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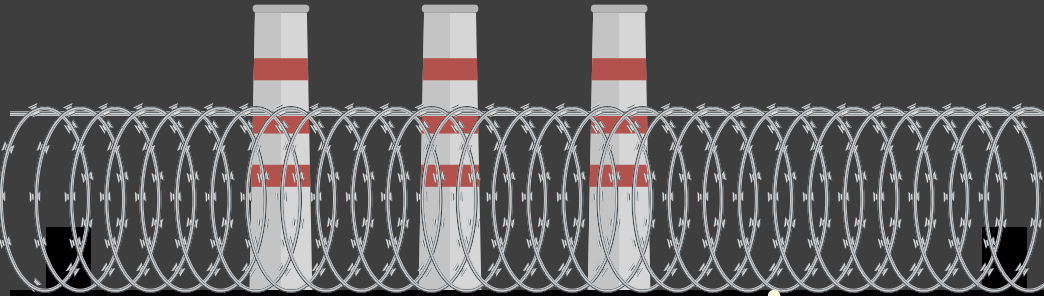
YAYASAN INDONESIA

**CERAH**



# JUST ENERGY TRANSITION IN INDONESIA

ANALYSIS OF REGULATORY GAPS IN THE  
ASPECT OF PROTECTION OF AFFECTED GROUPS



ARRANGED BY

**GIRI AHMAD TAUFIK**

**ALVIANI SABILLAH**

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**VIOLA REININDA**



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Just Energy Transition In Indonesia:  
Analysis of Regulatory Gaps in the  
Aspect of Protection of Affected Groups

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## PREFACE

Just Energy Transition in Indonesia Research Team

JUST ENERGY TRANSITION PARTNERSHIP (JETP) is a financing scheme aimed at encouraging energy transition policies from fossil fuel energy to new and renewable energy as part of the global community's commitment to reduce greenhouse gas emissions based on the Paris Agreement. Since the G20 Summit was held last November 2022, then followed by the establishment of JETP Indonesia Secretariat in February 2023, the Indonesian Government has established joint synergy with several partner countries with a target investment value of USD 20 Billion (around IDR 310 Trillion). With this investment value, it is hoped that JETP will be able to accelerate a just energy transition policy in Indonesia.

There is a strong emphasis on the aspect of justice in the energy transition so that these policies do not focus solely in the eyes of purely commercial-technical dimension, but also to the human dimension, especially to those who are affected in society. Considering the high impact of what this policy will do to society, it is necessary to carry out adequate risk mitigation as mandated in the JETP Indonesia Joint statement

“recognizing the importance of environmental, social, and governance standards as a consideration for developing transition financial frameworks and the existing gap between current standards and energy transition needs.”

Based on the mentioned context, the Center for Legal Studies and Indonesian Policy/Pusat Studi Hukum dan Kebijakan (PSHK) together with Yayasan Indonesia CeraH released our research entitled “Just Energy Transition in Indonesia: Analysis of Regulatory Gaps in Aspects of Protection of Affected Groups”. The focus of this research is aimed at answering the extent to which regulations in Indonesia have met international standards in ensuring the rights of workers and affected communities, as well as the offering of policy recommendations to optimize compliance with these international standards.

In general, our research results show that Indonesia’s energy transition regulatory framework (Presidential Decree No 112 of 2022) does not contain an explicit acknowledgment regarding risk mitigation and protection of workers’ rights and affected communities, especially in terms of social protection, job skills for the new economy, participation, and openness of information. In fact, the Indonesian Ministry of Labor, as the governmental body responsible for the employment sector, has not been involved in the JETP working group. These findings indicate that there is still a lack of serious attention to aspects of justice (just) in the energy transition policy framework.

We hope that the results of this research can contribute in encouraging broader advocacy activities and stimulate further research so that the energy transition policy in Indonesia can truly provide real justice for every element of society who

are affected. Lastly, we would like to thank Yayasan Indonesia CERAH, the entire writing team, and other parties who have made great contributions in publishing this research report.



## PREFACE

Center of Indonesian Law and Policies Studies (PSHK)

SINCE THE ESTABLISHMENT IN 1998, Center of Indonesia Law and Policies Studies (PSHK) continues to carry out its mission in encouraging the formation of socially responsible law. As one of the efforts, in the last two decade, PSHK has carried out quality assessment of legislative products, both in terms of the formation process and the substance of the regulation. From a number of criteria used as a tool to measure the legislation quality, two of them are the importance of environmental preservation and partiality toward vulnerable communities.

The study collaboration with the Yayasan Indonesia CeraH (CERAH) is not solely important in terms of theme and momentum, however it is also aligned with PSHK work mandate. The commitment of Indonesian government in implementing energy transition, from fossil based towards more environmentally friendly alternative energy required supervision from various stakeholders. Experience shows that, implementing policies that requires a transition—especially required soon—often leaves vulnerable communities behind. Therefore, policies makers and stakeholders must ensure that policies aimed

to accelerate the energy transition process takes into account the needs of potentially affected groups.

PSHK and CERAH are not accidentally emphasizing the aspect of protecting affected communities and employment in this report study. Just Energy Transition Partnership (JETP) scheme has mandated its partnered countries, including Indonesia, to create a just energy transition process, one of them is by ensuring the adequate risk mitigation arrangement. This study report finds that our national legal framework still has risk mitigation gaps, especially for the affected communities and labor force, both in regulations and institutional governance.

The resulting analysis from this study is a contribution from PSHK and CERAH in coloring the discourse around energy transition issue. Moreover, today's policy making situations is increasingly distant from the public interest, and therefore, required critical ideas from the civil society as a balancer. It is hoped, that this study will become an inseparable part of long-term advocacy efforts in safeguarding a just energy transition.

Warm regards,

Rizky Argama

Executive Director of PSHK

# PREFACE

Yayasan Indonesia Cerah

THE LAUNCHING OF THE JUST ENERGY TRANSITION financing scheme or Just Energy Transition Partnership (JETP) at the G20 Summit in November 2022 became Indonesia's opportunity to achieve the net zero target by 2050. This commitment was then followed by the establishment of the JETP Secretariat in February 2023, as the party that will coordinate the implementation techniques including projects and funding through the JETP Indonesia scheme. As this document was launched, JETP's action plan was in the form of a comprehensive investment and policy plan (CIPP) document as a reference for JETP implementation.

To support this, structured regulations and implementation of good governance is needed for the transition fair energy so as not to leave or cause harm to any party. Presidential Regulation (Perpres) 112/2022, regarding the acceleration of the development of renewable energy for the supply of electricity, is one of the regulations that is considered as a reference regarding energy transition policies. Unfortunately, the Presidential Regulation 112/2022 has not yet contained any sub-

stance related to the aspects of justice for affected communities. The absence of those just-related substances in the said Presidential Regulation might be feared to become an enabling factor to marginalize the rights of civil society groups most severely affected in the energy transition process.

Therefore, Yayasan Indonesia CERAH collaborated with the Center for Law and Policy Studies/*Pusat Studi Hukum dan Kebijakan* (PSHK) to carry out an in-depth analysis of Indonesia's regulatory preparedness to fulfill the rights of affected communities in the energy transition scheme. It is expected that the findings contained in the results of this study can enrich public discourse in implementing the principles of justice (just) in energy transition funding such as JETP and can help decision makers ensure a just energy transition can actually run in Indonesia.

Jakarta, Agustus 2023

Agung Budiono

Ad Interim Direktur Yayasan Indonesia CERAH

## EXECUTIVE SUMMARY

THE ENERGY TRANSITION PROGRAM from fossil fuel energy to renewable energy is a huge change that needs to pay attention to the serious impacts they have on society and the environment. According to data from the National Electricity Company/Perusahaan Listrik Negara (PLN) in 2021, there are 126 power generating units of coal-fired power plants (PLTU) spread all around Indonesia. Along with the ratification of the PLTU early retirement policy planned by the government, the closure will have an impact on the formal workforce as well as the informal dependents, including local community groups who depend on the existence of the PLTU. Therefore, the energy transition also needs to ensure reductions impact on workers and affected communities in order to ensure a just transition.

This study evaluates the extent of how the existing regulations framework can be used to ensure the rights of workers and communities affected by the energy transition policies. The analysis is based on the guidelines issued by the International Labor Organization (ILO), which entitled Guideline

for a Just Transition towards Environmentally Sustainable Economies and Societies for All, and best practices compiled by the United States Department of Energy entitled *Coal Dependent Communities in Transition: Identifying Best Practice to Ensure Equitable Outcomes*.

Based on the study, the research team succeeded in identifying several things as follows:

#### EMPLOYMENT ASPECT

- a. In the aspect of social protection for job loss, Indonesia already has several regulations that have accommodated this, including the Law No. 13 of 2003 jo. Perppu No. 2 of 2022, which guarantee the right to severance pay. In addition, Law No. 40 of 2004 jo. Perppu No. 2 of 2022 also provides the right to guarantee job loss in the form of money cash given for six months' wages. Although the associated regulations have added types of social security given, workers who experience Termination of Employment/*Pemutusan Hubungan Kerja* (PHK) have great potential to earn money which is smaller in number due to rounding of quantities money, unlike previously specified in minimum amount. In addition, the existing social security has the potential to not reach informal workers and workers with a Specific Time Work Agreement/*Perjanjian Kerja Waktu Tertentu* (PKWT).
- b. In the aspect of developing skills for new jobs, the government already has a supporting system, namely the National Job Training System/*Sistem Pelatihan Kerja Nasional* (Sislatkernas) which is regulated in PP No. 31 of 2006. The work training mentioned can be carried out

either by government institutions, private companies and non-private companies. This matter was then strengthened by the enactment of Presidential Regulation No.68 of 2022 which can become a legal umbrella to encourage job training collaboration with institutions TVET (Technical and Vocational Education and Training). Job training essentially requires the availability of information about the job market and ease of access. The Presidential Regulation No. 68 of 2022 has mandated the government to develop a labor market information system that at least contains the structure, characteristics, supplies and needs of labor. There are still flaws in the mapping and synchronizing of employment data for green jobs in Indonesia. So far, the new mapping was initiated by the Financial Services Authority/*Otoritas Jasa Keuangan* (OJK) through the “Green Taxonomy Document 1.0” and by Bappenas through “National Occupational Map of Green Jobs in the Indonesian National Qualifications Framework (KKNI)”. This is correlated with the absence of a specific program aimed at encouraging green jobs. Additionally, existing training programs are still being held partially, and have not been implemented in a massive, structured and integrated manner within the industry and TVET institutions.

- c. In the aspect of social dialogue (community participation), current regulations are starting to accommodate the principle of meaningful participation in the formation of laws and regulations at every level of discussion. However, it is feared that these provisions will not be implemented or reflected in the regulations about energy transitions that

are partly formed outside legal regulations.

An example is the document “*Comprehensive Investment and Policy Plan* (CIPP JETP Indonesia)” which is planned to be launched on August 16 2023 by the JETP Indonesia Secretariat. Such a document has the potential to have excluded the associated community dialogue (affected workers) fully at every level (stage) as determined by the ILO. Then, the tripartite mechanism that has not yet been present in its entirety at every level, especially in the energy transition program. For example, in post-layoffs which only involves a bipartite mechanism, even then it is carried out post-layoffs, instead of pre-layoff. This is because the Job Creation Law abolishes the authority of the Industrial Relations Court to determine layoffs, thereby potentially providing incentives for policy makers to do unilateral layoffs without prior dialogue. Furthermore, there are no regulations that specifically regulate the main tasks and mechanisms of social dialogue at this level of technical policy makers. Bearing in mind that policy making in the energy transition is in the hands of the Decarbonization and Energy Transition Task Force. In addition, five JETP Indonesia’s work groups do not include Ministries Employment as one of the partners in the work group. There is a concern on the dialogue mechanism that social issues for affected workers will not occur.

#### AFFECTED COMMUNITY ASPECT

- a. There are five important aspects that need to be considered in the coal-fired power plant retirement process. First, the state recognition and mitigation of risks from social im-

pacts on the community during the PLTU closure process. On this aspect, the state must recognize that the process of the PLTU closure will have an impact on the community around them. Cultural, social, economic, environmental, and long-term health impacts are the real impacts that occur in the PLTU retirement process. This aspect must be recognized and taken into account by the country in real terms by clearly stating the risk mitigation and solutions for these potential impacts into the PLTU closure planning documents.

- b. The Indonesian government has issued Presidential Regulation Number 112 of 2022 concerning the Acceleration of Renewable Energy Development for the Supply of Electric Power. This regulation was formed to encourage the target of reducing Indonesia's emissions by 2030. However, if we examine it in more detail, this regulation is not accommodating risk mitigation, impacts and protection for communities around the PLTU, as follows outlined in international best practices.
- c. Although normative, the provisions of legislation have supported the recognition of the rights of affected communities, but without recognition of regulated risks and risk mitigation specifically in the regulation of energy transitions. This has the potential to cause the neglect of risks toward affected communities, and its mitigation in the decision making process.

One of the biggest gaps in the regulatory framework is there is no mention of protection and risk mitigation from affected communities in Presidential Regulation 112/2022 as energy

transition specific policy regulations. The mention of specific requirements for mitigation and protection communities affected by the risks of the energy transition need to be implemented in order to mitigate potential implementation gaps between normative provisions contained in the associated laws and regulations rights of information and participation from the community.

# **JUST ENERGY TRANSITION IN INDONESIA**

**ANALYSIS OF REGULATORY GAPS IN THE  
ASPECT OF PROTECTION OF AFFECTED GROUPS**



# 1

## INTRODUCTION

INDONESIA IS THE FOURTH MOST POPULATED COUNTRY and the seventh largest economic power in the world. With its productive age reaching 2/3 of the total population, Indonesia is experiencing good economic growth with the average economic growth reaching 5% per year. In 2022 Indonesia's GDP will reach 19,588 trillion.<sup>1</sup>

To support its strong economic growth, it is certain that Indonesia has big energy needs. In 2021, Indonesia consumed amounting to 123 million ToE (Tons of Oil Equivalent) of energy, making its consumption the largest energy in the transportation sector which reached 44.2%, then followed by Industry at 33.5%, and Households at 16.3% (Figure 1).

It is projected that in 2023 Indonesia's consumption level will increase by 137 ToE, an increase of 10.8% from 2021. Final energy consumption in 2023 will still be dominated by the transportation sector reaching 43% of the total national

1 Indonesia's Central Bureau of Statistics, Indonesia's Economy in 2022 to Grow 5.31 <<https://www.bps.go.id/pressrelease/2023/02/06/1997/ekonomi-indonesiatahun-2022-tumbuh-5-31-persen.html>>, retrieved on 10 July 2023

Just Energy Transition In Indonesia

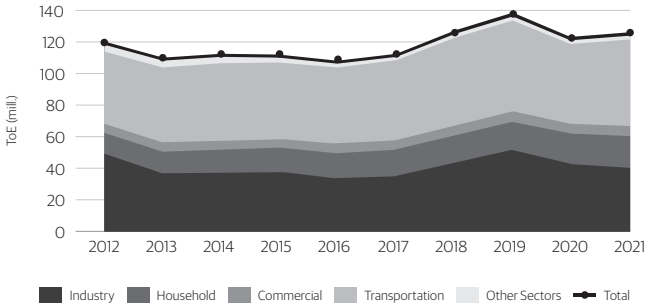


Figure 1.

Source: National Energy Council, Energy Outlook 2022

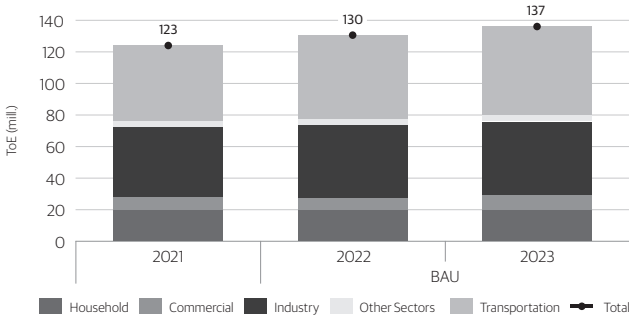


Figure 2.

Source: National Energy Council, Energy Outlook 2022

energy needs (Figure 2). Currently Indonesia’s primary energy supply is still dominated significantly by fossil fuel energy, where it is led in the first place by Coal (39%), Oil (26%), and Natural Gas (17%), EBT (11%),<sup>2</sup> and others (7%) (Figure 3).

2 New Renewable Energy (EBT) consists of Hydro Power, GeoThermal, Solar PP & PV, Wind PP, Bioenergy, PP, Solar Powered Public Street Light & Energy Saving, Solar Water Heater, Direct use of GeoThermal, Industrial Biomass, & Traditional Biomass.

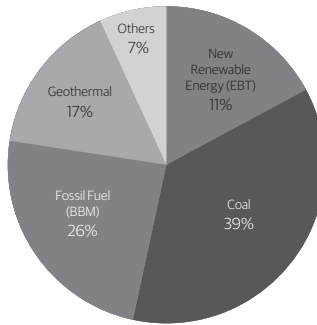


Figure 3.

Source: Ministry of Energy and Mineral Resources (ESDM) and Handbook of Energy & Economic Statistic of Indonesia, 2022

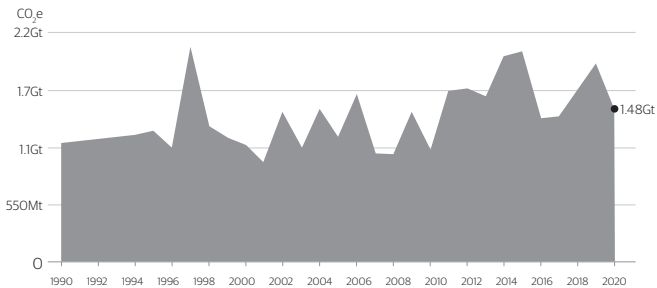


Figure 4.

Source: Global Historical Emissions Data, Climatewatch, 2020

Energy consumption that relies on fossil fuel energy has a significant impact on greenhouse gas emissions (GHG) towards the atmosphere. It was recorded that in 2020, Indonesia produced 1.48 gigatonnes of greenhouse gas (Figure 4).

Knowing the relatively large amount of GHG in Indonesia, the Indonesian government is committed in reducing its greenhouse gas emissions based on the 2015 Paris Agreement framework, by 31.89% based on the trajectory of Business As Usual (BaU), namely 2,869 GtCO<sub>2</sub>e (equivalent to 839

Million Tons of Co<sub>2</sub>) in 2030 through Enhanced Nationally Determined Contribution (E-NDC).<sup>3</sup> One way to control this increase in GHG is by changing Indonesia's energy composition, by carrying out an energy transition from fossil fuel energy to clean renewable energy, with the following targets:

- By 2025, the use of new and renewable energy will reach 23%, and in 2050 it will reach 31%;
- By 2025, the use of fossil must decrease to 25% and in 2050 it will reach 20%;
- By 2025, the use of coal must decrease to 30% and in 2050 it will reach 25%; and
- By 2025, the use of gas will increase to 22%, and in 2050 it will increase to 24%.

The implementation of such a massive energy transition has a big impact on social and economic aspects for the community affected, mainly workers and local communities who depend their economic life on fossil fuel energy activities. At the global level, the International Energy Agency (IEA) predicts that there will be 32 (thirty two) million workers in the fossil energy sector. In the context of Indonesia itself, dependency on the coal sector is quite significant, especially in East Kalimantan and South Kalimantan which reaches 10% of its total employment in the area.<sup>4</sup>

3 Ministry of Energy and Mineral Resources, Press Carbon Emissions, Indonesia Increase E-NDC Target to 32 Percent, <<https://migas.esdm.go.id/post/read/tekan-emisi-karbon-indonesia-naikkan-target-e-ndc-jadi-32-persen>> accessed on July 10 2023

4 International Energy Agency, *World Energy Employment*, <<https://iea.blob.core.windows.net/assets/a0432c97-14af-4fc7-b3bf-c409fb7e4ab8/WorldEnergyEm>>

One of Indonesia's sources of GHGs from fossil fuel energy is through coal-fired power plants with coal as its basis. It is recorded that in Indonesia there are approximately 253 (two hundred and fifty-three) coal-fired power plants (PLTU), where most of these PLTUs use coal.<sup>5</sup> These early retirements certainly have impact on the local economy, where of the three PLTUs alone, Center for Economic and Law Studies (CELIOS) estimates that there will be 4,663 (four thousand six hundred and sixty three) Direct and Indirect Workers who will be affected by the closure.<sup>6</sup>

In another source, referring to the CIF ACT draft of Indonesia's State Investment Plan (October 2022), the retirement of 49 GW of power plants by 2055 will approximately add 63,700 affected jobs.<sup>7</sup> Some of these adverse impacts include job losses due to coal plant closures, migration out of mining areas, harm to women, indigenous peoples, and other vulnerable groups, decline of and other vulnerable groups, decline of public services, and weakening community cohesion.<sup>8</sup>

Given the enormous impact on workers and local communities, an effort is needed to mitigate the negative impacts of the energy transition on workers and communities, which

ployment.pdf> diakses pada 16 Juli 2023

- 5 Sanita Sadya, Peta Sebaran PLTU di Indonesia, Terbanyak di Kalimantan Timur, <https://dataindonesia.id/sektor-riil/detail/peta-sebaran-pltu-di-indonesia-terbanyak-di-kalimantan-timur>, diakses pada 20 Juli 2023.
- 6 Rahayu Subekti, CELIOS: Pensiun Dini PLTU Batubara Berdampak ke Indikator Ekonomi, <https://ekonomi.republika.co.id/berita/ry0v2m370/celios-pensiun-dini-pltu-batubara-berdampak-ke-indikator-ekonomi>, diakses pada 24 Juli 2023
- 7 Ciera Group dan PT Hatfield Indonesia, *Laporan Final Pelingkupan SESA – Strategic Environmental and Social Assessment (SESA) Mekanisme Transisi Energi (MTE) di Indonesia*, 2023, hlm. 140.
- 8 *Id.*, hlm. 272.

has the potential to create injustice. An equitable energy transition is based on the understanding that energy transition needs to focus on the people and communities affected, by making them the center of the creation of existing energy transition policies.

A Just Energy Transition is a transition based on the understanding that the energy transition needs to put people and affected communities at the center of the creation of existing energy transition policies.

Currently, the Asian Development Bank (ADB) is developing a Strategic Environmental and Social Assessment (SESA) to support the Energy Transition Mechanism (ETM) in Indonesia which has been successfully completed. This assessment aims to improve strategic decision-making for the implementation of ETM in Indonesia at the policy, program, and government plan (PPP) levels.<sup>9</sup> SESA Indonesia aims to strategically assist and inform the government of Indonesia as early as possible to integrate environmental, socio-economic, and sustainability considerations in policy-making, planning and decision-making processes for ETM implementation in Indonesia before project/asset-level decisions are made.<sup>10</sup> The Fiscal Policy Agency/*Badan Kebijakan Fiskal* (BKF) is responsible as the implementing agency for Indonesia's SESA on behalf of the Ministry of Finance and will play a coordinating role with civil society.<sup>11</sup> Through the implementation of SESA, in the

9 *Id.*, hlm. 2.

10 *Id.*, hlm. 4.

11 *Id.*, hlm. 2.

area of the socio-economic sector, there are four issues of concern, namely: (1) livelihood change and retraining; (2) social condition and regional economy; (3) gender; (4) consultation and meaningful dialogues.<sup>12</sup>

This study analyzes the level of preparedness of Indonesia's existing legal framework in order to support an Equitable Energy Transition. The study evaluates the state of the legal framework that can be used to protect and empower affected communities of energy transition policies, and in which regulation aspects are there gaps that have the potential to create injustice to affected communities.

12 *Id.*, hlm. 276-277.



# 2

## **METHODS & ANALYSIS**

THIS REPORT WAS ARRANGED BASED ON normative doctrinal research. In this research, the researcher establishes evaluation criteria to assess the legal framework in Indonesia, particularly in relation to the protection of workers and affected communities in development contexts. The evaluation steps taken in identifying the existing regulatory gaps were carried out using the following methods:

Firstly, the report sets out evaluation criteria that is based on international standards and best practices applied in countries that have already made the energy transition, in particular, in regard to early retirement of coal-fired power plants. On the labor aspect, the labor standards used are those developed by the International Labor Organization (ILO), which is contained in a document entitled Guideline for a Just Transition towards Environmentally Sustainable Economies and Societies for All, which was launched in 2015. On the aspect of affected local communities, the report utilized a study document produced by the United States Ministry of Energy,

entitled Coal Dependent Communities in Transition: Identifying Best Practices to Ensure Equitable Outcomes.

Secondly, the criteria established in the first step are then used as an analytical tool to look at existing laws and regulations, especially those related to labor and affected local communities. Data collection is limited to literature study, with the understanding that this study is the early stage of a more comprehensive study at a later stage in the future.

# 3

## **PROTECTION STANDARDS FOR AFFECTED GROUPS**

One of the basic understandings of protecting affected groups in implementing an equitable energy transition is to place them at the center of the planning and decision-making process. For instance, the World Bank in its approach to the Just Energy Transition launched the “Just Transition For All” approach, which builds on the World Bank’s experience with energy transition, primarily the closure of coal-fired power plants.<sup>1</sup> There are at least three pillars, divided into two phases (Table 1).

This study focuses on the second pillar, which relates to people (workers employed in the fossil fuel energy sector, directly or indirectly) and affected communities who depend on fossil fuel energy-based economic activities for their livelihoods.

1 World Bank, The World Bank’s Approach To Just Transition For All Methodology for Energy Transition in Coal Regions, <[https://unece.org/sites/default/files/2021-10/31.%20WB%20approach%20to%20JT\\_UNECE%20CMMJT%20GoE\\_September21\\_rev02.pdf](https://unece.org/sites/default/files/2021-10/31.%20WB%20approach%20to%20JT_UNECE%20CMMJT%20GoE_September21_rev02.pdf)>, diakses pada 10 Juli 2023

	<b>1st Pillar: Institution and Governance</b>	<b>2nd Pillar: People and Communities</b>	<b>3rd Pillar: Environmental Reclamation and Land Asset Repurposing</b>
Phase I 10 - 18 Months	Strengthen policies, which are inclusive for economy strategy both micro and macro	Evaluation of laid off process, including assessment of workers, and the needs from labor market users	Valuation of land & assets, preparation for reclamation and reuse for other purposes, search funding for environment remediation
Phase II 2+ Years	Coordinated closure between the government and companies	Social aid to workers and communities through reskilling and active labor market policy	Implementation and determination of technical standards, including asset transfer and methane mitigation
Phase III 10+ Years	Establishment of specific specialized framework to implement transition programs including financing management	Giving long-term skills, education, and active labor market policy through future employment preparation	Remediation of land and assets by public or public institutions, granting of licenses re-permitting, and the granting of licenses activities with other purposes to encourage sustainable transformation.

Table 1. Source: World Bank; The World Bank's Approach to Just Transition For All, 2021

The standards used to assess the gaps in the regulatory framework in the labor sector are based on guidelines issued by the International Labor Organization (ILO), and the standard for assessing the gaps in the regulatory framework in affected communities is based on the guidelines developed by the United States Department of Energy, based on best practices. organized in the United States.

#### A. ENERGY TRANSITION STANDARDS: WORKERS PROTECTION

In 2015, the ILO issued guidelines and policy recommendations entitled “*Guidelines for a Just Transition towards Environmentally Sustainable and Societies for All*” which essentially obliges the government to prepare policies in order to anticipate the impact of energy transition to workers by providing: (1) adequate and sustainable social protection for those who lose their jobs; (2) skills development; and (3) social dialogues, including the fulfillment of effective rights to self-organization and bargaining collectively.<sup>2</sup>

##### *Sustainable and Adequate Social Protection*

In terms of social protection system, the government must provide it in accordance with international standards, among others referring to the following “Social Protection Floors Recommendation No. 202 (2012)” as follows:<sup>3</sup>

- 2 ILO, 2015, “Guidelines for a just transition towards environmentally sustainable economies and societies for all”, [https://www.ilo.org/wcmsp5/groups/public/@ed\\_emp/@emp\\_ent/documents/publication/wcms\\_432859.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf).
- 3 ILO, 2012, “Social Protection Floors Recommendation (No. 202)”, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:3065524](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3065524).

1. Access to a nationally defined set of goods and services and essential health care;
2. Basic income security for children, at least at a nationally-determined minimum level, providing access to nutrition, education, care, and other necessary goods and services;
3. Basic income security for people of productive age who are unable to earn sufficient income, at least at the nationally-determined minimum level, especially in the cases of sickness, unemployment, pregnancy, and disability; and
4. Basic income security for elderly people, at least at a nationally-determined minimum level.

#### *Skills Development for the New Economy*

In terms of skills development, including access to labor market information, we can refer to the following key policies recommended by the ILO as follows:<sup>4</sup>

1. Review existing skills development policies to ensure that they support responsive training and capacity building and appropriate curriculum;
2. Coordinate skills development and TVET (Technical and Vocational Education and Training) policies with environmental and green policies;
3. Establish or strengthen the availability and accessibility of basic labor market data;
4. Adjust skills supply and demand through skill needs as-

4 ILO, 2015.

assessments, labor market information, and core skills development through collaboration with industry and training institutions;

5. Identify and forecast the needs of currently developing skills; and
6. Develop STEM (Science, Technology, Engineering, and Mathematics) knowledge.

### *Encouraging Social Dialogues*

In the aspect of organizing social dialogue, the energy transition policy can refer to the following guidelines provided by the ILO:<sup>5</sup>

1. Encourage and actively engage in social dialog, from policy design to implementation and evaluation;
2. Encourage the establishment, development, and formalization of dialogue mechanisms and structures at all levels to discuss how to best implement the objectives; and
3. Strengthen the tripartite system.

The Coal Worker Transition Service program implemented in Victoria, Australia is one of the best examples that meets international standards in mitigating the impact of energy transition policies on workers. The program assists affected workers to find new jobs by providing access to a comprehensive labor market information including what new skills are needed by the industry.

5 ILO, 2015.

Then, it provides assistance to affected workers who want to start a business, along with financial counseling and strong social support for their families. This program is run by an independent specialized agency that intensely involves the local community in its decision-making.<sup>6</sup>

Germany's success in making the energy transition is also characterized by involving broad participation (social dialogue) in its decision-making process. In 2017, the new government succeeded in establishing a special commission (*Commission on Growth, Structural Change, and Employment*) which involved a broad participatory process that included representation from parliament, relevant ministries, states, environmental organizations, businesses, associations, and the science community. Although parliament is included in the commission, it does not have voting rights, but only the right to provide input.<sup>7</sup>

In addition Germany is also known for its success in reforming the coal energy industry into a diversified green economy activity. An example is the 'Action Program Ruhr Action Program' in the 1980s, which manifested itself in the establishment of established research and technology centers, conversion of mining land into tourism sites, and other economic and cultural activities that focus on empowering affected local communities.<sup>8</sup>

6 CASE for Southeast Asia, "Germany's Coal Phase-Out and Australia's Practical Implementation to Support energy Transition in Indonesia", [https://www.international-climate-initiative.com/fileadmin/iki/Dokumente/Publikationen/Projekte/20\\_I\\_380/CASE-Insights\\_IDN\\_COAL.pdf](https://www.international-climate-initiative.com/fileadmin/iki/Dokumente/Publikationen/Projekte/20_I_380/CASE-Insights_IDN_COAL.pdf).

7 CASE for Southeast Asia.

8 Melina Gabriella & Pamela Simamora, "Ensuring a Just Energy Transition in Indonesia: Lessons Learned from International Case Studies", Study Report

The Asian Development Bank (ADB) developed a Strategic Environmental and Social Assessment (SESA) as a guideline to support the Energy Transition Mechanism (ETM) in Southeast Asia. SESA has been introduced since the 1990s and more than 100 countries have adopted the assessment standard into their legal frameworks. In Asia, the initial focus of ETM implementation with SESA was Indonesia, the Philippines, and Vietnam. In Indonesia, SESA Indonesia aims to improve strategic decision-making for the implementation of ETM in Indonesia at the policy, program, and government plan (PPP) levels.<sup>9</sup> SESA Indonesia aims to strategically assist and inform the Government of Indonesia as early as possible to integrate environmental, socio-economic, and sustainability considerations in policy-making, planning and decision-making processes for ETM implementation in Indonesia, before project/asset level decisions are made.<sup>10</sup>

This will complement project/asset-level planning under the environmental and socio-economic impact assessment by: (a) generating information on key environmental and socio-economic issues; (b) providing a platform for structured stakeholder dialogue on issues between the government, private sector, and civil society; (c) offering a mechanism for taking the results of assessments and debates in institutional and governance ; and (d) establishing a planning framework for the closure of the power plant and its replacement by a new

IESR. file:///C:/Users/JRGN69/Downloads/A%20just%20energy%20transition.pdf.

9 Ciera Group dan PT Hatfield Indonesia, *Op. Cit.*, hlm. 2.

10 *Id.*, hlm. 4.

rational and sustainable renewable energy projects.<sup>11</sup> Currently, in Indonesia, SESA has been adopted in Article 15 of Law No. 32 of 2009 on Environmental Protection and Management (Law No. 32 of 2009) although it is not always implemented. The Fiscal Policy Agency (BKF) is responsible for the implementation of SESA on behalf of the Ministry of Finance and will play a coordinating role with civil society.<sup>12</sup>

SESA is implemented under three scenarios, namely business as usual, medium intensity transition, and high intensity transition. The three scenarios are elaborated below (Chart 5).<sup>13</sup>

#### **B. ENERGY TRANSITION STANDARD: PROTECTION OF AFFECTED GROUPS**

In general, as of today, there are no international standards or specific documents that standardly guide the process of coal power plant closure. In particular, paying attention to the

11 *Id.*, hlm. 2-3.

12 Article 15 paragraph (1) of Law No. 32/2009 provides an obligation for the government and local governments to make a Strategic Environmental Assessment (SEA) to ensure that the principles of sustainable development are met and have become the basis and integrated in the development of an area and/or policy, plan, and/or program. Meanwhile, Article 15 paragraph (2) stipulates, SEA must be implemented into the preparation or evaluation of: (a) regional spatial plans (RTRW) along with its detailed plan, long-term development plan (RPJP), and national medium-term development plan (RPJM), provincial, and regency/municipality; and (b) policies, plans, and/or programs that have the potential to cause environmental impacts and/or risks. Article 15 paragraph (3) provides direction that SEA is carried out with the mechanism of: (a) assessment of the effect of policies, plans, and/or programs on environmental conditions in an area; (b) formulation of alternative improvement of policies, plans, and / or programs; and (c) recommendations for policy, plan, and/or program decision-making that integrate the principles of sustainable development.

13 *Id.*, hlm. 273.

protection of coal-fired power plant workers and the communities around the coal-fired power plant that are affected by the coal-fired power plant retirement process. However, several studies have provided some indicators and important concerns in the energy transition process, one of which is the one published by the US Department of Energy can be found through study documents conducted by several countries that have carried out the process of closing coal-fired power plants such as the United States.

*Coal Dependent Communities in Transition: Identifying Best Practices to Ensure Equitable Outcomes*, issued by the U.S. Department of Energy in 2021<sup>14</sup> can be used as a reference in looking at important indicators of and good practices that must be carried out in conducting PLTU closure. In particular, those that affect local communities. The study looked at the early closure practices of approximately 546 (five hundred forty-six) coal-fired power plants across the United States during the 2010 through 2019.

The changing landscape of energy production will have an impact on the social, environmental and economic prospects whose lives depend on coal. The document examines the role of communities in the process of decommissioning a coal-fired power plant, identifying best practices for communities and ensuring a fair process. There are at least five important aspects that need to be considered in the process of terminating a coal-fired power plant, namely state recognition

14 Coal Dependent Communities in Transition: Identifying Best Practice to Ensure Equitable Outcomes, September 2021, the U.S. Department of Energy [https://www.pnnl.gov/main/publications/external/technical\\_reports/PNNL-31909.pdf](https://www.pnnl.gov/main/publications/external/technical_reports/PNNL-31909.pdf) accessed 2 May 2023.

<p>Business As Usual:</p>	<ul style="list-style-type: none"> <li>• Continuing with the current generation of coal-fired power plants until 2060. Some of the scheduled coal plant retirements absorption will be provided by new facilities coming into the pipeline.</li> <li>• Key concerns and responses: environmental risks such as pollution, threats to biodiversity, not meeting the goals of the Nationally Determined Contribution (NDC) goals, and increased climate change impacts.</li> </ul>
<p>Medium Intensity Transition</p>	<ul style="list-style-type: none"> <li>• Involves the phased retirement of 50% (16 GW) of the coal plant fleet by 2060. Could also include reuse of coal plants, closure of associated mines, and replacement of new and renewable energy (NRE) facilities.</li> <li>• Key concerns and responses: improved air quality, biodiversity disruption, social tensions, employment growth, land use impacts, development of potential policies to address environmental and social issues</li> </ul>
<p>High Intensity Transition</p>	<ul style="list-style-type: none"> <li>• This includes the full closure of coal-fired power plants, coal mines and supply chains, and a full build-out of a mix of renewable energy facilities in order to achieve net zero emissions by 2060.</li> <li>• Key concerns and responses: improved air quality, rising electricity prices may affect consumers, rising national debt, increase in the state budget, will reach net zero, residual emissions from increased development transportation and household emissions, threats to biodiversity due to the expansion of renewable energy, concerns over labor development.</li> </ul>

Figure 4. Source: Ciera Group and PT Hatfield Indonesia, SESA Final Scoping Report - Strategic Environmental and Social Assessment (SESA) Energy Transition Mechanism (ETM) in Indonesia, 2023

and risk mitigation, community participation, transparency, post-decommissioning planning, and early identification of technical needs.

First, state recognition and risk mitigation of social impacts on the community during the process of closing the PLTU. In this aspect, the state must recognize that in the process of closing the PLTU there will be an impact to the community around the PLTU. Cultural, social, economic, environment, and long-term health impacts are real impacts that occur in the PLTU closure process. This aspect must be recognized and taken into account by the state in a real way, namely pouring risk mitigation and solutions to potential impacts into the planning document for the closure of the PLTU.<sup>15</sup>

Second, community participation. This aspect is the most important aspect in the entire PLTU closure process. Indicators of community participation in the process include several things, namely (1) full community involvement from planning, process, and post-decommissioning; (2) the decision-making process must be based on community needs (community based) because each community has different needs and desires related to energy transition. What is best for one community may not be suitable for another; (3) continuous community engagement, from the beginning of the planning process to post closure. In this process, it must be ensured that there is communication and feedback process (dialogue occurs and community input and approval is obtained); (4) using many mediums (opening the widest possible space) to

15 *Ibid.*

involve the community.

Third, transparency. In this context, transparency must be present throughout the process. Information about the schedule, potential impacts on labor, economic, environmental aspects, and on the feasibility of using alternative sites, must be provided openly and accurately.

Fourth, post-decommissioning planning. This is related to the replacement of jobs, income, and community activities lost due to the closure of the PLTU. Reflecting from the practice of PLTU closure in the United States, there are three main things to help communities affected by the energy transition, namely: (1) technical assistance in the form of feasibility assessment of alternative locations with new technology; (2) cross-partnership engagement and collaboration. In order to facilitate the creation of a knowledge-sharing space on lessons learned from the decommissioning process between communities and provide guidance for the decommissioning process; (3) financial assistance, in the form of access to grant and/or loan programs to help survey rebuilding, supporting community economic resilience through job creation, and covering environmental cleanup costs.

Kelima, identifikasi kebutuhan teknis sejak dini. Hal demikian mencakup pada identifikasi sumber pendanaan, ahli teknik, dan/atau kemitFifth, identify technical needs early on. This includes identifying sources of funding, technical expertise, and/or strategic partnerships to support early retirements and affected communities early on.

It should be underlined that in addition to the five indicators above, universal aspects such as good governance, eco-

conomic diversification, social dialogue, social protection, and the availability of transitional funds and skills development are also things that should not be overlooked in the energy transition. These can be identified through the energy transition experiences of Germany, Australia, Canada and South Africa.<sup>16</sup> One form of state protection for affected groups in the energy transition, carried out by the Government of Germany and the German Regional Government in the Ruhr since 1986. Both made policies that focused on economic reorientation and diversification in the region. The ‘Development Program’ provided €8.7 million in incentives to attract new businesses from other sectors in the region, with a focus on technology development, innovation, education, and infrastructure for economic diversification.

This initiative brings assistance and cooperation from German universities to provide skill enhancement in order to create new jobs available in the new and renewable energy sector in the Ruhr. The education sector and research institutions are helping to attract new companies and people from outside the region to help the Ruhr recover. Proactive role of industry policies to build energy efficiency, renewable energy recycling, and waste combustion technology, thus impacting the Ruhr’s as a major hub for environmental and development research in Germany.

16 Melina Gabriella dan Pamela Simamora, “Ensuring a Just Energy Transition in Indonesia: Lesson Learned from Country Case Studies”, Institute for Essential Services Reform, Oktober 2020, hlm. 17-22, <https://iesr.or.id/en/pustaka/ensuring-a-just-energy-transition-in-indonesia-lessons-learned-from-country-case-studies-iesr-2020> diakses 2 Mei 2023



# 4

## **REGULATION GAPS ANALYSIS**

THIS SECTION REVIEWS the evaluation of the regulatory framework based on the standards as described in the previous section. As described in the previous section, the standard used in this evaluation is the labor protection standards formulated by ILO. Meanwhile, on the community aspect, a report on best practices derived from the experience of the United States are used as the standards.

### **A. GAPS IN LABOR PROTECTION ASPECTS**

The evaluation of the regulatory framework for labor protection covers three aspects, as outlined in the labor protection standard, namely: the sustainable and adequate social protection aspect, skills development for the new economy, and social dialogue aspect (Table 2).

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**ASPECT EXISTING/CURRENT REGULATIONS**


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Sustain- able and Adequate Social Protection	<ul style="list-style-type: none"> <li>• Law No. 13/2003 concerning Manpower as amended by Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation.  (Article 156 has given the right to workers who are affected by Termination of Employment (PHK) to obtain severance pay, and/or long service award money, and compensation money)</li> <li>• Law No. 40/2004 on National Social Security System as amended by Government Regulation in Lieu of Law Number 2 Year 2022 on Job Creation.  (Article 46A-46D has given the right to workers who are affected by layoffs to obtain job loss guarantees in the form of cash, access to labor market information, and job training for 6 months of wages)</li> <li>• Presidential Regulation No. 82/2018 on Health Insurance  (Article 27 has provided protection for workers whose employment is terminated for 6 months of participation in BPJS after the termination of employment)</li> </ul>
Develop- ment Skills for the New Economy	<ul style="list-style-type: none"> <li>• Law Number 13 of 2003 concerning Manpower as amended by Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation.  (Article 13 has regulated the implementation of job training by government institutions, private companies, or companies)</li> </ul>

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Table 2. Labor Protection Aspect and Existing Regulations

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**ASPECT EXISTING/CURRENT REGULATIONS**


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Develop-  
ment Skills  
for the New  
Economy  
(Continued)

- Government Regulation No. 31/2006 on the National Job Training System (Silatkernas).

(This regulation has given a mandate to the Minister of Manpower to develop Silatkernas that can be joined by every workforce according to their talents, interests, and abilities. Accompanied by the development of a national job training information system compiled from central and local governments, private and foreign institutions, which at least Information including: SKKNI and KKNI, job training programs, job training organizers, training personnel, and certification. The information system must reach a wide range of targets, and can be accessed affordably and easily by the public.)

- Presidential Decree No. 68 of 2022 on Revitalizing Vocational Education and Vocational Training (TVET).

(This regulation can strengthen TVET programs to improve the competence of workers in the renewable energy sector. Furthermore, mandates the Minister of Manpower to develop a Labor Market Information System that contains the structure, characteristics, supply, and labor needs)

- Minister of Manpower Regulation Number 11 of 2013 concerning Guidelines Implementation of the National Job Training System in Regions.

(This regulation has given responsibility to local governments to implement and foster vocational training in their respective regions)

- Minister of Manpower Decree No. 138/2019 on the Determination of Indonesian National Work Competency Standards In The Category of Electricity, Gas, Steam/Hot Air and Cold Air Procurement, Air Digging Field of Plant Operation of Various New Energy and Renewable Energy.

(This regulation contains SKKNI in the field of operating new and renewable energy plants as one of the references in the skills development program in the renewable energy sector)

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ASPEK	REGULASI SAAT INI ( <i>existing</i> )
Social Dialogue	<ul style="list-style-type: none"> <li>• Law No 13/2022 on Manpower regarding Manpower as amended by Government Regulation in lieu of Law Number 2 Year 2022 on Job Creation.</li> </ul> <p>(Article 96 affirms the right of people who are directly affected by and/or have an interest to provide input orally and/or in writing online/offline in every stage of legislation formulation of laws and regulations including: Law, Perppu, Government Regulation, Presidential Regulation, Regional Regulation, Ministerial Regulation, and so on)</p> <ul style="list-style-type: none"> <li>• Government Regulation No. 35/2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Time and Rest Time and Termination of Employment.</li> </ul>
ASPECT	REGULATION GAP ANALYSIS
Sustainable and Adequate Social Protection	<ol style="list-style-type: none"> <li>1. Decrease in the amount of severance pay received after the implementation of the Job Creation Law has led to the lower social safety net for affected workers.</li> <li>2. Inadequate amount of cash assistance for security of affected workers and their families.</li> </ol>
Skills Development for New Economy	<ol style="list-style-type: none"> <li>1. Lack of data mapping and synchronization information in the green jobs sector.</li> <li>2. Job training programs in the green jobs sector are not yet sufficiently integrated with the industry and TVET.</li> </ol>
Social Dialogue	<ol style="list-style-type: none"> <li>1. The meaningful participation principle is not yet guaranteed explicitly at every level of decision-making of the energy transition program</li> <li>2. The Ministry of Manpower has so far not been involved as a partner ministry/agency in the JETP working group.</li> <li>3. Weakening of the tripartite mechanism in termination of employment and determination of minimum wage.</li> </ol>

Table 3. Regulation Gap Analysis

*Sustainable and Adequate Social Protection Aspect*

As outlined above, one of the important things of sustainable and adequate social protection is to ensure that affected workers receive at least social security to guarantee their livelihood, until they regain employment. This social protection includes: (i) basic income security, and (ii) access to health care.

Although normatively, all of the worker protection checklists are in line with the guidelines issued by ILO guidelines, the fundamental problem with the existing regulatory framework lies in the question of whether these guarantees provided can meet the standard of living of workers while waiting to get re-employed?

After the enactment of the Job Creation Law, there is a decrease in the quantity of severance pay received by workers based on existing normative provisions. The decrease in the provisions of severance pay varies between 37.5% - 64.2% from before the enactment of the Job Creation Law, depending on the reason for termination of employment.

One of the possible reasons for the impact of the energy transition is the closure of companies due to losses, efficiency measures to prevent losses, and efficiency due to losses. For these types of reasons, there was a significant decrease, namely a 42.8% decrease from before the Job Creation Law for the reasons of efficiency to prevent losses and due to losses, or a decrease of 64.2% from before the Job Creation Law for the efficiency reason to prevent company closure. The decrease in the number of normative provisions certainly have an impact on affected workers in fulfilling their lives after being affected by the Termination of Employment (PHK).

However, the Job Creation Law compensates for the decrease in severance pay by introducing the Loss of Employment Guarantee (JKP). There are two issues with the JKP provision. First, access to the JKP requires 12 (twelve) months of membership by paying contributions, and six consecutive months of payment prior to the termination of employment. This provision has the potential to impact on contract workers, especially those with contracts of less than 6 months or daily employees (BHL) who are likely to be excluded from the JKP program. Data collected by CELIOS in three coal plants (Cilacap, Probolinggo, and Langkat), almost 50% of the total workforce at these plants, with a total of 1,934 workers.

Second, the amount of cash assistance is inadequate in terms of amount. Based on simulations conducted by the research team, the average cash support provided only amounted to around 14% - 32% of living costs, depending on the city in which the worker lives.

#### *Skills Development and Labor Market Information Access*

In terms of skills development, the vocational training program has been organized under a system called Sislatkernas which is based on SKKNI and KKNI. The government has also developed SKKNI in the field of operating new and renewable energy plants that can be used as a standard for job training in the green industry. This has also been supported by collaborating with TVET institutions. Nevertheless, in the results of this study, there are still shortcomings in the mapping and synchronization of green jobs data in Indonesia. So far, mapping has only been started by the Financial Services Authority/Otoritas Jasa Keuangan (OJK) through the “Green Econ-

omy Document 1.0” and by Bappenas through the “National Green Jobs Occupation Map in the National Qualification Framework” (KKNI).<sup>1</sup>

This correlates with the absence of specific programs aimed at encouraging green jobs. In addition, the existing training programs are still held partially and not yet organized in a massive, structured, and integrated manner with industry and TVET institutions. In addition to providing green jobs opportunities, the SESA Scoping Report also mentions the need to capture opportunities in economic diversification for construction and operation of renewable energy projects, business opportunities for small-scale renewable energy development with microfinance services and opportunities for women and indigenous ownership of renewable energy projects.<sup>1</sup>

Thus, as the findings of the ILO and SESA Scoping Report, the Government must immediately create a clear guideline for green jobs in Indonesia that can encourage job training and synchronization of labor market data according to international standards.<sup>2</sup> In the search conducted by the Team, SIAPkerja<sup>3</sup> as one of the results of active labor market policy, there are no job clusters specifically aimed at supporting the energy transition. In terms of training, the study team also did not see any clusters related to job training that encourage energy transition.

### *Social Dialogue Aspect*

In the aspect of social dialog (community participation), cur-

1 Ciera Group dan PT Hatfield Indonesia, *Op. Cit.*, hlm. 272.

2 ILO, 2023.

3 <https://siapkerja.kemnaker.go.id/app/home>

rent regulations have begun to accommodate the meaningful participation principle in the formation of legislation at every level of deliberation. However, it is feared that these provisions are not applied or reflected in the regulation on energy transition, which is partly formed outside the legislative order. An example is the document “Comprehensive Investment and Policy Plan (CIPP JETP Indonesia)” that is being drafted. Such a document is likely to not include a full community of interest (affected workers) dialogue in (affected workers) in full at every level (stage) as prescribed by the ILO.

Furthermore, the tripartite mechanism is not yet fully present at every level, especially in the energy transition program. For example, in the post termination of employment period, which only involves bipartite mechanism, and even then it is done post termination of employment, rather than pre termination of employment. There is no regulation that specifically regulates main tasks and functions (Tupoksi) and social dialog mechanisms at the level of technical policy makers. Job Creation Law removes provisions related to court decisions to conduct termination of employment, with the removal of this provision, companies have more incentive to carry out termination of employment unilaterally, without a dialogue process first.<sup>4</sup> Given that the policy maker in the energy transition is in the hands of the Decarbonization and Energy Transition Task Force.

In addition, the five JETP Indonesia Working Groups did not include the Ministry of Manpower as one of the part-

4 See Article 81 point 37 of Law No. 6/2023 on the Enactment of Government Regulation in Lieu of Law No. 2/2023 on Job Creation into Law (Job Creation Law & Employment Cluster)

ner ministries/agencies.<sup>5</sup> It is feared that the social dialogue mechanism on affected workers is not a major concern in policy formation.

In addition, the provisions in the Job Creation Perppu have weakened one of the important principles made by the ILO, namely the effective fulfillment of the right to self-organize and bargain collectively. This is reflected in the tripartite negotiations to determine the minimum wage which is increasingly weakened. Likewise, collective negotiations on wages are limited to the company level, thus significantly reducing the role of labor associations to fight for their interests at a higher level. This was exacerbated by the centralized approach of the central government which gradually limited the role of the Provincial Government to determine the minimum wage, and giving more power to the Ministry of Manpower.

## **B. GAPS IN THE PROTECTION OF AFFECTED LOCAL COMMUNITIES**

Below are some of the laws and regulations in Indonesia that are relevant when looking at the level of protection of affected local communities. Besides the retirement of coal-fired power plants, the regulations below should be a reference in the energy transition process, including in the development of renewable energy (Tables 4 and 5).

5 [https://www.inettt.org/pdf/IESR\\_JETP\\_INETTT.pdf](https://www.inettt.org/pdf/IESR_JETP_INETTT.pdf). This was also conveyed by officials from the Ministry of Energy and Mineral Resources of the Republic of Indonesia and the Coordinating Ministry for Maritime Affairs and Investment of the Republic of Indonesia at the CSO Dialogue event on June 12, 2023 in Jakarta.

*Country Recognition and Risk Mitigation*

Normatively, Indonesia's legal framework has recognized the potential impacts of development projects. This can be seen in several laws and regulations, including Law No. 32/2009 on the Protection and Management of the Environment (Environment Law), Law No. 30 /2007 on Energy (Energy Law), Government Regulation No. 22/2021 on the Implementation of Protection and Management of the Environment (Environmental Regulation), Government Regulation No 79/2014 on National Energy Policy (PP KEN), and Presidential Regulation No. 112/2002 on the Acceleration of the Renewable Energy Development for Electricity Supply (Perpres EBT).

Key arrangements regarding state recognition of impacts of development projects and risk mitigation can be found in the provisions on Environmental Impact Assessment (EIA) found in the provisions on Environmental Impact Assessment (AMDAL). In the Environment Law and the Environmental Regulation, it is stated that EIA is used in the context of activities that may cause, among others, processes and activities whose results can affect the natural, artificial, and socio-cultural environment. This provision mandates that there is an effort to identify, analyze and mitigate risks that have the potential to occur for major activities, one of which is energy transition activities.

Likewise with sector provisions such as the Energy Law and Government Regulations on National Energy Policy (PP KEN), which provide mandates at the policy and implementation level to manage and utilize energy, both the government and business actors must base themselves on the principle of

ASPECT	REGULATION GAP ANALYSIS
Country Recognition and Risk Mitigation	<ol style="list-style-type: none"> <li>1. Law No. 32/2009 concerning Protection and Management of the Environment as amended by Government Regulation in lieu of Law No. 2 Government Regulation in Lieu of Law No. 2/2022 regarding Job Creation.</li> <li>2. Government Regulation No. 22/2021 concerning Implementation of Protection and Management Environment</li> <li>3. Law No. 30/2007 concerning Energy</li> <li>4. Government Regulation No. 79/2014 concerning National Energy Policy</li> <li>5. Presidential Regulation No. 112/2002 concerning Acceleration of Renewable Energy Development for Provision of Electric Power</li> </ol>
Public Participation	<ol style="list-style-type: none"> <li>1. Law No. 9/1998 concerning Freedom to Express Opinions in General Public</li> <li>2. Law No. 32/2009 concerning Protection and Management of the Environment as amended by Government Regulation in lieu of Law No. 2 Government Regulation in Lieu of Law No. 2/2022 about Job Creation.</li> <li>3. Law No. 30/2007 concerning Energy</li> <li>4. Law No. 2/2012 concerning Land Acquisition for Development in the Public Interest</li> <li>5. Presidential Regulation No. 186/2014 concerning Social Empowerment of Isolated Indigenous Communities</li> <li>6. National Police Chief Regulation No. 7/2012 concerning Procedures Service Delivery, Security, and Handling Cases for Expressing Opinions in General Public</li> </ol>
Information Transparency	<ol style="list-style-type: none"> <li>1. Law No. 14/2008 concerning Openness of Public Information</li> <li>2. Government Regulation No. 79/2014 concerning National Energy Policy</li> </ol>
Information Transparency	<ol style="list-style-type: none"> <li>1. Information Commission Regulation No. 1/2013 concerning Public Information Dispute Resolution Procedures</li> <li>2. Information Commission Regulation No. 1/2017 concerning Classification of Public Information</li> <li>3. Information Commission Regulation No. 1/2021 concerning Public Information Service Standards</li> </ol>

Table 4. Gap Regulation Analysis

<p>Post Decommis-sioning Planning and Early Identification of Technical Needs</p>	<ol style="list-style-type: none"> <li>1. Law No. 26/2007 concerning Spatial Planning as last amended by the Regulations Government in Lieu of Law No. 2/2022 concerning Job Creation</li> <li>2. Law No. 39/2009 concerning Special Economic Zone which was last modified by Government Regulation in Lieu of Law No. 2/2022 concerning Job Creation</li> <li>3. Government Regulation No. 40/2021 concerning Implementation of Special Economic Zones</li> <li>4. Presidential Regulation No. 112/2022 concerning Acceleration of Renewable Energy Development</li> <li>5. Regulation of the Minister of State-Owned Enterprises of the Republic Indonesia Number PER-03/MBU/03/2021 concerning Third Amendment to the Regulation of the Minister of Business Entities State Owned Number PER-02/MBU/2010 concerning the Write Off Procedure and State-Owned Enterprise Steady Transfer Assets</li> </ol>
<p>Country Recognition and Risk Mitigation</p>	<p>The EBT Presidential Decree only focuses on technical aspects of the economy of energy transitions. There are no articles regarding state recognition of affected communities. Therefore, although in general the regulations for considering and recognizing that affected communities already exist, this aspect is absent in the regulations. Thus, the policy have the potential to cause the affected communities to be left behind when planning and implementing the energy transition.</p>
<p>Public Participation</p>	<p>The gap found in community participation is the same as in the aspect of country recognition and risk mitigation, where operational provisions that regulate energy transitions do not regulate this aspect, although normatively there are several existing provisions that have provided guarantees for public participation.</p>
<p>Information Transparen-cy</p>	<p>Normatively, Indonesia already has an adequate openness information regime. However, there are implementation gaps between regulations and their implementation. Problems that could potentially arise in the energy transition are related to sensitive information with commercial/business aspects, where the arguments that are often used to reject information disclosure are the existence of the dimension of "protection from unhealthy business competition". This is because one of the main stakeholders in this transition process is PLN, which is a business entity.</p>

Table 5. Regulation Gap Analysis

ASPECT	REGULATION GAP ANALYSIS
Post Decommissioning Planning and Early Identification of Technical Needs	The main gaps in post decommissioning planning and early identification of technical requirements lie in the absence of social and economic protection of affected communities. The absence of this aspect has the potential to neglect attention to affected communities in various operational policies that can be used to encouraging a just transition, including the use of the BUMN Ministerial Regulation on Certain Conditions as basis for providing flexibility in the PLTU asset repurposing program or provisions regarding area development for redevelopment to affected areas through spatial planning instruments.

expediency, rationality, fair efficiency, increased added value, sustainability, community welfare, preservation of environmental functions, national resilience, and integration with prioritize national capabilities.

Energy management must meet the needs of society, and achieve maximum community welfare by prioritizing meeting community needs and increasing economic activity in energy producing areas.

The state or business entity that carries out energy-related business activities are required to: a. empowering local communities; b. safeguard and maintain environmental sustainability functions; c. facilitating energy research and development activities; and d. facilitating education and training in the energy sector. Furthermore, in this context, national energy policy was prepared as a guideline to provide direction for national energy management in order to create Energy Inde-

pendence and National Energy Security to support sustainable development nationally.<sup>6</sup> That way, the whole process in energy management (including energy transition/ specific to PLTU closure) must be based on principles of energy management, and not ignoring aspects of community interests.

At the level of major policies such as the energy transition, the government system in Indonesia needs more regulations on more technical matters to regulate the implementation of the policy. These technical regulations are very strategic, where policies are implemented and controlled, in other words they are used as a reference important for implementers. Related to the transition mechanism energy, one of the main derivative technical regulations is issuance of the EBT Presidential Decree, this EBT Presidential Decree regulates detail several aspects, including:

1. Arrangements for the development of the Provision Business Plan Electric Power, focusing on New and Renewable Energy;
  2. Arrangements for the preparation of a Road Map to accelerate the end of the PLTU operational period;
  3. Fiscal support arrangements for termination PLTU; and
  4. Setting Purchase Prices and Implementing Purchases Electric Power.
- 6 Sustainable Development (TPB)/Sustainable Development Goals (SDGs) is a development that maintains a sustainable increase in the economic welfare of society, a development that maintains society's social life sustainability, development that maintains environmental quality life and a development that guarantees justice and the implementation of governance which is able to maintain the improvement in the quality of life from one generation to the next (<https://sdgs.bappenas.go.id/sekilas-sdgs/>)

A more detailed examination of the Presidential Decree shows that the EBT Presidential Decree does not include regulations, dimensions of risk and socio-economic risk mitigation towards affected community groups. The EBT Presidential Decree only focuses on the technical economic aspects of the energy transition. There is no article regarding state recognition of affected communities. Therefore, even though in general the regulations of acknowledging affected communities already exist, the absence of this aspect within the technical regulations underlying the policy have the potential to cause the affected communities to be left behind planning and implementing the energy transition.

#### *Public Participation*

Another important indicator in the retirement of PLTU and the overall energy transition is community participation. This indicator includes the full and meaningful involvement of affected local communities impacted in every closure process of the PLTU or other energy transition agendas.

Local communities must be involved starting from planning, processing, and post-decommissioning on an ongoing basis. Decision making in the entire process must be based on community needs. The country and associated parties must involve affected local communities by opening the widest possible medium for participation.

Review of the legal framework related to public participation in the energy transition policy found that there were at least 6 laws, 1 presidential regulation, and 1 regulation of the Chief of Police of the Republic of Indonesia. Each of these content items for each regulation are displayed in Table 6.

The laws and regulations mentioned above can be used as a basis for involving community participation impacted by the energy transition, including the process of winding up PLTUs. However, as also identified in the aspect of country recognition, these regulations are still general in nature. Application of the provisions in the articles are still sectoral in nature and cannot yet be operationally applied to energy transition activities. As for example, orders for community involvement in the Energy Law, only limited to the development of the General Plan Energy. Even though in the Presidential Decree on EBT, it is an operational technicalities regulation for the energy transition, the documents that need to be prepared by PLN as a guide to the energy transition are the Electricity Supply Business Plan (RUPTL). Therefore, legally, the obligation of the participation mandate communities guaranteed in the Energy Law do not directly apply to RUPTL.

In general, public participation in the energy sector still find its own obstacles. This can be seen in the study of community participation in the extractive energy sector, as one of the main industries in the energy sector. People who actively voice criticism of extractive industry activities or processes (as well as in the context of the energy transition), are below the shadow of criminalization. For example, Article 162 of the Mining Law provides a loophole for criminalization of local community participation in expressing their opinions regarding the rejection of mining business activities. This article stipulates the act of obstructing mining business activities as a criminal act. Not to mention, articles in the Criminal Code that have the potential to criminalize people who provide

criticism of the president and state institutions.<sup>7</sup>

However, it should be noted that there is space for advocacy/community participation in a sense that energy transition is not as suffocating as associated with extractive industry. In the power generation sector, the community can use litigation to protect the socio-economic environment from the impacts of extractive industrial activities and encouraging a more environmentally friendly energy transition. An example is the lawsuit of Cirebon residents against the construction of the Tanjung Jati A PLTU, who submitted the cancellation of the environmental permit for the construction of the Tanjung Jati A PLTU to the Bandung PTUN. People realized that the construction of the Tanjung Jati A PLTU will produce more than 350 million tons of CO<sub>2</sub> over a 30 year business period. It is simply not in line with the spirit of a just energy transition and it is realized that the construction of the Tanjung Jati A PLTU will have a negative impact for the environment and the lives of local residents. As a consequence of the decision on the cancellation lawsuit, the Ministry of Energy and Mineral Resources (ESDM) must revoke the Electricity Supply Business License (IUPTL) PLTU Tanjung Jati A.<sup>8</sup>

Regardless of the obstacles and good practices of local community participation in promoting a just energy transition, full participation for affected local communities must be presented by the Government and associated parties. No just

7 Article 218 paragraph (1), Article 219, Article 240 paragraph (1), and Article 241 paragraph (1) Law No.1/2023 concerning the Criminal Code.

8 Climate Justice Advocacy Team, Walhi Press Release: "The Victory of the Cirebon Residents is Confirmed, ESDM Must Immediately Revoke IUPTL Tanjung Jati A", 2022, accessed via <https://www.walhi.or.id/kemenangan-warga-cirebon-kan-diteguhkan-esdm-besar-segera-cabut-iuptl-tanjung-jati-a> on August 4 2023.

REGULATION	REGULATORY MATERIAL
Law No. 9/1998 Freedom of Speech in General Public	This law provides guarantees in freedom to express opinions (demonstrations), with various provisions including, exceptions to certain objects, one of which is a vital national object where some PLTUs can be categorized as vital objects, and provide notification to the police.  Article 2 Law No.9/1998 concerning Freedom to Express Opinions in Public
Law No. 32/2009 on Environmental Protection and Management	This law provides guarantees public participation, Article 65 of the PPLH Law, including rights to gain access to information, give in inputs that are thought to have potential to have an impact on the environment.  Article 65 of Law Number 32 of 2009 concerning Protection and Management of the Environment
Law No. 30/2007 on Energy	This law gives orders to the Government in carrying out the general energy plans preparation, both national and regions, must include the community.  Articles 17 and 19 paragraph (2) Law No. 30/2007 on Energy
Law No. 2/2012 on Land Procurement for Collective-Purposed Development	This law regulates and provides guarantee of community participation, if a project development requires land acquisition.

Table 6. Regulatory Material

quasi-participation, participation must fulfill the following three prerequisites: (1) giving the public the right to have their opinions heard (right to be heard); (2) giving the public the right to have their opinions considered (right to be considered); and (3) giving the community the right to get an explanation

or answer to an opinion given (right to be explained).<sup>9</sup>

Fulfilling community participation as a right in the formation of laws and regulations and the formation of policies must also be interpreted as a country obligation. Participation space for the affected local communities must be opened as wide as possible, using appropriate and contextual media community situations. All community input should mandatorily be considered, and decisions taken must be based on the interests of the surrounding community. Such a thing is important in the practice of a just energy transition because local communities will be the first party to experience the impact on the entire energy transition agenda and process, including retirement of PLTU.

#### *Information Transparency*

One of the main prerequisites for community participation is the existence of policy transparency through freedom of information. The government and all parties involved in the early termination of PLTU (for example regional governments, BUMN, private companies), must provide open and accurate information related to the early termination process of PLTUs.

The right to this information is guaranteed in Article 28F of the Constitution 1945 which is in the following:

“Everyone has the right to communicate and obtain information to develop personally and the environment’s social status, as well as the right to seek, obtain, own, store, process

9 Helmi Chandra SY and Shelvin Putri Irawan, “Expanding the Meaning of Public Participation in the Formation of Laws After the Court Decision Constitution”, *Constitution Journal*, Volume 19, Number 4, December 2022, pp 775-777.

and convey information by using all kinds of channels available.”

In particular, the state’s obligation to provide information regarding national energy policy is regulated in Government Regulation No. 79/2014 concerning National Energy Policy.<sup>10</sup>

However, in a more general context, the right to disclose information is regulated in Law No. 14/ 2008 concerning Openness of Public Information and several derivative regulations, such as the Information Commission Regulation Number 1/2021 concerning Public Information Services Standards, Information Commission Regulation No. 1/2013 concerning Dispute Resolution Procedures on Public Information, and Information Commission Regulation No. 1/2017 concerning Classification of Public Information. Obligations of the country and all related parties to provide open information is explicitly mentioned in Article 23 paragraph (2) letter e Government Regulation No. 79/2014 concerning National Energy Policy. On the contrary, the public can use the public information disclosure mechanism provided under Law No. 14/2008 concerning Openness Public Information. Transparency and openness of information to the public and cannot be separated from public participation. The two are intertwined and mutually support each other. Meaningful participation will run optimally if transparency exists, and vice versa.

In general, Indonesia has a complete legislation in the field of information transparency, however there is a gap be-

10 Article 23 paragraph (2) letter e Government Regulation No. 79/2014 concerning National Energy Policy.

tween legislation and its implementation. Resource Governance Index (RGI) 2017, published by the Natural Resource Governance Institute (NRGI) reports that Indonesia obtained a score of 65 out of 100 for enabling environment components. This report also notes that there are implementation holes between the governance regulations on paper with implementation in the field. In terms of regulatory and policy paper, Indonesia gets a score of 80 out of 100, while at the practical level, it gets a score of 61 out of 100. However, at the level of implementation in the field, Western Australia, for example, has high performance that even surpasses what is above paper.<sup>11</sup>

In line with this report, the implementation of information transparency regarding extractive industries often results in testing access to public information disclosure. This is caused by the frequent extractive sector information classified as information excluded by the pretext of protection from unfair business competition,<sup>12</sup> such as that occurred in the provinces of Aceh, West Sumatra and Kalimantan East. In this situation, the community uses an information access testing mechanism through the Information Management Officer and Documentation (PPID) and the Public Information Com-

11 Natural Resource Governance Institute, *Indonesia – Mining*, (tanpa tahun), diakses melalui <https://www.resourcegovernanceindex.org/country-profiles/IDN/mining?years=2017> pada 4 Agustus 2023.

12 See Governor's Decree Number 065/1025/2020 concerning Provision of Excluded Information in the Aceh Government Environment; West Sumatra Governor's Decree Number: 480-673-2018 concerning Amendments to Governor's Decree Number 480-595-2017 concerning the List of Public Information Excluded within the West Sumatra Provincial Government; Provision of Information and Documentation Management Officer of the Capital Investment Service and One Stop Integrated Service for East Kalimantan Province Number 04 Year 2019 concerning Classification of Excluded Information.

mission (KIP). One of the cases in Aceh was the Anti Movement's request Aceh Corruption (GeRAK) to the Provincial Information Commission Aceh was granted this through decision Number 018/I/KIA-A/2018 which the Aceh Provincial Information Commission decides that extractive industry information is information non-excludable public. Reflecting on the experience of the extractive industry, potential problems will arise related to this with information on energy transitions, especially those according to the government. Moreover, if the data owner is PLN, as the main stakeholder in implementing the energy transition, which in several aspects has a commercial dimension. The depiction above can be an illustration of the dynamics of transparency that occur in Indonesia. With these said conditions, it is not impossible that society will be experiencing obstacles in obtaining transparent information regarding processes in the energy transition agenda (power plant retirement).

*Post Decommissioning Planning  
and Early Identification of Technical Needs*

Another thing that is being evaluated in the process of closing the PLTU coal is about planning regarding post-decommissioning. In the context of PLTU closures and renewable energy, this should be found in special regulations regarding PLTU closures and renewable energy, especially Presidential Decree No. 112/2022, has not yet formulated clearly, how to reuse the assets that can be done or developed for affected communities through various kinds of development programs and community development.

There are at least two dimensions in planning post-decommissioning, namely, first the aspect of rebuilding from abandoned assets, for example in the context of PLTU early retirement, questions about how management of abandoned assets is the authority from the business entity that owns the assets. Second, development related to affected communities through a series of programs that need to be implemented.

In the aspect of reusing abandoned assets (re-purpose), it is necessary to look at the asset ownership first. In principle, existing PLTUs can be owned by the Purely State-Owned Company, Joint Venture State-Owned Enterprise and Private Business Entities, and Pure Private Business Entities. In PLTU business entities with joint venture ownership and pure private business entities, there are currently no regulations that provide signs and direction related to re-purposing that can be implemented. The policy of reusing existing PLTU assets depends on business decisions within each company organization. Meanwhile, the regulatory aspect is related to BUMN assets, the Minister of BUMN issues related regulations with procedures for write-off and transfer of fixed assets of state-owned enterprises. Generally, this regulation provides guidance on how to handle the unused/profitable assets that can be used, including the context of reusing PLTU assets. The main potential problem in this regulatory aspect is that the book write-offs orientation emphasizes on profit considerations. In some best practices, repurposing is not always oriented towards reuse of assets for purely commercial purposes, for example in the Redevelopment of the Ruhr area in Germany, some assets are even used for public community activities, art galleries and other social support facilities. However, in the regulations there

is also the opportunity, by using certain condition settings, to include energy transitions as Certain Conditions. Under certain circumstances, the reuse of these assets allows for a bigger flexibility. In the context of a reuse scheme in energy transition, the Minister of BUMN can determine specific policies related to these particular conditions.<sup>13</sup>

The second aspect is regional development, sometimes energy transition has an impact on the quiet regions. In the area of development, existing regulations can use a special development area model based on the provisions of existing laws and regulations. In some laws, these special areas may be given special preferences in the concept of redevelopment of an area, whether it's good for economic or strategic areas.<sup>14</sup> However, the development of an area into a special area requires a comprehensive political policy, this does not seem to have been accommodated in a special policy regarding energy transition.

Another important indicator in the closure of a coal-fired power plant is the early identification of technical needs, which includes identifying funding sources, expert techniques, and/or strategic partnerships to support early retirement and affected communities early on.

Different from the other four aspects mentioned above, the aspect of identifying sources of funding and financing, as well as partners, is in the framework for accelerating the clo-

13 Article 3 paragraphs (1) and (3) Regulation of the Minister of State-Owned Enterprises No. PER-02/MBU/2010 concerning Procedures for Write-Off and Transfer of Fixed Assets of State-Owned Enterprises.

14 See Law No. 26/2007 concerning Spatial Planning

sure of coal-fired power plants has been regulated in Presidential Decree 112/2022.<sup>15</sup> However, in the aspect of affected communities, this Presidential Decree does not provide a reference to carry out the technical aspects of risk mitigation for affected communities.

Looking at today's existing regulations, the interests and rights of the community still receive far less attention. In particular, community involvement (meaningful participation) in decision making regarding energy transition projects. This matter can be seen from the existence of special regulations regarding energy transition (closing coal-fired power plants), namely Presidential Decree 112/2022. These regulations stop at the technical matters in depth planning for early closure of the PLTU, and not touching aspects of community participation at all.

15 See Article 3, Article 27, Article 37, and Article 39 of Presidential Regulation No. 112 2022 concerning the Acceleration of Renewable Energy Development for Providing Electric Power.



# 5

## CONCLUSION

Based on the description above, several things can be concluded as follows:

1. This study shows that there are still some gaps between international standards related to employment protection with the existing regulatory framework in Indonesia. The gap at least can be seen through the aspect of social protection sustainable, where the normative provisions of social protection, in context, decline in its numbers after the implementation of the Job Creation Law. Second, on aspects of skills development and access, gaps that occur in implementation, where the research team did not see any integration between job training institutions, and industry and job placement systems managed by the Government. Third, The social dialogue aspect in this activity has not been a focus, this is indicated by the non-representation of the Ministry of Manpower as an element of the JETP Working Group. Apart from this, The current Job

Creation Law has provided disincentives, even hinder dialogue between employers and employees, by eliminating the authority of the Industrial Relations Court to determine termination of employment, so that the Job Creation Law has the potential to encourage unilateral termination of employment.

2. This study shows that there are still gaps in the aspect of protecting local communities with the current regulatory framework at the operational provisions level, which specifically regulates energy transition. There are no operational provisions which restates the rights and protection measures of affected communities. In general, existing laws and regulations have the potential to be ignored or its implementation deviates (implementation gap). On the level of general regulations, regulations in Indonesia contain complete information regarding community rights. The operational technical regulations in question are on the Presidential Decree Number 112 of 2022 concerning the Acceleration of Renewable Energy Development for the Supply of Electric Power. This Presidential Decree does not contain any clause that regulates directions related to the country's recognition of the rights of affected communities, along with risk mitigation. At a normative level, regulations can support the protection of affected communities. However, without any implementation documents for normative rights regulated in various regulations these laws, it can be ascertained operationalization of community protection is affected and risk mitigation is neglected.

**RECOMMENDATION**

Based on this, this study recommends:

1. The Government to revise Presidential Regulation No. 112/2022 concerning the Acceleration of Renewable Energy Development for Provision of Electrical Power, to accommodate protection and mitigation of affected communities;
2. Provide special protection by making operational policies related to encouraging protection of fair, appropriate employment rights with the standards outlined by the ILO. Specific attention must be given to workers who work without contracts; And
3. Minimize potential implementation gaps, between normative provisions related to the rights to public participation, and information transparency by issuing plans and guidance for implementing the energy transition at project level.



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