Job Creation Law’s Risks towards Investment Efficiency And Business Convenience Regarding the Environment

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Abstract

From the beginning, in the form of a Draft Law until it was issued and passed into a Law, the Omnibus Law Cipta Kerja caused a lot of controversy. Behind the efficiency of investment and convenience offered, UU Cipta Kerja is considered threaten environmental sustainability and risk weakening law enforcement related to the environment. Therefore, this study aims to analyze and describe the risks posed by the UU Cipta Kerja on the environment from a legal perspective. The type of research used by the writer is descriptive exploratory research with a qualitative approach that aims to describe the nature of something that is taking place when research is carried out and examine the causes of a particular phenomenon and to describe the state of a phenomenon. To obtain the desired method was carried out by means of a study using data from reading materials such as books and websites. So that the authors find it easy to find data and information needed from various sources.
A. Introduction

UU No. 11 Year 2020 Cipta Kerja adalah the first omnibus law passed in Indonesian law.1 The recently ratified Job Creation Law regulates at least 11 (eleven) clusters, including simplification of permits; investment requirements; employment; convenience, empowerment, and protection of MSMEs; ease of doing business; research and innovation support; government administration; imposition of sanctions; the land acquisition; investments and projects government; as well as economic area.2 The issuance of the Job Creation Law is has real the main instrument to encourage economic transformation and national economic recovery.3 The many overlapping laws in Indonesia are trying to be resolved through the Omnibus Law.

The presence and ratification of the Job Creation Law changed more than 70 regulations in the State of Indonesia, including the Environmental Protection and Management Law, and the Forestry Law.4 However, the Job Creation Law continues to be in the spotlight and even protests and criticisms from various parties. One of the reasons is because there is an assumption that the Job Creation Law is considered to have the potential to have a negative impact on the environment considered only concerned with investment and corporations and risks weakening law enforcement related to the environment.5 In the draft regulation which changes the permit-based approach to a risk-based approach, the Environmental Permit is no longer valid as a business license requirement.

In the midst of the threat of global warming and the climate crisis, the environment becomes the foundation and entry point for development. Companies in the world use environmental principles to stimulate the economy without affecting environmental disasters, and the costs of environmental disasters far exceed the price of economics and progress. In the forest and environment sector, according to the key issue, the monitoring is to determine the function of the forest to distinguish it from the category of forest area. Regulation of forest functions will protect forests in a sustainable manner even though circumstances change, without first determining forest functions, forest areas can be changed for various purposes. The Job Creation Law provides an opportunity to change the function of forest areas because they are too inclined to invest. One of the things that is a concern in the Job Creation Law is the environmental licensing regulations for business actors. Various provisions in the decree cut a lot of bureaucracy in investments that are related to the environment. Now, investment licensing is no longer uniform, but based on risk. Likewise, there are many changes in the AMDAL (Environmental Impact Analysis) assessment process.

The author examines the efficiency in the work copyright law which regulates the impact, risk of the presence of the work copyright law. This research is expected to be able to contribute to the formation, implementation, and feasibility of the work copyright law in terms of environmental risks. The novelty of this research is expected to make a significant contribution to the community, especially the government, to determine the impact and risk on environmental comfort.

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Moving on to the background that has been described, the problems to be discussed are formulated in questions as “What are the risks that arise to the environment due to investment efficiency and ease of doing business based on the Job Creation Act? In this article the author will use the method of writing through a qualitative approach and descriptive research.

B. Discussion

Since the drafting of the Job Creation Law, civil society organizations, environmental organizations, human rights, indigenous peoples' movements, communities, labor and other sectors have raised many objections and protests. Environmental organizations consider that the law can damage the environment. Several provisions in the law that guarantee environmental security have been removed on the pretext of facilitating investment.

As a small example, prior to the Employment Creation Act, companies had to apply for many permits related to environmental permits to carry out their business activities, but after the Employment Copyright Law was enacted, entrepreneurs only needed to take care of business permits. In the Job Creation Act, there is no longer any article concerning the company being required to apply for an environmental permit before operating. There are a number of crucial articles in the Ciptaker Law and the impact they have is quite worrying.

1. Comparison of the PPLH Law and the Job Creation Law

Since it was approved as a law, the Ciptaker Law has continued to receive rejection from various elements of society, both in terms of the process of its formation and its substance. One of the substances criticized is the regulation of the environmental sector in the Ciptaker Law which is considered no better than Law no. 32 of 2009 concerning Environmental Protection and Management (UU PPLH). The following is a comparison of the PPLH Law and the Job Creation Act:

a. Environmental Permit

   Article 40 PPLH Law
   1) Environmental permit is a requirement to obtain a business and/or activity permit.
   2) In the event that the environmental permit is revoked, the business and/or activity permit is cancelled.
   3) In the event that the business and/or activity undergoes a change, the person in charge of the business and/or activity is obliged to renew the environmental permit.

   However, in Article 40 of the Job Creation Law, the environmental permit has been removed.

b. Involvement in Amdal Preparation

   In the Job Creation Law, the preparation of the Environmental Impact Analysis (Amdal) document is considered to severely limit or narrow community participation or involvement in the context of optimal environmental protection. This is because the definition of the people involved is only limited to the people who are affected. Meanwhile, the previous PPLH Law that involved environmentalists or those who were influenced by various forms of decisions in the EIA process was omitted. The following reads Article 26 of the PPLH Law:
   1) The Amdal document as referred to in Article 22 is prepared by the initiator by involving the community.
   2) Community involvement must be carried out based on the principle of providing transparent and complete information and being notified before activities are carried out.
   3) The community as referred to in paragraph (1) includes:
      a) affected;
      b) environmentalists; and/or
      c) affected by all forms of decisions in the amdal process.
   4) The community as referred to in paragraph (1) may file an objection to the amdal document.

   Meanwhile, it reads in the Job Creation Law:
a) The EIA document as referred to in article 22 is prepared by the initiator by involving the community.

b) The preparation of the Amdal document is carried out by involving the community who are directly affected by the planned business and/or activity.

c) Further provisions regarding the process of community involvement as referred to in paragraph (2) shall be regulated in a government regulation.

c. B3 Waste Responsibilities

Article 88 of the Job Creation Law removes the part of absolute responsibility for losses that occur without proving the element of error. Article 88 of the PPLH Law reads: "Everyone whose actions, business, and/or activities use B3, generates and/or manages B3 waste, and/or poses a serious threat to the environment, is absolutely responsible for the losses that occur without the need for proof of elements error." Meanwhile, Article 88 of the Job Creation Law reads: "Everyone whose actions, business, and/or activities use B3, generates and/or manages B3 waste, and/or poses a serious threat to the environment, is absolutely responsible for the losses that occur from the business and/or its activities."

d. Freezing or Revocation of Permits

Articles governing the freezing and revocation of environmental permits were removed in the Omnibus Law on Job Creation. The following reads Article 79 of the PPLH Law: "The imposition of administrative sanctions in the form of freezing or revocation of environmental permits as referred to in Article 76 paragraph (2) letters c and d is carried out if the person in charge of the business and/or activity does not carry out government coercion." Meanwhile, Article 79 was deleted in the Job Creation Act.

2. Impact or Risks Incurred

The Job Creation Law has the potential to damage forests and the environment. The process of designating forest areas no longer goes through the stages of delimitation and determination. This condition, he said, threatens the existence and fulfillment of the rights of indigenous peoples, local communities, farmers and traditional fishermen.

This is because too much investment will result in changes to the licensing framework, weak environmental compliance monitoring, public consultation, and sanctions regimes. Article 22 of the "Law on Job Creation" makes major changes to Law no. 32 of 2009. This includes eliminating the authority of local governments to assess and determine the environmental impact assessment of companies. Coordination with local governments (e.g., electricity for natural gas and natural areas, special economic zones) is also cut off.

Amdal is no longer an absolute requirement for the issuance of environmental permits. Because according to the Copyright Act, a business license is only an administrative document. Similarly, the AMDAL becomes the due diligence team. The weakening of the role of the public (society) makes the government a "stigma". Environmental organizations have limited space to participate in environmental impact monitoring, and economic interests become more important, so environmental organizations that are not directly related to economic interests are marginalized.

From a legal perspective, Indonesia actually already has regulations that guarantee and protect the work of environmental defenders, namely Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH). Article 66 of the Law states that anyone who fights for the right to a good and healthy environment cannot be prosecuted criminally or be sued in a civil manner. However, the fact is that environmental defenders always experience physical violence and criminalization, both criminally and civilly. The presence of the Job Creation Law, which is a draconian law, which is a law that is more perceived as repression, abolition of rights, and more concerned with the power of its formation, is expected to exacerbate protection efforts for environmental defenders.
After the enactment of the 2020 Job Creation Law, the protection of environmental defenders will be weaker, mainly because:

a) Strengthening impunity for companies

The Job Creation Act is designed so that corporations or companies have 'impunity'. This means that companies that are proven to damage the environment or even engage in recruiting thugs will be less and less likely to be held accountable before the law. For example, environmental defenders will find it increasingly difficult to bring corporations involved in forest and land fires (karhutla) to justice.

b) Loss of public role.

In the Job Creation Law, an Environmental Impact Analysis (AMDAL) is not the basis for an environmental permit, but only an administrative document. In addition, the AMDAL Assessment Commission is a Feasibility Test Team that does not involve the role of local communities, environmental organizations and academics. The loss of public roles will add new conflicts and potentially increase the risk of intimidation, threats of criminalization, and violence in the affected communities.

c) Limited protection institutions for activists.

State administrative institutions such as the Witness and Victim Protection Agency (LPSK) and the National Human Rights Commission (Komnas HAM) have limited functions as supervisors of power. Apart from being unable to freely exercise their legal authority, these two institutions have minimal funding to carry out their functions to the fullest. This makes it difficult for environmental defenders with limited power and legal protection to advocate and demand environmental law enforcement.

The condition worsens when all permits no longer involve the role or participation of the community, including the granting or extension of plantation or mining permits. Authority is only in the hands of the central government. The Ciptaker Omnibus Law also seeks to eliminate public participation in determining environmental rights by removing environmental permits.

C. Conclusion

Since it was approved as a law, the Ciptaker Law has continued to receive a rejection from various elements of society, both in terms of the process of its formation and its substance. Due to excessive investment impacting changes in the licensing framework, weak monitoring of environmental compliance, public consultation, and the sanctions system, there are concerns about the environmental risk of the Ciptaker Law. The strengthening of impunity for companies, the loss of public roles, and the limited institutions for protecting activists are clear evidence of the weakening of protection for environmental defenders due to this. There is a high risk to the environment behind the investment efficiency and ease of doing business under the Job Creation Act. The community is the party most affected by environmental damage by regional changes. Community involvement in getting a getting healthy living environment is actuated in the Job Creation Law. The community also urges the Government to continue to disseminate environmental licensing based on the Job Creation Law so that there are no misinformation and interpretations that further trigger public concerns about environmental sustainability. The government should also immediately compile implementing regulations, including PP regarding risk-based Business Licensing, environmental feasibility tests, and the process of community involvement in the preparation of environmental permits.
Bibliography.


B. Internet

