



Indonesia: Repeal the Omnibus Law on Job Creation, abide to human rights obligations

(Jakarta, 6 October 2020) – The Indonesian Government should immediately repeal the Omnibus Law on Job Creation (also known as UU Cipta Kerja) as it severely curtails the country’s human rights obligations, said rights groups.

The Asian Forum for Human Rights and Development (FORUM-ASIA) and its Indonesian members, Indonesia Legal Aid Foundation (YLBHI), Commission for the Disappeared and Victim of Violence (KontraS), Human Rights Working Group (HRWG), Indonesia Legal Aid and Human Rights Association (PBHI), IMPARSIAL, The Alliance of Independent Journalists Indonesia (AJI), and the Institute for Policy Research and Advocacy (ELSAM), raised concerns of how the passing of the law would impact the labour and environmental sectors, with women workers and indigenous people being particularly affected.

The lack of any public oversight and the potential breach of Indonesia’s obligations under national and international law raise serious concerns over the Government’s hasty push of the law through Indonesian Parliament.

Passed by the House of Representatives last night, the law consists 1,000 pages, covering a broad range of issues including business regulations, labour, the right to complain, land procurement and the absolute decision-making power of the central government. The Government argues that the Bill would ease requirements on business, attract investment and boost job opportunities.

The Government fast-tracked the Omnibus Law on Job Creation with complete disregard for civil society’s mounting dissent. Environmental and labour groups, in particular, were not consulted in a meaningful manner and their objections were ignored.

National strike and labour rallies across 25 provinces and 300 regencies is anticipated to mobilise up to five million workers¹ eager to convey their disapproval of the newly adopted law. However, some business associations are condemning the rallies and are planning to sanction those who participate.

FORUM-ASIA and its member organisations also express concern over a letter dated 2 October from the Indonesian National Police Chief, which calls for the mobilisation of intelligence functions, social media and media outlet patrols to counter narratives that are critical of the Government. Such efforts can only lead to the violation of the right to freedom of expression and have a chilling effect on media freedom and public dissent, further shrinking civic space in the country.

The Omnibus Law amends 79 existing laws to the detriment of workers, indigenous communities and the environment, whose protection would be further side-lined.

¹ <https://en.tempo.co/read/1393021/labor-rally-against-omnibus-law-police-close-roads-to-dpr-building>

A LAW DETRIMENTAL TO ENVIRONMENTAL RIGHTS

‘We are particularly concerned with the replacement of environmental permits with a simple approval process led by the central Government. This weakens the Environmental Impact Assessment (*Analisis mengenai Dampak Lingkungan - AMDAL*) procedure,’ said the groups.

The law not only narrows the breadth of the AMDAL’s reach², but also removes the Assessment Commission needed to validate AMDAL procedures. It further restricts public participation by only allowing those deemed to be ‘directly’ affected by business operations to engage with AMDAL’s process.

Public participation is also barred in cases where operations are not considered to have a ‘significant impact’ on the environment, but still require an environmental permit (*Upaya Pengelolaan Lingkungan – Upaya Pemantauan Lingkungan, UKL-UPL*).³

The potential impact on forests is also concerning, as the law eliminates legal requirements to maintain a minimum forest cover of 30 per cent for watersheds and/or islands.

‘With these weaker environmental safeguards, it is alarming to see the law provide increased authority and power solely to the central Government, which would be mandated with crucial powers such as settling overlapping claims relating to land and forests, issuing permits for forest utilisation, applying administrative sanctions, and conducting environmental feasibility studies,’ the groups said.

SOCIOECONOMIC INEQUALITIES AND DIVISIVENESS

The law threatens to erode existing labour safeguards and further exacerbate socioeconomic inequalities, for example, leaving unfettered discretion to employers in determining work hours and compensation in certain sectors. Equally concerning are the law’s provisions on annual paid leave, since it eliminates existing forms such as parental and menstruation leave, placing a disproportionate burden on women workers.⁴

Of further concern is Article 82⁵ which grants the National Police authority to excessively control and even prohibit beliefs and schools of thought that can potentially ‘cause division’ or ‘threaten the unity and integrity of the nation’.

The definition of what may threaten the unity and integrity of the nation is loose and often relies on the judgement of the National Police, which in the past has led to the stigmatisation of minority beliefs under Indonesia’s existing blasphemy law. The provision within the Omnibus Law further exacerbates pre-existing vulnerabilities of minority believers across Indonesia.

The groups, which have been tracking Indonesia’s passing of the legislation under the blanket of the COVID-19 pandemic, expressed alarm with the Government’s fast-tracking of laws without meaningful civil society participation and amidst movement restrictions. These include the revised Coal and Mining Law and the Law on State Financial Policy approved in May 2020.

² Businesses are required to obtain an Amdal if their ‘process or activity has significant impact towards environment, society, the economy and culture’.

³ Previously, after a business has submitted the UKL-UPL, the relevant authority is required to announce an application for public feedback for three business days. With the Bill there will be no environmental study under the UKL-UPL, but simply a statement of environmental management ability. (<https://www.indo-ned.com/environmental-permit-ukl-and-upl/>)

⁴ By stipulating to calculate the minimum wage without taking into account the inflation rate, but rather only the GDP of the province, the daily cost of living and purchasing power of workers will be disregarded, the minimum wage set against an incomplete and misleading backdrop, and their right to an adequate standard of living jeopardized. In case of wages being set below the statutory minimum wage, workers are left hopeless, since the Bill eliminates the possibility for employers to be subject to penal or other sanctions. The rights of temporary workers are also in peril. The Bill allows employers to set a piece rate system to determine the provision of their wages, with the concrete risk of employers’ setting unrealistic targets in order to pay less and the temporary workers risking their health to achieve the targets. The Bill also eliminates the maximum period of temporary work agreement, allowing employers to keep temporary workers as such for an indefinite period of time.

⁵ <https://www.vice.com/id/article/wxqz3y/selain-rugikan-pekerja-omnibus-law-juga-mengancam-penganut-aliran-kepercayaan>

INDONESIA'S NATIONAL AND INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The provision in the Indonesian Constitution which stipulates the right for its people to be meaningfully involved in legislative processes and for draft legislations to be made accessible by the general public has been ignored in recent times.

As a State-party to both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), Indonesia should enable civil society participation in public affairs⁶, take concrete steps to realise its peoples' right to an adequate standard of living and to be free from hunger⁷, as well as to enjoy just and favourable conditions of work including fair wages and a decent living for workers and their families.⁸ The Declaration on the Rights of Indigenous Peoples, which Indonesia has signed, grants indigenous peoples the right to participate in 'decision-making matters that affect their rights'.⁹

The provisions of the law concerning both the environment and labour sectors impede Indonesia's progressive realisation of its people's economic, social and cultural rights and environmental protection, violating the international law principle of non-regression.

'The regressive steps triggered by the law must not be used to negotiate fundamental human rights safeguarded in the Indonesian Constitution and in international treaties Indonesia has signed on to. It is imperative that the Government repeal the law to ensure that the rights of the Indonesian peoples are safeguarded,' said the groups.

'The Government's willingness to prioritise profit over people, and business over the environment, will only lead to severe consequences in the weeks and years to come. As Indonesians continue to grapple with the impact of the pandemic, the Government of Indonesia must honour its obligations and ensure the full protection of people's rights and the environment in accordance to national and international law,' they said.

About FORUM-ASIA:

The Asian Forum for Human Rights and Development (FORUM-ASIA) is a Bangkok-based regional network of 81 member organisations across 21 Asian countries, with consultative status with the United Nations Economic and Social Council, and consultative relationship with the ASEAN Intergovernmental Commission on Human Rights. Founded in 1991, FORUM-ASIA works to strengthen movements for human rights and sustainable development through research, advocacy, capacity-development and solidarity actions in Asia and beyond. It has sub-regional offices in Geneva, Jakarta, and Kathmandu. www.forum-asia.org

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⁶ ICCPR Article 25

⁷ ICESR Article 11

⁸ ICESR Article 7

⁹ The United Nations Declaration on the Rights of Indigenous Peoples Article 18