THE IMPLICATIONS OF LAW NUMBER 11 OF 2020 CONCERNING JOB CREATION TO THE EXISTENCE OF TRADITIONAL LEGAL COMMUNITIES IN INDONESIA

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ABSTRACT

The research methods used in this"research are normative juridical research methods"with a statutory approach and literature studies."The purpose of this research is to find out"the implications of"Law Number 11 of 2020 concerning Job Creation"on the existence of indigenous law communities in Indonesia. The results of this study show that there are inconsistencies between legal politics and content material in Law Noumber 11 of 2020 where one of the legal bases in the establishment of the Job Creation Law is TAP MPR RI No.IX/ MPR/2001 on Agrarian Renewal and Natural Resource Management. However, in the implementation of the Job Creation Law, it focuses more on accelerating the improvement of the investment climate in Indonesia. So this law is still discriminatory against the"recognition of indigenous peoples and their customary territories, this can be seen"from the addition of several new provisions, namely administrative sanctions imposed on indigenous law communities, the addition of individual categories that are the subject of Social Forestry actors, Land bank mechanisms have the potential to revive the existence of verklaring domains, and limit the role of public supervision in the preparation of Amdal. So the government needs to review the content in the Job Creation Law and revise if there are articles that are detrimental to customary law communities in Indonesia, besides that, tenure policy reform is also needed and the immediate issuance of the Indigenous Law Peoples Protection Act in order to create certainty and justice"for all Indonesian people."

Keywords: Implications, Law Number 11 of 2020, Traditional legal comunities.

INTRODUCTION

2018 was the year in which the government under President Joko Widodo who played a role under the Coordinating Minister for the Economy Darmin Nasution had issued 16 policies which were economic policies where one of the main points of these policies was to facilitate the arrival of existing investors (Ibnu, 2018) because so far land licensing for investment has been one of the obstacles to investment. Moreover, in 2020 the Covid-19 pandemic has had a bad impact on national economic growth. Based on a report by the Central Statistics Agency (BPS) noted that national economic growth experienced minus 2.07% (Kemenkeu, 2021) caused by an increase in the unemployment rate in Indonesia from 2.56 million to 9.77 million (Purwanto, 2021). On this basis, the government provides ease of effort, especially related to licensing and legal regulations to improve the investment climate in Indonesia by passing Law No. 11 of 2020 on Job Creation as one of the solutions to increase job creation in an effort to accelerate the recovery of the national economy implemented by simplification of land licensing in Article 4 of Law Number 11 of 2020 concerning Job Creation that discusses land acquisition which is then in Article 6 letter b and d in increasing the existence of an investment ecosystem flow in the business world, it can be done by simplifying the basic requirements for simpler permits and the requirements that will be submitted for investment. Then in Article 13 relating to the simplification of the licensing requirements as referred to in Article 6 letter b changes the provisions of environmental permits and Amdal by simplifying only in the form of environmental approvals submitted by business actors through the electronically attempted licensing system submitted to the central government which is then approved by the central government (Article 15 paragraphs 1 and 2).

The increasing agrarian conflicts in the community who are still familiar with customary law as a result of this capitalistic-style investment continue to cause a systematic agrarian crisis. In 2018 there were many conflicts related to SDA (Natural Resources) conflicts which involved an area of about 2.1 million hectares and where there were 176,637 indigenous peoples who were victims of the conflict events (Gatra, 2019). Furthermore, referring to data from AMAN (Aliansi Indigenous Peoples of the Archipelago) on the other hand, in 2019 there have also been conflicts involving 125 communities that have resource conflicts that have occurred and have spread to almost a third of Indonesia's territory. (Walhi, 2020).

RESEARCH METHODS

In this study, the type of juridical"research is normative (Legal Research), which focuses on"the application of rules or norms to the applicable positive law (Ibrahim, 2008). A research approach that has used the existing legal approach (statute approach) by reviewing the existing regulations in the law which are then linked"to the problems that are the subject of discussion" (Marzuki, 2011). In this study, the author also uses a literature study approach"to obtain secondary data in the form of data,"information, and knowledge that has book guidelines and articles that are relevant to the problem being studied.

RESULTS AND DISCUSSION

Protection of"Indigenous Peoples in the 1945 Constitution of the Republic of Indonesia and Sectoral Law"

Communities that still use customary law or in other terms are called customary communities/customary law communities are a group in society that has order and behavior that is unified and resides in an area, the existence of advisors to the authorities in the area, the existence of law. customs adopted in the area (Salim, 2016). In addition to customary law community, there is another related term, namely customary law community. Some legal experts distinguish the term customary law community from

customary law community (Kalalo, 2018). The difference lies in the source of the term, namely the customary law community which is a translation of *adatrechtsgeneenschap* while the community comes from the term customary law communities (Kalalo, 2018). The concept of customary community is used to mean a technical juridical that designates a group of people who live in a region (ulayat) where they live and a certain environment of life, have wealth and leaders who maintain group affairs, and have a system of legal and governmental rules (Ridho, 2016). While the customary law communities is used to mean a group of people who organize and behave in one unit, reside, have leaders, their respective customary laws and have wealth, both objects and other forms of wealth and are able to control natural resources within their reach. Customary law communities are the reflection of the personality of a nation and is the incarnation of the soul of the nation so that in the State Constitution also gives the mandate of recognition and respect to customary law communities, contained in"Article 18B paragraph (2) of the 1945"Constitution which states:

> *"The State recognizes and respects the unity of indigenous peoples and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by the law."*

Arrangements related to the recognition and respect for indigenous peoples are also contained in Article 28I paragraph (3) which states that "The cultural identity and rights of traditional peoples are respected in harmony with the development of times and civilizations". Other basic foundations in the protection of indigenous peoples are also contained in"Article 32 paragraph (1) and paragraph (2), then at the level of MPR products are also regulated in MPR Decree No. XVI/MPR/ 1998 and reaffirmed in MPR Decree No. IX/MPR/2001 on Agrarian Reform and Natural Resource Management. Some laws also recognize the existence of indigenous peoples such as Law No. 19 of 2004 on The Establishment of Government Regulations in Replacement of Law No. 1 of 2004 on Amendments to Law No. 41 of 1999 on Forestry Into Law, Law No. 32 of 2009 on Protection and Management of Environmental and Law No. 18 of 2013 on Prevention and Eradication of Forest Destruction."

Then in the Regulation of the Minister of Agrarian Affairs / Head of National Land Agency No. 5 of 1999 on Guidelines for The Resolution of Issue of The Rights of Indigenous Peoples, which was later replaced with the Regulation of the Minister of Agrarian affairs and Spatial Planning / Head of the National Land Agency Number 9 of 2015 on The Procedure for The Establishment of Communal Rights to the Land of Indigenous Peoples and Peoples Residing in Certain Areas. Regulation of the Minister of Home Affairs No. 52 of 2014 where Article 2 is explained that the governor and regent/mayor recognize and protect indigenous. Then Article 4 mentions the recognition and protection carried out with the stages of identification of indigenous law communities, verification and validation of indigenous law communities as well as the determination of customary law communities, Government Regulation (PP) Number 24 of 1997 on Land Registration, PP Number 76 of 2001 on General Guidelines for Arrangements regarding Villages where local governments have an obligation to provide recognition and respect for customs and customary institutions in the region that can be established in the form of Local Regulations, PP No. 6 of 1999 on Forest Business and Collection of Production Forest Products, Presidential Decree (Keppres), Presidential Regulation (Perpres), and Regional Regulation (Perda). In addition to the laws and regulations and the derivative recognition of indigenous peoples, it is also seen from the support of the Indonesian government which is one of the 114 countries that participated in the ratification of the UNDRIP (United Nations Declarations on the Rights of Indigenous Peoples) which was ratified at the General Assembly.

Nevertheless, all recognition of indigenous law communities in Indonesia both in the regulation of legislation and declaration of recognition of indigenous law communities in fact until now has not provided guarantees for the continuity and preservation of indigenous law communities in various regions. This is due to the incompleteness of legal instruments where there are no technical procedures or mechanisms related to the recognition and respect for customary law communities in Indonesia, resulting in the weak position of indigenous peoples who do not obtain status as legal entities, so that local governments have not provided an optimal role in providing guarantee and protection for indigenous peoples in Indonesia.

Implications of"Law Number 11 of 2020 concerning Job Creation"on the Position of MHA in Indonesia

TAP MPR RI No.IX/MPR/2001 on Agrarian Reform and Natural Resource Management is one of the legal bases in the establishment of Law No. 11 of 2020 on Job Creation, which gives the mandate to the government to change and/replace all laws and regulations that are not in line with TAP MPR which requires agrarian reform and SDA management to be implemented in accordance with the principles: respecting and upholding human rights and recognizing, respecting, and protecting the rights of indigenous peoples and the diversity of the nation's culture over agrarian resources. However, the contents of Law No. 11 of 2020 do not reflect the mandate of TAP MPR IX/2001 which is one of the legal bases for its establishment, because Law No. 11 of 2020 prioritizes acceleration of national strategic projects, and the realization of ease of doing business, especially related to licensing and legal arrangements that were previously considered less effective and efficient to improve the investment climate in Indonesia. Law No. 11 of 2020 is still discriminatory against the recognition of indigenous peoples and their customary territories because there is no change to Article 67 paragraph (2) of Law No. 41 of 1999 on Forestry, in article 67 it regulates the strengthening of Indigenous Peoples through the mechanism of Regional Regulations. Whereas on the other hand, the government provides convenience in investing contained in Law No. 11 of 2020 Article 6 letter b and d in improving the investment ecosystem in trying to be done by simplifying the basic requirements of business licensing and investment requirements. In addition, the Job Creation Act also has the potential to ignore the problem of resolving tenure conflicts in forest areas, this is because this law is oriented to investments as seen in Article 36 point 1 of Law No. 11 of 2020. In fact, based on data from the Faculty of Forestry IPB, until 2017 there were 17.4 ha of land tenure in forest areas including mining and plantation permits (Kartodiharjo, 2017) while data from the Faculty of Forestry UGM also stated that there were 2.8 million ha of plantations oil palm in forest areas where 35% is controlled by the community, while the other 65% is controlled by corporations (Apriando, 2018).

Access of Indigenous Peoples to Forest Areas

The addition of social forestry schemes to the Job Creation Law formulated in Article 36 point 8 by adding new provisions of Law No. 41 of 1999 on Forestry through Articles 29A and 29B where Article 29A reads "Utilization of protected forests and production forests as referred to in article 26 and article 28 can be carried out social forestry activities". While article 29B reads "further provisions regarding permits for the use of forests and social forestry activities regulated in government regulations". Based on the"Regulation of the Minister of Environment and Forestry No.83 of 2016"on Social Forestry defines"that Social Forestry is a sustainable forest management system implemented in state forest areas or forest rights/customary implemented by local people or indigenous peoples as the main actors to improve their welfare, environmental balance and socio-cultural dynamics in the form of village forests, community forests, people's plant forests, people's forests, customary forests and forestry partnerships."

However, the problem related to social forestry is the existence of categories of individuals who are the subject of social forestry actors. This has the potential to encourage individuals with large capital to compete with indigenous peoples, thereby opening up foreign private space to invest in the social forestry business. The existence of categories of individuals who are subject to Social Forestry actors in the Job Creation Law does not confirm the communal principle in the management of state forests by the community, besides that there is also no affirmation of cooperatives as a forum for society to use forest areas.

Furthermore, in Article 36 point 18 of"Law No. 11 of 2020 on Job Creation"there is an addition of provisions on administrative sanctions imposed on the local community in the form of Article 50A of the Forestry Law. The addition of the above provisions has ignored The Decree No.95/ PUU-XII/2014 which reviewed the provisions of"Article 50 paragraph (3) letter c, d, and e of Law No. 41 of 1999 on Forestry."Although the new formulation in the Job Creation Law does not repeat the criminal threat to activities prohibited by Article 50 paragraph (3) letter c, d, and e (especially for people living in and around forest areas) but by providing administrative sanctions can also cause harm to indigenous peoples who live in the forest areas and their lives depend on the forest products, Moreover, administrative sanctions in the Job Creation Law are also not explained how it looks and the mechanism.

Land Bank Mechanism in Business/Investment Licensing and Its Impact on Indigenous Law Communities

Furthermore, in"Article 125 to Article 135 of the fourth part of Law No. 11 of 2020"on Job Creation regulates the mechanism of Land Bank which is then related to the implementation of its provisions regulated in PP No. 64 of 2021 which was passed by the President on April 29, 2021. The concept of Land Bank as the ruler and manager of state land has the potential to revive the *verklaring domain* that once took place in the Dutch colonial era. As for the contents of the *verklaring domain*, namely all land whose ownership cannot be proven by other parties is considered to have no control of the land on it, then the land is automatically considered as state land. Then from the results of the determination of state land by the government, the land will be used as a management right (HPL) and included as a source of land for the Land Bank, in this case it means that the state and government have absolute rights to land ownership. Meanwhile, the concept of the *verklaring* area has been explicitly omitted in the Basic Agrarian Law Number 5 of 1960 which is contained in the "decide" section in the preamble. Items 2 letters a to c state that the implementation of the LoGA is accompanied by the revocation of *"Domeinverklaring, Algemene Domeinverklaring, Domeinverklaring for Sumatra, Domeinverklaring for the Residency of Manado, and Domeinverklaring for Resident Zuider en Oosterafdeling van Borneo".*

In the implementation of PP No. 64 of 2021 on Land Bank which is a provision of the implementation of Article 135 of Law No. 11 of 2020 on Job Creation, especially in Article 19 which provides a guarantee of Land Bank against the availability of land in support of economic improvement and investment, the source of land managed by The Land Bank is determined by the government through state land claims regulated in PP No. 18 of 2021 on Land Management Rights which states that state land comes from the land of farmers, fishermen, indigenous peoples who have not been certified that cannot be proven ownership. Furthermore, Law No. 11 of 2020 on Copyright Work removes the provisions of Article 19 paragraph (2) of"Law No. 41 of 1999"on Forestry which states that:

> *"Changes in the allocation of forest areas as referred to in paragraph (1) which have an important impact and wide scope and strategic value, determined by the Government with the approval of the House of Representatives"*

The elimination of Article 19 paragraph"(2) of Law No. 41 of 1999 on Forestry"has the consequence of the central government not being obliged to seek the approval of the House Of Representatives in advance in making changes and allotments of forest area functions. The elimination of the class of approval of the House of Representatives in making changes and allotments of the function of forest areas shows a violation of the"principle of People's Sovereignty as stipulated in Article 1 paragraph (2) of the 1945 Constitution which states that""Sovereignty is in the hands of the people and implemented according to the Basic Law" Whereas the approval of the House of Representatives is a representation of the people that shows there is a democratic process in decision-making that affects peoples including indigenous peoples.

Moreover,"Law No. 11 of 2020 on Job Creation also removes the provisions of Article 26 paragraph (2), paragraph (3) and paragraph (4) of Law No. 32 of 2009 on Environmental Protection and Management"where paragraph (2) reads "Community involvement must be carried out based on the principle of providing transparent and complete information and notified before the activities are carried out". Then in paragraph (4) it reads "the public can object to the Amdal document" through changes to Article 26 there are three important implications, namely:

1. The public is increasingly difficult to obtain transparent and complete information related to environmental management;
2. Environmentalists and members of the affected communities have no right to any form of ruling in the Amdal process; and
3. The public loses the right to object to the Amdal document.

The three things above are contrary to Article 28 letter I of the 1945 Constitution which guarantees the right to a good and healthy environment, where the right to a good and healthy environment is supported by the three pillars of access to information, public participation, and access to justice.

The existence of contradictions between legal arrangements that prioritize the ease of investment compared to the need for resolving tenure conflicts in the field will have an impact on the widespread threat of expropriation of customary law communities' territories, especially forest areas for investment purposes, which in turn will increase conflict and criminalization of indigenous peoples who defend their rights over their customary territory which has been claimed by the government as a state forest area.

Tenure Conflict Resolution"Policy After the Issuance of Law No. 11 of 2020 on Job Creation"
The policy of conflict resolution of natural resources became one of the Nawacita of President Joko Widodo's government, which normatively the conflict resolution policy has been realized with the establishment of the"Joint Regulation of the Minister of Home Affairs, Minister of Forestry, Minister of Public Works and Head of National Land Agency Number 79 of 2014, PB.3/Menhut-II/2014, 17/PRT/M/2014, 8/SKB/X/2014 on Procedures for Land Tenure Settlement Within Forest Areas (Perber 4 Minister) and then revised with Presidential Regulation No. 88 of 2017 on Land Tenure Settlement in Forest Areas (Perpres 88/2017)"as one of the instruments to resolve land conflicts especially with the community. However, in fact the policy of equitable conflict resolution has not been realized properly because the Joint Regulation of 4 Ministers has a weak position, this is due to its existence is not supported by the Law so it is vulnerable to change and its implementation becomes non-continuous along with the change of government that causes changes in the ministry's nomenclature.

In order to resolve tenure conflicts and strengthen the existence of indigenous law communities in Indonesia, especially after the issuance of Law Number 11 of 2020 on Job Creation, tenure policy reform is needed in order to create certainty and tenure justice for all Indonesian citizens which is a mandate of the 1945 NRI Constitution, People's Consultative Assembly Decree"No. IX/MPR/2001 on Agrarian Renewal and Natural Resource Management, Law No. 5 of 1960 on (Agrarian Points), and Law No. 41 of 1999 on Forestry."So based on the 1945 NRI Constitution, the reform of this tenure policy implementation is based on the following aspects:

1) The"description of the Indonesian state of law (Article 1 paragraph 3)"
2) Tools for the effective exercise of the right to control the state to achieve the goal of maximum prosperity of the people (Article 3 Paragraph 3)
3) Fair and responsible decentralization (Article 18A)
4) Recognition and respect of the state for the rights of indigenous peoples (Articles 18B and 28I)
5) Implementation of state responsibility to ensure the protection and fulfilment of human rights, especially in the case of:
    a. The right"of the people to equitable recognition, assurance, protection, and legal certainty and equal treatment before"the law;
    b. The right of the people to live prosperously, live, and obtain a good and healthy living environment; and
    c. The right of the people to have private property rights that should not be arbitrarily taken over.

Tenure policy reform must be implemented based on nine important principles on the Basic Agrarian Law (UUPA) including:

1) The right to control the state over land and natural wealth as public authority to arranging mastery, allocation, utilization, protection, preservation of land and forests fairly provides prosperity to the people (Article 2);
2) Recognition of the rights of indigenous peoples and their customary laws (Articles 3 and Article 5);
3) Social function over land (Article 6);
4) Fair distribution of land and forests and prohibition of concentration of land and forest authority (Articles 7 and Article 13);
5) The principle of nationality where citizens get priority in the distribution of land and forest control and utilization (Article 9 paragraph 1);
6) Gender justice manifested on equal occasions for men and women to obtain land and forest rights (Article 9 paragraph 2);
7) Independence of the people (Article 10);
8) Protection of the poor (Article 11); and
9) Obligation to preserve forests for land and forest rights holders (Article 15).

Implementation of tenure conflict resolution policy in order to strengthen the existence of indigenous peoples in Indonesia after the issuance of Law No. 11 of 2020 on Job Creation can be measured through the following elements:

1) The improvement of policies and processes for the implementation of forest area strengthening in a participatory manner, acceptable to all parties, and able to provide strong legality for governments, communities, and business groups;
2) The immediate issuance of the Indigenous Peoples Protection Act in order to provide strong guarantees and protections in order to implement the recognition of indigenous peoples in Indonesia;
3) Recognition of maps obtained through mapping by the community into mapping forest areas and allocating forest areas to the community;

4) The availability of a system of recognition of the rights of indigenous peoples and local communities to land and forest areas with simple and accessible rights recognition procedures;
5) The establishment of independent institutions and mechanisms as a forum for settlement of tenure conflicts;
6) Resolution of cases agrarian conflict and reduced emergence of new conflicts;
7) The expansion of people's management areas that include forest areas for indigenous peoples and other local communities;
8) Improving the welfare of indigenous peoples and local communities; and
9) Increasing sustainability of forest areas managed by the government, indigenous law communities, and business groups.

CONCLUSIONS AND SUGGESTIONS

The implications of"Law Number 11 of 2020 concerning Job Creation"to the existence of traditional legal communities in Indonesia is found like the following:

The inconsistency between legal politics and its content material where one of the legal bases in the establishment of"Law No. 11 of 2020 on Job Creation"is"TAP MPR RI No.IX/MPR/2001 on Agrarian Renewal and Natural Resource Management."But in its implementation, the Job Creation Law focuses more on accelerating the improvement of the investment climate in Indonesia so that it is still discriminatory to the"recognition of indigenous peoples and their customary"territories because they are not changes to"Article 67 paragraph (2) of Law No. 41 of 1999 on Forestry"and potentially ignoring the issue of resolving tenure conflicts in forest areas as reflected in"Article 36 point 1 of Law No. 11 of 2020"that amends Article 15 paragraph (4) and (5) of Law No. 41 of 1999 on Forestry, This can be seen from several indicators, namely:

1. First, the Job Creation Law does not strengthen the communal principle in the management of state forests by the community because indigenous peoples' access to forest areas is limited by the addition of new provisions in the Job Creation Law in Article 36 point 18 of Law Number 11 of 2020, namely the existence of Article 50A of the Forestry Law related to administrative sanctions imposed on the local community, In addition, the existence of social forestry schemes that include individual categories being the subject of Social Forestry actors has the potential to encourage individuals who have large capital to compete with indigenous peoples so as to open foreign private spaces to invest in social forest businesses.
2. Second, the existence of land bank mechanisms in licensing efforts / investments has an impact on indigenous law communities because it has the potential to revive the existence of verklaring domains that have taken place in the Dutch colonial era. This was realized by the establishment of PP No. 64 of 2021 on Land Bank which is a provision of the implementation of Article 135 of Law No. 11 of 2020 on Job Creation, especially in Article 19 stating the guarantee of Land Bank against land availability in support of economic improvement and investment.
3. Third, the Job Creation Law limits the role of public supervision in the preparation of amdal by removing Article 19"paragraph (2) of Law No. 41 of 1999 on Forestry"and Article 26"paragraph (2), paragraph (3) and paragraph (4) of Law No. 32 of 2009 on Environmental Protection and Management."

On the basis of the foregoing, the suggestion for the Government needs to review the content material in the Job Creation Law and revise articles that harm indigenous peoples in Indonesia, while in order to resolve tenure conflicts and strengthen the existence of indigenous law communities in Indonesia, especially after the issuance of Law No. 11 of 2020 on Job Creation, tenure policy reform is needed and the immediate issuance of the Indigenous Protection Law to creation of certainty and justice for all Indonesian people which is a mandate of the 1945 NRI Constitution.

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