

The authors' views are their own and do not represent the official position of the Institute of Defence and Strategic Studies of the S. Rajaratnam School of International Studies, NTU. These commentaries may be reproduced with prior permission from RSIS and due recognition to the authors and RSIS. Please email to Editor IDSS Paper at RSISPublications@ntu.edu.sg.

No. 021/2021 dated 7 December 2021

A Litmus Test for Coalitional Dynamics: The Constitutional Court Ruling on Indonesia's Omnibus Law on Job Creation

Jefferson Ng

SYNOPSIS

With three years remaining in President Jokowi's second term, Indonesia's political parties are looking ahead to the next election. The president's ability to marshal political support to safeguard his signature legislative initiative, the Omnibus Law on Job Creation, could signal strength or weakness in the government coalition.

COMMENTARY

On 25 November, Indonesia's Constitutional Court ruled that the controversial Omnibus Law on Job Creation was [conditionally unconstitutional](#). The court required that the government revise the law within two years by adhering closely to the due process of lawmaking, as spelt out in existing legislation, but did not rule on substantive aspects of the law. In the interim period, the law [will remain in force](#), but the government is prohibited from introducing [new implementing regulations](#) or changing government policy based on its provisions.

The bill for an omnibus law on job creation first came to public attention in late 2019, after the re-election of President Jokowi, and is a signature legislative initiative of his second term. It was a major legal innovation designed to circumvent Indonesia's slow lawmaking process, bring together multiple laws under one umbrella, and produce much-needed regulatory clarity for businesses.

More importantly, the law reasserted the central government's powers over regional governments and improved the ability of future presidents to spearhead and

coordinate national-level economic strategy. Many of the Jokowi administration's key priorities, including the legal basis for Indonesia's sovereign wealth fund, the formation of new special economic zones, business permit simplification, and the liberalisation of labour regulations, also rely on the law.

Political Challenges

The Constitutional Court ruling has come up at a politically inconvenient time for the Jokowi administration. More than two years into President Jokowi's second term, political parties and potential presidential candidates are beginning to build alliances, increase their name recognition, and consider how best to form a ticket for the 2024 presidential election.

For one thing, political party leaders in Indonesia look increasingly restless. Gerindra Party chairman Prabowo Subianto's increasingly [warm ties](#) with Megawati Sukarnoputri, chair of the Democratic Party of Struggle (PDI-P), suggests that an alliance between Indonesia's third largest and largest parties could be on the cards. Also, the placement of [large billboards](#) at major road intersections around Indonesia with no election season in sight could suggest that Golkar Party chairman Airlangga Hartarto and Democrat Party chairman Agus Harimurti Yudhoyono are interested in presidential runs.

The omnibus nature of the law, with its broad coverage, has also become a poisoned chalice for the administration. The law includes many unpopular labour and environmental provisions such as changes to the minimum wage formula, the loosening of restrictions on hiring and firing, the removal of forest cover protection requirements, and the removing of community representatives from the environmental impact assessment team.

These issues had previously incited a broad coalition of workers, students, environmentalists and other civil activists. Such a coalition is likely to re-emerge once discussions of amendments to the law are restarted in Parliament.

President Jokowi rode on the momentum of his expanded popular legitimacy after his re-election and a legislative supermajority to pass the omnibus bill in late 2020. This was despite significant public opposition and rejection of the bill by the two opposition parties, the Democrat Party and the Prosperous Justice Party (PKS).

This time around, intense public scrutiny and the desire on the part of political parties to avoid being seen by voters as "anti-labour" could split parties in the government coalition between "pro-labour" and "pro-business" stances.

Although President Jokowi has made himself less vulnerable to party defection by incorporating Gerindra into the government coalition in late 2019 and thereby diluting the bargaining power of any single political party, there are limitations to the system of coalitional presidentialism practised in Indonesia. The president lacks his own party, and once given, a cabinet position occupied by a party politician cannot be easily taken away. With no stick to wield, President Jokowi is therefore likely to have to cajole the government coalition into supporting the amended law under conditions of diminished political leverage.

Technical Challenges

There are two main technical challenges relating to the law. First, omnibus laws are alien to the legal system and tradition of Indonesia, and the justices argued that it was unclear whether the law would be a [new standalone law or an amendment to existing laws](#). To address this legal ambiguity, lawmakers plan to revise the 2011 Law on Lawmaking, which stipulates Indonesia's hierarchy of laws and the procedures of lawmaking, in order to recognise the Omnibus Law on Job Creation as well as future omnibus bills.

Second, amendments to the Omnibus Law on Job Creation will have to be put to Parliament to fulfil the due process of lawmaking, as ruled by the Constitutional Court. Fulfilling this criterion means that Parliament must abide by the principle of transparency in all stages of the lawmaking process and respect the right of the public to provide inputs under Article 5G and Article 96 of Law No. 12/2011 on Lawmaking.

If the issues in the omnibus law flagged by the Constitutional Court cannot be resolved within two years, all legal provisions in the laws amended by the omnibus law will revert to their original form and language, and all its 50 derivative regulations will become devoid of legal force.

Likely Outcomes

Despite the various technical and political challenges, it is likely that the amendments to the omnibus law will be passed by Parliament within the two-year time frame. Not only does it involve vested economic interests, but the omnibus law has also made the presidency a more powerful political office than when President Jokowi first occupied it in 2014. For political parties interested in occupying the presidency in 2024, it therefore makes no sense to torpedo the amendments.

My overall assessment is that the Jokowi administration is not likely to experience too much difficulty in marshalling support from its legislative allies to pass the amendments. Nonetheless, the Constitutional Court ruling offers the opportunity for the Jokowi administration to have a proper do-over this time around, broker genuine compromise with civil society, forestall future constitutional challenges and safeguard its legacy.

Finally, with under three years left for President Jokowi's second term, the smooth passage of the amendments could serve as a signal of coalition unity as well as the potential success of other priority agenda items for the administration, including the passage of the law on the new capital. On the other hand, if a contentious and disorderly legislative process were to ensue, turbulent waters in Indonesia's political scene could lie ahead.

Jefferson NG is a Senior Analyst with the Indonesia Programme of the Institute of Defence and Strategic Studies (IDSS) at RSIS.

S. Rajaratnam School of International Studies, NTU Singapore
Block S4, Level B3, 50 Nanyang Avenue, Singapore 639798
T: +65 6790 6982 | E: rsispublications@ntu.edu.sg | W: www.rsis.edu.sg