

## Why the Job Creation Law Matters in Human Rights

Al Khanif, The Centre for Human Rights, Multiculturalism, and Migration (CHRM2)

One of the primary causes of environmental damages in Indonesia is the ineffectiveness of regulations which inhibit land conversion, forest destruction, and environmental pollution. Key examples of this are Law Number 32/2009 concerning Environmental Protection and Management and Law Number 41/2009 regarding the Protection of Sustainable Agricultural Land have been unable to sustain ecological balance. The scale of illegal logging, forest burning, mining exploration, and massive housing projects have proved to overpower current regulations which attempt to combat the environmental crisis. This crisis has exacerbated the marginalization of indigenous people who rely on the environment as an integral part of their identity and community.<sup>1</sup> If not properly anticipated, the environmental crisis will not only accelerate global warming and an acute ecological crisis, but also endanger the survival of those who rely on the environment for life.

The decision to enact the Government Decree (Perppu) Number 2/2022 to replace the Law Number 11/2020 on Job Creation Law demonstrates that some articles of the Job Creation Law which threaten environmental damage are not being taken seriously by the Government of Indonesia. Article 26 of the Job Creation Law, which limits community engagement during the preparation of the Environmental Impact Analysis (EIA), has not been updated in Perppu No. 2/2022. Both regulations stipulate that only directly affected communities will be involved in the EIA process. This arrangement differs from Article 26 of Law no. 32/2009 which stipulates that there are three criteria for people who must be involved in an EIA: (i) people directly affected; (ii) environmentalists; and (iii) people who are affected by decisions in the EIA process. The objective of the involvement of these three kinds of groups in the EIA is that all business sectors should consider human rights risks on a par with commercial rights, as stipulated by Stefanus Mere and Otto Gusti Madung in this volume.<sup>2</sup>

The disappearance of community categories involved in the preparation of the EIA demonstrates how the two regulations limit community rights to have sufficient

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1 Ditta Wisnu, "Food Estate Program Law Politics" (2022) 2:1 J Contemp Sociol Issues 76-91 at 83.

2 Stefanus Mere & Otto Gusti Ndedong Madung, "Disruptions and Corporate Human Rights Responsibility" (2022) 6:2 J Southeast Asian Hum Rights 277-298.

access to information and meaningful participation in the policy making process.<sup>3</sup> The communities who are affected by EIA decisions are not fully included in the definition of the "community" as a group who have the right to participate in preparing the EIA version of the Job Creation Law. The absence of environmental observers, including environmental experts and organizations, contributes to the marginalisation of these communities by rendering them politically and legally weak and inferior. Reducing the involvement of communities can be considered a limitation in terms of community engagement which must be accounted for by the business sector to ensure that business exploration respects human rights and human dignity.<sup>4</sup> For example, indigenous peoples and other politically and legally marginalised groups require special assistance from environmental experts, professionals, and environmental activists when preparing an EIA.

The government must realise that these two regulations aimed at improving economic competitiveness and the investment climate in Indonesia also have potential to negatively impact the environment and the communities whose culture and survival directly rely on it. Both Perppu and the Job Creation Law are too lenient and favour business sectors by guaranteeing cheap labour in an easy investment climate without regard for the negative impact on the environment and local communities. In fact, these regulations do not guarantee an increase in the sustainability of investment despite the expansion of business convenience.

Several articles in the Job Creation Law and the Perppu have changed or eliminated previously established norms in Law No. 32/2009 which intended to balance the investment climate with environmental protection. The new articles related to business licensing do not place environmental sustainability and preservation as a priority in Indonesia's economic policy. Changes to the utilization and simplification of the business permit system through the elimination of strategic areas and the criteria for at least 30 percent forest area of watershed or land, as stipulated in Law Number 26/2007 concerning Spatial Planning endangers the preservation of ecological functions which, in turn, impacts on human.<sup>5</sup> Elimination of these minimum provisions certainly has the potential to trigger land conversion and massive environmental damage throughout Indonesia. Additionally, the mass exploitation of forests and land will also threaten the survival of those communities who rely on the natural environment for their survival.<sup>6</sup>

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3 Inna Junaenah, Abd Shukor Mohd Yunus & Normawati Hashim, "Adequacy of Public Information for Meaningful E-Participation in Policy-Making" (2022) 6:2J Southeast Asian Hum Rights 153-181.

4 Abubakar Eby Hara, Suyani Indriastuti & Agus Trihartono, "Beyond the Global Agenda" (2022) 6:2J Southeast Asian Hum Rights 204-225.

5 *Catatan Kritis terhadap UU No. 11 Tahun 2020 tentang Cipta Kerja*, by Sigit Riyanto et al, Kertas Kebijakan 2 (Yogyakarta: Universitas Gadjah Mada, 2020) at 5.

6 Jong, *supra* note 2.

The experience of Wadas Village residents in Purworejo, Central Java who have been fighting against mining activities for years is critical evidence of how marginalised communities have struggled to access justice. In February 2022, Wadas residents staged a protest against the issuance of a mining approval letter by the Director General of Mineral and Coal which permitted quarry mining site in Wadas Village. The letter was contradicted to the EIA and Law No. 3/2020 Mineral and Coals which asserts that the Wadas mining area should be a rock mining area. It is not for an andesite Quarry mining area used for the construction of the Bener Reservoir.<sup>7</sup> Bener Reservoir was one of the National Strategic Programs (PSN) since 2018.

The PSN is often used by the government to justify exploitation of the environment in the name of the public interest. Unfortunately, PSN also often ignores environmental sustainability commitments and the rights of marginalized groups, including indigenous peoples and local communities. As such, it can be concluded that the stipulation of the aforementioned regulations, though intended to facilitate high economic growth, is not representative of ‘progress’ but rather a setback for economic development with regard to their human rights duties. At the core of human rights, all human beings depend on a healthy, safe, clean, and sustainable environment to ensure the enjoyment of a wide range of basic and fundamental rights such as the right to life, adequate living, water, food and free from the threat of global warming.

According to this argument, the Journal of Southeast Asian Human Rights has selected eight articles that represent the current situation of human rights in Southeast Asia. It has, as always, been very hard to select the best articles. That is why the editorial office is proud to have Cecilia Esterline, Maya Jasmine White, Alexandria Kohls, Alex Cameroon who have always been very helpful for language clarity. The editor is also thankful to have a very thorough copy editor, Cindy Claudia Putri, who has always worked hard to ensure that the articles are of the highest quality by ensuring the accuracy of reference citations.

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7 WALHI, <<https://walhi-jogja.or.id/index.php/2022/02/26/aksi-warga-wadas-datangi-kantor-esdm-menantang-surat-persetujuan-pertambangan-oleh-dirjen-minerba/>>