

Positive Law of Environment and John Ruggie Principles: Between Legal Texts and Norms

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Abstract

The aim of this research is to examine the application of the Guiding Principles for Business and Human Rights, that is Protection, Respect and Recovery in the implementation of the Law on Environmental Protection and Management (Environment Law). In 2015 the government issued the Presidential Regulation Number 75 of 2015 regarding to the National Action Plan for Human Rights 2015–2019 (NAP Human Rights). In 2020 the government is simplifying laws and regulations with the new concept of legal drafting that is the Omnibus Law of which government stated the law of which be familiar as Job Creation Law. One of the simplified clusters is the Environment Law. The findings show that many amended legal norms in the Environment Law are inconsistent with and even contradictory to the NAP Human Rights. Research is carried out normatively by paying attention to legal issues in social media as legal material, as well as reviewing scientific literature related to the topic of issues, laws and regulations, and court decisions. The conclusion from the research is that the Guiding Principles of United Nations for Business and Human Rights bind Judges in enforcing the Environment Law even though these principles are still at the level of the National Action Plan and have not yet entered into the level of legislation.

Keywords: environment law, business, human rights, national action plan

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Introduction

The regulation of environmental legal norms in Law Number 11 of 2020 concerning Job Creation (Job Creation Law) is considered by academics to be no better than Law Number 32 of 2009 concerning Environmental Protection and Management (Environment Law). Environmental legal norms in the Job Creation Law weaken or reduce community participation when compared to the Environment Law. This can be seen from the change in the definition of society which is mentioned in the amendment of Article 26 of the Environment Law stated in the Job Creation Law which states that the community is only limited to the affected community. Whereas in the Environment Law, there is a role for environmental observers in the position of a non-governmental organization (NGO) (HUKUMONLINE, 2020).

Article 26 of the Environment Law states that the Environment Impact Assessment (EIA) document prepared by the initiator involves the community. The community involvement must be carried out based on the principle of providing transparent and a complete information as well as being notified before activities are carried out. Then the definition of society in the article is stated to include: a) the affected community, b) environmentalists (observers), and/or, c) who are affected by all forms of decisions in the EIA process (Environmental Protection and Management Act, 2009).

However, now in the amendment to Article 26 in the Job Creation Law, the role of environmentalists (observers) or communities affected by various forms of decisions in the EIA process has been eliminated. The Job Creation Act

(2020) states that the preparation of the EIA document is carried out by involving people who are directly affected by the business plan and/or activity. Thus, the preparation of EIA only involves affected communities and the environmental NGOs are not involved in the process of issuing EIA documents.

Another environmental legal norm that has changed in the Job Creation Law is the abolition Article 38 of Environment Law. This means that the EIA document cannot be canceled through a court. Then also removing criminal norms, namely first removing Article 102 of the Environment Law on the actions of business actors who dispose of hazardous waste without permission. Secondly, abolishing the criminal norm of Article 109 of the Environment Law in which business actors without environmental permit approval cannot automatically be convicted. Business actors can only be convicted if in business activities without an environmental permit causing victims or damage to health, safety and/or the environment. Finally, Article 22 of the Job Creation Law has removed authority of local governments in assessing and determining the EIA of business actors. Thus, the Job Creation Law has substantially changed criminal sanctions and the authority of local governments (HUKUMONLINE, 2020).

The Job Creation Law no longer makes environmental permits a prerequisite for issuing business permits. This means that business activities can be carried out even though the environmental permit has not been issued or is still in process. Whereas the legal ratio of environmental permit legislation is to provide the ease of completion of environmental permits as well as ease in carrying out

supervision. In addition, an environmental permit has a preventive function as well as an instrument that functions in order to prevent environmental damage and pollution. Another consequence of the elimination of environmental permits is the loss of government authority, both central and regional authority, in order to control the impact of pollution and environmental damage. Licensing has a regulatory function in providing incentives for socio-economic growth as an engineering development instrument, the second is a financial function that is a source of income for the state, and the third that is a function of instruments for regulating people's actions and behavior (Luhukay, 2021).

It was found that the Omnibus Law approach by the government is to reform the licensing so that it is simpler, easier to obtain by business people, has an impact on employment and increases economic growth. However, the fact is that the amendments to the Environment Law in the Job Creation Law neglect environmental protection. It is said that the amendment to the Environment Law in the Job Creation Law only simplifies the investment and business process. This is despite the fact that environmental problems are still problems that have not been resolved until now (Amania, 2020).

On the taking of local government authority by the central government in the Job Creation Law on EIA policies it resulted in the degradation of regional authority. This results in the potential for central government policies that are incompatible with regional characteristics. Then the next consequence is that the orientation of economic improvement by the central government has the potential to have an unexpected impact, such as in industrial development that does not consider the natural conditions and the characteristics of the region in the future (Fatanen, 2021).

The question in this research is how the guiding principles of the three pillars, namely: "Protect, Respect and Remedies" can be implemented in positive environmental law. The goal of the findings of this study is that a globally recognized principle is part of positive law even though it is not contained in the formulation of a law. So that the guiding principles of the three pillars, namely: "Protect, Respect and Remedies" can be enforced in law enforcement of environmental violations of which taken action by business actors.

Methods

The type of data used in this study is secondary data. In order to obtain valid secondary data, this study requires 3 (three) sources of legal materials, namely primary sources of legal materials, secondary sources of legal materials, and tertiary sources of legal materials.

Data collection techniques are carried out by means of library research, namely by making an inventory of legal material sources consisting of (Marzuki, 2010), i.e. a) Source of primary legal materials: Primary legal materials are obtained by taking an inventory and collecting several laws and regulations on the environment, business principles and human rights and the environment in international conventions and court decisions; b) Secondary sources of legal materials: Secondary legal materials are obtained by

collecting library materials in the form of books, literature, scientific journals, and scientific articles as well as social media related to the formulation of research problems, related to the implementation of the guiding principles of business and human rights which basically consists of three pillars, namely: "Protect, Respect and Remedies", which is within the scope of the environment; c) Sources of tertiary legal materials: The tertiary legal materials needed in this study are legal dictionaries, encyclopedias, and Indonesian legal dictionaries.

The analysis technique used in this research is descriptive analysis, which is to reveal a problem, situation or event as it is based on the findings in the research in narrative form (Neuman, 2003). This descriptive analysis technique is used to reveal problems, circumstances or events related to Job Creation Law which is considered by academics to be no better than Environment Law. This technique is also used to describe the related research statement in writing which will be thoroughly and thoroughly researched and studied regarding the problem being studied. Then the results of research that are based on legal theory and philosophy are described in descriptive analysis to get conclusions from the discussion of the problem.

Result and Discussion

Principles for business and human rights Paradoxically, the global community has begun to pay great attention to environmental aspects with a human rights approach. The contestation between business and human rights peaked when United Nations Commission on Human Rights, unanimously, endorsed the Guiding Principles for Business and Human Rights, a UN framework pioneered by John Ruggie as UN Special Representative: "Protect, Respect and Remedies". This framework is known as "John Ruggie Principles". The guiding principles basically consist of three different but interrelated pillars, viz (Wagiman, 2014): a) the state's obligation has to protect human rights, of which the government must protect individuals from all of human rights violations by third parties, including business actors; b) the company's responsibility has to respect human rights, of which it means that not violating internationally recognized human rights by avoiding, reducing, or preventing the negative impacts from of all corporate operations; c) the need of expanding access for victims to receive the effective remedies, both through judicial and non-judicial mechanisms.

The company, as a business actor related to environmental sustainability, can analyze the potential impacts of human rights on the environment around its operational activities. Especially the guiding principles which basically consist of three pillars, namely: "Protect, Respect and Remedies". This can reduce the risk of the company as a business actor committing human rights violations which can create a bad image of the company in the perspectives of consumers and society (Nababan, 2014).

The remedies aspect is also one of the main points of the company's responsibility to respect human rights. Victims who have suffered losses due to company activities, both internally and externally, must have access to remedies. So far, there has been no communication between the victim and

the company other than in court. For this reason, the company should provide a complaint acceptance mechanism so that all parties can find solutions together. With a good remedy mechanism, it is hoped that the company's image will remain good in the community (Nababan, 2014).

These guiding principles provide practical guidance to the business world (business enterprises) on how to address the problem that has been haunting them, namely human rights. The business world can no longer stand idle by looking at that matters of human rights protection are merely a state obligation, and every effort to encourage the business world to respect human rights is accused of being an effort of "privatization of human rights" (Ruggie, 2013). This view has begun to be abandoned by business circles, and now they are starting to address human rights issues as an important part of their business operations, as a follow-up to environmental issues that they previously recognized (Wagiman & Widiyanto, 2014).

The John Ruggie Principles are a new impetus because the adoption of these norms also ends the absence of rules despite being soft-law at the UN level on this issue (Wagiman & Widiyanto, 2014). Under the United Nations Conference on Environment and Development (UNCED) what we call it Earth Summit or Rio Summit, takes place on di Rio de Janeiro, Brazilia on June 3–14, 1992, the result: a) the Declaration of Rio de Janeiro on Environment and Development consist of 27 principle (Rio Declaration), b) non-legally binding upon authorities statement regarding to principles for a global consensus on the management, conservation and sustainable development of all types of forest ("Forestry Principles"). The Agenda 21 also added that the programmed of action towards sustainable development at the national and global levels, the summit then adopted the non-legally binding declaration of principles that obtained the highest political endorsement (Ling, 2012).

In the context of environmental issues, this encouragement is also a very long journey. Starting in 1962 with the publication of Rachel Carson's book "The Silent Spring", attracting public attention because it describes environmental problems: disease attacks livestock and humans, there is a saying "... *there is a strange silence. Where did the birds go? ...*" (Carson, 1962).

Before Rachel Carson's book was published, there was a catastrophic environmental pollution caused by mercury in Minamata Bay (Japan) by factories along the Minamata River. The result is damage to the health system of the surrounding population: muscle weakness, loss of vision, disruption of brain function and then paralysis, coma and death. Then, Cadmium waste contamination in Toyama (Japan) in the Jintsu River: rheumatic disease, decreased red blood cells, bone marrow damage. In 1972 the United Nations (UN) held a conference in Stockholm (June 5–16, 1972) to discuss important environmental issues.

Previously there were unofficial report books "Only One Earth" by Barbara Ward and Rene Dubois, there is a saying "*As we enter the global phase of human evolution it becomes obvious that each man has two countries, his own and planet earth*" (Koffler, 1973). In this circumstance, the decline in the carrying capacity of the earth in various patterns, namely the population is getting denser, the occurrence of environmental

pollution, natural resources are damaged, natural resources that are not renewable (non-renewable resources) are depleting, forest reserves are depleting beyond conservation level. With the increasing production and population growth, it is necessary to adopt the "Zero Growth" policy (Meadows et al., 1972).

Paradoxically, the Job Creation Law finds changes in the norms in the Environment Law. This research is important because these changes of law, of which the Job Creation Law no longer makes environmental permits a prerequisite for issuing business permits, are not in line with the development of the guiding principles which basically consist of three pillars, namely: "Protect, Respect and Remedies". The legal reason is there is consequence of the elimination of environmental permits is the loss of government authority, both central and regional authority, in order to control the impact of pollution and environmental damage. These changes are: a) the Job Creation Law has an impact on environmental NGOs that normatively cannot file objections or rejection of the issuance of EIA in certain projects due to the elimination of the role of environmental observers; b) the elimination of Article 38 of the Environment Law so that normatively EIA cannot be canceled through the court; c) then eliminating criminal norms for Business Actors who dispose of hazardous waste without permission, and also for Business Actors without environmental permit approval; d) removing the authority of local governments in assessing and determining EIA of Business Actors companies; e) no longer makes environmental permits a prerequisite for issuing business licenses.

Changes in the norms of the environment law In the substances of the Job Creation Law finds the changes of the norms of the Environment Law. The changes in these norms are: a) the Job Creation Law has an impact on environmental NGOs normatively being unable to object or reject the issuance of EIA in certain projects due to the elimination of norms for the role of environmental observers, b) the abolition of Article 38 of the Environment Law so that normatively EIA cannot be canceled through the court, c) then the criminal norms are abolished for Business Actors who dispose of hazardous waste without permission, and also for Business Actors who do not have environmental permit approval, resulting of which, Business Actors cannot be convicted for violating the Environment Law, d) eliminating the norms of local government authority in assessing and determining EIA of Business Actors companies, resulting in the absence of supervision and control of the impact of pollution and environmental damage, e) no longer making environmental permits a prerequisite for issuing business licenses, then this change in norms results in problems in supervision and function damage prevention and environmental pollution.

This change in norms in the positive law of the Environment Law in the Job Creation Law, results in legislation reaching an extreme level of injustice, so that the conflict between positive law and justice cannot be tolerated. The consequence of the elimination of environmental permits under the change of norms is the loss of government authority in order to control the impact of pollution and

environmental damage. This is according to Gustav Radbruch, said that the law ceases to be law. The question regarding to the relationship between law and morality leads to the heart of the controversy between natural law and legal positivism theories. In refuting the grossly unjust legal injunction, Radbruch pose a purely formalistic ("value-free") view of the validity of law as expressed by the founders of philosophical legal positivist especially Hans Kelsen, whose "Pure Law Theory" emphasizes the autonomy of the legal order of all questions both ethics and politics (Haldemann, 2005).

The formulation of the norm of article 26 of Environment Law in the substance of the Job Creation Law results in environmental NGOs being unable to raise objections or objections to the issuance of EIA in certain projects. In Hans Kelsen's positivism view, it is true that there is autonomy of the legal order from all ethical and legal questions. However, Gustav Radbruch criticized this that laws and regulations that do not provide extreme justice are not laws since the relationship between law and morality leads to the heart of the controversy between natural law and legal positivism theories. In refuting the grossly unjust legal injunction, need the validity of law. Thus, there must be legal norms that provide justice to the community for the impact of EIA violations (Haldemann, 2005).

The removal of Article 38 of the Environment Law in the substance of the Job Creation Law, normatively, the EIA cannot be canceled through the court. As a result of this new norm, where EIA preparation only involves affected communities and environmental NGOs are not involved in the process of EIA issuance documents. In this circumstance the quality of EIA documents cannot provide a guarantee in the implementation of the Guiding Principles for Business and Human Rights which have been endorsed by the UN. One of the pillars of these principles is the company's responsibility to respect human rights. It means that it is not violating internationally recognized human rights by avoiding, reducing, or preventing the negative impacts of corporate operations. One of the respects of the company is exercising its rights and obligations towards the preparation of an EIA that does not violate human rights (UNCHR, 2011).

As the explanation above mention, the loss or reduction in public or community participation such as environmental NGOs in making decisions regarding EIA and approvals or permits will disrupt environmental justice and the rule of law. It could be said that public participation, I turn, relies upon strengthening the rule of law and access to justice. Honest government, open to the petitions of its citizens, is essential to justice (Wibisana, 2021).

According to the Anthropocene Epoch paradigm, law has an important role. This is because in this paradigm, humans have a central role, not in the sense that nature will only be valuable if it is of value to humans, but what humans do have an impact on global change. The Anthropocene Epoch paradigm has also led to changes in several fields and concepts of law including environmental law, indicating the increasing amount of human interference in individual actions, civil matters can become public affairs. Civil law and (civil procedure) will cause the changes related to civil liability, causality, sue, and property law, even international

law. This requires cooperation and coordination, or governance, at the global level, while imposing new boundaries on the "national interest" or the "state interest" (Wibisana, 2021).

Then the elimination of criminal norms in the Job Creation Law for Business Actors who dispose of hazardous waste without permission, and also for Business Actors who do not have an environmental permit approval, causing that the Business Actors being unable to be convicted for violating the Environment Law. In the context of positive law, this will make it difficult for judges if there are cases related to violations of the Environment Law. In the context of positive law, it is stated that positive law is not norms that are naturally attached to empirical reality, but are an idea of justice that is in the idea of goodness. These ideas are transcendent which places not only things that are outside the pseudo-empirical, but also outside the truth and rationality that are visible. This norm according to Plato can only be seen or be understood spiritually at the level of spiritual belief (Kelsen, 1960). Refer to the law as normative methods, its cover the gathering the intelligence collecting data both qualitative and quantitative methods (Neuman, 2003).

The elimination of criminal norms in the Job Creation Law for Business Actors as mentioned above, it seems that its exaggerating since there the Attorney General's Discretion regarding the environmental criminal law enforcement (principle of subsidiarity) (Circular Letter of the Deputy Attorney General for General Crimes, 2002). In the instructions of such discretion, it is stated about the principle of subsidiarity as a Specific Formal Requirements in dealing with Environmental Crimes which are regulated in the Environment Law of 1997, where criminal law enforcement activities against environmental crimes can only be started when legal actions have been carried out as follows: a) the apparatus has taken action against the offender by dropping an administration, is unable to stop the violation that has occurred, or b) between the company and the community victims, efforts have been made to resolve the dispute outside the court, but in a deadlock, or through court litigation but it is not effective. In such conditions, only then can the environmental criminal law enforcement instrument be used. These two conditions can be waived if 3 conditions are met: a) the perpetrator's culpability rate is relatively large; b) the consequences of his actions (culpability) are relatively large; c) the violation caused public stability (unrest). The determination of the requirements is not unilaterally by the investigator or the prosecutor, but there must be a written statement from the official sectoral technical agency.

In its application to positive law, Plato's doctrine of the idea of justice is the opposite of the doctrine of natural law which is made up of observable facts from empirical reality. This view seems to contradict the role of the judge. A just judge only decides a legal issue to be fair or not, according to the standards he has received from the authorities and legislators. However, this statement only refers to the limits of the judicial function. So, the conclusion is that the power of the judge is not the executive power but only the power of the guardian of the law that serves the power of the government (Circular Letter of the Deputy Attorney General for General Crimes, 2002).

Removing the norms of authority of local governments in assessing and determining EIA of Business Actors in the Job Creation Law, resulting in the absence or loss of supervision and control of the impact of pollution and environmental damage. The abolition of the norms of government authority is not a legal action but rather a political act since the issuing of the Job Creation Law brings the polemic and controversial. Politics is something that must be removed from the legal system from an imperfect legal position, of which from its inability to offer room for justice and politics. In this circumstance, the description of modern law faces a paradox, if they observe law as an autonomous totality, which refers to herself claiming the right to draw distinctions between herself and non-law. The paradox of autonomous law is that it cannot consistently show that it is itself legal as a totality (Lukkari, 2020).

The fundamental problem implied here is that the legal system cannot legitimize its existence and identity, of which in responding to challenges in any way other than by utilizing its own resources, which have been the targets of the challenge from the start. If we consider the law to offer a framework in which questions about justice and injustice can be answered, paradox arises when we ask the question the fairness of the framework itself. In this situation, it could be said that there is a paradoxical-critical orientation. Also, it could be concluded that the legal system is a paradoxical totality, which means that no neutral language, such as natural law, from which can solve the problem of referencing the law itself for the goodness (Lukkari, 2020).

No longer making environmental permits a prerequisite for issuing business licenses, this change in norms results in problems in the supervision and function of preventing environmental damage and pollution. It is the same as above, namely that it is not a legal action but rather a political action. This means that in the legal system it is a legal paradox in case that government act as a political actor rather than act as a legal actor. Thus, changing a legal norm must remove all political interests.

Guiding principles for business and human rights In general, the UN has adopted the guiding principles for business activities that must not violate human rights, including business activities in environmental law. In the UN guidebook mentioned in its publication contains: "the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework". These Guiding Principles are based on the recognition of (UNCHR, 2011): a) states' existing have the obligations in order to respect, protect and fulfil human rights and fundamental freedoms; b) the role of business enterprises as specialized organs of society performing specialized functions, have to comply with all applicable laws and to respect human rights; c) the need for rights and obligations have to meet with appropriate and effective remedies when breached.

The UN in guiding principles for Business and Human Rights is not the command center of its member states. According to such principles, it means that the UN is not a centralized command-and-control system that can impose its will on the world. It has no "will" apart from that with which

member States endow it. Contrary to the fact that it can and must lead intellectually and by setting expectations and aspirations. The Human Rights Council have ability to make a singular contribution to closing the governance gaps in business and human rights by supporting this framework, inviting its further elaboration, and fostering its uptake by all relevant social actors (Ruggie, 2008).

In order to comply with and implement the guiding principles for Business and Human Rights, there are a number of things that Business Actors must do to integrate human rights into their business operations, among others, Business Actors must carry out human rights due diligent, by means of (Wagiman, 2014): a) develop policy commitments to respect human rights; b) assessing the potential and actual impact of human rights; c) integrate and act on the findings of the assessment; d) conduct an audit of the impact handlers that occur; e) communicating how the impact has been handled. For the Indonesian context, in implementing the guiding principles for business and human rights, a strong government commitment is required in implementing the John Ruggie Principles into national law, political law, legislation and regional regulations on business and human rights.

As part of the state's responsibility, the John Ruggie Principles is the first part, namely the state obligation. The government must prepare a framework to provide a kind of guide for companies in the country to integrate John Ruggie's principles in the operations of the companies. The state, however, still has the responsibility to make the business world friendly to human rights. The government has established a National Action Plan based on Presidential Regulation Number 75 of 2015 (NAP Human Rights). However, this must be strengthened in the form of a law in Indonesia's positive law.

Implementation and law enforcement of the guiding principles for business and human rights in the environment law The government, in this case the National Human Rights Commission, has established a NAP Human Rights. The NAP Human Rights has not entered into a constitutional order but has entered into a morality and social order. In the NAP Human Rights, the Indonesian government has accepted the UN Guiding Principles for Business and Human Rights. All corporations have the responsibility to honor human rights by, namely by mentioning (KOMNAS HAM & ELSAM, 2017): a) *preparing policies or strategies that integrate the human rights*; b) *performing due diligence to evaluate the impact of the company's activities on human rights*; c) *develop a mechanism for recovery for individuals as well as the community affected by the (operational) activities of a corporation*. Then the important thing in the NAP Human Rights is that matters related to the availability of effective access for victims of human rights violations can be done through legal and non-legal mechanisms.

President Joko Widodo on October 2, 2015 also signed Presidential Regulation (NAP Human Rights). The target of NAP Human Rights is (SETKAB RI, 2015):

"is to improve the respect, protection, fulfillment, enforcement, and promotion of human rights for all levels of Indonesian society by the state, especially the government"

taking into consideration religious values, morals, customs, culture, security, public order, and the interests of the nation of Indonesia”.

How the rule of law enforces in implementing the guiding principles for business and human rights is a question. This is because the NAP Human Rights has not entered into a statutory level. Nonetheless, the NAP Human Rights has stated that the availability of effective access for victims of human rights violations can be done through legal mechanisms and non-legal mechanisms. In a positive legal framework this is difficult to do because the judge refers to the law. However, in practice this law enforcement can be carried out based on thought or doctrine (dogma) regarding unlawful acts or act against the law (“tort”) based on Article 1365 of the Indonesian Civil Code (*Kitab Undang-undang Hukum Perdata Indonesia*). Thus, violations in the implementation of the guiding principles for business and human rights are included in the category of tort.

In the thought or doctrine (dogmatism) of tort, it is stated that tort's actions result in shocks in the balance of balance of the community. The shock was not only due to violation of legal regulations but also violations of the rules of decency, religion and manners. All of this must be prevented not only in outright violation of the rules of law but also of the rules of decency, religion and courtesy alike. This thought or doctrine (dogma) was extended based on the Hoge Raad decision (colonial court decision) dated January 31, 1919 where tort (based on Article 1365 of the Indonesian Civil Code) is interpreted more broadly, so that it includes an act that is contrary to decency or with what is considered appropriate in the social life of the community (Prodjodikoro, 1984).

Law enforcement on the implementation of guiding principles for business and human rights that have not been regulated in law is the obligation of District Court Judges to resolve claims. This is based on legal considerations of the Situbondo District Court decision dated December 30, 1970 Number 92/1969 Pdt., of which was strengthened by the Supreme Court with its decision dated October 31, 1974 Number 981 K/Sip./ 1972. Then in this regard, in relation to Article 24 of the 1945 Constitution and the Representative Council (MPRS) II/1960 Decree, it becomes the applicable legal principle in general (“algemene geldend rechtsbeginsel”), which is called: “settlement of claims regarding matters that are not regulated in and have not been determined by the law, which officials are authorized, of which submitted to the District Court Judge” (Djojodirdjo, 1982).

Law enforcement to uphold the third principle of the John Ruggie Principles, namely access to remedies for the impact of environmental damage to the community (access to remedy) can be done by legal mechanisms and non-legal mechanisms. The government must provide settlement facilities and infrastructure by means of legal mechanisms and non-legal mechanisms. This must be regulated in law to provide legal certainty for the community to get remedies from the impact of environmental damage to the community (access to remedy).

Conclusion

The government in the Job Creation Law aims to simplify and synchronize various laws and regulations including the Environment Law cluster. However, in its implementation what happens is not a simplification but a lot of changes in norms paradoxically contrary to the principles of justice. In the Environment Law cluster there are many legal norms that are inconsistent with the Guiding Principles for Business and Human Rights, namely a UN framework pioneered by John Ruggie as the UN Special Representative: “Protect, Respect and Remedy”. This greatly provides injustice to the recovery of communities affected by environmental pollution by Business Actors.

Recommendation

The government makes regulations in the form of facilities and infrastructure for access to justice for the community in remedying the impact of environmental pollution. What is important in the NAP Human Rights has been socialized, namely that related to the availability of effective access for victims of human rights violence, it can be done through legal and non-legal mechanisms. Although in unlawful acts or act against the law (“tort”) thought or doctrine (dogma), this problem can be resolved by the Judge in his judicial function, but in order to provide legal certainty, it is necessary to establish an environmental dispute resolution body. Under judicial reviewed, the Constitutional Court Decision Number 91/PUU-XVIII/2020 of which give a two-year opportunity to improve it, it's the lesson for government how to issue the regulation of which should cover the principles of law, it means that the regulation should be effective, efficient and reliable.

References

- Amania, N. (2020). Problematika undang-undang cipta kerja sektor lingkungan hidup. *Syariat: Jurnal Studi Al-Quran dan Hukum*, 6(2), 209–220. <https://doi.org/10.32699/syariat.v6i02.1545>
- Carson, R. (1962). *Silent spring*. Greenwich: Fawcett Publications. Retrieved from: https://library.uniteddiversity.coop/More_Books_and_Reports/Silent_Spring-Rachel_Carson-1962.pdf
- Circular Letter of Deputy Attorney General for General Crimes on Legal Technical Guidance for Environment Crime, B-60/E/Ejp/01/2002. (2002). <https://www.kejaksaan.go.id/upldoc/produkhkm/B-60-E-EJP-01-2002%20Tgl.%2029%20Januari%202002.pdf>
- Djojodirdjo, M. A. M. (1982). *Perbuatan melanggar hukum*. Jakarta: Pradnya Paramita.
- Fatanen, A. (2021). Eksistensi kewenangan daerah dalam perlindungan dan pengelolaan lingkungan hidup pasca diterbitkannya undang-undang cipta kerja. *Khazanah Hukum*, 3(1), 1–7. <https://doi.org/10.15575/kh.v3i1>

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- Haldemann, F. (2005). Gustav Radbruch vs. Hans Kelsen: A debate on Nazi Law. *Ratio Juris*, 18(2), 162–178. <https://doi.org/10.1111/j.1467-9337.2005.00293.x>
- HUKUMONLINE. (2020). Guru besar FHUI: UU cipta kerja sektor lingkungan tidak lebih baik dibanding UU P P L H . H U K U M O N L I N E . <https://www.hukumonline.com/berita/a/guru-besar-fhui--uu-cipta-kerja-sektor-lingkungan-tidak-lebih-baik-dibanding-uu-pplh-lt5f981318c8f7d>
- Kelsen, H. (1960). Plato and the doctrine of natural law. *Vanderbilt Law Review*, 14(1), 23. Retrieved from: <https://scholarship.law.vanderbilt.edu/vlr/vol14/iss1/3>
- Koffler, S. (Eds.). (1973). *Only one rarth*. New York: H.W. Wilson Co. Retrieved from: https://unesdoc.unesco.org/in/documentViewer.xhtml?v=2.1.196&id=p::usmarcdef_0000074879&file=/in/rest/annotationSVC/DownloadWatermarkedAttachment/attach_import_459ccdfc-9344-450d-b602-e55fb3330eef%3F_%3D074879engo.pdf&locale=en&multi=true&ark=/ark:/48223/pf0000074879/PDF/074879engo.pdf#%5B%7B%22num%22%3A62%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2Cnull%2Cnull%2C0%5D
- KOMNAS HAM & ELSAM. (2017). *National action plan on business and human rights*. Retrieved from: [https://www.komnasham.go.id/files/20180214-national-action-plan-on-bussiness-\\$0PU500.pdf](https://www.komnasham.go.id/files/20180214-national-action-plan-on-bussiness-$0PU500.pdf)
- Ling, C. Y. (2012). *The Rio declaration on environment and development: An assessment*. Penang: Third World Network. Retrieved from: <https://www.twn.my/title/end/pdf/end12.pdf>
- Luhukay, R. S. (2021). Penghapusan izin lingkungan kegiatan usaha dalam undanguUndang omnibus law cipta kerja. *Jurnal Meta-Yuridis*, 4(1), 100–122. Retrieved from <http://103.98.176.9/index.php/meta-yuridis/article/view/7827/3961>
- Lukkari, H. (2020). *Law, politics and paradox: Orientations in legal formalism [dissertation]*. Helsinki: University of Helsinki.
- Marzuki, P. M. (2010). *Penelitian hukum*. Jakarta: Kencana Prenada Media Group.
- Meadows, D. H., Meadows, D. L., Randers, J., & Behrens III, W. W. (1972). *The limits to growth: A report to the club of Rome's project on the predicament of mankind*. New York: Universe Books. Retrieved from: <https://www.donellameadows.org/wp-content/userfiles/Limits-to-Growth-digital-scan-version.pdf>
- Nababan, A. (2014). *Tanggung jawab perusahaan untuk menghormati hak asasi manusia: Sebuah panduan interpretatif* (1st ed.). A. A. Almanar, translator; A. Nababa, editor. Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM).
- Neuman, W. L. (2003). *Social research methods, qualitative and quantitative approaches*. Boston: Pearson Education.
- Presidential Regulation on National Action Plan upon Human Rights Year 2015–2019, 75 (2015). <https://jdih.setkab.go.id/PUUdoc/174547/Perpres0752015.pdf>
- Prodjodikoro, W. (1984). *Perbuatan melanggar hukum*. Bandung: Sumur Bandung.
- Protection and Management of Environment Act, 32 (2009). [https://jdih.esdm.go.id/storage/document/UU%2032%20Tahun%202009%20\(PPLH\).pdf](https://jdih.esdm.go.id/storage/document/UU%2032%20Tahun%202009%20(PPLH).pdf)
- Ruggie, J. G. (2008). *Protect, respect and remedy: A framework for business and human rights: Report of the special representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, UN*. Retrieved from: <https://policycommons.net/artifacts/65027/protect-respect-and-remedy/131208/CID:20.500.12592/5hv6bb>.
- Ruggie, J. G. (2013). *Just business: Multinational corporation and human rights*. New York: WW Norton & Company.
- SETKAB RI. (2015). Berita: Presiden Jokowi tandatangani inpres aksi hak asasi manusia Tahun 2015. *SETKAB RI*. <https://setkab.go.id/2015/10/page/17/?cat=55>
- The Job Creation Act, 11 (2020). <https://uuciptakerja.go.id/wp-content/uploads/2020/11/Salinan-UU-Nomor-11-Tahun-2020-tentang-Cipta-Kerja.pdf>
- [UNCHR] United Nations Commision on Human Rights. (2011). *Guiding principles on business and human rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. New York and Geneva: United Nations. Retrieved from: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf
- Wagiman, W. (2014). *Prinsip-prinsip panduan untuk bisnis dan hak asasi manusia: Menerapkan kerangka Perserikatan Bangsa-Bangsa “Perlindungan, Penghormatan, dan Pemulihan* (2nd ed.). C. D. Putranto, translator; W. Wagiman, editor. Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM).
- Wagiman, W., & Widiyanto. (Eds.) (2014). *Bagaimana menjalankan bisnis dengan menghormati hak asasi manusia: Sebuah alat panduan bagi perusahaan* (1st ed.). R. Sandra, translator. Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM).

Wibisana, M. R. A. G. (2021). *Antroposen dan hukum: Hukum lingkungan dalam masa-masa penuh*

bahaya. Retrieved from: <https://law.ui.ac.id/v3/pengukuhan-guru-besar-ui-prof-m-r-andri-gunawan-w-s-h-l-l-m-ph-d/>