



Formulation and Implications of the Job Creation Law on Legal Protection in Indonesia's Forestry Sector

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Abstract

The forestry sector is significantly impacted by the Job Creation Law, which alters the legal framework governing the sector. This paper explores the formulation of forestry policies under the Job Creation Law and examines its implications for forest protection in Indonesia. A normative juridical research method is employed, focusing on the analysis of relevant theories, doctrines, and statutory regulations. Key changes in forestry sector regulations include the confirmation of forest areas, determination of forest area size, modifications to the designation and function of forest areas, the utilization of production and protected forests, business permits, non-tax state revenues (PNBP), use of forest areas outside forestry activities, and the roles of central and regional governments in forest protection. Additionally, the law revises prohibitions on activities leading to forest destruction and adjusts sanctions and procedural laws concerning forest-related criminal cases. These changes raise concerns regarding the potential for increased forest area conversion, reduced community involvement in forest management, and weakened sanctions,



particularly the removal of absolute liability, which may undermine effective forest protection.

A. Introduction

The Omnibus Law on Job Creation originated from the administration of President Joko Widodo and was formally proposed on February 13, 2020. The concept first gained public attention during Widodo's presidential inauguration speech on October 20, 2019.¹ Designed to address conflicts and disharmony between existing statutory regulations², the omnibus law approach aimed to streamline Indonesia's complex legal framework. However, from its proposal to its enactment, the Job Creation Law faced significant criticism and widespread public opposition, largely due to perceptions that the legislative process was rushed and lacked adequate public consultation.

Proponents argue that the Job Creation Law supports strategic policies in job creation and investment³ by enhancing economic productivity, facilitating investment, and creating new employment opportunities. Conversely, critics contend that the law disproportionately favors political elites and business interests, risks the exploitation of natural resources, and neglects broader public interests.⁴

Despite controversy, the Job Creation Law was officially enacted on October 5, 2020, as Law Number 11 of 2020. It consolidated and amended approximately 70 existing laws to promote investment and employment. Notably, it revised key environmental regulations⁵, including Law Number 41 of 1999 (Forestry Law) as amended by Law Number 1 of 2004, and Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction (PPPH Law).

The adoption of the omnibus method was not arbitrary but based on the objective of realizing a just and prosperous Indonesian society. In the forestry sector, revisions sought to simplify complex licensing processes and promote sustainable forest management. The subsequent enactment of Law Number 6 of 2023 further addressed forestry issues by recognizing social forestry, granting forest management rights to small communities, imposing stricter sanctions on illegal corporate activities, streamlining business permits, and empowering the government to revoke permits for environmental violations. The law emphasizes the integration of bio-geophysical and sociological considerations in forest management and aims to resolve forest area conflicts, protect community interests, enhance the welfare of smallholders, and mitigate environmental degradation.

The forestry sector has its licensing and investment requirements simplified under the Job Creation Law. Given that the law also amends the fundamental legal framework governing forestry, it is important to examine the policy formulations introduced by the Job Creation Law and their implications for forest protection in Indonesia. This research focuses on the aspect of law enforcement, which is understood as the promotion of the rule of law, the prevention of illegal forest destruction, and the mitigation of corruption and money laundering within the

¹ Adhi Setyo Prabowo, "Andhika Nugraha Triputra, dan Yoyok Junaidi, Politik Hukum Omnibus Law Di Indonesia", JurnalPamator, Vol. 13, No. 1, 2020, p. 1.

² Bayu Jati Jatmika, "Asas Hukum Sebagai Pengobat Hukum: Implikasi Penerapan Omnibus Law", Jurnal Audit danAkuntansi Fakultas Ekonomi dan Bisnis Universitas Tanjungpura, Vol. 9, No. 1, 2020, p. 52.

³ Mohammad Orinaldi, "Relasi Antara Omnibus Law Di Era Pandemi Covid-19 Dan Perekonomian Di Indonesia", JurnalManajemen dan Sains, Vol. 5, No. 2, 2020, p. 269-270.

⁴ *Ibid.*, p. 269.

⁵ Ima Mayasari, "Kebijakan Reformasi Regulasi Melalui Implementasi Omnibus Law Di Indonesia", Jurnal Rechtsvinding, Vol. 9, No. 1, 2020, p. 2.

forestry and natural resources sectors. Law enforcement in this context also encompasses the effective implementation of legal sanctions against violators, the empowerment of forest rangers and civil investigators, and the strengthening of the capacity of law enforcement agencies and courts to detect, prosecute, and sanction forest-related offenses.

B. Research Methodology

To identify, explore, and analyze the research problem, appropriate research methods were employed. This research utilizes both normative juridical and empirical juridical approaches. The normative juridical method involves the review and analysis of relevant theories, doctrines, and statutory regulations, while the empirical juridical method includes interviews to gather supporting data. Data sources for this research comprise interviews and literature studies, including books, journal articles, regulations, magazines, and other credible references. The collected data were processed through description, prescription, and systematization methods, and subsequently analyzed using qualitative descriptive analysis.

C. Results and Discussion

1. Forestry Sector Policy Formulation in the Job Creation Law

On October 5, 2020, the House of Representatives officially enacted Law Number 11 of 2020, known as the Omnibus Law on Job Creation. This law substantially amends the legal framework governing the forestry sector, previously regulated under the Forestry Law and the PPPH Law. Aimed at simplifying business licensing and facilitating investment in the forestry sector, the Job Creation Law revises several key provisions. These include the determination and extent of forest areas, changes in the designation and function of forest areas, the utilization of production and protected forests, business permit procedures, non-tax state revenue regulations, the use of forest areas for non-forestry activities, the division of authority between central and regional governments in forest protection, prohibitions against activities leading to forest destruction, and the imposition of sanctions and procedural rules for criminal offenses related to forest destruction.

a. Confirmation of Forest Areas

The confirmation of a forest area refers to the government's determination of a specific area to be maintained as a permanent forest.⁶ The Job Creation Law introduces new norms regarding the use of information technology, geographic coordinates, and satellite imagery in the confirmation process, innovations not previously regulated under the Forestry Law. Specifically, the Job Creation Law supplements Article 15 of the Forestry Law by adding paragraphs (3), (4), and (5). Article 15 paragraph (3) mandates the use of information technology and geographic or satellite coordinates for forest area confirmation, offering a more cost-effective alternative to traditional terrestrial surveys. Article 15 paragraph (4) emphasizes the central government's responsibility to prioritize the acceleration of forest area confirmation in strategic regions, while paragraph (5) further elaborates on prioritization criteria for this acceleration.

b. Forest Area Extent

One of the key changes introduced by the Job Creation Law concerns the determination of

⁶ Article 1 paragraph (3) Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan.

forest area size. Under the new framework, the minimum forest area is no longer based on a fixed percentage, but instead on the characteristics, geophysical principles, and the supporting capability and capacity of the land. Previously, Article 18 paragraph (2) of the Forestry Law mandated that at least 30% of the area of river basins and/or islands must be maintained as forest, with a proportional distribution. Following the enactment of the Job Creation Law, forest area requirements are now determined based on the physical and geographical conditions of the respective river basins and/or islands, as stipulated in the amended Article 18 paragraph (2).

c. Business Permit for Utilization of Protected Forests and Production Forests\

The Job Creation Law simplifies the licensing system for the use of protected and production forests. Under Article 26 paragraph (2) of the Forestry Law, permits for protected forest use previously consisted of three categories: business permits for area use, environmental service utilization, and non-timber forest product collection. The Job Creation Law consolidates these into a single business permit issued exclusively by the central government. Similarly, production forest utilization, which under Article 28 paragraph (2) of the Forestry Law required multiple permits—covering area utilization, environmental services, timber and non-timber product utilization, and product collection—is now streamlined into a single business permit issued by the central government. Despite this simplification, the Job Creation Law maintains business permit holders' responsibility for forest conservation, as Article 32 obliges them to safeguard, maintain, and preserve the forests under their management.

d. Non-Tax State Revenue in the Forestry Sector

Non-Tax State Revenue (*PNBP*) refers to state income that is neither categorized as nor regulated under tax laws, with proceeds directly entering the state treasury and managed through the State Revenue and Expenditure Budget (*APBN*). In the forestry sector, *PNBP* primarily consists of royalties for forest use.⁷ Pursuant to Article 35 paragraph (1) of the Forestry Law, forestry sector *PNBP* includes business permit fees, provisions, reforestation funds, and job guarantee funds. Business permit holders are required to pay fees calculated based on the work area's size and government-stipulated rates. Provisions are levied on timber and non-timber forest products harvested from state forests or government-financed areas, based on logging cruising results or production reports. Similarly, reforestation funds are collected for timber products based on logging activities. Unlike the Forestry Law, which specifies *PNBP* types, the Job Creation Law merely mandates that business permit holders are subject to *PNBP* obligations without detailing the specific types. However, the Job Creation Law introduces a notable advancement by explicitly allocating reforestation funds for forest and land rehabilitation, a provision not previously regulated under the Forestry Law.

Provisions are determined based on the results of annual logging cruising or proposed reports on logging or production results. Reforestation funds are imposed on every timber forest product produced by forest utilization business permit holders. Similar to provisions, reforestation funds are determined based on the results of annual logging cruising or proposed reports on logging or production results.⁸ In contrast to the provisions of the Forestry Law which determine the type of Non-Tax State Revenue (*PNBP*) in the forestry.⁹

⁷ Wahyu Yun Santoso dan Adrianto Dwi Nugroho, "Pemanfaatan Penerimaan Negara Bukan Pajak di Bidang kehutanandalam Melestarikan Fungsi Lingkungan", *Mimbar Hukum*, Vol. 21, No. 3, 2009, p. 555.

⁸ Article 35 paragraph (1) Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja.

⁹ Article 35 paragraph (2) Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja

e. Utilization of Forest Areas Outside of Forestry Activities

Forest resources have significant potential to enhance public welfare, provided that their utilization respects the forests' inherent vulnerability, characteristics, and fundamental functions. The use of forest resources must align with their principal roles, namely exploration, sustainability, protection, production, and conservation. To maintain forest quality, ideally, forest areas should not be used for activities outside the forestry sector.¹⁰ However, normatively, current forestry legislation does not prohibit such use. Article 38 paragraph (1) of the Forestry Law stipulates that production and protected forest areas may be used for development activities outside forestry, provided that such use does not alter the forest's function.¹¹ The use of forest areas for non-forestry development is permitted through the issuance of a borrow-to-use permit by the minister for a specified period, as implicitly regulated under Article 38 paragraph (3) of the Forestry Law. Following the enactment of the Omnibus Law on Job Creation, borrow-to-use permits for development activities outside the forestry sector can now be granted across all sectors, including mining. Unlike the Forestry Law, the Omnibus Law does not specifically regulate borrow-to-use permits for mining purposes, thereby generalizing the authorization process across various sectors.

f. Central and Regional Government Authorities in Forest Protection

The Forestry Law adheres to a centralized approach regarding forest protection. According to Article 48, the central government holds exclusive authority over the protection of both state forests and forests within designated areas, with no role granted to local governments. However, with the enactment of the Job Creation Law, forest protection responsibilities have been decentralized. Regional governments are now granted the authority to protect forest areas, though their actions remain subject to central government decisions. Under the Job Creation Law, both the central and regional governments are responsible for forest protection, with the execution guided by norms, standards, procedures, and criteria set by the central government.¹²

g. Prohibition of Activities that Cause Forest Damage

Before the enactment of the Job Creation Law, prohibited activities in forest areas were regulated under the Forestry Law. Article 50 of the Forestry Law outlines the general activities prohibited in forest areas, including:

1. Destruction of forest protection facilities and infrastructure;
2. Actions that lead to forest damage;
3. Illegal occupation, use, or work within forest areas;
4. Encroachment on forest areas and unauthorized tree felling;
5. Forest fires;
6. Unauthorized cutting or collection of forest products;
7. Engaging in economic transactions involving forest products suspected to be illegally sourced;
8. Mining exploration and exploitation in forest areas without proper permits;
9. Transporting, controlling, or possessing forest products without legal certification;
10. Grazing livestock in areas not designated for such activities by authorized officials;
11. Use of heavy equipment or other tools suspected to be used for transporting forest products within the forest area without official permission;

¹⁰ Irfani, "Disharmoni Pengaturan Tata Kelola Kawasan Hutan di Indonesia", *Al' Adl*, Vol. 7, No. 14, 2015, p. 88.

¹¹ Article 38 paragraph (3) Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan menyatakan penggunaan kawasan hutan untuk kepentingan pertambangan dilakukan melalui pemberian izin pinjam pakai oleh Menteri dengan mempertimbangkan batasan luas dan jangka waktu tertentu serta kelestarian lingkungan.

¹² Paragraph (4) Article 48 Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja.

12. Possession of tools typically used for felling, trimming, or splitting trees within forest areas without permission;
13. Disposing of items that could cause fire, damage, or endanger the integrity of forest functions;
14. Removal, transportation, or trading of non-protected plants and wildlife from forest areas without authorization.

The Job Creation Law has led to the removal of several prohibitions in forest areas that were previously regulated under the Forestry Law. The following prohibitions are no longer explicitly regulated in the Job Creation Law:

- 1) Prohibition of damaging forest protection facilities and infrastructure;
- 2) Encroaching on forest areas;
- 3) Cutting down trees beyond the specified radius;
- 4) Receiving, buying, selling, exchanging, accepting deposits, or possessing forest products that are known or reasonably suspected to be sourced illegally from forest areas;
- 5) Conducting general investigations or mining exploration and exploitation within forest areas without proper authorization;
- 6) Transporting, controlling, or possessing forest products without legal certificates;
- 7) Using heavy equipment or other tools suspected to be used for transporting forest products within forest areas without the permission of authorized officials;
- 8) Possessing tools commonly used for felling, trimming, or splitting trees within forest areas without official permission.

This simplification of prohibitions under the Job Creation Law has raised concerns about the potential risks. Removing these detailed prohibitions could lead to the opening for irresponsible parties to engage in activities that might harm the sustainability of forests and their resources.

h. Imposition of Sanctions and Procedural Laws for Criminal Forest Destruction Cases

The primary modification in sanctions for forest destruction following the enactment of the Job Creation Law pertains to individuals residing in or near forests for a minimum of five consecutive years. Under Articles 50 and 51 of the Job Creation Law, an additional provision, Article 50A, has been introduced. This article establishes exceptions for violations committed by individuals who have lived in or around forests for at least five consecutive years. According to Article 50A, such individuals are exempt from criminal sanctions and are only subject to administrative penalties. The application of these sanctions presents a dilemma. On one hand, the emphasis on administrative sanctions may limit the capacity of law enforcement to create a deterrent effect against forest destruction, potentially increasing the risk of further environmental degradation. On the other hand, administrative sanctions could facilitate environmental restoration, provided they are adhered to by the perpetrators. However, non-compliance with these sanctions could exacerbate environmental harm.¹³

2. Implications of the Job Creation Law for Indonesian Forest Protection

Legislation Number 11 of 2020, known as the Job Creation Law, was drafted using the Omnibus Law concept and aims to integrate 79 laws governing various sectors. The use of the Omnibus Law approach in drafting the Job Creation Law seeks to address the complexity of investment processes in Indonesia. It is anticipated that this approach will offer several benefits,

¹³ Mashuril Anwar, "Paradigma Holistik Kontradiksi Asas Ultimatum Remedium Terhadap Asas Legalitas Dalam Penegakan Hukum Pidana Lingkungan", *Administrative and Environmental Law Review*, Vol. 1, No. 1, 2020, p. 41.

such as simplifying investment licensing and expanding employment opportunities. Law No. 6 of 2023, which amends the Job Creation Law, specifically addresses the simplification of investment requirements, including the introduction of risk-based business licensing

Risk-Based Business Licensing

- a. Risk-based business licensing is determined based on the risk level and business scale of the activities involved.
- b. This law aims to accelerate the growth of the business and investment climate, so that Indonesia can become a developed country.
- c. Forest Utilization Licensing
- d. Holders of Forest Utilization business licenses can obtain partnership approval.
- e. This partnership approval is given to utilize forests in Protected Forest areas or Production Forest areas.
- f. Forest Utilization business licenses and Forest Product Processing Business Licenses can be submitted in hardcopy and softcopy formats.
- g. Forest Area Use Approval (PPKH)
- h. PPKH is an approval for the use of part of a forest area for development purposes outside of forestry activities.
- i. PPKH does not change the function and designation of forest areas

The Forestry Law, which is one of the regulations impacted by the enactment of the Job Creation Law, has undergone amendments and additions to eight provisions. These changes generally have adverse effects on the law's implementation. Three key aspects affected by these revisions are the function of forest areas, community participation, and the provisions for sanctions. These aspects will be discussed in detail below.

a. Increasing the Conversion of Forest Area

While the Job Creation Law facilitates investment, it poses significant risks to forest sustainability. Notably, it removes the previous requirement to maintain at least 30% of forest area, now instead basing forest preservation on the physical and geographical conditions of river basins and/or islands.¹⁴ This lack of a minimum threshold increases the potential for large-scale forest conversion for investment purposes, leading to unchecked exploitation of natural resources and destruction of wildlife habitats.¹⁵ Land conversion will also reduce green spaces and diminish agricultural areas, such as plantations and rice fields.¹⁶

Interview findings suggest that the Job Creation Law will not positively impact forestry policy in Indonesia. Its focus on economic growth and investment tends to eliminate obstacles to investment, including environmental protections. The removal of the 30% minimum forest preservation rule, coupled with development activities that disregard spatial planning and an exclusive Environmental Feasibility Test Team, further exacerbates these issues.

Furthermore, while Law 18/2013 was designed to address gaps in corporate accountability

¹⁴ Ady Thea DA, Omnibus Law Juga Berpotensi Mengancam Habitat Satwa, <https://www.hukumonline.com/berita/baca/lt5e39af27858cb/omnibus-law-juga-berpotensi-mengancam-habitat-satwa/>, 5 Februari 2020.

¹⁵ Budi Sastra Panjaitan, "Pengadilan Land Reform Sebagai Wadah Penyelesaian Kasus Pertanahan, *Justitia Jurnal Hukum*, Vol. 4, No. 1, 2020, p. 20.

¹⁶ Adam Maulana, "Memberdayakan Rencana Detail Tata Ruang (RDTR) Kawasan Strategis Hutan Lindung Sungai Waindan Sungai Manggar Tahun 2015-2035 dalam Mereduksi Ancaman Kelestarian Lingkungan", *Jurnal Wilayah dan Lingkungan*, Vol. 4, No. 2, 2016, p. 128.

under Law 41/1999, it has been poorly implemented. The law primarily targets individuals, even those who should be protected by it. Inconsistent oversight by the Indonesian House of Representatives (*DPR*) has allowed the issuance of a Government Regulation (PP) that legalized plantation permits in forest areas, despite a Supreme Court ruling (Decision Number 77 P/HUM/2019) annulling such permits.

The Job Creation Law has further undermined the Forestry Law and the P3H Law, particularly in relation to palm oil amnesty within forest areas. Law No. 6 of 2023, which formalized Perppu No. 2 of 2022 on Job Creation, amends provisions of Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction. Notably, it introduces Articles 110A and 110B, which effectively offer a three-year window for entrepreneurs operating in forest areas to obtain the necessary permits. Violations of these provisions are subject to administrative rather than criminal sanctions. These articles effectively provide amnesty to those engaged in forestry-related offenses.

The government has expedited the amnesty process, as evidenced by the Ministry of Environment and Forestry's (*LHK*) issuance of Decree (SK) XI. This decree outlines the business activities operating in forest areas without proper permits, identifying 890 legal entities, most of which are palm oil companies (531), followed by mining companies (175), and other individuals, cooperatives, and farmer groups. Earlier decrees (SK 1-7) issued by the Minister of *LHK* identified a total of 1,192 legal subjects, including 616 palm oil corporations, 130 mining companies, 241 individuals and groups involved in palm oil plantation activities, and 205 other business units.

b. Limiting Community Participation in Forest Management Plans

Communities play a key role in forest protection¹⁷, but the Job Creation Law weakens provisions ensuring their active involvement. It removes the requirement for community participation to be based on transparency and complete information, as outlined in Article 26 of the *PPLH* Law. This omission risks reducing public involvement to a mere formality, without ensuring that information is fully accessible and transparent.

Article 39 of the Job Creation Law mandates that environmental feasibility decisions be announced through an electronic system or other means determined by the Central Government. In regions like Tanah Papua, where infrastructure is limited and internet access is scarce, local governments are better suited to share information, thus limiting access for Customary Law Communities (*MHA*) to vital forest management data.

The elimination of the 30% minimum forest preservation requirement is another concern. Article 36, point 2, amends Article 18, paragraph (2) of the Forestry Law, allowing the Central Government to determine the area to be preserved based on river basins and islands' conditions. This change disregards the existing policy, which required 30% forest preservation in each province, including eight provinces (e.g., Lampung) where forest coverage is already below this threshold.

c. Weakening of Sanctions (Abolition of Absolute Liability)

The Job Creation Law prioritizes administrative sanctions and adopts the principle of *ultimum remedium*, where criminal sanctions are reserved as a last resort in law enforcement.²² The "strict liability" in the law removes the clause "without the need to prove elements of error." This omission weakens the application of strict liability by introducing potential ambiguity in its implementation. It also risks undermining the deterrent effect for corporations committing

¹⁷ Lidya Suryani Widparaghi, "Ultimum Remedium dalam Bidang Lingkungan Hidup", Jurnal Hukum IUS QUIA IUSTUM, Vol. 22, No. 1, 2015, p. 2.

violations, as the absence of this provision could be used to avoid accountability.

Furthermore, the Job Creation Law removes the exception for land clearing by burning based on local wisdom, which was previously stated in Article 69(2) of the *PPLH* Law. Under this provision, land burning was allowed for a maximum area of 2 hectares per household to plant local varieties, with fire breaks in place. The elimination of this exception may lead to an increase in forest fires, particularly in Papua, threatening its original natural forests, which are rich in unknown biodiversity, vital to indigenous communities, and a source of local income.

D. Conclusion

The Job Creation Law introduces several changes to the forestry sector. It modifies the confirmation of forest areas by incorporating norms related to the use of information technology, geographic coordinates, and satellites. In terms of forest area size, the law shifts from a percentage-based requirement to one determined by characteristics, geophysical principles, and supporting capabilities. Additionally, the law simplifies licensing processes for the use of protected and production forests.

In the realm of Non-Tax State Revenue (*PNBP*), the Job Creation Law does not explicitly define the types of *PNBP* within the forestry sector but clearly allocates reforestation funds for forest and land rehabilitation. Concerning forest area use outside of forestry activities, the law omits specific regulations for borrow-to-use permits for mining, as outlined in the Forestry Law.

The authority of both central and regional governments is also altered by the Job Creation Law. While regional governments are granted authority to protect forest areas, this is still contingent upon central government decisions. The law eliminates several prohibitions previously specified in the Forestry Law, but also introduces a categorization of sanctions for communities around forest areas. These changes have significant implications for forest protection, including increased forest area conversion, reduced community involvement in forest management, and the weakening of sanctions, such as the removal of absolute liability.

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