



Law Number 11 Year 2020 On Job Creation Regarding Natural Resources

INTRODUCTION

The Natural Resources sector has a vital role in supporting the National Economy while maintaining a major implication on the environment and the lives of so many people. The management of natural resources can be the main capital of development in increasing economic competitiveness in a sustainable manner. The contribution of natural resources to the country's economic development is very significant. About 50 percent of exports carried out by Indonesia are dominated by the results of the management of natural resources, especially from the sectors of oil and natural gas (oil and gas), minerals and coal (minerals), crude palm oil (CPO), rubber, and food¹. From 2003 to 2014, Non-Tax State Revenues (PNBP) in the SDA sector reached 3.26 billion United States (US) dollars or around 31 trillion rupiah². Then, based on data from the Central Statistics Agency (BPS) in 2017, the contribution of the SDA sector to Gross Domestic Product (GDP) reached 10.89 percent or IDR 1.480 trillion, and succeeded in creating a workforce absorption of 37.31 million people³.

On the other hand, natural resource management can have a negative impact on the environment and society. Problems such as agrarian conflicts, natural resource corruption, and poverty within the community also occur when the natural resources management permit has been issued. As of December 2019, the Association for Community-Based and Ecological Legal Reform (HuMa) found at least 346 conflicts due to the seizure of natural resources⁴. The conflicts occurred in 166 districts / cities in 32 provinces with an area of 2,3 million hectares and involving more than 1 million indigenous and / or local community members⁵.

Plantation conflicts occupy the highest number with 161 conflicts, 92 conflicts in the forestry sector, 50 mining conflicts, 40 land conflicts, and 3 conflicts in waters and islands⁶. The Alliance of Indigenous Peoples of the Archipelago (AMAN) in 2017 also stated that natural resource conflicts had occurred in 126 indigenous communities which resulted in 262 indigenous people being imprisoned⁷. In the same year, the Consortium for Agrarian Reform

¹ Mumu Muhajir, et al., 2020, "Harmonization of Regulation and Improvement of Natural Resources Governance in Indonesia," *Journal of Anti-Corruption INTEGRITY*, 5 (2-2), Corruption Eradication Commission, p. 2.

² Directorate of Research and Development, Deputy for Prevention of the Corruption Eradication Commission, 2020, Preventing State Losses in the Forestry Sector: A Study on the Non-Tax State Revenue System and Timber Administration, Jakarta, Corruption Eradication Commission, page 1, <https://acch.kpk.go.id/images/tema/litbang/pengkajian/pdf/Reports-PNBP-Forestry-KPK-report-web.pdf>, accessed on 14 September 2020.

³ Ibid

⁴ Ichwan Susanto, "Tanpa Reforma Agraria, Percepatan Investasi Perparah Konflik," <https://kompas.id/baca/humaniora/ilmu-pengetahuan-teknologi/2020/01/16/tanpa-reforma-agrariapercepatan-investasi-perparah-konflik>, diakses pada 16 September 2020.

⁵ Ibid

⁶ Ibid

⁷ Jakob Siringoringo "Marjinalisasi Masyarakat Adat Secara Terstruktur, Sistematis dan Masif", <http://www.aman.or.id/2019/06/marjinalisasi-masyarakat-adat-secara-terstruktur-sistematis-dan-masif/> diakses pada 9 November 2020

(KPA) also stated that at least 659 conflicts occurred due to the management of natural resources.⁸

REGULATORY ISSUES FOR NATURAL RESOURCES MANAGEMENT

The laws and regulations related to natural resources have their own respective histories and working areas, for instance in the oil and gas, mineral, coal, and plantation sectors. Meanwhile, the agrarian reform that has been going on for more than five decades is still far from expectations. Problems such as deprivation of land rights and violations of human rights always accompany the management of natural resources. The following are some of the factors that cause problems in natural resource management.

First, the important position of natural resources in the nation's economy encourages the creation of a condition known as regulatory corruption (*regulatory capture*)⁹. This situation occurs when a regulatory body established to serve the public interest only advances the interests of certain groups which in turn - in effect creating laws and regulations with strong sectoral interests and not in favor of society and the natural environment.¹⁰

Second, there are overlapping and incomplete regulations caused by corruption in the formation process and too many regulations (hyper-regulations) issued by the state, both in the form of laws and in the form of delegation regulations.¹¹ This condition can create vulnerability to corruption in the natural resources sector, inadequate law enforcement agency, and convoluted licensing processes.¹²

Third, the issue of agrarian reform to overhaul the structure of control and ownership of land in Indonesia for entitled citizens are still far from expectations. Until now, the confiscation of customary forests and community land as a result of investment policies is still happening. Meanwhile, the regulations formed in the management of natural resources are only oriented towards strengthening the “right to control the state”, with almost all of them referring to Article 33 paragraph (3) of the 1945 Constitution, but the underlying spirit is short-term investment growth that neglects equity.¹³

Researcher from the Center for Indonesian Law and Policy Studies (PSHK) Giri Ahmad Taufik, stated that the state's right to control in managing natural resources has limitations. In the concept of state control, the role of each actor in the management of natural resources is limited by Article 33 paragraph (4), namely that the national economy is carried out based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental awareness, independence, and maintaining balance of progress and national economic unit.

⁸ Jakob Siringoringo “Marjinalisasi Masyarakat Adat Secara Terstruktur, Sistematis dan Masif”, <http://www.aman.or.id/2019/06/marjinalisasi-masyarakat-adat-secara-terstruktur-sistematis-dan-masif/> diakses pada 9 November 2020

⁹ Mumu Muhajir, dkk, Op.Cit. hlm 2.

¹⁰ Ibid

¹¹ Ibid

¹² Ibid. hlm. 8.

¹³ Delivered by Giri Ahmad Taufik in the Omnibus Discussion Series Vol. 4 themed “Penguasaan Negara dan Perlindungan Publik Atas SDA dalam RUU Cipta Kerja” held by the Indonesian Center for Law and Policy Studies (PSHK) on Friday (17/7/2020).

One manifestation of the implementation of Article 33 paragraph (4) is the provision of opportunities and protection for the community, especially customary law communities who are on land controlled by the state, by making a balanced partnership with business actors engaged in the natural resources sector. This has also been regulated in the Plantation Law, Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, and Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises.

CRITICS FOR REGULATION OF THE MANAGEMENT OF NATURAL RESOURCES IN THE COPYRIGHT OF WORK

The government's hope is for the Job Creation Law to become a tool of economic transformation to avoid a middle-income trap towards the direction of a Golden Indonesia before 2045 and make Indonesia the fifth economic power in the world.¹⁴ Unfortunately, this good intention is not reflected in the formulation process and substance in the Job Creation Law.

The lack of public participation in the formation process has become one of the areas that has received criticism. In terms of substance, the Job Creation Law is also considered environmentally unfriendly and threatens marginalized communities. Various leniency in environmental requirements for business actors in the Job Creation Law have the potential to cause side effects. For instance, environmental pollution that threatens the safety of future generations, such as not fulfilling the right to a good environment and the right to a safe place to live.¹⁵

The Job Creation Law changed the method of business licensing from initially being based on environmental permits to being based on risk and scale of business. For low-risk businesses, business licensing is only required through the issuance of a Business Identification Number (NIB). Medium-risk businesses have their licenses coupled with the fulfillment of standard certificates. Meanwhile, those at high risk need approval from the central government to start a business. Meanwhile, the Environmental Impact Analysis (AMDAL) is only for business activities with high risk to the environment.

In addition, community participation in the licensing process is reduced. The Job Creation Law only allows people who are directly affected to be involved in the preparation of Amdal. So far, in Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH), communities in the affected environment are involved in making Amdal, not only those who are directly affected by a business, but also parties such as environmentalists.¹⁶ Apart from that, the Job Creation Law also eliminates the opportunity for the public to submit objections to AMDAL.¹⁷

In terms of waste management, the Job Creation Law allows individuals or business entities to dispose hazardous and toxic material (B3) management waste in rivers, seas, and put it on the ground with a permit from the government.¹⁸ The issuance of a permit to dispose of very dangerous waste for the environment because it has the potential to cause pollution, while the requirements and procedures for disposal of B3 waste to environmental media (rivers, land, sea, and air) are not regulated in detail in the Job Creation Law.

¹⁴ Airlangga Hartarto on Gora Kunjana, "RUU Ciptaker Seimbangkan Manfaat bagi Masyarakat dan Kepentingan Pelaku Usaha", <http://brt.st/6P8f>, accessed on 14 Oktober 2020

¹⁵ Indonesian Center for Environmental Law, Berbagai Problematika Dalam UU Cipta Kerja Sektor Lingkungan dan SDA, series #3: series analysis on 6 october 2020, <https://icel.or.id/wp-content/uploads/ICEL-SERI-ANALISIS-UU-CIPTA-KERJA-SEKTOR-LH-DAN-SDA-compressed.pdf>, accessed on 14 Oktober 2020

¹⁶ Law Number 32 Year 2009 regarding Environmental Protection and Management, Article 26 paragraph (3)

¹⁷ Compare between Article 26 of Law Number 32 of 2009 concerning Protection and Management of the Environment with Article 26 of Law Number 32 of 2009 in the amended version of the Job Creation Law.

¹⁸ Article 61A amendments to Law Number 32 Year 2009 regarding Environmental Protection and Management in the Job Creation Law.

Within the management of B3 waste, the absolute responsibility of business actors polluting B3 waste is relegated. The phrase "losses that occur without the need to prove an element of error" contained in Article 88 of the PPLH Law is changed to become "losses from the business or activity". With this change, the accountability of business actors for environmental pollution the result of B3 can only be prosecuted after first verification is done to see whether or not there is an element of error.¹⁹

Criticism of the management of natural resources in the Job Creation Law is not only on the amendments to the PPLH Law, but also in several other laws, such as Number 39 of 2004 concerning Plantations (Law on Plantation), Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral Mining and Coal (Minerba Law), and Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest (Law on Land Acquisition for Development for Public Interest).

The Job Creation Law amends Article 16 of the Plantation Law, which provides a maximum limit of 3 years and 6 years after obtaining the status of land rights for business actors to cultivate their plantation land. In the Job Creation Law, the time limit is shortened to 2 years after obtaining the status of land rights. The Job Creation Law does not change the consequences for business actors in the event that the exploitation is not carried out, namely the taking over of part of the plantation land that has not been cultivated. However, administrative sanctions for such violations, which were previously regulated in Article 18 of the Plantation Law, are now nullified by the Job Creation Law. The absence of such sanctions raises questions about the effectiveness of implementing these provisions in the field.

Then, the Job Creation Law also changes Article 34 of the Law on Land Acquisition for Development in the Public Interest. Based on this change, the state can unilaterally confiscate land for reasons of public interest with a compensation value determined by the appraiser (appraisal). In contrast to the previous arrangement, which used a deliberation process.

Table 1. Comparison of Business License Rules in the Job Creation Law with the PPLH Law

| Regulated Subject | PPLH Law | Job Creation Law |
|-------------------|--|---|
| Amdal | Article 25 letter c Amdal documents contains: c. suggestions for input and comments from the public on the planned business and / or activity; | Article 25 letter c Amdal documents contain: c. suggestions and input as well as responses from the directly affected communities that are relevant to the planned business and / or activity; |

¹⁹ Lusia Arumingtyas and Sapariah Satri, "Horor RUU Cipta Kerja, dari Izin Lingkungan Hilang sampai Lemahkan Sanksi Hukum", <https://www.mongabay.co.id/2020/02/14/horor-ruu-cipta-Kerja-dari-environmental-permit-lost-to-lower-legal-sanctioned/> / accessed on August 7, 2020

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| | <p>Article 26</p> <p>(1) The EIA document as referred to in Article 22 is prepared by the initiator by involving the community.</p> <p>(2) Community involvement must be carried out based on the principle of providing transparent and complete information and being notified before the activity is carried out.</p> <p>(3) The community as referred to in paragraph (1) includes:</p> <p>a. who are affected;</p> <p>b. environmentalist;</p> <p>and / or</p> <p>c. affected over all form of decisions in the Amdal process.</p> <p>(4) The public as referred to in paragraph (1) can submit objections to the EIA document.</p> | <p>Article 26</p> <p>(1)The EIA document as referred to in Article 22 is prepared by the initiator by involving the community.</p> <p>(2) Preparation of EIA documents is carried out by involving communities who are directly affected by the planned business and / or activity.</p> <p>(3) Further provisions regarding the process of community involvement as referred to in paragraph (2) shall be regulated in a Government Regulation</p> |
| | <p>Article 32</p> <p>(1) The government and regional governments assist in the preparation of Amdal for businesses and / or activities of economically weak groups that have an important impact on the environment.</p> | <p>Article 32</p> <p>(1) The Central Government and Local Governments assist in the preparation of Amdal for Micro and Small Businesses and / or activities that have an important impact on the environment.</p> |
| Regulated Subject | PPLH Law | Job Creation Law |
| UKL-UPL (Effort in Managing Environment and Environmental Monitoring Efforts) | <p>Article 34 paragraph (1) (1) Every business and / or activity that is not included in the criteria for compulsory AMDAL as referred to in Article 23 paragraph (1) must have UKL-UPL.</p> | <p>Article 34 paragraph (1)</p> <p>(1) Every business and / or activity that does not have a significant impact on the environment must comply with UKL-UPL standards.</p> |
| Environmental Permit | <p>Article 36</p> <p>(1) Every business and / or activity that is obliged to have AMDAL or UKL-UPL must have an environmental permit.</p> <p>(2) The environmental permit as referred to in paragraph (1) is issued based on an environmental feasibility decision as referred</p> | <p>Article 36 is deleted.</p> |

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| | <p>to in Article 31 or a UKL-UPL recommendation.</p> <p>(3) The environmental permit as referred to in paragraph (1) must include the requirements contained in the environmental feasibility decision or UKL-UPL recommendation.</p> <p>(4) Environmental permits are issued by the Minister, governors or regents / mayors in accordance with their respective authorities.</p> | |
| Regulated Subject | PPLH Law | Job Creation Law |
| Disposal of B3 Waste | Provisions regarding the disposal of B3 waste are not regulated in the PPLH Law. | <p>Article 61A</p> <p>Activities subject to the person in charge of a business and / or activity:</p> <ul style="list-style-type: none"> a. produce, transport, distribute, store, utilize, and / or process B3; b. produce, transport, store, collect, utilize, process and / or landfill B3 waste; c. disposal of waste water into the sea; d. disposal of waste water to water sources; e. releasing emissions into the air; and/ <p>or</p> <ul style="list-style-type: none"> f. make use of waste water for application to the ground; which is part of a business activity, the management is stated in the EIA or UKL-UPL. |

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| Absolute Corporate Responsibility | <p>Article 88</p> <p>Anyone whose actions, business and / or activities use B3, produce and / or manage B3 waste, and / or pose a serious threat to the environment are absolutely responsible for the losses incurred without the need to prove the element of error.</p> | <p>Article 88</p> <p>Anyone whose actions, business and / or activities use B3, produce and / or manage B3 waste, and / or pose a serious threat to the environment, are absolutely responsible for the losses that occur from their business and / or activities</p> |
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To determine compensation, in the Job Creation Law, the value of compensation determined by the appraiser is final and binding and becomes the basis for determining the form of compensation.

The existence of a deliberation process based on the new regulation is uncertain because the reference to the paragraph regulating it is not found in Article 34. With this amendment, the only opportunity for the community to file an objection is through the court. Limited resources in society, especially the marginalized, are increasingly squeezing their chances of getting their rights, or at least getting proper compensation.

From a number of problems above, it can be seen that the government has neglected the environmental protection and community protection sectors in regulating the management of natural resources. The government wants to solve real problems in the field, but the paradigm that is used fully uses the paradigm of economic growth with a short-term business perspective.²⁰ In this case, natural resource management has a great potential to damage the environment and cause the community to become victims, especially the community. customary law that often conflicts due to natural resource management.

According to an academic from Gadjah Mada University (UGM) Totok Dwi Widiatoro, the Job Creation Law reduces the prudent aspect of natural resource management.²¹ Changes in the regulation of the Job Creation Law have the potential to cause

²⁰ *CNN Indonesia*, "Pakar: UU Ciptaker Sarat Eksploitasi SDA hingga Manusia," <https://www.cnnindonesia.com/nasional/20201006160926-32-555036/pakar-uu-ciptaker-sarat-eksploitasi-sda-hingga-manusia>, accessed on 9 November 2020

²¹Ibid

excessive exploitation of natural resources which results in damage to the environment and threatens society.²²

Table 2. Comparison of land tenure regulations in the Job Creation Law with the previous Law.

| Indicator | Job Creation Law | Previous Regulations |
|--------------------------------------|---|---|
| Company Obligation to cultivate land | <p>Amendments to Article 16 of the Plantation Law</p> <p>(1) A plantation company is obliged to cultivate a plantation land no later than 2 (two) years after granting the status of land rights.</p> <p>(2) If the Plantation Land not cultivated in accordance with the provisions referred to in paragraph (1), Plantation land which has not been exploited for exploitation by the state in accordance with the provisions of the statutory regulations.</p> | <p>Article 16 of the Plantation Law</p> <p>(1) A plantation company is obliged to cultivate plantation land:</p> <p>no later than 3 (three) years after granting the status of land rights, the Plantation Company is obliged to cultivate the Plantation Land at least 30% (thirty percent) of the area of land rights; and</p> <p>no later than 6 (six) years after granting the status of land rights, the Plantation Company is obliged to cultivate the entire area of land rights that can technically be planted with Plantation Plants.</p> <p>(2) If the plantation land is not cultivated accordingly</p> <p>with the provisions as referred to in paragraph (1), the part of Plantation Land which has not been exploited for exploitation by the state in accordance with the provisions of the statutory regulations,</p> |

²²Ibid

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| State supervision regarding the obligation to cultivate land | <p>Amendment to Article 18 paragraph (1) of the Plantation Law</p> <p>Plantation companies that violate the provisions referred to in Article 14 will be subject to administrative sanctions.</p> | <p>Article 18 paragraph (1) of the Plantation Law</p> <p>Plantation companies violating the provisions referred to in Article 15 and Article 16 is subject to administrative sanctions.</p> |
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| Indicators | Job Creation Law | Previous Regulations |
|---------------------------------------|---|--|
| Compensation for land for development | <p>Amendment to Article 34 of the Law on Land Acquisition for Development in the Public Interest</p> <p>(3) The amount of Compensation value based on the results of the Appraiser's assessment as referred to in paragraph (1) is final and binding.</p> <p>(4) The amount of compensation value as referred to in paragraph (2), is used as the basis for determining the form of compensation.</p> <p>(5) The deliberation to determine Compensation as referred to in paragraph (4) * is carried out by the Head of Land Acquisition Executive together with the Appraiser and the Entitled Parties.</p> <p>* Note: Article 5 paragraph (5) refers to paragraph (4) but paragraph (4) does not find the word deliberation.</p> | <p>Article 34 of the Law on Land Acquisition for Development for Public Interest</p> <p>(3) The value of compensation based on the results of the appraiser's assessment as referred to in paragraph (2) shall be the basis for deliberation to determine the compensation.</p> |

Executive Director of Lingkar Temu Kabupaten Lestari, Gita Syahrani, said that natural resource management should be seen with long-term thinking, not only in the lens of short-term investment or economic needs, but also economic requirements and the sustainability of environmental ecosystems to natural resource management, such as the need for land,

maintained water sources, good energy needs, and good air needs. In essence, the perspective that must be seen is how the impact will be on these four basic needs, so that Indonesia can truly upgrade its economic class.²³

CLOSING

Natural resource management is a sector that is closely related to environmental protection. However, the provisions formulated in the Job Creation Law have not answered the problems of natural resource management as expected. The new Job Creation Law is limited to regulating exploitation in the management of natural resources. On the other hand, the commitment to environmental protection and protection of marginalized communities is still not visible, and even tends to weaken existing commitments.

The regulation on natural resource management in the Job Creation Law has reduced the aspect of prudence. The applied licensing methods can lead to excessive exploitation of natural resources and damage the environment. Meanwhile, the absolute responsibility of the corporation in environmental damage is eliminated because the company holding the permit is no longer obliged to ensure the appropriateness of spatial use activities, environmental approval, approval of buildings, and certificates of proper function. On the other hand, supervision of the permits granted is also weakened because it is only carried out by the central government and criminal sanctions are immediately replaced by administrative sanctions.

In terms of protecting marginalized communities, community participation in the preparation of AMDAL is also limited, that is, only people directly affected are involved. In fact, it is possible that there are people who will be affected, even if not directly. In addition, in land acquisition for the public interest, the Job Creation Law opens up a new space for conflict with the community because there is no deliberation to determine compensation. If there is rejection, people's land will still be confiscated with compensation deposited in court.

Supposedly, policies related to natural resources must be addressed thoroughly through the formation of comprehensive regulations, support law enforcement and/or form regulations that can encourage bureaucratic reform and strengthen supervision so as to solve current problems, such as regulatory corruption, agrarian conflicts, corruption of natural resources, overlapping policies, overlapping regulations, and poverty. In the context of laws and regulations, the Job Creation Law, which is mentioned as part of the solution to investment problems, has the potential to cause even more problems.

²³ Gita Syahrani, conveyed in Podcast PSHK Episode 3: "State Control and Protection"
<https://pshk.or.id/podcast/podcast-pshk-episode-3-penguasaan-negara-dan-pelindungan-publik-atas-sumber-daya-alam-dalam-ruu-cipta-kerja/>