The Relationship between Land Law, Investment and Environment Post Job Creation Law

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Abstract

The purpose of this research is to find out the relationship between land law, investment and the environment after the existence of the Job Creation Law. The research method used is a normative research method, using a statutory approach related to issues of land law, investment and sustainable environment after Law Number 11 of 2020 concerning Job Creation. The data sources used are primary and secondary data. Data collection through library research and research, then analyzed qualitatively. The results of the study show that Indonesia is a country that asserts itself as an agricultural country that places land in a very important position. This is expressly stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which is spelled out in Law no. 5 of 1960 (UUPA) concerning Basic Agrarian Regulations. The BAL does not provide a clear definition of land law, but legal experts (land) agree to provide an understanding of the meaning of law, namely land law is the field of law that regulates land tenure rights. Land law has a very close relationship with environmental law. In investing, investors are required to maintain environmental sustainability in Indonesia. Every investor, especially foreign investors, is given the right to use land rights in Indonesia, including building use rights (HGB), business use rights (HGU) and usage rights (HP). The Constitutional Court's ruling, especially regarding land clusters, suggests that several land policies should be suspended in the hope that the government will immediately improve the Job Creation Law (Law Number 11 of 2020). The Job Creation Law has a very broad impact on various sectors such as research and innovation, land, government administration and the environment, the agricultural and forestry sectors are no exception.

Keywords*: land law, international investment, and job creation law.*

JEL Classification: K22, K32

1. Introduction

Before discussing the connection between „the Relationship between Land Law, Investment and Environment Post Job Creation Law" with the environmental structure in which the law applies, first, we must look at the role of the Indonesian Country. As a country that asserts itself as an Agrarian Country which puts land in a very important position. Land is quite important that the constitution mandates the state to protect it. This is stated explicitly in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which affirms that: „Earth, water and the natural riches contained therein, shall be controlled by the state and used for the greatest welfare of the people." The constitutional mandate has entrusted that everything related to land as part of the earth, water and natural resources contained therein in Indonesia must and required to

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be managed and utilized for the greatest prosperity of the Indonesian people.

Law No. 5 Year 1960 concerning Basic Regulations of Agrarian Principles is an elaboration of the objectives and legal principles of Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia as well as the source for the development of policies and legislation of the national land. Next, the UUPA (Basic Agrarian Law) with the principles attached is directed at ensuring the realization of prosperity for all Indonesian people, especially those who are weak and marginalized by land policies in the past.[3] With the principles intended to ensure the realization of these objectives, the UUPA can be placed as a progressive law.[4]

As a progressive law, the UUPA is intended as an instrument to create changes in society that are advanced in their economic field through the arrangement of land ownership structures, which on one hand pushing toward changes in agriculture and industry that are increasingly advanced but without neglecting justice in the sense of creating equal distribution of land ownership. Although the UUPA does not provide a clear definition on land law, but the (land) law scholars agree to provide an understanding of the meaning of law, including the land law, among others: Land Law is a field of law that regulates land tenure rights. Tenure rights are rights that give authority to the right holder to act with the land they control.[5] Another opinion says that the land law is part of the agrarian law, because the agrarian law itself consists of the law of earth (land), water and space.[6]

Land Law is the entirety of legal regulations in the field of land that regulate rights and obligations originating from the rights of individuals and legal entities regarding the land that they control or own.[7] Land Law can also be referred to as the law of land, which basically can be found in Article 4 paragraph (1) of the UUPA. Land in a juridical sense is the surface of the earth, while land rights are rights to a certain portion of the earth's surface which has borders, two-dimensional with length and width. The object of land law is the right of control over land, meaning rights that contain a series of power, obligations and/or prohibitions for the holder of the right to do something about the land to which he is entitled. Land law is the whole legal regulations both written and unwritten that regulate ownership rights over land which constitutes concrete legal institutions and relationships.[8]

The Agrarian Law through the Basic Agrarian Law Year 1960 states that everyone is responsible for preserving the environment on agrarian lands, but does not explicitly regulate how to protect and manage the environment. In Article 15 which reads „to take care of the land, including to improve its fertility and to prevent it from damage is the obligation of every person, legal entity or agency that has a legal relationship with the stated land, taking into account the economically weak party", only explain about regulating the obligation to preserve land. The procedure for preventing environmental damage is not explained in more detail in the explanation of the UUPA.

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[3] Maria Sumarjon, *Reorientasi kebijakan Pertanaha*n, Jakarta: Penerbit Kompas, 2006, p. 31.

[4] Satjipto Rahardjo, *Hukum Progresif, Penjelajahan Suatu Gagasan*, Majalah Neweslatter: Kajian Hukum Ekonomi dan Bisnis, 2004, p. 59.

[5] Yudhi Setiawan, *Hukum Pertanahan Teori dan Praktek*, Malang: Bayumedia, 2010, p. 2.

[6] Mudzakir Syah, *Dasar-Dasar Pembebasan Tanah Untuk Kepentingan Umum*, Jakarta: Jala Pratama, 2007, p. 8.

[7] Ali Hamzah, *Hukum Pertnahan*, Jakarta: Prestasi Pusataka, 2002, p. 10.

[8] Urip Santoso, *Hukum Agrari Kajian Komprehensif*, Jakarta: Prenadamedia Group, 2015, p. 7.

2. Research methods

The method used in this study uses the normative juridical method, this normative juridical method is also called the doctrinal research method which looks at the purpose of law, the value of justice, legal validity, legal concepts and legal norms. This normative juridical method is a method that prioritizes library materials or can be said as primary legal materials such as positive law and supporting legal theory. Apart from that, normative juridical research methods also place more emphasis on library research and see how it is implemented. This study uses Primary Legal Materials (consisting of laws and regulations, official treatises, and official documents consisting of civil law books, basic agrarian code books, law no. 11 of 2020 work copyright law), legal materials Secondary (consisting of law books, legal journals containing basic principles (legal principles), views of legal experts (doctrine), legal research results, legal dictionaries, legal expopedias), and Tertiary legal materials (consisting of legal dictionaries, dictionary language, encyclopedia, and legal encyclopedia). The technique of collecting legal materials is done by internet searching and literature studies. Data analysis was carried out using qualitative analysis, namely a research model originating from the social sciences to examine social problems and phenomena in depth with a small research area or population, but more focused and then draw conclusions using inductive methods. namely a method of extracting data based on specific facts to then draw general conclusions to answer problems based on research conducted by the author.[9]

3. Results and discussion

3.1. Bilateral investment agreements between Indonesia and other countries and investor-state dispute settlement (ISDS)

Indonesia is a party to 37 investment treaties in force today. Like investment treaties signed by many other countries, these treaties typically protect investments made by treaty-covered investors against expropriation and discrimination. Provisions requiring “fair and equitable treatment” (FET) are also common, providing a floor below which government behaviour should not fall. While there are some significant recent exceptions, investment treaties often enforce these provisions through access to ISDS mechanisms that allow covered investors access to impartial international arbitration that awards monetary damages in an effort to depoliticise such disputes.[10]

The implementation of bilateral investment cooperation is set forth in cooperation agreements, including through the Bilateral Investment Treaty. Bilateral Investment Treaty (BIT) is a legally binding agreement between 2 (two) countries that stipulates reciprocal protection and investment promotion in both countries. In Indonesia, bilateral investment agreements or BITs are known as “Investment Promotion and Protection Agreements (P4M)”. From information obtained from The United Nations Conference on Trade and Development (UNCTAD), since 1968, namely the

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[9] Muhaimim, *Metode Penelitian Hukum*, NTB: Mataram University Press, 2020, p. 13.

[10] OECD, *OECD Investment Policy Reviews: Indonesia 2020, OECD Investment Policy Reviews*, Paris: OECD Publishing, 2020, https://doi.org/10.1787/b56512da-en.

signing of BITs between Indonesia and Denmark, a total of 72 (seventy-two) BITs that have been signed by Indonesia. Currently the government is conducting a moratorium on P4M, not even extending/discontinuing P4M which has expired. Various international agreements, especially P4M, will be evaluated to make adjustments to the applicable laws and regulations and the interests of Indonesia, especially the state's right to regulate its economy. Even though international agreements are aimed at encouraging investment, they must not reduce state sovereignty in making economic decisions for the national interest. Arrangements regarding BIT are regulated in Law No. 25 of 2007 concerning Investment (UUPM).[11]

As a developing country, Indonesia is aware of the importance of direct foreign investment, commonly referred to as Foreign Direct Investment (FDI). Limited capital owned by Indonesia in the context of national economic development makes Indonesia need foreign capital to help achieve this development goal. Foreign investment can make a real contribution to Indonesia's economic growth. However, in recent years, Indonesia has decided to discontinue all of its BITs to review BIT provisions prior to renewal. It is suspected that there is a lawsuit against the Government of Indonesia at ICSID on the basis of the Indonesian-Dutch BIT. President Susilo Bambang Yudhoyono emphasized that the Government will not allow multinational companies to do what they want with international support and put pressure on the development of countries like Indonesia. The reasons for the review conducted by Indonesia are basically the same as the reasons for reviews conducted by other countries. First, a review has been carried out to strike a balance between investor protection and national sovereignty; second, most of the existing IIA provisions are out of date as they provide broad protections and rights to foreign investors, leaving the host country no policy space to implement its own development goals. Third, one of Indonesia's biggest concerns regarding IIA is the provision of ISDS which increases Indonesia's involvement with investor claims in international arbitration. Fourth, the provisions in IIA have the potential to replace national legislation.[12]

Several experts criticized Indonesia's decision to terminate several existing BITs and viewed this decision as unfriendly to investors or considered that Indonesia was too selfish for terminating BIT cooperation. On the other hand, some experts view that the steps taken by Indonesia are a bold decision because most BITs only adopt clauses to protect the interests of foreign investors. This can be seen from the case of Churchill Mining PLC which filed a lawsuit against the East Kutai Provincial government or a lawsuit by PT. Newmont Nusa Tenggara is related to the issuance of a government policy regarding the imposition of tin ore export duties which is also contrary to the BIT.

In investment agreements, disputes may arise relating to the application or interpretation of the investment agreement between the investor and the host-state. If a dispute arises between the investor and the host-state, the parties must first resolve it by means of consultation and negotiation. As a form of international agreement, BIT must prioritize the resolution of disputes peacefully and in accordance with the principles of

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[11] Laura Sembirirng, *Urgensi Perjanjian Investasi Bilateral Antara Indonesiadengan Negara Lain Dengan Klausula Penyelesaian Sengketa Ivestor-State Dispute Sttlement*, Dharmasisya: „Jurnal Program Magister Hukum" FHUI 1, no. 22 (July 2021): 1944.

[12] David Price, *Indonesia's Bold Strategy on Bilateral Investment Treaties: Seeking an Equitable Climate for Investment?*, „Asian Journal of International Law" 7, 2017, 2.

justice and international law, as stipulated in the 1969 Vienna Convention on International Agreements. ISDS clauses are drawn up by capital-importing countries and capital-exporting countries, not made directly between investors and capital-importing countries/host-states. However, most dispute resolutions are submitted by corporations or investors over policy steps taken by the host-state, such as: changes in investment incentive schemes, cancellations or alleged breaches of contracts by the state, nationalization or direct expropriation, revocation of permits, changes in tariffs, changes in land zoning determination, tax determination, cancellation of patents, and so on.

The dispute settlement system regulated in the BIT, based on the view of private investors, the host-state legal system proved insufficient to resolve disputes from direct investment in the country. Nonetheless, this view must be balanced with the state sovereign right to regulate and control its national law. The state also has a great interest in attracting foreign investment and eliminating investors' worries, for these circumstances, the state has changed their priority to sovereign aspects and the current dispute resolution system is "normally perceived as a necessary consequence of an investment-friendly climate rather than a negative aspect....".[13]

In preparing the ISDS clause in the Indonesian BIT (P4M), Indonesia must still consider Indonesia's position as a host-state/capital-importing country and the position of Indonesian investors as a capital-exporting country abroad. There is a possibility that Indonesian investors as a capital-exporting country can be sued where they provided their capital. For this reason, as the form of an International Agreement, the ISDS clause in P4M must also prioritize amicable dispute resolution between the two parties before bringing it to court. In addition, learning from Churchill Mining and Planet Mining Pty Ltd's lawsuit against the Government of Indonesia at the ICSID arbitration forum in Washington DC, United States of America regarding indirect exploration, Indonesia needs to adjust the format related to the ISDS clause while remaining Indonesian national law as the host-state. The use of host-state national law in dispute resolution is considered to have benefits, including: (i) improving the legal and justice system; (ii) makes it easier for ISDS to render a qualified decision because ISDS has studied host-state national laws through decisions of host-state courts; (iii) regulate investors fairly to citizens without any privileges; as well as integrating the roles of domestic courts and ISDS arbitration. Combining the possibility of the ISDS dispute resolution concept in P4M in the future, the author also proposes that dispute resolution related to expropriation cases require local remedies before going to arbitration, while for cases outside of expropriation, consent from both parties is required before being brought to international arbitration.

3.2. Relationship between land law, investment and environment post job creation law

The introduction of the Job Creation Bill is unusual in Indonesian regulatory practice. It is more commonly used in the common law system than in the Indonesian civil law system. The government, on the other hand, is of the opinion that this is the best way to improve regulatory structures, particularly the ease with which businesses

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[13] Rudolf Dolzer, *The Impact of International Investment Treaties on Domestic Administrative Law*, „New York University Journal of Inter national Law and Policy", 2006, p. 953.

can operate in Indonesia. The aim of this bill is to deregulate the overlapping, disparate and conflicting rules governing the activities of companies. Finally, on 5 October 2020, the government stipulated this bill as Law Number 11 of 2020 concerning Job Creation. The government claims that the Job Creation Law will benefit Indonesia. Including opening new jobs for citizens by attracting more foreign investors, simplifying the process of opening a business, and eradicating illegal levies that are the source of corruption.

Furthermore, some experts are of the opinion that the Law will increase the interest of foreign investors to invest in Indonesia by simplifying various overlapping regulations related to investment. The presence of investors in Indonesia will open up many job opportunities for the community, which in turn will accelerate Indonesia's economic growth and strengthen Indonesia's competitiveness internationally.[14] However, the Job Creation Law has also raised resistance from the public, especially from labor associations as well as wrong assumptions about the contents of the law demanding that the government clarify false information circulating in society. One such issue is the elimination of the Environmental Impact Assessment (EIA), which has been refuted and straightened out.[15] Moreover, the process of drafting this Bill is undemocratic as it is not transparent and hastily conducted. Furthermore, the target to complete it within 100 days is unrealistic as the content of this Bill will significantly change some existing laws in Indonesia, including Investment and Environmental Laws.[16]

Land law has a very close relationship with environmental law. In investment, it is required that investors are obliged to preserve the living environment in Indonesia. If it is violated, the permit in investment can be revoked by the authorized official. Even the investors who violate the laws and environmental field can be punished or asked to pay compensation for polluting the environment.[17] Why investment is closely related to land law, because every investor, especially foreign investors, is given the right to use land right in Indonesia. Land rights granted to investors are in the form of Building Use Right *(HGB)*, Cultivation Rights (HGU) and Right of Use (HP). Building Use Right can be granted for a period of 30 years and can be extended for a period of 20 years. The total period is 50 years. Cultivation Rights are granted to investors for a period of 25 years and can be extended for a period of 25 years. The total period is 50 years. While the term for the Right of Use is 25 years and can be extended for another 20 years to a total of 45 years. In other words, foreigners (both individuals and businesses) are not permitted to get ownership rights. However, there has been a widespread illegal practice, notably in the tourism industry, in which foreigners purchase land under the names of Indonesians in order to get ownership rights. They signed other relevant agreements to bind both parties (foreigner and Indonesian), such as a debt recognition deed, which

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[14] Nur Aida, *Kelebihan dan Kekurangan UU Cipta Kerja dari Kacamata Pengamat Politik*, „Kompas", October 10, 2020. https://www.kompas.com/tren/read/2020/10/10/103000865/kelebihan-dan-kekurangan-uu-cipta-kerja-dari-kacamata-pengamat-politik?page=all.

[15] Dewa Ketut and Aziz Kurmala, *Government ensures Amdal not eliminated in Omnibus Law*, „Antaranews", October 9, 2020. https://en.antaranews.com/news/158577/government-ensures-amdal-not-eliminated-in-omnibus-law.

[16] Vera Kristi, Adi Sulistiyono, and Hudi Asrori, *Implications of Foreign Investment on Economic Development Growth Post-Job Creation Act*, „International Journal of Multicultural and Multireligious Understanding" 9, no. 1(2022), p. 148. http://dx.doi.org/10.18415/ijmmu.v9i1.3250.

[17] Salim, and Budi Sutrisno, *Hukum investasi di Indonesia*, Jakarta: Rajagrafindo, 2018, p. 21.

explains that the foreigner lends money to Indonesian and the land purchased is used as collateral to ensure Indonesian's obligation. Despite the fact that this method does not break any Indonesian laws, it has resulted in the transfer of property rights, allowing foreigners to gain control over Indonesian land.

After the enactment of the Job Creation Law, Article 123 of Job Creation Law, several provisions in Law No. 2 of 2012 concerning Land Procurement for Development in the Public Interest (Land Procurement Law) are amended. Article 144 (1) of this law states that ownership rights to an apartment unit may be granted to foreign nationals who have permits in accordance with the provisions of laws and regulations. These rights may be transferred or pledged as collateral. This arrangement is controversial because prior laws and regulations only gave foreigners use or leasing rights. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Basic Agrarian Law are both in opposition to this shift in ownership status. Foreigners' rights to shared land are indirectly enabled by providing foreigners ownership rights to flat units. Shared land is land that exists in Indonesia and that, according to the BAL idea of property rights, can only be owned by Indonesians. Based on this view, the government should evaluate the articles pertaining to flats in the Job Creation Law and other derivative legislation, making the appropriate changes to the status and nature of foreigners' property rights over flat units. The change tries to avoid ambiguous interpretations and legal ramifications (*fraus legis*). As a result, flat management would be consistent with national ideals, the concept of property rights, and national interests, allowing the Indonesian people to grow and prosper.

Starting from the idea that investment is a necessity for everyone, then investment must be done with a perfect calculation. Perfect in the sense that it needs to be prepared and studied from all aspects from the start, both from the economic, social, cultural, political and legal aspects. A number of studies on the function and role of investment in a country show a level of balance and interdependence regarding the resulting excesses. In various literatures that discussing law and development (economy), law is basically expected to serve 3 (three) main sectors, namely: first, law as tool of order, second, law as a balancing tool, and third, law as a catalyst which essentially serves to maintain the balance or harmony of the various interests that exist.[18] The same opinion was also expressed by other[19]: "promote economic development, governments must rely upon the law, for legal order is the filter through which policy becomes practice". But if we listen to the decision of the Constitutional Court, especially regarding the land cluster, it is better if some land policies should be suspended in the hope that the government will immediately improve the Job Creation Law. The Constitutional Court through its decision Number 91/PUU-XVII/2020, which was held on Thursday (25/11/2021) granted partially the request for a formal test. The Constitutional Court of Justice in its decision affirmed that Law Number 11 Year 2020 concerning Job Creation (Job Creation Law) is formally flawed.[20] The Court stated that the Job Creation Law was conditionally unconstitutional. Decision Number 91/PUU-

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[18] Bambang Sunggono, *Hukum dan Kebikan Publik*, Jakarta: Sinar Grafika, 1999, p. 104-105.
[19] Robert Seidment, *The State, law and Development*, New York: ST. Martin Pres, 1978, p. 17.
[20] Rahmat Saputra, and Rama Dhianty, *Investment License and Environmental Sustainability in Perspective of Law Number 11 The Year 2020 Concerning Job Creation*, „Administrative and Environmental Law Review" 3, no. 1, 2022, p. 31, https://doi.org/10.25041/aelr.v3i1.2472.

XVII/2020 The Court granted some of the request submitted by Migrant CARE, the West Sumatra Nagary Customary Density Coordinating Board, the Minangkabau Customary Court, and Muchtar Said.

Furthermore, the complexity of the problems of the national agrarian law, strategic steps should be needed to resolve the existing problems. And the steps that can be taken are to review several land clusters that exist in the Job Creation Law and other regulations governing agrarian matters by involving various components of the agrarian society. This step is taken to find the root cause of various agrarian problems, so that the essence of this agrarian problem can be used as a basis for reforming the Job Creation Law and its derivative regulations in order to accommodate the needs and interest of the people in the agrarian sector as well as to meet investment interest. The Job Creation Law has a very broad impact on various sectors such as research and innovation, land, government administration and the environment, agriculture and forestry sectors are no exception. This broad impact is certainly a question of how this law can degrade the values and spirits of the norms previously contained in the law that regulates the related fields.[21]

3.3. The impact of the forestry sector and the environment in the vortex of the omnibus law

The environmental sector, especially forestry, a described before indeed not spared the impact on the plan to ratify the Job Creation Law, this is because the regulation regarding simplification of business licensing and land acquisition alludes to many regulations in the forestry and environmental sectors. The fundamental change that occurred was the amendment of some of the essence of the main forestry sectors regulations contained in Law No. 41/1999 concerning Forestry and Law No. 32 Year 2009 concerning Environmental Protection and Management. Here are some important points of changes that existed when the Job Creation Law was legalized:

3.3.1. Easy permit for utilization of forest area

The significant changes in the Job Creation Law are regarding the licensing mechanism for the use of forest areas which is only applied to the use of timber forests, while for the use of non-timber and environmental services is only a formality to meet general standards. In the Law No. 41/1999 concerning Forestry, all types of permits for the use of forest areas are listed in full which consists of 8 points of types of permits divided according to the function and designation of the forest. Meanwhile, in the Job Creation Law, the licensing mechanism is simplified to only one type, namely in the form of business licensing. The impact of this law is the revocation of articles 27-29 of Law No. 41/1999, so that the intervention towards forest areas through this business licensing scheme will be more massive and the domino effect will make it easier for any party, especially those with capital and power to apply for business permits in forest areas. The Ease of granting permits without considering the ecological aspect is very

[21] Gusti Widiatedja, and Nyoman Suyatna, *Job Creation Law and Foreign Direct Investment in Tourism in Indonesia: Is It Better than Before?*, „Udayana Journal of Law and Culture" 6, no. 1, 2022, p. 70-71, https://doi.org/10.24843/UJLC.2022.v06.i01.p04.

risky for the environmental impacts that will arise in the future.

3.3.2. Utilization of protected forest area is increasingly unprotected

The basic principle of limiting the use of existing protected forests is to ensure that the protected forest maintains its main function, namely as a forest area that has the main function as a life support system such as regulating water management, preventing flooding, controlling erosion, preventing sea water intrusion, and maintaining soil fertility (Law No. 41/1999). The plan to implement the Job Creation Law really threatens the existing utilization patterns in protected forests. The type of use of protected forest which was originally only in the form of environmental services and utilization of non-timber forest products (NTFPs) in accordance with the mandate of Law No. 41/1999 can be used more diversely because of the addition of a clause on the use of forest areas. Just like the use of geothermal energy without the need for a permit but only the form of compliance with the NSPC (Norms, Standards, Procedures, and Criteria) and the use of area through the lease-to-use agreement has transferred authority to the Central Government. As a consequence of the existence of this Job Creation Law, the existence of protected forest areas is very risky to be used for interests that tend to be exploitative, for example, conversion of function to mining, plantations, etc. This can clearly lead to the loss and destruction of protected forest which is valuable as a permanent life support. Moreover, the role of the central government is increasingly centralized, so that with this centralized mechanism, it can lead to inequality of benefits received between the central and the region.

3.4. Loss of AMDAL (Environmental Impact Assessment) as the last gate to save the environment

Changes to the basic points of Law No. 32 Year 2009 including the revocation of the term “environmental permit” has implication for the changing position of AMDAL in the business licensing permit where AMDAL is no longer mandatory for deciding the feasibility of a business license but is only used as consideration. Ironically, Mandatory AMDAL is only applied in business of which processes and activities have an important impact on the living environment, social, economy and culture. As a consequence, the increasing number of business establishment permits that do not require an AMDAL has resulted in increasingly uncontrollable environmental impacts. From this, the government seem to have completely ignored the environmental considerations in the development activities.

One of the most controversial provisions of the Job Creation Law is the relaxing of requirements for developers and businesses to conduct the EIA. Under Environmental Law, the EIA is a compulsory requirement to get an environmental permit from either the central or local governments, depending on the scope of the project. The environmental permit is then required to obtain a business permit. Once the business permit is granted, the project can be started. The Law will degrade the position of the environmental permit. It will be transformed into an environmental approval. Along with other approvals, such as the building and spatial plan approvals, environmental approval will become a prerequisite for the approval of a business permit. The Law also introduces a risk-based approach in specifying the kind of business permit that businesses and

developers need to secure. The government will determine the risk level of business activities based on the hazard level and the potential hazard level by looking at four factors: the environment, safety, health, and/or natural resources utilization and management.

All business activities are divided into three levels, namely low, medium and high risks. The Minister of Environment and Forestry states that under the new approach, the EIA is still required and it is allocated as a standard instead of a requirement for obtaining a permit. Putting it as a standard will enable the government to consistently monitor the environmental impact of particular activities. Moreover, the government has more power to prosecute companies that adversely affect the environment. It seems clear that the government assumes the problem of the EIA regulations caused by its burdensome procedure, making it is impractical to be implemented. Hence, it is more viable to replace the EIA with a kind of environmental standard, particularly for low and medium-risk projects. However, there should be a clearer benchmark of what constitutes a project with a 'significant impact' and how it falls within the category of medium or high-risk activities. If this does not happen, a particular tourism project could not be classified as a high-risk activity although it might have a 'significant impact'. As a result, it would not be required to complete the EIA and involve the affected community.

3.5. The easier it is to change of designation and function of forest area and the use of forest area

This Job Creation Law provides flexibility to the government in terms of deciding changes to the allocation of forest areas. In the Law No. 41/1999, the mechanism for changing the allocation and function of forest areas must be approved by the House of Representatives (DPR). However, in this Job Creation Law, only the government decides on the changes of the allocation and function of the area and does not need to reach the door of the House of Representatives (DPR), except for policies that support the National Strategic Projects. This has an impact on the loss of the supervisory function of the community in the implementation of forest development by conveying their aspirations through the House of Representatives (DPR), especially regarding plans for forest allocation and utilization of forest products. It is feared that there will be more and more conversions of forest areas that are no longer in accordance with the function of the area which are carried out by persons with power without supervision and knowledge of the community.

4. Conclusion

The Job Creation Law came with a lot of controversy, including in agrarian matters because many things related to land and spread to the fields of plantations, agriculture, housing, industrial areas and other investment matters that require land. The enactment of the Job Creation Law can threaten the agrarian and environmental sectors, because the community is not allowed to participate in environmental and natural resource management, only investors are freer and easier to use land rights. The government should pay more attention to always holding full authority in land acquisition in accordance with the general principles of good governance and fairness, because if this is allowed to happen, it will be difficult for people's welfare to be achieved

and the Job Creation Law that is enacted can be judged to have failed in achieving the goals and mandates of the Indonesian state. The Job Creation Law is seen as only a red carpet for private entrepreneurs or foreign investors to be able to get land cheaply or even for free, and on the other hand it is causing misery for the common people.

The Job Creation Law reflects the government's economic interests for investment and ease of doing business, which are not matched by a commitment to preserving forest resources and the environment in a sustainable manner. The domination of investment interests and economic development over environmental interests shows the tendency of the government to use its power to open door after door for the exploitation of natural resources without considering the environment. The passage of this law will mark the starting point for the potential for structured damage through legislation products, especially land clusters.

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