

Reconciling Environment and Development: Legal Transformation in the Job Creation Law Through a Green Constitution

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ABSTRACT

This research examines the compatibility of the Job Creation Law with the principles of the green constitution in the context of environmental protection and people's constitutional rights. The Job Creation Law was born to accelerate investment and simplify regulations. This raises concerns about the potential decline in environmental quality. This research uses a normative legal approach and literature analysis to identify the impact of the Job Creation Law on the environment and its integration with the green constitution. The discussion shows that the Job Creation Law tends to neglect environmental protection, reducing the role of state oversight and public participation. The results of this study emphasize the need for policy revision to integrate the principle of environmental sustainability in the legal framework of economic development. Public participation is also key to the success of sustainable environmental protection. This is because the people who will be directly affected by environmental changes are the people. Policy development that integrates sustainable principles in all aspects of economic development without sacrificing the environment.

Keywords: Environmental Protection; Green Constitution; Job Creation Law; Sustainable Development.

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INTRODUCTION

The discussion on the controversial Job Creation Law (Omnibus Law), which aims to increase investment and create jobs through regulatory simplification, is still ongoing. One of them relates to environmental issues. The fulfillment of the right to a good and healthy environment is part of the state's responsibility to ensure that the development carried out in every aspect of the life of the nation and state is a common will in fulfilling the common interests of all levels of Indonesian society (Winarni, 2022).

The community's right to a good and healthy environment is also closely related to global environmental issues (Raseukiy, 2023), where the impact of climate change is due to environmental degradation, limiting state action and global engagement in mitigating environmental impacts stemming from environmental degradation around the world (Knox, 2009). Environmental problems also arise from the inequality of justice experienced by marginalized communities. This inequality of justice is born through the recognition that certain individuals benefit disproportionately from environmental damage, but on the other hand there are people who are disadvantaged in their overall welfare and quality of life due to the reduction in the quality of a good and healthy environment (Salcido, 2021).

To guarantee people's rights to a good and healthy environment, several countries, including Indonesia, have formulated what is known as a green constitution. This idea includes the principles of environmental conservation in the state constitution with the aim of strengthening legal protection of the environment and affirming people's rights to a good and healthy environment. This green constitution comes as a response to the alarming environmental damage caused by human activities that have a significant negative impact, both for humans themselves, ecosystems and environmental sustainability (Rohmah & Kholish, 2022). The spirit of the green constitution in Indonesia has even existed since the formulation of the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945) through Article 33 paragraph (3). The phrase used is that the State controls natural resources does not mean owning but the state can regulate and manage natural resources. The right to control the state must aim for the welfare of the nation while still paying attention to and respecting the rights of the community in an equitable manner (F. Chandra, 2020).

This research is expected to describe the reconciliation of the often conflicting spirit of environmental protection and development by looking at what is regulated in the Job Creation Law and still paying attention to the principles in the green constitution. This research is expected to formulate policies that can integrate the principles of environmental sustainability within the framework of economic development. The difference with previous research is that the integration of the principles of sustainability and environmental protection in the basic legal framework of a country has the potential to ensure transparent, accountable and sustainable management of natural resources written by Febrian Chandra, Adithiya Diar and Hartati in 2024 on the Green Constitution in Efforts to Preserve an Equitable Environment. Concretely, previous researchers only focused on the constitution which was still very abstract about the green constitution (Febrian Chandra et al., 2024). Another research written by Ricky Rachmat Yuniardi, Yoyok Suharyanto and Agus Satory on the Impact of Environmental Licensing Simplification on the Environment of Communities and Business Actors in his study found that steps are needed in the Job Creation Law in overcoming political changes in environmental protection law and ensuring alignment with sustainable development goals (Yuniardi et al., 2024).

METHODS

The method used is normative law research (Irwansyah, 2020). This research uses a literature study approach and legal analysis. Literature study by collecting information sourced from academic journals, laws and regulations, legal documents and literature related to the research (Ali, 2021). The legal analysis is carried out by comparing the existing provisions in the Job Creation Law with the principles in the green constitution.

DISCUSSION AND RESULT

The Concept of Green Constitution

The treatment of environmental issues is diverse. Traditional discourse categorizes them narrowly as "environmental rights" (Gellers, 2015). This perspective is then expanded with a more comprehensive concept, environmental constitutionalism. In constitutional language by realizing environmental constitutionalism (Kotzé, 2012). Constitutionalism is defined as the foundation that legitimizes and directs government, both in the private and public sectors. It establishes universal and fundamental values that are widely respected by the legal community and also safeguarded by the legal order. It also establishes checks and balances in the exercise of executive, legislative and judicial authority in day-to-day governance. Environmental provisions in the constitution are not only a means of shaping the content of laws but also a mechanism for establishing moral and ethical environmental obligations (Kotzé, 2012).

The first wave of constitutionalism was characterized by the regulation of civil and political rights. The next wave focused on economic, social and cultural rights. The third wave paid attention to the right to development, which included the development of environmental protection (Yusa & Hermanto, 2018). A green constitution is the application of an ecocratic outlook in a country's constitution (Nur Fauzan, 2021). Global awareness of the increasingly widespread problem of environmental damage is no longer seen as a stand-alone phenomenon but also in the political structure. The solution is to include the character of environmental protection in the political structure itself (Nurmardiansyah, 2015). The spirit of this green constitution contains a green commitment that is the basis for reorganizing human relations with nature. This commitment is the basis for reorganizing economic, political and cultural relations in the various aspects that relate to nature. Not only as a status or trait but also as a verb.

Analysis of the Job Creation Law

Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law (hereinafter referred to as the Job Creation Law) is a legal product with the aim of simplifying regulations and improving the convoluted investment climate in Indonesia. The law covers various sectors, ranging from labor, investment and environment. The main criticism of the Job Creation Law is that some of the provisions regulated or amended in it are considered to ignore the principles of environmental protection that have been regulated in Law Number 32 of 2009 concerning Environmental Protection and Management and other regulations relating to the environment. This law is considered ideal in promoting sustainable development because it

combines environmental elements with an economic approach. There are at least four strategic steps in supporting sustainable development, namely spatial planning, environmental standard planning, AMDAL implementation and damage rehabilitation (SUDARWANTO & Kharisma, 2020).

The Job Creation Law aims to increase the attractiveness of investment in Indonesia by simplifying the licensing process and providing incentives to investors. In relation to employment prospects, the Job Creation Law is expected to provide new jobs and support the expansion of micro, small and medium enterprises. The Job Creation Law is expected to increase productivity and efficiency in the labor sector through the implementation of regulatory reforms and simplification of licensing procedures. Facilitation of economic growth through the Job Creation Law by stimulating Indonesia's economic expansion and international competitiveness through the implementation of policies that strengthen key sectors of national interest.

The environmental permit in the Job Creation Law aims to ensure the methodical and comprehensive maintenance of environmental functions and the prevention of environmental pollution and/or damage. In obtaining an environmental permit, a person must obtain environmental approval from either the Central or Local Government that provides an assessment of the acceptability of a project with respect to environmental impacts or a statement regarding the project's capacity to adequately address environmental issues. The position of AMDAL, which in the Job Creation Law is only required for high-risk business activities, reduces the participation of surrounding communities who feel a direct impact on their environment. In fact, the position of AMDAL is very important because it has a function as a pollution prevention instrument that can show the quality of the environment through the AMDAL document (Sukananda & Nugraha, 2020).

There are 84 laws that are amended and repealed by the Job Creation Law. With details of 2 laws being revoked and 82 others being amended. Some of the amended and repealed laws are laws that are related to the environment. Conceptually, legislation plays a very important role in ensuring climate plans in an effort to protect future generations (Sembiring, 2023). The Job Creation Law includes consolidation of environmental permits which has caused some concerns.

The core principles of efficient environmental management in the form of public access to information, fairness in the legal process and active involvement in the decision-making process are ignored by the Job Creation Law. In the AMDAL review, community and environmental organizations play a passive role as monitors, while the due diligence team consisting of government agencies and experts determine the AMDAL. Directly affected communities have the potential to be manipulated in the process. Flexibility to accommodate business organizations, but ignoring environmental conditions that have the potential to cause ecological damage, including factors such as planning, utilization, control, maintenance, supervision and law enforcement (Akhmaddhian, 2016).

The government's rationale for removing environmental permits for business activities in the Job Creation Law is based on the fact that AMDAL or UKL UPL require considerable time and financial resources to complete environmental documentation (Bilal et al., 2021). Complicated permits and

complex procedures of different numbers and types exacerbated by inadequate and inconsistent regulations and corruption lead to high costs of obtaining company licenses. The revocation of environmental licenses is inconsistent with the regulatory framework for environmental management and will hamper supervision and implementation of laws and regulations (Dewi, 2020).

Impact on People's Constitutional Rights

The enactment of the Job Creation Law tends not to provide adequate protection for the right to a clean and healthy environment. Several provisions in the Job Creation Law facilitate business licenses without considering the environmental impact in depth. This is contrary to the green constitutional principle that emphasizes the need for environmental protection as part of human rights. This lack of protection could potentially threaten the health and welfare of people who depend on a clean and healthy environment.

The state has an obligation to preserve the environment, which is emphasized in the green constitution as the main person responsible for the fulfillment of citizens' rights (Elfudllatsani et al., 2019) to obtain a clean and healthy environment. In this case, the Job Creation Law actually reduces the role of the government in environmental monitoring and emphasizes more on accelerating the licensing process. This change in legal construction can reduce the effectiveness of environmental supervision and increase the risk of environmental damage due to economic activities and uncontrolled exploitation of natural resources. Whereas the principle of the green constitution is the active role of the state in protecting and preserving the environment.

Furthermore, public participation is one of the main principles in the green constitution. The Job Creation Law is considered to not provide enough space for public participation in decision-making that impacts the environment. Public participation is essential to ensure that decisions reflect the interests of the community and consider environmental impacts thoroughly. The potential for marginalized communities and indigenous peoples to not get space for participation is getting bigger.

The importance of democratization and community participation is contained in the 1992 Rio Declaration, where environmental protection and management is not only the obligation of the Government, but also the obligation of all levels of society, because environmental management will always intersect with the community and the various impacts of environmental management will first be felt directly by the community (Kahpi, 2013). The noble goal of the Job Creation Law to ensure legal certainty in ensuring the effectiveness of the bureaucracy must be in line and integrated with the application of sustainable environmental aspects (Indradjaja & Chamdani, 2023). Of course, to ensure a good and healthy environment for future generations.

CONCLUSION

The spirit of environmental protection and economic development goals in the context of the Job Creation Law must be aligned. Simplifying regulations to increase investment and create jobs has brought significant changes to previously strict environmental regulations. The elimination of environmental permits and

making AMDAL only applicable to high-risk business activities can increase the risk of environmental damage. Communities and environmental organizations are reduced to a more passive role that previously played an important role in maintaining environmental quality. This research finds it important to integrate the principles of a green constitution within the country's basic legal framework to ensure that natural resource management is sustainable and equitable. The purpose of a green constitution is to ensure that economic development does not come at the expense of the environment and also gives future generations the right to enjoy a healthy and clean environment. The integration of green constitutional principles in the Job Creation Law is expected to realize a balance between development needs and environmental protection. The government needs to reconsider measures in the Job Creation Law that could harm the environment. This is important to ensure that economic development can take place without compromising the quality of the environment for current and future generations.

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