Jakarta, July 13, 2020

Open Letter: An Investment Alert for International and Foreign Financiers responding the Omnibus Bill on Job Creation

Appendix 1

Indonesian environmental and social safeguards red flags

An observation to the events leading to the Omnibus Bill development suggests that the bill intends to justify existing attenuations of environmental and social safeguards that the executive government has passed through various implementing regulations. Upon closer observation, we found that the bill will further deteriorate the already fragile environmental and social safeguards the country currently puts in place.

Omnibus bill masks itself with a promise to resolving disharmonized regulations, deemed as hampering the investment climate in Indonesia. However, the technique employed in writing the bill has been criticized by many, including some dangerous legal maneuvers clearly in contradiction with the nation's civil law tradition and checks and balances. The bill proposes radical alterations of many laws in one bill by partial revision of a handful of provisions in each law, practically bring in more misery in understanding what the rules are. Surely, that will threaten progress towards establishing a sound climate for sustainable investment and environmental and social justice.

Prior to the Omnibus Bill, the executive government passed a few regulations, including Government Regulation no. 24 of 2018 re: Online Single Submission Licensing Service Government Regulation (GR OSS) being one of the most significant turning points. The regulation reverse the progress Indonesia has made with its EIA system. The systematic effort to weaken environmental and social safeguards can be observed in following details:

A. Significant setback of environmental impact assessment.

Several provisions in the Omnibus Bill and OSS GR undermines the essence of the EIA as an instrument to prevent environmental pollution and damage (see note A.1.1). The provisions are contradictory with Financial Institutions' standard concerning environmental and/or social safeguards, which requires the application of social and environmental risk assessment for all projects to be conducted before the projects begin. In particular, the provisions contradict:

a. World Bank (WB) Environmental and Social Standard 1 on Assessment and Management of Environmental and Social Risks and Impacts, which requires social and environmental risk assessment for all projects before they begin, to help ensure that projects are environmentally and socially sound and sustainable;
b. International Finance Corporation (IFC) Performance Standards 1, which requires environmental risk assessment for all projects before they begin;
c. Asian Development Bank (ADB) Safeguard Requirement 1 on Environment, which requires borrowers to undertake environmental assessment at an early stage of project preparation;

d. Asian Infrastructure and Investment Bank (AIIB) Environmental and Social Standard 1, which requires the environmental and social assessment to be made available by clients during preparation and implementation of the project.

The Omnibus Bill and GR OSS compromise the quality of EIA (see note A.1.2), expand the exemption for seriously impacted activities from EIA obligation (see note A.1.4, A.2.3), determine an unreasonable timeline for establishing an EIA (see note A.1.3) and attenuate environmental instruments, which as a whole undermine the principle of non-regression (see note A.2.2, A.2.4, and A.2.5.). Furthermore, the unclear concept and provision concerning "Risk-Based Licensing" in Omnibus Bill poses more risk to regulatory uncertainties (see notes A.2.1). These provisions are contradictory with Financial Institutions' standard, which requires (among others) that the environmental and social assessment be proportionate to the potential risks and impacts of the project. In particular, the provisions contradict:

a. WB Environmental and Social Standard 1, which requires (among others) that the environmental and social assessment be proportionate to the potential risks and impacts of the project;
b. IFC Performance Standards 1, which requires (among others) the environmental and social assessment and management systems be consistent with good international industry practice and level of detail and complexity of management program and the priority of the identified measures and actions will be commensurate with the project's risks and impacts;
c. ADB Safeguard Requirement 1 on Environment, which requires environmental assessment to consider all potential impacts and risks of the project taking into account costs and benefits of various alternatives including no project alternative;
d. AIIB Environmental and Social Standard 1, which requires environmental and social assessment and management measures be proportional to the risks and impacts of the project. According to the standard, the requirement for EIA surely is quality oriented, should be in favor of more sustainable impact management and thus a reasonable timeline to obtain such quality and favor is of importance.

A.1. Existing Rules

A.1.1. GR OSS allows some activities to be carried out before the completion and approval of EIA

It is noted that the OSS GR allows project proponents to carry out some activities before the completion and approval of EIA, including land acquisition, changing the land area, procurement of equipment or facilities; provision of human resources; completion of certification or worthiness; implementation of production trials; and/or implementation of production (Art. 38 GR OSS). In listing all these activities that a business can undertake with an OSS license, GR OSS states that a business that has the OSS business license, but has not yet completed an EIA, is prohibited only from constructing buildings.

A.1.2. Severely compromising EIA Term of Reference's quality, especially related to the scoping of the EIA

Under the OSS scheme, EIA ToR has to be developed and approved **within 30 days since issuance of 'environmental permit with commitment,'** with only 10 days for approval. On the other hand, the OSS GR and MOEF regulation require additional screening for EIA: (a) whether or not the project falls under the OSS system; (b) category of the project. Further, the approval of EIA ToR previously assigned to the EIA Committee, where community representatives are a member, under the OSS scheme is left to the technical committee. The substance required in the EIA ToR is also simplified, without having to include environmental baseline, spatial plan compliance, bibliography and appendixes;

A.1.3. GR OSS requiring unreasonable timeline for EIA completion

There is a reduction of EIA completion under GR OSS, while imposing additional bureaucratic points for EIA screening. GR no. 24 of 2018 trimmed down the time limit for each stage of EIA development. MOE Regulation 38/2019 further spells out three categories of EIA, with different maximum time limits for each: (a) Category A max. 180 days; (b) Category B max. 120 days; (c) Category C max. 60 days. Large projects such as coal fired power plants only fall to category B. In all projects, basic environmental data to ensure the EIA is made with reliable environmental baseline is often non-existing.

A.1.4. Expanded EIA exemptions

While the 2009 EPMA and 2012 Environmental Permit GR do recognize some exceptions, the recent MOEF Regulation 38/2019 expands and promotes EIA exceptions by detailing some exception mechanisms. Under the 2019 regulations, EIA is not needed for the following conditions: (a) locations with detailed spatial plan, informed with strategic environmental assessment (SEA); (b) locations within protected areas that has a management plan and/or detailed spatial plan for protected areas, informed with SEA; (c) forest product utilization activity plan in order to protect and manage peatlands; (d) activities carried out in the event of disaster response; (e) activities inside of industrial estate, special economic zone, port zone and free trade zone; (f) environmental remediation activities in areas where permit or any kind of environmental study is not required.

In addition, there are provisions giving privilege for accelerating business operation for National Strategic Projects which ignores licensing procedures and requirements. In the first place, Presidential Regulation No.91 of 2017 and GR OSS allow the issuance of a temporary business license, by making the license requirements as fulfillment of Commitment that can be completed after the business activities have begun. Subsequently, the Government Regulation No.24 of 2018 that followed after, also gave an ease for National Strategic Projects implementation. Issuance of some permits such as location permit and water location permit for National Strategic Project activities can be granted without Commitment, which include EIA obligation (see: GR No. 24 of 2018, Art 33 (1) g), and the building permit is not required for the issuance of business license in case the building constructed is part of National Strategic Project (see: GR No. 24 of 2018, Art. 36). As the result, licenses/permits as a means of command and control instrument cannot carry out its function on National Strategic Projects, because by positioning licenses/permits requirements as a Commitment to be fulfilled later, licenses/permits is reduced as an administrative prerequisite, plus all the other eases granted to the National Strategic Projects.

A.2. Omnibus Bill

A further backward move is going to occur if proposed reforms under the Omnibus bill are to become a law:

A.2.1. Omnibus Bill introduces a new licensing regime: risk-based licensing.
At this stage it is still unclear how this system will interact with the 'significant impact' determination currently governing EIA requirements. While in few series of discussions the government argues that high risk activities are activities with significant impact, this argument has not been drawn under the provision. Additionally, there are reasons to believe that the scheme is alarming for environmental protection, including: (a) possibility that the scheme will shift a large amount of previously controlled small/medium polluters to the uncontrolled box; (b) the risk-based formula being proposed suggests that activities with 'significant impact' that but less occurrence probability could get away without permission; (c) failure to articulate the relationship between the risk-based approach with the sectoral approach that the scheme seek to replace, i.e. how the 'risk-based licensing' for the business permit will link with the EIA's 'significant impact' determination. See: Article 9, 10, 11 of Omnibus Bill

Additionally, practice in other countries shows that it needs availability of data and inventory, (i.e.natural resources inventory, compliance history, etc) to effectively implement risk-based licensing. Unfortunately, these are the main problems that Indonesia shall focus on, with its unintegrated database as well as lack of availability of data as the baseline. With this condition, it is doubtful that all of the significant aspects will be considered during the licensing process.

A.2.2. Omnibus Bill proposed deletion of environmental permit and alteration to environmental approval.

One main critic of the Omnibus Bill lies in the proposed deletion of environmental permit and altered it to environmental approval. It should be noted that under Omnibus Bill, there only be one license, which refers to business licenses. The Omnibus Bill deletes all of the current licenses into approval, including environmental approval. This deletion downgrades the essence of the environmental license, since Indonesian administrative law recognized license as the highest consent from the government to conduct the business. Approval is weaker than license in terms of prerequisites for obtainment and enforcement. In this manner, Indonesian Government neglects the non-regression principle which is internationally acknowledged. Under this principle, states, sub-national entities, and regional integration organizations shall not allow or pursue actions that have the net effect of diminishing the legal protection of the environment or of access to environmental justice. Unfortunately, the deletion of environmental permits signs that Indonesian Government does not obey this principle.

A.2.3. More obscure, potentially arbitrary EIA's 'significant impact' criteria.

The Omnibus bill proposes deletion to EPMA's current specification of 9 (nine) criteria in determining 'significant impact' activities subject to EIA. Further, the bill proposes to add the phrase 'towards environment, social, economy and culture' following 'significant impact,' practically narrowing the breadth of EIA's reach. With such changes, the bill will give more flexibility to the executive (administrator) in determining which activities are subject to EIA. See: Art. 23 of RUU Cipta Kerja, proposed revision to Article 23 of the 2009 EPMA.

A.2.4. Significant reduction of environmental impact study by shifting UKL-UPL into standards.

Omnibus bill proposes to change the nature of UKL-UPL, a simpler environmental impact study for activities not considered to have 'significant impact,' from study to standards. With the proposed change, UKL-UPL will not require an environmental feasibility decision and simply need a statement of environmental management ability. Additionally, the problem also lies in the mechanism to develop the standard. It is unclear under the Bill: a) Who will be involved to develop the standards; b) What aspects that will be considered in developing the standards. In this manner, it is also unclear to what extent environmental issues will be taken into consideration; c) How is the process in developing the standards; d) How long the time to make the standard, since the standard itself will be regulated under implementing regulation, which always be problems due to the long time to draft it

A.2.5. Changes to supervision and enforcement mechanism.

Under the Omnibus Bill, the supervision and enforcement mechanism is inseparable from the shift of decision making to central government. Supervision to compliance to permission (or standards) will also be centralized, including abolishment of institutional arrangements currently established for decentralized supervision. Other than that, the Omnibus Bill proposes to divide the level of supervision's intensity based on the Risk-Based licensing. The higher the risk, the more intensity of the supervision. However, as previously mentioned, there is a possibility that small/medium polluters will be classified into uncontrolled boxes, due to their lower risks. This also means there will be possibility that the supervision to these small/medium polluters will be relaxed compared to existing rules.

B. Shrinking meaningful participation opportunities in environmentally degrading projects

The alteration in Omnibus Bill neglects the fact that most members of societies, especially from least developed regions, lacks capability to participate properly in the environmental decision-making process, using the law to defend their right to healthy environment and environmental protection throughout the process (see notes in B). The stipulations related to public participation in Omnibus Bill contradicts Financial Institutions' environment and/or social standards concerning meaningful engagement of all potentially affected stakeholders in the whole project cycle and must be started at the earliest stage of project preparation. In particular, the provisions contradict:

a. WB Environmental and Social Standard 10 concerning engagement of all potentially affected stakeholders during project preparation, undertake early meaningful consultation, and disclose all relevant information so that stakeholders can understand the risks and impacts of the project;
b. IFC Standard 1, which requires adequate engagement with affected communities and, where appropriate, other stakeholders, throughout the project cycle and to ensure that relevant environmental and social information is disclosed and disseminated;
c. ADB Safeguard Requirement 1 on Environment, particularly which requires the incorporation of all relevant views of affected people and other stakeholders into decision making;
d. AIIB Environmental and Social Standard 2 on Involuntary Resettlement, which requires meaningful consultations with persons to be displaced by the project, host

communities, and NGOs, and facilitate their informed participation in the consultation, as well as to ensure their involvement in planning, implementation, monitoring and evaluation of the resettlement plan.

B.1. Existing rules

B.1.1. Less meaningful public participation

In an attempt to trim down the time limit for EIA development & approval, the OSS GR narrows down some important public space previously given in the EIA process. The OSS scheme **deleted the announcement requirement upon permit application**. Further, the OSS scheme also **shortens** the period of post-announcement **comment submission opportunity**, from 10 days to 5 days. It also relaxed the announcement requirement, requiring permit issuance announcement to **only be listed in OSS page**, whereas under the non-OSS scheme announcement shall be placed in mass media relevant to the administrative scale of the project (national / provincial / regency-city).

B.1.2. Putting aside environmental organizations & indirectly impacted communities from being informed and consulted

The subjects that must be consulted in the public participation process under OSS scheme must include **only '[directly] impacted community.'** This is a backward step from the 2009 EPMA, that defines consulted public with a broader meaning, including environmentalists and any party influenced by all decisions in the EIA process.

B.2. Omnibus bill

B.2.1. Significant reduction of public participation by proposed deletion of the multi-stakeholder EIA committee

The Committee is currently the main participation platform that must involve local communities, environmental NGOs and experts (Article 30 EPMA). Not only the Committee is erased, determination of the appropriateness of an EIA, which under the 2009 EPMA requires recommendation from the committee, is proposed to be the sole authority of the central government through a 'feasibility test'. **See:** Article 23 of RUU Cipta Kerja, proposed deletion to Article 29, 30 and 31 of EPMA, proposed revision to Article 24 EPMA.

B.2.2. Limited subject to participate, reduction of access to information

The Omnibus bill proposes revision of the subjects required to be consulted in the EIA process to fit the OSS GR and revise the permit announcement requirement so it fits the OSS GR (see point 5 & 6 of the OSS changes). The bill seeks to replace the currently required announcement for environmental permit request and decision to be a one-time announcement when the environmental feasibility decision (*SKKLH*) is already given. It also seeks to replace the requirement to ensure the announcement is conducted 'in a way that is easily known to the public' into 'announcement through electronic system or other method determined by central government.' See: Article 23 of RUU Cipta Kerja, proposed revision to Article 26, 39 (1), 39 (2) of the 2009 EPMA.

B.2.3. Complete elimination of public participation opportunity in non-EIA projects

The change in UKL-UPL mechanism (formerly required for a non-EIA required activity) into standard certificate will also completely deprive the public from any participation opportunity, by eliminating the announcement & comment opportunity requirement currently embedded in environmental permit announcement requirements. See: Article 23 of RUU Cipta Kerja, proposed revision to Article 1(12) and Art. 34 of the 2009 EPMA.

Omnibus Bill neglects the fact that people's awareness on the importance of participating in the decision-making process are still lacking, thus proactive systems that encourage the people to become aware are of the most importance. Access to electronic systems surely is not an ideal instrument for most communities in Indonesia (see note B.1.1 and B.2.2). Public participation should be conducted prior to decision making and sufficient time must be given for the people to be able to understand and give input. Failure to communicate and obtain prior-informed consent from local society prior to starting the business will only postpone and worsen societal and environmental risk later. The role of multi-stakeholders EIA committee and allowing environmentalists, as governed in EPMA, is not only to assist impacted communities to better understand the potential impact of business activity (thus, can make a better decision during the process of consultation), but also to help ensure the environmental protection will not be at stake.

C. Inconsistent spatial planning provision potentially causes disproportionate environmental burden, increasing biodiversity loss, endorsing state-sponsored land grabs, and discriminates impacted communities including indigenous people from access to justice opportunities.

Existing regulations and the Omnibus Bill allow development and national strategic projects to compromise spatial plans. Government Regulation No.13 of 2017 allows requirement to comply with spatial plans to be waived for national strategic projects (C.1.1). Meanwhile, spatial plan provision set in the Omnibus Bill further leads to legal uncertainty (C.2.1), and strengthen the special treatments for national strategic projects (C.2.2). Finally, the bill undermines the protection of forest areas by eliminating the minimum limit that government must allocate for watershed and/or island area, currently set at 30% (C.2.3). The inconsistency of regulations regarding spatial planning, and the weakening of spatial plan as environmental protection instruments potentially violate environmental standards and/or social standards of Financial Institutions to protect biodiversity and their habitat, to not conduct land grabbing and displacement/forced evictions, and to provide protection for indigenous peoples. In particular, the provisions contradict:

- WB Environmental and Social Standards:
    - Environmental and Social Standard 6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources, concerning identification and protection of critical habitats and the consistency of protected area's legal protection status;
    - Environmental and Social Standard 5 on Land Acquisition, Restrictions on Land Use and Involuntary Resettlement, which requires borrowers to engage

in meaningful consultation within the decision-making processes related to resettlement and livelihood restoration;
    - Environmental and Social Standard 7 on Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, which requires the borrower to obtain free, prior, and informed consent of the affected indigenous people regarding the project will impact and/or relocate them from their land and natural resources subject to traditional ownership.
- IFC Performance Standards:
    - PS6 (Biodiversity Conservation and Sustainable Management of Living Natural Resources) concerning identification and protection of critical habitats and the consistency of protected area's legal protection status;
    - PS5 (Land Acquisition and Involuntary Resettlement), which requires borrowers to engage in meaningful consultation within the decision-making processes related to resettlement and livelihood restoration;
    - PS7 (Indigenous Peoples), which requires the borrower to obtain free, prior, and informed consent of the affected indigenous people regarding the project will impact and/or relocate them from their land and natural resources subject to traditional ownership.
- ADB Safeguard Requirements:
    - Safeguard Requirement 1 on Environment, which requires no project activity will be implemented in areas of critical habitat;
    - Safeguard Requirement 2 on Involuntary Resettlement, concerning meaningful consultation with affected peoples which requires to enable the incorporation of all relevant views of affected people into decision making, including project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues.
    - Safeguard Requirement 3 on Indigenous Peoples, which requires to seek prior consent and agreements with the indigenous peoples in a process of good faith negotiations relating to the project design, implementation activities, and the impact and/or the relocation of them because of the commercial development to their cultural and natural resources.
- AIIB Environmental and Social Standards
    - AIIB Environmental and Social Standard 1 on Environmental and Social Assessment and Management, which requires:
        - The prohibition to conduct the activities in the critical habitats;
        - To ensure that there will be no significant conversion or degradation, should the project has to be implemented in an area of natural habitats;
    - AIIB Environmental and Social Standard 3 on Indigenous People, which requires to engage indigenous peoples in FPIC and obtain the broad support of the affected Indigenous Peoples if activities under the Project would: (a) have impacts on land and natural resources subject to traditional ownership or under customary occupation or use; (b) cause relocation of Indigenous Peoples from land and limitations on access to natural resources subject to traditional ownership or under customary occupation or use; or (c) have significant impacts on Indigenous Peoples' cultural heritage.

C.1. Existing Rules

C.1.1. Assumed compliance for national strategic projects violating spatial plans

Presidential Regulation No.3 of 2016 on National Strategic Projects, Art. 19 allow spatial plan "adjustments" for listed national strategic projects not in compliance with provincial and/or city/regency level spatial plan. Moreover, Presidential Regulation No. 58 of 2017, revising PR no 3 of 2016, allows location suitability recommendations to be issued even though the location of the project clearly violates the provincial or city/regency level spatial plan. Government Regulation No.13 of 2017 further promotes this practice by creating a fiction of compliance for the National Strategic Project violating the provincial and/or city/regency level spatial plan, simply by Ministry of Agrarian and Spatial Plan recommendation, as outlined in Art. 114A.

Such move ruined the fine nexus between spatial plan and environmental protection, where strategic environmental assessment is mandated in each level of planning to ensure carrying capacity and pollution load is well reflected. Moreover, it also deny protection to law abiding property owners, creating more unpredictable risks.

C.2. Omnibus Bill

C.2.1. Overlapping and Centralized Authorities in Spatial Approval Potentially Create Inconsistency, and Impacts on the Spatial Plan Policies Determined Far Away from Affected Communities

The Omnibus Bill gives the central government authority to take over the authority of local government to issue approval of confirmation with spatial plan to the applicant of business activity in the absence of a detailed spatial plan (see Article 16(1)(2) Omnibus Bill) by withdrawing the authority of spatial plan confirmation approval to the central government. The authority to enact a detailed spatial plan held by local governments in their respective region. The absence of the detailed spatial plan should not make the central government authorized to issue the approval of confirmation with a spatial plan, because then there would be a potential mismatch between such approval and the regional conditions that should be contained in the detailed spatial plan. Eventually, there will be a potential for inconsistency and/or the spatial policy determined by the Central Government does not consider the affected local communities.

C.2.2. Omnibus Bill gives affirmation to change of spatial plan as special treatments for National Strategic Project and actually aggravates the environmental burden due to its regulation.

Unclear, arbitrary EIA/permit exemption and various eases for government activities, national strategic projects, and public interest development projects. The Omnibus bill introduces different eases for the three categories above, without detailing the relationship and overlaps between the three categories are not made clear in the bill. The relevant eases including: (a) flexible spatial plan adjustment for national strategic projects; (b) easier land procurement for public interest development; (c) waiver of various requirements for public interest development projects, including conformity with spatial plan, technical considerations, (declaration of) outside forest area and outside mining area, (declaration of) outside peatlands / coastal conservation line, and environmental impact assessment; (d) more flexible land conversion of national strategic projects; and (e) government assistance in national strategic projects.

The Academic Paper of the Omnibus Bill states that spatial plan is often an obstacle for implementing national policies. In fact, spatial plan is an environmental protection instrument, and a review of spatial plan should only be done if there is abnormal environmental damage, national security interest, or natural disasters. Adjustment of spatial plans that have been established based on environmental considerations with economic interests and political policies will lead to environmental problems, impacting the biodiversity protection, as well as causing horizontal and vertical conflicts with local communities and indigenous people.

C.2.3 The 30% Forest Area Minimum Limit that Must Be Maintained for each Watershed and/or Island Area is Removed.

The Omnibus Bill removed the provisions in the Forestry Law No. 41 of 1999 regarding the minimum limit of 30% of the area from the watershed and/or island area that must be maintained by the government to optimize the environmental, social, and economic benefits for the local community. In the Omnibus Bill's academic paper, the deletion of this 30% minimum limit is proposed following current development that in Java Island, the forest area is less than 30% of the total area. The existence of this provision actually agrees that the already protracted deforestation, such as in Java Island where the 30% limit has been surpassed, can also occur on the other islands.

In addition, determining the extent of forest area that must be maintained in the Omnibus Bill only considers physical and geographical conditions, without mentioning environmental considerations. This regulation will still be regulated further in a government regulation, so that if the Omnibus Bill is passed without being followed by such government regulation, a legal vacuum will arise regarding the extent of the forest area that must be maintained. Even worse, the Academic Paper mentions that the Government Regulation will regulate the exemption from the obligation to maintain sufficient forest area for the benefit of infrastructure development which is national strategic projects.

D. Underlying Problems and Impacts

Beside the problems mentioned above, there are some unresolved prerequisites to an accountable licensing and enforcement system, despite orders from the existing laws.

D.1. Disharmonized and Hyper-Regulation

The Academic Paper of Omnibus Bill on Job Creation underlines disharmony of regulations and hyper-regulation with regards to investment in Indonesia. However, the Bill proposes a strange solution to these problems by amending several articles from 73 laws with a lot of disintegrated norms as depicted partly in the notes above, which only focuses on environmental and several social aspects.

Despite the hyper-regulation, a lot of explicitly mandated regulations by the laws have not been enacted. However, the Bill delegates more than 400 topics to be further regulated on lower regulations.

Considering the government's track record in resolving and implementing the existing laws, alteration of the licensing system and weakening environmental and social standards will only slow down the progress towards accountability. In the end, it will instigate more unwanted risks for investors.

D.2. Unresolved Spatial Planning and Integrated Maps

Until now, there are only 54 regions in Indonesia that have a detailed spatial plan. The discrepancy of data, particularly spatial data, poses a big hurdle to adjust detailed spatial plan beside sectoral-ego of government institutions. Different ministries and institutions can have different mapping, often overlapped. By law, conflicts among sectoral ministries governing land and natural resources utilization should have been resolved through the spatial plan. Spatial plan also should be based on the Strategic Impact Assessment, which includes the assessment on environmental and social carrying capacity. A detailed spatial plan should be the final reference for further managing development in each region.

D.3. The lack of environment and natural resources inventory, emission sources database and compliance history

Unintegrated databases and lack of inventory have always been Indonesian Government's problems. Unfortunately, these issues are the most crucial things in environmental management and protection. In the upstream level, the lack of environment and natural resources inventory has made the environmental permit grants without proper baseline. In many cases, the spatial planning - as a basis of environmental permit - is determined without proper consideration on environmental carrying capacity, due to lack of inventory. Not to mention the emission sources database, that supposed to be the basis in determining the environmental carrying capacity, are also mostly unavailable. As a result, the environmental permits are oftenly granted, even though the environmental carrying capacity in that area is already incapable to accommodate such projects.

Further, as previously mentioned, the Government argues that Omnibus Bill will alter the complexity of the permit regime into risk-based licensing and strengthen the monitoring to ensure environmental protection. Therefore, the availability of compliance history becomes important to ensure the effectiveness of the monitoring. Compliance history is crucial to track the compliance of the permit holder to the permit as well as the regulation. Also, compliance history will become the basis whether the permit holder's compliance shall be followed by the law enforcement or not. Additionally, the compliance history is essential as a basis in conducting the regular monitoring, since it comprises the data of previous monitoring. It is seen that there is no success monitoring process without a proper compliance history database. With the current condition of lack of compliance history, the effectiveness of the monitoring process will become questionable.