manufacture of Legislation in Indonesia and</p>	<p>What distinguishes this research from the research that I will examine is that this research focuses on the concept of Omnibus Law and</p>	

	<p><i>Law</i></p> <p>Concept in Employment Cluster Article 89 Number 45 Concerning The Provision of Severance to Workers Who Are Laid Off by Fajar Kurniawan Postgraduate Faculty of Law, University of Surabaya, 2020.</p>	<p>Problematika s Of The Establishmen t of Work Copyright Bill With Omnibus Law Concept on Employment Law Article 89 Concerning The Provision of Severance to Workers Who Are Laid Off</p>	<p>the problem of its application in the Copyright Law and focuses on the labor cluster..</p>	
4.	<p>Omnibus Law Draft</p>	<p>Effectiveness of The</p>	<p>The difference between previous</p>	

	<p><i>Copyright Work In Perspective Of Law No. 12 of 2011 Concerning Establishme nt of Laws and Regulations carried out by Yhannu Setyawan as a lecturer of the Faculty of Law University of Lampung 2020.</i></p>	<p>Implementati on of Laws and Regulations with <i>The Method of Law In Indonesia and the Implications of the Omnibus Law Draft on Copyright Work in accordance with other Laws and Regulations</i></p>	<p>research and research that I will examine is the effectiveness of the application of omnibus law and the implications of the Copyright Law with other laws.</p>		
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Based on the research table above this thesis is the original work of the author because the results and novelty are different from previous research. The result

obtained from this research is that the law still does not meet the principles contained in the laws and regulations that are both fundamentally formal and material principles because in the process of formation that starts from the design, planning, discussion, promulgation and dissemination of the Copyright Law.

CHAPTER II

LIBRARY REVIEW

A. Principles or Principles of Forming Good Laws and Regulations

The establishment of laws and regulations aims to form a good law. ³¹According to I.C. Van Der Vlies and A. Hamid S. Attamimi are divided into 2 (two) classifications³², namely :

- a. Formal principles include: the principle of clear purpose or *beginsel van duidelijke doelstelling*; the principle of proper organ/institution or *beginsel van het juiste orgaan*; the principle of the need for arrangement or *het noodzakelijkheids beginsel*; the principle of being able to be implemented or *het beginsel van uitvoerbaarheid*; the principle of consensus or *het beginsel van consensus*.
- b. Material principles include: correct terminology and systematic principles or *het beginsel van duidelijke terminology en duidelijke systematiek*; recognizable principle or *het beginsel van de kenbaarheid*; principle of equal treatment in law or *het rechtsgelijkheidsbeginsel*; principle of legal certainty

³¹ (Article 5 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations (State Gazette of 2011 Number 82)

³² After his legal studies, Van der Vlies from 1969 worked as chairman of the Principles of Constitutional Law and Administration at the University of Amsterdam, first as a student assistant and lastly as a senior staff member. Since 1983 he has worked as a lawyer, adviser and director in three ministries. Prof. dr. Dr IC van der Vlies has and still has many additional positions, both in law and culture. For example, he chairs the Advisory Committee of the Cultural Heritage Preservation Act, which under his leadership in 1998 adopted the Cultural Heritage Preservation Act. Released evaluation of legal operations. From September 1, 1995. Quoted from Royal Decree of May 29, 1995, no. 95.004465 on the honorable discharge of the current Vice-President and appointment of a new Vice-President of the Council for the Interior', in: Government Gazette , July 20, 1995

or *het rechtszekerheids beginsel*; principle of implementing law according to individual circumstances or *het beginsel van deindividuele rechtbedeling*.³³

The principles of the establishment of laws and regulations should reflect a good form of legislation. If it is applied to a law, it will form a good law in accordance with the principles already stated in the law without abandoning the principles of justice. While A. Hamid S. Attamimi argued about the establishment of good laws and regulations. Attamimi's opinion mentions that, the establishment of appropriate Indonesian laws and regulations, is as follows: Cita Hukum Indonesia; State Principles Based on Laws and Principles of Government based on the Constitution and other principles. The establishment of laws and regulations must prioritize clarity of purpose, in the sense that the purpose of the establishment of these laws and regulations must be clear, fulfilling the wishes of many people in order to create equitable certainty so as to distribute benefits to all Indonesian people. ³⁴

The principle adopted from the concept of the state Pancasila law has a truth that has been recognized by the Indonesian nation since long ago until now. The concept of Pancasila law state is undoubtedly the truth in realizing the principle of the establishment of laws and regulations in Indonesia. The principles in the state concept of Pancasila law can be spelled out and realized into the principles of the establishment of good laws and regulations, which create certainty, justice, and benefits for all Indonesians. ³⁵Here we

³³ Maria Farida Indrati S, *Ilmu Perundang-undangan (Jenis, Fungsi dan Materi Muatan)* (Yogyakarta: PT Kanisius, 2007).228

³⁴ (Article 5 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations (State Gazette of 2011 Number 82)

³⁵ Maria Farida Indrati S, *Science of Legislation (Type, Function and Content Material)* (Yogyakarta: PT Kanisius, 2007). 228

can further examine whether the Copyright Law has fulfilled the principles in Pancasila. The principle of the establishment of laws and regulations must adhere to the principles of the establishment of good laws and regulations in accordance with the principles of justice. The principle is the norm that must be realized in the laws and regulations and that applies coercively. The principles of the establishment of good laws and regulations include: The laws and regulations do not apply retroactively; Laws and regulations made by higher authorities, have a higher position, this is in accordance with the hierarchy of legislation; Laws and regulations that are particularly sideways to the general laws and regulations; Legislation as a means to achieve spiritual and material well-being for society and individuals as a means of obtaining justice..³⁶

The principles of the establishment of laws and regulations can be divided into two principles, namely formal principles and material principles. Formal principles include a clear principle of purpose for the sake of fairness, the proper foundation of institutions for shaping law, the necessary basis of arrangement, the principle of implementation, and the basis of consensus. While the material principle is the true principle of terminology and systematics, the principle can be recognized, the principle of equal treatment in law, the principle of legal certainty, and the principle of legal implementation in accordance with individual circumstances. In forming laws and regulations must be done based on the principle of the establishment of good laws and regulations including clarity of purpose in forming appropriate laws and regulations, institutions or forming officials that are credible institutions democratically elected by the

³⁶ Van de Vlies, *Handboek Wetgeving* (Zwolle: Tjeenk Willink, 1987).175

people as holders of state power, conformity between types, hierarchies, and content materials, can be implemented, ³⁷usefulness and effectiveness, clarity of formulation, and openness.³⁸

Undang-Undang Cipta Kerja which uses the concept of omnibus law should be reviewed in terms of the theory of laws and regulations by Prof.Dr. A. Hamid S. Attamimi, SH. Because there is a lot of controversy related to the process of making the bill until it has been passed. In terms of formil and materiil very much make this law many who deviate from Law No.12 of 2011. For further research in the future we will be able to conclude whether this law has fulfilled good principles in the theory of legislation or even many that deviate from existing principles. ³⁹

B. Concept of Mashlahah

Al-Ghazali argues that Mashlahah is something that brings benefits (good luck) and keeps away harm (damage), but the essence of mashlahah itself is to maintain the purpose of syara' (in establishing the law). The meaning of mashlahah in Arabic is "actions that encourage human goodness". So it has the meaning of everything that is beneficial to humans, either in the sense of attractiveness ³⁹ or producing such as making profits or happiness by avoiding danger. So anything that contains benefits should be called

³⁷Maria Farida Indrati S, *Science of Legislation (Type, Function and Content Material)* (Yogyakarta: PT Kanisius, 2007). 228

³⁸Maria Farida Indrati S, *Science of Legislation (Type, Function and Content Material)* (Yogyakarta: PT Kanisius, 2007). 229

³⁹Jimly Asshiddiqie, *Omnibus Law and Its Implementation in Indonesia* (Jakarta: Constitution Press, 2020). 5-6

mashlahah. So, mashlahah contains two sides, namely attracting or bringing benefits and rejecting or avoiding dangers..⁴⁰

Yusuf Hamid explained in his book the specialty of Maslahah syar'i that is :

- a. The basis of the mashlahah is always the guidance of syara', not just based on human reason, because human reason is imperfect, subjective and relative, always limited place and time, and often affected by the environment and the impulse of lust;
- b. The understanding of mashlahah or bad good in syara' is not limited only as the interest of the world alone but also the hereafter, not only for the benefit of one season, but all the time;
- c. Mashlahah in the sense of syara' is not limited to good taste and bad in the physical sense only, but also good in the spiritual mental sense.

In the outline mashlahah has two goals to be achieved, namely :

- 1) Bring benefits to mankind for the time of living on earth and to be provision later in the hereafter. These benefits can be felt immediately like a hungry person being given food. There are also those who feel the benefits are not directly like consuming habatausauda to cure cholesterol disease;
- 2) Avoid hope, both in the life that exists in the world today and later in the hereafter. Mudharat is just like the benefits that the impact can be directly felt or a few days later just feel the impact. Like drinking khamar, then someone will immediately feel the impact of teler. From the beginning of the establishment of the Work

⁴⁰ Amir Syarifuddin, USHUL FIQH 2, 4th edn (Jakarta: Kencana Prenadamedia group, 2008) .367

Copyright Bill has caused a lot of opposition among the community, especially workers who consider that this *omnibus law* causes a lot of harm for them. In terms of its relationship with *nash syara'* *mashlahat* it is divided into 3⁴¹:

- a) The controlled *mashlahat*, which is something that according to the calculation of reason is good and controlled by *nash syara'*. Attention or support of this *syara'* is divided into two forms, *first* (*al-muatstsiah*) or direct support where *nash* or *ijma* directly assign it to be noticed. Like Ulil Amri who upholds justice among his people, it is a good and *mashlahat* act. *Second*, (*startmah*) is indirect attention or support where there is no *nash* or *ijma* who pay attention or support *mashlahat* based on that reason;
- b) The rejected *mashlahat* is something that according to the consideration of reason is *mashlahat*, but *nash syara'* rejects or does not pay attention to it;
- c) Free *mashlahat* is something that according to the consideration of reason is *mashlahat*, but there is no attention and support from *nash syara'* and also there is no resistance or rejection from *nash syara'*.

Mashlahat as the substance of *maqashid al-shari'ah* can be divided according to its review. When viewed from the aspect of its influence in human life, *mashlahat* can be divided into three levels.⁴² :

1. *Dharuriyat*, which is a primary *mashlahat*, on which human life is very dependent on it, both *the diniyah* (religious) and worldly aspects. This is something that cannot be left behind in human life. If that does not exist, human life in the world

⁴¹ Amir Syarifuddin, *USHUL FIQH 2*, 4th edn (Jakarta: Kencana Prenadamedia group, 2008).240-241

⁴² Amir Syarifuddin, *USHUL FIQH 2*, 4th edn (Jakarta: Kencana Prenadamedia group, 2008).371-373

becomes destroyed and the afterlife becomes corrupted (punished). This is the highest level of *maslahat*. In Islam, *this maslahat dharuriyat* is guarded from two sides: *first*, its realization and realization, and *second*, maintaining its sustainability. For example, the first takes care of religion by realizing and carrying out all religious obligations, and the second maintains religious sustainability by fighting and fighting against the enemies of Islam;

2. *Hajiyat*, which is a secondary *maslahat*, which is needed by humans to facilitate in life and eliminate difficulties and narrowness. If he does not exist, there will be difficulties and narrowness whose implications do not damage life.;
3. *Tahsiniyat*, that is, *maslahat* which is a demand of *muru'ah* (moral), and it is meant for good and glory. If it does not exist, it does not damage or complicate human life.

So because *mashlahah* is something that is considered good by common sense because it brings benefits and avoids evil to humans, in line with the purpose of *syara'* in setting the law. So it is expected that in the process of forming a Work Copyright Bill that uses the concept of Omnibus Law which is now officially passed into the Work Copyright Law on October 5, 2020 we should be careful, whether the Law brings benefits to the people or not. ⁴³Because there are so many things from the process of discussing the law. Even today there are massive demonstrations that cause many riots and fatalities. Therefore, in terms of form and material this law must be examined whether it is useful for the health of many people or malah hurts its people only.⁴⁴

⁴³Jimly Asshiddiqie, *Omnibus Law and Its Implementation in Indonesia* (Jakarta: Constitution Press, 2020). 5-6

⁴⁴ Amir Syarifuddin, *USHUL FIQH 2*, 4th edn (Jakarta: Kencana Prenadamedia group, 2008).371-373

CHAPTER III

RESULTS OF RESEARCH AND DISCUSSION

A. Proses Pembentukan Undang-undang No.11 Tahun 2020 tentang Cipta Kerja

Article 1 of Law No.12 of 2011 concerning the Establishment of Laws and Regulations which reads "The establishment of Laws and Regulations is the making of Laws and Regulations that include the stages of planning, drafting, discussing, ratification or determination, and promulgation. "⁴⁵The substance of the Copyright Law began to be discussed at limited cabinet meetings, coordination meetings, and committee meetings between ministries / institutions involving academics, trade unions / workers of msme, NGOs and other stakeholders. Legal and Human Rights Symmetry conducts substance harmony and *legal drafting* of Academic Manuscripts and Work Copyright Bill. Based on Kepmenko Perekonomiaan No.121 of 2020 and Kepmenko Ekonomi No. 138 of 2020, the Government involves workers, practitioners, and business people.⁴⁶

1. Planning and Drafting of Law No.11 of 2020 on Work Copyright.

Planning for the drafting of legislation is carried out in the National Legislation Program (Prolegnas). In Article 20 paragraph (1) of Law No.12 of 2011 on the Establishment of Laws and Regulations mentioned that the preparation of Prolegnas is carried out by the House of Representatives and the Government of the Republic of Indonesia. Coordination of the preparation of Prolegnas between the DPR and the government is carried out through dpr

⁴⁵ (Article 1 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations (State Gazette of 2011 Number 82)

⁴⁶Kementrian Koordinator Bidang Kemaritiman dan Investasi, 'Tahapan Penyusunan UU Cipta Kerja' <<http://maritim.go.id/tahapan-penyusunan-uu-cipta-kerja/> [accessed 27 Juny 2021]

equipment that specifically handles the field of legislation. The preparation of prolegnas in the government environment is coordinated by the Minister whose duties and responsibility include the field of laws and regulations. In the context of the Copyright Law, the process began from the discourse of President Joko Widodo on October 20, 2019 his maiden speech after officially serving as head of state for a second period. He said that whatever is a regulatory obstacle must be trimmed and cut.⁴⁷

At the 8th (eight) 8nd (eight) "Plenary Meeting of the House of Representatives of the Republic of Indonesia" on January 22 (twenty-two) (two thousand and twenty) was outlined in the "Dpr Decision" numbered "1/DPR RI/II/2019 - 2020" on "National Legislation Program 2 020". In the Annex of the Decree there is a "Draft Law - Work Copyright Law" with the title "Draft Law on Job Creation" which is contained on Number 40 (forty) Page 8 (eight) "List of National Legislation Program of 2020" along with proposals derived from "Government of the Republic of Indonesia".⁴⁸ The government will submit to the Dpr to issue two major laws, namely the Employment Copyright Act and the MSME Empowerment Act. Simplification of bureaucracy and lengthy procedures must be done in a big way so that investment for job creation can be prioritized.

⁴⁹ The Work Copyright Law was discussed again by President Joko Widodo on

⁴⁷ Jimly Asshiddiqie, *Omnibus Law dan Penerapannya di Indonesia* (Jakarta : Konstitusi Press, 2020).220-225

⁴⁸ Egia Ginting Abdurakhman Alhakim, 'Analysis of the Establishment of Work Copyright Law at the Planning and Drafting Stage based on the law', *Combines*, 1 (2021). 292

⁴⁹ Speech of the First Term of President Joko Widodo's Term as President of the Republic of Indonesia 2019-2024', in *President of The Republic of Indonesia* <<https://www.presidentri.go.id/transkrip/pidato->

Monday, December 16, 2019 at the National Development Planning Conference (Musrenbangnas) of the National Medium Term Development Plan (RPJMN) 2020-2024 at the State Palace. Then on December 27, 2019 President Joko Widodo held a limited meeting to discuss the Work Copyright Law at the Presidential Palace of Bogor, West Java.

The Draft Work Copyright Law entered the finalization stage on January 15, 2020⁵⁰ and finally the Official Work Copyright Law was submitted by the government to the Dpr in mid-February 2020 precisely on the 13th, as a government initiative bill to the House of Representatives (DPR). The Copyright Law which in technical preparation uses the Omnibus Law model covers eleven policy areas as follows: Simplification of Licensing; Investment Requirements; Employment; Facilities, Empowerment, and Protection of UMK-M and Operation; Ease of effort; Research and Innovation Support; Administration of Government; Implementation of sanctions; Land Procurement, Transfer of Agricultural Land, Land, and Other Related Issues; Investment and National Strategy Projects; Economic area⁵¹. Through Airlangga Hartanto as Minister of Economy representative of the Government has officially submitted the

masa-awal-jabatan-presiden-joko-widodo-sebagai-presiden-republik-indonesia-masa-jabatan-2019-2024/ > [accessed 20 December 2020]

⁵⁰Coordinating Ministry for Maritime Affairs and Investment, 'Stages of Drafting The Work Copyright Law' < <https://maritim.go.id/tahapan-penyusunan-uu-cipta-kerja/> [accessed 27 Juny 2021]

⁵¹Riyanto Sigit, Sulistiowati and et al, *Critical Note Policy Paper and Recommendations Against The Work Copyright Bill* (Yogyakarta: Faculty of Law, Gajah Mada University, 2020). 4

President's letter and draft draft of the Work Copyright Law to the Chairman of the House of Representatives on February 12, 2020.⁵².

The law was designed using the omnibus law. The concept of Omnibus Law is usually called the Omnibus Bill which means the technique of forming laws with a view to making changes at once to some existing and previously applicable laws. This Copyright Law uses omnibus law techniques because the formation technique makes a new law that was initially associated with the need to make changes to several existing laws at once.⁵³ The establishment of this Work Copyright Law was created by the government to realize the goal of establishing the Government of the State of Indonesia and realizing a prosperous, fair, and prosperous Indonesian society based on Pancasila and the Constitution of the Republic of Indonesia of 1945, the State needs to make various efforts to fulfill the right of citizens to decent jobs and livelihoods for humanity through work copyright.

With the copyright of work is expected to be able to absorb indonesia's broadest energy in the midst of increasingly competitive competition and the demands of economic globalization; to support the work copyright requires adjustment of various aspects of regulations related to the ease, protection, and empowerment of cooperatives and micro, small, and medium enterprises, the improvement of the investment ecosystem, and the acceleration of national

⁵² BEM Kema Unpad, 'Catatan Kritis Omnibus Law Membedah RUU Cipta Kerja', *Kema Unpad*, 2020, 2.

⁵³ Jimly Asshiddiqie, *Omnibus Law and Its Implementation in Indonesia* (Jakarta: Constitution Press, 2020). 5-6

strategic projects, including the improvement of protection and welfare of workers⁵⁴. that arrangements related to the ease, protection, and empowerment of cooperatives and micro, small, and medium enterprises, the improvement of the investment ecosystem, and the acceleration of national strategic projects, including improved protection and welfare of workers spread across various sector laws currently have not been able to meet the legal need for accelerated work copyright so that changes need to be made⁵⁵.

Here is the meeting held by the national legislature⁵⁶ :

- 1) Introduction April 02, 2020, 13th Plenary Meeting, Assignment of Discussion of the Bill on Job Creation to the Legislative Body;
- 2) Introduction on April 7, 2020, Legislative Body Meeting regarding the Draft Schedule for the Discussion of the Bill on Job Creation;
- 3) Level 1 discussion 14 April 2020 , Work meeting related to the discussion of the Bill on Job Creation;
- 4) Level 1 Discussion On April 20, 2020, a Working Committee Meeting to discuss the Bill on Job Creation to discuss the RDPU plan with experts;
- 5) Level 1 Discussion on April 27, 2020, RDPU Panja Baleg with 3 speakers: Prof. Djisman, Yose Rizal, and Sarman Simanjorang;

⁵⁴Riyanto Sigit, Sulistiowati and et al, *Critical Note Policy Paper and Recommendations Against The Work Copyright Bill* (Yogyakarta: Faculty of Law, Gajah Mada University, 2020). 4

⁵⁵ "Undang-undang Nomor 11 Tahun 2020 tentang Cipta Kerja'.(Lembaran Negara Tahun 2020 Nomor 6573)'.

⁵⁶ 'Catatan Rapat Rapat Badan Legislasi Dalam Rangka Pembahasan Rancangan Jadwal Acara Rapat – Rapat Pembahasan Ruu Tentang Cipta Kerja Tanggal 7 April 2020', Dewan Perwakilan Rakyat Republik Indonesia, 2020, 3-4.

- 6) Level 1 Discussion April 29, 2020, RDPU Panja Baleg with 2 speakers: Bambang Kesowo and Prof. Dr. Satya Arinanto;
- 7) Level 1 Discussion on May 5, 2020, RDPU Panja Baleg with 2 speakers: Emil Arifin and Dr. Ir. H. Sutrisno Iwantono;
- 8) Level 1 Discussion On 20 May 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation for Preamble, Chapter I, and Chapter II;
- 9) Level 1 Discussion on June 3, 2020, Working Committee Meeting on the DIM Discussion of the Draft Bill on Job Creation material Chapter V (Ease, Protection, and Empowerment of MSMEs and Cooperatives) and Chapter VII (Support for Research and Innovation);
- 10) Level 1 Discussion on June 4, 2020, Working Committee Meeting on the DIM Discussion of the Draft Bill on Job Creation material Chapter V (Ease, Protection, and Empowerment of MSMEs and Cooperatives) and Chapter VII (Support for Research and Innovation);
- 11) Level 1 Discussion on June 9, 2020, RDPU Panja Baleg with the Indonesian Television Journalists Association regarding the Bill on Job Creation and RDPU Panja Baleg with KADIN and M. Mova Al Afghani, SH., L.L.M., Ph.D related to the Bill on Job Creation ;
- 12) Level 1 Discussion on June 10, 2020, RDPU Panja Baleg with Prof. Dr. Ramdan Andri Gunawan (Univ. Indonesia), Prof. Dr. Asep Warlan Yusuf (Parahyangan Catholic Univ.), Prof. Dr. Ir. H. San Afri Awang (Gadjah Mada Univ.) Related to the Bill on Job Creation;

- 13) Level 1 Discussion On 11 June 2020, RDPU with the Press Council and the Alliance of Independent Journalists (AJI) on the Job Creation Bill related to Media Issues and RDPU with the Indonesian Ulema Council (MUI); The Executive Board of Nahdlatul Ulama (PB NU); Muhammadiyah Central Leadership (PP) related to the ease and requirements of investment in the religious sector and guarantee of halal products;
- 14) Level 1 Discussion On 29 June 2020, the DIM Working Group Discussion Meeting on the Bill on Job Creation, Chapter V (Cooperatives) and Chapter VII (Research and Innovation Support);
- 15) Level 1 Discussion On 01 July 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation, Chapter VII (Research and Innovation Support);
- 16) Level 1 Discussion On 09 July 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation;
- 17) Level 1 Discussion On July 13, 2020, DIM Working Committee Discussion Meeting on the Bill on Job Creation for Chapter III (Article 7 to Article 16);
- 18) Level 1 Discussion On 14 July 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation for Chapter III (Article 7 to Article 13);
- 19) Level 1 Discussion on July 15, 2020, Working Committee Meeting on the DIM Discussion of the Draft Bill on Job Creation on Chapter III (Articles 13 to 16);

- 20) Level 1 Discussion on July 22, 2020, Working Committee Meeting on the DIM Discussion of the Draft Bill on Work Creation on Chapter III (Articles 17 to 18);
- 21) Level 1 Discussion On July 23, 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation for Chapter III (Article 18);
- 22) Level 1 Discussion On 27 July 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation for Chapter III (Article 18 to Article 20);
- 23) Level 1 Discussion On 28 July 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation and the DIM Working Committee Discussion Meeting on the Bill on Material Job Creation;
- 24) Level 1 Discussion On 03 August 2020, the DIM Working Committee Discussion Meeting on the Bill on Material Job Creation;
- 25) Level 1 Discussion On 04 August 2020, the DIM Working Committee Discussion Meeting on the Draft Bill on Material Job Creation;
- 26) Level 1 Discussion On 06 August 2020, the DIM Working Committee Discussion Meeting on the Bill on the Creation of Materials;
- 27) Level 1 Discussion on August 10, 2020, Working Committee Meeting on DIM Draft Discussion on Job Creation;
- 28) Level 1 Discussion On 11 August 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation, Chapter III Article 19;
- 29) Level 1 Discussion on July 13, 2020, Working Committee Meeting on the DIM Discussion of the Draft Bill on Work Creation on Chapter III Article 20 and Article 21 Materials;

- 30) Level 1 Talks August 13, 2020; DIM Working Committee Discussion Meeting on the Draft Bill on Material Job Creation Chapter III Article 22 and Article 23;
- 31) Level 1 Discussion On August 19, 2020, DIM Working Committee Discussion Meeting on the Bill on Job Creation for Material Chapter III Article 23, Article 24, and Article 25;
- 32) Level 1 Discussion On 24 August 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation, Chapter III Article 26;
- 33) Level 1 Discussion On August 25, 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation, Chapter III Article 28;
- 34) Level 1 Discussion On August 26, 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation, Chapter III Article 28;
- 35) Level 1 Discussion On 27 August 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation, Chapter III Article 31 to Article 35 (partial);
- 36) Level 1 Discussion on August 31, 2020, Working Committee Meeting on DIM Draft Discussion on Job Creation on Chapter III Article 35 material;
- 37) Level 1 Discussion On September 1, 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation, Chapter III Article 36 to Article 38;
- 38) Level 1 Discussion on September 2, 2020, Working Committee Meeting on the DIM Discussion of the Draft Bill on Job Creation on Chapter III Article 38 material

- 39) Level 1 Discussion On 03 September 2020, DIM Working Committee Discussion Meeting on the Bill on Job Creation, Chapter III, Article 39 and Article 44;
- 40) Level 1 Discussion On 07 September 2020, DIM Working Committee Discussion Meeting on the Bill on Job Creation, Chapter III Article 43 to Article 44;
- 41) Level 1 Discussion On 08 September 2020, DIM Working Committee Discussion Meeting on the Bill on Job Creation, Chapter III Article 45 to Article 49
- 42) Level 1 Discussion On September 09, 2020, DIM Working Committee Discussion Meeting on the Bill on Job Creation, Chapter III Article 51 to Article 55;
- 43) Level 1 Discussion on September 10, 2020, Working Committee Meeting on the DIM Discussion of the Draft Bill on Job Creation on Chapter III Article 59 up to Article 66;
- 44) Level 1 Discussion on September 12, 2020, Working Committee Meeting on DIM Discussion of the Draft Bill on Job Creation material Chapter III Article 76 to Article 79
- 45) Level 1 Discussions On September 14, 2020, DIM Working Group Discussion Meeting on Bill on Job Creation Chapter III - Discussing pending DIM-DIM (Article 17-18, Article 41, and Article 43) - Discussing Article 83 to Article 86;

- 46) Level 1 Discussion on September 15, 2020, Working Committee Meeting on DIM Discussion of the Bill on Job Creation on Chapter III Material - Discussing pending DIMs (Articles 17-18, Article 41, and Article 43) - Discussing Articles 83 to Article 86;
- 47) Level 1 Discussion on September 16 2020, Working Committee Meeting on DIM Draft Discussion on Chapter VIII Material Work Creation;
- 48) Level 1 Discussion On September 17, 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation for Chapter IX;
- 49) Level 1 Discussion On September 19, 2020, DIM Working Committee Discussion Meeting on the Bill on Job Creation for Chapter VI;
- 50) Level 1 Discussions On September 21, 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation for Chapter X;
- 51) Level 1 Discussions On September 22, 2020, the DIM Working Committee Discussion Meeting on the Bill on Job Creation for Chapter X;
- 52) Level 1 Discussions on 24 September 2020, Continuing the DIM Discussion of the Bill on Job Creation Chapter III (Article 27-Article 81), Chapter VI (Article 108-Article 118) and Chapter VIII (Article 120 - Article 139);
- 53) Level 1 Discussion On September 25, 2020, Continuing the discussion of the DIM Bill on Job Creation Chapter VI, Chapter X and DIM related to Patent Rights and the RDPU Working Committee Meeting with the KPPU;
- 54) Level 1 Discussion On 03 October 2020, PAF Plenary Meeting / Decision Making on the results of the Discussion of the Bill on Job Creation.

The Copyright Act utilizes the idea of omnibus law. The idea of omnibus law is also often referred to as the Omnibus Bill, which is a procedure for drafting laws with the aim of making changes to some existing and relevant laws. This work utilizes the Omnibus Law strategy because of the way it is regulated making other laws that were initially related to the need to revise some existing laws without any delay for a while. The draft Law on the Establishment of such work also contains the purpose of improving the quantity of guidelines that are considered to prevent the speed of interest to encourage an increase in the speed of domestic monetary development, as used to reduce useless guidelines.⁵⁷

The Copyright Act quickly loaded different settings that resulted in very thick pages, combining material from 82 laws into a single new law combined with a 2,500-page scholastic original copy. The number of articles rejected, amended or amended from the 82 laws totals 2,512 articles that were merged into a separate law that only contained 174 articles. The Creation Act is also designed to beat nearby guidelines that include focal guidelines, making it frustrating to approach speculation.⁵⁸

2. Discussion of Law No.11 of 2020 on Copyright Work

Referring to article 43 paragraph 3 of law no. 12 of 2011 concerning the establishment of laws and regulations, a new draft law derived from the proposal of the DPR, The President or DPD must be accompanied by an academic text. In

⁵⁷Jimly Asshiddiqie, *Omnibus Law and Its Implementation in Indonesia* (Jakarta: Constitution Press, 2020). 5-6

⁵⁸Jimly Asshiddiqie, *Omnibus Law dan Penerapannya di Indonesia..220-225*

the same chapter regulates the drafting of legislation article 45 paragraph 1 explaining that "the draft law both coming from the dpr, the president and the dpd to the dpr is prepared based on Prolegnas. The Copyright Law originating from the government together with the academic text was not submitted to Prolegnas in 2020 but after the agreement. This is evident in the presidential letter numbered "R-06/Pres/02/2020" on February 7, 2020 with the subject in the letter is a draft work creation law along with the contents of the letter that delivers a draft law to get approval with the top priority and assignment of the minister for discussion purposes⁵⁹. Prolegnas in 2020 in the decree of the house of representatives dated January 22, 2020 as well as the draft work copyright law and academic manuscript submitted in the presidential letter dated February 7, 2020. While the provisions in article 43 paragraph 3 and article 45 paragraph 1 of law no.12 of 2011 concerning the regulation of legislation have been changed to law no. 15 of 2019.

3. Ratification and Promulgation of Law No.11 of 2020 on Work Copyright

On October 5, 2020, the Dpr Ri has passed the Copyright Law. The law has been signed by President Jokowi on November 2, 2020 as Law No. 11 of 2020 on Work Copyright (UU CK). This law comes from the Government Initiative Bill submitted to the House of Representatives on February 13, 2020. Law No. 12 of 2011 which says that the bill that has been approved with the Government and the House of Representatives submitted to the President to be

⁵⁹ Egia Ginting Abdurakhman Alhakim, 'Analysis of the Establishment of Work Copyright Law at the Stage of Planning and Drafting based on the law on the regulation of legislation', *Combines*, 1 (2021).291-292

passed into law within 7 days, of course it cannot be justified. Therefore, the explanation of the Article has been limited in Law No. 15 of 2019 which amends Law No. 12 of 2011, that the use of 7 working days is a decent time to prepare matters related to the technical writing of the Law to the official gazette of the President until the signing, ratification and promulgation. That is, only technical administration and preparation alone should not enter into the actions of removing, adding or even changing meaning.⁶⁰

Let alone in words, even dots and commas can't actually be done, because it also has the potential to change meaning. Though that is what is real, the additions of post-plenary DPR in the Copyright Law. In the case of the Copyright Law, the condition becomes very likely because there is no division of the draft bill for members of the House of Representatives, nor is there a formal mechanism for the availability of time to read and control the substance of the bill, and the vagueness of the text of the bill passed in the plenary. Thus, no one can guarantee that there is no change or tinkering with the sound of the actual article should not be done especially after the plenary approval of the DPR and the President. In straightening out, in fact it happens. There was a change from a 905-page version to 812 pages, and then to 1187 pages. Not only that, the draft is not clear where and not accessible at all.

⁶⁰ Sigit Riyanto, Maria S.W Sumardjono, et al . *Policy Paper Critical Note Against Law No.11 of 2020 on Work Copyright (Dpr Endorsement October 5, 2020)* 2020. 17

So that circulating in the public is unverified as an official source. The implication is that no one can be sure whether or not there is a change, although at the same time no one can be sure and convince that nothing changes occur. In addition, the Law that has been recorded to the state gazette as Law No. 11 of 2020 on Work Copyright turned out to be experiencing changes that are currently seen as technical changes in writing (as found to be article changes and inappropriate article references). Again, it happens because of the closure and weakness of participation⁶¹. Participation for example. In Article 96 of Law No. 12 of 2011 stipulates that the community (individuals or groups of people who have an interest in the substance of the draft legislation) has the right to provide input orally and / or written in the formation of laws and regulations⁶².

Input orally and/or in writing can be done through public hearings, work visits, socialization, and/or seminars, workshops, and/or discussions. The community in the explanation of the article mentioned that including groups of people include community groups / organizations, professional groups, non-governmental organizations, and indigenous peoples. The formality of the establishment of the Law is actually an important condition for the legitimacy of the law. That power should basically be limited. And in exercising that power, there must be restrictions in the formal context so that they are not made haphazardly. That formality becomes a control over that looks and arbitrariness. That is, the law

⁶¹Sigit Riyanto, Maria S.W Sumardjono, et al. Policy Paper Critical Note Against Law No.11 of 2020 on Work Copyright (Dpr Endorsement October 5, 2020) 2020. 17

⁶²Joko Riskiyono, Community Participation in the Establishment of Legislation to Realize Prosperity (Public Participation in the Formation of Legislation to Achieve Prosperity)

must be maintained so as not to be made arbitrarily, but must go through agreed concepts and mechanisms. In this case, of course, the law must also go through the concept.⁶³.

B. Pembentukan UU No.11 Tahun 2020 tentang Cipta Kerja Menurut Asas Pembentukan Perundang-undangan yang Baik

1. Pembentukan UU No.11 Tahun 2020 tentang Cipta Kerja Menurut Asas Formil

Hamid. S. Attamimi, says that when it comes to the distribution of formal principles, the distribution is as follows: ⁶⁴

- a. **The principle of clear objective:** this principle means that every Establishment of Laws and Regulations must have a clear purpose to achieve. The copyright bill already has a clear goal of making it easier to permit investments and cut too many laws and regulations. **In the proposal and planning** of Law No.11 of 2020 has fulfilled the principle of a clear goal that is for job creation that will later be in sync with the human resource development program (SDA). This Copyright Law uses omnibus law techniques because the technique of forming new laws that were originally related to the need to make changes to several existing laws at once.⁶⁵ **In the discussion** of the principle of clarity of the formulation of Law No.11 of 2020

⁶³Joko Riskiyono, Partisipasi Masyarakat Dalam Pembentukan Perundang-undangan untuk Mewujudkan Kesejahteraan (Public Participation in the Formation of Legislation to Achieve Prosperity)

⁶⁴Maria Farida Indrati S, Legislasi (Teknik Proses dan Pembentukan) (Jakarta: PT Kanisius, 2006). 230-233

⁶⁵Lukas, 'Four Presidential Instructions related to Job Creation Efforts', on the *President of the Republic of Indonesia*". "[accessed January 2, 2021]

on Technical Copyright Work the discussion carried out is very hasty even though the regulations discussed in it are very much so as to make this law a lot of suspicion in the community. **In the proposal and** dissemination of the post-plenary addition of the DPR in the Copyright Law. In the case of the Copyright Law, conditions become very possible because there is no division of the draft bill for members of the House of Representatives, nor is there a formal mechanism of availability of time to read and control the substance of the bill, and the vagueness of the text of the bill passed in plenary. Thus, no one can guarantee that there is no change or tampering with the actual article vote should not be done especially after the plenary approval of the Dpr and the President. In straightening out, in fact it happens. There was a change from a 905-page version to 812 pages, and then to 1187 pages. Not only that, the draft is unclear where and is not accessible at all. ⁶⁶ So that circulating in the public is not verified as an official source. The implication is that no one can be sure whether or not there is a change, although at the same time no one can be sure and convince that no change has occurred. In addition, the Law that has been recorded as a state gazette as Law No. 11 of 2020 on Copyright Work turned out to be undergoing changes that are currently viewed as technical changes in writing (such as article changes and improper article references)⁶⁷.

Proper organ/institution principle: this principle means that any type of law

⁶⁶Riyanto Sigit, Sulistiowati and et al, *Critical Note Policy Paper and Recommendations Against The Work Copyright Bill* (Yogyakarta: Faculty of Law, Gajah Mada University, 2020). 18

⁶⁷Riyanto Sigit, Sulistiowati and et al, *Critical Note Policy Paper and Recommendations Against The Work Copyright Bill* (Yogyakarta: Faculty of Law, Gajah Mada University, 2020). 18

must be created by the authorized institution/official that makes up the law. These laws and regulations may be null and void, if made by unauthorized institutions/officials. In this case, the Employment Copyright Law has been drafted by the President together with the DPR as it should be;

- b. **The Principle of Proper Organ or Institution** are based on each type of law and regulation to be created by the institution/office that makes up competent laws and regulations. Such laws and regulations may be null and void, if created by unauthorized agencies/officials. **In the proposal and planning** of the Copyright Law has been made by the President together with the DPR as appropriate. This law in institutional principles has been qualified because Law No.11 of 2020 has been proposed by the President to the Dpr. ⁶⁸ The Draft Law proposed by the President is drafted by the minister or head of a non-ministerial government agency in accordance with the scope of his duties and responsibilities. ⁶⁹ **In the discussion of** the material of the Work Copyright Law between the DPR, the President and the Special Task Force of the Work Copyright Bill. In the dpr ri web on prolegnas there is a series of discussions of the Kejra Copyright Law, which is 2 preliminary meetings and 52 times level 1 talks conducted by Baleg. **In the proposal and dissemination** of Law No.11 of 2020 has been in accordance with Law No.12

⁶⁸Jimly Asshiddiqie, *Omnibus Law and Its Implementation in Indonesia* (Jakarta: Press Constitution, 2020). 5-6

⁶⁹(Article 47 paragraph (1) of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations (State Gazette of 2011 Number 82)

of 2011 because it was passed by the Dpr and approved by the President of the Republic of Indonesia;

- c. **The principle of proper content material:** which means in the formation of laws and regulations must really pay attention to the right content material with the type of laws and regulations. **In the proposal and planning of this Work Copyright Law** the material is very complex so that in the future it will require many derivative rules that are very much. **In the discussion of Law No.11 of 2020 on Copyright Work** contains many laws that are very much so that making the material in it very complex so that it makes between the content and the title out of sync.
- d. **The principle can be implemented⁷⁰:** that is, every formation of laws and regulations must take into account the effectiveness of these laws and regulations in society, both philosophically, juridically and sociologically. The principle can be implemented in this Law where it must pay attention to the effectiveness of the laws and regulations that will apply. **When viewed from sociological, philosophical and juridical factors of Law No.11 of 2020 on Copyright Work** has the goal of realizing the goal of forming the Indonesian state government and realizing a prosperous, fair, and prosperous Indonesian society based on Pancasila and the constitution of the Republic of Indonesia in 1945, the state needs to make various efforts to fulfill the rights of citizens to Indonesia. work and livelihoods worthy of humanity through copyright

⁷⁰Maria Farida Indrati S, *Science of Legislation (Process and Engineering Formation)* (Jakarta: PT Kanisius, 2006). 230-233

law. This copyright law is also expected to attract as many Indonesian workers in the midst of highly competitive economic competition and the demands of economic globalization.

- e. **The principle of usefulness and usefulness⁷¹**: is that every rule of law is made because it is really needed and useful in regulating the life of society, nation and state. Then for the realization of work creation, adjustment of various aspects of regulation related to the ease, protection, and empowerment of cooperatives and micro, small, and medium enterprises, the improvement of the investment ecosystem, and the acceleration of national strategic projects, including increased protection and welfare of workers. **In the proposal and planning of** the Work Copyright Law was formed due to the adjustment of various aspects of arrangements related to aspects that already exist in the previous Law has not been able to meet the acceleration of work copyright. However, this Copyright Law is very complex and will even be far from the main purpose of this law created.⁷².
- f. **The Principle of formulation clarity⁷³**: that every law must meet the technical requirements of the preparation of laws and regulations, systematic writing and choice of words or terminology, and the legal language is clear and easy to understand, so as not to cause various interpretations in its implementation. Appendix II number 3 in Law No. 12 Of 2011 concerning

⁷¹Maria Farida Indrati S, *Science of Legislation (Process and Engineering Formation)* (Jakarta: PT Kanisius, 2006). 230-233

⁷² 'Law No. 11 of 2020 on Copyright Work'. (State Gazette of the Year 2020 Number 6573)

⁷³Maria Farida Indrati S, *Science of Legislation (Process and Engineering Formation)* (Jakarta: PT Kanisius, 2006). 230-233

the Establishment of Laws and Regulations mentioning the name of the Laws and Regulations made briefly using only 1 (one) word or phrase but essentially the meaning has been and reflects the contents of the Laws and Regulations.

Technically naming this omnibus law as the Copyright Law with one short phrase is appropriate, but as an overview of the contents of a law, it does not describe the content of the laws and regulations that are intended to be acted upon. When associated with Law No. 32 of 2009 on Environmental Protection and Management (hereinafter referred to as UU PPLH), this bill in no way reflects the spirit of environmental protection and management contained by the PPLH Law. Article 1 number 2 of the PPLH Law expressly mentions that environmental protection and management is a systematic and integrated effort made to preserve environmental functions and prevent pollution and / or environmental damage that includes planning, utilization, control, maintenance, supervision, and law enforcement. This understanding is based on the spirit of protection first and then followed by good and proper management. Paying attention to environmental protection arrangements in the Copyright Law is contrary to the so-called environmental protection and management contained by the PPLH Law. **In the discussion**, the principle of clarity of the formulation of Law No.11 of 2020 on Copyright Technical work discussions carried out are very hasty even though the regulations discussed in it are so much that it makes this law a lot of suspicion in the community. The formulation of the settings in this Copyright Act seems to be deliberately made complicated, difficult to understand and inefficient. This is because the

writing format as the February 2020 draft is not systematically written. The drafting of the Law should be done by putting forward the principle of clarity of formulation as the provisions of Article 5 of Law No. 12 of 2011, so that the public can easily read and understand the provisions in this bill. In the Copyright Act this also contains a regulatory content that tends to be unconstitutional. This is certainly seen from changes in substance that are not done thoroughly and leave the substance problematic. Issues that are precisely important and potentially violate the constitutional rights of citizens are eliminated and no changes are made. ⁷⁴ **In the promulgation and dissemination** of this Work Copyright Law after it was passed at the plenary meeting of the House of Representatives on October 5, 2020 is still being changed in substance by the government and the DPR. After getting a joint endorsement between the Dpr and the President in the entire meeting, the substance of the Copyright Bill should not be changed. This is regulated in Article 72 of Law No. 15 of 2019 on Amendments to Law No. 12 of 2011 on the Establishment of Laws and Regulations. Even so, actually the substance of the Copyright Bill has changed, both while still in the House of Representatives and after it was submitted to the President.⁷⁵.

- g. **The Principle of openness** : that in the process of establishing laws and regulations ranging from planning, preparation, preparation, and discussion is

⁷⁴ Ramanata Disurya, Suryati, Layang Sardana, 'Basic Violations in the Preparation and Endorsement of Work Copyright Law'. Unpad Journal, Vol.19 No.1.2021.32

⁷⁵ Admin, 'Permasalahan Proses Legislasi UU Nomor 11 Tahun 2020 tentang Cipta Kerja', in *Pusat Studi Hukum Konstitusi* < "<https://pshk.or.id/publikasi/lawmetric/permasalahan-proses-legislasi-uu-nomor-11-tahun-2020-tentang-cipta-kerja/>" <https://pshk.or.id/publikasi/lawmetric/permasalahan-proses-legislasi-uu-nomor-11-tahun-2020-tentang-cipta-kerja/> [accessed 2 April 2021]

transparent and open. Thus, all levels of society have the widest opportunity to provide input in the process of establishing laws and regulations.⁷⁶ Then again in the principle of openness of the omnibus law discussion process the copyright law must involve massive public participation. According to Handoyo, there are several ways that can be done to open a community participation space, namely :

- 1) Open access to information on all components of society about the process of drafting a law;
- 2) Formulating the rules of the game, especially those concerning the transparency of the preparation and formulation of draft laws and regulations;
- 3) Formulate together a procedure and procedures to communicate the aspirations of the community in the discussion of laws and regulations;
- 4) Drafting a code of ethics while forming an Honorary Assembly whose composition consists of elements of the Dpr, society, academia, and mass media;
- 5) Expanding the network of cooperation among civil society that has been ad hoc. The network must be permanent while there is a division of duties and responsibilities to monitor the process of formulating legal rules.⁷⁷

⁷⁶Maria Farida Indrati S, *Science of Legislation (Process and Engineering Formation)* (Jakarta: PT Kanisius, 2006). 230-233

⁷⁷ Joko Riskiyono, 'Partisipasi Masyarakat dalam Pembentukan Perundang-Undangan Untuk Mewujudkan Kesejahteraan', *Jurnal Aspirasi*, VI (2015).160

The proposing and planning of the Work Copyright Law Ombudsman highlights that the establishment of omnibus law Cipta Kerja minimal participation publik. This is strengthened by the start of the draft law when the draft is ready and only discussed by Baleg. This is certainly a strange record when omnibus law copyright work even minimal community participation. It should have involved the public's aspirations for the fulfillment of the formiil principle in the formation of legislation. The establishment of legislation must be aspirational and participatory which in this case contains the meaning of process and substance. The process in the formation of legislation must be transparent, so that people's aspirations can participate in providing inputs. While the substance related to regulated material must be intended for the benefit of the community so as to produce laws that are responsive, participatory, aspirational, and democratic ⁷⁸character. In addition to PSHK FH UII there are two state institutions / commissions such as the Indonesian Ombudsman and Komnas HAM RI which claimed until January 31 it was still difficult to get a draft omnibus law. Although the obudsaman party in the process has submitted a letter in December 2019 to request the draft Omnibus Law Bill referred to the Coordinating Minister for Economic Affairs unfortunately, the good intention did not get the positive response as expected In essence the Ministry of Economic Affairs refused to present the draft law on the grounds that the draft had not been approved by the

⁷⁸Gosanna Oktavia, 'Omnibus Law Lacks Public Participation, Ombudsman Opens Complaint Opportunity.', in *Ombudsman* < "i <https://ombudsman.go.id/news/r/omnibus-law-minim-partisipasi-publik-ombudsman-bukakesempatan-pengaduan> [accessed 6 April 2021]

President and there had been no direction from the Minister.⁷⁹ Then it is also contrary to the principle of openness, namely if it is true that this bill is intended for the benefit of the people and does not ignore environmental aspects, then the Task Force in question certainly accommodates representatives of labor organizations, environmental organizations and other popular organizations and youth and student groups in their education. Concrete evidence of Kadin's leadership in the formulation of academic manuscripts and bills benefiting business groups can be seen from the UU content that removes some provisions of the PPLH Law related to legal liability that have been tested by APHI and GAPKI in the Constitutional Court in 2017. The material test submitted by the two business associations was revoked due to public pressure. The academic text and this law are only published to the public when submitted to the Dpr when the draft and academic manuscript should involve public participation. If the argumentation used is the logic of meeting the legal needs of the community, then the thing that must be met is the participation of the community in the process of establishing laws and regulations, especially for individuals or groups who have an interest in the substance of the laws and regulations.⁸⁰ Finally the draft began to be opened to the public for the first time on April 02, 2020 when it was submitted to the Dpr to begin discussion. Recorded on the dpr ri website held 54 meetings to discuss the Copyright Law. Discussion on the Work Copyright Bill

⁷⁹Ady, 'These Two Institutions Have Difficulty Accessing The Work Copyright Bill Text', in Online Law < <https://www.hukumonline.com/berita/baca/lt5e33ddd1059a5/dua-lembaga-inikesulitan-akses-naskah-ruu-ciptalapangan> [accessed April 2, 2021]

⁸⁰'Article 96 paragraph 3 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations) State Gazette of 2011 Number 82'.

can be considered not participatory and even tends to look exclusive. The House of Representatives seems to be doing the sorts to present the parties to be heard in the Public Hearing (RDPU). The Legislative Body (Baleg) does not conduct RDPU with workers or workers' organizations, but only conducts RDPU with the Indonesian Chamber of Commerce (KADIN). Whereas rdp should also be done with the trade union hashtag formulation of articles that are considered straight in the employment cluster of the Copyright Law can absorb the inspiration of interested parties. This non-participatory process violates Article 1 paragraph (2) of the 1945 Constitution which reads: "sovereignty is in the hands of the people and carried out in full by the People's Consultative Assembly."⁸¹⁸² **In the promulgation and dissemination** is very hasty this is seen from how this process was carried out on October 3 at 22.00 WIB, the House of Representatives has held a decision on the level I Omnibus Law Of Work Copyright Bill that has been approved as many as 7 of 9 factions, except the Democratic and PKS factions. Then continued the discussion of level II in the plenary meeting scheduled for 8October 2020. But on the way, suddenly the plenary meeting was advanced and held on October 5, 2020 afternoon. As expected, this law was approved by 6 Factions, pan faction approved with a note, only 2 factions rejected, namely the Democratic faction and the Prosperous Justice Party (PKS). The un participatory process that hastily in the preparation of the Copyright Law violates

⁸¹ Ramanata Disurya, Suryati, Layang Sardana, 'Basic Violations in the Preparation and Endorsement of Work Copyright Law'. Unpad Journal, Vol.19 No.1.2021.31

⁸² Ramanata Disurya, Suryati, Layang Sardana, 'Basic Violations in the Preparation and Endorsement of Work Copyright Law'. Unpad Journal, Vol.19 No.1.2021.32

the principles set out in Article 5 of Law No. 12 of 2011 Concerning the Establishment of Legislation. In the provisions of the article, of course, it is clear that what is violated by the Dpr and the government is about the principle of openness.⁸³ Preparation that tends to be hasty, closed from the public and without involving input from the public is certainly one of the important points of how problematic the Copyright Law related to its preparation.⁸⁴.

2. Establishment of Law No.11 of 2020 on Copyright Work According to Material Principles.

a. Proposing and Designing Law No.11 of 2020 on Work Copyright According to Material Principles

There are 4 principles in the material principle that must be fulfilled in lawmaking, namely :

- 1) Principles in accordance with the Indonesian Legal Ideals and Fundamental Norms of the State;
- 2) Principles in accordance with the Basic Law of the State;
- 3) Principles in accordance with the principles of the State based on the Law, and;
- 4) Principles in accordance with the principles of government based on a system of codification.

⁸³ Aida Mardatillah, ' Code of Initiative: Ratification of The Work Copyright Bill Is Not Participatory, Violates Principles, Until Unconstitutional, in Online Law < <https://www.hukumonline.com/berita/baca/lt5f7b4692c4104/kode-inisiatif--pengesahan-ruu-cipta-kerja-tidak-partisipatif--langgar-asas--hingga-inkonstitusional/> [accessed 10 May 2021]

⁸⁴ Ramanata Disurya, Suryati, Layang Sardana, 'Pelanggaran Asas Dalam Penyusunan Dan Pengesahanundang-Undang Cipta Kerja'. Jurnal Unpad, Vol.19 No.1.2021.32-33

Here can be drawn an analysis of whether Law No.11 of 2020 has qualified in the material principle, namely, the first :

That any establishment of laws and regulations must be in accordance with Pancasila because as a Legal Cita (*rechtside*) and The Basic Norms of the State, so that the two articles are closely related to the General Explanation of the 1945 Constitution. Although in the 1945 Constitution never mentioned the name Pancasila but in every article contains the meaning of the values of Pancasila⁸⁵. While the material principle is the true principle of terminology and systematics, the principle can be recognized, the principle of equal treatment in law, the principle of legal certainty, and the principle of legal implementation in accordance with individual circumstances.⁸⁶ Basically, if discussing the laws and regulations as said by Crabbe then not only talk about the arrangement, but also to the formation that must be in accordance with the principles related to the material content⁸⁷. The establishment of the Copyright Law still requires efforts to bridge the aspirations of all parties.

The purpose of the establishment in order to be accepted by all circles and the resulting legislative products can accommodate all interests in a balanced manner For that, the Copyright Law must be done in depth by involving all interested parties. Therefore, the discussion in this House must involve the

⁸⁵A.Hamid S.Attamimi, *Pancasila Cita Hukum in the Legal Life of the Indonesian Nation, Pancasila as an Ideology in various Fields of Community Life, Nationality, and Statehood* (Jakarta: BP 7 Center, 1991). 62-63

⁸⁶ Maria Farida Indrati S, *Science of Legislation (Type, Function and Content Material)* (Yogyakarta: PT Kanisius, 2007).228

⁸⁷ VCRAC Crabbe, *Legislative Drafting* (London: Carendish Publishing Limited, 1994). 4

public through public support (*people endorsement*) in addition to political support (*political endorsement*) before finally there is legal approval (*legal approval*) in the form of mutual agreement between the Dpr and the President as mandated by the Constitution. This is important to ensure there is support from all elements of the Indonesian people, namely bureaucracy, academia, the business world and the industrial world, working society, and the mass media in the process of forming a draft law. Maria Farida Indrati stated that the principles of the formation of laws and regulations are a guideline or signs in the formation of good laws and regulations.⁸⁸

A. Hamid S. Attamimi argues that "material lawmaking must be in accordance with state standards in view of the law in article 1 paragraph (3) of the 1945 Constitution". The idea of law and order can also be executed as hypotheticals that define the essential prerequisites for law, or as procedural instruments (procedural gadgets) required by law-domiciled individuals⁸⁹. The government in a country that adheres to the rule of law must act according to the law. In this case, the establishment of laws and regulations must be in accordance with written law that regulates how to form a law, namely Law No. 12 of 2011 concerning the Establishment of Laws and Regulations. In the *omnibus law* applied by the government to the Copyright Law, omnibus techniques are actually made to change which consists of repealing, replacing or adding material to

⁸⁸Maria Farida Indrati S, *Science of Legislation (Process and Engineering Formation)* (Jakarta: PT Kanisius, 2006). 252

⁸⁹Hilaire Barnett, *Constitutional and Administrative Law* (London: Cavendish Publishing Ltd, 2002). 9

various provisions in various laws in one legal instrument, instead of making a new law⁹⁰. In this case, a change in the law is certainly not unconstitutional.

Talking about the context of the establishment of laws and regulations, should refer to the content material that has been determined by Law No. 12 of 2011 on the Establishment of Laws and Regulations, namely⁹¹:

- (1) further arrangements regarding the provisions of the 1945 Constitution;
- (2) legal orders that will be governed by law;
- (3) ratification of international treaties;
- (4) follow-up to the court's decision and;
- (5) Meeting the needs of the law in the community.

b. Discussion of Law No.11 of 2020 on Work Copyright in material principles

Omnibus law formed by the government is based on the order of something law then the question of which law gives the mandate of the law change must be done using omnibus techniques. Historically, the form of law in Indonesia adheres to *the single subject clause rule*. Daniel N. Boger in his writings stated that the single subject clause rule prohibits a law from containing a wide variety of subjects. Clearly mixing up a wide variety of subjects in one law raises its own

⁹⁰Jimly Asshiddiqie, *Omnibus Law and Its Implementation in Indonesia* (Jakarta: Constitution Press, 2020). 5-6

⁹¹ Maria Farida Indrati S, *Ilmu Perundang-undangan (Proses dan Teknik Pembentukannya)* (Jakarta: PT Kanisius , 2006).230-233

questions as to which foundation governs the use of omnibus techniques in shaping legislation in Indonesia⁹².

Law No. 11 of 2020 on Copyright Work has a legal basis that is in accordance with Article 7 paragraph (1) letter c of Law No.12 of 2011 on the Establishment of Laws and Regulations that read "*The type and hierarchy of Laws and Regulations consists of: Government Laws / Regulations In lieu of Laws*" From the sound of the article, this Law has a position and is recognized so that it has binding and legal power formil. However, in the process of formation and discussion is very closed and lack of voice from the community. The Confederation of All Indonesian Trade Unions (KSPSI) said that workers were not involved in the preparation of omnibus law, the President of KSPSI also advised the government to communicate with workers before formulating this rule.

The union rejected and commented on the draft omnibus law with the Center for constitutional law studies and director of PSHK FH UII, Allan Fatchan Gani Wardhana also explained that much of the material in the law was problematic. So they stated the need for the House of Representatives to return the Omnibus Law to the president and change the controversial provisions and contain various aspirations that have been raised by the community⁹³. The plan to make Undang-Undang Cipta Kerja as a legal policy (*legal policy*) is of public concern,

⁹²Daniel N. Boger, 'Constitutional Avoidance: The Single Subject Rule As An Interpretive Principle', *Virginia Law Review*, 103 (2017). 1249

⁹³Fakhrur , Razy Muhamad and Fedryansyah Muhammad, 'Conflicts of Civil Society Movement and Government In Government Process of Drafting Omnibus Law', *Journal of Conflict Resolution Collaboration*, III (2020), 75

because *Omnibus law* is not yet known in the Indonesian legal system, there is a decentralization of authority in the central government, affects labor rights, and Alignment with investors. In addition, the creation of the Copyright Law with the concept of omnibus law has an indication of a closed nature because it does not involve the community at the stage of preparation by the Government.

Sangat is contrary to the principle of openness contained in Article 5 letter g of Law No.12 of 2011 concerning the Establishment of Laws and Regulations.⁹⁴ In every legal political process of the Copyright Bill, it must involve all elements of the nation because the law in the process cannot be viewed as imperative articles or imperatives of watershed sollen, but must be viewed as a subsystem in reality (*das sein*) which is largely determined by the dynamics in the formulation of the material and its norms.⁹⁵ . In this case, the creation of the Copyright Law with the concept of omnibus law has an indication of a closed nature because it does not involve the community at the stage of preparation by the Government. And unions are disapproving and commenting on the draft omnibus law. Center for Constitutional Law Studies and Director of PSHK FH UII, Allan Fatchan Gani Wardhana also explained that a lot of the material in the Law is problematic.

So they stated the need for the House of Representatives to return the Omnibus Law to the president and change the controversial provisions and contain various aspirations that have been raised by the community. From the

⁹⁴ Shanti Dwi Kartika, 'Political Law copyright bill. Field of Info Law and a Brief Review of Actual and Strategic Issues', 12 (2020). 1-2

⁹⁵Mahfud MD, *Political Law in Indonesia* (Jakarta: PT. King Grafindo Persada, 2010). 9

above statement can be concluded that included in the concept of *maslahat* rejected because according to the consideration of reason the purpose of the establishment of the Ciptaker Law is to *mashlahat*, but *nash syara'* rejected or not accepted by the community.

c. Promulgation and Dissemination of Work Copyright Law According to Material Principles

The ratification of Copyright Work still requires efforts to bridge the aspirations of all parties in order to be in accordance with the purpose of formation and acceptable to all circles and the resulting legislation products can accommodate all interests in a balanced manner For that, the Copyright Law must be done in depth by involving all interested parties. Therefore, the discussion in this House must involve the public through public support (*people endorsement*) in addition to political support (*political endorsement*) before finally there is *legal approval (legal approval)* in the form of mutual agreement between the Dpr and the President as mandated by the Constitution. This is important to ensure there is support from all elements of the Indonesian people, namely bureaucracy, academia, the business world and the industrial world, working society, and the mass media in the process of forming a draft law. However, this law was approved without the aspirations of the people, this is very contrary to the characteristics of a democratic State of Indonesia.⁹⁶.

⁹⁶ Jimly Asshiddiqie, *Omnibus Law dan Penerapannya di Indonesia* (Jakarta : Konstitusi Press, 2020).5-6

The Plenary Meeting version of the Copyright Law is 905 pages as of October 5, 2020 and the Work Copyright Law version submitted to the President is 812 pages thick as of October 14, 2020, showing significant differences, namely changes, deletions, and new arrangements on the provisions of the 10 Laws. Not only that, the difference in the content of the manuscript continued when the 812-page Work Copyright Law submitted to the President as of October 14, 2020 was juxtaposed with the manuscript enacted into Law No. 11 of 2020 on Work Copyright, namely there is one Law whose article provisions are removed.⁹⁷The regulation of the concept of the formation of the law should be regulated first so that the good message contained in the concept can be implemented properly so as not to cause new problems in the community. The government is in the form of the application of *omnibus law* to create jobs. But it is not balanced with the substance of regulation that is able to avoid conflicts that have occurred so far. It has clearly been mentioned that this law was approved in the absence of the aspirations of the people, this is very contrary to the characteristics of the democratic State of Indonesia.⁹⁸

C. Establishment of Law No.11 of 2020 on Copyright Work According to the Concept of Mashlahah.

⁹⁷ Sigit Riyanto, Maria S.W Sumardjono, et al. Policy Paper Critical Note Against Law No.11 of 2020 on Work Copyright (Dpr Endorsement October 5, 2020) 2020. 17

⁹⁸ Sigit Riyanto, Maria S.W Sumardjono, dkk Kertas Kebijakan Catatan Kritis Terhadap UU No.11 Tahun 2020 tentang Cipta Kerja (Pengesahan DPR 5 Oktober 2020) 2020. 17

Maslahah is something that brings benefits (profits) and keeps harm (damage), but the essence of maslahah itself is to maintain the purpose of syara' (in establishing a law).⁹⁹ Maslahah definition in Arabic is "an act that encourages human goodness". So it means everything that is beneficial to humans, either in the sense of attracting or producing such as generating profit or happiness by avoiding harm. So anything that contains benefits deserves to be called mashlahah. So, maslahah contains two sides, namely attracting or bringing benefit and rejecting or avoiding harm. The job creation law may not be in line with the concept of Maslahah. Because controlled Maslahah, namely considering something according to reason is good and is controlled by syara' texts.

Like ulil amri who uphold justice among his people, this is a good and maslahat act.¹⁰⁰ Here the government as ulil amri should be fair to listen to the aspirations of the people. But in reality, the government and the DPR seemed indifferent and did not want to meet the demonstrators directly. Many activists were arrested for unknown reasons. Then where is the side of our justice as the people? Isn't the laws and regulations made for the benefit of the people, not just a handful of people? So it is necessary to examine the proposal, design, discussion, promulgation and dissemination of Law N0.11 of 2020 concerning Job Creation with the Mashlahah Concept.

1. Mashlahah Goal Review

⁹⁹ Amir Syarifuddin, *USHUL FIQH 2*, 4th edn (Jakarta: Kencana Prenadamedia group, 2008).367

¹⁰⁰ Amir Syarifuddin, *USHUL FIQH 2*, 4th edn (Jakarta: Kencana Prenadamedia group, 2008).241

Imam Syatibi stated that *mashlahah* is the understanding of the protection of human rights by attracting benefits and rejecting damages, which reason is not free to find a situation, and the agreement of Muslims that if in *nash syar'i* is not found that something contains *mashlahah* then the opinion must be rejected.¹⁰¹ *Mashlahah* is also the nature of the act that produces a continuous benefit and is determined based on the opinion of the majority of scholars.¹⁰²

- a. **Bringing benefits** to mankind for the time of living on earth and for later provision in the hereafter. There are benefits that can be directly felt like people who are starving are given food. As the benefits of the Job Creation Law, it is more in the investment sector that benefits business people.
- b. **Avoiding danger**, both in this life and in the hereafter. *Mudarat* is the same as benefits whose effects can be felt immediately or a few days later they will feel the effects.¹⁰³

1.) Proposing and Designing Law No.11 of 2020 on Work Copyright According to **Mashlahah Review**

Viewed from the process of proposing and planning Law No. 11 of 2020, it was originally intended to bring benefits to the government and the people of Indonesia. For example, creating many jobs by facilitating investment and reducing overlapping

¹⁰¹ Ibrahim bin Mûsa Abu Ishâq al-Syâtibi, *Al-I'tisham* (Beirut: Dar al-Marifah, 2000).113

¹⁰² Muhammad Thâhir bin 'Âsyûr, *Maqâshid al-Syari'ah al-Islâmiyyah* (Beirut: Muassah Fuad, 2004).297

¹⁰³ Sigit Riyanto, Maria S.W Sumardjono, dkk Kertas Kebijakan Catatan Kritis Terhadap UU No.11 Tahun 2020 tentang Cipta Kerja (Pengesahan DPR 5 Oktober 2020) 2020. 20

regulations. However, from the start, the government did not listen to the aspirations of the people. So that it does not bring real benefits to the general public. Especially when the process of drafting a government bill is very closed and only opens access to the public when the draft and academic text have been submitted to the DPR¹⁰⁴.

The Plenary Meeting version of the Employment Creation Law as thick as 905 pages as of 5 October 2020 and the version of the Job Creation Act submitted to the President with a thickness of 812 pages as of 14 October 2020, show that there are significant differences, namely changes, deletions, and new arrangements for the provisions of the 10 Laws. Invite. Not only that, the difference in the content of the text continued when the 812-page version of the Job Creation Law which was submitted to the President as of October 14, 2020, was juxtaposed with the text that was promulgated into Law No. 11 of 2020 concerning Job Creation, namely there is one law whose article provisions are deleted¹⁰⁵. This is contrary to the purpose of masalah which prioritizes the interests of the general public, not only from certain circles. to avoid harm, both in the life that is in this world today and later in the hereafter. Mudharats are the same as benefits whose impact can be felt immediately or a few days later you just feel the impact¹⁰⁶.

From the outset, the proposal and planning of the Job Creation Law has caused a lot of conflict among the people, especially workers who consider that this omnibus

¹⁰⁴ Admin, 'Permasalahan Proses Legislasi UU Nomor 11 Tahun 2020 tentang Cipta Kerja', in *Pusat Studi Hukum Konstitusi* < "<https://pshk.or.id/publikasi/lawmetric/permasalahan-proses-legislasi-uu-nomor-11-tahun-2020-tentang-cipta-kerja/>" <https://pshk.or.id/publikasi/lawmetric/permasalahan-proses-legislasi-uu-nomor-11-tahun-2020-tentang-cipta-kerja/> [accessed 2 April 2021]

¹⁰⁵ Sigit Riyanto, Maria S.W Sumardjono, dkk Kertas Kebijakan Catatan Kritis Terhadap UU No.11 Tahun 2020 tentang Cipta Kerja (Pengesahan DPR 5 Oktober 2020) 2020. 17

¹⁰⁶ Sigit Riyanto, Maria S.W Sumardjono, dkk Kertas Kebijakan Catatan Kritis Terhadap UU No.11 Tahun 2020 tentang Cipta Kerja (Pengesahan DPR 5 Oktober 2020) 2020. 17

law causes a lot of harm to them. Moreover, the Job Creation Act was passed at a time when the world was in crisis with the Covid 19 pandemic. There were many large-scale demonstrations demanding the government not to rush into enacting the law, but the government completely ignored the voices of the people. Law on job creation has minimal public participation. This is strengthened by the commencement of the draft of the Bill when the draft is finished and remains to be discussed by the Legislation Agency¹⁰⁷. This is certainly a strange note when the omnibus law on job creation has minimal public participation. It should have involved public aspirations in its design so that the formal principles in the formation of legislation are fulfilled. The formation of laws must be aspirational and participatory, which in this case implies process and substance. The process in the formation of laws must be transparent, so that public aspirations can participate in providing inputs.

2.) Discussion of Law No.11 of 2020 on Work Copyright According to Mashlahah Review

The process of discussing the Job Creation Law was very fast and seemed rushed, it did not concern the community because the discussion was closed and not open to the public. Whereas in the discourse of the initial discussion meeting the DPR and the government will open this meeting to the public through a live broadcast on national television. But in reality not even the aspirations of the people are not heard. When the ratification was carried out, there were also many problems, namely differences

¹⁰⁷ RUU Tentang Cipta Lapangan Kerja (Omnibus Law) ', in *Dewan Perwakilan Rakyat Republik Indonesia* " <https://www.dpr.go.id/uu/detail/id/442> > [accessed 23 November 2020]

of opinion between members of the DPR¹⁰⁸. Even a large-scale demonstration took place in the midst of the Covid-19 pandemic due to the sudden passing of the Job Creation Act. Whereas the government and the DPR should pay more attention to public safety by focusing on solving the pandemic rather than rushing to complete the Job Creation Law.

3.) Promulgation and Dissemination of Law No.11 of 2020 on Copyright Work Menurut Review Mashlahah

Law No.11 of 2020 was suddenly passed by the government and the Dpr very quickly. Whereas at the last plenary meeting 2 factions did not agree with the passing of this law. But with great confidence the government still passed the law. There was chaos during this plenary meeting became a sensation among the wider community¹⁰⁹. And finally there was a massive demo in various points of Indonesia. The government should be the government during the covid-19 pandemic is more concerned with the health of its people, and even when the government is still indifferent and even invites this law legally and has been taken by President Jokowi. Here the government as ulil amri should be fair to listen to the aspirations of its people. But the fact that at the demonstrations that took place the government and the Dpr seemed indifferent and did not want to meet directly the demonstrators. Many of the activists were arrested for unclear reasons. If viewed in the context of the Copyright Law this is not urgent to be made because in it the rules are very complex and will increasingly make

108 Riyanto Sigit, Sulistiowati and dkk, *Kertas Kebijakan Catatan Kritis Dan Rekomendasi Terhadap RUU Cipta Kerja* (Yogyakarta: Fakultas Hukum Universitas Gajah Mada, 2020).17

¹⁰⁹ Bill on Job Creation (Omnibus Law)', in *the House of Representatives of the Republic of Indonesia "* <https://www.dpr.go.id/uu/detail/id/442> > [accessed 23 November 2020]

the regulations overlap. In it also facilitates investment permits that are all transferred to the center so that many studies that should be done by the Regional Government for the benefit of the people are even lost. And also the derivative rules of the Copyright Law are prone to misuse¹¹⁰.

When Law No.11 of 2020 has been passed and then enacted a lot of unrest that occurs in the community and within the dpr itself. Whereas it should be Law No.11 of 2020 on Copyright Work is avoiding the misfortune but when it is passed and invited it even brings benefits to the community when the Covid-19 pandemic is ongoing. There were riots at the bottom of the region in Indonesia. However, the government still has to close its eyes and still invite this Work Copyright Law into Law No.11 of 2020 on Work Copyright. Even this law after it was passed there are still some changes in its editorial¹¹¹. even though the law that has been estimated by President Jokowi cannot be changed because in order to avoid the possibility of fraud, there will be noise in the community.¹¹²

2. Overview of the mashlahah level

- a. *Dharuriyat*¹¹³, namely the primary benefit, where human life is very dependent on it, both the diniyah (religious) and worldly aspects. So this is something that cannot be left out in human life. If it does not exist, human life in this world will

¹¹⁰ Fakhur , Razy Muhamad and Fedryansyah Muhammad, 'Conflicts of Civil Society Movement and Government In Government Process of Drafting Omnibus Law', *Journal of Conflict Resolution Collaboration*, III (2020), 75

¹¹¹ Shanti Dwi Kartika, 'Political Law copyright bill. Field of Info Law and a Brief Review of Actual and Strategic Issues', 12 (2020). 1-2

¹¹² Shanti Dwi Kartika, 'Politik Hukum RUU Cipta Kerja. Bidang Hukum Info dan Kajian Singkat Terhadap Isu Aktual dan Strategis', 12 (2020).1-2

¹¹³ Amir Syarifuddin, *USHUL FIQH 2*, 4th edn (Jakarta: Kencana Prenadamedia group, 2008).241

be destroyed and the hereafter will be corrupted (tormented). This is the highest level of benefit. In Islam, this dharuriyat benefit is guarded from two sides: first, its realization and realization, and secondly, maintaining its sustainability.

- b. *Hajiyat*, namely the benefits of a secondary nature, which are needed by humans to make life easier and eliminate difficulties and narrowness. If he does not exist, there will be difficulties and hardships whose implications are not to the point of destroying life.
- c. *Tahsiniyat*, namely maslahat which is a muru'ah (moral) demand, and it is intended for goodness and glory. If it does not exist, then it will not damage or complicate human life.

Based on the level of mashlahah, Hajiyat is appropriately used in analyzing Law No.11 of 2020 on This Work Copyright. It can be seen in terms of :

1.) Proposing and designing Law No.11 of 2020 on Work Copyright According to Mashlahah Hajiyat Review

The beginning of the proposal for the job creation law, it was intended to create many jobs and facilitate regulation. President Jokowi really expects a lot from this law. So far, the Government has made various efforts to create jobs that are able to absorb the high number of workers in Indonesia, but have not shown results in line with expectations. This is because the efforts so far are still partial. Various efforts to create jobs have been continuously carried out, one of which is by encouraging increased investment. However, this does not have a significant impact because investors are reluctant to invest in Indonesia. One of them is because of the difficulty

of doing business in Indonesia¹¹⁴. For this reason, the Indonesian government has made various efforts to improve the ease of doing business in Indonesia. Namely, one of them is by proposing the Job Creation Law and this Law being included in the Super Priority Prolegnas.

Then 3 other reasons that make this law important to be made but if it is not made it will not have a detrimental impact on the community, namely the first, overlapping regulations. The complexity of managing business licensing in Indonesia is caused by the obesity of licensing regulations, which in turn triggers overlapping regulations between central regulations and implementing regulations at the regional level.¹¹⁵. This overlapping problem is a factor causing investment delays in Indonesia because of the high authority of licensing officials and sectoral egos of each ministry/institution/region.

Second, disharmony of regulatory material (contrary to one another). Oftentimes, there are different arrangements between the regional government and the central government in determining the requirements that must be met to obtain a business activity permit. This causes a conflict of license requirements and difficulties for prospective business actors in Indonesia. *Third*, the business licensing procedure is convoluted. The working mechanism of business services in Indonesia is considered to take a long time, is not transparent, is not informative, has limited service facilities and infrastructure so that it requires high costs. This reality has become a

114 Muhammad Irham Roihan, 'OMNIBUS LAW DITINJAU DARI PERSPEKTIF SISTEM PERUNDANGUNDANGAN DI INDONESIA (Studi Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja). (Fakultas Hukum Universitas Islam Indonesia,2021). 20

115 Jimly Asshiddiqie, *Omnibus Law dan Penerapannya di Indonesia* (Jakarta : Konstitusi Press, 2020).5-6

consideration for the urgency of integrating sector laws and regulations, trying to create order, as well as ensuring legal certainty and protection.¹¹⁶ However, at the time of drafting this law, it was very closed and neglected public participation. Even the design of academic manuscripts and drafts were made without involving the wider community. Academic manuscripts and draft laws are only opened to the public when they have been submitted to Baleg. This is certainly a public spotlight, because they feel that their right to express their opinion is being ignored. Even though this law should be made openly for the sake of creating the common good¹¹⁷.

2.) Discussion of Law No.11 of 2020 on Work Copyright According to Mashlahah Hajiyat Review

The discussion on the job creation law begins with the dissemination of academic papers and draft laws to the Legislative Council and the wider community. The discussion at the beginning of the government meeting had made a discourse to broadcast it on National TV and was aspirational, but in reality it was still closed. And this discussion seemed rushed because it was still being discussed during the COVID-19 pandemic. And also this law contains a lot of regulations that will be combined with the hope that it will make regulation easier. In this law, there should be more people and workers that must be considered, but during discussions the government prioritizes listening and inviting entrepreneurs. In fact, in this way, the government seems indifferent. Therefore, even if the discussion of this law is not carried out or

¹¹⁶ Jimly Asshiddiqie, *Omnibus Law dan Penerapannya di Indonesia* (Jakarta : Konstitusi Press, 2020).5-6

¹¹⁷ Riyanto Sigit, Sulistiowati and dkk, *Kertas Kebijakan Catatan Kritis Dan Rekomendasi Terhadap RUU Cipta Kerja* (Yogyakarta: Fakultas Hukum Universitas Gajah Mada, 2020).12

postponed, it will not have a serious impact on the community. Because the government should be more concerned about dealing with the covid-19 pandemic¹¹⁸.

3.) The promulgation and dissemination of Law No.11 of 2020 on Work Copyright According to Mashlahah Hajiyat Review

Law No. 11 of 2020 was suddenly passed by the government and the DPR very quickly. Even though at the last plenary meeting 2 factions did not agree with the passing of this law ¹¹⁹. But with full confidence the government still passed the law. There was chaos when the plenary session became a scene among the wider community. And finally there was a massive demonstration in various points in Indonesia. The government should have paid more attention to the health of its people during the COVID-19 pandemic, and even during the demonstration the government was still indifferent and even enacted this law legally and has been adopted by President Jokowi. Here the government as *ulil amri* should be fair to listen to the aspirations of the people. But in reality, the government and the DPR seemed indifferent and did not want to meet the demonstrators directly¹²⁰. Many activists were arrested for unknown reasons. When viewed in the context of the Job Creation Act, it is not urgent to make it because the regulations are very complex and will make the

¹¹⁸ Fakhur ,Razy Muhammad and Fedryansyah Muhammad, 'Konflik Gerakan Masyarakat Sipil dan Pemerintah Dalam Pemerintah Proses Penyusunan Rancangan Undang-undang Omnibus Law', *Jurnal Kolaborasi Resolusi Konflik*, III (2020), 78-79.

¹¹⁹ Catatan Rapat Rapat Panja Badan Legislasi Dalam Rangka Pembahasan RUU Tentang Cipta Kerja 20 April 2020', in *Dewan Perwakilan Rakyat Republik Indonesia* <<https://www.dpr.go.id/dokakd/dokumen/BALEG-RJ-20200512-015521-5041.pdf> [accessed 11 May 2021]

¹²⁰ Egia Ginting Abdurakhman Alhakim, 'Analisis Pembentukan Undang-undang Cipta Kerja Pada Tahapan Perencanaan dan Penyusunan berdasarkan Undang-undang pemebentukan peraturan perundangan', *Combines*, I (2021).291-292

regulations more overlapping. It also makes it easier for investment permits to be transferred to the center so that many studies that should be carried out by the regional government for the benefit of the people are lost. And also the derivative rules of the Job Creation Law are prone to being misused. For example, legalizing alcohol may be carried out from a certain area. This is not justified because it is against Islamic law. Whereas a good mashlahah is to bring benefits and eliminate harm¹²¹. Here the Job Creation Act is a law that is not urgent to be made and does not cause serious problems if it is not passed which is in accordance with the concept of *maslahah Hajiyat*. Then the Job Creation Law is included in the free *Mashlahat*, which according to reason's considerations is *maslahat*, but there is no attention and support from the *syara'* texts and there is also no resistance or rejection of the *syara'* texts.

¹²¹ Amir Syarifuddin, *USHUL FIQH 2*, 4th edn (Jakarta: Kencana Prenadamedia group, 2008).241

CHAPTER IV

CLOSING

A. Conclusion

1. The establishment of Law No.11 of 2020 on Copyright work according to the establishment of good laws and regulations that is, this law does not all meet the two principles (formiil and materiil). When making the academic manuscript and the draft law is very closed to the public. The academic text and the draft law were only opened to the public when it was submitted to baleg at the first plenary meeting. In the discussion was very minimal aspirations from the public, and it is not clear the principle of clarity of formulation in the Law. When the process of ratification and promulgation of the law there is a lot of noise, especially after the enactment of the law is still being improved writing. This is of course contrary to the principle of openness on the principle of formiil and the principle in accordance with the ideals of Indonesian law on a material basis.
2. This Copyright Law when viewed from the concept of mashlahah was originally intended to bring benefits to the community, namely to facilitate regulation, investment and create many jobs. However, during the process of proposing, planning, discussion, endorsement and promulgation cause a lot of expectations. There is a lot of noise between the community to the government and on the internal side of the DPR. This law was made very quickly and in a hurry to be passed. In fact, for the sake of the benefit of the joint making of

laws by ulil amri must pay attention to the aspirations of his people. But there is no justice found by the people. In the concept of mashlahah hajiyat this law is not urgent to be formed, because if this law is not made and passed by the government it will not cause a detrimental impact on the community and instead avoid the impediment.

B. Suggestion

1. The regulation of the concept of the formation of the law is regulated more carefully so that the good message contained in the concept can be implemented properly so as not to cause new problems in the community. Moreover, the most important point of the principle of clarity of formulation should be more considered. And also the government must pay more attention to the principle of openness in accordance with the formation of good laws and regulations because in the formation of this law the main purpose is for the community.
2. The government should think more about the risks that will occur if this law is passed in the midst of the covid-19 pandemic, because many expectations are caused after Law No.11 of 2020 is passed. Because the welfare of the people is more important than a handful of parties who passed this law.

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