

Shifting Regulatory Paradigms in the Political Development of National Environmental Law

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Abstract

This article examines the transformation of Indonesia's environmental legal regime following the enactment of Law No. 6 of 2023 on Job Creation through the lens of legal politics, ecological constitutionalism, and climate governance. Unlike prior scholarship, which primarily critiques sectoral deregulation, this study situates the weakening of environmental safeguards within the broader shift from an environmental rule-of-law paradigm toward investment-oriented regulatory governance. The central issue concerns the erosion of preventive environmental control mechanisms, particularly through the simplification of environmental approvals and the restriction of public participation in Environmental Impact Assessment (AMDAL) procedures. Employing normative legal research, this study evaluates the consistency of the Job Creation Law with the constitutional right to a good and healthy environment, sustainable development principles, and Indonesia's international climate commitments. The findings indicate that the deregulatory framework prioritizes investment facilitation over environmental protection, thereby increasing risks of ecological degradation, regulatory uncertainty, and weakened



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environmental accountability. More significantly, the attenuation of AMDAL's ex ante gatekeeping function may directly hinder Indonesia's climate commitments under Sustainable Development Goal 13 (Climate Action), particularly by reducing substantive environmental oversight in emissions-intensive sectors such as energy, forestry, and industry. Comparative analysis with Malaysia and Bangladesh demonstrates that strong environmental assessment mechanisms and meaningful public participation remain essential to accountable environmental governance. This study concludes that Indonesia's environmental legal framework requires substantive recalibration through strengthened institutional oversight, restoration of participatory decision-making, and the reintegration of sustainability and climate accountability as binding regulatory principles.

KEYWORDS: *Environmental Law, Job Creation Law, Sustainable Development, Environmental Impact Assessment, Climate Action.*

Introduction

Although a substantial body of scholarship has established that the right to a good and healthy environment constitutes a constitutional right within Indonesia's green constitution framework, most studies remain confined to normative affirmation of that right without critically examining how its legal protection has been transformed under post-investment regulatory reform. Studies by Yusa and Hermanto argue that environmental protection has attained constitutional status as an integral component of sustainable development.¹ At the same time, Suong and Budahu similarly emphasize environmental protection as a constitutional entitlement of citizens.² However, these works do not specifically interrogate whether the post-Job

¹ I Gede Yusa and Bagus Hermanto, "Implementasi Green Constitution Di Indonesia: Jaminan Hak Konstitusional Pembangunan Lingkungan Hidup Berkelanjutan," *Jurnal Konstitusi* 15, no. 2 (September 18, 2018): 306, <https://doi.org/10.31078/jk1524>.

² Moh Akli Suong and Muhamad Abdi Sabri I Budahu, "Perlindungan Lingkungan Hidup Sebagai Hak Konstitusional Warga Negara Dalam Pembangunan Berkelanjutan," *Jurnal Media Hukum* 10, no. 2 (2022), <https://doi.org/https://doi.org/10.59414/jmh.v10i2.525>.

Creation Law regulatory architecture has diluted the constitutional protection of environmental rights.

At the level of environmental legal instruments, extensive scholarship has examined Law No. 32 of 2009 on Environmental Protection and Management (EPM Law), particularly concerning Environmental Impact Assessment (AMDAL), strict liability, public participation, and environmental enforcement mechanisms. Research by Akib et al.,³ Zahroh and Najicha, Tumangger et al.,⁴ and Riyadi and Suparno demonstrates that the principal challenges lie in institutional weakness,⁵ fragmented enforcement, and inconsistent application of environmental sanctions. Nevertheless, these studies predominantly address implementation failures (law in action) rather than the deeper structural transformation of Indonesia's legal policy orientation from environmental protection toward investment facilitation.

Scholarship specifically addressing the Job Creation Law has developed considerably. Sudharto P. Hadi et al.,⁶ Asrizal,⁷ Saputra and Dhianty, and Basuwendro et al.⁸ identify concerns regarding the weakening of AMDAL, the reduction of public participation, and normative inconsistencies with sustainable development principles. However, most of these studies focus on isolated regulatory amendments or sectoral critiques rather than situating these legal changes within a broader legal politics framework. Consequently, the existing literature has not systematically explained how these reforms reflect a shift in state

³ Muhammad Akib et al., "Application of Strict Liability Principles in Environmental Dispute Resolution," *Annals of Justice and Humanity* 2, no. 2 (December 27, 2023): 65–75, <https://doi.org/10.35912/ajh.v2i2.1796>.

⁴ Umami A'zizah Zahroh and Fatma Ulfatun Najicha, "Problems and Challenges on Environmental Law Enforcement in Indonesia: AMDAL in the Context of Administrative Law," *Indonesian State Law Review* 5, no. 2 (2022), <https://doi.org/10.15294/islrev.v5i2.23131>.

⁵ Elfi Nola Tumangger et al., "Enforcement of Strict Liability Principles in Cases Environmental Law in Indonesia" 5 (2024): 69–91.

⁶ Sudharto P. Hadi, Rizkiana S. Hamdani, and Ali Roziqin, "A Sustainability Review on the Indonesian Job Creation Law," *Heliyon* 9, no. 2 (February 2023): e13431, <https://doi.org/10.1016/j.heliyon.2023.e13431>.

⁷ Asrizal, "Reduksionisme AMDAL Dan Ancaman Deteriorasi Lingkungan: Perspektif Pembangunan Dalam Undang-Undang Cipta Kerja," *Jurnal Lex Renaissance* 7, no. 2 (April 1, 2022): 325–39, <https://doi.org/10.20885/JLR.vol7.iss2.art8>.

⁸ Rahmat Saputra and Rama Dhianty, "Investment Licensing and Environmental Sustainability in the Perspective of Law Number 11 The Year 2020 Concerning Job Creation," *Administrative and Environmental Law Review* 3, no. 1 (June 29, 2022): 25–38, <https://doi.org/10.25041/aclr.v3i1.2472>.

legal policy (politik hukum) from an environmental rule-of-law paradigm to an investment rule-of-law paradigm.

From a comparative international perspective, studies by Loh et al. (Malaysia),⁹ Hasan et al. (Bangladesh),¹⁰ and Nita et al.¹¹ (broader EIA governance) reveal that although environmental assessment systems face practical challenges globally, public participation and preventive environmental review remain fundamental features of environmental governance. However, these comparative studies do not address Indonesia's distinct regulatory trajectory under omnibus legislative reform. Thus, there remains a comparative-analytical gap regarding whether Indonesia's deregulatory environmental model constitutes an international anomaly or part of a broader global trend.

A further theoretical deficiency lies in the limited application of legal politics theory to the analysis of Indonesia's environmental regulatory transformation. While Mahfud MD conceptualizes politik hukum as the direction of legal policy determined by the State,¹² and Satjipto Rahardjo frames law as an instrument of progressive social engineering,¹³ these theoretical frameworks have rarely been employed to explain the structural reorientation of Indonesian environmental law under the Job Creation Law. Similarly, Otto Soemarwoto's environmental sustainability approach has largely been invoked as normative support rather than as a critical analytical lens for examining legislative transformation.¹⁴ At present, Indonesia finds itself at a critical juncture in development politics, facing the classical dilemma between pro-growth and pro-green interests.

⁹ Ing Hoe Loh et al., "PUBLIC PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENT (EIA) LAW IN MALAYSIA: A CRITICAL ANALYSIS," *PLANNING MALAYSIA* 21 (April 27, 2023), <https://doi.org/10.21837/pm.v21i25.1227>.

¹⁰ Md Arif Hasan, Kh Md Nahiduzzaman, and Adel S. Aldosary, "Public Participation in EIA: A Comparative Study of the Projects Run by Government and Non-Governmental Organizations," *Environmental Impact Assessment Review* 72 (September 2018): 12–24, <https://doi.org/10.1016/j.eiar.2018.05.001>.

¹¹ Andreea Nita, Stacey Fineran, and Laurentiu Rozyłowicz, "Researchers' Perspective on the Main Strengths and Weaknesses of Environmental Impact Assessment (EIA) Procedures," *Environmental Impact Assessment Review* 92 (January 2022): 106690, <https://doi.org/10.1016/j.eiar.2021.106690>.

¹² Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: Rajawali Pers, 2012).

¹³ Satjipto Rahardjo, *Hukum Progresif: Hukum Yang Membebaskan* (Jakarta: Kompas, 2006).

¹⁴ Otto Soemarwoto, *Analisis Dampak Lingkungan* (Yogyakarta: Gadjah Mada University Press, 1991).

More importantly, limited scholarship has critically examined this regulatory shift through the lens of legal politics (politik hukum) and ecological constitutionalism. Existing studies rarely interrogate whether the transformation introduced by the Job Creation Law represents merely a technical regulatory reform or a deeper paradigm shift from an environmental rule-of-law model where environmental protection, precaution, and public participation serve as constitutional constraints to an investment rule-of-law model that prioritizes economic efficiency and capital facilitation. This article addresses that analytical gap by examining the political development of national environmental law as a contestation between constitutional environmental commitments and investment-driven regulatory governance.¹⁵

On the one hand, the State requires economic growth to expand employment opportunities, enhance global competitiveness, and attract foreign investment, which is perceived as a driver of national economic stability. On the other hand, such growth often generates serious consequences for environmental quality, ranging from increased carbon emissions and deforestation to ecosystem degradation. This phenomenon aligns with the Environmental Kuznets Curve (EKC) hypothesis, which posits a non-linear relationship between economic growth and environmental degradation. In the early stages of development, environmental harm escalates alongside rising income, before declining once the economy reaches a certain threshold.¹⁶

Studies on inclusive green growth demonstrate that although Indonesia's Inclusive Green Growth Index (IGGI) increased between 2015 and 2019, the improvement was largely driven by economic factors, while the environmental sustainability dimension showed a declining trend. It indicates that the orientation of development remains more focused on

¹⁵ Heribertus Jaka Triyana, Novita Putri Harjono, and Ronan Mcdermott, "Implementing the ASEAN Agreement on Disaster Management and Emergency Response for Better Coordination and Simplification Procedures," *Jambe Law Journal* 5, no. 2 (December 3, 2023): 147–205, <https://doi.org/10.22437/jlj.5.2.147-205>.

¹⁶ Aryo Dwi Febriyanto and Jihad Lukis Panjawa, "Economic Growth and Carbon Emissions: Environmental Kuznets Curve (EKC) Hypothesis in Indonesia from 1990 to 2020," *Jurnal Ekonomi Pembangunan* 13, no. 1 (April 30, 2024): 1–14, <https://doi.org/10.23960/jep.v13i1.1147>.

enhancing economic output than on prioritizing environmental preservation.¹⁷ Economic growth has not yet been fully integrated with a sustainable ecological agenda. Various mechanisms of green financing have been proposed to bridge the need for economic growth with the obligation to preserve the environment. Such green financing instruments include green bonds, environmentally friendly tax incentives, and performance-based environmental funding.

A crucial legal issue to be examined is the alignment between the Job Creation Law (Omnibus Law on Job Creation) and the orientation of national legal development politics grounded in the principle of sustainability. It is important, as it reflects a paradigm shift in regulation. First, the Environmental Protection and Management Law (EPM Law) emphasizes an environmental protection paradigm based on public participation. Second, the 2023 Job Creation Law highlights an investment-oriented paradigm through regulatory simplification.

On this basis, what emerges is the manifestation of politik hukum (legal politics) in governmental regulation. According to Mahfud MD, politik hukum constitutes the direction of legal policy determined by the State in the process of forming and enforcing law in order to achieve specific objectives.¹⁸ This line of thought is essential in explaining the dynamics of environmental regulation in Indonesia, where the Environmental Protection and Management Law (EPM Law) was enacted with a paradigm of environmental protection based on public participation, the precautionary principle, and the State's responsibility to guarantee the people's right to a healthy environment.

With the enactment of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law (the Job Creation Law), there is a noticeable regulatory shift toward an investment-oriented paradigm that emphasizes licensing simplification and deregulation to promote economic growth. This shift demonstrates that legal politics in environmental law is not static

¹⁷ Jaka Aminata, Dzulfikar Ilham Kusuma Nusantara, and Indah Susilowati, "The Analysis of Inclusive Green Growth In Indonesia," *Jurnal Ekonomi & Studi Pembangunan* 23, no. 1 (April 27, 2022), <https://doi.org/10.18196/jesp.v23i1.13811>.

¹⁸ Mahfud MD, *Politik Hukum Di Indonesia*.

but adapts to the dominant direction of national development policy at a given time.

The National Law Development Agency (BPHN), through the National Law Development Plan 2020-2024, emphasizes that lawmaking must serve as an instrument to support sustainable development as mandated in the National Long-Term Development Plan (RPJPN) and the National Medium-Term Development Plan (RPJMN). This perspective aligns with environmental law theory, in which Satjipto Rahardjo asserts that environmental law must prioritize the principles of sustainability, precaution, and public participation.¹⁹

Otto Soemarwoto emphasizes the importance of legal instruments based on environmental impact analysis as a means to ensure ecological sustainability.²⁰ The principal legal issue addressed in this study is whether the Job Creation Law remains consistent with the orientation of national legal development based on sustainability, or whether it signifies a regulatory paradigm shift from environmental protection toward investment-driven governance, thereby potentially weakening constitutionally protected environmental rights.

The legal research method employed is normative legal research. This method focuses on the study of legislation, legal doctrines, and principles relevant to environmental protection and management, particularly the Environmental Protection and Management Law (EPM Law) and the Job Creation Law. A normative analysis is necessary because the paradigm shift from protection-based regulation to investment-oriented regulation presents juridical problems that must be examined through systematic, historical, and teleological interpretation of legal norms.²¹ In this context, normative legal research enables the author to examine regulatory disharmony, the hierarchical relationship between regulations, and their conformity with the constitutional mandate of the Indonesian State regarding the right to a good and healthy environment.

This analytical framework draws upon the concept of the environmental rule of law, which positions environmental

¹⁹ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009).

²⁰ Otto Soemarwoto, *Analisis Dampak Lingkungan*.

²¹ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*.

protection as a core element of constitutional governance, requiring accountability, public participation, precaution, and ecological justice as legal constraints upon state power. As articulated by the United Nations Environment Programme (UNEP), environmental rule of law requires that environmental norms function not merely as policy preferences, but as enforceable legal commitments.²² The shift under the Job Creation Law raises the critical question of whether Indonesia is moving away from this constitutional environmental framework toward an investment rule of law paradigm, in which legal certainty for business actors becomes the dominant organizing principle of regulatory governance.

Whether the post-Job Creation Law transformation of Indonesia's environmental legal regime represents a shift in legal politics from an environmental rule of law paradigm toward an investment rule of law paradigm, and what juridical, constitutional, ecological, and institutional consequences such a transformation produces for the protection of the constitutional right to a good and healthy environment.

Result & Discussion

A. The Environmental Protection Paradigm under the Environmental Protection and Management Law (EPM Law)

The Environmental Protection and Management Law (EPM Law) can be regarded as a pivotal milestone in the emergence of modern environmental law in Indonesia. The primary orientation of this regulation is to place ecological protection as the foundation for sustainable development. The EPM Law regulates environmental management comprehensively, covering planning, use, control, maintenance, and enforcement, thereby functioning not merely as sectoral norms but as a strategic legal instrument to balance economic growth with ecosystem preservation.

²² United Nations Environment Programme, "Environmental Rule of Law: First Global Report," 2019, <https://wedocs.unep.org/handle/20.500.11822/27279>.

Various studies affirm that this law operates as positive environmental law within the framework of the welfare state, whose ultimate objective is the realization of sustainable development.²³ The implementation of the Environmental Protection and Management Law (EPM Law) continues to face several challenges, particularly in relation to the protection of environmental activists, the consistency of criminal law enforcement, and the effectiveness of licensing supervision in the forestry and mining sectors.²⁴

This issue is becoming increasingly relevant to the direction of national legal policy, as the National Law Development Agency (BPHN) has emphasized the importance of formulating sustainable legal development through strategic documents such as the BPHN Strategic Plan 2025-2029 and the synchronization of the National Legislation Program (Prolegnas) with the National Medium-Term Development Plan (RPJMN).²⁵ Equally important is that the Environmental Impact Assessment (AMDAL) is not merely an administrative requirement for the issuance of business or activity permits, but rather a substantive legal instrument regulated within the framework of environmental protection. Prior to the issuance of permits, the AMDAL functions as a preventive mechanism that comprehensively assesses the impacts of activities on the ecosystem, while also serving as a regulatory tool to ensure that every development project complies with the criteria of sustainability and precaution.²⁶

Andreea Nita, Stacey Fineran, and Laurentiu Rozyłowicz, in their research on the strategic role of Environmental Impact

²³ Siti Sumartini and Tri Setiady, "Harmonizing International and National Legal Systems Through The Principles of Sustainable Development in The Modern State," *Cepalo* 8, no. 1 (June 4, 2024): 17–30, <https://doi.org/10.25041/cepalo.v8no1.3248>.

²⁴ Helmi, "Sistem Pengawasan Perizinan Bidang Lingkungan Hidup Terhadap Perizinan Berusaha Bidang Kehutanan Dan Pertambangan Di Indonesia," *Jurnal Sains Sosio Humaniora* 6, no. 1 (2022), <https://doi.org/https://doi.org/10.22437/jssh.v6i1.28996>.

²⁵ Humas dan Kerja Sama, "Membangun Sistem Hukum Berkelanjutan: BPHN Gelar Penyusunan Renstra 2025-2029," Badan Pembinaan Hukum Nasional, 2024, <https://bphn.go.id/berita-utama/membangun-sistem-hukum-berkelanjutan-bphn-gelar-penyusunan-renstra-2025-2029>.

²⁶ Ricki Rahmad Aulia Nasution and Irwan Triadi, "Implementasi Analisis Mengenai Dampak Lingkungan (AMDAL) Dalam Mencegah Kerusakan Lingkungan Berdasarkan Undang-Undang No. 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Cendekia: Jurnal Hukum, Sosial Dan Humaniora* 3, no. 2 (2025), <https://doi.org/https://doi.org/10.5281/zenodo.15093469>.

Assessments (EIA/AMDAL) in mitigating potential environmental damage, explain that EIAs seek to balance economic, social, and ecological aspects at the project planning stage, although their implementation remains hindered by limited public participation and challenges in regulatory enforcement.²⁷ Urgensi AMDAL sebagai mekanisme kontrol berbasis perizinan yang esensial dalam menjaga mutu lingkungan dan stabilitas fungsi usaha.²⁸

Provisions on administrative and criminal sanctions for officials who issue environmental permits without fulfilling technical requirements (such as the AMDAL) are also stipulated in order to preserve the legal control function over ecological aspects. This normative framework places environmental permits not as a mere “administrative supplement,” but as a substantive legal condition binding before, during, and after the issuance of business permits. Consistent enforcement of administrative law is crucial, as the effectiveness of environmental permitting depends largely on the institutional capacity of administrative bodies, the independence of supervisory authorities, and the certainty of sanction implementation.

If implementation proves inadequate, environmental permits as a standalone legal instrument lack sufficient efficacy to prevent environmental degradation. Comparative studies and evaluations of AMDAL implementation in Indonesia confirm a significant gap between the legal norms established and the actual practices in the field.²⁹ There is a risk of weakening environmental protection through licensing reform. Studies of licensing reform, including the Job Creation Law and its implementing regulations, indicate a trend toward more integrated, risk-based licensing mechanisms.

²⁷ Andreea Nita, Stacey Fineran, and Laurentiu Rozylowicz, “Researchers’ Perspective on the Main Strengths and Weaknesses of Environmental Impact Assessment (EIA) Procedures.”

²⁸ Agus Iskandar and Pradana Putra, “Aktualisasi Hukum Lingkungan Terhadap Analisis Mengenai Dampak Lingkungan (AMDAL) Ditinjau Dari Hukum Administrasi Negara,” *Keadilan* 22, no. 1 (February 11, 2024): 91–103, <https://doi.org/10.37090/KEADILAN.V22I1.1502>.

²⁹ Dadang Purnama, “Reform of the EIA Process in Indonesia: Improving the Role of Public Involvement,” *Environmental Impact Assessment Review* 23, no. 4 (July 2003): 415–39, [https://doi.org/10.1016/S0195-9255\(03\)00046-5](https://doi.org/10.1016/S0195-9255(03)00046-5).

It has the potential to alter or reduce the constitutionality of environmental permits if the legal framework governing them is not strictly adhered to. Effective judicial and regulatory oversight is therefore essential to ensure that the precautionary principle and legal certainty are preserved. Sustainability analyses and risk assessments relating to this licensing reform have been addressed in the literature examining the impact of changes in the licensing regime on environmental protection.³⁰

The scholarly article authored by Umami A'zizah Zahroh and Fatma Ulfatun Najicha reveals that the implementation of environmental law in the administrative domain continues to face various weaknesses, including weak inter-agency coordination, the dominance of local political interests, and the suboptimal effectiveness of sanctions in practice.³¹ The NTB case highlights how weakened AMDAL control may intensify environmental conflict where local political-economic interests dominate regulatory decision-making. Jayadi and Hidayat find that administrative sanctions against mining-related environmental violations remain weak due to political influence and limited enforcement capacity.

Under a robust AMDAL gatekeeping model, environmental feasibility should have been rigorously assessed before project authorization. However, when preventive scrutiny is diluted, environmental governance becomes dependent upon ex post enforcement, which is often politically compromised. It transforms AMDAL from a preventive constitutional safeguard into a procedural administrative formality. Although the principles of strict liability and license revocation are frequently applied as administrative sanctions, their implementation remains inconsistent across cases.³²

A study on environmental permit violations in West Nusa Tenggara found that the influence of local political and economic interests, along with limitations in oversight and resources, significantly hampers the effectiveness of administrative

³⁰ Sudharto P.Hadi, Rizkiana S.Hamdani, and Ali Roziqin, "A Sustainability Review on the Indonesian Job Creation Law."

³¹ Umami A'zizah Zahroh and Fatma Ulfatun Najicha, "Problems and Challenges on Environmental Law Enforcement in Indonesia: AMDAL in the Context of Administrative Law."

³² Tumangger et al., "Enforcement of Strict Liability Principles in Cases Environmental Law in Indonesia."

measures.³³ The Manokwari case demonstrates the institutional consequences of weakening preventive environmental governance. Wambrauw et al. show that environmental law enforcement remains ineffective due to weak institutional coordination, insufficient supervisory resources, and poor sanction implementation.³⁴

The Manokwari case demonstrates the institutional consequences of weakening preventive environmental governance. Wambrauw et al. show that environmental law enforcement remains ineffective due to weak institutional coordination, insufficient supervisory resources, and poor enforcement of sanctions. When AMDAL no longer functions as a robust gatekeeping instrument, environmental protection shifts from prevention toward reactive enforcement. It is problematic because post-violation sanctions are structurally less effective than ex ante environmental review. In practice, weakened AMDAL oversight creates a regulatory vacuum in which environmentally harmful activities continue despite formal legal controls. From a regulatory standpoint, AMDAL permits often become a mere formality in the licensing process, as technical aspects and public participation are frequently neglected.

From the perspective of legal politics, the Job Creation Law demonstrates a tendency to reduce the function of AMDAL. Several provisions of the Law have shifted the position of AMDAL from a binding environmental control instrument into one that is more flexible and lenient, with its primary orientation directed toward accelerating investment activities.³⁵ Although the regulatory framework has incorporated the principle of sustainable environmental management, the implementation of law enforcement and the oversight mechanisms concerning

³³ Muhammad Irfan Jayadi and Ilham Hidayat, "The Implementation of Administrative Sanctions Against Environmental Violations Committed by Mining Companies in West Nusa Tenggara Province," *Justicia Insight* 1, no. 2 (May 28, 2025): 44–49, <https://doi.org/10.70716/justin.v1i2.159>.

³⁴ Frengky Ever Wambrauw, A. M. Yunus Wahid, and Maskun, "EFFECTIVENESS OF ENVIRONMENTAL LAW ENFORCEMENT IN MANOKWARI REGENCY," *JILPR Journal Indonesia Law and Policy Review* 4, no. 2 (February 28, 2023): 56–70, <https://doi.org/10.56371/jirpl.v4i2.118>.

³⁵ Asrizal, "Reduksionisme AMDAL Dan Ancaman Deteriorasi Lingkungan: Perspektif Pembangunan Dalam Undang-Undang Cipta Kerja."

mining and forestry activities still reveal significant weaknesses.³⁶

From a comparative international perspective, the study *Public Participation in EIA Law in Malaysia: A Critical Analysis* demonstrates that although the regulations on Environmental Impact Assessment (EIA) in Malaysia have established public participation as a fundamental element, their implementation still faces various obstacles, including limited public access to relevant information and the judiciary's lack of responsiveness in accommodating environmental interests.³⁷ Similarly, an article examining practices in Bangladesh reveals that in government-managed projects, although normative provisions for publication and public hearings are formally available, public participation often remains a mere procedural formality and fails to achieve substantive meaning in environmental decision-making.³⁸

Contemporary challenges to the paradigm of Environmental Protection and Management, as well as the implementation of AMDAL, include the influence of new regulations, particularly the Omnibus Law on Job Creation, which may reduce AMDAL's role as an instrument of environmental control and oversight. The issue of independence in the assessment of AMDAL also constitutes a crucial concern, wherein the principle of assessment, which ought to be scientific, objective, and independent, is often distorted by the intervention of economic interests or local political pressures.³⁹

Public participation has also become increasingly constrained. The narrowing of participation under the amended Article 26 of the Environmental Protection and Management Law limits involvement primarily to directly affected communities, reducing broader democratic oversight in

³⁶ Imelda Hasibuan and Muhammad Japri, "Implementation of Environmental Law in Sustainable Natural Resource Management," *Awang Long Law Review* 7, no. 1 (November 30, 2024): 140–46, <https://doi.org/10.56301/awl.v7i1.1453>.

³⁷ Ing Hoe Loh et al., "PUBLIC PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENT (EIA) LAW IN MALAYSIA: A CRITICAL ANALYSIS."

³⁸ Md Arif Hasan, Kh Md Nahiduzzaman, and Adel S. Aldosary, "Public Participation in EIA: A Comparative Study of the Projects Run by Government and Non-Governmental Organizations."

³⁹ Ivan Wagner and Suteki Suteki, "Independensi Penilaian AMDAL Sebagai Wujud Perlindungan Terhadap Lingkungan Hidup," *Jurnal Pembangunan Hukum Indonesia* 1, no. 3 (September 24, 2019): 404–24, <https://doi.org/10.14710/jphi.v1i3.404-424>.

environmental decision making.⁴⁰ This legal shift reflects not merely administrative reform, but a deeper transformation from a precaution-based environmental rule of law toward an efficiency-oriented investment governance paradigm.

All of these studies indicate that, in order for the paradigm of environmental protection as regulated under the Environmental Protection and Management Act to be effectively implemented, it is imperative to strengthen institutional capacity for environmental oversight through the establishment or revitalization of an independent body, free from political and economic interference, vested with clear authority in monitoring, evaluation, and the imposition of administrative sanctions.

The independence of AMDAL evaluations must be reinforced by adopting national standards, codes of ethics, and strict conflict-of-interest mechanisms, along with accreditation systems and professional sanctions for compilers found to lack objectivity. With respect to public participation, access to environmental information must be guaranteed through mandatory open data requirements and legally binding, substantive public consultation forums.

From the perspective of legal certainty, the enforcement of administrative, civil, and criminal sanctions must be emphasized to be more effective, proportionate, and deterrent, while ensuring that environmental permits remain an absolute prerequisite for business licenses. Finally, regulatory harmonization between the Environmental Protection and Management Act, and the Job Creation Act along with their implementing regulations, is crucial so that the function of AMDAL is not reduced to a mere procedural formality, but is preserved as the principal instrument of environmental protection and control.

B. The Investment Paradigm Based on Regulatory Simplification under the Job Creation Law

⁴⁰ Rahmat Saputra and Rama Dhianty, "Investment Licensing and Environmental Sustainability in the Perspective of Law Number 11 The Year 2020 Concerning Job Creation."

The Job Creation Law reorients Indonesia's environmental regulatory framework toward an investment-driven governance model through risk-based licensing, administrative simplification, and the integration of sectoral licensing mechanisms.⁴¹ While normatively designed to accelerate economic growth, this regulatory transformation has generated measurable ecological and social consequences. This shift raises significant concerns regarding the weakening of preventive environmental safeguards, particularly through the reduced constitutive role of environmental permits and AMDAL obligations.⁴²

The exemption of certain projects from AMDAL requirements based on spatial planning instruments has diminished ex ante environmental scrutiny and created potential inconsistencies with sustainable development objectives.⁴³ Empirical evidence indicates that environmental conflicts have intensified in the post-Job Creation Law period. The Consortium for Agrarian Reform (KPA) recorded 241 agrarian conflict cases in 2023, affecting more than 638,000 hectares and involving over 135,000 households, many of which were associated with investment-driven land acquisition and extractive development projects.⁴⁴ This suggests that regulatory simplification has not merely altered legal procedures, but has also exacerbated socio-ecological tensions on the ground.

Similarly, environmental advocacy reports reveal that strategic national projects accelerated under the deregulation framework have generated significant public resistance. The Rempang Eco-City conflict (2023) illustrates how investment acceleration may proceed despite unresolved issues of public participation, environmental transparency, and community rights. WALHI documented that the project triggered forced displacement concerns and ecological risks affecting coastal

⁴¹ Sudharto P.Hadi, Rizkiana S.Hamdani, and Ali Roziqin, "A Sustainability Review on the Indonesian Job Creation Law."

⁴² Asrizal, "Reduksionisme AMDAL Dan Ancaman Deteriorasi Lingkungan: Perspektif Pembangunan Dalam Undang-Undang Cipta Kerja."

⁴³ Rahmat Saputra and Rama Dhianty, "Investment Licensing and Environmental Sustainability in the Perspective of Law Number 11 The Year 2020 Concerning Job Creation."

⁴⁴ Raden Ariyo Wicaksono, "KPA: Konflik Agraria Naik 21%," January 24, 2025, <https://www.kpa.or.id/2025/01/kpa-konflik-agraria-naik-21/>.

communities.⁴⁵ From the perspective of environmental law, this regulatory development raises concerns regarding normative inconsistency with constitutionally protected environmental rights, particularly the right to a good and healthy environment, as well as with Article 65 of the Environmental Protection and Management Law, which embodies the principles of precaution and sustainable environmental governance..⁴⁶

At the regulatory level, the weakening of AMDAL's preventive function remains a central concern. Under the previous framework of Law No. 32 of 2009, AMDAL functioned as a constitutive ex ante environmental gatekeeping mechanism. However, under the risk-based licensing model, environmental scrutiny increasingly depends on administrative classification and spatial conformity instruments, potentially reducing substantive environmental review.⁴⁷

The weakening of the AMDAL instrument may hinder achieving the national target for reducing greenhouse gas emissions, as stipulated in Presidential Regulation No. 98 of 2021 on the Implementation of Carbon Economic Value (NEK), which constitutes Indonesia's commitment under the Paris Agreement. With the reduction of substantive oversight through AMDAL, the risks of environmental degradation and increased emissions from strategic sectors (such as energy, industry, and forestry) become more pronounced, thereby potentially obstructing the attainment of the Sustainable Development Goals (SDGs), particularly Goal 13 (climate action) and Goal 15 (life on land). From the perspective of legal politics, the enactment of the Job Creation Law embodies a normative problem in the form of disharmony with the higher framework of environmental law and a contradiction with Indonesia's international commitments. This condition calls for the formulation of more progressive implementing regulations to

⁴⁵ Wahana Lingkungan Hidup Indonesia, "Tanpa AMDAL, Bahlil Berambisi Menggusur Warga Pulau Rempang Demi Investasi Tiongkok," September 29, 2023, <https://www.walhi.or.id/tanpa-amdal-bahlil-berambisi-menggusur-warga-pulau-rempang-demi-investasi-tiongkok>.

⁴⁶ Reyhandhi Alfian Muslim and Fatma Ulfatun Najicha, "Perlindungan Lingkungan Dalam Undang-Undang Cipta Kerja," *Indonesian State Law Review* 5, no. 1 (2022), <https://doi.org/https://doi.org/10.15294/islrev.v5i1.23124>.

⁴⁷ Asrizal, "Reduksionisme AMDAL Dan Ancaman Deteriorasi Lingkungan: Perspektif Pembangunan Dalam Undang-Undang Cipta Kerja."

ensure that AMDAL remains a preventive and substantive legal instrument, rather than a mere procedural formality.

The implementation of the Job Creation Law forms part of the government's broader legal policy agenda to construct an efficient and competitive investment regime through regulatory simplification. In this context, the introduction of risk-based business licensing and the integration of sectoral regulatory frameworks are framed as legislative reform instruments designed to strengthen legal certainty and foster a more favorable investment climate. The juridical consequence of this regulatory model is the derogation of environmental law instruments that previously held constitutive authority. Environmental deregulation within the framework of the PPLH Law tends to weaken the government's regulatory control and risks creating normative conflicts with the objectives of sustainable development.⁴⁸

With the Job Creation Law replacing environmental permits with technical approvals, there is, in normative terms, a reduction in the substantive due process value of environmental impact control. The weakening of the AMDAL instrument may result in Indonesia's failure to achieve its greenhouse gas emission reduction targets, which constitute an international commitment under the Paris Agreement. As stipulated in the Job Creation Law, there has been a shift of legal instruments from wastewater discharge permits to technical approvals. This shift renders environmental monitoring increasingly difficult to implement, particularly for small-scale enterprises that are no longer subject to formal licensing mechanisms.⁴⁹ This indicates the potential emergence of a regulatory gap that could weaken the effectiveness of environmental law at the local level.

The Job Creation Law marks a shift in orientation from an environmental rule-of-law paradigm to an investment rule-of-law paradigm. As an omnibus law, the Job Creation Law tends to prioritize business certainty over environmental certainty, a stance that runs counter to the spirit of ecological constitutionalism developing in many jurisdictions, which holds

⁴⁸ Sudharto P.Hadi, Rizkiana S.Hamdani, and Ali Roziqin, "A Sustainability Review on the Indonesian Job Creation Law."

⁴⁹ Maskun et al., "Legal Reform of Wastewater Management under the Job Creation Law in Kendari City: Between Regulatory Conflict and Environmental Ethics," *LAW REFORM* 21, no. 2 (2025), <https://doi.org/https://doi.org/10.14710/lr.v21i2.68417>.

that law must safeguard the sustainability of ecosystems as the foundation of development. The Job Creation Law also raises issues of legal certainty. Several of its implementing regulations provide ambiguous interpretations regarding the categories of low, medium, and high risk. In practice, this ambiguity allows business actors to classify activities with significant environmental impacts as low risk, thereby circumventing the obligation to conduct an AMDAL,⁵⁰ it demonstrates that such ambiguities have become a source of conflict between the central and regional governments in determining licensing authority.

The Job Creation Law narrows the space for participation, as public consultation in the preparation of the AMDAL is no longer substantive but merely procedural. As a consequence, the principle of informed consent of affected communities is often disregarded, despite its recognition as an international standard in AMDAL practices. A more critical comparative perspective shows that Malaysia and Bangladesh cannot be idealized as fully effective environmental governance models.⁵¹ Loh et al. demonstrate that although Malaysia formally guarantees public participation in EIA procedures, implementation remains constrained by limited information access, procedural opacity, and weak judicial responsiveness.⁵²

Similarly, Hasan et al. show that in Bangladesh, public participation often functions as procedural symbolism rather than substantive democratic engagement.⁵³ Thus, the comparative lesson for Indonesia is not that these systems are inherently superior, but that even imperfect systems preserve the preventive gatekeeping function of environmental assessment more clearly than Indonesia's post-Job Creation Law framework. Indonesia could adopt several practical reforms from comparative experience: mandatory public disclosure of EIA

⁵⁰ Yasser Basuwendro, Suhadi, and Rofi Wahanisa, "The Impact Of Law No. 6 Of 2023 On Environmental Protection And Management," *Journal of Law, Politic and Humanities* 5, no. 6 (September 7, 2025): 4878–93, <https://doi.org/10.38035/jlph.v5i6.2314>.

⁵¹ Denny Sanjaya et al., "Collaborative Governance in Building Utilization Cultural Heritage in Metro City Through the Lens of a Socio-Legal Regime," *Jambe Law Journal* 4, no. 2 (November 30, 2021): 201–16, <https://doi.org/10.22437/jlj.4.2.191-210>.

⁵² Ing Hoe Loh et al., "PUBLIC PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENT (EIA) LAW IN MALAYSIA: A CRITICAL ANALYSIS."

⁵³ Md Arif Hasan, Kh Md Nahiduzzaman, and Adel S. Aldosary, "Public Participation in EIA: A Comparative Study of the Projects Run by Government and Non-Governmental Organizations."

documents,⁵⁴ legally enforceable public consultation periods, independent environmental review panels, and judicially reviewable environmental approval decisions.

Indonesia, however, has taken a different path under the Job Creation Law weakening this instrument. Such divergence may have international implications, particularly in the realm of sustainable trade and investment, as weak environmental protection standards often serve as the basis for trade disputes and claims in international arbitration. From the perspective of legal politics, the Job Creation Law embodies a normative problem in the form of disharmony with higher-ranking environmental law frameworks and contradictions with Indonesia's international commitments.

This situation necessitates the formulation of more progressive implementing regulations to ensure that AMDAL continues to function as a preventive and substantive legal instrument rather than a mere procedural formality. While the Job Creation Law offers positive momentum for accelerating investment and bureaucratic efficiency, it simultaneously generates significant legal and constitutional risks. These risks include the weakening of preventive instruments, the erosion of legal certainty in business risk categorization, the narrowing of public participation, the potential violation of constitutional rights to a healthy environment, and inconsistency with international commitments. To avoid a legitimacy crisis, the implementing regulations of the Job Creation Law must be designed in accordance with the precautionary principle, environmental justice, and a rule-of-law approach oriented toward sustainability

C. The Political Implications for the Development of National Legal Frameworks

A historical comparison of the evolution of environmental law in Indonesia demonstrates a layered dynamic of legal

⁵⁴ Andreea Nita, Stacey Fineran, and Laurentiu Rozylowicz, "Researchers' Perspective on the Main Strengths and Weaknesses of Environmental Impact Assessment (EIA) Procedures."

politics. Law No. 4 of 1982 introduced the AMDAL for the first time as a preventive legal instrument, although its implementation remained largely administrative and lacked sanctions. The subsequent development under Law No. 23 of 1997 elevated AMDAL's position by expanding the principle of state responsibility and introducing criminal sanctions for environmental violations, thereby strengthening regulatory control. Thereafter, Law No. 32 of 2009 went further by establishing the environmental permit as an autonomous instrument, distinct from business licenses, affirming that economic activities could not proceed without AMDAL approval. This approach is regarded as the apex of modern codification of Indonesian environmental law, as it integrates the principles of sustainable development and the polluter pays principle.⁵⁵

Furthermore, the amendment to Article 26 of the Environmental Protection and Management Law narrows public participation in the AMDAL process to directly affected parties, thereby weakening both democratic legitimacy and the substantive quality of environmental decision-making.⁵⁶ The replacement of formal environmental permits with technical approvals has also complicated regulatory monitoring, particularly for small-scale enterprises, reducing effective oversight of environmental impacts.⁵⁷ Consequently, the regulatory transformation reflects not merely procedural reform, but a deeper paradigm shift from precaution-based environmental governance toward efficiency-oriented investment governance. This shift may be systematically illustrated through the following comparative regulatory framework.

Comparative Regulatory Shift Between Law No. 32/2009 and Law No. 6/2023

⁵⁵ Said Mahmoudi, "A UN Specialized Agency for the Environment," ed. Bharat H. Desai, *Environmental Policy and Law* 51, no. 1–2 (May 21, 2021): 111–20, <https://doi.org/10.3233/EPL-219012>.

⁵⁶ Rahmat Saputra and Rama Dhianty, "Investment Licensing and Environmental Sustainability in the Perspective of Law Number 11 The Year 2020 Concerning Job Creation."

⁵⁷ Maskun et al., "Legal Reform of Wastewater Management under the Job Creation Law in Kendari City: Between Regulatory Conflict and Environmental Ethics."

Regulatory Aspect	Law No. 32/2009 (Environmental Protection Paradigm)	Law No. 6/2023 (Investment Simplification Paradigm)	Legal Consequence
Environmental Permit	Separate constitutive environmental permit required	Replaced by environmental approval/technical approval	Preventive legal control weakened
AMDAL Position	Mandatory gatekeeping instrument before business permit	Risk-based selective obligation	Reduced ex ante environmental screening
Public Participation	Broad participation including affected communities	Narrowed to directly affected parties	Democratic legitimacy weakened
Licensing Logic	Precautionary principle	Business efficiency/risk-based approach	Shift from environmental rule of law
Enforcement	Administrative, civil, criminal layered sanctions	Monitoring complexity increases	Enforcement fragmentation
Spatial Review	Environmental + permit review	Reliance on RDTR/digital OSS	Spatial/ecological gaps

A significant shift emerged with the enactment of Law No. 6 of 2023. This regulation introduced a risk-based licensing system that streamlined the environmental permit into a technical approval. Such a shift is not merely a technocratic measure, but rather reflects a new orientation of legal politics that places greater emphasis on investment acceleration than on

environmental protection. This transformation entails a serious trade-off between the efficiency of licensing and the capacity for environmental control.⁵⁸ The replacement of pollution permits with technical approvals has weakened oversight of small and medium-scale industries.⁵⁹

The paradigm shifts reflected in Law No. 4 of 1982, Law No. 23 of 1997, and Law No. 32 of 2009 laid the foundation for environmental safeguards by strengthening AMDAL and environmental permits. By contrast, Law No. 6 of 2023 has propelled a new paradigm that is overtly pro-investment. This development raises fundamental questions concerning the balance between the objectives of sustainable development and strategies for accelerated economic growth, as well as how Indonesia can maintain consistency with the constitutional mandate guaranteeing the right to a good and healthy environment.

The current trajectory of legal politics emphasizes investment acceleration under a deregulatory logic. From the perspective of legal politics, this is not merely a matter of technical bureaucratic reform but rather a political choice that prioritizes investment while simultaneously reducing the preventive function of AMDAL and environmental permits. Such a shift underscores the unavoidable trade-off between licensing efficiency and environmental regulatory capacity.

The author contends that the “softening of the AMDAL instrument” may directly affect Indonesia’s carbon-reduction targets and the success of its sustainable development agenda. Consequently, a legal-political orientation that favours short-term economic interest risks engendering long-term environmental crises. From the perspective of legal-political theory, this paradigm shift signifies that law is no longer primarily a tool of social engineering for environmental protection, but increasingly a facilitative instrument for investment. It highlights a “polarization of interests” in the development of national law between the State’s constitutional duty to safeguard citizens’ rights to a good and healthy

⁵⁸ Sudharto P.Hadi, Rizkiana S.Hamdani, and Ali Roziqin, “A Sustainability Review on the Indonesian Job Creation Law.”

⁵⁹ Maskun et al., “Legal Reform of Wastewater Management under the Job Creation Law in Kendari City: Between Regulatory Conflict and Environmental Ethics.”

environment and the government's commitment to fostering an investment-friendly climate.

The Job Creation Law, as a regulation oriented toward accelerating investment through the mechanism of risk-based licensing, has the potential to obscure the protective function of environmental law, thereby posing a risk of constitutional rights violations. In this context, the role of the judiciary becomes essential in ensuring a balance between economic interests and the constitutional protection of the environment. The Constitutional Court, for example, has repeatedly been called upon to review provisions of the Job Creation Law relating to AMDAL and environmental permits, demonstrating that judicial oversight serves as a vital corrective mechanism against deregulation-oriented policies.

It is therefore imperative to strengthen oversight mechanisms, both through judicial review before the Constitutional Court and through administrative control by technical ministries and local governments. Weak interagency coordination, the dominance of local political interests, and the limited effectiveness of sanctions have collectively undermined the efficacy of environmental legal instruments. These conditions illustrate the urgent need for institutional reform to ensure that pro-investment policies do not erode constitutional rights to a healthy environment.⁶⁰ Given the normative trade-off between investment deregulation and the effectiveness of environmental control, it is imperative to reinforce the rule of law so that environmental legal instruments function not merely as administrative procedures, but as safeguards for constitutional rights and the principles of sustainable development.

The current phenomenon demonstrates that decentralization without strengthening local capacity results in fragmented governance, which, in turn, weakens environmental protection. What is urgently required is the enhancement of institutional capacity at the local level for the implementation of AMDAL, so that it does not merely operate as an administrative formality. The author observes that local governments in

⁶⁰ Umami A'zizah Zahroh and Fatma Ulfatun Najicha, "Problems and Challenges on Environmental Law Enforcement in Indonesia: AMDAL in the Context of Administrative Law."

Indonesia often lack the capacity to supervise environmental permits, rendering AMDAL implementation largely ineffective.

In the absence of mechanisms of checks and balances, decentralization exacerbates the exploitation of natural resources by local actors in coalition with business interests. Within the framework of risk-based licensing, there exists a fundamental weakness if risk classifications fail to account for spatial and cumulative impacts. This condition becomes particularly evident when micro and small enterprises are dispersed within a given area. At the same time, individually they may be categorized as low risk, collectively they can exert significant ecological pressure.

Therefore, modern licensing mechanisms must be complemented by spatial cumulative assessments and area-wide monitoring to ensure environmental sustainability. Risk classifications in current practice too often neglect cumulative and systemic risks, thereby undermining the preventive function of environmental law.⁶¹ For instance, the implementation of risk-based licensing in Kuningan Regency has encountered significant obstacles due to the absence of a Detailed Spatial Plan. This regulatory gap has resulted in difficulties in ensuring spatial conformity and the lawful allocation of land use.⁶²

The Kuningan Regency case illustrates how the weakening of AMDAL's gatekeeping function creates regulatory fragmentation at the local level. Agus Susanto et al. demonstrate that risk-based licensing implementation in Kuningan has been obstructed by the absence of a Detailed Spatial Plan (RDTR), creating uncertainty regarding environmental compatibility assessments. Under the previous environmental permit regime, AMDAL served as an *ex ante* screening mechanism that identified spatial incompatibilities before project approval. Under the risk-based model, however, licensing decisions increasingly rely on administrative digital classifications rather than substantive ecological review. This shift increases the

⁶¹ Hariyanto, "Risk-Based Business License and Problems Arising After The Job Creation ACT," *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 2 (August 23, 2022): 354–66, <https://doi.org/10.29303/ius.v10i2.1082>.

⁶² Agus Susanto et al., "Policy Evaluation Implementation of Risk-Based Business Licensing in Kuningan District," *Jurnal Syntax Transformation* 5, no. 7 (July 24, 2024): 929–41, <https://doi.org/10.46799/jst.v5i7.984>.

likelihood that environmentally sensitive activities proceed without adequate cumulative environmental assessment.

There is also a policy analysis report by Mongabay which highlights that the risk standards established under the Job Creation Law still contain significant loopholes, as they fail to guarantee a comprehensive ecological consideration of a given territorial area.⁶³ These findings underscore the urgent need to reform the licensing system so that it is not only sector risk based but also spatially informed and attentive to cumulative environmental impacts. If administrative mechanisms are reduced while the capacity of supervisory institutions remains insufficient, the enforcement burden will increasingly fall on criminal prosecution or civil litigation, both of which typically require significant time and resources. Modern environmental law doctrine emphasizes that enforcement effectiveness is better ensured by optimizing administrative instruments, such as imposing strict administrative sanctions, requiring periodic environmental audits, and imposing immediate corrective measures for violations.

This framework is set out in Articles 76 to 82 of the Environmental Protection and Management Act (Law No. 32 of 2009), which provide the legal basis for the government to impose administrative sanctions, including written warnings, administrative coercion, license suspension, and environmental permit revocation. These mechanisms are designed to prioritize prevention and rapid remediation rather than relying solely on criminal proceedings. Strengthening environmental audits and immediate corrective mechanisms represents a more responsive instrument aligned with the *ultimum remedium* principle in environmental criminal law.⁶⁴

The paradigm shift in the governance of legal development has had significant impacts on the rights of indigenous communities and land tenure. Policies aimed at accelerating strategic projects and simplifying licensing mechanisms often sideline procedures for the recognition of communal rights,

⁶³ I Wayan Bhayu Eka Pratama, "Model Perizinan Berbasis Resiko Yang 'Penuh Resiko' Dalam UU Cipta Kerja," MONGABAY, 2020, <https://mongabay.co.id/2020/10/10/model-perizinan-berbasis-resiko-yang-penuh-resiko-dalam-uu-cipta-kerja/>.

⁶⁴ Siti Noor Malia Putri, "The State Responsibility on The Iuu Fishing : The Reflection of The 2015 Itlos Advisory Opinion on Iuu Fishing and Its Relevance to Indonesia," *Indonesia Law Review* 8, no. 2 (August 31, 2018), <https://doi.org/10.15742/ilrev.v8n2.488>.

thereby contributing to increased agrarian conflicts and the escalation of social disputes. Various studies in the mining and plantation sectors have confirmed a strong correlation between lax licensing mechanisms and the proliferation of tenure-related conflicts, frequently culminating in litigation.⁶⁵ Within the framework of national legal policy, the protection and recognition of the rights of local communities must be positioned as a fundamental prerequisite in the licensing process to ensure legal certainty, justice, and social sustainability.

Indonesia's constitutional framework recognizes the right to a good and healthy environment as a fundamental constitutional entitlement under Article 28H(1) of the 1945 Constitution, thereby embedding environmental protection within the broader architecture of human rights and constitutional governance. This constitutionalization of environmental rights reflects the concept of ecological constitutionalism, under which environmental protection operates not merely as a policy preference but as a binding limitation upon legislative and executive action. The central juridical question, therefore, is whether the regulatory restructuring introduced by Law No. 6 of 2023 concerning Job Creation remains compatible with this constitutional mandate or instead reflects a departure toward an investment-oriented legal paradigm.

Economic advancement through deregulation must always be conditioned upon compliance with legally binding environmental protection norms. In the context of sustainable legal development policy, it is necessary to strengthen remedial and restorative mechanisms. When environmental norms are violated, enforcement approaches should not only be repressive but must also prioritize ecosystem restoration and compensation to affected communities.

Administrative sanctions play a crucial role in environmental law enforcement, both preventively and repressively. Such sanctions may include written warnings, government coercion (*dwangsom*), license suspension, and revocation of business permits. The application of these administrative sanctions is intended to compel business actors to

⁶⁵ Naswar et al., "Legal Protection for Environment and Coastal Community from Marine Ecosystem Degradation and Climate Change Impact," *Journal of Law and Sustainable Development* 11, no. 9 (October 13, 2023): e978, <https://doi.org/10.55908/sdgs.v11i9.978>.

comply with environmental regulations and undertake immediate corrective measures for any damage caused. Integrating effective administrative sanctions with a restorative justice approach in environmental law enforcement can create a system that not only punishes but also restores and prevents further harm to the environment and society.

The paradigm shifts in national legal development regulation produces multidimensional consequences. On one hand, deregulation can stimulate increased investment and administrative efficiency; on the other hand, it carries risks of weakening environmental protection, reducing public participation, and escalating social conflicts. Every deregulatory policy must be balanced with strengthened supervisory institutions, the enforcement of non-negotiable environmental baselines, public information transparency, and enhanced technical capacity of managing authorities. If implemented effectively, legal and economic development can advance in tandem with sustainability principles, ensuring legal certainty, environmental protection, and social justice as the foundation of national development.

Conclusion

This study demonstrates that the Job Creation Law has fundamentally reconfigured Indonesia's environmental legal regime, shifting from a precautionary and participatory framework toward to an investment-driven regulatory model. While intended to improve economic competitiveness and licensing efficiency, this transformation weakens preventive environmental safeguards, narrows public participation, and generates constitutional tension with the State's obligation to protect the right to a good and healthy environment.

Regulatory reform should therefore move beyond general sustainability rhetoric toward concrete institutional and legislative correction. First, Article 26 of Law No. 32 of 2009, as amended by the Job Creation Law, should be revised to restore broader public participation in AMDAL procedures, including civil society organizations and environmentally affected communities beyond direct economic stakeholders. Second, environmental approval mechanisms should be restructured so

that AMDAL regains its constitutive ex ante gatekeeping function rather than operating merely as a procedural licensing requirement.

Third, Indonesia should establish an independent environmental oversight authority with statutory powers to review environmental approvals, conduct compliance audits, and impose administrative corrective measures insulated from political and economic interference. Fourth, risk-based licensing should be supplemented by cumulative ecological assessment and spatial compatibility review to prevent environmentally significant activities from escaping substantive scrutiny through fragmented risk classification.

Ultimately, the legitimacy of Indonesia's environmental legal development depends upon restoring the balance between economic governance and ecological constitutionalism. Without such reforms, deregulation risks producing not only environmental deterioration but also a structural erosion of constitutional environmental rights.

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