

Constitutional Limits to Omnibus Legislation: Indonesia, Germany, and the Protection of Essential Rights

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Abstract

The growing use of omnibus legislation reflects governments' efforts to accelerate regulatory reform and overcome statutory fragmentation. However, when this technique alters legal regimes governing constitutionally protected rights, legislative efficiency may conflict with deliberative legitimacy, legal clarity, and substantive rights protection. This article examines the constitutional limits of omnibus legislation through a comparative study of Indonesia and Germany. It employs a normative legal method combining statutory, constitutional, conceptual, and functional comparative approaches. The comparison evaluates both jurisdictions through common variables: legislative structure, rights protection, legal definiteness, public deliberation, proportionality, and constitutional review. The study finds that Indonesia's Job Creation framework has primarily generated constitutional scrutiny concerning legislative procedure, transparency, and meaningful public participation, while its substantive effects on environmental, land, and socio-economic rights remain insufficiently addressed through a coherent constitutional standard. Germany, although not formally recognising omnibus legislation as a distinct category, controls complex and multi-subject legislation through the Rechtsstaat principle, legal definiteness, proportionality, federal deliberation, and rights-based judicial review. Based on these findings, the article develops the Essential Rights Exclusion Principle, under which omnibus legislation directly altering the scope, protection, enforceability, or institutional safeguards of essential constitutional rights must be excluded from ordinary legislative consolidation unless supported by heightened deliberation, rights-specific justification, and intensified judicial scrutiny. The principle provides a structured constitutional standard for reconciling

Introduction

The rapid proliferation of omnibus legislation across diverse constitutional systems represents one of the most consequential developments in contemporary legislative practice. Conceived as a technique of legal consolidation, the omnibus method aspires to overcome regulatory fragmentation, accelerate reform, and harmonise dispersed statutory regimes within a single legislative instrument.¹ In theory, such consolidation enhances coherence and efficiency in complex regulatory environments marked by hyper-regulation and normative overlap. In practice, however, omnibus legislation has increasingly generated profound constitutional anxieties, particularly in jurisdictions where the technique is deployed to restructure foundational sectors affecting environmental governance, labour protection, and land rights.²

Indonesia's adoption of the omnibus method through Law No. 11 of 2020 on Job Creation (Undang-Undang Cipta Kerja) epitomises this tension between legislative efficiency and constitutional fidelity. The legislative ambition behind the Job Creation Law was rooted in the perceived necessity to address regulatory disharmony, bureaucratic rigidity, and investment stagnation.³ The philosophical justification for its enactment invoked constitutional mandates to promote national development and secure the right to work and a decent livelihood under Article 27(2) of the 1945 Constitution. Yet, despite its proclaimed developmental orientation, the omnibus approach adopted in Indonesia provoked substantial constitutional controversy. The Constitutional Court, in Decision No. 91/PUU-XVIII/2020, declared the law conditionally unconstitutional, emphasising procedural deficiencies, lack of transparency, and insufficient public participation in its formation.⁴

The constitutional controversy surrounding the Job Creation framework did not conclude with Constitutional Court Decision No. 91/PUU-XVIII/2020. Following the Court's order to revise the legislation, the Government issued Government Regulation in Lieu of Law No. 2 of 2022, which was subsequently enacted as Law No. 6 of 2023. This development

¹ Saru Arifin, "Illiberal Tendencies in Indonesian Legislation: The Case of the Omnibus Law on Job Creation," *The Theory and Practice of Legislation* 9, no. 3 (2021): 386–403, <https://doi.org/10.1080/20508840.2021.1942374>.

² Denis Kirchhoff and Leonard J. S. Tsuji, "Reading Between the Lines of the 'Responsible Resource Development' Rhetoric: The Use of Omnibus Bills to 'Streamline' Canadian Environmental Legislation," *Impact Assessment and Project Appraisal* 32, no. 2 (2014): 108–20, <https://doi.org/10.1080/14615517.2014.894673>.

³ Rahmat Saputra and Rama Dhianty, "Investment Licensing and Environmental Sustainability in the Perspective of Law Number 11 The Year 2020 Concerning Job Creation," *Administrative and Environmental Law Review* 3, no. 1 (2022): 25–38, <https://doi.org/10.25041/aclr.v3i1.2472>.

⁴ R. Wahjoe Poernomo Soeprapto, "Meaningful Participation Through Online Channels in Legislation Making in Indonesia via Dpr.Go.Id Page," *Trunojoyo Law Review* 6, no. 2 (2024): 189–210, <https://doi.org/10.21107/tlr.v6i2.25960>.

altered the formal legal basis of the Job Creation framework but did not eliminate the underlying constitutional question addressed in this article. The central issue remains whether a legislative instrument that simultaneously restructures numerous rights-sensitive statutory regimes can be constitutionally justified merely through procedural correction. Accordingly, this study treats Law No. 11 of 2020, the Constitutional Court's decision, and Law No. 6 of 2023 as a continuing constitutional sequence rather than as isolated legal events.

Notwithstanding these subsequent legislative developments, the constitutional tension is not merely procedural. The deeper normative concern lies in the substantive reach of the Job Creation framework into domains that implicate essential rights. As evidenced in the analysis of environmental and land rights implications, the Indonesian omnibus framework amended multiple environmental statutes, weakened strict liability principles, centralised environmental authority, and altered land management regimes. The research by Edy Ikhsan in the *Journal of Human Security* demonstrates that while the Omnibus Law effectively reduced regulatory burdens for investors, it simultaneously diminished environmental safeguards and constrained meaningful public participation in environmental impact assessments.⁵ Notably, the removal of the strict liability principle in environmental disputes potentially weakens accountability for ecological damage.

The constitutional implications of such legislative strategy demand a deeper theoretical inquiry. Omnibus legislation is often defended on pragmatic grounds—efficiency, simplification, acceleration of reform. However, constitutional democracies are not organised merely around procedural efficiency; they are structured upon substantive commitments to the protection of fundamental rights and the preservation of democratic deliberation.⁶ The question thus arises: does the constitutional order permit legislative techniques that compress wide-ranging amendments affecting essential rights into a single accelerated instrument, thereby diluting scrutiny, fragmenting accountability, and complicating judicial review?

This article contends that omnibus legislation is not constitutionally neutral. Its legitimacy depends not only on procedural compliance but also on substantive boundaries. In particular, legislation governing essential fundamental rights—such as environmental protection, land rights of indigenous communities, and socio-economic guarantees of decent livelihood—should not be subjected to consolidation through omnibus methods without heightened constitutional safeguards.⁷ The absence of such doctrinal boundaries transforms omnibus legislation into a vehicle for structural rights regression under the guise of reform.

⁵ Edy Ikhsan, "The Omnibus Law in Indonesia: Assessing Its Consequences on Environmental Sustainability and Land Rights," *Journal of Human Security* 18, no. 2 (2022): 47–53.

⁶ Yasushi Hazama and Şeref İba, "Legislative Agenda Setting by a Delegative Democracy: Omnibus Bills in the Turkish Parliamentary System," *Turkish Studies* 18, no. 2 (2017): 313–33, <https://doi.org/10.1080/14683849.2016.1261022>.

⁷ Ahmad Gelora Mahardika, "Implikasi Omnibus Law Terhadap Hak Konstitusional Atas Lingkungan Hidup Yang Sehat," *Jurnal Konstitusi* 18, no. 1 (2021): 195–218, <https://doi.org/10.31078/jk1819>.

In this article, the term “essential rights” does not establish a new formal hierarchy among constitutionally protected rights, nor does it imply that other fundamental rights possess lesser constitutional value. It is used as an analytical category referring to rights whose alteration may affect the basic conditions of human dignity, physical and social survival, environmental sustainability, livelihood, community existence, or access to effective legal protection. Such rights are regarded as constitutionally sensitive because legislative changes to their scope, institutional safeguards, or enforceability may produce structural and long-term consequences that cannot easily be corrected through ordinary political processes. The concept therefore identifies the degree of constitutional sensitivity attached to a legislative domain rather than creating a separate class of rights beyond the constitutional text.

The constitutional controversy in Indonesia reveals a deeper structural problem: the absence of a clear doctrine defining the constitutional limits of omnibus legislation. While the Constitutional Court emphasised procedural deficiencies, it stopped short of articulating a comprehensive theory of substantive boundaries.⁸ The legal system therefore lacks a principled framework determining whether certain categories of legislation—particularly those directly regulating essential rights—should be excluded from omnibus consolidation. The problem is not merely whether omnibus laws are procedurally valid, but whether they are substantively appropriate instruments for altering rights-sensitive legal regimes.

Germany is selected not because its legislative system employs an omnibus-law category identical to that used in Indonesia, but because it provides a functional comparator for examining the constitutional control of complex and multi-subject legislation. Both jurisdictions confront the practical need to coordinate extensive regulatory reform across interconnected sectors. Their constitutional responses, however, differ in the mechanisms through which legislative complexity is disciplined. Germany offers a particularly relevant comparison because legislative consolidation remains subject to legal definiteness, proportionality, federal deliberation, rights-based constitutional review, and the binding force of fundamental rights. The comparison therefore concerns not the formal label attached to legislation, but the constitutional safeguards governing statutory reforms that simultaneously affect multiple rights-sensitive domains.⁹ German constitutional jurisprudence consistently emphasises the principle of *Bestimmtheitsgebot* (requirement of definiteness), ensuring that statutory provisions are precise, transparent, and foreseeable.¹⁰ Moreover, environmental protection in Germany is constitutionally anchored, and environmental impact assessments are governed by the *Umweltverträglichkeitsprüfungsgesetz* (UVPG), which integrates European Union

⁸ Arif Rahman et al., “Constitutional Transition in a Democratic State: A Critical View of the Omnibus Law Establishing Employment Copyright Law,” *Journal of Law and Legal Reform* 5, no. 4 (2024), <https://doi.org/10.15294/jllr.v5i4.1552>.

⁹ Novendri M. Nggilu et al., “The Absence of Judicial Review on Constitutional Amendments in Indonesia: Urgency and Legal Reform for Constitutional Safeguards,” *Journal of Law and Legal Reform* 6, no. 2 (2025): 659–92, <https://doi.org/10.15294/jllr.v6i2.20888>.

¹⁰ Birgit Völm, “Germany,” in *Global Perspectives in Forensic Psychiatry*, 1st ed., by Gary Chaimowitz et al. (Routledge, 2025), <https://doi.org/10.4324/9781003376248-12>.

directives and mandates systematic evaluation of environmental consequences before legislative and administrative decisions are finalised.

The contrast between Indonesia and Germany is not merely institutional but philosophical. While Indonesia's omnibus reform prioritised economic acceleration, Germany's legislative culture embeds environmental sustainability and rights protection within constitutional identity.¹¹ This difference illustrates that legislative technique is inseparable from constitutional ethos. The German model suggests that consolidation mechanisms must remain subordinate to constitutional principles rather than instrumentalising them.

The objective of this research is twofold. Analytically, it seeks to examine omnibus legislation through the lens of comparative constitutional law, situating Indonesia's experience within broader theoretical debates concerning legislative technique and rights protection. Normatively, it aims to construct a doctrinal framework—termed here the “Essential Rights Exclusion Doctrine”—which posits that omnibus legislation must not be used to amend or dilute statutory regimes that directly safeguard essential fundamental rights without heightened constitutional scrutiny. This reconstruction aspires to bridge the gap between legislative pragmatism and constitutional fidelity..

The existing body of scholarship on Indonesia's Omnibus Law, while substantial and analytically rich, reveals important conceptual and doctrinal gaps. The study by Edy Ikhsan provides a comprehensive normative examination of the environmental and land-rights implications of the Job Creation Law, demonstrating how regulatory simplification and centralization may undermine environmental safeguards and weaken the protection of indigenous land entitlements. The analysis highlights the removal of strict liability principles and the restriction of meaningful public participation in environmental impact assessments as indicators of a structural shift toward investment-oriented governance.¹²

A further strand of scholarship, interrogates the tension between legislative efficiency and constitutional democracy through a comparative constitutional lens. This contribution underscores procedural deficiencies in the enactment of the omnibus framework, particularly concerning transparency, public participation, and the balance of powers.¹³ However, its analytical emphasis remains predominantly on institutional dynamics and democratic process, without advancing a categorical constitutional doctrine that delineates substantive boundaries for omnibus legislation in rights-sensitive domains. In addition, another scholarly contribution situates the omnibus reform within the broader discourse of administrative harmonization and governance rationalization. While it critically evaluates regulatory centralization and administrative streamlining, its focus remains anchored in public law efficiency and structural reform

¹¹ Julia Mattei, “Constitutional Tension Between Environmental Protection and Economic Order in Germany and in Brazil,” *Revista de Direito Econômico e Socioambiental* 10, no. 2 (2019): 108, <https://doi.org/10.7213/rev.dir.econ.soc.v10i2.23667>.

¹² Ikhsan, “The Omnibus Law in Indonesia: Assessing Its Consequences on Environmental Sustainability and Land Rights.”

¹³ Kaharuddin Kaharuddin et al., “Omnibus Law In The Dynamics Of Constitutional Law: A Comparative Research Of Indonesia, The United States, The Philippines, And Canada,” *Administrative and Environmental Law Review* 6, no. 1 (2025): 1–22, <https://doi.org/10.25041/aelr.v6i1.4054>.

rather than articulating a normative hierarchy that distinguishes between amendable regulatory sectors and constitutionally protected rights regimes.¹⁴

Taken together, these studies provide indispensable sectoral and procedural critiques—addressing environmental regression, land-right vulnerability, administrative centralization, and participatory deficits. Yet, they stop short of constructing a systematic constitutional framework capable of identifying specific categories of legislation—particularly those regulating essential fundamental rights—that ought to be insulated from omnibus consolidation. The absence of such doctrinal articulation constitutes the principal research gap this article seeks to address.

The novelty of this article lies precisely in advancing such a doctrine. Rather than treating omnibus law as inherently problematic or inherently efficient, this research reconceptualises it as constitutionally contingent. It introduces the Essential Rights Exclusion Doctrine, grounded in three normative premises: (1) the primacy of fundamental rights within constitutional hierarchy; (2) the requirement of heightened deliberation and transparency when rights are affected; and (3) the principle that legislative technique must not structurally impede judicial review or democratic accountability. Under this doctrine, omnibus legislation may legitimately address administrative harmonisation, regulatory simplification, and procedural coordination. However, it must not consolidate amendments that fundamentally reshape environmental safeguards, indigenous land rights, or socio-economic entitlements without distinct and transparent legislative processes.

The theoretical contribution of this study extends beyond Indonesia. In an era where governments increasingly deploy omnibus techniques to expedite reform, the constitutionalisation of legislative method becomes imperative. Global constitutionalism demands not only the protection of rights in substance but also vigilance regarding the structural modalities through which laws are enacted. Legislative form is not neutral; it shapes the capacity of citizens to participate, courts to review, and institutions to remain accountable.

The practical significance of this research is equally substantial. For Indonesia, articulating constitutional limits offers guidance for future legislative reforms and judicial review standards. For comparative constitutional scholarship, the Indonesia–Germany juxtaposition illuminates how constitutional culture influences legislative technique. Ultimately, this article affirms that efficiency cannot eclipse constitutional integrity. The boundaries of omnibus legislation must be drawn not merely by political expediency but by enduring commitments to fundamental rights and democratic governance.

¹⁴ Hendra Gunawan and Syahbudin Syahbudin, “Legal Reconstruction of the Omnibus Law on Job Creation for Justice in Enhancing Investment and Indonesia’s Competitiveness,” *Jurnal Hukum* 41, no. 2 (2025): 253, <https://doi.org/10.26532/jh.v41i2.44442>.

Problem Statement

The problem addressed in this article therefore crystallises around three interrelated questions: First, what constitutional limits should govern the use of omnibus legislation in democratic systems? Second, should legislation regulating essential fundamental rights—particularly environmental and socio-economic rights—be excluded from omnibus consolidation? Third, what lessons can Indonesia draw from Germany's constitutional framework in reconstructing a doctrine of legislative boundaries?.

Methods

This study employs a normative legal methodology integrating statutory, constitutional, conceptual, and functional comparative approaches.¹⁵ The doctrinal analysis examines the constitutional foundations, legislative structure, and judicial control of complex legislation in Indonesia and Germany. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Job Creation legislative framework—comprising Law No. 11 of 2020, Constitutional Court Decision No. 91/PUU-XVIII/2020, Government Regulation in Lieu of Law No. 2 of 2022, and Law No. 6 of 2023—together with relevant sectoral legislation concerning environmental protection, land governance, and socio-economic rights. German primary materials include the Basic Law, relevant federal statutes governing rights-sensitive regulatory fields, and decisions of the Federal Constitutional Court concerning legal definiteness, proportionality, environmental protection, and rights-based legislative review. Secondary materials consist of peer-reviewed scholarship, constitutional commentaries, and comparative legislative studies selected according to their doctrinal authority, direct relevance to complex legislation, and capacity to illuminate the interaction between legislative form and constitutional rights.

The comparison is structured around a common *tertium comparationis*: the constitutional control of complex or multi-subject legislation that directly affects rights-sensitive statutory domains. Germany is treated primarily as a functional comparator and, in a limited sense, as a normative reference, rather than as an institutionally transferable model. To avoid selective or asymmetrical comparison, both jurisdictions are assessed through the same analytical dimensions: the structure and scope of legislative consolidation, the constitutional status of affected rights, requirements of legal clarity and definiteness, mechanisms of public and institutional deliberation, standards of proportionality and constitutional review, and the legal consequences of constitutional non-compliance.¹⁶ The analysis applies systematic and purposive interpretation, constitutional reasoning, and structured comparison to distinguish procedural deficiencies from demonstrable substantive rights regression. On that basis, the study develops the Essential Rights Exclusion Principle as a doctrinal standard for determining

¹⁵ Nurul Qamar Farah Syah Rezah, *Metode Penelitian Hukum Doktrinal Dan Non-Doktrinal* (Social Politik Genius, 2020).

¹⁶ Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Mirra Buana Media, 2020).

when omnibus consolidation should be restricted or subjected to heightened legislative justification, deliberative safeguards, and judicial scrutiny.

Omnibus Legislation and Constitutional Democracy: Between Efficiency and Constitutional Integrity

The contemporary resurgence of omnibus legislation reflects a broader transformation in legislative governance within modern constitutional democracies. Faced with regulatory complexity, economic stagnation, and bureaucratic fragmentation, governments increasingly deploy omnibus statutes as instruments of rapid harmonisation. By consolidating multiple amendments across diverse sectors into a single legislative package, omnibus law promises coherence, simplification, and efficiency.¹⁷ In legal systems characterized by overregulation or normative disharmony—particularly in the Indonesian context—omnibus legislation is frequently advanced as a corrective mechanism to legislative inertia. However, the very features that render this technique administratively appealing simultaneously give rise to constitutional concern.¹⁸ Although efficiency may be normatively desirable, it does not represent the ultimate telos of constitutional democracy. Constitutional orders are instead anchored in more fundamental commitments, including deliberative legitimacy, transparency, accountability, and the protection of fundamental rights.¹⁹

From a theoretical perspective, omnibus legislation may be understood as a form of “legislative bundling,” whereby heterogeneous normative changes are aggregated within a single enactment. Legislative bundling is not inherently unconstitutional; it may facilitate systemic reform and reduce statutory inconsistency. However, when bundling extends across domains with varying degrees of constitutional sensitivity—such as environmental protection, land tenure, labour rights, and administrative restructuring—the technique raises fundamental questions about the integrity of democratic lawmaking. Constitutional democracy presupposes that law emerges from informed deliberation, public scrutiny, and reasoned justification.²⁰ The compression of wide-ranging normative transformations into a single legislative instrument may attenuate these deliberative conditions. In this sense, the problem of omnibus legislation is not purely technical but structural: it concerns the relationship between legislative form and constitutional substance.

¹⁷ Bayu Dwi Anggono and Fahmi Ramadhan Firdaus, “Omnibus Law in Indonesia: A Comparison to the United States and Ireland,” *Lentera Hukum* 7, no. 3 (2020): 319, <https://doi.org/10.19184/ejllh.v7i3.19895>.

¹⁸ Muhammad Eko Purwanto and Efridani Lubis, “Judicial Review Omnibus Law Dalam Melindungi Pekerja Dan Mengembangkan Investasi Di Indonesia,” *VERITAS* 8, no. 1 (2022): 49–66, <https://doi.org/10.34005/veritas.v8i1.1757>.

¹⁹ Novendri M. Nggilu et al., “Indonesia’s Constitutional Identity: A Comparative Study of Islamic Constitutionalism,” *De Jure: Jurnal Hukum Dan Syar’iah* 16, no. 2 (2024): 480–500; Siti Mariyam et al., “Safeguarding Personal Data in Indonesian E-Commerce from a Constitutional Rights Perspective,” *Jambe Law Journal* 8, no. 2 (2025): 683–711, <https://doi.org/10.22437/x5q9y093>; Admiral Admiral et al., “Unfair Terms in Standard Digital Contracts: A Hidden Threat to Human Rights and Consumer Justice,” *Yustisia Jurnal Hukum* 14, no. 3 (2025): 312, <https://doi.org/10.20961/yustisia.v14i3.109656>.

²⁰ Abdul Hakim Siagian, “Omnibus Law Draft in the Perspective of Constitutionality and Legal Politics,” *Jambura Law Review* 3, no. 1 (2021): 93–111, <https://doi.org/10.33756/jlr.v3i1.7222>.

The tension between efficiency and constitutional integrity is therefore not accidental but intrinsic. On one hand, legislative efficiency embodies the pragmatic dimension of governance: the capacity of the state to respond swiftly to socio-economic demands. On the other hand, constitutional integrity embodies the normative dimension of governance: the obligation to respect procedural safeguards and substantive rights. The risk emerges when efficiency becomes the dominant legislative rationale, overshadowing the constitutional architecture designed to restrain majoritarian power. As the Indonesian experience demonstrates—particularly in the enactment of Law No. 11 of 2020 on Job Creation—efficiency-driven consolidation may alter the balance between development policy and rights protection.²¹ The constitutional controversy culminating in Decision No. 91/PUU-XVIII/2020 reveals that procedural acceleration can undermine participatory legitimacy, thereby calling into question the democratic quality of legislative output.

Philosophically, this dilemma invites reflection on the nature of constitutionalism itself. Constitutionalism is predicated on the idea that public power must be limited, structured, and justified within a hierarchy of norms. Fundamental rights occupy a privileged position within this hierarchy, functioning not merely as policy preferences but as entrenchments against transient political majorities. If rights possess structural primacy, then legislative techniques that obscure or dilute their protection demand heightened scrutiny. Omnibus legislation, by amalgamating diverse policy areas, may complicate the visibility of rights-implicating provisions and reduce the granularity of legislative debate. In doing so, it alters the epistemic conditions under which citizens, legislators, and courts evaluate normative change. The question, therefore, is whether constitutional democracy can tolerate such alteration without compromising its foundational commitments.

A further constitutional risk concerns judicial review. Constitutional adjudication depends upon normative clarity and issue-specific reasoning. When multiple amendments across distinct sectors are bundled within a single statute, courts may face difficulties in isolating contested provisions, assessing proportionality, and calibrating remedies. The Indonesian Constitutional Court's conditional unconstitutionality ruling illustrates this tension: rather than invalidating discrete rights-infringing provisions, the Court addressed procedural defects affecting the legislative process as a whole.²² This outcome reflects the structural challenge posed by omnibus legislation: it complicates

²¹ Sostones Y. Sisinaru and Susi Dwi Harijanti, "The Constitutionality of Outsourcing Job Regulation in the Law on Job Creation," *LAW REFORM* 18, no. 1 (2022): 79–88, <https://doi.org/10.14710/lr.v18i1.44249>.

²² Dewi Sulastri and Abu Sanmas, "The Constitutional Court as a Positive Legislator: Implications of Decisions on the Principle of Checks and Balances in Indonesia," *LITIGASI* 26, no. 2 (2025), <https://doi.org/10.23969/litigasi.v26i2.21999>; Siti Hasanah and Firzhal Arzhi Jiwantara, "Non-Formal Legitimacy of Constitutional Change and Public Perception in The Reform of the 1945 Constitution Through Constitutional Court Decisions," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 3 (2025): 621–37, <https://doi.org/10.29303/ius.v13i3.1841>; Zulkarnain Ridlwan et al., "Curbing Elitist Populism in Lawmaking: A Constitutional Law Perspective," *Lex Scientia Law Review* 9, no. 2 (2025): 1260–94, <https://doi.org/10.15294/lslr.v9i2.27909>; Muthi'ah Alamri, "Constitutional Courts and the Protection of Constitutional Rights: A Comparative Analysis of Institutional Authority in Indonesia and Morocco," *International Journal of Constitutional and Administrative Law*, September 30, 2025, 116–30, <https://doi.org/10.66502/0wcva437>.

targeted constitutional correction. The judicial function, designed to safeguard constitutional supremacy, may thus be indirectly constrained by legislative form.

Moreover, omnibus legislation may affect the distribution of political accountability. In conventional legislative practice, distinct bills permit discrete voting decisions, enabling legislators to support or oppose specific reforms. Bundled legislation reduces this clarity.²³ Representatives may be compelled to endorse an entire package despite reservations regarding particular components, thereby weakening representative responsibility. From a democratic theory standpoint, such bundling may attenuate the expressive function of legislative voting and obscure lines of political accountability.²⁴ The integrity of constitutional democracy depends not only on outcomes but on processes that enable meaningful representation and public contestation.

This structural tension is further intensified in domains implicating essential fundamental rights. Environmental protection, for example, is not merely a regulatory concern but a constitutional commitment in many jurisdictions. Socio-economic guarantees, including the right to work and a decent livelihood, likewise possess normative weight grounded in constitutional text and jurisprudence.²⁵ When omnibus legislation modifies statutory frameworks governing such rights, the consolidation technique may magnify the risk of rights regression. This recalibration, while justified as harmonisation, reveals the deeper normative question: should legislative efficiency justify structural alteration of rights-sensitive regimes without distinct and focused deliberation?

Ultimately, the debate over omnibus legislation compels a re-evaluation of the relationship between legislative form and constitutional substance. Omnibus law is not intrinsically incompatible with constitutional democracy; however, its legitimacy depends upon structural safeguards that preserve deliberation, transparency, and rights protection. The challenge lies in reconciling the pragmatic demands of governance with the normative commitments of constitutionalism. If constitutional democracy is to retain its integrity, legislative efficiency must remain subordinate to constitutional principle. The task of constitutional theory, therefore, is not to reject omnibus legislation categorically, but to articulate principled limits ensuring that the pursuit of efficiency does not erode the foundational architecture of rights and democratic legitimacy.

In this light, the tension between efficiency and constitutional integrity becomes not merely a descriptive observation but a normative question demanding doctrinal resolution. The analysis that follows seeks to move beyond critique toward reconstruction, exploring whether and how constitutional systems can define

²³ Ni'matul Huda et al., "Fast-Track Legislation: The Transformation of Law-Making Under Joko Widodo's Administration," *Yustisia Jurnal Hukum* 13, no. 1 (2024): 117, <https://doi.org/10.20961/yustisia.v13i1.71061>.

²⁴ Thomas Däubler et al., "Assessing Democratic Representation in Multi-Level Democracies," *West European Politics* 41, no. 3 (2018): 541–64, <https://doi.org/10.1080/01402382.2017.1409498>.

²⁵ Louis J. Kotzé, "The Transnationalization of Environmental Constitutionalism," in *Research Handbook on Transnational Environmental Law*, ed. Veerle Heyvaert and Leslie-Anne Duvic-Paoli (Edward Elgar Publishing, 2020), <https://doi.org/10.4337/9781788119634.00020>.

substantive boundaries—particularly in rights-sensitive domains—within which omnibus legislation may legitimately operate.

Indonesia's Omnibus Law: Structural Expansion and Rights-Sensitive Domains

Indonesia's adoption of the omnibus legislative technique through Law No. 11 of 2020 on Job Creation represents one of the most far-reaching structural reforms in its post-Reformasi constitutional era. Conceived as a comprehensive response to regulatory fragmentation and investment stagnation, the omnibus framework consolidated amendments to more than seventy statutes across diverse sectors, including environmental governance, labour regulation, spatial planning, land administration, and investment law.²⁶ The philosophical justification for this legislative experiment was anchored in developmental constitutionalism: the imperative to realise economic growth, create employment opportunities, and fulfil the constitutional mandate under Article 27(2) of the 1945 Constitution guaranteeing the right to work and a decent livelihood. The omnibus technique was thus framed as an instrument of harmonisation and acceleration—a corrective to bureaucratic inertia and normative overlap²⁷. Yet the structural breadth of the reform inevitably extended into domains that implicate essential fundamental rights, thereby transforming what appeared to be a technical legislative innovation into a profound constitutional event.

The design of the Job Creation Law illustrates the expansionary character of omnibus consolidation. Rather than addressing discrete regulatory inefficiencies through sector-specific amendments, the legislature opted for a sweeping restructuring of multiple statutory regimes within a single legislative act. This structural aggregation altered the epistemic and deliberative conditions of lawmaking. By embedding heterogeneous reforms into a unified legislative package, the process compressed debate across domains of varying constitutional sensitivity.²⁸ The Constitutional Court's Decision No. 91/PUU-XVIII/2020, which declared the law conditionally unconstitutional on procedural grounds, reflects the institutional unease generated by this approach. The Court emphasised deficiencies in transparency, public participation, and legislative technique, signalling that accelerated consolidation may compromise democratic legitimacy.²⁹ However, the ruling focused primarily on procedural irregularities, leaving open the deeper substantive question of whether rights-sensitive domains should be subject to omnibus restructuring at all.

²⁶ Saputra and Dhianty, "Investment Licensing and Environmental Sustainability in the Perspective of Law Number 11 The Year 2020 Concerning Job Creation."

²⁷ Rohtash and Devinder Singh, "Constitutional Welfare Economics: A Study of Classical and Keynesian Economic Ideas in Indian Constitutional Economic Philosophy," in *Law, Economy, and Society: Insights into Legal and Economic Issues in India*, ed. Ashish Virk et al., Accounting, Finance, Sustainability, Governance & Fraud: Theory and Application (Springer Nature Singapore, 2025), https://doi.org/10.1007/978-981-95-3361-9_6.

²⁸ Prakoso Bhairawa Putera et al., "Regulatory Amendments of The Strategic Policy for The Job Creation in Indonesia: Research and Innovation Aspect," *ASEAN Journal on Science and Technology for Development* 39, no. 1 (2022), <https://doi.org/10.29037/ajstd.735>.

²⁹ Rian Saputra et al., "Executability of the Constitutional Court's Formal Testing Decision: Indonesia's Omnibus Law Review," *Journal of Law, Environmental and Justice* 1, no. 3 (2023): 244–58, <https://doi.org/10.62264/jlej.v1i3.18>.

The subsequent enactment of Government Regulation in Lieu of Law No. 2 of 2022 and its approval as Law No. 6 of 2023 formally reconstituted the legal basis of the Job Creation framework. Nevertheless, the constitutional significance of this development cannot be assessed solely by reference to the replacement of Law No. 11 of 2020. The relevant inquiry is whether the later legislation corrected only the formal defects identified by the Constitutional Court or also addressed the structural risks arising from the consolidation of rights-sensitive statutory regimes. Although the later framework provided a new legislative basis for the reform, it retained the omnibus structure and continued to regulate environmental, land, labour, and investment matters within an integrated instrument. The post-decision development therefore reinforces the distinction between procedural correction and substantive constitutional justification: compliance with formal legislative requirements does not by itself establish that omnibus consolidation is an appropriate mechanism for altering the scope and protection of essential rights.

Nowhere is this tension more visible than in the environmental sector. The omnibus reform introduced significant amendments to Law No. 32 of 2009 on Environmental Protection and Management, modifying environmental impact assessment procedures, recalibrating administrative authority, and eliminating the strict liability principle in certain environmental disputes. As critically examined in existing scholarship these changes have been interpreted as privileging investment facilitation over ecological accountability.³⁰ The centralisation of environmental licensing authority reduced the role of regional governments and curtailed avenues for public participation, thereby altering the participatory architecture of environmental governance. Philosophically, this recalibration reflects a shift from sustainability-oriented constitutionalism toward instrumental developmentalism. Environmental protection, previously embedded within a framework of precaution and accountability, became rearticulated within an efficiency paradigm prioritising regulatory simplification.

The implications extend beyond procedural modification to the normative hierarchy of rights. Environmental sustainability in Indonesia is not merely a policy objective; it is constitutionally anchored in Article 28H(1) of the 1945 Constitution, which guarantees the right to a good and healthy environment. By consolidating amendments affecting environmental safeguards within a broad investment-oriented statute, the omnibus method risks attenuating the visibility and normative weight of this constitutional commitment.³¹ When rights-sensitive provisions are embedded within a legislative package driven by economic rationality, the deliberative focus may shift from rights protection to growth facilitation. The structural form of the law thus shapes the substantive balance between competing constitutional values. Legislative technique becomes a medium through which rights hierarchy is implicitly recalibrated.

A parallel dynamic is evident in the domain of land rights and agrarian governance. The omnibus framework introduced reforms affecting land acquisition, management rights, and the establishment of a land bank mechanism. These changes were justified as

³⁰ Saputra and Dhianty, "Investment Licensing and Environmental Sustainability in the Perspective of Law Number 11 The Year 2020 Concerning Job Creation."

³¹ Qurrata Ayuni et al., "Strengthening the Renewable Energy Bill: Promoting Sustainability within Constitutional Rights," *IOP Conference Series: Earth and Environmental Science* 1537, no. 1 (2025): 012039, <https://doi.org/10.1088/1755-1315/1537/1/012039>.

necessary to streamline development projects and attract foreign investment. Yet land in Indonesia is not merely an economic resource;³² it is intimately connected to indigenous identity, social justice, and constitutional recognition of customary communities under Article 18B(2).³³ By incorporating agrarian reform into a consolidated statute primarily oriented toward economic acceleration, the legislative process risked marginalising the socio-cultural and constitutional dimensions of land tenure. The configuration of agrarian policy within the omnibus framework reflects a substantive recalibration of the relationship between state-driven investment facilitation and the protection of indigenous and local land rights.³⁴ When such restructuring is undertaken through a bundled legislative format, it raises fundamental concerns regarding the depth of deliberation, the visibility of rights implications, and the adequacy of scrutiny applied to norms that directly affect constitutionally sensitive domains

From a theoretical standpoint, Indonesia's omnibus experiment reveals the vulnerability of rights-sensitive domains to structural legislative expansion. The aggregation of heterogeneous reforms within a single statute may obscure the differentiated constitutional status of the norms affected. Environmental protection, labour rights, and land tenure do not occupy the same normative plane as administrative coordination or licensing simplification.³⁵ Yet omnibus consolidation treats them as functionally equivalent components of regulatory reform. This equivalence is methodologically convenient but constitutionally problematic. It collapses distinctions between ordinary policy adjustments and modifications affecting entrenched constitutional guarantees. The legislative form thereby risks eroding the hierarchical structure that underpins constitutional democracy.

Moreover, the Indonesian case illustrates how structural expansion may generate asymmetries in accountability. When reforms across multiple sectors are adopted simultaneously, civil society actors and affected communities face significant obstacles in mobilising focused opposition or engaging in issue-specific advocacy. The complexity of the legislative package disperses attention and diffuses critique. Judicial review, too, becomes structurally complicated, as courts must navigate interrelated amendments spanning diverse domains. The Constitutional Court's procedural ruling highlights this challenge but does not resolve the substantive tension inherent in bundling rights-sensitive reforms within a single act.

³² Aditya Prastian Supriyadi et al., "STRENGTHENING INDONESIA'S GREEN INVESTMENT LAW: Legal Reconceptualisation toward Net-Zero Emissions under Green Constitution and Masalahah," *Jurisdictie: Jurnal Hukum Dan Syariah* 16, no. 2 (2025): 411–51, <https://doi.org/10.18860/j.v16i2.35169>; Hananto Widodo et al., "Balancing National Constitutions and International Trade Commitments: Comparative Insights from Indonesia, Thailand, and India," *Lampung Journal of International Law* 7, no. 2 (2026): 103–18, <https://doi.org/10.25041/lajil.v7i2.4813>.

³³ Stefanie Steinebach and Yvonne Kunz, "Separating Sisters From Brothers: Ethnic Relations and Identity Politics in the Context of Indigenous Land Titling in Indonesia," *Austrian Journal of South-East Asian Studies* Vol 10 No 1 (June 2017): 47–64 Pages, 47–64 Pages, <https://doi.org/10.14764/10.ASEAS-2017.1-4>.

³⁴ Ikhsan, "The Omnibus Law in Indonesia: Assessing Its Consequences on Environmental Sustainability and Land Rights."

³⁵ Putu Eva Ditayani Antari, "The Implementation of Omnibus Law in Indonesia Law Making Process on Philosophy Review," *De Jure: Jurnal Hukum Dan Syariah* 14, no. 1 (2022): 179–94, <https://doi.org/10.18860/j-fsh.v14i1.15757>.

In sum, Indonesia's omnibus law demonstrates that legislative consolidation is not a neutral technical device but a structural intervention with profound constitutional implications. Its expansionary scope extended into domains protected by constitutional guarantees, thereby transforming efficiency-driven reform into a contestation over rights hierarchy and democratic legitimacy. The Indonesian experience thus provides a critical case study for examining whether constitutional democracy requires principled limits on the use of omnibus legislation, particularly when essential fundamental rights are implicated. The analysis that follows situates this national experience within a comparative framework, exploring how alternative constitutional cultures—most notably Germany's Rechtsstaat tradition—embed legislative practice within more explicit structural safeguards.

Germany's Legislative Practice: Rights-Embedded Lawmaking in a Rechtsstaat Framework

Any meaningful reconstruction of constitutional limits to omnibus legislation requires engagement with a constitutional culture in which legislative technique is structurally subordinated to rights protection. Germany provides such a reference point. Although German law does not employ the term “omnibus law” as a distinct doctrinal category in the manner often used in common law jurisdictions, legislative consolidation and multi-sectoral amendment are not unknown within the German federal system.³⁶ What distinguishes the German approach, however, is not the absence of legislative bundling, but the embedding of lawmaking within a robust Rechtsstaat framework characterised by constitutional supremacy, doctrinal precision, and entrenched fundamental rights under the Basic Law (*Grundgesetz*).

At the philosophical core of German constitutionalism lies the principle that all public authority is bound by the constitution (Art. 20(3) GG). This binding effect operates not merely as a formal constraint but as a substantive commitment to the primacy of fundamental rights (*Grundrechte*). Legislative activity is therefore understood as constitutionally conditioned from the outset.³⁷ Unlike instrumental conceptions of lawmaking that prioritise regulatory efficiency, the German tradition conceptualises legislation as an act of normative ordering within a hierarchy of values anchored in human dignity (Art. 1(1) GG). Human dignity, declared inviolable and placed beyond constitutional amendment, establishes a structural orientation that permeates legislative practice. Consequently, any legislative technique—whether incremental amendment or comprehensive reform—must be compatible with the substantive core of fundamental rights.

This rights-embedded orientation is operationalised through doctrinal principles that shape legislative drafting and judicial review. Among the most significant is the Bestimmtheitsgebot, the constitutional requirement of legal definiteness and clarity.

³⁶ Cara Röhner, “Practices of Social Constitutionalism: Poverty, Socio-Economic Status and Social Exclusion in the Jurisprudence of the German Federal Constitutional Court,” *German Law Journal* 26, no. 2 (2025): 213–33, <https://doi.org/10.1017/glj.2025.4>.

³⁷ Karl-Peter Sommermann, “Constitutional State and Public Administration,” in *Public Administration in Germany*, ed. Sabine Kuhlmann et al., Governance and Public Management (Springer International Publishing, 2021), https://doi.org/10.1007/978-3-030-53697-8_2.

Rooted in the rule of law principle (*Rechtsstaatsprinzip*), this doctrine demands that statutory provisions be sufficiently precise to enable foreseeability and prevent arbitrary application. The principle functions not merely as a drafting guideline but as a constitutional safeguard ensuring that legislative consolidation does not produce normative opacity. When statutes are amended or consolidated, the requirement of clarity compels careful delineation of scope and effect. Legislative bundling that obscures the meaning or consequences of rights-sensitive provisions would likely encounter constitutional challenge before the Federal Constitutional Court (*Bundesverfassungsgericht*).³⁸ Thus, structural safeguards against legislative overreach are internalised within the drafting culture itself.

Environmental governance in Germany illustrates how rights-sensitive domains are integrated into legislative practice within this constitutional architecture. Although environmental protection is not framed exclusively as an individual fundamental right in the Basic Law, Article 20a GG establishes the state's duty to protect the natural foundations of life for future generations.³⁹ This constitutional mandate has been interpreted by the Federal Constitutional Court as imposing substantive obligations on the legislature, most notably in the landmark 2021 Climate Decision, where the Court held that insufficiently ambitious climate legislation could disproportionately burden future generations. This jurisprudence reveals a constitutional culture in which environmental sustainability is not subordinated to economic expediency but treated as a dimension of intergenerational justice.⁴⁰ Legislative reforms affecting environmental regulation are therefore scrutinised not only for procedural compliance but for substantive proportionality and adequacy in light of constitutional commitments.

The proportionality principle constitutes a central doctrinal safeguard within the German Rechtsstaat, ensuring that legislative reforms affecting fundamental rights remain constitutionally justified. Through the structured three-step test—suitability, necessity, and proportionality in the strict sense—German constitutional jurisprudence requires the legislature to demonstrate that rights-restricting measures are rationally grounded, minimally intrusive, and normatively balanced.⁴¹ Comprehensive statutory reforms, including those involving multiple amendments, must therefore withstand rigorous scrutiny as to whether they disproportionately impair protected interests. Although legislative consolidation is not inherently unconstitutional, bundling provisions that significantly affect fundamental rights without differentiated and reasoned justification

³⁸ Janet L. Hiebert, "The Charter, Policy, and Political Judgment," in *Policy Change, Courts, and the Canadian Constitution*, ed. Emmett Macfarlane (University of Toronto Press, 2018), <https://doi.org/10.3138/9781487519483-006>.

³⁹ Johannes Saurer, "Between Industrial Society and the Anthropocene - On the Development of Environmental Constitutional Law in 75 Years of the Basic Law," *Die Verwaltung* 57, no. 3 (2024): 251–78, <https://doi.org/10.3790/verw.2024.382424>.

⁴⁰ Stefan Theil, "Cautious Scrutiny: The Federal Climate Change Act Case in the German Constitutional Court," *The Modern Law Review* 86, no. 1 (2023): 263–75, <https://doi.org/10.1111/1468-2230.12746>.

⁴¹ Joachim Wolf, "The Principle of Proportionality – the Centrepiece of the System of Constitutionally Compliant Executive Performance of State Tasks," *Zeitschrift Für Europarechtliche Studien* 28, no. 4 (2025): 639–59, <https://doi.org/10.5771/1435-439X-2025-4-639>.

would likely trigger heightened constitutional review.⁴² In this sense, proportionality functions as a substantive counterweight to legislative expediency, anchoring reform within the discipline of rights-based reasoning.

These constitutional requirements are reflected in concrete decisions of the Federal Constitutional Court. In its decision of 28 September 2022, the Court clarified that statutory cross-references and complex regulatory structures are not inherently incompatible with the requirements of legal clarity and definiteness; nevertheless, their use remains constitutionally limited where the interaction between provisions prevents individuals from identifying the scope, conditions, and legal consequences of state authority. The Court's Climate Change Decision of 24 March 2021 further demonstrates the operation of proportionality in rights-sensitive legislation. Although Article 20a of the Basic Law obliges the state to pursue climate protection and climate neutrality, the Court emphasised that this constitutional objective does not enjoy automatic precedence over all competing interests.⁴³ Rather, the legislature must distribute the burdens of emissions reduction in a manner that does not disproportionately transfer severe restrictions of freedom to future generations. These decisions illustrate that German constitutional review does not prohibit complex or far-reaching legislation as such, but requires its structure, justification, and temporal effects to remain compatible with legal certainty, proportionality, and the effective protection of fundamental rights.

This doctrinal structure operates within an institutional architecture that embeds deliberation and federal participation into the legislative process. The Bundesrat's constitutionally entrenched role ensures that reforms affecting regional administration or shared competencies undergo multilayered scrutiny. Legislative initiatives must pass through parliamentary debate in the *Bundestag*, federal review, and, where necessary, mediation procedures.⁴⁴ Such diffusion of authority mitigates the risk that sweeping reforms—particularly in rights-sensitive fields such as environmental regulation—can be adopted without sustained deliberation and negotiated compromise. Legislative consolidation, where undertaken, is thus conditioned by structural safeguards that integrate rights considerations into institutional design rather than relegating them to ex post judicial correction.

German legislative practice also demonstrates that multi-statute consolidation is not foreign to the Rechtsstaat. The Bundestag recognises the Artikelgesetz, also described as a Mantelgesetz or omnibus statute, as a legislative form through which several statutes may be enacted or amended simultaneously, including across different regulatory fields. A relevant example is the 2022 legislative package for the accelerated expansion of renewable energy, commonly associated with the Easter Package. Its principal legislative instrument amended the Renewable Energy Sources Act and numerous related

⁴² Albrecht Weber, "Limitation and Derogation of Fundamental Rights," in *Writing Constitutions*, ed. Wolfgang Babeck and Albrecht Weber (Springer International Publishing, 2024), https://doi.org/10.1007/978-3-031-39622-9_17.

⁴³ R. Bodle and S. Sina, "The German Federal Constitutional Court's Decision on the Climate Change Act," *Carbon & Climate Law Review* 16, no. 1 (2022): 18–24, <https://doi.org/10.21552/cclr/2022/1/5>.

⁴⁴ Felix Arndt et al., "Germany's Parliamentary Administration," in *The Routledge Handbook of Parliamentary Administrations*, 1st ed., by Thomas Christiansen et al. (Routledge, 2023), <https://doi.org/10.4324/9781003181521-22>.

provisions governing electricity markets, grid regulation, combined heat and power, and other aspects of the energy transition. The package therefore illustrates that German lawmaking may also employ extensive and technically complex legislative consolidation. Its comparative significance lies not in the absence of bundling, but in the institutional and constitutional conditions under which bundling occurs: the affected statutory amendments remain separately identifiable, supported by article-specific legislative explanations, subjected to parliamentary and Bundesrat consideration, and reviewable against the requirements of legal definiteness, proportionality, and fundamental rights. At the same time, these safeguards do not eliminate political controversy or guarantee substantively optimal legislation, which is why Germany should be understood as a critical functional comparator rather than an ideal or directly transferable model

The German experience demonstrates that legislative aggregation is compatible with constitutional democracy only when embedded within a disciplined constitutional culture. Consolidated reforms in complex domains—such as energy transition or environmental assessment—occur within a normative environment that foregrounds constitutional supremacy, doctrinal clarity, and enforceable rights protection. Legislative technique is not treated as a neutral administrative instrument but as constitutionally conditioned practice. The critical distinction is therefore not whether multiple amendments are adopted simultaneously, but whether such consolidation respects the hierarchical ordering of constitutional norms. For comparative purposes, Germany illustrates that efficiency can coexist with constitutional integrity when legislative reform remains structurally subordinated to fundamental rights and sustained judicial oversight.

Comparative Constitutional Analysis: Diverging Legislative Philosophies

The juxtaposition between Indonesia's omnibus experiment and Germany's rights-embedded legislative practice reveals not merely institutional divergence, but a deeper philosophical divergence concerning the function of legislation within constitutional democracy. Both jurisdictions formally adhere to the principle of constitutional supremacy; both recognise fundamental rights as binding constraints on state authority. Yet the structural orientation of legislative practice differs markedly. In Indonesia, the omnibus technique was deployed as an instrument of accelerated economic governance, justified primarily through developmental rationality and regulatory harmonisation. In Germany, by contrast, legislative reform operates within a constitutional culture that internalises rights protection as a prior and structuring commitment. The contrast therefore illuminates two diverging legislative philosophies: instrumental legislative rationality and constitutionally embedded legislative rationality.

Indonesia's omnibus law embodies what may be characterised as an instrumentalist conception of legislation, in which law is primarily deployed as a regulatory mechanism to advance socio-economic objectives such as investment facilitation, employment generation, and administrative streamlining.⁴⁵ The philosophical rationale underpinning the Job Creation Law was framed around economic urgency and the constitutional mandate to promote public welfare and decent work. While these aims are normatively defensible within a developmental constitutional framework, their predominance in the

⁴⁵ Saputra et al., "Executability of the Constitutional Court's Formal Testing Decision."

legislative agenda generated a structural consequence: domains implicating fundamental rights were absorbed into a comprehensive economic reform package. Environmental protection, land governance, and labour safeguards were effectively recalibrated within a unified regulatory logic oriented toward efficiency and growth.⁴⁶ In this configuration, legislative technique reflected the imperatives of accelerated development, consolidating heterogeneous and rights-sensitive reforms into a single statutory instrument designed to overcome bureaucratic fragmentation, thereby raising critical questions about the hierarchical positioning of fundamental rights within the legislative process.

Germany's legislative philosophy is grounded in a rights-centred conception of constitutional order. Within the Rechtsstaat tradition, economic development is recognised as important, yet legislative reform is situated within a normative hierarchy anchored in human dignity and fundamental rights. Law is not treated merely as an instrument of policy but as an expression of constitutional commitment.⁴⁷ Doctrinal safeguards—such as proportionality, legal definiteness, and the constitutional entrenchment of environmental responsibility—operate as structural constraints on legislative ambition. Even comprehensive reforms, including those related to energy transition or environmental assessment, remain subject to rigorous constitutional scrutiny, ensuring that consolidation does not eclipse rights protection.

The divergence becomes evident when examining how each system treats rights hierarchy. Indonesia's omnibus reform structurally bundled heterogeneous amendments, effectively flattening distinctions between routine regulatory adjustments and modifications affecting constitutionally sensitive domains. Environmental protection and land governance were consolidated alongside investment licensing and administrative simplification, thereby risking the dilution of their differentiated constitutional status.⁴⁸ In contrast, German legislative culture implicitly recognises that not all statutory domains carry equivalent constitutional weight. Fundamental rights under Articles 1–19 of the Basic Law and environmental obligations under Article 20a function as normative anchors that resist reduction to administrative expediency.⁴⁹

A further contrast lies in the relationship between legislative form and democratic deliberation. Indonesia's consolidation of numerous amendments within a single enactment altered the depth and tempo of parliamentary debate, limiting issue-specific scrutiny and constraining meaningful public engagement. Although procedural deficiencies were identified by the Constitutional Court, the broader concern is whether accelerated consolidation affects democratic legitimacy itself.⁵⁰ Germany's institutional architecture—particularly federal participation through the *Bundesrat* and multilayered

⁴⁶ Ahmad Ainun Najib and Retno Saraswati, "Omnibus Law on Job Creation: Tug of War over Environmental Protection Authority Amid the Climate Crisis," *IOP Conference Series: Earth and Environmental Science* 1270, no. 1 (2023): 012004, <https://doi.org/10.1088/1755-1315/1270/1/012004>.

⁴⁷ Eilert Herms, "Institutions of Physical and Cultural Reproduction of the Community: Socio-Ethical Consideration of Their Regulation by the Constitution," *Zeitschrift für Theologie und Kirche* 115, no. 1 (2018): 47–70, <https://doi.org/10.1628/zthk-2018-0004>.

⁴⁸ Siagian, "Omnibus Law Draft in the Perspective of Constitutionality and Legal Politics."

⁴⁹ Manfred Weiss, "Fundamental Rights and German Labor Law," in *Research Handbook on Labour, Business and Human Rights Law*, ed. Janice R. Bellace and Beryl Ter Haar (Edward Elgar Publishing, 2019), <https://doi.org/10.4337/9781786433114.00010>.

⁵⁰ Arifin, "Illiberal Tendencies in Indonesian Legislation."

deliberative processes—diffuses legislative authority and embeds scrutiny at several levels. This structural design reduces the likelihood that rights-implicating provisions are subsumed within opaque reform packages.⁵¹

Taken together, the comparison demonstrates that the constitutional challenge of omnibus legislation is rooted less in technique than in legislative philosophy. Where law is conceived instrumentally, consolidation risks subordinating rights to efficiency; where law is understood as constitutionally embedded practice, reform operates within defined normative limits. Constitutional democracy therefore requires structural fidelity to rights hierarchy, not merely procedural compliance. The Indonesian and German experiences illustrate competing conceptions of the relationship between law, policy, and constitutional commitment, providing the normative foundation for articulating principled limits on omnibus legislation in rights-sensitive domains.

Toward a Doctrine of Constitutional Limits: The Essential Rights Exclusion Principle

The comparative analysis undertaken in this study demonstrates that the constitutional tension surrounding omnibus legislation stems not merely from procedural deficiencies or political controversy, but from the absence of clearly articulated substantive limits governing its deployment in rights-sensitive domains. In a constitutional democracy structured upon the primacy of fundamental rights, legislative technique cannot be regarded as normatively neutral. The structural form of lawmaking must correspond to constitutional hierarchy.⁵² Against this backdrop, this article advances the Essential Rights Exclusion Principle (EREP), which posits that legislative instruments directly regulating essential fundamental rights—particularly those affecting environmental sustainability, indigenous land tenure, and core socio-economic guarantees—should not be subjected to omnibus consolidation without heightened constitutional safeguards.

The philosophical foundation of the EREP rests on constitutional entrenchment. Fundamental rights constitute defining commitments of the constitutional order and cannot be reduced to adjustable variables within an efficiency-driven reform agenda. In the Indonesian context, guarantees such as the right to a healthy environment (Article 28H(1)), the right to work and a decent livelihood (Article 27(2)), and recognition of customary communities (Article 18B(2)) embody normative anchors that resist instrumental recalibration. The omnibus restructuring of statutory regimes governing environmental liability and agrarian governance revealed the absence of a doctrinal framework distinguishing economic harmonisation from rights transformation.⁵³ The EREP addresses this lacuna by affirming that legislative form must respect the normative hierarchy embedded in constitutional text and jurisprudence.

⁵¹ Matthias Niedobitek, “The German Bundesrat and Executive Federalism,” *Perspectives on Federalism* 10, no. 2 (2018): 198–214, <https://doi.org/10.2478/pof-2018-0023>.

⁵² Siagian, “Omnibus Law Draft in the Perspective of Constitutionality and Legal Politics.”

⁵³ Anna Sanders et al., “The Omnibus Law on Job Creation and Its Potential Implications for Rural Youth and Future Farming in Indonesia,” *Asia Pacific Viewpoint* 65, no. 2 (2024): 248–62, <https://doi.org/10.1111/apv.12408>.

Doctrinally, the principle operates through three interrelated propositions: the recognition of a hierarchy of legislative sensitivity; the requirement of enhanced deliberation and transparency in rights-implicating reforms; and the application of heightened judicial scrutiny where omnibus consolidation affects constitutionally entrenched domains. The principle does not categorically prohibit comprehensive reform, but conditions its legitimacy on structural alignment with constitutional safeguards.⁵⁴ By differentiating between ordinary regulatory coordination and essential rights legislation, it restores hierarchical clarity and prevents the flattening of rights-sensitive norms within bundled economic reform packages.

Comparative experience reinforces the normative plausibility of this reconstruction. Germany's rights-embedded legislative culture illustrates how comprehensive reform can coexist with constitutional discipline when fundamental rights function as pre-emptive constraints on legislative ambition. Drawing from this insight without mechanically transplanting institutional arrangements, the EREP articulates a doctrinal boundary suited to Indonesia's constitutional framework, where developmental objectives must coexist with entrenched rights commitments. It reframes the debate from reactive critique of specific omnibus provisions to a forward-looking theory of legislative limits.

The Essential Rights Exclusion Principle affirms that constitutional democracy is defined not only by the substance of rights but by the modalities through which they are regulated. Legislative efficiency remains a legitimate objective, yet it cannot displace constitutional hierarchy and deliberative integrity. When omnibus legislation reaches into domains that shape human dignity, environmental sustainability, and socio-economic security, the threshold of constitutional justification must correspondingly intensify. By articulating principled limits grounded in rights hierarchy and structural fidelity, this doctrine contributes to the broader discourse of global constitutionalism, safeguarding both the substance of rights and the integrity of democratic lawmaking.

Conclusion

The foregoing analysis demonstrates that omnibus legislation, while not inherently incompatible with constitutional democracy, becomes constitutionally problematic when deployed without principled limits in rights-sensitive domains. The Indonesian experience with Law No. 11 of 2020 on Job Creation reveals that the absence of clear constitutional boundaries allowed structural consolidation to extend into areas directly implicating environmental protection, land tenure, and socio-economic guarantees. Although the Constitutional Court identified procedural deficiencies, the deeper issue concerns the substantive relationship between legislative technique and rights hierarchy. By contrast, the German *Rechtsstaat* framework illustrates how legislative reform may coexist with constitutional integrity when fundamental rights function as pre-emptive normative constraints, reinforced by proportionality, definiteness, and robust judicial

⁵⁴ Abdullah Sait Özcan and Fırat Kimya, "Executive Decrees, Omnibus Bills, and the Politics of Abusive Constitutionalism in Turkey," *Southeast European and Black Sea Studies* 24, no. 4 (2024): 881–903, <https://doi.org/10.1080/14683857.2023.2231678>.

review. The comparative inquiry therefore confirms that omnibus legislation must be evaluated not merely in terms of procedural regularity or policy outcome, but in light of constitutional hierarchy and the structural conditions of democratic deliberation.

In response to the central research questions, this study concludes that constitutional democracy requires explicit limits on the use of omnibus legislation, particularly where essential fundamental rights are at stake. Legislation regulating environmental sustainability, indigenous land rights, and core socio-economic guarantees should not be consolidated within omnibus statutes absent heightened deliberation, transparency, and judicial scrutiny. The Essential Rights Exclusion Principle proposed in this article offers a doctrinal framework reconciling legislative efficiency with constitutional fidelity, ensuring that developmental objectives do not eclipse entrenched rights commitments. By situating legislative form within constitutional philosophy and comparative insight, this study advances a normative reconstruction that contributes to both Indonesian constitutional discourse and broader debates in global constitutionalism. Ultimately, the legitimacy of omnibus reform depends not on its capacity to accelerate governance, but on its fidelity to the constitutional architecture that defines and limits democratic power..

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