



OMNIBUS LAW; OLIGARCH'S LEGAL HOLY BOOK

Mining Businessmen and Dirty Energy behind
Omnibus Law: Their Roles, Conflicts of Interests,
and Track Record

#BERSIHKAN
INDONESIA



FRAKSI
RAKYAT
INDONESIA

Terminology used in the report

■ Dirty Energy:

Energy that **does not** come from renewable energy sources, also energy **that is not** based upon the values and principles that is just, sovereign, transparent, accountable, have integrity/anti-corruption, focus on the sustainability of the living environment of humans and non-humans, respect the heritage of local tradition/culture and increase the durability of the livelihood of the people and support the mitigation of the climate crisis.

■ Regulatory capture:

Regulatory capture happens when a regulatory body that was established to serve the public interest advance the agenda of certain groups that dominate the industrial sectors or other sectors which are supposed to be regulated by said body. Corruption influences the creation and or the enforcement of those regulations. Corruption that are tied to violations are a form of corruption which are meant to violate or ignore the regulation and laws that exist.

■ Oligarchy:

Actors that control or have power over the large concentrates of material resources that can be used to sustain or increase their own personal wealth or exclusive social position

■ Politically Exposed Person (PEP):

are people who hold or had held public roles (such as a head of state or government, senior politician, held judicial or military office, state-owned enterprise executive, and leadership of political parties). PEP also include their family, close relative, and social or professional connections. Because of the position that they hold, many PEP often misuse or ignore laws, regulations, and policies: so that it only benefits the beneficial owners, and increases the risk of corruption when permits to work on natural resources are granted to their companies or companies that are affiliated to them. This is also caused by weak supervision and lack of transparency on the beneficial owners.

*Jeffrey A. Winters, Oligarki terj., Jakarta: Gramedia Pustaka Utama, 2011. hlm.1



SUMMARY

The Omnibus Law/Job Creation Law has just been passed in a rush, even though the Indonesian people are currently struggling to deal with the effects of the COVID-19 pandemic. The question is, *“How do mining and dirty energy companies in Indonesia connect to the people that are involved in discussion of Omnibus Law or Job Creation Law? and “What are the conflicts of interest and or benefits that they have in regards to Omnibus Law?”*

#BersihkanIndonesia coalition investigated¹ the important actors related to this law including the Omnibus Law task force, the working committee, and also the leadership of DPR RI (Indonesian Parliament) that has connections with mining and dirty energy businesses to find an answer on who really reaps the benefit from this regulation. At the same time, the conflicts of interest that the elites have will create numerous harms to the public, among them is the threat of environmental damage, will also be analyzed.

Through this investigation, it is found that the important actors that are involved in the Omnibus Law task force, working committee, the leadership of DPR RI, and even several related ministries have ties to the mining and dirty energy businesses in Indonesia.

This relationship shows conflicts of interest, because the drafters and discussants of this law were found to have direct or indirect, personal business relations with a number of companies, be it as owners, commissioners, or directors; but at the same time they are also the parties that compile and discuss this Job Creation bill. Even in the many discussion meetings on the Job Creation Bill, that Koalisi had been paying close attention to, these parties hardly criticize the draft of the bill at all and are constantly supporting the draft as proposed by the government. In addition, by tracing track records it is found that some of these actors were former success teams and campaign teams in the 2019 presidential election.

¹ This search uses digging through official government data such as company profile data at the Directorate General of Legal Administrative Affairs at the Ministry of Law and Human Rights, track records of the destructive power of mining and coal companies from media clippings, and institutions gathered in the #BersihkanIndonesia Coalition.

■ CONFLICTS OF INTEREST

A conflict of interest is a situation in which a state administrator or appointed team is selected to exercise authority, one of which is to compile or discuss regulations, has a personal interest in every use of their authority so that it can affect the quality of the resulting policy. Furthermore, conflicts of interest can result in **regulatory capture**, which is the preparation of regulations based on the interests of the political and economic elites.

Conflicts of interest have been regulated either directly or indirectly in several regulations. Article 2 of *DPR RI Regulation No. 1 of 2011 concerning the DPR RI Code of Ethics* states that members of the DPR RI must prioritize public interests over personal, political party, and or group interests. In article 8, it is stated that members of the DPR RI must convey if there are personal interests related to the issues being discussed.

Law No. 30 of 2014 concerning Government Administration has also clearly regulated conflicts of interest. Article 42 of the Government Administration Law states that Government Officials who potentially has a conflict of interest are prohibited from enact and or making decisions and or actions.

Indirectly, the spirit to fight conflicts of interest has also been stated in Article 2 of MPR Decree Number: XI / MPR / 1998 concerning State Administrators who are Clean and Free of Corruption, Collusion and Nepotism and Article 5 paragraphs (4) and (6) of Law Number 28 of 1999 concerning State Administrators Who Are Clean and Free of Corruption, Collusion and Nepotism.

In the end, according to the Council of Europe (2000), conflicts of interest will encourage public officials to make decisions and policies that are not based on public interests or systemic corruption, which today, the public at large calls it corruption by the oligarchy of power. This systemic corruption is categorized as a serious crime because it is able to change the substantial structure of a state from a democracy to a state with oligarchic characteristics that no longer serve the public interest.

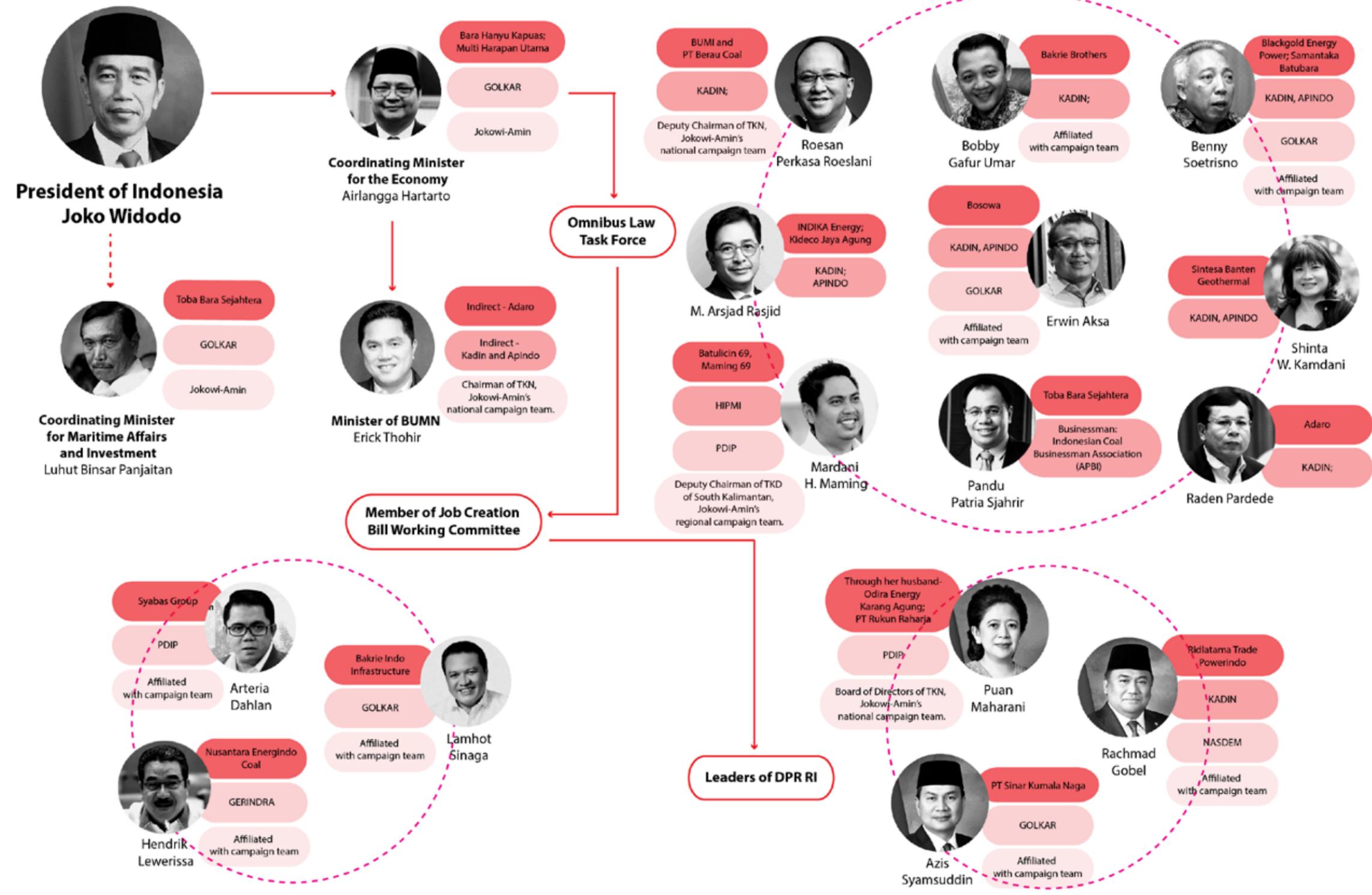
Thus, it can be said that there has been a structured betrayal through the taking of public institutions and their regulations as hostages, so that they become tools that benefit the interests of a few². If necessary, including by shifting the burden towards or by causing huge losses to the people, this includes the issuance of a series of regulations such as the Omnibus Law which has just been passed.

It is not surprising that from our notes, the substance of the articles in the mining and energy sector as well as articles from other related sectors in the Omnibus Law actually benefit big business and people who are affiliated with the political elite. Not only that, various negative impacts be it environmental, social, and economical as a logical consequence of this one-sided rule will occur, exacerbating existing and longstanding conditions.

Therefore, there is no other way but to revoke and cancel the Omnibus Job Creation Law. The government and DPR RI must start listening to the warnings from various circles of society that have been vocally critical since the beginning, in order to avoid various negative impacts that will only weaken this nation in facing various crises that occur today and will occur in the future.

² From "Institutional" to "Structural" Corruption: Rethinking Accountability in a World of Public-Private Partnership, Irma E. Sandoval-Ballesteros Edmond J. Safra Research Lab Working Papers, No. 33, hal. 11.

Conflict of Interest Along The Way



Notes:

- Affiliated with mining and dirty energy business
- Affiliated with business association
- Affiliated with political party
- Affiliated with campaign team

TKN : National Campaign Team, KADIN Indonesia: Indonesian Chamber of Commerce and Industry, APINDO: Indonesian Employers Association, DPR: The Indonesian House of Representatives

INVESTIGATING OLIGARCHIC ARTICLES

At the time this report was written, there was no official manuscript of the Job Creation Law (Ciptaker) that could be accessed by the public. There were disputes and hoax allegations thrown at the critics of the Ciptaker Omnibus Law articles by the government, and even criminalization by the police. At the same time the president gave a speech that was scorned by the public for reducing the colossal protests against the Ciptaker Law that occurred throughout Indonesia as protests that were only fueled by disinformation and hoaxes.

The president and his ministers received backlash as the public mocked them for not giving access to the text of the Ciptaker Law for almost a week, even after the DPR passed it as a law. Some critics also say that the president and the DPR are ratifying blank papers because, let alone the common people, fellow DPR members who have participated in discussing punts do not have access to the text of this law.

It was reported that DPR RI issued a statement that among at least 5 versions of the manuscript in circulation, the one to be submitted to the president and called official was a 1035-page thick manuscript³. Afterwards, through a press statement, DPR RI stated that the number of pages in the final draft of the Omnibus Law on the Job Creation Bill was 812 pages⁴.

Coalition conducted an investigation into a number of problematic articles in the text⁵ and found at least three articles related to mining, minerals and coal (minerba), and even mining in controversial and problematic forest areas. These articles are:

1. Article on 0% royalty incentive for mineral and coal mining companies that carry out downstreaming and increase added value on page **147**.
2. Article on the Use of Marine Space for the Coal Industry on page **43**.
3. Article on Whitewashing of Forestry Crimes (mining in the forest) on pages **145 and 146**.

³ Sekjen DPR: Draf UU Omnibus Law Cipta Kerja Jadi 1.035 Halaman: <https://tirto.id/sekjen-dpr-draf-uu-omnibus-law-cipta-kerja-jadi-1035-halaman-f5Q5>, diakses pada 13 Oktober 2020

⁴ Sah! DPR: Draf Final UU Cipta Kerja yang Resmi 812 Halaman: <https://www.cnbcindonesia.com/news/20201013152323-4-194007/sah-dpr-draf-final-uu-cipta-kerja-yang-resmi-812-halaman>, diakses pada 13 Oktober 2020

⁵ Draft final Omnibus Law UU Cipta Kerja versi 812 halaman <https://cdn.cnbcindonesia.com/cnbc/ruu-cipta-kerja-12-oktober-2020-final.pdf>, diakses pada 13 Oktober 2020



Article on 0% royalty for companies that downstream coal benefits the companies owned by the coal oligarchs

The addition of Article 128 A in the Job Creation Law which states that business actors who carry out downstreaming and increase the added value of coal can be given certain treatment for state revenue obligations, namely the imposition of royalties of 0% (zero percent).

Royalty is a fee that must be paid by entrepreneurs to the state after extracting mineral and coal resources. Royalties are part of the Non-Tax State Revenues (PNBP). Providing 0% royalty incentives is related to the downstreaming and the increase in added coal value program that the government has launched.

Entrepreneurs who carry out downstreaming and increase the added value of coal, including from the coal upgrading industry, processing coal into dimethyl ether (DME) or coal gasification to coal briquettes will receive incentives that eliminate the obligation to pay royalties. Although the elimination of royalties is incentive in nature, it is clearly problematic.

The elimination of royalties will decrease state revenues. In 2018, Natural Resource Revenues reached 180 trillion Rupiah. Revenue from mineral and coal mining accounts for around 17% of that amount. In particular, PNBP from coal royalties in 2018 reached 21.854 trillion Rupiah. If royalties are abolished, trillions of rupiah could potentially disappear⁶.

Therefore Coalition found a number of downstream projects and an increase in the added value of coal that are suspected to benefit directly from this article, both in the scope of the last 6 months and projects that are and still exist, among these projects are also connected with actors in the task force, working committee, as well as the leadership of the DPR who drafted the Job Creation Law.

These projects range from **Projects in Planning to Existing**, among which the Ministry of Energy and Mineral Resources (ESDM) has announced⁷, namely;

⁶ Indonesia Corruption Watch (ICW) Press Statement, State Revenue Potentially Disappeared, Businessmen Benefiting, 2020.

⁷ <https://industri.kontan.co.id/news/ini-daftar-proyek-hilirisasi-batubara-yang-dirilis-kementerian-esdm>

- Three coal upgrading facility projects at PT. ZJG Resources Technology Indonesia in 2024, 2026 and 2028, each with a capacity of 1.5 million tons per year.
- Coal gasification project or coal to Dimethyl Ether (DME) project. This project will be undertaken by a consortium of PT Bukit Asam Tbk (PTBA) which is planned to be operational in 2024.
- Coal gasification project in the form of coal to methanol which will be undertaken by PT Kaltim Prima Coal.
- A briquette manufacturing project, PT Batubara Bukit Asam will add a briquette factory in 2026 and 2028 with a capacity of 20,000 tons per year.
- The cokes making project, PT Megah Energi Khatulistiwa (MEK) in North Kalimantan is targeting the addition of two cokes making facilities in 2026 and 2028 with a capacity of around 1 million tons.

The existing project, there are currently six existing coal downstream processing plants. First, PT Thriveni briquette processing in Banyuasin, South Sumatra (Sumsel) with a product of 79,000-85,000 tons per year. Second, the PTBA briquette processing factory in Tanjung Enim, South Sumatra with a production of 10,000-20,000 tons per year.

Third, the PTBA briquette processing factory in Tarahan, Lampung, with a product of 7,000 tons per year. Fourth, PT ZJG Resources Technology, which produces 100,000 tons of briquettes per year in North Kalimantan. Fifth, semi coking coal plant. Sixth, PT Prima Coal Chemical's semi-coke in Central Kalimantan.

■ Downstream coal gasification project of PT. KPC and its ties to Airlangga, Rosan, and Bakrie

From this data, PT Kaltim Prima Coal (KPC) is one of the parties suspected of receiving a 0% royalty incentive because it is planning on downstreaming through a coal gasification project in the form of coal to methanol. The track record of this company cannot be separated from the existence of the the Aburizal Bakrie family, the former chairman of the Golongan Karya Party (Golkar) and still active as Chairman of the Golkar Party Board of Trustees for the period 2019-2024 which is now held by Airlangga Hartarto. In the last presidential election, he was in the Jokowi-Amin camp after in the previous election he was in the Prabowo Subianto camp.

Bakrie's control in Golkar is still strong and connected to Airlangga Hartarto as Chairman of Golkar for the current period, so that relations among Golkar are a marker for political operations and the Omnibus Job Creation Law in the current government. Other signs are the relations with Kamar Dagang dan Industri (Kadin, Indonesia chamber of commerce and industry), because the majority of the people of the Omnibus Law Task Force (Satgas), the team consists of 127 people who are dominated by business people who are also businessmen affiliated with KADIN.

The current chairman of KADIN, Rosan Roeslani, is also the "channel" of the Bakrie family business. In the past, Rosan has pursued a career as an entrepreneur, apart from being in the financial and financial services business, he has also been listed in a number of coal mining business entities, namely as Commissioner of PT Arutmin Indonesia in 2001-2007, President Director of PT Berau Coal in 2010-2013, President Director of PT Berau Coal Energy in 2010-2013, non-executive director of BUMI Plc for the period 2010-2012, and commissioner of PT Kaltim Prima Coal in the period 2003-2007. All of them are companies that were once and partly controlled by the Bakrie family.

Two of Bakrie's sons, Anindya and Ardiansyah Bakrie, are both still connected to Rosan in their management structure at KADIN. Anindya Bakrie served as deputy chairman, accompanying Rosan in the 2015-2020 period.

In business, the Anindya Bakrie-Rosan Roeslani relationship is also connected through the company Visi Media Asia, which is the umbrella company for Viva News and TV One. Rosan holds shares in the company, while Anindya Bakrie controls the company as president director with his younger brother Ardiansyah Bakrie as deputy director. From the search results, there are 36 companies connected to Rosan, with a wide spectrum of businesses ranging from media to mining and energy.

In addition to downstream matters, KPC is also included in the list of coal mining companies that are currently dealing with a number of problems such as debt maturities in 2022 and uncertainty of contract extensions. During the pandemic, KPC was increasingly hit by falling coal prices and decreasing demand for coal from buyers, so KPC needed a lot of help, therefore all possible ways were done, especially companies under Bakrie's umbrella had a track record of being good at taking advantage of politics. In the Lapindo mudflow case scandal, for example, the political forces of Golkar and Bakrie at that time managed to take advantage of 7.2 trillion state funds originating from the people, used to subsidize the problems inherited from Lapindo. That's how the state's money might be hijacked.

who are the beneficiaries?

Coordinating Minister for Maritime Affairs and Investment
Luhut Binsar Panjaitan - Connected with the Task Force:
Pandu Patria Sjahrir (Luhut's nephew)

Gasification / Downstream Project under the Ministry of Maritime Affairs and Investment.

In planning:

Three coal upgrading facility projects at PT. ZIG Resources Technology Indonesia in 2024, 2026 and 2028, each with a capacity of 1.5 million tons per year.

Coal gasification project or coal to Dimethyl Ether (DME) project. This project will be undertaken by a consortium of PT Bukit Asam Tbk (PTBA) which is planned to be operational in 2024.

The briquette manufacturing project, PT Batubara Bukit Asam will add a briquette factory in 2026 and 2028 with a capacity of 20,000 tons per year.

The cokes making project, PT Megah Energi Khatulistiwa (MEK) in North Kalimantan targets the addition of two cokes making facilities in 2026 and 2028 with a capacity of around 1 million tons.

Kutai Energi is the largest coal mining concession in this group, the three coal mining subsidiaries under Toba Bara Sejahtera (TOBA) - Admira Baratama Nusantara, Indomining, and Trisensa Mineral Utama, are the fastest growing companies in this group.

Not only in the upstream, this group which contains retired generals also has a downstream business through the Coal Power Plant, namely PT Pusaka Jaya Palu Power since 2007 in Palu, PT Kartanegara Energi Perkasa since 2012 in East Kalimantan. In 2016, TOBA expanded its business through Coal Power Plant Sulbagut I in Gorontalo, North Sulawesi. Another Coal Power Plant project in Minahasa, North Sulawesi. This expansion plan is in accordance with the national electricity mega-project plan of 35 thousand MW. (coalruption - 2018).

PT Multi Harapan Utama (MHU) has a mining concession of 39,972 ha. In 2015, MHU is connected to Sandiaga Uno. The PKP2B permit expires on April 1, 2022.

PT Arutmin Indonesia is connected with Abu Rizal Bakrie. The concession area is 57,107 ha. The PKP2B permit ends on November 1, 2020.

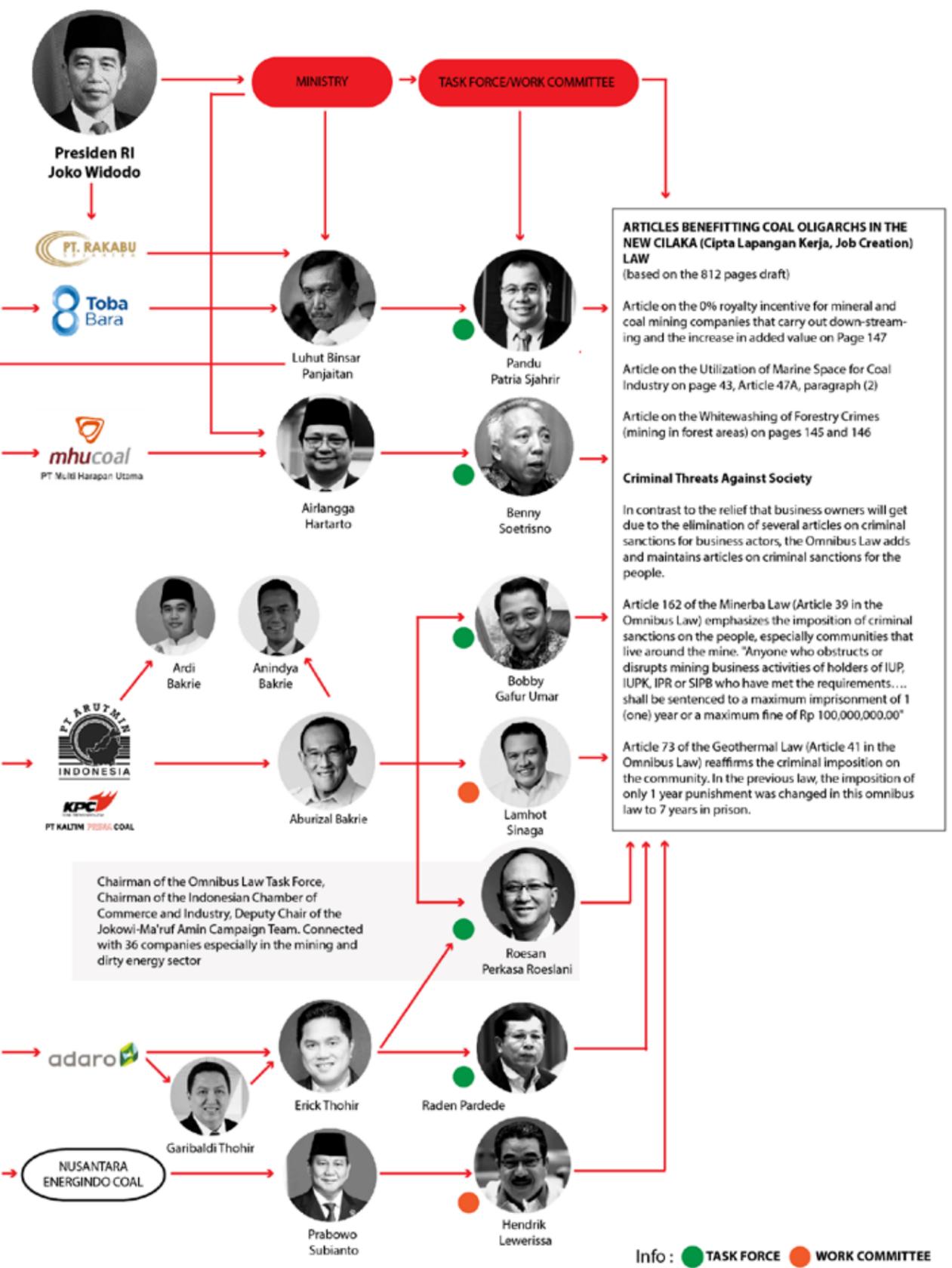
Kaltim Prima Coal (KPC) has a mining concession area of 90,038 Ha. Its ownership is connected to Abu Rizal Bakrie. The PKP2B permit expires in December 2021.

The coal gasification project in the form of coal to methanol which will be carried out by PT Kaltim Prima Coal in Bengalon, East Kutai, East Kalimantan.

Garibaldi Thohir is the President Director of PT Adaro Energy Tbk (ADRO). The 31,000 hectare concession area and the PKP2B permit expire on October 1, 2021.

The Global Witness report titled "Adaro's Overseas Company Network" reveals how the company moved profits to its overseas network during 2009-2017. With this profit transfer, Adaro was able to pay US \$ 125 million less in taxes than it should have. Thus it is estimated that the Indonesian government has the potential to lose nearly US \$ 14 million dollars in revenue every year.

Hendrik Lawerisa (Member of the Working Committee on the Job Creation Bill) was a director of PT. Nusantara Energiindo Coal. A mining company which is a subsidiary of Nusantara Energy Group, Prabowo's holding company.



Info: ● TASK FORCE ● WORK COMMITTEE



0% Royalty: Reaping the Benefits from Coal in the National Strategic Project

The coalition also explored documents issued by the Coordinating Minister for Economic Affairs regarding a list of 89 national projects (PSN) submitted by the government. The document, which was released on May 29, 2020, contains a summary of 89 PSNs that have been approved from the 245 summaries of the Committee for the Acceleration of Priority Infrastructure (KPIP) from July 2018 to April 2020⁸.

From these documents the coalition found a number of projects that are directly related to the mining and mineral-coal sector, it is suspected that this PSN project will also benefit from the 0% royalty article because it is related to downstream projects and increased added value through mineral and coal processing. Here's the information:

- The Tanjung Enim Industrial Estate, South Sumatra, has a strategic value in supporting the downstream industry and is included in the RPJMN 2020-2024 Major Project, which is in the process of preparing an FS worth IDR 45.9 trillions.
- Gasification of Coal into DME, Methanol, and MEG, South Sumatra by PT BA. Approved at the Coordination Meeting of the Coordinating Minister for the Economy on March 3, 2020, the Ministry of Energy and Mineral Resources has supported this project worth of Rp 43.5 trillions.
- Construction of a Coal to Methanol facility in East Kalimantan was supported by a proposal by the Coordinating Ministry for Maritime affairs and investment worth Rp. 29 trillions.

- Weda Bay Industrial Estate (Indonesia Weda Bay Industrial Park), this project is supported by the Coordinating Ministry for Maritime affairs and investment. The proposer for this project comes from the private sector, namely the Director of PT Indonesia Weda Bay Industrial Park, worth IDR 70 trillions.
- Obi Island Industrial Estate (Industrial Activities of Processing and / or Refining of Nickel Ore and Minerals and Its Supporting Facilities). This project is located in an industrial area and still requires revision of the spatial plans. This project is supported by the Coordinating Ministry for Maritime affairs and investment, and also proposed by the private sector by the Director of PT Trimegah Bangun Persada worth Rp. 31.32 trillion.
- Smelter Development Program. Referring to the agreement between the Minister of Energy and Mineral Resources and the Minister of Industry. Location of Smelters in West Kalimantan, North Maluku, Central Sulawesi, South Sulawesi, North Sulawesi, West Nusa Tenggara and East Java Provinces) worth more than IDR 209 Trillion.
- PT Sungai Raya Nickel Alloy Indonesia smelter, proposed by the Regent of South Konawe, the proposal supported by the Coordinating Ministry for Maritime affairs and investment worth IDR 14.04 trillion.
- PT Alchemist Metal Industry smelter, proposed by the Regent of South Halmahera, the proposal supported by the Coordinating Ministry for Maritime affairs and investment, worth Rp. 4.04 trillion.

■ National Strategic Project and its Power over Land

The Job Creation Law was made in order to provide the widest possible convenience for the sustainability of the National Strategic Project (PSN), where several lists of projects that are included in the PSN are still questionable whether the goal is for the welfare of the Indonesian people. Learning from various cases of agrarian conflict arising from projects labeled "for the public interest" which displaced a large number of settlements and agricultural land, the Job Creation Law was not made to provide more protection to communities and their land ownership.

PSN which is regulated in the Job Creation Law, especially article 173 concerning the Ease of National Strategic Projects allows the land acquisition process to be carried out by business entities, if the government is unable to do so. Through this land acquisition, every Indonesian citizen is obliged to surrender his land if the land is designated for a national strategic project.

Land is often sacred to some Indonesian people, it is not only represents a place to live and a source of livelihood, but it contains a sense of historical heritage and legacy passed down from their ancestors.

The Job Creation Law has given enormous powers to business entities, both state-owned and private, which are out of place, so that they have their rights protected by law in controlling people's lands for the continuity of a project.

The Ties of Coal, Electrical Vehicle Battery Project, Luhut, and His Nephew

The majority of these National Strategic Projects (PSN) are projects related to downstream processing and refining industries, ranging from coal gasification projects to 20 smelter projects which were fully supported by the Ministry of Maritime Affairs and Investment (Kemkomarvest) Luhut Panjaitan.

Luhut's still significant role in the Golkar Party, the main "political circuit" in The Job Creation Law or Omnibus Law also support him. Luhut is a respected senior because he has primary access to President Jokowi in the eyes of Golkar party cadres, even though he does not hold a structural position and maneuvered to support Jokowi-Kalla when Golkar was still led by Aburizal Bakrie (who at that time supported Prabowo-Hatta in the 2014 presidential election)⁹. Aburizal returned to the Golkar arena as Chairman of the 2019-2024 Golkar Party Advisory Board when Airlangga Hartarto became chairman. "Mr. Luhut is a Golkar cadre who has wisdom and has a wide network of connections" said Airlangga, when he announced his new structure in January 2019¹⁰.

This reinforces Luhut, who has four political dimensions at the same time, starting from the military, mining businesses, to government politics, with his position as Coordinating Minister for Maritime Affairs and Investment.

The Weda Bay Industrial Park project in North Maluku Province on its website states that it has several tenants, one of which is PT Youshan Nickel Indonesia, which is a joint venture founded by Huayou Group and Tsingshan Group as a pioneering company making battery components for electronic vehicles (EVs) in the Weda Bay Industrial Area (IWIP).

Meanwhile, Tsingshan Group is the same company that also operates in Morowali, to be precise in Morowali Industrial Park (IMIP), where Tsingshan Steel is a company that was built in collaboration with PT Shanghai Descent Indonesia Group with PT Bintang Delapan Mineral in December 2016¹¹.

In the company data of PT Bintang Delapan Mineral there is the name of Sintong Panjaitan, a former colleague of Luhut Panjaitan who is also a retired general who has been with Kopassus¹² (Indonesian Army Special Forces), he is also a business partner of Luhut Panjaitan or commonly called "Luhut's people", because in many mining companies Luhut is suspected of having the habit of always inviting former colleagues while in the army. Apart from Sintong, there is also the name of Fachrul Razi, retired general and former deputy TNI Chief in 1999 who joined the Luhut family clan company in East Kalimantan, PT Toba Bara Sejahtera as the President Commissioner. Sintong and Fachrul Razi are "Luhut's people"¹³.

Apart from PT Bintang Delapan Mineral, Sintong Panjaitan still serves as Commissioner of PT Adimitra Baratama Nusantara (ABN), a subsidiary of PT Toba Bara Sejahtera Tbk owned by Luhut Panjaitan in East Kalimantan.

9 <https://nasional.kompas.com/read/2014/05/23/1742410/Keluar.dari.Golkar.Luhut.Panjaitan.Jadi.Pengarah.Timses.Jokowi-JK>
10 <https://www.cnnindonesia.com/nasional/20200116020257-32-465758/airlangga-angkat-luhut-karena-bijaksana-dan-jaringan-luas>

11 Data profil Perusahaan Tsingshan Steel, Ditjen AHU Kemenhukham, basis data JATAM, 2020
12 <https://tirto.id/benarkah-pt-bintang-8-mineral-milik-prabowo-mayoritas-pakai-tka-cJ8c>
13 Coalruption, Koalisi Bersihkan Indonesia, 2018

Other Luhut's people is his nephew Pandu Patria Syahrir who also holds an important position in the Job Creation Omnibus Law Task Force. Pandu is the Chairman of the Indonesian Coal Mining Association (APBI). He is also at APINDO in the Digital Economy Sector.

He is also a member of the Gojek Board of Commissioners, Director of Toba Bara, and also serves at the coal company PT Adimitra Baratama Nusantara (ABN), coal companies owned by his uncle Luhut Panjaitan.

In the Weda Industrial Estate, PT Youshan Nickel Indonesia will produce nickel sulphate with a capacity of 130,000 mtpa in 2020. To support this production target, a coal power plant with 250 MW power and a port with a capacity of 50,000 mt will be built.

The support and role of project execution by the Coordinating Minister for Maritime Affairs and Investment Luhut Panjaitan is very strong in the proposed PSN 2020 document. At the same time, these smelters, which mainly support the electric vehicle battery industry, are linked to a number of coal-fired power plant construction projects to support the smelter industry.

It is estimated that more than 4000 MW of coal-fired electricity is needed to sustain it, control of the coal mine by "Luhut's people" and the smelter project, bringing Luhut only one breath away from coal and smelter projects that will receive the most significant profit and benefits from the mineral and coal mining industry downstreaming incentive.



The two were united by a joint venture in the furniture sector, namely PT Rakabu Sejahtera. The company was originally founded by Jokowi on February 21 1988 as CV Rakabu. In 2005, when he was elected Mayor of Solo, Jokowi handed over the company to his sibling Anjas Widjanarko.

A big change occurred in 2009 when Luhut invested in this company and changed its name to PT Rakabu Sejahtera. Toba Sejahtera is a minority shareholder (15,557 shares) while Jokowi's eldest son, Gibran Rakabuming Raka, serves as the commissioner who holds part of it shares (16,193 shares) until 2016, when it was replaced by Kaesang Pangarep. When Jokowi became president, Luhut's role was very strong, which made him a "super minister", who was often assigned to a special task until he assumed the post of Coordinating Minister for Maritime Affairs and Investment. The Luhut-Jokowi relationship is the real portrait of the unholy union of business and politics.

The real portrait of Luhut and Jokowi's business union

The business relationship between Luhut and Joko Widodo (Jokowi) has long been in the spotlight. The Coalruption report and the Sexy Killers documentary which went viral ahead of the election have described it. The initial marker of the Luhut-Jokowi relationship began when Jokowi received an invitation from Luhut to attend the Due Diligence Meeting and TOBA Public Expose before the initial public offering (IPO) on June 11, 2012 at the Ritz Carlton, Jakarta.

Both of them are suspected to have the same interests in the mining sector because Jokowi once served as Chair of the Energy and Mining Sector of the Surakarta Chamber of Commerce and Industry (Kadin).

■ 0% Royalty Discount: 100% Exploitation and Its Affects on Regional Income

The Coalition also discovered the names of mining and coal companies that are suspected of benefiting from the 0% royalty article. So far, these companies are the largest payers of royalties to the country from the coal sector. The impact of this article will cause the state to drastically lose income from royalties and allow coal companies to secure their money in their respective pockets.

In 2017, three coal companies were also listed as the largest royalty providers, namely PT Kaltim Prima Coal, PT Adaro Indonesia, and PT Bukit Asam Persero Tbk. Meanwhile, in 2019, the three coal companies that were also the largest payers of royalties and PNPB were PT Kaltim Prima Coal with Rp 6.5 Trillion, PT Adaro Indonesia Rp 5.0 Trillion and PT Kideco Jaya Agung Rp 3.3 Trillion¹⁴.

Even the impact of the imposition of the 0%15 royalty can have an impact on the regions, provinces including East Kalimantan¹⁵. Revenue-sharing funds (DBH) from mineral and coal to areas that have been dredging areas can be drastically reduced, while at the same time, coal mining companies continue to exploit the area without a break.

According to the *Decree of the Minister of Energy and Mineral Resources Number 201K/80/MEM/2019 concerning the Determination of Producing Areas and the Basis for Calculating the Revenue-sharing Funds for Natural Resources of Mineral and Coal Mining for 2020*, the total DBH for all provinces is 25.65 trillion rupiah this year. East Kalimantan received the largest DBH at 9.33 trillion rupiah, while South Kalimantan received 6.58 trillion rupiah and South Kalimantan 1.95 trillion rupiah.

Of the 9.33 trillion rupiah DBH Minerba for East Kalimantan, East Kutai District received the largest funding, namely 3.03 trillion rupiah. The second largest was Kutai Kartanegara 2.83 trillion rupiah and the third was Berau 1.72 trillion rupiah.

Not only coal-producing areas, because the DBH calculation is all mining including non-coal ones, regions such as Papua will also be affected by the decline in state revenues due to the royalty discount of up to 0%. Papua's DBH 2.19 for instance is 2.19 trillions rupiah and the other 32 provinces who benefit from mining and other minerals production will also be impacted.

From this, we can see how the coal companies that pay royalty, which are also headed by the people composing the Job Creation Law, are making a profit again.

KPC, Adaro Indonesia, Kideco Jaya Agung and Bukit Asam are coal companies that are once again connected with the ranks of the coal oligarchs.

Apart from keeping all the money inside the pockets of the company due to royalty incentives, profits also suspected to flow to the actors behind the KPC, such as the Bakrie family which includes its interest operators such as Rosan Roeslani, Lamhot Sinaga and Bobby Gafur Umar, all of whom have ties with the Bakrie companies. At PT Adaro Indonesia, profits and benefits also suspected to flow to the Thohir-Garibaldi and Erick Thohir family. Meanwhile, at PT Kideco Jaya Agung, Arsjad Rasjid's role in Indika Energy will also be a potential beneficiary.

Article on Forest Area Violations Whitewashing

One of the other advantages that mining business actors get from the Omnibus Law is the whitewashing of permits for forest area violations which previously had to be accounted for with criminal sanctions.

Amendments and additions to articles of *Law 18 of 2013 concerning Prevention and Eradication of Forest Destruction* in the Omnibus Law provide whitewashing rooms for miners, both individuals and companies carrying out illegal or unlicensed mining.

Article 17 of Law 18/2013 states that every person is prohibited from carrying out mining, transporting, receiving, selling, controlling, buying, marketing, and processing activities without a business license in forest areas. For this violation, individuals and corporations are subject to a 10 year criminal sanction and a fine of at least 1.5 billion rupiah, a maximum of 5 billion rupiah. Corporations are sentenced to a maximum of 20 years and a minimum fine of 20 billion rupiah and with a maximum of 50 billion rupiah.

However, there are additional articles of transitional provisions that provide whitewashing opportunities for corporations and individuals. The Job Creation Law adds Article 110A to Law no. 18/2013 which regulates every person carrying out business activities that have been built, and have Business Licensing in forest areas prior to the enactment of this law, but have not met the requirements according to the provisions in the forestry sector, must complete within a maximum of 3 years. If the requirement is not met then they will only receive administrative punishment; never resulting in criminal sanctions.

Such provisions have previously appeared in Article 51 of Government Regulation 104/2015 concerning Procedures for Changing the Designation and Function of Forest Areas. The difference is, in this regulation, a special overdue settlement is given for plantation businesses whose permits were issued by the regional government before the enactment of Law 26/2007 on Spatial Planning, and are only given 1 year.

It appears that the Job Creation Law provides a broader definition. The implication is that the application of this article may not be limited to plantation activities in forest areas, but also for illegal mining activities in forest areas that do not have an IPPKH permit. This provision is also applied not only to permits issued before the enactment of the Spatial Planning Law, but also for business activities that already exist in forest areas but do not meet forestry licensing requirements. In fact, there are no criminal sanctions for those who violate, as if as long as they have paid an administrative fine, activities in the forest area that do not comply with the provisions can continue.

¹⁵ <https://kaltimkece.id/warta/hukum/mengapa-kaltim-patut-menolak-omnibus-law-royalti-nol-persen-hingga-potensi-kriminalisasi-warga>

This whitewashing also has the potential to conflict with various other provisions aimed at saving forests, including Presidential Instruction 5/2019 which regulates the termination of granting new permits in primary natural forests and peatlands and Presidential Instruction 8/2018 which regulates a moratorium on permits to release forest areas for plantations. It can be seen that the Job Creation Law does not take sides with policies that promote forest sustainability.

Other Problematic Articles

■ Criminal charges against entrepreneurs are eliminated, the community punishment is maintained

In contrast to relief and eliminating several criminal articles for business actors, the Omnibus Law adds and maintains criminal articles for the people.

Article 162 of the Minerba Law (Article 39 in the Omnibus Law) emphasizes the imposition of criminal sanctions on the local community, especially those around the mining areas. "Anyone who obstructs or interferes with mining business activities from IUP, IUPK, IPR or SIPB holders who have met the requirements.... shall be sentenced to a maximum imprisonment of 1 (one) year or a maximum fine of 100,000,000. Rupiah "

Article 73 of the Geothermal Law (Article 41 in the Omnibus Law) reaffirms the imposition of crimes on the people. In the previous law, the imposition of only 1 year of punishment is changed in the Omnibus Law to 7 years in prison.

■ The fate of AMDAL and Environmental Permits

The Job Creation Law has replaced the obligation to obtain an Environmental Permit as stated in Law No.32 of 2009 into a Business License. The existence of an Environmental Permit has provided a special protection which, if it is violated, the Environmental Permit can be revoked, which results in business activities being unable to continue.

The Job Creation Law requires AMDAL and UKL-UPL to be included in a business license. But is this an even better arrangement? There was no explanation as to which agency was given the authority to issue the permit. If a business license is issued by an agency assigned to perpetuate and encourage the growth of business and investment, then how can supervision and compliance with AMDAL and UKL-UPL be carried out properly and seriously? Whereas previously, the Environmental Permit had the same legal power to cancel a business activity in the event of a violation.

The existence of the AMDAL Assessment Commission has also been removed in the Job Creation Law where this role was replaced by a Due Diligence Team which did not mention the existence of community representatives as part of the team. In this law, AMDAL is only required for high-risk types of businesses, where people who are allowed to be involved are those who are directly affected.



The Job Creation Law clearly undermines the importance of protecting the environment and society in Indonesia development. This law directs us towards a form of development that has the right to be "exploitative", in which the roles of society and the environment have been explicitly undermined by the rules and laws imposed in Indonesia.

■ Geothermal Breaks Through Forests

In the geothermal sector, there is no sacred and forbidden place that can be protected from the expansion of the energy industry, as seen in Article 5, (1) The Central Government's Geothermal Administration is carried out on Geothermal for Direct Use located across provinces, including the Production Forest and Protected Forest Areas; Conservation Forest Area; Conservation area in the water; and sea areas of more than 12 (twelve) miles measured from the coastline to the open seas throughout Indonesia.

Geothermal for Indirect Use throughout Indonesia, including Production Forest Areas, Protected Forest Areas, Conservation Forest Areas, and marine areas.

Another article is the amendment of article 43 in the Geothermal Law by the Job Creation Law, concerning direct use of Business Permit holders or Geothermal Business Permit holders when settling land rights, opening space for "coercion" to get approval from the community to relinquish their rights.



SUMMARY AND CALL

There is a compelling diction in this article, namely : "Users of land on state land and / or holders of rights are obliged to permit the holder of a Business Permit related to direct use or the holder of a Geothermal Business Permit to carry out Geothermal exploitation on the land concerned. The dictation of "obliging to allow" geothermal exploitation in community areas is the murder of the community's veto right to reject the geothermal industry.

Currently, there are a number of community resistances against geothermal energy projects that are taking over land and are just as "deadly" because the Geothermal power plant project can cause damage to the geyser due to drilling activities below the surface. A geyser is a type of hot spring that gushes periodically, releasing hot water and water vapor into the air.

Heat extraction through the use of power plants causes the geyser to lose pressure. If done continuously, the longer it will cause drought. Then water pollution occurs by natural contaminants in the earth. In addition, the effect of the activities carried out by Geothermal power plant is an earthquake. Due to the activity of hydraulic fracturing (fracking), this concern has prompted protests such as at Mount Talang Solok, West Sumatra, as well as in other places such as the operation of PT Sarana Multi Infrastructure (SMI) in Wae Sano Flores, East Nusa Tenggara to the operation of PT Sintesa Geothermal. Banten in Padarincang, Banten, which residents also rejected because it was near a residential area, especially for the latter name PT Sintesa Gheothermal Banten which is connected to a member of the Omnibus Law Task Force who is also the deputy chairman of KADIN, Shinta W. Kamdani.

At this point and through this study, it is increasingly clear that the Omnibus Law of the Job Creation Bill, from planning to ratification, is filled with conflicts of interest of the coal mining and dirty energy business. Several articles related to the mining and dirty energy sectors studied also show that the Omnibus Law will only benefit a handful of big businessmen who have affiliations with the political elite. In this case, one of them is through the National Strategic Project (PSN).

On the other hand, is the pressure of environmental damage which will get bigger and wider; the disregard for human rights; also a growing economic loss for areas that have been and will continue to be exploited.

This report also further confirms public anxiety and pressure in various aspects or sectors of the Job Creation Bill, including the labor sector and the environment sector more broadly. Therefore, with this report, in line with the demands of the wider public, #BersihkanIndonesia Coalition calls on President Jokowi, his entire government and the Indonesian Parliament to immediately:

1. Repeal and cancel the Omnibus Law on the Job Creation and the Mineral and Coal Mining Law because it is suspected that the product is defective and comes from legislation that is filled with conflicts of interest.
2. Strengthen law enforcement in mining operations. Prevent the presence of Politically Exposed Person (PEP) in the ownership and leadership of coal companies, or vice-versa, prevent the owners and leaders of coal, mining and dirty energy companies in the government and political system of Indonesia.
3. Strengthen legal measures to prevent conflicts of interest among PEPs, creating stronger protection from risks of collusion and political interference. Regulate the conflicts of interest between politicians or government officials and the mining and dirty energy businesses.
4. Highlight the beneficial owners in coal mining, mining and dirty energy businesses.
5. Ensure the resolution of cases of human rights and environmental violations in the mining sector and ensure the recovery of the socio-ecological impacts caused by mining.
6. Pushing for a moratorium on mining permits and coal-fired power plants followed by compiling a road map to leave coal and dirty energy as a bane of natural resources, transitioning to fair and sustainable renewable energy.

Conflict of Interest: A Track Record

No	Name	Role or Position	Affiliated with Coal and Dirty Energy Business	Affiliated with Business Association	Associated with Political Party	Affiliated with a Presidential Elections Campaign Team
1	Airlangga Hartarto	Coordinating Minister for the Economy - Former and Director of the Omnibus Law Task Force	✓		✓	✓
2	Luhut Binsar Panjaitan	Coordinating Minister for Maritime Affairs and Investment	✓		✓	✓
3	Erick Thohir	Minister of BUMN	✓	✓		✓
4	Roesan Perkasa Roeslani	Chairman of the Omnibus Law Task Force	✓	✓		✓
5	Shinta W. Kamdani	VI Deputy Chairperson of the Task Force	✓	✓		
6	Raden Pardede	VII Deputy Chairperson of the Task Force	✓	✓		
7	Bobby Gafur Umar	VIII Deputy Chairperson of the Task Force	✓	✓		✓
8	M. Arsjad Rasjid	Member of Task Force	✓	✓		
9	Mardani H. Maming	Member of Task Force	✓	✓	✓	✓
10	Pandu Patria Sjahrir	Member of Task Force	✓	✓		
11	Benny Soetrisno	Member of Task Force	✓	✓	✓	✓
12	Erwin Aksa	Member of Task Force	✓	✓	✓	✓
13	Arteria Dahlan	Member of Job Creation Bill Working Committee	✓		✓	✓
14	Lamhot Sinaga	Member of Job Creation Bill Working Committee	✓		✓	✓
15	Hendrik Lewerissa	Member of Job Creation Bill Working Committee	✓		✓	✓
16	Puan Maharani	Chairperson of DPR RI	✓		✓	✓
17	Azis Syamsuddin	Deputy Chairman of DPR RI	✓		✓	✓
18	Rachmad Gobel	Deputy Chairman of DPR RI	✓	✓	✓	✓