

POSITION AND RESPONSIBILITY OF THE STATE IN REGULATION OF THE RIGHT TO A HEALTHY ENVIRONMENT (CASE STUDY OF JOB CREATION ACT AND ENVIRONMENTAL LAW ENFORCEMENT)

[Kedudukan dan Tanggung Jawab Negara dalam Pengaturan Hak Atas Lingkungan Hidup Yang Sehat
(Studi Kasus Undang-Undang Cipta Kerja dan Penegakan Hukum Lingkungan)]

**BENNY HARRY LEKSMON SITUMORANG¹⁾, VIORIZZA SUCIANI PUTRI^{2)*}, RAMADHAN USMAN³⁾,
SUYANTO⁴⁾, HEZRON SABAR ROTUA TINAMBUNAN⁵⁾**

¹⁾Department of Nursing, Faculty of Health, Widya Nusantara University, ²⁾Supreme of Court, Republic
Indonesia, ³⁾Faculty of Law, State University of Gorontalo, ⁴⁾Faculty of Law, University of Gresik,
⁵⁾Faculty of Law, State University of Surabaya

¹⁾benny@uwn.ac.id , ²⁾viorizza@mahkamahagung.go.id (corresponding), ³⁾ramadhanu_dosen@ung.ac.id ,
⁴⁾suyanto@unigres.ac.id, ⁵⁾ezrontinambunan@unesa.ac.id

ABSTRAK

Penelitian ini bertujuan untuk menganalisis kedudukan dan tanggung jawab negara dalam pengaturan hak atas lingkungan hidup yang sehat, khususnya dalam konteks implementasi Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja serta putusan Mahkamah Konstitusi yang berkaitan. Hak atas lingkungan hidup yang sehat merupakan bagian dari hak asasi manusia yang dijamin dalam Undang-Undang Dasar 1945, sehingga negara memiliki kewajiban konstitusional untuk memastikan keseimbangan antara kepentingan pembangunan ekonomi dan perlindungan lingkungan. Namun, penyederhanaan mekanisme perizinan lingkungan dalam Undang-Undang Cipta Kerja menimbulkan perdebatan mengenai lemahnya pengawasan terhadap kegiatan usaha yang berdampak pada ekosistem. Penelitian ini menggunakan metode hukum normatif dengan pendekatan perundang-undangan (statute approach), konseptual (conceptual approach), dan kasus (case approach). Sumber data berasal dari peraturan perundang-undangan, putusan pengadilan, serta literatur ilmiah terkait kebijakan lingkungan. Hasil penelitian menunjukkan bahwa negara belum optimal dalam menjalankan tanggung jawabnya dalam penegakan hukum lingkungan, terutama dalam aspek pengawasan, sanksi terhadap pelanggaran lingkungan, serta partisipasi publik. Putusan Mahkamah Konstitusi menegaskan pentingnya transparansi dalam regulasi lingkungan, namun implementasi kebijakan masih cenderung berpihak pada kepentingan investasi dibandingkan perlindungan lingkungan hidup yang berkelanjutan.

Kata kunci: Hak atas lingkungan; Undang-Undang Cipta Kerja; Penegakan Hukum

ABSTRACT

This study seeks to examine the role and obligations of the state in overseeing the right to a healthy environment, particularly with the enforcement of Law Number 11 of 2020 on Job Creation and pertinent Constitutional Court rulings. The right to a healthy environment is enshrined in the human rights provisions of the 1945 Constitution, therefore imposing a constitutional duty on the state to maintain equilibrium between economic progress and environmental conservation. The simplification of the environmental licensing process in the Job Creation Law has sparked discussion regarding the inadequate oversight of economic activities affecting the ecology. This study employs a normative legal methodology utilizing a statutory approach, a conceptual approach, and a case law approach. Data sources are from legislation, judicial rulings, and scientific publications pertinent to environmental policy. The study's findings indicate that the state has not effectively fulfilled its obligations in implementing environmental legislation, particularly on oversight, penalties for violations, and public engagement. The Constitutional Court ruling underscores the significance of transparency in environmental regulation; nonetheless, policy execution frequently prioritizes financial interests over sustainable environmental safeguarding.

Keywords: Environmental rights; Job Creation Law; Law Enforcement

INTRODUCTION

Article 28H, paragraph (1) of the 1945 Constitution states that everyone has the right to physical and spiritual well-being, a residence, and a conducive and healthy living environment (Wantu et al., 2023). Article 33, paragraph (4) of the 1945 Constitution states that the economy must be sustainable and ecologically friendly (Abdussamad et al., 2024). The state must guarantee and regulate environmental sustainability principles through legislation, regulations, and law enforcement. The passage of Law Number 11 of 2020 on Job Creation has sparked debate about the state's role in regulating the right to a healthy environment (Gobel et al., 2023).

The Job Creation bill, an omnibus bill, deregulations and simplifies licensing to boost investment and economic development. Its adoption raises environmental issues. One topic is the more flexible environmental licensing method for commercial players (Bakung et al., 2024). The Amdal (Environmental Impact Analysis) process was the principal tool for guaranteeing that every environmental project was studied and supervised before the Job Creation Law took effect. However, the new regulations simplify environmental licenses, which reduce governmental control of industrial operations that may harm the environment (Putri et al., 2023). This raises basic problems about the state's responsibility to protect people's rights to a healthy environment among commercial interests.

The absence of environmental permit requirements in corporate licensing undermines community influence on environmental project decisions. Previously, the community might oppose to a project via the Amdal procedure (Amania, 2020). The Job Creation Law modification reduces public engagement, reducing environmental policy check and balance. This imbalances economic and ecological interests, which should be balanced under the 1945 Constitution's sustainable development premise (Siregar, 2020).

Constitutional Court Decision 91/PUU-XVIII/2020 declared the measure provisionally invalid. Job Creation Law does not meet the 1945 Constitution and Law on the Formation of Legislation's requirements for maximal transparency and public engagement, according to the Constitutional Court. To avoid legal ambiguity, the administration and House of Representatives were directed to reform the legislative process within a specific timeframe (Muhtar et al., 2024). This ruling should be used to reassess the state's role in environmental protection, notably in ensuring that legislation promote investment interests and sustainability (Nur et al., 2021).

The Constitutional Court's recent ruling, Number 38/PUU-XXI/2023, increases criticism of the Job Creation Law by underlining the need of public involvement in policymaking, particularly environmental policy (Rahman, 2022). The government continues to strive for this law's implementation with technical amendments in the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation. These changes are still debated for their environmental impact. Civil society organizations and academics say the revisions have not considerably restored the tougher environmental supervision process before the Job Creation Law. This suggests that the state emphasizes commercial interests above environmental preservation, which should be its first priority for people's wellbeing.

Environmental law enforcement is difficult, making Indonesian environmental protection regulations less than ideal. Weak environmental penalties enforcement is a major issue. Many businesses that breach environmental laws face modest administrative punishments. Environmental criminal law enforcement still struggles with evidence and court decision enforcement, which is frequently unsuccessful. In several statutes, notably Law Number 32 of 2009 on Environmental Protection and Management, the state may impose heavy punishments on environmental offenders to dissuade them.

Environmental law enforcement also faces justice inequality for impacted populations. Many communities have trouble using legal systems to hold polluters accountable for environmental harm. The high expense of litigation and lack of legal help for minor environmental damage groups contribute to this scenario. This indicates that the state has failed to adequately safeguard communities' environmental rights (Pambudhi & Ramadayanti, 2021).

Indonesia has accepted many international environmental agreements, including the 2015 Paris Agreement on Climate Change. The national execution of measures in conformity with this international agreement nevertheless confronts several hurdles. Several environmental policies may collide with international climate change mitigation and carbon emission reduction obligations. The subject of how the state balances national interests and international commitments in environmental preservation continues to grow in Indonesian environmental law debate (Rs et al., 2023).

Indonesia still struggles to regulate the right to a healthy environment and ensure that current legislation safeguard the community. Economic and environmental concerns frequently conflict in legislation and policy implementation, as shown by the Job Creation Law. The Constitutional Court's ruling encourages the state to rethink its environmental law approach, notably in ensuring that rules incorporate investment interests and the community's right to a healthy environment. Continuing challenges in law enforcement and environmental policy implementation make the state's role in ensuring the right to a healthy environment a relevant issue for further study in law, policy, and implementation.

Formulation Of The Problem

This paper asks (1) How does the state regulate the right to a healthy environment under the 1945 Constitution and relevant laws and regulations? After adoption of the Job Creation Law and the current Constitutional Court judgment, what is the state's role in environmental law enforcement?

Research Purposes

The objective of this study is to analyze the regulation of the right to a healthy environment within the framework of the 1945 Constitution and relevant laws and regulations in Indonesia. It aims to examine the impact of the enactment of the Job Creation Law on the state's role in environmental law enforcement, particularly by assessing regulatory changes and their implications for environmental protection. Furthermore, this research seeks to evaluate the state's responsibility in enforcing environmental law following the Constitutional Court's ruling on the Job Creation Law, investigating whether the government has effectively upheld its duty to safeguard the right to a healthy environment for its citizens. Lastly, the study intends to provide recommendations to strengthen the state's role in environmental regulation and law enforcement, ensuring more effective environmental protection in accordance with the principles of environmental justice and sustainability.

RESEARCH METHODS

This study employs normative legal research to analyze legislation and court judgments on the right to a healthy environment and the state's environmental law enforcement. This study examines how human rights laws regulate environmental rights and how they are implemented and effective in Indonesia's environmental policy, especially after the Job Creation Law and Constitutional Court decision (Amiruddin & Asikin, 2012).

This research utilized legislative, conceptual, and case techniques. The statutory approach examines the constitutional provisions governing the right to a healthy environment, as stated in Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution, as well as related regulations, such as Law Number 32 of 2009 on Environmental Protection and Management and Law Number 11 of 2020 on Job Creation and its derivative regulations. Environmental law theory, sustainable development, and state-human rights theories, notably in environmental policy, are examined in the conceptual approach. The case technique is utilized to examine Constitutional Court rulings, specifically Decision Number 91/PUU-XVIII/2020 and Decision Number 38/PUU-XXI/2023, which review the state's environmental protection stance and responsibilities.

This qualitative study uses descriptive-analytical analysis. This study uses main legal sources like laws and court judgments and secondary legal materials like books, scientific journals, and research papers on the issue. The research identified legal standards that control the right to a healthy environment, examined regulatory changes caused by the Job Creation Law, and assessed Indonesia's environmental law enforcement. With this strategy, the study is aimed to give a thorough knowledge of the state's role in ensuring a healthy environment and a critical perspective on Indonesia's environmental policies.

DISCUSSION

The Position of the State in Regulating the Right to a Healthy Environment Based on the 1945 Constitution and Applicable Legislation

The Indonesian constitution and legislation support the state's control of the right to a healthy environment. Indonesia's 1945 Constitution's Article 1 paragraph (3) requires all policies and regulations to be founded on fair and democratic legal principles (Harahap et al., 2023). Article 28H paragraph (1) of the 1945 Constitution states that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment. This section affirms the state's constitutional obligation to protect environmental rights for everyone.

Additionally, Article 33 paragraph (4) of the 1945 Constitution underlines that the national economy is structured on fair economic democracy principles that include sustainability and the environment (Muhtar et al., 2023). To preserve future generations' rights to a healthy environment, natural resource management must include ecological balance as well as economic interests. Article 33 paragraph (3) of the 1945 Constitution stresses that the state controls soil, water, and natural resources for the people's benefit. As a regulator, manager, and law enforcer, the state balances economic and ecological interests (Abqa et al., 2023).

Indonesia's principal environmental management law is Law Number 32 of 2009 (Pakaja et al., 2024). Everyone has the right to a decent and healthy environment and a duty to preserve it, according to this legislation. This legislation also governs Environmental Impact Analysis (Amdal), environmental permits, and environmental

monitoring and enforcement. Article 65 of Law Number 32 of 2009 declares that the state shall protect the right to a healthy environment.

The state's regulation of environmental rights was questioned when Law Number 11 of 2020 on Job Creation was passed. An omnibus legislation, this law simplifies licenses and regulations in several areas, including the environment, to stimulate investment and economic development. Environmental permissions, which were formerly autonomous, are now merged in risk-based business permits under the Job Creation Law. Amdal, originally the primary prerequisite for business licenses, is now solely necessary for high-risk environmental industries (Mamu et al., 2024). Business with minimal risk have more flexible monitoring and control procedures, which may lessen supervision of environmental-harming operations.

This suggests the state is putting commercial interests above environmental preservation. Before the Job Creation Law, the public may comment on and oppose environmental-damaging initiatives during environmental licensing. Since the Job Creation Law, public engagement in environmental decision-making has decreased. This violates Article 96 of Law Number 12 of 2011 on Legislation Formation, which guarantees public involvement in policymaking with wide effects.

Indonesian environmental policy has gotten more complicated after the Constitutional Court declared the Job Creation Law provisionally unconstitutional in Decision Number 91/PUUXVIII/2020. In drafting the Job Creation Law, the Constitutional Court found transparency and public engagement violated. To reduce legal confusion, the Constitutional Court ordered the administration and House of Representatives to improve within a specific timeframe. This ruling should be used to reassess the state's role in protecting the right to a healthy environment, particularly in ensuring that rules are sustainable and investment-oriented (Hamdani et al., 2022).

Latest developments suggest that despite the Constitutional Court verdict, the administration is still pressing for Job Creation Law implementation via administration Regulation in Lieu of Law Number 2 of 2022. This reform is contentious since it has not considerably restored the stringent environmental monitoring process before the Job Creation Law. Decision Number 38/PUU-XXI/2023 of the Constitutional Court stressed the need of public engagement in the legislative process for policies that affect society (Indra et al., 2023).

Indonesia's approved international agreements must also guide the state's environmental regulation. Indonesia has signed many environmental accords, including the Paris Agreement to limit carbon emissions and combat climate change. Implementing policies in conformity with these international accords is difficult, particularly ensuring that national policies do not clash with global obligations. The state must guarantee that rules address short-term national interests as well as long-term environmental and generational implications.

Indonesia's environmental legislation enforcement still confronts several obstacles, reflecting the state's inadequate position in protecting the right to a healthy environment. Environmental offenses are typically not pursued, and the penalties are often administrative rather than deterrent. Law Number 32 of 2009 allows the state to enforce environmental law, including criminal penalties for major breaches. However, insufficient supervisory competence, lack of institutional coordination, and political and economic involvement sometimes hinder law enforcement deployment.

Environmental contamination affects communities' access to justice. Many communities with environmental devastation struggle to hold polluters accountable. High litigation expenses, restricted legal assistance, and insufficient environmental witness and victim protection affect this issue. This illustrates that the state still struggles to guarantee everyone's right to a healthy environment.

With so many issues, the state's role in regulating the right to a healthy environment must be increased via better rules and law enforcement. Transparent and participatory evaluation of the Job Creation Law and environmental policies is needed to ensure that rules promote economic interests and ecological fairness. The state has a constitutional duty to balance growth and environmental sustainability to protect people and future generations.

State Responsibility in Enforcing Environmental Law after the Retailing of the Job Creation Law and The Latest Decision of The Constitutional Court

The state's role in implementing environmental law has grown in Indonesian environmental law debate with the enactment of Law Number 11 of 2020 on Job Creation and the current Constitutional Court judgment. According to Article 28H paragraph (1) of the 1945 Constitution, the state must ensure that everyone has a healthy environment. Since the Job Creation Law was passed, environmental law enforcement has had problems with oversight, punishments, and public engagement.

A major issue with the Job Creation Law is the streamlining of the environmental licensing system, which might impair environmental monitoring for high-risk corporate operations. The Environmental Impact Analysis (Amdal) process was the key tool for ensuring that projects with major environmental implications were carefully evaluated before receiving a permit before the Job Creation Law. After the Job Creation Law, Amdal is only necessary for high-risk firms, whereas medium- and low-risk businesses have lighter environmental clearance requirements. This suggests the state is prioritizing investment above environmental preservation (Amri, 2022).

In addition, the Job Creation Law inhibits public engagement in environmental decisions. Before this regulation change, the public may protest to Amdal and environmental permits. After the Job Creation Law, public engagement was prohibited, reducing social control over environmental initiatives. The state failed to guarantee active public engagement, a desirable environmental governance concept. Decision Number 91/PUUXVIII/2020 of the Constitutional Court declared the Job Creation Law provisionally unlawful since its creation violated transparency and public engagement. This case underlines the importance of deliberative democracy in lawmaking, where the public has the opportunity to weigh in on major policy decisions. The Constitutional Court gave the government and House of Representatives time to improve this law to avoid legal uncertainty and ensure that the regulation balances economic development and environmental protection.

Instead of implementing major adjustments as directed, the government released Job Creation Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 (Annisa, 2023). This regulation maintains many controversial provisions in the Job Creation Law, including environmental permit flexibility, investment that could deplete natural resources, and worker protection. This has sparked legal discussion about whether the administration has largely executed the Constitutional Court's judgment or is just avoiding key regulatory reforms.

The Constitutional Court has never stated that changes to the Job Creation Law must be made in urgent conditions to issue a Perppu under Article 22 of the 1945 Constitution, raising questions about the government's urgency and constitutionality. The government's actions may be seen as circumventing the legislative process, which should be more transparent.

The newest Constitutional Court verdict, Decision Number 38/PUU-XXI/2023, reiterates that public engagement is essential in policymaking that affects society, particularly the environment. This verdict underlines the significance of transparency in the legislative process and states that the state must allow public access to sustainable environmental policymaking. Public engagement is an essential aspect of the democratic process that guarantees long-term ecological concerns are reflected in rules.

In practice, the administration pushes the Job Creation Law via administrative technical amendments without considerably reinstating the stringent supervision system. The environmental licensing system's fragility, the lack of a clear public complaint process, and the danger of exploiting natural resources without complete examination remain unaddressed by the revisions (Firdaus & Ristiawati, 2022). This has sparked a debate about whether the government would protect the community's right to a healthy environment under Article 28H paragraph (1) of the 1945 Constitution.

However, the Constitutional Court's verdict and government policy conflict, indicating a state system check and balances deficit. It sets a hazardous precedent for law supremacy when the constitutional court's final and definitive ruling is not fully incorporated into policymaking. If this continues, environmental protection and the judicial system's ability to ensure the government follows the constitution and substantive democracy are jeopardized.

The Constitutional Court ruling's uncertain governmental responsibilities in environmental law enforcement has far-reaching ecological, legal, economic, and social effects. First, the poor environmental monitoring system might enhance uncontrolled natural resource use. Lack of regulations and effective law enforcement allows industrial activities and investments in the natural resource sector to disregard sustainability, which increases environmental pollution, deforestation, and ecosystem degradation. This harms biodiversity and accelerates climate change.

Second, legal ambiguity about the Job Creation Law might hurt investment, particularly in areas that need clear environmental standards. Green investors and CSR advocates avoid nations with unclear or changing legislation. This uncertainty may escalate legal conflicts between firms, communities, and the government over environmental licenses and commercial repercussions. This might hurt Indonesia's long-term investment appeal as a sustainable development nation.

Third, environmental policies that don't include ecological justice and community engagement in decision-making jeopardize national growth. Unsustainable development threatens growing socioeconomic inequality, especially for indigenous peoples and small populations that rely on natural resources. This environmental management mismatch might lead to societal disputes over land grabbing, forest conversion, and water scarcity.

The government's refusal to execute the Constitutional Court's ruling may also indicate a weak rule of law. The checks and balances system may suffer if the state ignores the highest constitutional court's judgment. State institutions will lose public faith, notably in law enforcement and human rights protection, including the right to a healthy environment.

Environmental law enforcement also struggles due to the state's inadequate enforcement of environmental laws. Environmental infractions are seldom prosecuted, and the penalties are generally administrative with minor fines, so they are not deterrent. Environmental criminal law enforcement also confronts challenges, such as the difficulties of supplying court evidence and political and economic interests in the environmental justice process. legislation 32 of 2009 gives the state the power to enforce environmental legislation, although its implementation is still poor (Imran et al., 2024).

This situation affects access to justice for impacted communities fighting for a healthy environment. Many communities have trouble using legal systems to hold polluters accountable for environmental harm. High litigation expenses, restricted legal assistance, and insufficient environmental witness and victim protection affect this issue. State obligation to defend communities' environmental rights has not been completely enforced.

Indonesia has accepted many international environmental agreements, including the Paris Agreement to limit carbon emissions and combat climate change. However, national implementation of programs in conformity with this international agreement still confronts many hurdles (Reyseliani et al., 2022). Several environmental policies may collide with international climate change mitigation and carbon emission reduction obligations. The subject of how the state balances national interests and international commitments in environmental preservation continues to grow in Indonesian environmental law debate. Despite the limitations, the state's role in implementing environmental legislation following the Job Creation legislation and the subsequent Constitutional Court verdict must be increased via policy adjustments and better law enforcement. Environmental rules must be evaluated transparently and participatorily to ensure they support economic interests, sustainability, and ecological justice. The state has a constitutional duty to balance growth and environmental sustainability to protect people and future generations.

CLOSING

Conclusion

The state must balance economic development with environmental protection, as mandated by the 1945 Constitution. While Article 28H paragraph (1) guarantees the right to a healthy environment, the Job Creation Law prioritizes investment over environmental safeguards, weakening licensing mechanisms, public participation, and oversight of high-risk activities. This policy shift violates Article 33 paragraph (4) on sustainable development, as confirmed by the Constitutional Court in cases 91/PUU-XVIII/2020 and 38/PUU-XXI/2023. Despite corrective measures through Government Regulation in Lieu of Law Number 2 of 2022, concerns remain over inadequate environmental controls.

Suggestion

To address these challenges, the state must strengthen environmental law enforcement, improve monitoring, and ensure better access to environmental justice. Inconsistencies between national policies and international commitments, such as the Paris Agreement, must be resolved to align development with sustainability. Future policy reforms should reinforce environmental standards while balancing investment and ecological justice. Greater transparency and public participation in policymaking are essential to fulfilling constitutional obligations and safeguarding the environment for future generations.

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