

ASSESSING CONSTITUTIONALITY OF AMENDMENT BY APPENDIX MODEL IN INDONESIA

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Abstract: This research aims to analyze the “amendment by appendix” model as employed in Law 1/2026 and to review its formal constitutionality. This doctrinal legal research combines statutory and conceptual approaches. The findings show that while the “amendment by appendix” model offers functional legislative efficiency, it operates as a distinct and novel drafting technique that remains unregulated within the strict guidelines of Appendix II of Law 12/2011 and its amendments. The precedent of Decision 91/PUU-XVIII/2020 is instructive, mandating that every novel legislative drafting technique must be regulated prior to its use. Consequently, the absence of the “amendment by appendix” model in the established guidelines renders its practice in Law 1/2026 *prima facie* unconstitutional on procedural grounds. While Law 1/2026 remains constitutional under the presumption of validity absent a formal judicial review, *ex-post* measures to cure its defects may prove futile. As a policy implication, lawmakers must proactively amend Law 12/2011 to explicitly legitimize the model, ensuring its valid future application while mitigating the risk of constitutional invalidation.

Penelitian ini bertujuan untuk menganalisis model “perubahan melalui lampiran” sebagaimana dipraktikkan dalam UU 1/2026 dan meninjau konstitusionalitasnya secara formil. Penelitian hukum doktrinal ini menggabungkan pendekatan perundang-undangan dengan pendekatan konseptual. Temuan penelitian menunjukkan bahwa kendatipun model ini menawarkan efisiensi secara fungsional dalam proses legislasi, model tersebut merupakan teknik perancangan perundang-undangan baru yang belum secara tegas diatur dalam Lampiran II UU 12/2011 beserta perubahannya. Putusan 91/PUU-XVIII/2020 menjadi relevan dengan menegaskan bahwa setiap teknik penyusunan peraturan perundang-undangan harus diatur terlebih dahulu sebelum digunakan. Akibatnya, belum diaturnya model tersebut menjadikan penerapannya dalam UU 1/2026 inkonstitusional secara prima facie karena cacat prosedural. Kendatipun UU 1/2026 tetap dianggap konstitusional berdasarkan asas praduga keabsahan sebelum adanya putusan pengujian undang-undang yang menyatakan sebaliknya, upaya ex-post untuk memperbaiki cacat prosedur besar kemungkinan akan sia-sia. Sebagai implikasi kebijakan, pembentuk undang-undang harus secara proaktif mengubah UU 12/2011 untuk melegitimasi model tersebut, guna memastikan keabsahan

penggunaannya di masa depan sekaligus memitigasi risiko inkonstitusionalitas.

Keywords: amendment; appendix; formal constitutionality.

INTRODUCTION

The principles of procedural constitutionalism and the rule of law require that the lawmaking process adhere strictly to established procedures to ensure legal certainty and legislative legitimacy (Jiménez Ramírez 2024; Biernat 2020). These principles are enshrined in Article 1 number 2 of Law Number 12/2011 on the Formation of Laws and Regulations (Law 12/2011). This provision explicitly states that all laws and regulations must be duly enacted according to established procedures. However, Law Number 1 of 2026 on Criminal Sanctions Adjustment (Law 1/2026), enacted to bridge the disparities between the old paradigm of criminal sanctions employed in pre-existing sectoral laws and the New Criminal Code (Republik Indonesia 2026), has introduced a novel legislative drafting method that challenges this procedural rigidity. Specifically, Law 1/2026 effected a sweeping amendment of criminal sanctions provisions in 187 Laws outside the New Criminal Code through a novel method, namely “amendment by appendix” (Republik Indonesia 2026; Trikarinaputri 2026).

Law No 1 2026 adopted an omnibus method to amend these criminal sanctions provisions. However, it departed from standard drafting conventions by listing the amended provisions in an appendix, rather than directly amending the body of the law. The lawmakers’ preference for this method, however, is not without its pragmatic merit. Amending 187 different laws through the standard mechanism would have resulted in a legislative document of unmanageable length and complexity.

The “amendment by appendix” model offers more convenience, functioning effectively as a conversion table, thereby allowing law enforcement officials to quickly identify the adjusted criminal sanction provisions without having to go through thousands of pages of legislative text. However, despite this convenience, the method is not specifically regulated in Law Number 12 of 2011 on the Formation of Laws and Regulations (Law 12/2011), as lastly amended by Law Number 13 of 2022 on the Second Amendment of Law Number 12 of 2011 on the Formation of Laws and Regulations (Law 13/2022).

This lack of regulations places the method under significant constitutional scrutiny. Constitutional Court Decision Number 91/PUU-XVIII/2020 is highly instructive in this regard. The Court held the “omnibus” Job Creation Law conditionally unconstitutional on the grounds that the omnibus method was not specifically regulated under Law 12/2011 (Mahkamah Konstitusi Republik Indonesia 2020; Mochtar et al. 2024; Panjaitan 2022). Through this ruling, the Court established the principle that every novel method of law formation must be regulated beforehand. While it may be argued that an appendix is an inseparable part of the body of the law (Republik Indonesia 2011; Purnamasari 2018),

employing an unauthorized amendment technique raises fundamental questions regarding formal constitutional validity.

This research contributes to the literature by introducing the “amendment by appendix” model as a distinct legislative technique. Unlike both the codification and the omnibus methods, the “amendment by appendix” model amends multiple laws’ body texts through the means of an appendix. This distinct mechanism subsequently warrants dedicated academic inquiry.

Currently, discourses on amendment techniques in Indonesia have primarily focused on the omnibus method in general. Several studies have thoroughly examined the Job Creation Law’s lack of meaningful participation (Mochtar et al. 2024; Arifin 2021), its implications for worker protections and illiberal tendencies (Mahy 2022), and its incompatibility with regulatory harmonization (Rishan and Nika 2022). What is missing from the existing literature, however, is an examination of non-standard amendment techniques that bypass the body text entirely. This research fills this gap by specifically analyzing the formal constitutionality of the “amendment by appendix” model.

To address this gap, this research formulates the following research questions: how does the “amendment by appendix” model in Law 1/2026 differ from existing amendment techniques regulated under Law 12/2011 and its amendments? and does the use of the “amendment by appendix” model satisfy the formal constitutionality standards established by Constitutional Court’s precedents? Consequently, the objectives of this research are to describe the characteristics and anatomical distinctions of the “amendment by appendix” model compared to standard amendment, codification, and omnibus methods; and evaluate the formal constitutional validity of this model within the framework of the Constitutional Court’s precedents.

RESEARCH METHOD

This research employs a doctrinal legal research method to examine the formal constitutionality of the “amendment by appendix” model employed in Law 1/2026 (Baude, Chilton, and Malani 2017; Marzuki 2017). To provide a robust analytical foundation, this research is grounded in the theoretical framework of procedural constitutionalism and the rule of law. These frameworks posit that the legitimacy of the lawmaking process depends heavily on strict adherence to established procedures, rather than being merely derived from the substantive moral and justness of a law (Jiménez Ramírez 2024). Subsequently, this research evaluates whether the deviation from established legislative drafting techniques compromises the formal validity of the law.

To examine the “amendment by appendix” model, this research employs a combination of statutory and conceptual approaches (Marzuki 2017; Taekema 2018). The primary legal materials analyzed include Law 1/2026, Law 12/2011 and its amendments, and Constitutional Court Decision Numbers 27/PUU-VII/2009, 73/PUU-XII/2014, and 91/PUU-XVIII/2020 (Bhat 2019). Secondary legal materials, comprising journal articles,

books, and other relevant literature on legislative drafting techniques, are utilized to support the conceptual analysis (Bhat 2019).

The analysis is conducted systematically through three primary stages. First, a descriptive-comparative analysis is employed to deconstruct the anatomy of the “amendment by appendix” model in Law 1/2026, comparing its structure with that of the standard amendment, codification, and omnibus methods prescribed in Appendix II of Law 12/2011 and its amendments. Second, a normative analysis is conducted by applying the parameters of formal constitutionality established in prior Constitutional Court’s precedents to examine the formal constitutionality of the “amendment by appendix” model. Lastly, this research employs systematic and teleological interpretation methods to determine the legal consequences of employing a distinct and unestablished legislative drafting technique. Through deductive reasoning, this analytical framework allows the research to produce a more comprehensive analysis and conclusion concerning the model’s formal validity and to provide concrete recommendations for future legislative reforms.

RESULT AND DISCUSSION

The “Amendment by Appendix” Model as a Legislative Drafting Technique

Amendment techniques, as an integral part of legislative drafting techniques, are strictly regulated in Appendix II of Law 12/2011 and its amendments (Arfa’i, Nasution, and Febrian 2020). Specifically, the Law prescribes 2 (two) principal methods of amendment (Republik Indonesia 2011): (a) by “inserting or adding material to laws and regulations”; (b) by “repealing or replacing part of the material in laws and regulations”. Furthermore, these amendments may be applied to: (a) “all or part of a book, chapter, section, paragraph, article, and/or verse,” denoting the specific location of norms within the body of the law; or (b) “words, phrases, sentences, numbers, and/or punctuation,” denoting the parts of the texts in the body of the law (Republik Indonesia 2011). In short, the methods regulated in Law 12/2011 were strictly limited to only amendments to the body of a law.

Law 13/2022 subsequently introduced specific provisions addressing appendices (Republik Indonesia 2022). However, these regulations are strictly limited to instances where an existing appendix is amended or replaced by a new appendix (appendix-to-appendix model). There is no provision authorizing the amendment to the body of a law by an appendix. Given that Law 13/2022 was enacted against the backdrop of Constitutional Court’s mandate to standardize the “omnibus” method (Guswara and Nasution 2023; Syafriadi 2023), the legislative silence regarding “amendment by appendix” model indicates that this specific amendment technique remains unregulated (Cecot 2024).

To fully grasp the structural anomaly of the “amendment by appendix” model, it is important to compare it with the already established drafting conventions. Table 01

provides a comprehensive comparison between standard amendment, codification, the omnibus method, and the “amendment by appendix” model employed in Law 1/2026.

Table 01 – Anatomical and Structural Comparison
Between the Established Legislative Drafting Techniques
and the “Amendment by Appendix” Model

Aspects	Standard Amendment	Codification	Omnibus Method	Amendment by Appendix
Primary objective	To replace or repeal specific norms within an existing law.	Systematizing and unifying laws within a sector into one comprehensive code (Siagian 2021).	Harmonizing and streamlining laws, (sometimes) across different and unrelated sectors, to achieve a specific policy goal (Rishan and Nika 2022; Toruan 2021).	To efficiently amend massive amounts of provisions across multiple laws using a conversion table.
Structural Anatomy	Amendments to the body text are made strictly through a body text, while amendments to an appendix are made strictly through an appendix with a body text authorizing it.	An entirely new body text is drafted from scratch, incorporating and systematizing the subject matter of the repealed laws.	Amendments to multiple laws are made directly within the body text of the new omnibus law.	Substantive amendments to the body text of multiple laws are bypassed and delegated entirely via appendices.
Treatment of Existing Laws	Retained: The existing law remains in force, subject to the specific textual changes.	Repeal and replace: The existing laws are repealed entirely or in part and replaced by the new codified law.	Amend and retain: The existing laws remain in force, but specific provisions within the laws are amended, repealed, or added to.	Retained: The existing laws remain in force, but their provisions are amended via an appendix of the amending law.
Scope of Subject Matter	Singular: Typically targets one specific law at a time.	Homogenous: Deals with related topics or sectors (Fauzia et al. 2023).	Homogenous or Heterogenous: May cover different sectors or a single sector (Prasetyo,	Heterogenous but Thematic: Amends multiple laws across different sectors, but

Aspects	Standard Amendment	Codification	Omnibus Method	Amendment by Appendix
			Budiono, and Hadiyantina 2022; Rudy 2019).	targets a single specific theme, such as criminal sanctions.
Regulatory Status	Strictly Regulated: Explicit guidelines provided in Appendix II of Law 12/2011 and its amendments.	Recognized: Acknowledged as a standard legislative drafting method for systematic lawmaking.	Regulated: Formally recognized and regulated post-Law 13/2022's enactment.	Unregulated: No explicit regulatory authorization exists for amending a law's body text exclusively via an appendix.
Examples	Law 12/2011 on Mass Organizations	Law 7/2017 (codified Laws governing Presidential Elections, Legislative Elections, and Electoral Management Bodies); Law 1/2023 (codified criminal sanction provisions in a plethora of laws); and Law 17/2023 (codified several Laws in the health sector, e.g., hospitals, health quarantine, and medicinal doctor education and practice).	Law 4/2023 on the Development and the Strengthening of the Financial Sector (homogenous); and Law Number 6 of 2023 on the Stipulation of Law Number 2 of 2022 on Job Creation into Law (heterogenous).	Law 1/2026

Source: processed by the Author from several sources, 2026.

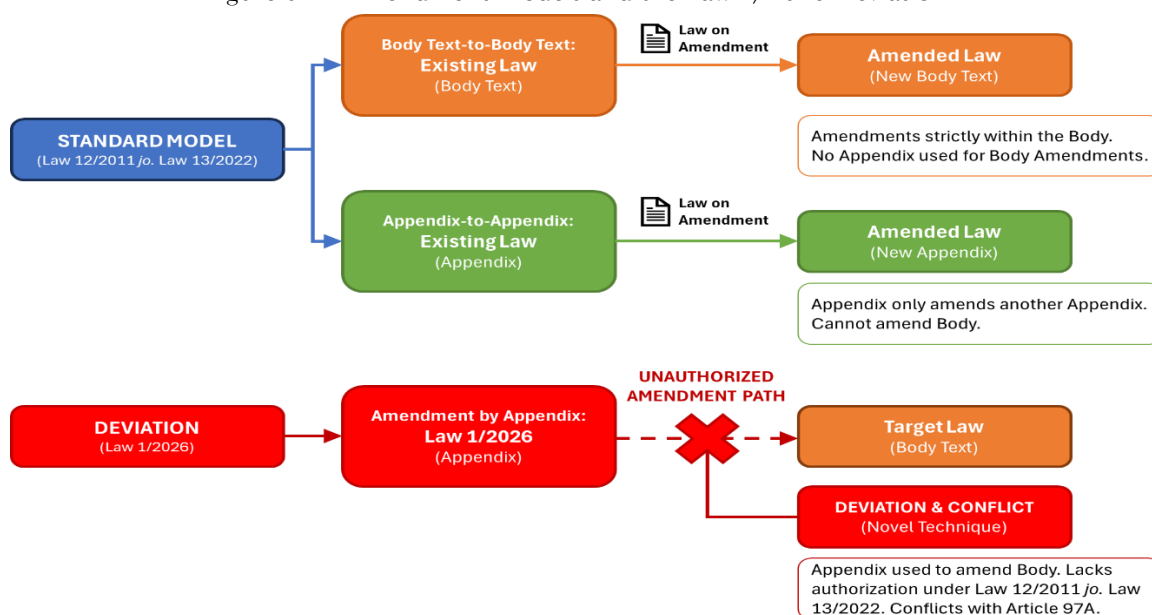
Before concluding whether this deviation is fatal, one must take notes of the counter arguments supporting the model's use. From a functional perspective, proponents might argue that the efficiency provided by the model aligns with the doctrine of "substance over form". In addition, an appendix normatively constitutes an inseparable part of a law (Purnamasari 2018). An appendix can arguably provide functional equivalence to standard amendment techniques by categorizing the adjusted norms within a convenient

supplementary part of the law. Consequently, if this equivalence is acceptable enough, the usually strict reading of Law 12/2011 might be interpreted more flexibly to accommodate massive and inter-sectoral legislative overhauls. From a comparative perspective, the use of annexes or appendices to amend the body text of a law is not entirely novel. Australia provides the primary example of this practice, specifically known as “amending schedules”. Under Australian law, a schedule is deemed as an integral part of an Act, similar to how an appendix is deemed as an inseparable part of a law in Indonesian context.

While an amending schedule cannot amend the main body of the Act it is attached to, its entire purpose is to rewrite the main bodies of other “principal” Acts (Australia. Parliament. House of Representatives 2018). Historically, the use of schedules is meant to avoid cluttering a bill that would hamper its readability (Australia. Parliament. House of Representatives 2018). This highlights that the use of appendices is recognized as standard drafting practice and has the same underlying functional purpose of maintaining readability and convenience.

Nevertheless, within the strict procedural framework of Indonesian law, the method by which Law 1/2026 adjusted criminal sanctions in 187 Laws presents a *prima facie* deviation from the established drafting practices. Specifically, the Law effectively amends provisions located within the body of a law by means of an appendix. As illustrated in Figure 01, while standard methods directly target the structural components of the primary body text, the deviation in Law 1/2026 bypasses this convention entirely, funneling all amendments through a “supplementary” part of a law. This constitutes a structural anomaly that indicates the “amendment by appendix” model operates as a novel and distinct amendment technique, lacking explicit authorization under Law 12/2011 and its amendments.

Figure 01 - Amendment Models and the Law 1/2026 Deviation



Source: processed by the Author, 2026.

The procedural tension is further complicated by the fact that Law 1/2026 amended several criminal sanction provisions previously amended by the omnibus Job Creation Law (Republik Indonesia 2026). These amendments create a direct conflict with Article 97A of Law 13/2022, which explicitly states that, “Subject matters regulated in Laws and Regulations employing the omnibus method may only be amended and/or repealed by amending and/or repealing said Laws and Regulations” (Republik Indonesia 2022; Ummah 2022). Consequently, this provision implies that any amendment to criminal sanction provisions already amended by the Job Creation Law must be done by enacting a Law on the Amendment to the Job Creation Law (Hantoro and Wicaksono 2023).

This principle against amending provisions already amended by an omnibus law is best exemplified by the recent enactment of Law Number 18 of 2025 on the Third Amendment to Law Number 10 of 2009 on Tourism (Law 18/2025). Notably, Law 18/2025 virtually left any provisions in Law Number 10 of 2009 on Tourism (Law 10/2009) that had previously been amended by the omnibus Job Creation Law untouched, adhering strictly to the limitation imposed by Article 97A (Republik Indonesia 2025) as seen in Table 02.

Table 02 - Provisions of Law 10/2009 Amended by the Omnibus Job Creation Law and Law 18/2025

Articles	Job Creation Law	Law 18/2025	Articles	Job Creation Law	Law 18/2025
Art. 1		✓	Art. 36		
Art. 2		✓	Art. 37		
Art. 3		✓	Art. 38		
Art. 4		✓	Art. 39		
Art. 5		✓	Art. 40		
Art. 6		✓	Art. 41		
Art. 7		✓	Art. 42		
Art. 8		✓	Art. 43		
Art. 9		✓	Art. 44		
Art. 10			Art. 45		
Art. 11		✓	Art. 46		
Art. 12		✓	Art. 47		
Art. 13		✓	Art. 48		
Art. 14	✓		Art. 49		
Art. 15	✓		Art. 50		✓
Art. 16	✓		Art. 51		✓
Art. 17		✓	Art. 52		✓
Art. 18		✓	Art. 53		✓
Art. 19		✓	Art. 54	✓	
Art. 20		✓	Art. 55		✓
Art. 21		✓	Art. 56	✓	

Articles	Job Creation Law	Law 18/2025	Articles	Job Creation Law	Law 18/2025
Art. 22		✓	Art. 57		✓
Art. 23		✓	Art. 58		✓
Art. 24		✓	Art. 59		✓
Art. 25		✓	Art. 60		✓
Art. 26	✓		Art. 61		✓
Art. 27		✓	Art. 62		✓
Art. 28		✓	Art. 63		✓
Art. 29	✓		Art. 64	✓	
Art. 30	✓		Art. 65		✓
Art. 31		✓	Art. 66		✓
Art. 32			Art. 67		
Art. 33			Art. 68		
Art. 34			Art. 69		✓
Art. 35			Art. 70		

Source: processed by the Author from several sources, 2026.

Constitutional Court's Precedents and the Formal Constitutional Standards on Law Formation

Historically, the Constitutional Court has experienced a jurisprudential evolution regarding formal judicial review. In its early days, the Court was rather flexible in its approach to addressing procedural defects. This jurisprudence of procedural flexibility is found in Constitutional Court Decision Numbers 27/PUU-VII/2009 and 73/PUU-XII/2014. While affirming that the lawmaking process must follow the established guidelines regulated in laws and regulations, the Court was of the opinion that procedural defects may be permissible if: 1) the substance of the law does not create any legal issues; 2) the law contains substance that is materially better than the previous or amended law; and 3) the law has been applied and has legal consequences that are deeply intertwined with other pre-existing laws (Mahkamah Konstitusi Republik Indonesia 2010; 2014; Saifullah, Azis, and Lutfi 2020). This suggests that even if the “amendment by appendix” model is to be deemed as a procedural defect, its use could plausibly be held as valid as long as it fulfills these functional criteria. However, it must be noted that the facts of the case in both of these earlier decisions addressed defects in the rules of procedure, rather than in the drafting technique.

This flexible formal jurisprudence, however, was significantly tightened in Decision 91/PUU-XVIII/2020, which was decided in the wake of the omnibus Job Creation Law controversy (Neta, Evendia, and Firmansyah 2022). The “omnibus” method was considered novel at the time, primarily because it amended not just one law, but rather 78 laws covering a plethora of different sectors (Sanders et al. 2024; Aristeus 2021). This method was employed specifically to address the regulatory disharmony between these

sectors purportedly hindering the ease of doing business in Indonesia (Fahamsyah and Chansrakaeo 2022; Halili and Kukovič 2022).

Most importantly, the omnibus method deviated from the standard “single law amendment” method prescribed under Law 12/2011, a deviation that significantly impaired meaningful public participation in the legislative process due to the sheer breadth of the amendment (Wardana, Sukardi, and Salman 2023; Anggono and Firdaus 2020). Despite mounting public pressure surrounding its enactment, the lawmakers remained largely unresponsive to the wave of public criticism challenging the Law’s “expedited” process (Mahy 2022). The controversy eventually culminated in a formal judicial review by the Constitutional Court, which sought to determine whether such legislative innovation was permissible without prior regulation.

In Case Number 91/PUU-XVIII/2020, the petitioners sought to invalidate the recently enacted Job Creation Law on procedural grounds (Irawan 2022). They argued that the Law contained fundamental procedural defects, highlighting the lack of meaningful public participation and inconsistencies in its drafting (Anggraeni 2025). The petitioners specifically identified the omnibus method as a novel and “distinct” amendment technique relative to the established guidelines set in Appendix II of Law 12/2011 (Mahkamah Konstitusi Republik Indonesia 2020). They further contended that the employment of an amendment technique absent from the strictly regulated legislative drafting techniques in Appendix II of Law 12/2011 constituted a procedural violation of the lawmaking process.

In response to the petitioners’ argument, the experts testifying on behalf of the lawmakers asserted that the omnibus method is not a novel legislative drafting technique (Mahkamah Konstitusi Republik Indonesia 2020). To substantiate this claim, they cited several laws as examples of the practice of “omnibus” method: (1) Law Number 13 of 2003 on Manpower (Law 13/2003); (2) Law Number 20 of 2009 on Titles, Decorations, and Distinction of Honors (Law 20/2009); and (3) Law Number 7 of 2017 on General Elections (Law 7/2017). What these laws shared in common is that they repealed multiple existing laws and consolidated their subject matter into a single new law. However, the experts also acknowledged that the omnibus method is not a conventional drafting method. This fact is corroborated by the Job Creation Law’s own considerations, which explicitly described the method as a legal innovation (Mahkamah Konstitusi Republik Indonesia 2020).

While sympathetic to the lawmakers’ concern on the problem of overregulation and cross-sectoral disharmony, the Court ultimately agreed with the petitioners’ argument. In its *ratio decidendi*, the Court differentiated between “codification” and the “omnibus” method (Mahkamah Konstitusi Republik Indonesia 2020). To illustrate this difference, the Court cited Law 7/2017 as an example of codification. Law 7/2017 consolidated three distinct and separate laws (Republik Indonesia 2017): (1) Law Number 42 of 2008 on the General Elections of the President and the Vice President (Law 42/2008); (2) Law Number 15 of 2011 on the General Elections Management Bodies (Law 15/2011); and (3) Law

Number 8 of 2012 on the General Elections of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council (Law 8/2012). Crucially, Law 7/2017 did not merely amend these existing laws, rather it codified the entire subject matter regulated therein and simultaneously repealed the prior laws in the process (Aris 2018).

The crux of the major formal validity issue lies in the Court's finding that the "omnibus" method was not recognized under the existing framework of Law 12/2011 (Saputra 2022; Anwar and Shafira 2022). The Court grounded this reasoning in the mandate of Article 22A of the 1945 Constitution which stipulates that "[f]urther provisions regarding the procedures for the enactment of laws shall be regulated by laws" (Mahkamah Konstitusi Republik Indonesia 2020; Sungkar et al. 2022). The Court interpreted the provision to mean that any legislative drafting techniques must first be regulated by law before it is employed (Warjiyati et al. 2024). Consequently, the fact that Law 12/2011, as the Law implementing Article 22A's mandate, did not explicitly regulate the omnibus "method" rendered its usage formally defective (Rishan 2022). The Court was of the opinion that legislative procedural innovation cannot supersede the requirement for strict compliance with established lawmaking procedures (Mochtar et al. 2024; Mahkamah Konstitusi Republik Indonesia 2020).

Amendment by Appendix Model and its Formal Constitutionality

Based on the Constitutional Court's holding in Decision 91/PUU-XVIII/2020, the fact that Law 12/2011 and its amendments do not regulate or provide technical guidelines for the "amendment by appendix" model renders the practice *prima facie* unconstitutional. The Court's precedent effectively bars any *terra incognita* in the realm of legislative drafting techniques, precluding *ad hoc* innovations (A. Putra 2023). This judicial preference for legal certainty is arguably understandable given that Appendix II of Law 12/2011 and its amendments is exhaustively detailed. This level of detail led the Court to assume that lawmakers intended to provide little-to-no room for deviation from established legislative drafting practices (Kurunczi 2025).

This presumption is supported by the maxim *casus omissus pro omisso habendus est* in statutory interpretation (Marais and Muller 2018). Consistent with this principle, the absence of the "amendment by appendix" model in the detailed Appendix II of Law 12/2011 and its amendments indicates that the lawmakers did not intend to authorize its practice. By authorizing one specific use of an appendix (specifically to amend another appendix) while omitting the other, the lawmakers effectively excluded the "amendment by appendix" model as a valid legislative drafting technique (Lailam and Anggia 2023).

While an appendix constitutes an inseparable part of a law (Hermanto, Aryani, and Astariyani 2020), thereby making it seem theoretically accommodative of the novel "amendment by appendix" model, the legislative history of Law 13/2022 undermines this

argument. Law 13/2022 explicitly introduced the “appendix-to-appendix” amendment model in addition to the previously regulated “body text-to-body text” amendment model, thereby establishing a rigid structural distinction. In short, the distinction mandates that the body of a law must be amended by body text, not by an appendix.

The question on Law 1/2026’s validity, therefore, not only rests with principle of formal constitutional validity the Court espoused in Decision 91/PUU-XVIII/2020, but also follows the Decision’s exact facts and logic. The exclusion of “amendment by appendix” model from the detailed Appendix II of Law 12/2011 and its amendments strongly indicates that Law 1/2026 is procedurally defective. However convenient the “amendment by appendix” model may be, the strict procedural reasoning of Decision Number 91/PUU-XVIII/2020 points toward such a conclusion.

Nevertheless, applying the strict jurisprudential approach the Court adopted in Decision Number 91/PUU-XVIII/2020 to Law 1/2026 remains debatable. The outcome depends on whether the Court’s *ratio decidendi* is universally applies to all legislative drafting technique innovations or remains highly context-specific. It is plausible that the Court’s adoption of this strict procedural stance in 2020 was heavily influenced by the surrounding political backlash in the wake of the omnibus Job Creation Law’s enactment, particularly its severe lack of meaningful public participation (Sanders et al. 2024). If Law 1/2026 did not suffer from the same participatory deficits, the Court might not apply the same standard of formal constitutionality.

The Court’s dynamic jurisprudential approach could also suggest a possible change in judicial posture (Hanan, Sulistianing Astuti, and Eddyono 2025). Just as the Court shifted from a flexible approach in 2009 to a strict proceduralism in 2020, the Court may again pivot back toward recognizing the “amendment by appendix” model’s functional benefits. This is especially true if striking down the use of the model in Law 1/2026 as unconstitutional would cause immense legal uncertainty in the national criminal justice system.

Under the principle of *praesumptio iustae causa* (presumption of validity), Law 1/2026 remains constitutional absent a judicial review decision stating otherwise (Muda 2018). However, despite the strict 45-day time limit for formal judicial review post-enactment (Baharuddin Riqiey 2023; Amal and Sulistyawan 2022), the Law’s procedural defects render it constitutionally vulnerable. Should the Court declare Law 1/2026 unconstitutional on procedural grounds, law enforcement officials would be left attempting to enforce sectoral laws outside the New Criminal Code that still rely on the sentencing formula of the old Criminal Code. Given this risk of legal uncertainty, it is plausible that the Court would declare the law as conditionally unconstitutional and order the lawmakers to do the legal patchwork amending Law 12/2011 to accommodate the

“amendment by appendix” model, mirroring Decision 91/PUU-XVIII/2020 (I. Putra and Arrasuli 2025).

This anticipated outcome, however, is at best speculative. In the meantime, the lawmakers should proactively amend Law 12/2011 and its amendments to explicitly regulate this drafting method, regardless of whether a formal judicial review is filed. While this measure may not retroactively cure the procedural defects of Law 1/2026 if a challenge is filed within the formal judicial review window, it is nevertheless an essential step to legitimize the future employment of this currently novel legislative drafting technique.

CONCLUSION

With the enactment of Law 1/2026, the lawmakers have once again stepped into *terra incognita* in the realm of legislative drafting by introducing the novel “amendment by appendix” model. While arguably simpler in application than the standard amendment techniques, this drafting technique innovation contravenes the constitutional principle of formal validity the Constitutional Court has established in Decision 91/PUU-XVIII/2020, namely that any drafting techniques must be regulated by law prior to its use. Consequently, the fact that the “amendment by appendix” model is absent from the detailed Appendix II of Law 12/2011 and its amendments as a valid amendment technique renders its practice in Law 1/2026 *prima facie* unconstitutional on procedural grounds.

Given the constitutional vulnerability of the “amendment by appendix” model, *ex post* measures to cure the procedural defects of Law 1/2026 may prove futile. Instead, as the primary recommendation for legislative reform, the lawmakers should legitimize the use of the model by proactively amending Appendix II of Law 12/2011 and its amendments. This would provide the necessary legal basis for the future application of the model as a valid and constitutional legislative drafting technique. Furthermore, officially regulating this model would provide lawmakers with a more convenient amendment technique, offering ease of use to both the public and law enforcement officials, while simplifying the usually “complex” and hard-to-follow application of the omnibus method.

As this research is limited to the “amendment by appendix” model, future inquiries should extend to other non-standard forms of amendment. This includes the phenomenon of “hidden amendment,” as in the case of state administrative decision (*keputusan tata usaha negara*) redefinition through Law Number 30 of 2014 on Governmental Administration (Law 30/2014), as well as “amendments” achieved solely through the principle of *lex posteriori derogate legi priori*. Furthermore, it is crucial to investigate whether the current doctrinal preference for strict, rigid procedural formalities favoring legal certainty remains desirable or perhaps feasible in the long run. Future research should explore the possibility of a more flexible framework for legislative drafting capable of accommodating the dynamic

needs of the modern administrative state, while at the same time remaining consistent with the rule of law and democratic legitimacy. [W]

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