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IMPLICATIONS OF THE CONSTITUTIONAL COURT DECISION NUMBER 91/PUU-XVIII/2020 TOWARD JOB CREATION LAW IN THE MINERAL AND COAL MINING SECTOR

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Abstract

This study aims to analyze and examine the juridical implications of the decision of Constitutional Court Number 91/PUU XVII/2020 on the job creation law in the mineral and coal mining sector. The research method used is a normative legal research method with approach legislation. The results illustrate that the juridical implication of the Job Creation Act in the mineral and coal mining sector is that in its decision the Constitutional Court stated that the Job Creation Act was still valid as long as the law-makers made improvements in the procedures for establishing Job Creation Law. In this case, the Constitutional Court has given two years for the legislators to revise the procedure for the formation of the Job Creation Law since the decision was pronounced. If no improvements are made, the Law can be declared unconstitutional permanently. Thus, if Law Number 11 of 2020 concerning job creation is unconstitutional, namely permanently removing coal incentive opportunities, the elimination of coal incentive opportunities must indeed be carried out due to the targets of coal utilization in Article 128A, not power optimization towards clean energy and will increase the portion of coal in the national energy mix and overall will systematically overlap with climate adaptation and mitigation targets and programs as well as the Articles in the Job Creation Act are also infiltrated by the interests of mining and dirty energy businesses.

Keywords: Judgment; Job Creation; Mining;

1. INTRODUCTION

Law Number 11 in 2020 concerning Job Creation has been ratified by the House of Representatives in a plenary session at the Parliament Building in Senayan Jakarta on Monday, November 5th, 2020. The enactment of this law revokes and changes other laws related to job creation directly with the provisions of the job creation law. Two laws were repealed, namely Law Number 3 of 1982 concerning Mandatory Company Registration and Staablaad of 1926 Number 22 of 1940 Number 450 concerning the Law on Disturbance (Hinderordonnantie). There are also 82 laws that have been amended,

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one of which is Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

The mineral and coal mining sector are one of the sectors regulated in Law Number 11 of 2020 concerning Job Creation. There are two articles of amendment to Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining in the Job Creation Act which are considered problematic, which is Article 128A.

Article 128A, states;

(1) Business actors who increase the added value of coal as referred to in Article 102 paragraph (2), may be given certain treatment to the obligation of state revenue as referred to in Article 128.
(2) The provision of certain treatment to the obligation of state revenue as referred to in paragraph (1) for the activity of increasing the added value of coal can be in the form of imposition of royalty of zero percent.
(3) Further provisions regarding certain treatment as referred to in paragraph (1) shall be regulated in a Government Regulation.

Wherein Article 128 A Article 102 paragraph (2), states:

a. Holders of Mining Business Permits or Special Mining Business Permits at the stage of Production Operation activities may undertake the Development and or Utilization of Coal. Development: Coal development may include, among others: improving coal quality; manufacturing of coal briquettes; manufacturing of coke; coal liquefaction; coal gasification, including underground coal gasification; and Coal-water mixture.
b. Utilization: among others by building their own Steam Power Plant at the mouth of the mine.

According to Irena Handika as deputy general chairman of the field of energy, natural resources, and the environment at Gadjah Mada University, Article 128A and Article 102 paragraphs (2) and (3) only target coal utilization, not power optimization toward clean energy as expected. Article 128A will increase the share of coal in the national energy mix and will systematically overlap with targets and programs for climate adaptation and mitigation.[1] Clean energy is a technology that produces greenhouse gases in very low levels or near zero when compared to other technologies. Clean energy also does not have a negative impact on society and the environment during its lifetime.[2] The use of green energy is important because it can bring double advantage, especially for developing countries. First, the use of green energy can reduce climate change. Second,

[1] Denis Riantiza Meilanova, "UU Cipta Kerja DInilai Berpotensi Tingkatkan Ketergantungan Terhadap Batubara," *Ekonomi Bisnis.Com*, 2021, https://ekonomi.bisnis.com/read/20210701/44/1412232/uu-cipta-kerja-dinilai-berpotensi-tingkatkan-ketergantungan-terhadap-batu-bara.

[2] Nasruddin Bambang et al., "Kapita Selekta Teknik Mesin 2016 CLEAN ENERGY," 2016.

the continuous use of green energy will not reduce natural resources and damage the environment, also resulting in a slight impact on health. [3]

The same thing was also said by Merah Johansyah, one of the participants of *Koalisi Bersihkan Indonesia*, the articles in the job creation law have been infiltrated by the interests of mining and dirty energy businessmen.[4] As in Article 128A paragraph (2), there is a zero percent royalty for companies. As a result, this article reduces the huge amount of state revenue received from the natural resources sector. Meanwhile, the rate of exploitation continues without a moratorium.

At least, around 32 provinces and dozens of regencies and cities have so far participated in receiving the royalty revenue-sharing funds. East Kalimantan Province is one of the largest provinces receiving royalty revenue-sharing funds of Rp 9 trillion, followed by South Kalimantan with around Rp 6 trillion. From a company perspective, *Kaltim Prima Coal, Adaro, Kideco,* and *Bukit Asam* are the biggest contributors to royalties. This means that the regions that previously received, will automatically reduce the transfer of funds for the results because the state has provided incentives to these giant companies.[5]

In recent months, *Koalisi Bersihkan Indonesia* noted that there are plans or existing projects to downstream and increase the added value of coal, as announced by the Ministry of Energy and Mineral Resources. Among other things, three coal upgrading facility projects at *PT.ZJG Resources Technology Indonesia* in 2024, 2026, and 2028, each with an estimated capacity of 1.5 million tons per year. The coal gasification project or the coal to dimethyl ether project is being carried out by the *Bukit Asam. Tbk* consortium is expected to operate in 2024. Then, the coal to methanol gasification project will be carried out by *PT Kaltim Prima Coal* and the coal to methanol project. briquette maker, *PT Batubara Bukit Asam*, which will add a briquette factory, in 2026 and 2028 with a capacity of 20,000 tons per year. These are all projects that will benefit from the 0% Royalty, as the company will carry out downstream.[6]

Wherein, the implementing rules for the mineral and coal mining sector in article 128A are regulated in Government Regulation Number 25 in the year 2021 concerning the Implementation of the Energy and Mineral Resources Sector. One of the provisions regulated in Government Regulations Number 25 of 2021 regarding incentives for coal commodities used for value-added or downstream programs. Article 3 of Government Regulation Number 25 of 2021 states that holders of mining business permits for production operations, Special Mining Business Permits for production operations, and as a continuation of contract operations or agreements for coal commodities that carry

[3] Elizabeth Bast and Srinivas Krishnaswamy, "Access to Energy for the Poor: The Clean Energy Option," *Change International*, no. October (2011): 1–33, http://priceofoil.org/2011/06/01/access-to-energy-for-the-poor-the-clean-energy-option/.

[4] Agus Mawan, "Mengapa Omnibus Law Untungkan Pembisnis Batubara, Dan Potensi Hambat Energi Terbarukan?," Mongabay Situs berita Lingkungan, 2020, https://www.mongabay.co.id/2020/10/24/mengapa-omnibus-law-untungkan-pebisnis-batubara-dan-potensi-hambat-energi-terbarukan/.

[5] *ibid*

[6] *ibid*.

out value-added activities in the country may be given certain treatment in the form of imposition royalty of 0 (zero) percent.

At least less than 11 petitions for judicial review have been read out by the Constitutional Court. Of the eleven cases, the first case decided by the Court was Case Number 91/PUU-XVIII/2020. In its decision, the Constitutional Court granted a formal review of the Job Creation Law.[7] The decision of the Constitutional Court Number 91/PUU XVII/2020 states the formation of Law Number 11 of 2020 concerning Formally Disabled Job Creation therefore its status is conditionally unconstitutional. Even though it is declared contrary to the 1945 Constitution, Law Number 11 of 2020 is still considered valid, with the condition that in the next two years it must be corrected. If not, then Law Number 11 of 2020 becomes unconstitutional and does not apply permanently.

Based on the results of research from Ria Maya Sari on the Job Creation law, The Indonesian government seeks to boost the Indonesian economy by facilitating foreign investment in Indonesia, which is realized through the enactment of the Omnibus Law on Job Creation Number 11/2020 and the Revision of the Mineral and Coal Mining Law Number 3/2020, both of which aim to legitimate investment in Indonesia in terms of natural resource management and to improve the welfare of the Indonesian people through the creation of jobs from these investments. However, those two legislations also pose several potential threats to indigenous peoples in the form of expropriation of their customary territories.[8]

Then the results of research from Verido Dwiki Herdhianto regarding Omnibus Law can provide legal certainty by regulating several clusters of issues that are intertwined in a legal system directly. This method is considered more effective than the establishment of separate laws and regulations that may cause overlaps and inconsistencies between regulations. In contrast to this ideal concept, the Omnibus Law or Job Creation Law made by the Government of Indonesia must then be conditionally canceled by the Constitutional Court through Constitutional Court Decision Number 91/PUU-XVIII/2020. The House of Representatives as the legislative institution responsible for forming the Law has 2 (two) years to correct the formal defects of the Job Creation Law.[9]

Consequently, the problem in this paper is what are the juridical implications of the Constitutional Court Decision Number 91/PUU XVII/2020 on Job Creation Law in the Mineral and Coal Mining Sector. This paper is included in the study of normative law with a statutory approach.

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[7] Muhamad Ali Hasan, "Catatan Kritis Putusan Mahkamah Konstitusi Terkait UU Cipta Kerja," *Kompas*, November 26, 2021, https://www.kompas.com/konsultasihukum/read/2021/11/26/060000480/catatan-kritis-putusan-mahkamah-konstitusi-terkait-uu-cipta %0A %0A.

[8] Ria Maya Sari, "Potensi Perampasan Wilayah Masyarakat Hukum Adat Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Mulawarman Law Review* 6, no. 1 (2021): 1–14, https://doi.org/https://doi.org/10.30872/mulrev.v6i1.506.

[9] Verido Dwiki Herdhianto, Sunny Ummul Firdaus, and Andina Elok Puri Maharani, "Omnibus Law Dalam Kerangka Prinsip- Prinsip Legalitas (Omnibus Law in the Principles of Legality'S Framework)," *Jurnal Inovasi Penelitian* 2, no. 10 (2022): 3473.

2. ANALYSIS AND DISCUSSIONS

2.1 Constitutional Court Decision Number 91/PUU XVII/2020

The authority of the Constitutional Court is regulated in the Constitution of the Republic of Indonesia Article 24 paragraph (1), which states: "The Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final to examine the law against the Constitution, decide on disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide on disputes regarding election results."

The decision of the Constitutional Court, which is final and binding, contains four legal meanings, there are; First, to realize legal certainty as soon as possible for the disputing parties. Second is the existence of the Constitutional Court as a constiutional court. Third, it means as a form of social control carried out by the Constitutional Court. Fourth, as the sole custodian and interpreter of the constitution. The decision of the Constitutional Court which is final and binding gives rise to a number of legal consequences in its application. In this case, it is classified into two outlines, namely the decisions of the Constitutional Court which have positive and negative legal consequences. The positive legal consequences are; ending a legal dispute; Maintaining the principle of checks and balances; and Encouraging the political process. Meanwhile, the legal consequences of the decision of the Constitutional Court which are final and binding in a negative sense are Closed access to legal remedies and the occurrence of a legal vacuum. It is hoped that the decision of the Constitutional Court must reflect justice based on the constitution. In view of the final and binding nature that is not accommodated by the principle of tiered justice, through its decisions, the Constitutional Court still has a place for justice seekers, and vice versa. Whether or not the decision of the Constitutional Court is effective, depends on the acceptance of the parties. In the case of examining the constitutionality of a law, for example. Not infrequently the decision of the Constitutional Court does not get a positive response from the public, even from related parties (House of Representatives and the Government). So that there is a legal vacuum, this is due to the absence of regulations governing the executive power of the decisions of the Constitutional Court. It is hoped that later the decision of the Constitutional Court which is final and binding will not only be limited to a written decision but can also be carried out effectively in its implementation.[10]

On Thursday, November 25th, 2021, the Constitutional Court held a hearing to pronounce the decision on the application for a formal review of Law Number 11 of 2020 concerning Job Creation with the Constitutional Court Decision Number 91/PUU-XVIII/2020. The trial for pronouncing the verdict, which lasted for more than three

[10] Johansyah Johansyah, "Putusan Mahkamah Konstitusi Bersifat Final Dan Mengikat (Binding)," *Solusi* 19, no. 2 (2021): 165–82, https://doi.org/10.36546/solusi.v19i2.359.contains 4 (four

hours, presented to the public various judges' considerations, which in the end stated that the Job Creation Law was procedurally flawed in its formation. There are at least three judges' considerations regarding the formal defects of the Job Creation Law, that are:[11]

1. The makers of the Job Creation Law are not guided by the technique of drafting the laws and regulations in Attachment II of Law Number 12 of 2011 concerning the Establishment of Legislation. At this point, the Constitutional Court judge emphasized that the legislators did not comply with the standard techniques mandated in Law Number 12 of 2011 starting from writing the title, how to revoke the Act, the existence of general provisions, principles, and objectives in the Job Creation Law even though the old law that was amended still exists. These things will lead to ambiguity and multiple interpretations in the implementation of the Job Creation Law and discrepancies in the format of the Law.
2. During the trial, it was revealed the fact that there was a change in the content or substance of the draft Law on Job Creation which had been jointly approved by the House of Representatives and the President before being ratified and promulgated into Law with a text that had been ratified into Law.
3. In the trial, it was revealed the fact that the makers of the Job Creation Law did not provide a space for maximum participation for the community or meaningful participation.

Regarding the Constitutional Court Decision Number 91/PUU XVII/2020, it is stated that the formation of Law Number 11 of 2020 concerning Job Creation is formally flawed, so its status is conditionally unconstitutional. Even though it is declared contrary to the 1945 Constitution, Law Number 11 in the Year 2020 concerning Job Creation is still considered valid, with the condition that it must be revised within the next two years. If not, then Law Number 11 of 2020 concerning Job Creation becomes unconstitutional and does not apply permanently. This is contained in the contents of the Constitutional Court's Decision on the Job Creation Law number 3 which states: "Declaring the establishment of Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) is contrary to The 1945 Constitution of the Republic of Indonesia and does not have conditional binding legal force as long as it is not interpreted as "no amendments have been made within two years since this decision was pronounced".

The conditional unconstitutional meaning in the Constitutional Court Decision is that within two years since the decision was pronounced, from November 25th, 2021 until November 25th, 2023, the Job Creation Law is still valid on the condition that both,

[11] Fitriani Ahlan Sjarif, "Babak Baru UU Cipta Kerja: Babak Belur Perundang-Undangan?," hukumonline.com, 2021, https://www.hukumonline.com/berita/a/babak-baru-uu-cipta-kerja--babak-belur-perundang-undangan-lt61a-19faeb1279?page = all, a.

the House of Representatives and the government must make changes in accordance with the orders from the Constitutional Court Decision Number 91/PUU- XVIII/2020 of which are:

a. Reorganize the Job Creation Law in accordance with the principles of the formation of laws and regulations contained in Appendix II of Law Number 12 of 2011
b. Opening the widest possible participation of the public who are willing to criticize and provide input on the revision of the Job Creation Law; and
c. Avoiding 'sudden' substance changes between the joint approval process by the President, House of Representatives, and ratification.

If the Job Creation Law is not amended in accordance with the Constitutional Court's Decision, then legally the Job Creation Law becomes permanently unconstitutional (not valid). Thus, the old law or substance that has been revoked or amended by the job creation law is declared to be valid again.

In fact, even though it has become a decision of the Constitutional Court, the people have the right and deserve to demand that Law Number 11 of 2020 concerning Job Creation, along with 49 Government Regulations and 3 Presidential Regulations be cancelled. Law Number 11 of 2020 concerning Job Creation is not feasible to apply, then the law or articles and material content of the law that have been revoked or amended by Law Number 11 of 2020 concerning Job Creation must be declared valid again. The demand for the cancellation of Law Number 11 of 2020 concerning Job Creation is based on various facts and legal logic, as well as the strategic interests of the Indonesian state and people as described below:[12]

1. The Constitutional Court formally stated that the formation of Law Number 11 of 2020 concerning Job Creation was contrary to the constitution. So, if the method and process for the formation of Law Number 11 of 2020 concerning Job Creation alone are not in accordance with the constitution and the principles of the formation of applicable laws and regulations, then the content contained in it automatically also contradicts the constitution.
2. With the decision of the Constitutional Court No. 91/PUU XVII/2020 stating the formation of Law Number 11 of 2020 concerning Formal Disability Job Creation, public concern, especially related stakeholders, regarding the alleged moral hazard in the process of forming Law Number 11 of 2020 concerning Job Creation has been confirmed. Because it is full of moral hazard in order to support the interests of the power oligarchy, the constitution and the principles of the formation of laws and regulations are violated, so the resulting law products are not worthy of acceptance.
3. The dominant role of the oligarchs in the process of forming Law Number 11 of 2020 concerning Job Creation cannot be separated from the motives carried. It is precisely this motive that is more damaging to the state and detrimental to the people than

[12] Marwan Batubara, "Batalkan UU Cipta Kerja Segera!" (Jakarta, 2021).

the violation of the formal principles of establishing regulations. The motive for the oligarchs to be actively involved is so that the provisions and material content of Law Number 11 of 2020 concerning Job Creation guarantee the achievement of the intended agenda and interests, no matter if the content material violates the constitution, and is detrimental to the state and people. Due to the status of an oligarchic law, where the content and provisions contained in it are unconstitutional, it is very appropriate if Law Number 11 of 2020 concerning Job Creation is declared null and void immediately.

4. In contrast to the unlimited opportunities and roles for members of the oligarchy, the government actually limits public participation and access. Essentially, the right of the public to participate must be meaningful and fulfill the following conditions: the right to be heard, the right to be considered, and the right to receive an answer. Because these public rights, especially related stakeholders, have been muzzled, automatically the content of Law Number 11 of 2020 concerning Job Creation also fails to accommodate the interests of the public and related stakeholders, so Law Number 11 of 2020 concerning Job Creation deserves to be declared unconstitutional.

In order to accommodate public participation, the Constitutional Court Decision No. 91/PUU XVII/2020 has indeed contained various public hearings, work meetings, FGDs, workshops, public discussions, and various forums held by the DPR and the government (pages 441-445). However, because it is more unidirectional, with pleasantries, formalities, "imposing the will", seems authoritarian, takes place without dialogue to reach an agreement, many parties are passive and walk out of the forum. Even from the beginning, the public did not have the opportunity to access academic manuscripts and Job Creation. Therefore, it is natural that the content and provisions produced are not aspirational and not in the public interest.

5. Judges of the Constitutional Court have received various facilities from the government in Law Number 7 of 2020, concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court. This should be suspected as a "gift or bribe" that can make judges fail to be objective in deciding formal/material test cases of Law Number 11 of 2020 concerning Copyright. In Law No. 7 of 2020, for example, there are provisions regarding the extension of the term of office of judges to 70 years for those currently in office, an extension of the periodization of judges as a consequence of an extended term of office, or extension of the tenure of the chairman and deputy chairman of the Constitutional Court to five years. These various prizes can cause a conflict of interest which can result in a decision of the Constitutional Court with a moral hazard nuance. So, the public can judge that the Constitutional Court is part of an oligarchy, so its decision deserves to be considered pro-oligarchy, not pro-public, and not in accordance with the constitution.
6. Anumberofexpertsstatedthattheconstitutionalcourtdecisionno.91/puuxvii/2020 was a middle ground that deserved appreciation in order to achieve benefits for the

common good, especially since Law Number 11 of 2020 concerning Copyright has already been formed. With the alleged moral hazard above, the public can also judge that the Constitutional Court's decision is an oligarchic middle ground. Because what the Constitutional Court is doing is not choosing decisions that are consistent with the constitutional mandate with decisions that are beneficial to the public because Law Number 11 of 2020 concerning Copyright has already been formed. But choosing a decision that is consistent with the constitutional mandate with an effort to fulfill the oligarchic and personal interests of the judges. As a whole, the Constitutional Court can also be considered not to have made an objective decision, and seem to have deliberately made ambiguous and multiple interpretations, especially in order to protect the interests of the oligarchs.

The Constitutional Court's decision Number 91 has received different responses from a number of experts. Some experts consider that the Job Creation Law is still valid by referring to point 4 of the Constitutional Court Decision Number 91. Meanwhile, some other experts think that the Copyright Act is automatically annulled by referring to points 4 and 7 of the Constitutional Court Decision Number 91. However, these two groups of experts agree that Constitutional Court Decision Number 91 is indeed multi-interpreted and ambiguous. Point 4 of the Constitutional Court's decision states that the Copyright Act is still valid until it is revised within 2 years. However, point 7 states that the government must suspend all strategic and broad-impact policies, and it is not justified to issue new implementing regulations related to the job creation Law. By referring to points 4 and 7, the Copyright Act should have been annulled. However, because it only refers to point 4, the government states that the Copyright Law and its derivatives are still valid.

Apart from the differences in interpretation above, what is actually more important is the motive behind the Constitutional Court's decision itself. The Constitutional Court seems to have deliberately prepared a loophole to meet the target of "multiple interests" through a multi-interpretation decision. So, what should be highlighted is not only about the validity or cancellation of the contents of the Copyright Law, but also about the multiple interpretations of the Constitutional Court's decision and why the decision is considered to have multiple interpretations, and therefore it caused a big problem.

The Constitutional Court as a judicial institution and the last bastion of law and democracy can be considered an institution that is also problematic and contaminated by oligarchy. The proof is that the Constitutional Court declared the Copyright Act unconstitutional, but at the same time stated that the Copyright Law could still be implemented. This is done through the determination of decision points that are deliberately made of multiple interpretations and contradict each other. This means that the Constitutional Court is also involved in engineering and legal crimes so its decision

takes side the interests of the oligarchs. The main factor is the alleged moral hazard due to conflict of interest and oligarchic intervention.

Six reasons described above show that the oligarchic Copyright Law must immediately be annulled. Various methods and manipulations were carried out, including inhibiting public participation and changing the Constitutional Court Law, so that the Constitutional Court was held hostage and suspected of being infected with moral hazard. The intervention of oligarchic power made the Constitutional Court fail to establish an objective, straightforward, pro-people, and unambiguous constitutional decision. This clearly contradicts the principles mandated by Pancasila, the 1945 Constitution, and the principles of democracy. Therefore, while questioning the problematic attitude of the Constitutional Court, the people deserve to demand that the Copyright Law full of oligarchic content be immediately annulled. For this reason, the government must immediately issue a Government Regulation in Lieu of Law.

2.2 Juridical Implications of the Constitutional Court Decision Number 91/PUU XVII/2020 about Job Creation Law in the Mineral and Coal Mining Sector

Based on the three considerations of the Constitutional Court judges regarding the Constitutional Court Decision Number 91/PUU XVII/2020, the Constitutional Court declared the Job Creation Law to be formally flawed but to avoid legal uncertainty and the greater impact it had, according to the Constitutional Court the Job Creation Law had to be conditionally declared unconstitutional. The implication is that in its decision, the Constitutional Court stated that the Job Creation Law was still valid as long as the Lawmakers made improvements in the procedures for the formation of the Job Creation Law. In this case, the Constitutional Court has given two years for the legislators to revise the procedure for the formation of the Job Creation Law since the decision was pronounced. If no improvements are made, then the Job Creation Law can be declared unconstitutional permanently, meaning that the Job Creation Law will be revoked and the old provisions that were amended by the Job Creation Law will be declared valid again. Not only that, the Constitutional Court ordered the suspension of all strategic and broad-impact actions or policies, and the issuance of new implementing regulations related to the Job Creation Law was not justified.

The mineral and coal mining sector are one of the sectors regulated in Article 39 of Law Number 11 of 2020 concerning Job Creation. There are two articles of amendment to Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining in the Job Creation Act which are considered problematic, namely Article 128A.

Article 128A, states:

(1) Business actors who increase the added value of coal as referred to in Article 102 paragraph (2), may be given certain treatment to the obligation of state revenue as referred to in Article 128.

(2) The provision of certain treatment to the obligation of state revenue as referred to in paragraph (1) for the activity of increasing the added value of coal can be in the form of imposition of a royalty of 0% (zero percent).

(3) Further provisions regarding certain treatment as referred to in paragraph (1) shall be regulated in a Government Regulation.

Where Article 128 A Article 102 paragraph (2), states:

a. Holders of Special Mining Business Permits at the stage of Production Operation activities may undertake the Development and/or Utilization of Coal. Development: Coal development may include, among others: improving coal quality (coal upgrading); manufacture of coal briquettes; manufacture of coke (coking); coal liquefaction; coal gasification, including underground coal gasification; and Coal-water mixture.
b. Utilization: among others by building their own Steam Power Plant at the mouth of the mine.

As for the juridical implications of the Constitutional Court Decision Number 91/PUU XVII/2020 on the Job Creation Act in the mineral and coal mining sector, if Law Number 11 of 2020 concerning permanent unconstitutional Job Creation, namely removing the opportunity for coal incentives. Elimination of the opportunity for coal incentives, according to the author, must be done, due to Article 128A only targeting coal utilization, not power optimization towards clean energy as expected. Article 128A will increase the share of coal in the national energy mix and will systematically overlap with targets and programs for climate adaptation and mitigation. Articles in the Job Creation Law are also infiltrated by the interests of mining and dirty energy businesses.

The source of energy used today is fossil energy, one of which is coal, which is limited and non-renewable. Burning fossil energy produces greenhouse gas and carbon dioxide emissions that damage the environment and atmosphere. Human activities intensively use fossil energy causing global warming. The Intergovernmental Panel on Climate Change, an international panel between countries that examines global climate change, 2018 launched a Special Report on Global Warming of 1.5°C. This report covers the impact of global warming on human health and ecosystems. With the pace of growth in greenhouse gas emissions, the IPCC warns that the opportunity to achieve this target is until 2030. Achieving the results requires extreme, fast, forward-looking mitigation efforts by all parties around the world including reducing coal use.[13] Strengthened by the results of the United Nations Climate Change Summit or Conference of the Parties on November 13, 2021, in Glasgow Scotland. The crucial substance note is that 196 countries are committed to reducing the use of coal as an energy source and reducing fossil-based energy subsidies.[14]

[13] Marlistya Citraningrum, "Energi Bersih Terbarukan Untuk Kita Semua," *Iesr*, 2019, 20.

[14] Sita Hidriayah, "Hasil Konferensi Tingkat Tinggi," *Pusat Penelitian Badan Keahlian Sekretariat Jenderal DPR RI* 2021, no. November (2021): 2021.

Regulations in Indonesia are considered not to support the clean energy sector optimally. Law Number 11 of 2020 concerning Job Creation is feared to actually encourage the extractive industry, especially coal, while the world is trying to achieve zero carbon emissions by 2050. Law Number 11 of 2020 Article 39, which discusses Law Number 3 of 2020 concerning Changes to Law Number 4 of 2009 concerning Mineral and Coal Mining states that the insertion of a new article, which is Article 128 A, stipulates a zero percent royalty for activities to increase the value of coal mines. According to the Head of the Surfactant and Bioenergy Research Center of *Institut Pertanian Bogor*, Meika Syahbana Rusli, the article has not shown the government's commitment to sustainable development. The zero percent royalty is considered to foster industrial interest in fossil energy, not clean energy. Where the largest contributor to climate change is fossil fuels, which is 57 percent. There must be a policy related to bioenergy that can attract the interest of entrepreneurs. The existence of a zero percent royalty has an impact on the potential loss of state revenue and revenue-sharing funds to the regions. Zero percent royalty is also feared to encourage coal exploitation. The government targets the portion of new and renewable (EBT) energy in the national energy mix to reach 23 % by 2025. Until the end of 2020, the portion of NRE is still far from the target, which is only 11.5 percent. The government also targets to reduce greenhouse gas emissions by 314 million tons in 2030. EBT-based power plants are targeted to contribute to reducing 156.6 million tons of carbon dioxide. However, up to now, 90 % of energy in Indonesia is still dominated by coal, oil, and gas. Therefore, the commitment to NRE has not been reflected in the Job Creation Act, in fact, the regulations are more inclined toward the extractive industry.[15]

The government has set a roadmap for developing 23 % renewable energy in the national energy mix by 2025. The strong political will strengthens the government's commitment to mitigating climate change globally which has recently been confirmed in the ratification of the Paris Agreement (Law Number 16 of 2016 concerning Paris Ratification).[16] Therefore, clean energy development policies become a strategic agenda in national energy management to strengthen climate mitigation.

Actually, Indonesia is drafting a law on New Renewable Energy as a mitigation measure for the climate crisis, but its contents still contain elements of fossil energy and dirty energy sources which have drawn protests from the Youth Coalition for Renewable Energy.[17]

Global efforts and the support of national political will for the renewable energy revolution will become an increasingly significant need in the future as a climate

[15] Sekar Gandhawangi, "Regulasi Belum Optimal Dukung Energi Bersih," *Kompas.Id*, 2021, https://www.kompas.id/baca/ilmu-pengetahuan-teknologi/2021/06/02/regulasi-belum-optimal-dukung-energi-bersih.

[16] Hariyadi, "Terobosan Global Energi Terbarukan : Pembelajaran Dan Implikasinya Bagi Indonesia," *Kajian* 22, no. 1 (2017): 33–44.

[17] Geny Jati, "Koalisi Pemuda Peduli Energi Terbarukan : 'Keluarkan Sumber Energi Kotor Dari RUU EBT,'" IESR, 2021, https://iesr.or.id/koalisi-pemuda-peduli-energi-terbarukan-keluarkan-sumber-energi-kotor-dari-ruu-ebt.

mitigation instrument. To achieve this goal, global governance must be made more democratic, participatory and polycentrically inclusive. A critical review of the article "The Clean Energy Revolution: Fighting Climate Change with Innovation", by Sivaram & Norris (2016), shows that this effort is feasible in line with the high level of world energy consumption, while climate mitigation targets will be difficult to achieve, even if the targets are set. the target of The Paris Agreement is implemented. As a country with a strong commitment to developing renewable energy and playing a role in climate mitigation, Indonesia has an interest in the discourse of this effort. The challenge lies in the need for the government's political will. Changes in the policy of the new government in the US, however, will color the degree of legitimacy of this effort within the US itself. This condition will also affect the level of national and global legitimacy of this revolutionary effort.[18]

The coal industry is usually held by powerful stakeholders, with vested interests able to delay the removal of coal. The strategy to counter this self-interested influence is a payment from the government for a coal-fired power plant to be closed. As in Germany, the government agreed in early 2020 on a series of measures to phase out coal by 2038 at an additional €70–90 billion in costs, including €4.35 billion to coal-fired power plant operators who in time shut their power plants for more early before 2030. More cost-effective alternatives that can be assessed include accelerated carbon pricing or industry-internal schemes where the remaining power plants pay for expiring plants. In addition, the alternative interests of energy producers can be leveraged to help build coalitions that support the elimination of coal.[19]

The journey toward reducing coal-fired power plants in Germany is that the complete elimination of coal-fired power plants is necessary to achieve the goal of balancing greenhouse gases. By 2030, emissions caused by coal-fired power plants should fall

[18] Hariyadi, "Terobosan Global Energi Terbarukan : Pembelajaran Dan Implikasinya Bagi Indonesia."

[19] Fulong Song et al., "Review of Transition Paths for Coal-Fired Power Plants," *Global Energy Interconnection* 4, no. 4 (2021): 354–70, https://doi.org/10.1016/j.gloei.2021.09.007.particularly in the coal sector, and provides a detailed discussion on specific and significant socio-technical pathways taken by countries to achieve zero-carbon targets. Their implementation involves restructuring the existing energy system and requires appropriate policy support and sufficient investment in infrastructure development and technological innovation. Some basic principles and countermeasures that have already been implemented by some major emitters, such as India and China, are also discussed, with different transformation pathways. Critical suggestions are also provided, such as implementing best practice policies at the national level, moving to more efficient transition strategies, national and regional cooperation, cross-border energy grid integration, and private sector involvement to reduce carbon emissions from coal-fired power plants, not only by reducing coal consumption but also by introducing various low carbon technologies.","author":[{"dropping-particle":"","family":"Song","given":"Fulong","non-dropping-particle":"","parse-names":false,"suffix":""},{"dropping-particle":"","family":"Mehedi","given":"Hasan","non-dropping-particle":"","parse-names":false,"suffix":""},{"dropping-particle":"","family":"Liang","given":"Caihao","non-dropping-particle":"","parse-names":false,"suffix":""},{"dropping-particle":"","family":"Meng","given":"Jing","non-dropping-particle":"","parse-names":false,"suffix":""},{"dropping-particle":"","family":"Chen","given":"Zhengxi","non-dropping-particle":"","parse-names":false,"suffix":""},{"dropping-particle":"","family":"Shi","given":"Fang","non-dropping-particle":"","parse-names":false,"suffix":""}],"container-title":"Global Energy Interconnection","id":"ITEM-1","issue":"4","issued":{"date-parts":[["2021"]]},"page":"354-370","publisher":"Global Energy Interconnection Group Co. Ltd.","title":"Review of transition paths for coal-fired power plants","type":"article-journal","volume":"4"},"uris":["http://www.mendeley.com/documents/?uuid=2ffa6095-8a14-4636-b551-25470ac98f40"]}],"mendeley":{"formattedCitation":"Fulong Song et al., "Review of Transition Paths for Coal-Fired Power Plants," < i > Global Energy Interconnection < /i > 4, no. 4 (2021

by about 60% to 85% compared to 2017. Reducing the share of coal in Germany's electricity mix could contribute to mitigating the climate policy gap caused by not meeting the 2020 targets in a relatively short time. short. Rapid reduction of coal-based power enables longer run of fewer power plants and still maintains a carbon budget.[20] The way to remove coal is to achieve the target of the internationally agreed climate agreement, which is that the world needs to phase out coal quickly, but it is politically even more difficult in the changing political and economic landscape after the coronavirus pandemic. The roadmap to phasing out coal is a smart use of a combination of policy instruments and the effective integration of strong stakeholders.[21]

3. CONCLUSION

Constitutional Court Decision No. 91/PUU XVII/2020 states that the formation of Law Number 11 of 2020 concerning Job Creation declares a formal defect so that its status is conditionally unconstitutional. The implication is that in its decision the Constitutional Court stated that the Job Creation Law was still valid as long as the lawmaker made improvements in the procedures for establishing the Job Creation Law. In this case, the Constitutional Court has given two years for the legislators to revise the procedure for the formation of the Job Creation Law since the decision was pronounced. If no improvements are made, then the Job Creation Law can be declared unconstitutional permanently, which means that the Job Creation Law will be revoked and the old provisions that were amended by the Job Creation Law will be declared valid again. Not only that, the Constitutional Court ordered the suspension of all strategic and broad-impact actions or policies, and the issuance of new implementing regulations related to the Job Creation Law was not justified.

As for the juridical implications of the Constitutional Court Decision No. 91/PUU XVII/2020 on the Job Creation Act in the mineral and coal mining sector, if Law No. 11 of 2020 concerning permanent unconstitutional Job Creation, specifically removing the opportunity for coal incentives. Elimination of the opportunity for coal incentives must indeed be carried out, because Article 128A only targets coal utilization, not power optimization towards clean energy as expected. Article 128A will increase the share of coal in the national energy mix and will systematically overlap with targets and programs for climate adaptation and mitigation. Articles in the Job Creation Law are also infiltrated by the interests of mining and dirty energy businesses.

Therefore, regulations in Indonesia are considered not to support the clean energy sector optimally. Law Number 11 of 2020 concerning Job Creation is feared to actually

[20] Timon Wehnert, "Climate Change and Mitigation Targets," in *PHASING OUT COAL IN THE GERMAN ENERGY SECTOR INTERDEPENDENCIES, CHALLENGES AND POTENTIAL SOLUTIONS* (Jerman: German Institute for Economic Research, 2019), 39.

[21] Carol Farbotko et al., "Relocation Planning Must Address Voluntary Immobility," *Nature Climate Change* 10, no. 8 (2020): 702–4, https://doi.org/10.1038/s41558-020-0829-6.

encourage the extractive industry, especially coal, while the world is trying to achieve zero carbon emissions by the year 2050. The insertion of a new article, specifically Article 128 A, stipulates a zero percent royalty for activities to increase the value of coal mines. This Article has not shown the government's commitment to sustainable development. Zero percent royalties are considered to foster industry interest in fossil energy, not clean energy.

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