

## The Job Creation Law and REDD+ Possible synergies and challenges

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### Key messages

- The Job Creation Law is intended to improve economic development through deregulating investment procedures and supporting entrepreneurialism in a typical market-oriented business model. The stronger legal basis for social forestry and multi-business forestry permit are intended to promote forest and environmental sustainability.
- As an overarching law, it mandates the alignment of other sectoral regulations. Synchronization between economic sectors is needed to ensure the sustainability of forest functions in supporting emission reduction.
- Both Job Creation Law and REDD+ promote entrepreneurialism, but efforts to generate rural 'green' jobs should also focus on aspects pertaining to rural labour markets, migration, and whether the appropriation of only forest-use rights (with highly technical requirements) would really benefit emission reductions and the livelihoods of marginalized rural communities.
- Before UUCK amendment is ready and ratified, it is important for the government to determine WPK area for results-based payments (a government-led program) and carbon trading purposes (which can be assigned to private sector).
- Further research is needed to understand to what extent Job Creation Law would affect the integrity of REDD+ designated areas (WPK), and how the law and REDD+ can together promote the creation of rural 'green' jobs and foster emission reduction from forestry sector.

### Introduction

The Indonesian government aspires to balance economic development and emission reduction targets in the face of climate change. A number of planning documents and strategies have been developed in line with domestic circumstances and international climate commitments, such as the National Action Plan for Greenhouse Gas Emission Reductions (RAN GRK), Reduce Emission from Deforestation and degradation (REDD+), and the Updated Nationally Determined Contribution (NDC), and the latest Long-Term Strategy for Low Carbon and Climate Resilience (LTS-LCCR) 2050 (Government of Indonesia 2021).<sup>3</sup>

Several actions under the REDD+ initiative in Indonesia have already brought about a series of policy changes on climate

change. Indonesia's emission reduction efforts have also led to two results-based payments. The country received USD 103.8 million from the Green Climate Fund (GCF) for 20.3 MtCO<sub>2</sub>eq of avoided emissions during the period 2014–2016 (compared with the average land sectors' annual emissions) (GCF 2021). Additionally, Indonesia was supposed to receive USD 56 million through the REDD+ partnership with the Norwegian Government for 4.8 MtCO<sub>2</sub>eq of avoided emissions in 2017 (compared with the 2006–2016 historical baseline) before the Indonesian Government terminated the cooperation in September 2021. The implementation of REDD+ has also moved from project to 'jurisdictional' level – one in East Kalimantan Province under the Forest Carbon Partnership Facility (FCPF) Carbon Fund and in Jambi Province with the BioCarbon Fund Initiative for Sustainable Forest Landscape (ISFL).

However, reconciling economic and emission reduction targets as well as transitioning to a 'green' economy have been challenging as trade-offs over the sustainable use of resources weigh against powerful business-as-usual interests (Erbaugh and Nurrochmat 2019; Moeliono et al. 2020). As part of a broader economic reform, the government enacted a new Law on Job Creation No. 11/2020 (hereafter referred to as the UUCK). This law is overwhelmingly economic

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<sup>3</sup> The LTS-LCCR 2050 document is a mandate of Article 4.19 of the Paris Agreement. This document contains the pathways toward low emissions development until 2050 and serves as a guideline for the subsequent NDCs (Government of Indonesia 2021).

in tone, aiming to foster investment, boost consumption and generate jobs, while also fulfilling international commitments to reduce carbon emissions and mitigate climate change (Box 1). The law is seen by the government as a transformative effort as it attempts to amend 78 laws in different sectors and to absorb growing numbers of the productive workforce, or the so-called demographic bonus, which is projected to make up about 68% of the total Indonesian population by 2030 (Government of Indonesia 2020). The law is expected to encourage major investments as well as micro- and small-scale entrepreneurship among youth to support nationwide job creation efforts (Junida and Kurmala 2020). One notable alignment between the UUCK and the NDC is that further investment to create jobs and boost productivity in agriculture, forestry and broader land-use sectors can somehow be reconciled with emission reduction efforts. The UUCK affects a wide range of sectors, including environment and forestry, leading to policy adjustments that also apply to the Reducing Emissions from Deforestation and Forest Degradation (REDD+) programmes.

In this brief, we review policy and relevant literature to understand how the UUCK might affect the implementation of forest protection in general and REDD+ in particular. As starting point, we note that the enactment of the UUCK has already led to the new regulations, namely Government Regulation (PP) No. 22/2021 on environmental protection and management, PP No. 23/2021 on forestry management and PP No. 24/2021 on illegal activities in the forest area. We refer to Li's assemblage theory, mainly in the alignment of actors in driving change, the formulation of policies in technical terms thereby ignoring the politics of policy making (Li 2007; Myers et al. 2018; Savage 2020). The theory allows us to explore the gap between the state apparatus's will and ability to govern, its intractable parallels hindering REDD+ governance, and how it responds to emerging challenges (Li 2021).

The recent Constitutional Court ruling in November 2021 deemed the UUCK to be 'conditionally unconstitutional'.<sup>4</sup> This is mainly a legal formality as the court found that the law was not deliberated and ratified in accordance with the formal legislative process, which may lead to further legal uncertainties in the future (MKRI 2021). The government completed the draft of UUCK with limited formal public consultation (which took place from February to April 2020) led by a task force comprised of select government officials and businesspeople (Sembiring et al. 2020; Temenggung et al. 2021). The administration's communications efforts were concentrated on getting the parliamentary support needed to pass the law (Kurniawati et al. 2021). Under this ruling, the government must revise the law within a two-year grace period, during which no new derivative regulations are to be issued. No immediate impact is expected on any derivative regulations that have already been issued as the law remains in force (Jakarta Globe 2021; MKRI 2021), so analysis in this brief continues to be relevant.

4 Based on Constitutional Court Ruling No. 91/PUU-XVIII/2020 issued on 25 November 2021.

## Box 1. UUCK objectives and ambitions

The Jokowi administration reportedly began preparation of the Job Creation Bill as early as 2016, having it submitted to parliament in late 2019 at the start of his second term before it passed in its entirety on 5 October 2020 (Mietzner 2021). The rapidity of the law's deliberation process corresponds to the three main economic development priorities, namely attracting investment, fostering job creation, and reviving the economy amid the pandemic.

The UUCK highlights to improve the country's gross domestic product (GDP), becoming the world's top five economies and escaping the middle-income trap by 2045. One of the challenges to achieve this goal was the stagnating growth in recent years (after recording about 5% each year before the pandemic) and massive barriers to investment. It aims to slash the overly restrictive, abundant, and often overlapping policies, including those related to the environment. In this regulation, it is stated that Indonesia needs to achieve at least 6% annual GDP growth (Government of Indonesia 2020) – higher than the projected growth rate under the NDC's unconditional commitment pathway (5.04%) and the low-carbon development scenario compatible with the Paris Agreement (5%) (Government of Indonesia 2021).

## Potential implications for REDD+

The UUCK gives the central government more control over local spatial plans to accommodate the implementation of national strategic projects/policies. If national strategic projects/policies include changes that are not in line with the spatial plans, these projects/policies can still be implemented with a recommendation letter from the central government.<sup>5</sup> Additionally, the UUCK and its derivative regulations (e.g. the Regulation of the Minister of Environment and Forestry, or Permen LHK No. 24/2020) allow production forests and protected forests (albeit limited to degraded areas that no longer have a protection function) to be reserved and converted into farmland for food estate purposes (ICEL 2020). For REDD+, these recent developments may contradict Permen LHK No. P.70/2017 in which REDD+ activities can be implemented in all state and private forests as well as other relevant land-use classes. This would potentially compromise its central component for monitoring, reporting and verification (MRV), namely the performance measurement area (*Wilayah Pengukuran Kinerja* REDD+ or WPK). WPK are designated areas for REDD+ implementation that were covered by forest at the end of 2012. Protected forest may also fall into this WPK category.

5 Article 17(18) of UUCK.

**Table 1. Some potential implications for REDD+ from implementing UUCK**

Keyword	Potential implications	Source
Forest fires	<ul style="list-style-type: none"> <li>Added emphasis on forest fire prevention as part of permit holders' responsibilities in their working area</li> <li>The weakening of strict liability (SL) provision under the UUCK and PP No. 22/2021 may render future forest fire-related litigation more difficult (Widyarningsih and Sembiring 2021).</li> </ul>	Article 36(16) of UUCK
Legal acknowledgment	UUCK opens new possibility for forest rehabilitation business as well as carbon trading and offsetting to be implemented in production forests and protected forests under a multi-business forestry permit – however, the final technical decision for on ground implementation would depend on an upcoming ministerial regulation that is currently being drafted. These activities were previously regulated in a ministerial regulation under an ecosystem restoration concession permit (IUPHHK-RE).	Article 130 and 143 of PP No. 23/2021
Land procurement, food security, deforestation, land rights	Further deforestation and forest degradation, as (degraded) protected forests can be converted for food estate purposes. The same goes for areas with social forestry permits, which will experience increasing uncertainty over tenure security.	Article 115(1) of PP No. 23/2021
Spatial planning	<p>The UUCK and PP No. 23/2021 reaffirmed central government control over forest areas and spatial plan formulation at the subnational level. This may:</p> <ol style="list-style-type: none"> <li>affect subnational governments' decision-making power over jurisdictionally strategic issues like REDD+, even though subnational governments are still able to design and propose their own jurisdictionally strategic area for protection and cultivation (business) purposes;</li> <li>affect the 'stickiness' of spatial planning as it can now be revised anytime to accommodate national strategic projects/policies. National strategic projects/policies can overrule the spatial plan with a recommendation letter from the central government, even though the project/policy is not in line with the spatial plan.</li> </ol>	<p>Article 17(3), (13), (15), and (18) of UUCK</p> <p>Article 18(2) of PP No. 23/2021</p>

## The centrality of market economy in REDD+ and UUCK

The centrality of the market economy in REDD+ can also be seen in the importance of legal constructs in formal land titles. This is understandable from an economic standpoint as benefit distribution payments for environmental services (PES) schemes like REDD+ will be most efficient if given to individuals with clear private property rights, or to *adat* (indigenous) groups with proven claims to the land (Tacconi 2012). Yet, this is easier said than done. There are layers of rights and units when it comes to emission reduction efforts as REDD+ is a transaction between state parties, prepared for by multiple entities at national, subnational and local levels. This means all parties along the way are entitled to receive some degree of benefits. This 'rights-based' and 'performance-based' benefit distribution model is challenging in an area with historically contested land titles (Streck 2020). Whether the UUCK is up to tackling this issue remains to be seen, or instead it could further exacerbate conflicts related to overlapping land tenure. At a minimum, this law provides a stronger legal basis for social forestry and may have a positive spillover effect to REDD+ implementation – but social forestry performance varies, depending on local contexts and prior exposure to market economies (Bong et al. 2019; Santika et al. 2019).

Although deregulation is a pillar of neoliberal economic strategy, the UUCK does not effectively reduce the central government's grip on strategic issues and natural resources in the country as nationalism remains an important aspect of governance. This form of 'hybrid' neoliberalization in Indonesia follows the ongoing pattern around the world where local circumstances (e.g., political, cultural, environmental) influence the degree of neoliberal shifts (Bakker 2010; Hayter and Barnes 2012). Other market-based strategies employed to protect forests and the environment, such as REDD+ and social forestry (which in practice encourages entrepreneurialism), have also been recognized as a hybrid neoliberal form of conservation (Devine and Baca 2020; McCarthy 2005; Scheba and Scheba 2017; Sheng et al. 2019).

### Promoting entrepreneurialism

UUCK bolsters the view that REDD+ will fit into the new regulatory assemblage, which is heavily market oriented. REDD+ has long been promoted as entrepreneurialism and a way to make conservation pay (Angelsen 2017; Li 2007). Under UUCK, all privately owned ecosystem restoration and environmental service providers (which previously held the IUPHHK-RE permit) can continue and expand their businesses under the multi-business forestry model. However, just like the criticisms surrounding neoliberal

conservation, the entrepreneurialism element has proven contentious. On the one hand, low-carbon agriculture and forestry sectors are projected to provide a high number of green jobs (Government of Indonesia 2021), but one enduring assumption (that doesn't necessarily hold true) is that the handover of rights to use forestland would convince most rural settlers to stay and work in the agricultural and forestry sector (Afiff 2021; Ragandhi et al. 2021). In the future, efforts to generate rural 'green' jobs should also focus on aspects pertaining to rural labour markets, migration, and whether the appropriation of only forest-use rights (with highly technical requirements) would really benefit emission reductions and the livelihoods of marginalized rural communities (Merten et al. 2021).

## Re-assembly of policies

On the one hand, the UUCK stipulates that land-based business permit holders are responsible not only for controlling, but also for preventing forest fires in their working area. This is a stricter provision than the Forestry Law No. 41/1999, provided both 'prevention' and 'control' are not mutually exclusive (or cancel each other out) in practice (ICEL 2020). On the other hand, a weakened strict liability provision in PP No. 22/2021 is expected to render future environmental lawsuits – including those related to forest fires – more difficult (Syaharani and Tavares 2020) as it stipulates that strict liability can only be applied in the case of fault. This contradicts the original meaning of the strict liability provision, which was supposed to include liability without fault (Widyaningsih and Sembiring 2021).

Weighing trade-offs and making compromises are necessary for consensus building in land-use decision making and are essential in keeping an assemblage together. But trade-offs can also explain why policies fall short of targets. On the one hand, the UUCK becomes an important addition for improving the investment climate, but challenges lie ahead when investment deregulation must go hand in hand with other policies and targets, such as Indonesia's LTS-LCCR 2050 (Government of Indonesia 2021). This situation is not new and can be compared to the early national REDD+ readiness plans of various countries whereby plans for large-scale forest clearing existed alongside forest-based climate mitigation (Sunderlin and Atmadja 2009). One example of a relevant policy compromise on emission reductions today is seen in the preservation of high-carbon value forest (HCVF) within legally established oil palm concessions, preventing companies from fully converting their land for oil palm cultivation (FCPF 2019). This is not to say that a policy is inherently ineffective because it is born out of compromise. Rather, we show that a reconfiguration of the assemblage is possible, especially driven by those in power. Any shortcomings or contradictions that makes a policy fall short can always be framed as a manageable situation which requires (another) technical solution (Li 2007). The internalization of the National REDD+ Agency into the Ministry of Environment and Forestry (KLHK) in 2015 is one example of this policy reassembly. It surely came at the cost of the BP REDD+ agency's cessation and slowed

REDD+ progression in the period 2014–2015, but now emerged as a central player in Indonesian climate change governance (Moeliono et al. 2020). Furthermore, REDD+ remains one of the central instruments in forest-based climate mitigation.

## Questions for future research and recommendations

The recent developments in Indonesia, the legal uncertainty surrounding the UUCK following the Constitutional Court's ruling, and the UUCK's unknown impact on forest and environmental protection raise several questions that might provide guidance on improving forest-based climate mitigation:

- To what extent do land-intensive business investments encouraged by the UUCK affect the integrity of REDD+ designated areas (WPK)? How can REDD+ help fulfil the Paris Agreement targets in an increasingly market-oriented economy while also promoting local and adat communities' interests?
- How can REDD+ contribute to rural 'green' job creation without burdening local and adat communities with complicated prerequisites, while still observing the emission reduction targets of the forestry sector?
- What insights can be gained for REDD+ implementation through knowledge on rural labour-market and migration patterns, given the job-creation and economic-development imperatives?

In the meantime, there are at least couple action points important to be clarified before UUCK amendment is ready and ratified. *First*, the potential adverse implications of UUCK to REDD+ can be minimized by determining WPK area and the emission reduction targets for results-based payments (which is a government-led program) and carbon trading purposes (which can be assigned to private sector). *Secondly*, as REDD+ implementation scaled up to provincial level, the government must strengthen the compromise mechanism for land cultivation and conservation. One example is the East Kalimantan Provincial Regulation No. 7/2018 on Sustainable Plantation that regulates HCVF protection within oil palm concession. The government can also place its focus to synchronize the implementation of social forestry which also targets forest and land rehabilitations. These highlight the significance of subnational governments to REDD+ implementation, as well as the need for significant support and resources from the central government.

## Conclusion

The UUCK can be considered a typical example of assemblage whereby stakeholders realign and readjust goals and positions in response to the recentralization tendencies of government, and to accommodate the renewed emphasis on economic development through technical approaches. Although the intention was to

solve the problem of overly restrictive, abundant, and often overlapping regulations – including environmental and forestry policies – the policies have not become less restrictive. REDD+ is now have to align itself with the new market-oriented regulatory assemblage and has thereby transformed into businesses in the forest, competing with other national-level businesses rather than focusing only on the promotion of commerce organized by local people and regulated by local governments. In the end, the successful implementation of REDD+ will depend on the aspirations and willingness of local people to collaborate, including the presence of significant support from the central government towards REDD+. Numerous studies have documented the evolution of REDD+ over time, highlighting its strengths and weaknesses, but the UUCK's implementation is still in its early stages, so, REDD+ performance under this new regulatory regime remains to be seen.

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