

## POSITION PAPER

### INDONESIAN PEOPLE'S FACTION (FRI)

#### OMNIBUS LAW *CILAKA* DRAFT BILL: COLONIAL REGULATIONS

JAKARTA -- Omnibus Law Job Creation Draft Bill (*Cilaka* Draft Bill) is a government tool to earn foreign investment through colonial ways. Therefore, the people's organizations and civil society organizations which are members of the Indonesian People's Faction (FRI) reject the Omnibus Law of the *Cilaka* Draft Bill. The FRI considers the whole process to be exclusive, undemocratic, and only entrepreneurs involved. In addition, the substance of the Indonesian *Cilaka Draft* Bill resembles the character of the Dutch East Indies colonial government.

The concept of the labor system in the *Cilaka Draft* Bill is similar to labor conditions in the Dutch East Indies colonial period. At the end of the 19<sup>th</sup> century, under the pressure of globalization and international agreements, the Dutch East Indies colonial government issued a regulation named *Koeli Ordinance* to ensure that employers could hire porter's tobacco plantations with low-cost wages and without any protection. Moreover, workers were threatened with forced labor while employers who violated the rules were only subject to light fines.

Furthermore, the *Cilaka Draft* Bill restores the national land policy to colonial times since the same enthusiasm with the provisions of *Agrarische Wet 1870*. Both of these rules are equally ambitious to facilitate land clearing at the maximum for foreign investment by seizing land rights and the space management of indigenous and local people. Strong legal formalism in the *Cilaka Draft* Bill revives the spirit of *domein verklaring* which is a typical colonial rule. The people lose their participation rights and legal remedies to defend the land they have and control.

Moreover, in order to smoothly facilitate the *Cilaka Draft* Bill, President Joko Widodo asked the Attorney General Office of the Republic of Indonesia and ordered the security forces of the Indonesian National Police and the State Intelligence Agency (BIN) to

support and anticipate the threat of this regulation. The use of this kind of state tools resembled the work of the Dutch East Indies Police who were tasked with spying, arresting and torturing the people at that time.

The Government's failure in conducting its programs and policies does not need to be covered up by making new regulations. Moreover, these regulations are orders that will threaten the existence of the nation and state, both the people and the environment.

## **12 Reasons to Refuse Omnibus Law on the *Cilaka* Draft Bill (#Cilaka12)**

### **1. Legitimizing investment in environmental destruction, ignoring the investment of people and indigenous people who are more environmentally friendly and prosperous.**

The investment that was seized by the Indonesian government as a solution to overcome the trade balance deficit and economic growth is actually an investment having the potential to damage the environment and not make the community prosperous. It is due to the government is not selective in attracting incoming foreign investment, thus the potential investors present are the worst and most extractive investors, which will only expand natural exploitation and environmental damage.

The government has never considered the existence of investment in local communities (indigenous people) heretofore. Whereas, on the condition it was nominated, the indigenous people had run an investment trillions of rupiah in the form of a healthy and sustainable ecosystem (dense forest and fertile, clean rivers, and beaches and clear blue seas). However unfortunately, through the *Cilaka Draft* Bill, what indigenous people have invested has been destroyed and even divided up through extractive concessions which merely benefit a handful of black investors protected by state power.

### **2. The drafting of the *Cilaka Draft* Bill is flawed because it was conducted in private, without the participation of civil society, and recycled the unconstitutional article.**

Formally, the drafting of *Cilaka Draft* Bill is a defective procedure. *First*, the process of drafting the *Cilaka Draft* Bill awfully violates the right of public

participation. Since the discussion of National Legislation Program to the preparation of the draft by the Coordinating Ministry for Economic Affairs, Academic Paper and draft bill cannot be accessed by the public. In fact, Jokowi is targeting the completion of the *Cilaka Draft* Bill to be discussed with the House of Representatives within 100 working days. Moreover, the absence of a strong opposition demonstrated in numerous statements that the House of Representatives will accommodate all of the government's interest in the omnibus law. This violates Article 89 jo 96 of Law 12/2011 which requires the government to easily open access to all draft laws and regulations for the public.

*Secondly*, there are many unconstitutional laws and recycled colonial rules in the draft bill of *Cilaka*, for instance the plan to increase the regulation of the President's authority to revoke a Regional Regulation in order to centralize permits. The provisions have been included in the Local Government Act and have been declared unconstitutional by the Constitutional Court. Third, the conclusion of the process is conducted in private, impromptu outreach, as well as the involvement of National Intelligence Agency and the National Police, shows that the government is harming democracy/ Should these government efforts left unchecked, there will be an opportunity for authoritarian regimes to emerge.

**3. The Omnibus Law Task Force is elitist and does not accommodate elements of the community affected by the existence of a set of Omnibus Law draft bills.**

The Omnibus Law is fronted by 138 people, the majority of which are consisted of the government and business people. There were 69 people representing the government and most were taken from the Coordinating Ministry for the Economy as many as 27 people. There were only 3 representatives from the regional government, namely, the Governor of DKI Jakarta, the Mayor of South Tangerang, and the Banyuwangi Regent who were involved in the Omnibus Law Task Force team. There are more than 46 entrepreneurs representing the employers' association in the Omnibus Law Task Force team, consisting of 21 entrepreneurs representing the Chamber of Commerce and Industry and 25 entrepreneurs representing various Employers' Associations in Indonesia. As many as 46 people did not include individual entrepreneurs who were included by the Coordinating Minister for the Economy, Airlangga Hartanto in this very team.

There are 12 university representatives included in this Task Force Team, which consists of 10 Public University Rectors and 2 Private University Chancellors. However, no community organizations or associations were included in this task force. Therefore, the contents of the *Cilaka Draft* Bill will only accommodate the interests of other non-community entrepreneurs, even it is very likely to conflict with the interests of the community in general. Even worse, there are some members of this Task Force Team who are indicated to be dragged into several corruption cases (Century Bank case, Salt Import, Garlic Import, etc.). This will definitely be awfully risky to the eradication of corruption agenda considering the *Cilaka Draft* Bill will contain several provisions that will relate to the elimination of criminal sanctions for corporations.

**4. Authority centralism is a policy drawn to the central government which injures the spirit of reform.**

The government's plan to transfer all licensing authority to the central government in the *Cilaka Draft* Bill is not in accordance with the spirit of regional autonomy as a product of reform. Some of the local authorities who will be drawn to the center, among others: *First*, the *Cilaka Draft* Bill will attract authorities of the provinces in managing mineral and coal, including the authority to issue local regulations and the issuance of permits. Unlike Law No. 23 of 2014 on Regional Government, this has delegated this authority to the local government. *Second*, the centralized licensing has implications for increasingly distancing public services and making it difficult to deliver the aspirations of affected communities.

**5. The gaps of corruption are widened due to the narrowed oversight mechanism and the removal of people rights to sue.**

The *Cilaka Draft* Bill becomes a loophole for corruptors since it only accommodates the interests of the oligarchy. This interest is fraught with business licenses having an impact on the environment. Government Regulation No. 24 of 2018 concerning Electronic Integrated Licensing Services is considered to have failed to cover the potential of corruption, collusion, and nepotism. However, the excuse of the Indonesian Coordinating Ministry for the Economy, the new system is considered not running optimally due to overlapping licensing regulations between the center

and the regions. Thus, through this Omnibus Law, the government will revise dozens of laws that are considered to complicate business ease. In fact, cutting the licenses will make corruptors more rampant and the environment will be even more destroyed. Along with the plan, the supervision and people rights to sue are lost, hence the protection of human rights is never guaranteed.

## **6. Deprivation and destruction of people's living space.**

On behalf of development and economic interests, the *Cilaka* Draft Bill becomes a tool to seize and abolish people's living space. The reason is, this regulation will provide convenience for corporations and governments to seize land and natural resources controlled by the people, either urban impoverished groups, indigenous people, farmers, and fishermen.

According to the Legal and Human Rights Report issued by the Indonesian Legal Aid Foundation (YLBHI) in 2018, 16 Legal Aid Offices under the auspices of the Indonesian Legal Aid Foundation reported 300 cases of agrarian conflicts in 16 provinces with conflict area reaching 488,404.77 hectares. In these cases, Legal Aid Offices - the Indonesian Legal Aid Foundation found 367 human rights violations committed by various actors. The highest perpetrators of violations of rights were corporations with 84 cases, followed by Regional Governments with 73 cases, *Perhutani* (Indonesian State Forest Company) with 54 cases, Indonesian National Army with 34 cases and State-Owned Enterprises with 49 cases. The data shows that heretofore the government has violated the rights and neglected to protect the rights of citizens.

The condition of fulfilling rights will be made worse by the presence of this *Cilaka* Draft Bill. The *Cilaka Draft* Bill plans to remove the location permit and replace it with a Plan Detailed Spatial Planning (RDTR), which prevents people from defending their land and living space since it narrows public space to test government decisions that violate the law. In addition, the building permit is also planned to be removed. Thus, the public loses the opportunity to control development projects in their area. The *Cilaka Draft* Bill will also close traditional fishermen's access to marine fisheries resources. Conditions will occur provided a fishing permit that is applied to a catcher with a capacity of thousands of Gross

Tonnage (GT) is also applied to traditional fishermen with small boats under 10 GT. Provisions regarding the demarcation of forest areas will be abolished as well. Therefore, the government will more easily launch its arbitrariness in establishing forest areas. Eventually, the extension of Cultivation Rights and Building Rights "in advance" eliminates the social functions of land and land law politics formulated in the Basic Agrarian Law and *TAP MPR No. IX of 2001*. Even the extension of the Cultivation Rights and Building Rights was declared unconstitutional by the Constitutional Court. Through this *Cilaka Draft Bill*, the ideals of land redistribution to eradicate land tenure inequality will be buried deep and land will only be owned by a handful of people.

**7. Acceleration of the environmental crisis due to investments that increase environmental pollution, ecological disasters (man-made disaster), and environmental damage.**

History has proven that the desire to boost profits often has implications for long-term environmental and public health costs. Forest fires in Kalimantan and Sumatra, floods and collapsed buildings in Jakarta, gaping mining pits throughout the archipelago, drought in West Java and Nusa Tenggara, and suffocating air pollution - all are lessons for us not to forget to calculate environmental costs in development. However, the government has neglected environmental costs by formulating the *Cilaka Draft Bill*. The following are some environmental protection and management provisions that will be amended by the *Cilaka Draft Bill*: reducing environmental protection and management instruments, eliminating environmental permits, eliminating criminal sanctions for administrative violations, and limiting community involvement.

*First*, the *Cilaka Draft Bill* is expected to change the system of protection and management of the environment which was originally mandatory EIA to be risk-based regulatory (risk-based regulation) that would eliminate the environmental impact study on the activities or projects in a given location. In fact, it will not be possible since it requires a lot of data. Meanwhile, environmental inventory, Strategic Environmental Assessment (KLHS), and Plan Detailed Spatial Planning are not ready to be applied in the new system. Reflecting on the reality, of the 514 districts/cities in Indonesia, only 41 districts/cities have Plan Detailed Spatial Planning.

*Second*, the elimination of the environmental permit will complicate supervision, eliminating moreover objected space and remedies that have been the checks and balances upon the decisions of the environment, and significantly reduce the chance of people fighting for their rights (including representing the environment) with the licensing lawsuit. *Third*, eliminating criminal sanctions for administrative violations will also increase vulnerability to disasters because violations only get administrative sanctions. Meanwhile, when the disobedience against the administrative sanctions that could potentially exacerbate the damage/pollution or repetition administrative violations, cannot be enforced using criminal sanctions, such as Article 100 of Law No. 32/2009. *Fourth*, the limited involvement of communities is at risk in ignoring local knowledge which can keep environmental sustainability belongs to affected/indigenous/interested communities.

**8. Applying modern slavery through a system of labor flexibility in the form of legalization of wages below the minimum standards, the hourly wage and contract job expansion-outsourcing**

The *Cilaka* Draft Bill was actually an attempt to revise Law No. 13 of 2003 on Manpower which has been tried to be applied by the government since 2006 and continue to be thwarted by the labor/labor movement. Labor flexibility system that relied on government, employers, and the World Bank is the main feature of job creation cluster of the *Cilaka Draft* bill that will be realized in the ease of recruitment and termination/layoffs (*easy hiring, easy firing*). Eventually, workers/laborers will be hired as cheap as possible with the calculation of hourly wages and legalized the payment of wages below the minimum standards, as well as the status and job security are not apparent through outsourcing and labor contracts indefinitely.

Women workers who are paid hourly are the most affected group. Hourly wages are only applied when women workers are engaged in production activities. Therefore, they will lose access to leave of menstruation, childbirth, miscarriage, and opportunities to breastfeed at work because they are considered to be unproductive. In addition, hourly wages will be very small if it is based on the calculation of UMK Jakarta 2020 of Rp 4,200,000/month for 8 hours of work/day, the work will only be valued at Rp22,250/hour.

Furthermore, labor flexibility will suppress the union (*union busting*). That is due to workers will find it difficult to organize either because of their work status, low wages which requires overtime or adds other kind of work. Workers in the system created by the Omnibus Law of the *Cilaka Draft Bill*, in addition to losing time to organize, will also lose time for social and community life.

## **9. Potential mass layoffs and worsening working conditions**

Throughout the year, the employers' association and the World Bank has been continued to encourage the decline and even eliminating severance pay. The government then granted the request by making the Employment Insurance and Social Security (*BPJS Ketenagakerjaan*) benefit as a part of compensation for dismissal. In fact it is a trick, because workers pay labor insurance and social security contributions. That is, the laborers/workers are paying the dismissal costs that will befall them. With the loss of severance, it will be easier for companies to relocate to regions with lower wages. Mass layoffs threaten all workers/laborers.

With more and more easily employers dismiss labors/workers make working conditions worse. Labors/workers will no longer have bargaining power to improve working conditions since they will be easily fired without proper compensation. Young workers and prospective workers will face this condition in the coming years. Job security will all be lost.

## **10. Orientation of the education system to create cheap labor**

Pupils and students who are attending school and lectures will also be targeted for the interests of capital brought by the Omnibus Law of the *Cilaka Draft Bill*. In Indonesia, the new workforce is increasing every year as school and college graduates become the place to form an educated workforce. The government argues that the *Cilaka Draft Bill* is to absorb 2 million new workers and 7 million unemployed. In order to smooth the move, the Minister of Education and Culture, Nadiem Makarim, facilitated the creation of labor for the industry through the idea



of an "Independent Campus". The educational system "Independent Campus" was created so that its graduates are able to match the industry needs (*link and match*). Students currently available at universities throughout Indonesia are prepared to become workers in the midst of government efforts to attract increasingly massive investment.

Nadiem gives autonomy authority to universities to open new study programs that are tailored to the needs of the industry. He even orders universities to establish partnerships with companies, non-profit organizations, and multilateral institutions. This cooperation is accompanied by a policy that each student is required to take 40 credits or the equivalent of three semesters to be able to do internships in companies, projects in villages (land grabbing projects), research, and entrepreneurship. Government through Nadiem will cooperate with *start-up* company to support apprenticeship students in semesters 6 to 8. Interns will fill that need of cheap labor for the industry since it does not need to be paid full wages or no wages.

What Nadiem formulated was a form of commercialization, privatization, and liberalization in the education sector. In fact, education should be oriented to the intelligence and independence of the nation to free the shackles of ignorance and colonialism in accordance with the struggle of the previous figures in the early 20<sup>th</sup> century. The industry-oriented education system occurs in the midst of unequal education in Indonesia due to poverty, where based on data from the National Team for the Acceleration of Poverty Reduction (TNP2K) there are 1,228,792 children in ages 7-12 who cannot access education in Indonesia. At the age of 13-15 years there are 936,675 children. While at the age of 16-18 years there are 2,420,886 children who also cannot access education.

In the current Indonesian education system, the critical power of students is also curbed through repressive efforts. Students who demonstrated the performance of government or university authorities were expelled from the campus, and some were shot dead by security forces. The case has been felt by students at the Indonesian Christian University Paulus Makassar, where 28 students were expelled or dropped out for refusing the chancellor's rules. It was experienced by 4 UN Khairun Ternate students as well.

**11. Impoverished farmers, fishermen, indigenous people, women and children, disabled people, and minority groups of beliefs, gender and sexual.**

The loss of living space will also be deeply experienced by women. It not only loses livelihoods and the economy, but also destroys social values, local wisdom, knowledge and aspects of spirituality that have been preserved and lived by women. Cutting public participation both in the procedure for the drafting of the *Cilaka* Draft Bill and eliminating the mandatory status of EIA will contribute to strengthening gender inequality and marginalizing women and other minority groups.

Regarding employment, prior to the *Cilaka Draft* Bill, women workers, people with disabilities, gender and sexual minorities still experienced discrimination of rights which ended in structural impoverishment. The government is terribly slow to respond to these conditions. If the *Cilaka Draft* Bill, far from the spirit of human rights protection, is passed, it will further perpetuate the discrimination of the rights of minority and vulnerable groups. This group will be increasingly marginalized, unable to access the right to adequate livelihood.

The government's commitment to present itself as a State that encourages women's empowerment is utter nonsense when faced with the discourse of the *Cilaka* Draft Bill that ignores people's rights. Before the existence of the *Cilaka Draft* Bill, women were vulnerable to exploitation and discrimination in the workplace. Even the special rights of women that has been minimally listed in *UUK 13/2003* such as the right to feel safe when pregnant, in practice are easily violated.

Women have fallen into inhumane work situations because of targets and long working hours, wages that are often far from decent living standards, unclear status (read: contract), or even not recognized as workers. This relationship imbalance makes women more vulnerable to physical and sexual violence such as rape and sexual harassment while working.

The *Cilaka* Draft Bill requires unlimited exploitation (flexibility), while women's rights demand that they remain properly paid when pregnant, giving birth and

breastfeeding (not working in the sense of productivity), receive the same benefits as the Head of the Family, responsibility for physical and sexual violence that is experience (a system of leave for victims to take care of cases, guarantees not to be laid off), as well as the elimination of unskilled occupational categories which caused many women to not be recognized for work status and not be paid properly. Therefore, with the existence of the *Cilaka Draft* Bill, women are not freed and are increasingly far from access to empowerment.

The *Cilaka* Draft Bill is the most dangerous and detrimental for vulnerable groups., for instance, if an ecological disaster occurs, women and children are more vulnerable to sexual violence in refugee camps. The government tends to forget its responsibility to give the right to security. Proven to this day, the Bill on the Elimination of Sexual Violence is still stagnant, only parked in National Legislation Program for years. The government is more eager to approve policies that are miserable for its own people.

In addition, indigenous people have specific links to their land. Forced evictions of indigenous people do not merely force them to move and lose their livelihoods, which subsist onutilizing the natural resources. However, it is also a great insult to the original rights of indigenous people, who have managed natural resources with traditional knowledge for generations long before Indonesia's independence.

**12. Criminalization, repression and state violence against the people, while the state provides legal immunities and privileges to employers.**

The rules in the Omnibus Law are exclusively made to prioritize the position of investors/corporations rather than the protection of the democratic and constitutional rights of its people. The mandate of the constitution to protect and improve the welfare of the people is simply disregarded under the pretext of bringing in investment. Sadly, many cases of criminalization against the community are the reporters who are the corporates/ investors themselves, such as the BISI Corporation in Kediri, East Java, which reports small farmers because they are accused of falsifying corporate corn seeds. Meanwhile, the state neglects to protect and defend its people, the state actually makes regulations that strengthen the privilege of the position of investors (entrepreneurs/corporations) with various facilities while

regulating the rights of their own citizens.

All business facilities for investors/corporations are guaranteed by the Government in the Omnibus Law which is run by the Investment Coordinating Board (BKPM). Starting from the ease of administrative administration of investing, providing incentives for investors, providing land for investors who will invest, eliminating EIA as well as building permits, guaranteeing low labor wages, eliminating criminal sanctions for mean investors (anti-union and environmental polluters).

It does not stop there, there are even various types of tax discounts for investors/corporations. All these privileges are not found for the common people, what happens is that the government revokes subsidies for small people, the price of basic necessities such as food is more expensive, labor costs are cheaper, and weakens not only domestic competitiveness but also the purchasing power of many Indonesian people. Even in many cases, people are threatened and criminalized if they do not support government and or corporate projects.

Not infrequently the government employs the police and military to criminalize people who reject the regulations that will be made and the ongoing development projects. Data for 2019 has shown this. 114 cultivators, 94 indigenous people, 74 farmers, and 25 workers were criminalized for fighting for their rights. The situation will be worse with the enactment of the Omnibus Law. Such conditions will widen economic inequality and injustice for ordinary people, due to the government's partiality towards the interests of investors/corporations and ignorance of the people destinies.

**Contact persons:**

Arip Yogiawan (0812-1419-4445)

Raynaldo Sembiring (0813-7667-0167)

Nining Elitos (0813-1733-1801)

**About the Indonesian People's Faction (FRI)**

The Indonesian People's Faction is a civil society movement consisting of various organizations/institutions/community groups, namely:

1. Konfederasi Kongres Aliansi Serikat Buruh Indonesia (KASBI)
2. Konfederasi Persatuan Buruh Indonesia (KPBI)
3. Sentra Gerakan Buruh Nasional (SGBN)
4. Konfederasi Serikat Nasional (KSN)
5. Pergerakan Pelaut Indonesia
6. Jarkom Serikat Pekerja Perbankan
7. Serikat Pekerja Media dan Industri Kreatif untuk Demokrasi (SINDIKASI)
8. Kesatuan Perjuangan Rakyat (KPR)
9. Federasi Pekerja Pelabuhan Indonesia
10. LBH Jakarta
11. AEER
12. Konsorsium Pembaruan Agraria (KPA)
13. Gerakan Mahasiswa Nasional Indonesia (GMNI) Universitas Kristen Indonesia
14. Aksi Kaum Muda Indonesia (AKMI)
15. Federasi Pelajar Indonesia (Fijar)
16. Liga Mahasiswa Nasional untuk Demokrasi-Dewan Nasional (LMND DN)
17. YLBHI
18. ICEL
19. JATAM
20. WALHI
21. KPRI
22. EPISTEMA
23. HUMA

24. GREENPEACE
25. PWYP
26. AURIGA NUSANTARA
27. ICW
28. Solidaritas Perempuan
29. KIARA
30. Perempuan Mahardhika
31. IGJ
32. Perhimpunan Pembela Masyarakat Adat Nusantara (PPMAN)
33. DEMA UIN Jakarta
34. Lembaga Bantuan Hukum (LBH) Pers
35. Aliansi Masyarakat Adat Nusantara (AMAN)
36. RMI-Indonesian Institute for Forest and Environment
37. CM
38. Solidaritas Pekerja VIVA.co.id (SPV)
39. Pusat Studi Agraria (PSA) IPB
40. Trend Asia