



## TESTING THE OMNIBUS LAW CONCEPT IN LEGAL THEORY: EVALUATING ITS EFFECTIVENESS AS A TOOL FOR SOCIAL ENGINEERING

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### **Abstract**

*This research examines the enactment of Law Number 6 of 2023, which formalizes Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation. The law reflects the Indonesian government's efforts to create and expand employment opportunities. However, it is crucial to investigate whether these efforts align with the broader interests of the community or merely serve the ruling elite's agendas. This study assesses whether the law, with its various mechanisms, effectively addresses social conditions in line with the government's objectives—such as reducing unemployment, accommodating new workers, and fostering the growth of cooperatives and MSMEs—or whether it diverges from these goals. A socio-legal approach is employed to analyze whether the government's interests genuinely reflect the community's needs.*

**Keywords:** *Omnibus, Law, Theory, Social, Engineering.*

### **A. Introduction**

The concept of law as a mechanism for social engineering, initially articulated by Roscoe Pound<sup>1</sup>, represents a significant departure from more abstract European legal theories. Pound

<sup>1</sup> According to Professor of the Faculty of Law at Hasanuddin University, Musakkir, Roscoe Pound was not the one who "first" introduced the concept of "law as a tool of social engineering". Musakkir himself prefers to use the term "developing the concept". Musakkir. "Putusan Hakim yang Diskriminatif dalam Perkara Pidana; Suatu Tinjauan Sosiologi Hukum dan Psikologi Hukum." *Rangrang Education*, (2013): 26 & 43.

critiqued the overly abstract<sup>2</sup> and technical nature of these traditional theories, advocating instead for a pragmatic approach that views law as a tool for shaping and improving society.<sup>3</sup>

This perspective is particularly relevant in contexts characterized by competing needs and interests, such as those observed in Indonesia.<sup>4</sup> In countries experiencing significant economic competition, limited job access, and unequal natural resource exploitation, law as a tool for social engineering offers a framework for addressing these issues.<sup>5</sup>

In response to such challenges, the Indonesian government has implemented comprehensive regulatory reforms. One notable example is the "omnibus law," officially known as Law Number 6 of 2023, which enacts the provisions of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation.<sup>6</sup> This legislation aims to address unemployment and promote job creation by fostering the development of Cooperatives and Micro, Small, and Medium Enterprises (MSMEs).<sup>7</sup> The overarching goal is to stimulate economic growth and enhance community welfare through systematic and strategic legal interventions.<sup>8</sup>

The implementation of Law Number 6 of 2023, which enacts Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, has led to a modest increase in the Indonesian workforce. As of February 2022, the total labor force comprised 144.01 million individuals, reflecting an increase of approximately 4.20 million from February 2021.<sup>9</sup> However, the current working population stands at 135.61 million, with 81.33 million (59.97%) employed in the informal sector. The COVID-19 pandemic has significantly impacted the labor market, affecting 11.53 million people (5.53% of the working-age population), including 0.96 million unemployed individuals. Additionally, 0.55 million people are classified as not in the labor force, 0.58 million are not working, and 9.44 million experienced a reduction in working hours.

Beyond labor force issues, there is a pressing need to address wage levels to match economic growth and enhance worker productivity.<sup>10</sup> The Central Government, through Presidential Regulation, is working to expand social security and assistance programs. This initiative aims to improve competitiveness and the quality of human resources by accelerating

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<sup>2</sup> McManaman, Linus J. "Social engineering: The legal philosophy of Roscoe Pound." *John's L. Rev.* 33.1 (2013): 1. <https://scholarship.law.stjohns.edu/lawreview/vol33/iss1/1/> .

<sup>3</sup> Merryman, John Henry. "Comparative Law and Social Change: on the Origins, Style, Decline & Revival of the Law and Development Movement." *The American Journal of Comparative Law* 457 (1977): 457-491. <https://law.stanford.edu/publications/comparative-law-and-social-change-on-the-origins-style-decline-and-revival-of-the-law-and-development-movement/> .

<sup>4</sup> Tanya, Bernard L., Yoan N. Simanjuntak, and Markus Y. Hage. *"Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi."* Genta Publishing, (2010): 139.

<sup>5</sup> Abubakar, Lastuti, and Tri Handayani. "The Environmental Fund Management Model in Indonesia: Some Lessons in Legal Regulation and Practice." *Environmental Policy and Law Preprint* 53.2-3 (2023): 205-217. <https://doi.org/10.3233/EPL-230013> .

<sup>6</sup> Saputra, Rahmat, and Rama Dhianty. "Investment License and Environmental Sustainability in Perspective of Law Number 11 the Year 2020 concerning Job Creation." *Administrative and Environmental Law Review* 3.1 (2022): 27-40. <https://doi.org/10.25041/aelr.v3i1.2472> .

<sup>7</sup> McGann, Michael, Mary P. Murphy, and Nuala Whelan. "Workfare Redux? Pandemic Unemployment, Labour Activation and the Lessons of Post-crisis Welfare Reform in Ireland." *International Journal of Sociology and Social Policy* 40.9/10 (2020): 963-978. <https://doi.org/10.1108/IJSSP-07-2020-0343> .

<sup>8</sup> Tekola, Hagos, and Yemane Gidey. "Contributions of Micro, Small and Medium Enterprises (MSMEs) to Income Generation, Employment and GDP: Case Research Ethiopia." *Journal of Sustainable Development* 12.3 (2019): 46-81. <https://doi.org/10.5539/jsd.v12n3p46> .

<sup>9</sup> Wijaya, H. Karna, et al. "Constitutionalization of Minimum Wage as the Right of Laborers/Workers." *International Journal of Social Science Research and Review* 6.4 (2023): 416-431. <https://doi.org/10.47814/ijssr.v6i4.1076> .

<sup>10</sup> Piroșcă, Grigore Ioan, et al. "Digitalization and Labor Market—A Perspective Within the Framework of Pandemic Crisis." *Journal of Theoretical and Applied Electronic Commerce Research* 16.7 (2021): 2843-2857. <https://doi.org/10.3390/jtaer16070156> .

poverty reduction and addressing income inequality.<sup>11</sup> The goal is to ensure that the benefits of social security and assistance extend not only to workers but also to their families.

It is crucial to examine whether the interests underlying Law Number 6 of 2023 align with broader societal needs or primarily reflect the interests of the ruling elite. This inquiry will assess whether the law and its mechanisms effectively address the government's goals of reducing unemployment, accommodating new workers, and fostering the development of cooperatives and Micro, Small, and Medium Enterprises (MSMEs), thereby improving the overall economy and welfare of the community.

To investigate these concerns, an interdisciplinary approach, specifically socio-legal studies, will be employed. Socio-legal studies<sup>12</sup> integrate legal and social sciences to provide a comprehensive understanding of how legal frameworks interact with social realities.

## B. Discussion

### 1. The Omnibus Law Concept: Is it in accordance with Legal Theory as a Social Engineering Tool or Government Coercion Engineering Social Conditions

In Indonesia, the concept of law as a tool for social engineering was notably advanced by Mochtar Kusumaatmadja. Kusumaatmadja's approach emerged from his engagement with empirical disciplines<sup>13</sup> and aimed to adapt legal frameworks to societal changes. For Kusumaatmadja, the role of law as a tool of social engineering is to facilitate and manage societal transformations effectively.<sup>14</sup>

The core of legal theory as a tool for social engineering, as articulated by Roscoe Pound, involves organizing the diverse interests within society to achieve a balanced and equitable distribution.<sup>15</sup> Pound's theory seeks to minimize social conflict and economic inefficiencies, striving for the maximum satisfaction of human needs.<sup>16</sup> According to Pound, these interests include public, social, and individual interests, each of which the law aims to protect.<sup>17</sup>

Public interest refers to the safeguarding of societal welfare by the state as a legal entity, ensuring the protection of social interests. Social interests encompass the maintenance of public security, social institutions, public morals, social resources, progress, and individual life opportunities, including self-expression and living conditions. Individual interests involve the protection of personal aspects such as physical well-being, freedom of will, honor, privacy, beliefs, domestic relations (e.g., parent-child relationships), and various substantial interests including property, contracts, employment, and interpersonal relations.<sup>18</sup>

In the context of Law Number 6 of 2023, which enacts Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, the Indonesian Central Government can be seen as addressing these categories of interest. The law reflects an effort to protect and organize interests in line with Pound's framework. By examining the law's provisions, one can discern the government's rationale and objectives in enacting such legislation. This alignment suggests an attempt to address public, social, and individual interests through regulatory measures aimed at fostering economic development and social stability.

<sup>11</sup> Bratton, Michael. "The politics of government-NGO relations in Africa." *World Development* 17.4 (1989): 569-587. [https://doi.org/10.1016/0305-750X\(89\)90263-5](https://doi.org/10.1016/0305-750X(89)90263-5).

<sup>12</sup> Purwanda, Sunardi, and Andi Sri Rezky Wulandari. "Socio-Legal Studies: Methodical Implications of Legal Development in Indonesia." *Al-'Adl* 16, no. 2 (2023): 152-163. <http://dx.doi.org/10.31332/aladl.v16i2.6129>.

<sup>13</sup> Since Mochtar Kusumaatmadja's interest in empirical disciplines, "Sociology of Law" and "Anthropology of Law" have been included in the "shopping list" of legal studies in Indonesia. Rahardjo, Satjipto. "Pendidikan Hukum sebagai Pendidikan Manusia." Genta Publishing, (2009): 40-41.

<sup>14</sup> Djasmani, H. Yacob. "Hukum Sebagai Alat Rekayasa Sosial Dalam Praktek Berhukum di Indonesia." *Masalah-Masalah Hukum* 40, no. 3 (2011): 365-374. <http://doi.org/10.14710/mmh.40.3.2011.365-374>.

<sup>15</sup> Sweet, Alec Stone, and Jud Mathews. "Proportionality Balancing and Global Constitutionalism." *Colum. J. Transnat'l L.* 47 (2008): 72-164. <http://hdl.handle.net/10722/300158>.

<sup>16</sup> Rahardjo, Satjipto. "Ilmu Hukum." Citra Aditya Bakti, (2012): 335.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

The government's primary public interest is to safeguard the resilience of the national economy amidst the global economic crisis. However, the pursuit of social interests may be undermined by emerging public concerns, such as increasing competition for jobs. Unskilled labor can become a liability in a competitive job market that increasingly demands specialized expertise. This mismatch can lead to adverse economic outcomes for individuals, such as employment at wages below the minimum standard. The theoretical framework proposed by Pound, which categorizes interests, is not only instrumental for legislative purposes but also for practical application by aligning principles and values with these interests.<sup>19</sup>

Significant transformations in developed societies often originate from legal changes, particularly legislative reforms. These legal changes are typically spurred by shifts within the local or international community. However, societal changes do not attain legitimacy until they are codified into law, especially those that influence actions, events, modes, and relationships pertinent to the broader community or the state.<sup>20</sup> It is essential to investigate whether the interests reflected in Law Number 6 of 2023, which stipulates the government regulation in lieu of Law Number 2 of 2022 on Job Creation, genuinely align with community interests or are primarily driven by the preferences of the ruling elite.

In this context, Soetandyo's critique of C. Langdell's theories, referencing Roscoe Pound<sup>21</sup>, is pertinent. Soetandyo notes, "Pound advanced the argument that there exists a functional relationship between law and society."<sup>22</sup> This functional relationship between law and societal changes is driven by the operational functions of law. Podgorecki identifies five key functions of law within society, which are as follows:<sup>23</sup>

- 1) Integration Function: This function pertains to how law establishes and maintains mutual expectations among societal members.
- 2) Verification Function: This function involves the law's role in selecting patterns of human behavior to attain social objectives.
- 3) Reduction Function: This function addresses how the law identifies and manages diverse human attitudes within a complex society to meet societal needs.
- 4) Motivational Function: This function focuses on how the law influences individuals to adopt behaviors that align with societal values.
- 5) Educational Function: This function encompasses the law's role in not only enforcing and motivating behavior but also in educating and socializing individuals.

Among the five functions of law identified by Podgorecki, the function of integration can be analyzed in the context of the legislative process for work copyright law. This function involves government dissemination as a metric to assess the effectiveness of integration. A fundamental question to address is whether public participation was incorporated into the drafting of this law. Specifically, does the copyright issue align with public interest?

In relation to this function, the law anticipates community input. Research indicates that public participation has been involved in the drafting of copyright laws, including during stages of legal reform. Notably, the incorporation of the omnibus method in law drafting has aimed to enhance the scope and significance of public participation.<sup>24</sup>

<sup>19</sup> Tanya, Bernard L., Yoan N. Simanjuntak, and Markus Y. Hage. *Op.Cit.*, (2013): 139.

<sup>20</sup> Fuady, Munir. *Teori-Teori Besar (Grand Theory) dalam Hukum.* Prenadamedia Group, (2014): 252.

<sup>21</sup> Roscoe Pound must be recognised as a new force of thought that tried to re-conceptualise how law and legal functions should be understood. Pound was the first legal scientist who dared to advocate that the legal science of social knowledge be utilised for the advancement of updated and constructed theories in legal science. Wignjosoebroto, Soetandyo. *Hukum, Paradigma, Metode dan Dinamika Masalahnya.* ELSAM & HuMA, (2002): 71.

<sup>22</sup> Wignjosoebroto, Soetandyo. *Pergeseran Paradigma dalam Kajian-Kajian Sosial dan Hukum.* SETARA Press, (2013): 126.

<sup>23</sup> Milovanovic, Dragan. *A Primer in the Sociology of Law.* Harrow and Heston, (1988): 121.

<sup>24</sup> Following the decision of the Constitutional Court regarding the formal testing of the Job Creation Law in 2021, the Coordinating Ministry for Economic Affairs of the Republic of Indonesia, Airlangga Hartarto, said that the Government has stipulated an amendment to Law Number 12 of 2011 concerning the Formation of Legislation into Law Number 13 of 2022.

The function of law as a means of societal change, as discussed by Milovanovic, can also be evaluated through shifts in societal attitudes or the formation of new societal perspectives.<sup>25</sup> The relationship between social change and the legal sector is interactive, with social changes influencing legal reforms and vice versa. Legal changes that impact social change align with one of the primary functions of law: its role as a tool for social change or social engineering.<sup>26</sup> Social change, including legal transformations, can alter societal views or attitudes, driven by various stimulants<sup>27</sup>, including:

- 1) Evolutive changes in societal norms;
- 2) Impromptu needs of the society due to special circumstances or emergencies, especially with regard to the distribution of resources and standards of fairness;
- 3) The initiative of a small group of visionary citizens, which in turn influences the general way of life or outlook of the society;
- 4) There is a technical injustice in the law that calls for a change in the law;
- 5) There are inconsistencies in the body of law that also request changes to the content of the law; and
- 6) The development of science and technology that gives rise to new formations of certain fields of law.

Friedmann's six principles can reinforce Milovanovic's five normative legal functions. While the government may use Milovanovic's legal functions as reference material, it is likely to encounter challenges from Friedmann's stimulants. For instance, the fifth principle highlights inconsistencies within the legal framework that necessitate amendments to the law's content. The Job Creation Law, which originated from a Government Regulation in Lieu of Law (*Perppu*), was enacted in response to urgent needs.

However, the continuity of this *Perppu*, which became the Job Creation Law, faced challenges in the Constitutional Court. The Court's ruling affirmed that the Job Creation Law is formally flawed and conditionally unconstitutional. The judges declared that the establishment of the Job Creation Law contravenes the 1945 Constitution of the Republic of Indonesia and lacks conditional binding legal force unless corrected within two years from the decision. This indicates that lawmakers are required to address these issues within the specified timeframe.

Several critical considerations must be addressed by the government, particularly regarding public perception of the law. It is crucial that the legal system is perceived as a tool for societal change.<sup>28</sup> Soekanto<sup>29</sup> has outlined conditions that must be met for a legal system to be effective, including clarity for citizens, public awareness of the law's provisions, and the absence of conflicting regulations. Given these criteria, it is essential to examine whether the extensive provisions of the Job Creation Law—spanning over one thousand pages might conflict with existing or future legislation.

Any desired or planned social change is typically under the control and supervision of its initiators.<sup>30</sup> Methods for influencing society through systematically planned and organized approaches are known as social engineering or social planning.<sup>31</sup> According to Soemitro, two

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Kemenko Perekonomian, "Libatkan Partisipasi Masyarakat, Pemerintah Terapkan Meaningful Participation dalam Pembahasan Undang-Undang Cipta Kerja", (2023). Link <https://www.ekon.go.id/publikasi/detail/4867/libatkan-partisipasi-masyarakat-pemerintah-terapkan-meaningful-participation-dalam-pembahasan-undang-undang-cipta-kerja> .

<sup>25</sup> Fuady, Munir. *Op.Cit.*, (2014): 260.

<sup>26</sup> *Ibid.*, (2014): 248-249.

<sup>27</sup> Friedmann, Wolfgang Gaston. "Law in a Changing Society." Columbia University Press, (1972): 45.

<sup>28</sup> Suteki. "Desain Hukum di Ruang Sosial." Thafa Media & Satjipto Rahardjo Institute, (2013): 114.

<sup>29</sup> Soekanto, Soerjono. "Pokok-Pokok Sosiologi Hukum." Rajawali Press, (1986): 130.

<sup>30</sup> Spaargaren, Gert, and Arthur PJ Mol. "Sociology, Environment, and Modernity: Ecological Modernization as a Theory of Social Change." *Society & Natural Resources* 5.4 (1992): 323-344. <https://doi.org/10.1080/08941929209380797>.

<sup>31</sup> Soekanto, Soerjono. *Op.Cit.*, (1986): 107.

key factors drive social change within a society: firstly, the willingness of the ruling authorities to implement changes, and secondly, the necessity for alignment between political rulers and economic power holders, including influential economic actors.<sup>32</sup> However, Soemitro's suggestions must align with the public's literacy to ensure understanding and compliance with the law.

The approval of Law No. 6 of 2023 was intended to serve as a tool for social engineering to address community issues. Nevertheless, media reports indicate significant opposition to this law. Rejections were widespread from March to October 2023, encompassing not only laborers but also farmers, students, and civil society groups. The following table summarizes the sources of this opposition:

No.	Time and Location	Mass Group
1	March 30, 2023. Located at the Lampung Provincial Parliament Building <sup>33</sup>	Combined student elements
2	April 6, 2023. Located at the DPR/MPR Building, Jakarta <sup>34</sup>	Combined student elements
3	May 1, 2023. Located at the Office of the Nahdlatul Ulama (NU) Central Leadership Council, Jakarta <sup>35</sup>	Konfederasi Serikat Buruh Muslimin Indonesia (K-Sarbumusi) Nahdlatul Ulama
4	June 6-9, 2023. Located at the Bandung, Semarang, and Surabaya <sup>36</sup>	Labor union association
5	June 15-16, 2023. Located at the Geneva, Swiss <sup>37</sup>	International Trade Union Conderation (ITUC)
6	July 26, 2023. Located at the Monas, Jakarta <sup>38</sup>	Partai Buruh dan Konfederasi Serikat Pekerja Indonesia (KSPI)
7	August 10, 2023. Located at the International Labor Organization (ILO) Office to Arjuna Wiwaha statue area, Jakarta <sup>39</sup>	Aliansi Gerakan Buruh Bersama Rakyat (Gebrak); Konsorsium Pembaharuan Agraria (KPA); Konfederasi Kasbi; Walhi Nasional; Greenpeace Indonesia; Serikat Petani Simalingkar Bersatu (SPSB); Serikat Tani Mencirim Bersatu (STMB); and 12 other civil society organizations

<sup>32</sup> Soemitro, Ronny Hanitijo. "Permasalahan Hukum di Dalam Masyarakat." Alumni, (1984): 73.

<sup>33</sup> Tempo, "Belum Berubah Polisi Tangani Demonstrasi", (2023). Link <https://koran.tempo.co/read/nasional/481249/penolakan-uu-cipta-kerja-masih-berlanjut>.

<sup>34</sup> Tirto, "Isi UU Cipta Kerja 2023 yang Ditolak Demonstran & Kontroversinya", (2023). Link <https://tirto.id/isi-uu-cipta-kerja-2023-yang-ditolak-demonstran-kontroversinya-gEy5>.

<sup>35</sup> NU Online, "Hari Buruh, Sarbumusi NU Tegaskan Tolak UU Cipta Kerja, Permenaker 5/2023, dan RUU Kesehatan", (2023). Link <https://www.nu.or.id/nasional/hari-buruh-sarbumusi-nu-tegaskan-tolak-uu-cipta-kerja-permenaker-5-2023-dan-ruu-kesehatan-UZCpy>.

<sup>36</sup> Tempo, "Hari Ini Ribuan Buruh Aksi Menolak UU Cipta Kerja di Istana Negara dan Gedung MK", (2023). Link <https://bisnis.tempo.co/read/1752201/hari-ini-ribuan-buruh-aksi-menolak-uu-cipta-kerja-di-istana-negara-dan-gedung-mk>.

<sup>37</sup> Kompas, "UU Cipta Kerja Jadi Bahasan Konferensi Buruh Internasional", (2023). Link <https://www.kompas.id/baca/ekonomi/2023/06/11/kelompok-pekerja-tetap-menentang-keberadaan-uu-cipta-kerja>.

<sup>38</sup> Kompas, "Massa Buruh Gelar Demo di Kawasan Monas, Ini Tuntutannya", (2023). Link <https://video.kompas.com/watch/755063/massa-buruh-gelar-demo-di-kawasan-monas-ini-tuntutannya>.

<sup>39</sup> Mongabay, "Kala Berbagai Kalangan Terus Desak Cabut UU Cipta Kerja", (2023). Link <https://www.mongabay.co.id/2023/08/16/kala-berbagai-kalangan-terus-desak-cabut-uu-cipta-kerja/>.

8	October 2, 2023. Located at the Arjuna Wiwaha statue area, Jakarta <sup>40</sup>	Federasi Serikat Pekerja Metal Indonesia (FSPMI); Konfederasi Serikat Pekerja Seluruh Indonesia (KSPSI); and several other labor elements
9	October 2, 2023. Located at the Surabaya <sup>41</sup>	Labor union association

The significant rejection of Law No. 6 of 2023 from March to October 2023 indicates that the government's social engineering efforts have not achieved their intended outcomes. This widespread opposition suggests a failure to implement the desired social changes effectively. The reasons behind this failure can be multifaceted, reflecting discrepancies between the government's objectives and the community's needs or expectations.

Changes in social conditions may not always align perfectly with the desires of either the government or the community, including community groups or organizations advocating for these changes. The enactment of the Job Creation Law exemplifies this disconnect. Munir Fuady has outlined four conditions under which social engineering via legal policy is accepted, influenced by the following factors:<sup>42</sup>

- 1) a position where the law actually changes as desired by society (full compliance);
- 2) a legal position that sharpens the perception of change in society;
- 3) a legal position that only ratifies changes that have actually occurred in society; and
- 4) a legal position that changes but not as desired by society.

Munir Fuady outlines four distinct positions regarding the acceptance and implementation of social engineering through legal policy. The first position is where the community determines the policies to be enacted by the government. This approach strengthens the role of society in shaping governance and is particularly valued in democratic contexts. It aligns with Sociological Jurisprudence, which holds that a good law is one that reflects the living law within society.<sup>43</sup>

In the second position, the law serves to legitimize and support the actions or desires of the community. Unlike the first position, where the government merely follows societal preferences, this approach involves the government using its legal instruments to collaborate with the community in achieving the desired social changes. This cooperative effort aims to materialize the mutual goals of both government and society.

The third position involves the law being imposed as a government product that must be accepted by the community. The primary distinction from the second position lies in the lack of material reinforcement and collaboration between the government and society. This situation often arises from external pressures or constraints, such as natural disasters or other forceful circumstances, which compel acceptance and ratification of the law despite limited cooperation.

The fourth position reflects a scenario where the government unilaterally determines and applies policies to the community. This contrasts with the first position by emphasizing the government's control over societal changes. This approach is typical in autocratic regimes, where the ruler exercises significant control. It aligns with Legal Positivism, as articulated by

<sup>40</sup>CNBC Indonesia, "Gugatan UU Ciptaker Ditolak, Pendemo Mulai Membubarkan Diri", (2023). Link <https://www.cnbcindonesia.com/news/20231002184931-4-477231/gugatan-uu-ciptaker-ditolak-pendemo-mulai-membubarkan-diri>.

<sup>41</sup>BBC, "MK tolak lima gugatan serikat buruh dan kukuhkan UU Cipta Kerja - Apa yang digugat dan mengapa regulasi ini terus ditentang?", (2023). Link <https://www.bbc.com/indonesia/articles/cn0q33n9p1qo>.

<sup>42</sup>Fuady, Munir. *Op. Cit.*, (2014): 265.

<sup>43</sup>Simarmata, Rikardo. "Socio-Legal Studies dan Gerakan Pembaharuan Hukum." *Digest Law, Society & Development* 1 (2006): 12-32. <https://perpustakaan.bldk.mahkamahagung.go.id/index.php?p=fstream&fid=4130&bid=3293>.

John Austin, who identified four fundamental elements of law: sovereignty, command, duty to obey, and sanctions for disobedience.<sup>44</sup>

The rejection events throughout 2023 regarding the immediate enforcement of the Job Creation Law illustrate that we are effectively in a state represented by the fourth position described by Munir Fuady. This position signifies a condition where society is subordinated to the government, reflecting a significant power imbalance in favor of the ruling authorities. The imposition of the law, despite substantial public opposition, highlights a disregard for the principle of popular sovereignty. The community's resistance can be seen as an assertion of this principle, challenging the government's approach and underscoring a disconnect from the foundational ideas enshrined in the 1945 Constitution.<sup>45</sup>

According to M. Koesnoe, one of the central ideas of the 1945 Constitution is that laws should originate from the people and embody populist characteristics. The government's failure to adhere to this principle constitutes a constitutional violation, shifting its governance approach from a state of law (*rechtstaat*) to a state of power (*machtstaat*).

Furthermore, there are concerns that the passing of the Job Creation Law may be driven by economic motivations, potentially aimed at undermining people's rights. Historically, economic justifications have been used to legitimize actions that infringe upon rights, as seen in the case of imperialism justified by economic motives. Pierre Bourdieu has cautioned that economic coercion is often disguised as legal justification.<sup>46</sup>

This situation is evident not only in the legislative process spanning submission, socialization, ratification, and revision but also in the judicial stage, where constitutional judges have raised concerns about the law's validity. The juridical legitimization of the Job Creation Law in the name of economic reform appears to be an imposed measure, rather than a consensual and equitable solution.

### C. Conclusion

Legal changes that aim to drive social change align with one of the key functions of law: serving as a means of social transformation or community engineering. The inconsistencies identified in the Job Creation Law necessitate amendments to its content. The *Perppu* on Job Creation, which was eventually formalized into the Job Creation Law, faced challenges in the Constitutional Court. The Court's ruling confirmed that the Job Creation Law was formally flawed and conditionally unconstitutional. For the Job Creation Law to effectively contribute to social change, it must first address these inconsistencies. Achieving the law's objectives hinges on its acceptance and functionality within society. The government must ensure that the law is not only acceptable to the community but also operational in practice. Without meeting these prerequisites, it is unrealistic to expect the law to bring about meaningful social change.

### D. Suggestion

To effectively impact society, it is crucial to consider how the law will operate within the community. Firstly, the government must ensure that the law is acceptable to the community. Secondly, the law must be functional and operational. If either of these conditions is not met, it is unrealistic to expect the law to effect meaningful social change.

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<sup>44</sup> Tanya, Bernard L., Yoan N. Simanjuntak, and Markus Y. Hage. *Op.Cit.*, (2013): 109.

<sup>45</sup> Marbun, SF. "Peradilan Tata Usaha Negara." *Liberti*, (2003): 147-148.

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