



## Implementing Regulations for the Omnibus Law within the Taxation Cluster: A Delegated Legislation Perspective

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**Abstract.** This research explores the implications of Indonesia's Law Number 11 of 2020 concerning Job Creation, or the Omnibus Law, with a focus on delegated legislation and its role in fostering investment through regulatory clarity. The law emphasizes the importance of the timely implementation of regulations, mandating that all implementing regulations remain in effect unless they conflict with the new law. However, there is a gap in the existing literature regarding how delegated legislation influences the creation of these implementing regulations, particularly within the taxation cluster. Utilizing a qualitative design and normative juridical approach, the research analyzes the hierarchy of legal regulations in Indonesia, including the constitutional framework that supports economic growth. Data collection involves an in-depth examination of relevant laws and specific tax provisions introduced by Law 11/2020. The findings reveal that while the law aims for regulatory simplification, its implementation has led to over-regulation, complicating compliance for businesses. Recommendations include refining the preparation and organization of the law to enhance clarity and ensuring that the formation of delegated regulations aligns with established legislative principles. Ultimately, this research contributes to the discourse on regulatory reform, emphasizing the necessity for coherence and efficiency in Indonesia's legal landscape to promote a conducive environment for investment and economic development.

**Keywords:** Delegated Legislation, Omnibus Law, Regulatory Reform, Taxation Cluster.

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**Abstrak.** Penelitian ini mengeksplorasi implikasi dari Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja di Indonesia, dengan fokus pada legislasi delegasi dan perannya dalam mendorong investasi melalui kejelasan regulasi. Undang-undang ini menekankan pentingnya pelaksanaan regulasi secara tepat waktu, yang mengharuskan semua regulasi pelaksana tetap berlaku kecuali bertentangan dengan undang-undang baru. Namun, terdapat kekurangan dalam literatur yang ada mengenai bagaimana legislasi delegasi memengaruhi pembuatan regulasi pelaksana ini, khususnya dalam kluster perpajakan. Dengan menggunakan desain kualitatif dan pendekatan normatif yuridis, penelitian ini menganalisis hirarki peraturan hukum di Indonesia, termasuk kerangka konstitusi yang mendukung pertumbuhan ekonomi. Pengumpulan data melibatkan pemeriksaan mendalam terhadap undang-undang yang relevan dan ketentuan perpajakan spesifik yang diperkenalkan oleh Undang-Undang 11/2020. Temuan menunjukkan bahwa meskipun undang-undang ini bertujuan untuk menyederhanakan regulasi, implementasinya justru menyebabkan over-regulasi, yang menyulitkan kepatuhan bagi bisnis. Rekomendasi mencakup penyempurnaan persiapan dan pengorganisasian undang-undang untuk meningkatkan kejelasan serta memastikan bahwa pembentukan regulasi delegasi sejalan dengan prinsip legislasi yang telah ditetapkan. Pada akhirnya, penelitian ini berkontribusi pada diskursus tentang reformasi regulasi, menekankan perlunya koherensi dan efisiensi dalam lanskap hukum Indonesia untuk mempromosikan lingkungan yang kondusif bagi investasi dan pengembangan ekonomi.

**Kata kunci:** Legislasi Delegasi, Undang-Undang Omnibus, Reformasi Regulasi, Kluster Perpajakan

## 1. Introduction

The Republic of Indonesia is a state governed by law, grounded in the values of Pancasila, which serves as the philosophical foundation of the nation. Pancasila embodies the essence of the Indonesian identity and must serve as the source for all legal regulations.<sup>1</sup> In conceptual terms, the framework of the Republic of Indonesia should be articulated both materially and formally. Materially, the legal substance derived from Pancasila must adhere to several core principles.<sup>2</sup> First, it must reflect the values of the Almighty God, ensuring that laws governing state life originate from and do not contradict divine principles, aligning with existing religious teachings, which serve as vital sources of law.<sup>3</sup> Second, it must encompass the values of just and civilized humanity, meaning that laws should align with universal human rights, justice, and civilization. Third, it must embody the values of the people, guided by deliberation and representation, ensuring that laws reflect the interests and aspirations of citizens through democratic processes. Fourth, it must uphold the values of Indonesian unity, ensuring laws respect and integrate the diverse cultures, religions, and traditions of the archipelago. Lastly, it must

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<sup>1</sup> Pancasila serves as the foundational source of law in Indonesia, guiding national legislation and judicial decisions. Previous research highlights its integral role in shaping the concept of the state of law and influencing Constitutional Court rulings, reinforcing Pancasila's significance in legal interpretation. Additionally, studies indicate that Pancasila values are embedded in contemporary reforms, such as the new Indonesian criminal code, ensuring their continued relevance in the legal system. See, Artha Debora Silalahi, "The Paradox of State of Law Idea on Pancasila Philosophical Justification As Sources Of Law: Paradoks Ide Negara Hukum dalam Justifikasi Filosofis Pancasila Sebagai Sumber Hukum," *Jurnal Konstitusi* 21, no. 1 (2024): 62. See also, Labib Muttaqin, Sudjito Atmoredjo, and Andy Omara, "Relasi Pancasila dengan Putusan Mahkamah Konstitusi Sebagai Sumber Hukum di Indonesia," *Jurnal Konstitusi* 21, no. 1 (2024): 77; Saldi Isra and Pan Mohamad Faiz, "The Indonesian Constitutional Court: An Overview," *Brill's Asian Law Series* 12, no. 3, (2024): 59; Adam James Fenton, "The Pancasila Ideological Direction Bill (RUU-HIP): A Missed Opportunity?," *Politics and Governance* 12, no. 2 (2024): 7672; Nadiyah Meyliana Putri et al., "Pancasila Values in the New Indonesian Criminal Code: Does the Code More Humanist?," *Journal of Law and Legal Reform* 4, no. 4 (2023): 597; Wawan Andriawan, "Pancasila perspective on the development of legal philosophy: Relation of justice and progressive law," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, no. 1 (2022): 10; Iqbal Kamalludin, "Restoration of Pancasila Values Against Criminal Law Reform Strategy in Indonesia Political Perspective of Islamic Law," *Syariah: Jurnal Hukum dan Pemikiran* 22, no. 1 (2022): 37.

<sup>2</sup> Nadiyah Meyliana Putri et al., "Pancasila Values in the New Indonesian Criminal Code: Does the Code More Humanist?," *Journal of Law and Legal Reform* 4, no. 4 (2023): 599. See also, Jefry Tarantang, "Cita Hukum Dan Sistem Nilai Etika Advokat Dalam Penyelesaian Sengketa Hukum Keluarga Islam," *El-Mashlahah* 9, no. 2 (2019): 139.

<sup>3</sup> Aris Munandar, "Religion and Nation Building: Religion and National Development in Indonesia," *International Journal of Religion & Spirituality in Society* 9, no. 2 (2019): 19.

embody the principle of social justice, aiming to foster equitable social welfare for all Indonesians, thereby guaranteeing justice and well-being without exception.<sup>4</sup>

Meanwhile, in terms of formal legality, the Indonesian constitutional state must be based on the provisions outlined in the articles of laws and regulations, including the 1945 Constitution and its amendments, as well as other legislative instruments. The foundational pillars of the Indonesian constitutional state are articulated in the Preamble of the 1945 Constitution and further elaborated in its articles. According to Alex Carroll,<sup>5</sup> these laws and regulations encompass legal provisions enacted by parliament, which may take the form of laws (statutes or primary legislation) or regulations established by other authorities delegated power from parliament to create laws and regulations, known as subordinate or secondary legislation.<sup>6</sup> The concept of delegation in the legislative context, as explained by Bagir Mannan, pertains to the transfer of authority that is permitted within the framework of governance.<sup>7</sup>

Delegated legislation is a mechanism that allows provisions within a law (Act of Parliament) to be enforced or modified without the need for parliament to enact a new law. This approach enables the creation of more detailed regulations, as laws often provide a broad framework that requires further specification. In Indonesia, the first Omnibus Law, Law Number 11 of 2020 (Law 11/2020) concerning Job Creation, exemplifies this concept. The Omnibus Law aims to establish a single new law that revises and/or revokes multiple existing laws simultaneously. This legislative model is widely utilized in various common law countries with an Anglo-Saxon legal tradition, such as the United States, Belgium, England, and Canada, to streamline regulations and address issues of over-regulation and legal overlap.<sup>8</sup> Despite its potential benefits, the Omnibus Law remains relatively unpopular in Indonesia due to several implications for its implementation. First, existing laws continue to be valid unless specific articles (legal provisions) are replaced or declared invalid. Second, if the articles that are replaced or invalidated represent the essence or spirit of the law, the entire law may no longer be applicable.

To understand Law 11/2020, it is essential to consider the background behind its drafting, with the primary objective of encouraging investment through increased employment. This initiative addresses the numerous contradictions and

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<sup>4</sup> Yudi Latif, "The Religiosity, nationality, and sociality of Pancasila: Toward Pancasila through soekarno's way," *Studia Islamika* 25, no. 2 (2018): 221.

<sup>5</sup> Alex Carroll, *Constitutional and Administrative Law*. 3rd ed, (London: Pearson Education, 2003), 54.

<sup>6</sup> Efendi Aan & Freddy Poernomo, *Hukum Administrasi*, (Jakarta: Sinar Grafika, 2017), 48.

<sup>7</sup> Bagir Manan, "Wewenang Provinsi, Kabupaten, dan Kota dalam Rangka Otonomi Daerah," *Hukum Unpad*, 13, no. 5 (2000): 9.

<sup>8</sup> Antoni Putra, "Penerapan Omnibus Law Dalam Upaya Reformasi Regulasi," *Jurnal Legislasi Indonesia* 17, no. 1 (2020): 7.

disharmonies in existing legislation that have hindered investment implementation in Indonesia, exacerbated by the Covid-19 pandemic, which has led to widespread layoffs (Termination of Employment). Additionally, Law 11/2020 mandates the prompt establishment of implementing regulations. Article 185, letter b, states, "All implementing regulations of the Law that have been amended by this Law are declared to remain in effect as long as they do not conflict with this Law and must be adjusted no later than 3 (three) months."

This research presents a novel exploration of the application of delegated legislation within the framework of Indonesia's Omnibus Law, Law Number 11 of 2020 concerning Job Creation.<sup>9</sup> While existing literature,<sup>10</sup> highlights the urgency

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<sup>9</sup> Previous studies investigate the implications of Indonesia's Job Creation Law, particularly focusing on the law's implementation, its impact on various sectors and the regulatory environment surrounding labor protections. See, Irene Mariane, Listyowati Sumanto, and Ignatius Pradipta Probondaru, "Problems of Converting Agricultural Land and the Need to Anticipate Its Control After the Enactment of the Job Creation Law," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 7, no. 1 (2024): 23. See also, Rr Ani Wijayati, and Haposan Sahala Raja Sinaga, "Implementation of Indonesian Government Regulations Concerning the Job Loss Guarantee Program in the Province of the Special Capital Region of Jakarta," *Khazanah Hukum* 6, no. 1 (2024): 98; Siti Kunarti et al., "The Legal Politics of Outsourcing and Its Implication for the Protection of Workers in Indonesia," *Srinwijaya Law Review* 8, no. 1 (2024): 11; Widhayani Dian Pawestri et al., "Investment in Infrastructure: A Comparative Study of the Regulation of Online Single Submission in Indonesia, Canada, and New Zealand," *European Journal of Comparative Law and Governance* 11, no. 1 (2024): 141; Muhammad Ikhsan Kamil, Khairul Aswadi, and Fathur Rauzi, "The Concept of a Perfect BUMDES Law Entity After Law No. 11/2020 on Working Creation in The Role of Increasing Village Income," *Jurnal IUS Kajian Hukum dan Keadilan* 11, no. 3 (2023): 589; Mohammad Zainullah, "The Compatibility of Indonesia's Job Creation Law Number 11 Of 2020 With United Nations Guiding Principles on Business and Human Rights," *Jurisdictie: Jurnal Hukum dan Syariah* 14, no. 1 (2023): 21; Fithriatus Shalihah, "Industrial Relations with Specific Time Work Agreements after the Decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-XVIII/2020 in The Perspective of Legal Justice," *Jurnal Hukum Novelty* 13, no. 1 (2022): 65; Imam Koeswahyono, Diah Pawestri Maharani, and Airin Liemanto, "Legal breakthrough of the Indonesian job creation law for ease, protection, and empowerment of MSMEs during the COVID- 19 pandemic," *Cogent Social Sciences* 8, no. 1 (2022): 2084895; Nurul Aprianti, Muchamad Ali Safaâ, and Indah Dwi Qurbani, "Dualism of Review Model on Regional Regulations Post Act Number 11 of 2020 on Job Creation," *Jurnal IUS Kajian Hukum dan Keadilan* 9, no. 2 (2021): 474; Atikah Mardhiya Rohmy, H. Setiyono, and Supriyadi Supriyadi, "Corporate Criminal Sanction in Omnibus Law for Forest Destruction in Indonesia: Review of Law Number 11 of 2020 on Job Creation," *Al- Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 21, no. 1 (2021): 49.

<sup>10</sup> Diding Rahmat et al., "The Urgency of Administrative Law in Light of Ius Constituendum Regarding the Role of Village Heads," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 9, no. 4 (2024): 53. See also, Martitah et al., "Transformation of the Legislative System in Indonesia Based on the Principles of Good Legislation," *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 545; Lelisari et al., "Implications of the Constitutional Court Decision Number 91/Puu-Xviii/2020 Toward Job Creation Law in The Mineral and Coal Mining Sector," *Jurnal IUS Kajian Hukum dan Keadilan* 10, no. 3 (2022): 555; Izzati N Risfa, "Deregulation in Job Creation Law: The Future of Indonesian Labor Law," *Padjadjaran Jurnal Ilmu Hukum* 9, no. 2 (2022): 191.

of legislative processes and administrative law in contemporary legislative processes, there is a gap in understanding how delegated legislation specifically influences the formulation of implementing regulations in this context. Previous studies have examined the broader implications of the Omnibus Law in various legal sectors,<sup>11</sup> but have not adequately addressed the detailed interplay between legal theory and the practicalities of legislation in the taxation cluster.

Furthermore, this research builds on the work of previous research, who discussed the implications of Law Number 6 of 2023 on job creation, by focusing specifically on how the Theory of Legislation is applied in the preparation of implementing regulations.<sup>12</sup> By analyzing the specific challenges and limitations presented by the Omnibus Law's implementation process, this study seeks to contribute to the understanding of how legal frameworks can be optimized to facilitate more effective governance and regulatory clarity in Indonesia. Thus, in line with the concept of the Omnibus Law, which seeks to establish concise, compact, and clear legal regulations, the presence of limiting regulations during the formulation of implementing regulations has significant implications when analyzed from a legal theory perspective. Given this context, the research will focus on the following problem formulation: how is the Theory of Legislation applied in the preparation of implementing regulations for Law Number 11 of 2020 concerning Job Creation within the taxation cluster? This inquiry aims to explore the interplay between legal theory and practical implementation in the context of taxation clustering in Indonesian Omnibus Law.

## 2. Research Methods

The research method employed in this study follows a qualitative design utilizing a normative juridical approach. The aim is to examine the hierarchy and types of legal regulations in Indonesia, specifically focusing on the implications of Law Number 11 of 2020 concerning Job Creation. This law is situated within a broader framework that includes the 1945 Constitution and various decrees and regulations, establishing a legal basis for understanding how these laws facilitate a

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<sup>11</sup> Dedah Jubaedah et al., "Halal Certification in Indonesia: Study of Law Number 6 of 2023 on Job Creation," *Jurisdictie: Jurnal Hukum Dan Syaria* 14, no. 1 (2023): 154. See also, Ali Murtadho Emzaed, Ibnu Elmi AS Pelu, and Shakhzod Tokhirov, "Islamic law legislation in Indonesia: anomalies of the relationship between political configuration and zakat legal product during the reform era," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (2023): 97.

<sup>12</sup> Dewi Cahyandari, "The Good Governance Principle in Fictitious-Positive Case Applications After the Job Creation Law," *Yustisia* 12, no. 1 (2021): 77. See also, Kunarti, "The Legal Politics," 10; Anindita Purnama Ningtyas, "The Fulfillment of The Clarity Principle Towards the Formulation Arrangement in The Recognition of Statutory Bodies Within the Limited Liability Company," *Jurnal IUS Kajian Hukum dan Keadilan* 11, no. 1 (2023): 156.



conducive business environment and economic growth in Indonesia. By assessing these legal structures, the research seeks to elucidate the interplay between regulatory frameworks and economic growth.

Data collection involves a thorough examination of the relevant laws and regulations, particularly those related to taxation as outlined in Law 11/2020. This includes detailed analysis of specific articles that address amendments to existing tax laws, the requirements for foreign tax subjects, and the procedural guidelines for tax compliance and exemptions. The normative juridical method provides a lens through which these legal texts are interpreted, ensuring that the research aligns with established legal doctrines and principles while addressing tax regulation after the enactment of Law 11/2020 in Indonesia.

Data analysis is conducted descriptively, focusing on the content and implications of the laws examined. This approach facilitates a comprehensive understanding of how various articles within Law 11/2020 interact with previous tax regulations and the overall legal landscape in Indonesia. By highlighting specific changes and their potential impacts on business operations and taxpayer behavior, the study aims to provide insights into the effectiveness of legal frameworks in fostering economic development and legal certainty. The findings will contribute to ongoing discussions about regulatory reform and its significance in enhancing the ease of doing business in Indonesia.

### **3. Results and Discussion**

#### **3.1. Delegation of Taxation Cluster as Implementing Regulations of Omnibus Law**

Delegation, in a theoretical context, involves the transfer of authority from a higher entity to a lower one, allowing the latter to exercise specific powers or responsibilities. Delegation is the process of transferring authority and responsibility from a higher entity to a lower one, enabling the latter to act on behalf of the former.<sup>13</sup> From a theoretical legal perspective, delegation serves as a critical mechanism for enhancing administrative efficiency and responsiveness within governance frameworks. It allows for the exercise of discretion in decision-making, enabling subordinate entities to adapt actions to specific circumstances while remaining within the bounds of the authority conferred upon them. This legal construct underscores the balance between empowerment and oversight, ensuring that while authority is distributed, the principal retains ultimate responsibility for the actions undertaken by the delegate. This transfer allows

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<sup>13</sup> Sholahuddin Al-Fatih et al., "The Hierarchical Model of Delegated Legislation in Indonesia," *Lex Scientia Law Review* 7, no. 2 (2023): 629. See also, Moh. Gandara, "Kewenangan atribusi, delegasi dan mandat," *Khazanah Hukum* 2, no. 3 (2020): 95.

individuals or organizations to manage specific tasks or decisions within a defined scope, promoting efficiency and flexibility.<sup>14</sup> The delegation process is often governed by legal frameworks or organizational guidelines that outline the parameters of authority, ensuring accountability and clarity in roles. This concept manifests in various fields, including legal,<sup>15</sup> medical,<sup>16</sup> and regulatory frameworks. In the realm of law, delegation facilitates the practical application of authority, enabling bodies like the Public Prosecutor's Office to exercise discretion in prosecuting cases based on their significance or potential impact on state resources.<sup>17</sup> Such dynamics reflect the broader implications of delegation as explored in previous research, which highlights its critical role across multiple legal domains.<sup>18</sup>

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<sup>14</sup> Jonathan Bendor, Amihai Glazer, and Thomas Hammond, "Theories of delegation," *Annual review of political science* 4, no. 1 (2001): 235. See also, Daniel L. Nielson and Michael J. Tierney, "Delegation to international organizations: Agency theory and World Bank environmental reform," *International organization* 57, no. 2 (2003): 241; Mark Thatcher and Alec Stone Sweet, "Theory and practice of delegation to non-majoritarian institutions," *West European Politics* 25, no. 1 (2002): 17; Junyan Jiang, "Making bureaucracy work: Patronage networks, performance incentives, and economic development in China," *American Journal of Political Science* 62, no. 4 (2018): 982.

<sup>15</sup> Adhy Riadhy Arafah et al., "FIR agreement Indonesia–Singapore: What are the legal implications?," *Helijon* 10, no. 8 (2024): 27.

<sup>16</sup> Nur Azizah Idris, Abdul Razak, and Muhammad Ilham Arisaputra, "Delegation of Medical Action Authority of Doctors to Nurses in Health Services in Emergency Departments: Empirical Legal," *Revista de Gestão Social e Ambiental* 18, no. 2 (2024): e06155.

<sup>17</sup> Muhammad Rustamaji and Bagus Hanindyo Mantri, "Reconstruction of the Termination of Prosecution of Corruption Offences Public Prosecutor's Discretion," *Evolutionary Studies in Imaginative Culture* 8, no. 2, (2024): 1131.

<sup>18</sup> The previous research illustrates the implementation of delegation across various legal domains in Indonesia, highlighting its significance in areas such as legislative authority, regulatory oversight, and international agreements. These studies emphasize the need for clarity and effective governance in delegated functions, ensuring accountability while addressing sovereignty issues and enhancing administrative efficiency within the legal framework. For instance, See, Naufal Faiz Muhammad, Atip Latipulhayat, and Garry Gumelar Pratama, "Realignment of Flight Information Region Agreement Between Indonesia and Singapore 2022: Unraveling Sovereignty and Ratification Issues for Indonesia," *Padjadjaran Jurnal Ilmu Hukum* 11, no. 1 (2024): 21. See also, Mohamad Nasir, Laurens Bakker, and Toon van Meijl, "Government Supervision of Oil Palm Plantations in Indonesia: Legal Issues and Proposed Remedies," *Law and Development Review* 12, no. 1 (2024): 131; Sugeng Riyadi et al., "The Urgency of Establishing Constitutional Court Procedural Law," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 9, no. 2 (2023): 209; Atty Genald Malvas Valones and Ulil Albab Junaedi, "Urban Green Space Policy Reform in Indonesia: Breathing in the Middle of Development," *Journal of Law and Legal Reform* 4, no. 2 (2023): 191; Fikri Muhammad, "Environmental agreement under the non-interference principle: the case of ASEAN agreement on transboundary haze pollution," *International Environmental Agreements: Politics, Law and Economics* 22, no. 1 (2022): 139.



In legislative processes, this delegation reflects the structured hierarchy of legal regulations, which includes the 1945 Constitution of the Republic of Indonesia, Decrees of the People's Consultative Assembly (*Ketetapan Majelis Permusyawaratan Rakyat/ TAP MPR*), Laws/Government Regulations in Lieu of Laws (*Peraturan Pemerintah Pengganti Undang-Undang/Perpu*), Government Regulations, Presidential Regulations, Provincial Regional Regulations, and Regency/City Regional Regulations. In addition to these types of laws and regulations, several institutions are also authorized to create laws and regulations, provided they operate under the mandates of higher laws or are established based on specific legal authority. This framework ensures that delegated powers are exercised within a clearly defined legal context, promoting coherence and accountability in the legislative process.<sup>19</sup>

However, the law in Indonesia does not regulate the substance of its provisions in detail within the articles listed, so further or more specific regulations are typically established by laws and regulations that are subordinate to the main Law. One area that is included, but less explored, in Law 11/2020 is the taxation cluster. The taxation cluster is a component of Chapter VI, “Ease of Doing Business,” in Law 11/2020. The aim of this cluster is to create a conducive business climate, enhance economic growth, improve legal certainty, attract foreign citizens with special classifications to work in Indonesia, and encourage voluntary compliance among taxpayers.<sup>20</sup>

In addition to Chapter VI, “Ease of Doing Business,” the taxation cluster is also addressed in Chapter X, “Central Government Investment and Ease of National Strategic Projects,” specifically in Paragraph 2 regarding the Investment Management Institution. Central Government investment aims to boost investment and strengthen the economy to support strategic policies for job creation.<sup>21</sup> The goals of Central Government investment include obtaining

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<sup>19</sup> Republik Indonesia, Undang-Undang tentang Pembentukan Peraturan Perundang-Undangan, UU Nomor 12 Tahun 2011, LN Nomor 82 Tahun 2011, TLN Nomor 5234, Ps. 7.

<sup>20</sup> Kadek Meytha Dewantari, “Lebih Lanjut di: UU Ciptaker Disahkan, Simak Perubahannya pada Klaster Perpajakan,” Pajak.go.id, December 1, 2020. <https://www.pajak.go.id/id/artikel/uu-ciptaker-disahkan-simak-perubahannya-pada-klaster-perpajakan>, accessed on May 27, 2024.

<sup>21</sup> The taxation cluster is crucial for enhancing the “Ease of Doing Business” in Indonesia, particularly to attract foreign investment. Previous research highlights that many small and medium enterprises (SMEs) face significant challenges due to complex regulations and cumbersome tax systems, which hinder their growth and compliance. To address these issues, regulatory reforms—such as those proposed through the Omnibus Law—aim to simplify business processes and taxation, drawing on successful strategies from countries like the Netherlands, where the government effectively reduced administrative burdens on SMEs. By implementing similar measures, Indonesia can create a more conducive environment for businesses, ultimately promoting economic growth and increasing its appeal to foreign investors. See, Agus Riwanto, Sukarni Suryaningsih, and Delasari Krisda Putri, “Reform and Breakthrough in Business Regulations for Empowering MSMEs in Indonesia and the Netherlands,” *Journal of Human Rights, Culture and Legal System* 3, no. 3 (2023): 513. See also, Dianwicakasih Ariefiara et al., “Contingent fit between business

economic and social benefits, contributing to the development of the national economy and state revenues, generating profits, and providing general benefits, particularly in job creation. Furthermore, the taxation cluster is included in Chapter XI, "Implementation of Government Administration to Support Job Creation," particularly in the section on Regional Government. This section focuses on providing support for Central Government budget incentives to simplify licensing processes and implement business licensing by Regional Governments, even as this may lead to a decrease in regional original income. The Job Creation Law introduces several changes to existing regulations, including the General Provisions and Tax Procedures Law (KUP - *Ketentuan Umum dan Tata Cara Perpajakan*), the Value Added Tax Law (PPN - *Pajak Pertambahan Nilai*), the Income Tax Law (PPh - *Pajak Penghasilan*), and the Regional Tax and Regional Retribution Law (PDRD - *Pajak Daerah dan Retribusi Daerah*).

The provisions regarding this matter can be seen in Article 111, Article 112, Article 113, Article 114, Article 172 Paragraph (2), and Article 176. For instance, Law Number 11 of 2020 introduces significant changes to the provisions of Law Number 36 of 2008 concerning Income Tax, specifically in Article 111. This law delegates regulatory authority across several articles, detailing requirements and procedures for taxation. For instance, Article 2 Paragraph (4) letter c outlines the requirements for foreign tax subjects, while Article 4 Paragraph (1d) specifies the expertise criteria and procedures for imposing income tax on foreign citizens. The law also addresses non-taxable income in Article 4 Paragraph (2), with regulatory frameworks provided under Government Regulations and Regulation of the Minister of Finance (*Peraturan Menteri Keuangan/PMK*). Furthermore, Article 4 Paragraph (3) includes various tax object exceptions, such as aid or donations (letter a number 1) and gifted assets (letter a number 2). Additional provisions, particularly in letter f number 10, detail criteria and procedures for investment, tax exemptions, and adjustments to dividend limits (Table 1).

Furthermore, in mapping the delegation of implementing regulations for the taxation cluster, a detailed review of each article in the Job Creation Law reveals that at least 7 (seven) Government Regulations (PP), 26 (twenty-six) Regulations of the Minister of Finance, 1 (one) Decree of the Minister of Finance, and 1 (one) Regulation of the Regional Head have been compiled. However, in its implementation, only 3 (three) Government Regulations for the taxation cluster have been stipulated, with details shown in Table 2.

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strategies and environmental uncertainty: The impact on corporate tax avoidance in Indonesia," *Meditari Accountancy Research* 28, no. 1 (2019): 139; Sarah Xue Dong and Chris Manning, "Labour-market developments at a time of heightened uncertainty," *Bulletin of Indonesian Economic Studies* 53, no. 1 (2017): 12; Ning Rahayu, "Analysis of tax treatment of personal taxpayers engaging in business with certain gross income (small enterprise)," *International Journal of Economic Research* 14, no. 9 (2017): 289.

**Table 1.** Summary of Law Number 11 of 2020 and Delegated Regulations.

Law 11 of 2020	Parent Law	Delegation of Regulations	Set About	Regulation
Article 111	Changes to articles in Law Number 36 of 2008 concerning Income Tax	Article 2 Paragraph (4) letter c	Requirements for foreign tax subjects	PMK*
		Article 4 Paragraph (1d)	Certain expertise criteria and procedures for imposing income tax on foreign citizens	PMK
		Article 4 Paragraph (2)	Non-taxable income	PP
		Article 4 Paragraph (3) letter a number 1	Tax object exceptions for aid or donations	PP
		Article 4 Paragraph (3) letter a number 2	Tax object exceptions for gifted assets	PMK
		Article 4 Paragraph (3) letter f number 10	Further provisions regarding: a) criteria, procedures and specific time periods for investment; b) procedures for exemptions from income tax; and c) changes to the limits on invested dividends.	PMK
		Article 4 Paragraph (3) letter l	Scholarships that meet certain requirements	PMK
		Article 4 Paragraph (3) letter f number 10	further provisions regarding: a) criteria, procedures and specific time periods for investment; b) procedures for exemption from income tax; and c) changes to the limits on dividends invested.	PMK
		Article 4 Paragraph (3) letter l	Scholarships that meet certain requirements	PMK
		Article 4 Paragraph (3) letter f number 10	Further provisions regarding: a) criteria, procedures and specific time periods for investment; b) procedures for exemption from income tax; and c) changes to the limits on dividends invested.	PMK
		Article 4 Paragraph (3) letter l	Scholarships that meet certain requirements	PMK
		Article 4 Paragraph (3) letter f number 10	further provisions regarding: a) criteria, procedures and specific time periods for investment; b) procedures for exemption from income tax; and c) changes to the limits on invested dividends.	PMK
		Article 4 Paragraph (3) letter l	Scholarships that meet certain requirements	PMK
Article 112	Changes to Articles in Law Number 42 of 2009 concerning VAT on Goods and Services & Sales Tax on Luxury Goods	Article 9 Paragraph (6)	Guidelines for calculating the amount of Input Tax that can be credited for taxable deliveries	PMK
		Article 9 Paragraph (7b)	Provisions regarding business circulation, certain business activities, and guidelines for calculating Input Tax credits	PMK
		Article 9 Paragraph (13)	Further provisions regarding: a. criteria for not having made a delivery of Taxable Goods and/or Taxable	PMK

			Services and/or export of Taxable Goods and/or Taxable Services; b. calculation and procedures for refunding excess Input Tax; c. determination of certain business sectors; d. procedures for repayment of Input Tax; and e. procedures for crediting Input Tax	
		Article 13 Paragraph (1a) letter d	Tax invoices created at other times	PMK
		Article 13 Paragraph (5a)	Characteristics of end consumers	PMK
		Article 13 Paragraph (8)	Procedures for making Tax Invoices and procedures for correcting or replacing Tax Invoices	PMK
Article 113	Changes to articles in Law Number 28 of 2007 concerning General Provisions and Tax Procedures (KUP)	Article 9 Paragraph (3a)	Payment period for small business taxpayers and certain regional taxpayers	PMK
		Article 9 Paragraph (4)	DGT approval of taxpayers' requests to pay in installments and postpone	PMK
		Article 11 Paragraph (4)	Procedures for calculating and returning excess tax payments	PMK
		Article 13 Paragraph (6)	Procedures for issuing a Tax Underpayment Assessment Letter	PMK
		Article 14 (6)	Procedures for issuing a Tax Bill	PMK
		Article 15 Paragraph (5)	Procedures for issuing an Additional Tax Underpayment Assessment Letter	PMK
		Article 17B Paragraph (1a)	Exceptions for Taxpayers who are undergoing preliminary evidence examination of criminal acts in the taxation sector	PMK
		Article 44B Paragraph (3)	Request to stop investigation of criminal acts in the taxation sector	PMK
Article 114	Changes to articles in Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions	Article 156A Paragraph (5)	Procedures for determining tax rates and levy rates that apply nationally	PP
		Article 156B Paragraph (5)	Provision of regional fiscal incentives	Perda
		Article 159A	Further provisions regarding the procedures: a. evaluation of the Draft Regional Regulation on Regional Taxes and Regional Levies; b. supervision of the implementation of the Regional Regulation on Regional Taxes and Regional Levies and its implementing regulations; and c. imposition of sanctions	PP
Article 172 Paragraph (2)	-	-	Tax treatment of transactions involving Investment Management Institutions and/or entities owned by them, including transactions.	
Article 176	Changes to Articles in Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government	Article 292 Paragraph (2)	Provision of budget incentives.	PP

\*PMK= Regulation of the Minister of Finance (Peraturan Menteri Keuangan); PP: Government Regulation (Peraturan Pemerintah); Perda: Regional Regulation (Peraturan Daerah)

**Table 2.** Details of the Tax Cluster Government Regulations (contained in the Parent Law)

Law 11 of 2020	Parent Law	Derivatives	Legal Analysis
Article 111	Changes to Articles in Law Number 36 of 2008 concerning Income Tax	PP Number 9 of 2021 concerning Tax Treatment to Support Ease of Doing Business	<ol style="list-style-type: none"> <li>1. The legal basis refers to Article 111 of the Job Creation Law, but the provisions in PP 9 also accommodate the material in Article 112 and Article 113;</li> <li>2. There are provisions that are not in accordance with the delegation given by the Law.</li> <li>3. This can be seen in the considerations considering that the legal basis is Law Number 42 of 2009 concerning VAT on Goods and Services and Sales Tax on Luxury Goods and Law Number 28 of 2007 concerning General Provisions and Tax Procedures (KUP);</li> <li>4. The compiler of the substance of the material in PP 9/2021 uses an omnibus law system, which combines new provisions and provisions for changes to previous PPs;</li> <li>5. Details of the provisions of PP 9/2021, namely: Chapter I General Provisions; Chapter II Tax Treatment to Support Ease of Doing Business in the Income Tax Sector; Chapter III Adjustment of Regulations in the Income Tax Sector for Ease of Doing Business Regarding Calculation of Taxable Income and Payment of Income Tax in the Current Year (draft amendment to PP 45/2019); Chapter IV Adjustment of Regulations in the Value Added Tax Sector for Ease of Doing Business (draft amendment to PP 1/2012); Chapter V Adjustment of Regulations in the General Provisions and Tax Procedures for Ease of Doing Business (draft amendment to PP 74/2011); Chapter VI Transitional Provisions; Chapter VII Closing Provisions (PP 19/2009 is still valid as long as it does not conflict)</li> <li>6. Effective date of enactment February 2, 2021 (fulfilling the provisions of Article 185B, set for 3 months)</li> </ol>
Article 112	Changes to Articles in Law Number 42 of 2009 concerning VAT on Goods and Services & Sales Tax on Luxury Goods		
Article 113	Changes to articles in Law Number 28 of 2007 concerning General Provisions and Tax Procedures (KUP)		
Article 114	Changes to articles in Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions	PP Number 10 of 2021 concerning Regional Taxes and Regional Levies to Support Ease of Doing Business and Regional Services	<ol style="list-style-type: none"> <li>1. The legal basis does not only refer to the provisions of Article 114, but also to Article 176;</li> <li>2. There is a merger of the preparation of PP from 2 (two) Articles that provide delegation. The compiler of the substance of PP 10/2021 uses an omnibus law system, which combines several implementing regulations contained in different laws, namely Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions and Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government;</li> <li>3. Regulation PP 10/2021 Chapter I covers general provisions, while Chapter II addresses the adjustment of tax and levy rates as mandated by Article 156A paragraph (5) of Law Number 28 of 2009. Chapter III focuses on the evaluation of draft regional regulations concerning taxes and levies, divided into sections for general evaluations, provincial regulations, and regency/city regulations. Chapter IV pertains to the supervision of these regional regulations, also based on Article 159A of Law Number 28 of 2009. Chapter V supports incentives for easing business operations, as regulated by Article 176 of Law Number 11 of 2020 and Article 292A paragraph (2) of Law Number 9 of 2015. Chapter VI details administrative sanctions mandated by Article 159A, and Chapter VII concludes with provisions that have no prior applicable regulations.</li> <li>4. Effective date of enactment February 2, 2021 (fulfilling the provisions of Article 185B, set for 3 months)</li> </ol>
Article 176	Changes to Articles in Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government		

**Table 3.** Details of Government Regulations Taxation Cluster.

Law Number 11 of 2020	Article sounds	PP Derivatives	PP Analysis
Article paragraph (2)	172 Tax treatment of transactions involving LPI and/or entities it owns, including transactions as referred to in paragraph (1), is regulated by or based on Government Regulation.	PP Number 49 of 2021 concerning Tax Treatment of Transactions Involving LPI and/or Entities It Owns	Details of the PP 10/2021 regulations, enacted on February 2, 2021, namely: Chapter I General Provisions Chapter II Capital, Assets, Loans, and Asset Management at LPI and/or Entities It Owns Chapter III Tax Treatment of Transactions of LPI and/or Entities It Owns including Third Parties Transacting with LPI and/or Entities It Owns Chapter IV Tax Treatment of Formation of Reserve Funds, Loan Interest, Dividends, and/or Transfer, and/or Acquisition of Assets Chapter V Closing Provisions

Furthermore, the regulation concerning the taxation cluster is also addressed in Chapter X, which covers Central Government Investment and National Strategy Project Facilitation, specifically in Paragraph 2 regarding the Investment Management Institution (Lembaga Pengelola Investasi, LPI). The LPI is an institution granted special authority (*sui generis*) for managing Central Government investment, as referenced in Law Number 11 of 2020 concerning Job Creation.<sup>22</sup> A *sui generis* institution is one that operates outside the government, established by law, and executes functions that were previously within the government's authority, maintaining autonomy from governmental interests.<sup>23</sup> The LPI, established under Law Number 11 of 2020, was created to address the limited capacity of government financing both fiscal and through State-Owned Enterprises—needed to support investment. With permanent legal protection, it is anticipated that the LPI will serve as a trusted partner in attracting foreign direct investment to bolster infrastructure financing and development in Indonesia.

Law Number 11 of 2020 serves as the legal foundation for the establishment and regulation of the Investment Management Institution (LPI). In addition to outlining the framework for its establishment, this law also delineates the fundamental principles governing LPI management, including mandates, sources

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<sup>22</sup> This institution is further regulated in the Government Regulation on Tax Treatment of Transactions Involving Investment Management Institutions and/or Entities Owned by Them, Government Regulation Number 49 of 2021, State Gazette Number 59 of 2021, Additional State Gazette Number 6661, Article 1, paragraph 4.

<sup>23</sup> Rachmadi, “BUMN, BLU, PTNBH, dan Lembaga Sui Generis,” *Direktorat Jenderal Kekayaan Negara*, March 27, 2019. <https://www.djkn.kemenkeu.go.id/artikel/baca/12783>, accessed May 27, 2024.



and use of assets, institutional organs, and tax provisions. Moreover, Law Number 11 of 2020 requires the formulation of Government Regulations (PP) as further regulations for LPI. At least three PPs have been enacted as derivative regulations of Law Number 11 of 2020 to provide additional guidelines for LPI: PP Number 73 of 2020 concerning the Initial Capital of LPI, promulgated on December 15, 2020; PP Number 74 of 2020 concerning LPI, also promulgated on December 15, 2020; and PP Number 49 of 2021 concerning Tax Treatment of Transactions Involving LPI and/or Entities It Owns, which was promulgated on February 2, 2021. PP Number 49 of 2021 is part of the Taxation Cluster Government Regulation, with further details presented in Table 3.

### **3.2. Reformulation of implementing regulations in the taxation cluster aligns: Delegated legislation perspective**

The theory of legislation refers to the study and analysis of how laws are created, interpreted, and applied within a legal system. It encompasses various principles, concepts, and frameworks that help understand the nature and purpose of legislation. Legislation is a formal process through which governing bodies create laws, addressing the rule of law, justice, and societal welfare. According to Krygier,<sup>24</sup> the rule of law serves as a crucial mechanism to limit arbitrary power by ensuring that all individuals and institutions adhere to established legal norms. For this to be effective, laws must be universally applicable, clear, and understandable, allowing citizens to navigate their rights and obligations confidently. Although the ideal of perfect adherence to the rule of law may be unattainable, the extent to which these principles are implemented plays a vital role in fostering social cooperation and mitigating fear of both the state and fellow citizens. Ultimately, Krygier's insights support the notion that a well-structured legal framework underpins fairness, accountability, and social cohesion within governance of legislation processes.<sup>25</sup>

In the relationship between law and business, the interplay of regulation and economic decision-making is crucial for fostering a stable and predictable environment. Government regulation, as noted by Rose,<sup>26</sup> utilizes the “coercive power” of the state to guide firms in their investment and product choices, emphasizing the importance of legislative processes in economic regulation. This regulatory framework encompasses various dimensions, such as price controls and environmental standards, ensuring that legislative actions reflect broader societal

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<sup>24</sup> Martin Krygier, “Rule of Law,” In *International Encyclopedia of the Social & Behavioral Sciences*, (Amsterdam: Elsevier, 2001), 13403.

<sup>25</sup> Krygier, “Rule of Law,” (Amsterdam: Elsevier, 2001), 13407.

<sup>26</sup> Nancy L. Rose, “Political Economy of Regulation.” In *International Encyclopedia of the Social & Behavioral Sciences*, (Amsterdam: Elsevier, 2001), 13406.

objectives.<sup>27</sup> In the context of European legislation, Craig<sup>28</sup> categorize regulations into three key types: directives, regulations, and decisions. Directives establish mandatory goals while allowing member states some flexibility, regulations impose strict compliance across all members, and decisions focus on specific entities or individuals, illustrating the complexities of the legislative process. Together, these perspectives highlight that a well-structured legislative process is essential for creating a coherent regulatory environment that governs economic behavior and aligns with societal values and expectations.

All of these principles of legislation underscore the foundational aspects of legal systems. The legislative theory examines the sources from which laws derive authority, including constitutions, statutes, regulations, and judicial decisions, and emphasizes the importance of understanding the hierarchy and interaction among these sources.<sup>29</sup> Moreover, the theory of legislation from Dworkin includes stages such as proposal, debate, amendment, and enactment, analyzing how these processes vary across different jurisdictions and their implications.<sup>30</sup> Fuller also addresses the interpretation of laws, considering principles such as legislative intent

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<sup>27</sup> Government regulation plays a crucial role in guiding firms' investment decisions and economic activities, utilizing the coercive power of the state to enforce compliance. Recent developments, such as the European Union's response to China's economic coercion, highlight the need for robust regulatory frameworks that protect member states from unfair practices while enhancing market resilience. By implementing new legislative measures, the EU aims to deter third countries from using economic pressure tactics, reflecting a broader strategy of "economic de-risking" that seeks to safeguard the common market from external threats. See, Ljiljana Biukovic, "The Lithuania-China Row: The European Union's Search for a Strategy and Instruments to Deal with China," *Legal Issues of Economic Integration* 50, no. 4 (2023): 57. In other contexts, such as the implementation of the Scottish Living Wage policy, regulatory approaches can yield unintended consequences. While the policy aimed to improve employment conditions in the social care sector, it did not achieve significant benefits for workers, primarily due to compliance challenges and market constraints influenced by austerity measures. See, Cunningham, Ian, Philip James, Alina Baluch, and Anne-Marie Cullen. "Introducing Fair Work through 'Soft' Regulation in Outsourced Public Service Networks: Explaining Unintended Outcomes in the Implementation of the Scottish Living Wage Policy." *Industrial Law Journal* 52, no. 2 (2023): 312. These examples underscore the complexities of regulatory environments, where the interplay of state power, market dynamics, and social factors can significantly impact the effectiveness of regulatory measures and the overall economic landscape. See, Hani Safadi and Richard Thomas Watson, "Knowledge monopolies and the innovation divide: A governance perspective," *Information and Organization* 33, no. 2 (2023): 100466. See also, José Brunner, "Property, Solidarity and (German) History," *Theoretical Inquiries in Law* 10, no. 1 (2021), 11; Myles McGregor-Lowndes, "Australia: Co-production, self-regulation and co-regulation," *Regulatory waves: Comparative perspectives on state regulation and self-regulation policies in the nonprofit sector* 10, no. 4 (2017): 179.

<sup>28</sup> Paul P. Craig, "The legal effect of directives: policy, rules and exceptions," *European Law Review* 34, no. 3 (2009): 351.

<sup>29</sup> Herbert Lionel Adolphus Hart and Leslie Green, *The concept of law*, (New York: Oxford University Press, 2012), 76.

<sup>30</sup> Ronald Dworkin, *Law's empire*, (Cambridge: Harvard University Press, 1986), 98.

and context.<sup>31</sup> Additionally, the theory examines the roles of various stakeholder legislators, legal experts, interest groups, and the public in shaping legislation and emphasizes principles like clarity, accessibility, consistency, and fairness in law-making.<sup>32</sup>

In this context, the formulation of implementing regulations within the taxation cluster to provide detailed explanations of Law Number 11 of 2020 represents delegation within the legal regulatory system. Delegated regulations can take the form of a 'Government Regulation,' 'Government Regulation in Lieu of Law,' or a 'Presidential Regulation.' This is stipulated in Article 5, paragraph (2) of the 1945 Constitution, which states that the President establishes Government Regulations to ensure proper implementation of the Law.<sup>33</sup> The mandate of the 1945 Constitution, which is the basis for the authority to establish delegated regulations, can be explained that when a law gives orders to the regulation or is a follow-up to the regulation of the contents of the law, then the regulation is referred to as a delegated regulation. In the delegation there is a delegation of authority to form legislation carried out by higher legislation to lower legislation, whether the delegation is stated explicitly or not. This delegation of authority is not

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<sup>31</sup> Lon L. Fuller, *The Morality of Law*, (New Haven: Yale University Press, 1964), 121.

<sup>32</sup> For instance, Tamanaha provides insights into the relationship between law, society, and the legislative process, while Elliott and Thomas. Public offer an overview of public law in the UK, including legislative processes and principles. See, Brian Z. Tamanaha, *A General Jurisprudence of Law and Society*, (New York: Oxford University Press, 2001), 31. See also, Mark Elliott and Robert Thomas, *Public Law*, (New York: Oxford University Press, 2017), 21.

<sup>33</sup> Delegated legislation in Indonesia plays a significant role in the broader context of reform, enabling regional and ministerial authorities to craft regulations that address specific local needs while adhering to national legal frameworks. The Constitution grants provincial, district, and city governments autonomy to manage local affairs, which is further enshrined in Law Number 12 of 2011 that emphasizes community participation in the legislative process. This participatory approach ensures that regional regulations, particularly those influenced by sharia, reflect the social realities and expertise of local communities, thus enhancing governance and compliance with local customs and beliefs. Moreover, the increasing reliance on ministerial regulations illustrates the dynamic nature of delegated legislation within Indonesia's presidential system. As ministerial regulations proliferate—as a study showed that 65% arise from ministerial authority—it raises concerns about the balance of power between the presidency and the ministries. While this system allows for more nuanced and responsive governance, the unchecked growth of ministerial regulations can dilute the authority of presidential legislation, undermining the foundational principles of the presidential system as outlined in the Indonesian Constitution. See, Gazali, "Community Participation in Shari'ah-Based Regional Regulations in Indonesia," *Manchester Journal of Transnational Islamic Law and Practice* 20, no. 2 (2024): 89. See also, Charles Simabura et al., "Ministerial Authority in Formulating Regulations Related to Presidential Lawmaking Doctrine," *Constitutional Review* 9, no. 2 (2023): 297; Moh. Fadli, "Constitutional Recognition and Legal Protection for Local Religion in Indonesia: A Discourse on Local Religion of the Tengger and Baduy People," *Pertanika Journal of Social Sciences and Humanities* 25, no. 2 (2017): 601.

given but rather “represented” and this authority is temporary in the sense that it can be carried out as long as the delegation still exists. Regulations regarding the delegation of authority are regulated in Appendix Chapter II of Law Number 12 of 2011 concerning the Formation of Legislation Number 198 - 220. As a regulation that is delegated by law, the function of Government Regulation is to organize:<sup>34</sup>

1. Further regulation of provisions in laws that expressly mention this function is in accordance with the provisions of Article 5 paragraph (2) of the 1945 Constitution which states that PP is made to implement provisions of a law that expressly requests further regulation by PP
2. Organizing further regulation of other provisions in laws that regulate it even though they do not expressly mention it.

It is done if a provision in a law requires further regulation but in the provision it is not expressly stated to be regulated by PP, then the President can form a PP as long as it is a further implementation of the law. This is based on the fact that the provisions of Article 5 paragraph (2) of the 1945 Constitution have been a delegation to each PP to implement the law. Government Regulations (PP) are constitutionally only an instrument or mechanism to carry out the delegation from the Law. PP is a statutory regulation stipulated by the President to implement the law properly.<sup>35</sup>

In the regulation of Government Regulation Number 9 of 2021 concerning Tax Treatment to Support Ease of Doing Business, Government Regulation Number 10 of 2021 concerning Regional Taxes and Regional Retributions in the Framework of Supporting Ease of Doing Business and Regional Services, and Government Regulation Number 49 of 2021 concerning Tax Treatment of Transactions Involving Investment Management Institutions and/or Entities They Own, there are 3 (three) implementing regulations of the taxation cluster in the form of Government Regulations to carry out the mandate of Law Number 11 of

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<sup>34</sup> Maria Farida Indrati, *Ilmu Perundang-Undangan 1 (Jenis, Fungsi, Materi Muatan)*, (Yogyakarta: PT. Kanisius, 2007), 221.

<sup>35</sup> Regarding the President's power in forming Government Regulations as implementing regulations because the President is the holder of state power. Government Regulations are a type of regulation under the law as the implementer of the law. It cannot be issued by the Government if it is not preceded by an order from its parent. The order from the parent law must of course be firmly regulated in a regulation issued by the legislative power institution. Without such an order, the Government does not have the authority to make and issue regulations with the type of PP. Delegated regulations are even owned and delegated to the Minister who is the President's assistant. <https://www.hukumonline.com/klinik/detail/ulasan/lt5943825cc413c/keberlakuan-peraturan-pemerintah-yang-belum-ada-peraturan-pelaksanaannya/>, accessed on May 27, 2024

2020 concerning Job Creation as an omnibus law, because there are 7 (seven) Government Regulations that should have been made to implement Law Number 11 of 2020, but were combined into 3 (three) Government Regulations. This situation raises pros and cons. The pro party says that the formation of 1 (one) Government Regulation from the mandate of several articles in several laws is permitted as long as the contents of the material are still in line or the same or related. But on the other hand, the opposing party said that PP should be formed to further regulate the articles stated in the law so that 1 (one) PP only carries out the mandate of 1 (one) law. PP Number 9 of 2021 is a mandate from Article 111 of Law 11/2020 (the parent law is Law Number 36 of 2008 concerning Income Tax), and PP Number 10 of 2021 is a mandate from Articles 114 and 176 of Law 11/2020 (the parent law is Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions and Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government).

In PP Number 9 of 2021 concerning Tax Treatment to Support Ease of Doing Business, it not only implements the provisions of Article 111, but also Articles 112 and 113. Then, PP Number 10 of 2021 concerning Regional Taxes and Regional Retributions in the Framework of Supporting Ease of Doing Business and Regional Services is an implementing regulation to implement the provisions of Articles 114 and 176 of Law 11/2020. Then, PP Number 49 of 2021 concerning Tax Treatment of Transactions Involving Investment Management Institutions and/or Entities They Own, which is an implementing regulation of the provisions of Article 172 paragraph (2) of Law 11/2020. Then, the merger of several articles in Law Number 11 of 2020 which mandates the formation of PP according to the theory of legislation is in line with the concept of omnibus law in the formation of laws, but the omnibus law PP is not recognized in Law Number 12 of 2011 (Law 12/2011), so that the regulatory material should still be subject to Law 12/2011.

In delegating a law into a PP, it must first be seen from the content side. In Point 206 of Law Number 12 of 2011 it is explained that if there are several delegated content materials, the delegated content materials can be combined in one implementing regulation of the delegating legislation. While in the practice of this omnibus law, there are several articles from different parent laws made into one government regulation. In terms of content material, of course the reference laws have different main issues. This is in accordance with the theory presented by Prof. Maria Farida Indrati that one law can delegate regulations to many implementing regulations, but different parent laws cannot delegate regulations to one implementing regulation. However, this can also be viewed differently, if it is still in the same main discussion, combining different laws with one implementing regulation is still possible. This problem can be seen in PP Number 9 of 2021 which refers to Article 111, Article 112, and Article 113 and PP Number 10 of 2021 which refers to Article 114 and Article 176.

In addition, there is a new delegation in Law Number 11 of 2021. This can be seen in Government Regulation Number 49 of 2021 which regulates the imposition of taxes on LPI and the entities it owns. LPI is a new institution formed through Law 11/2020 and its regulations are further regulated in Government Regulations. This is in accordance with the principles of the formation of laws and regulations. The PP comes into force and has binding force on the date the PP is enacted as stipulated in Article 87 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, which sounds “Legislation comes into force and has binding force on the date of promulgation, unless otherwise specified in the relevant legislation.” Lastly, referring to the provisions of Article 185 letter b of Law Number 11 of 2020 concerning Job Creation, it is stated that when this law comes into effect, the implementing regulations of this law must be stipulated no later than 3 (three) months and all implementing regulations of the law that have been amended by this law are declared to remain in effect as long as they do not conflict with this law and must be adjusted no later than 3 (three) months. PP Number 9 of 2021, PP Number 10 of 2021, and PP Number 49 of 2021, have been stipulated and enacted on February 2, 2021, exactly 3 (three) months after Law Number 11 of 2020 was ratified and enacted on November 2, 2020, so that they are in accordance with the provisions of Article 185 letter b of Law Number 11 of 2020.

#### **4. Conclusion**

Based on the descriptions in the discussion above, the following conclusions can be drawn. The regulation of Delegation Regulations in the Indonesian legal regulatory system still has various forms and types. Both from the side of the parent that delegates and the regulations that receive delegation. The implementing regulations of the taxation cluster have been stipulated in 3 (three) Government Regulations PP Number 9 of 2021 concerning Tax Treatment to Support Ease of Doing Business, PP 10 of 2021 concerning Regional Taxes and Regional Retributions in the Framework of Supporting Ease of Doing Business and Regional Services, and PP Number 49 of 2021 concerning Tax Treatment of Transactions Involving Investment Management Institutions and/or Entities They Own. However, in terms of the substance of the regulation, it is not in line with the theory of legislation, because the mandate of the preparation of PP Number 9 of 2021 is only related to the provisions of Income Tax, but in the regulations contained in PP Number 9 of 2021 it regulates the entire taxation material. In addition, the formation of PP 10 of 2021 is a mandate from 2 (two) articles in Law 11/2020 with different parent laws. Only PP Number 49 of 2021 is purely a mandate from Law Number 11 of 2020 concerning Job Creation.



The implementation of the omnibus law in Law Number 11 of 2020 concerning Job Creation has a good purpose, namely to create simplification of several laws. But in practice, it actually creates over-regulation with the many delegations of implementing regulations that must be made so that they are not in accordance with the implementation of the omnibus law in common law countries. For this reason, it is necessary to review the implementation of the omnibus law in Indonesia. In order not to confuse readers in reading and finding out the contents of Law Number 11 of 2020, the arrangement of its preparation should be improved to make it easier for readers. In addition, even though the omnibus law is implemented, the implementation of the delegation of laws and regulations must be in accordance with the provisions contained in Law Number 12 of 2011 concerning the Formation of Legislation.

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