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Policy Advocacy Paper on Law No. 11 year 2020 on Job Creation in the Education Sector

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Preface

One of the indicators of investor's interest in a country is the quality of human resources (HR)¹. This is in line with the vision of President Joko Widodo (Jokowi) in creating superior human resources through its main prerequisites, which is quality education.² In fact, not all Indonesians have had access to education. The United Nations Children's Fund (UNICEF) stated that many Indonesian children miss learning opportunities because those who live in rural or remote areas in Indonesia are unable to access education services from an early age.³

¹ Oktaviano DB Hana, "These are 5 Reasons Vietnam is the Choice for Manufacturing Investment Than Indonesia," *Bisnis.com*, 11 October 2019

² Ihya Ulum Aldin and Sorta Tobing, "Jokowi Conveys Five Visions for Five Years of Indonesia In the future," *Katadata.co.id* <<https://katadata.co.id/sortatobing/berita/5e9a50d93957b/Jokowi-convey-five-visions-for-Indonesia-five-years-ahead>>, 15 July 2019.

³ The ASEAN Post Team, "Indonesia's education dilemma," *The ASEAN Post*, 14 April 2019.

Data from the Central Statistics Agency (BPS) proves the same. In 2019, the Gross Enrollment Rate (APK) for college level is only 30.28% lower than the target in the 2015-2019 Long Term Development Plan (RPJMN) of 36.70%.⁴ Likewise, the GER for the primary and secondary school levels, all of which are still not in accordance with the targets set government. APK itself describes the population ratio who are currently attending a level of education towards suitability of school age. The closer it is to the 100% figure, the more according to the comparison.⁵

To fulfill the ambition to improve the quality of human resources, President Jokowi is committed to maintaining the education budget allocation according to the constitutional mandate, which is 20 percent of the total State Revenue and Expenditure Budget (APBN).⁶ Not only that, the government has also included a number of provisions related to the education sector in the Job Creation Bill (RUU Job Creation). The move shows the government's strategy to regulate the education sector to support accelerated investment.

In the draft Job Creation Bill that the government submitted to on February 2020, there is one separate section that changes five Laws related to education, namely Law Number 20 of 2003 concerning the National Education System, Law Number 14 of 2005 concerning Teachers and Lecturers, Law Number 12 of 2012 concerning Higher Education, Law Number 20 of 2013 concerning Medical Education, and Law Number 4 of 2019 on Obstetrics.⁷

A number of groups considered that these alterations have the potential to change the way the government's views on the management of the education sector, one of which is to provide opportunities for education without the principle of a non-profit.⁸

In the end, these changes were not made because the DPR and the government, at the end of September 2020, agreed to remove material on education from the draft bill Job Creation.⁹ However, after being promulgated into Law Number 11 of 2020 concerning Job Creation, related material the education sector is still found in Article 65 on Paragraph 12. That article allows licensing in the education sector to be carried out through a business licensing mechanism, and further regulation of such provisions shall be regulated by a Government Regulation, which in this case is Government Regulation Number 24. 2018 concerning Electronically Integrated Business Licensing. With this provision, the implementation of education is included in the business licensing authorities together with other sectors, such as

⁴ Muhammad Ahsan Ridhoi, "Highlighting Article Commercialization of Education in the Law on Employment," *Katadata.co.id* <<https://katadata.co.id/muhammadrighoi/analdata/5f90ff2931890/highlighting-article-commercialization-education-in-uu-copy-work>>, 14 October 2020.

⁵ Ibid

⁶ Rahajeng Kusumo Hastuti, "Aiming for a Quality Generation, RI Increases Education Budget," *CNBC Indonesia* <<https://www.cnbcindonesia.com/news/20190819151254-4-93041/incargenerasi-berk-Quality-ri-n-Increase-anggaran-pendidikan>>, 19 August 2019.

⁷ See the draft of the Job Creation Bill which can be accessed at "Draft Bill on Field Creation Kerja (Omnibus Law)," *DPR.go.id* <<http://www.dpr.go.id/dokakd/dokumen/BALEG RJ-20200605-100224-2372.pdf>>, accessed on 8 November 2020.

⁸ Ady Thea DA, "A Number of Reasons the Education Sector Should Be Revoked from the Job Creation Bill," *Hukumonline.com* <<https://pro.hukumonline.com/berita/baca/lt5f1588ca3f97c/sejotalalasan-sektor-pend-Pendidikan-perlu-dicabut-dari-ruu-cipta-kerja?page=all>>, 20 July 2020.

⁹ Rofiq Hidayat, "Removing the Education Cluster from the Job Creation Bill is considered the Right Step," *Hukumonline.com* <<https://www.hukumonline.com/berita/baca/lt5f6e1f4c70e67/mencabutklastar-pend-Pendidikan-dari-ruu-cipta-kerja-dinilai-langkah-tepat/>>, 26 September 2020.

marine and fisheries, forestry, energy, transportation and tourism. Some critics suspect the article will bring Indonesia's education sector towards commercialization¹⁰

REGULATORY ISSUES RELATED TO EDUCATION

Since independence, Indonesia has had dozens of regulations on education that are spread out at the level of laws and regulations the People's Consultative Assembly.¹¹ In 1989, for the first time the national education system was regulated in a separate Law¹², until then the regulation was renewed with the enactment of Law Number 20 of 2003 concerning National Education System (UU Sisdiknas) which applies until currently.

Initially, the National Education System Law was formed with the aim of become an umbrella regulation for the education sector in Indonesia. However, a number of derivative topics are then regulated separately through several other laws, namely the Teacher and Lecturer Law, which regulates the definition and qualifications of teaching staff in primary and secondary formal education, the Higher Education Law become the basis for the management and administration of higher education, as well as Law Number 9 of 2009 concerning Legal Education Entities (UU BHP) which provides the framework for law, organs, as well as the operational basis for educational institutions.

The inception of various new laws that intersect with the National Education System Law do not come without problems. Teacher and Lecturer Law, for example, passed in 2005 and mandates 3 million teachers from Primary and secondary schools must be certified by 2015 with the hope of an increase in teacher competence. However, Agnes Sukasni and Hady Efendy's study shows that regulation has not succeeded in making certified teachers improve their skills and competencies. As a result, there is no difference between teachers who are certified and which have not.¹³ Certification is only about fulfilling administrative requirements rather than focusing on the essence of quality improvement teachers and lecturers.

Then, there is also the BHP Law which was formed to provide the widest possible autonomy for educational institutions, including but not limited to the scope of academic freedom but also in management and independence of funding. However, a number of circles— especially in civil society groups working on human rights issues, student organizations, teacher associations, and parents of students— of the view that the provision of management autonomy for schools and universities will have an impact on increasing costs education so that access to education for the lower middle income class becomes hampered. Massive public rejection channeled through judicial review at the Constitutional Court (MK) led to the cancellation of the BHP Law in 2010.¹⁴

The government responded to the cancellation of the BHP Law by establishing the Higher Education Law two years later. The mandate has the same regulatory direction as the BHP Act

¹⁰ Callistasia Wijaya, "Omnibus Law: The article 'smuggling' is feared for education" added expensive ', DPR:' In the SEZ, commercialization is definitely there ', "BBC News Indonesia <<https://www.bbc.com/indonesia/indonesia-54454113>>, 8 October 2020.

¹¹ Indonesian Center for Law and Policy Studies, "Map of Regulations and Policies Related to Education National Before and After the National Education System Law, "the presentation was delivered in a focus group for the Ministry of Education and Culture Quality Team discussion (unpublished), 15 March 2018

¹² Indonesia, Law Number 2 of 1989 concerning the National Education System.

¹³ Agnes Sukasni and Hady Efendy, "Problematic of Education System in Indonesia and Reform Agenda, "International Journal of Education (2017) vol. 9, no. 3 <<https://doi.org/10.5296/ije.v9i3.11705>>.

¹⁴ Andrew Rosser, "Beyond Access: Making Indonesia's Education System Work," Lowy Institute , 21 Februari 2018.

but with a scope limited to higher education¹⁵. Until now, eleven state universities have legal entity status according to what is stipulated in the Higher Education Law.¹⁶ However, according to Andrew Rosser, the change in status to a Legal Entity State University (PTN-BH) has not contributed effectively in improving the quality of higher education and the quality of graduates¹⁷. Even in terms of content, the Higher Education Law is actually inconsistent with the National Education System Law, which mandates further regulation on higher education through the formation of Government Regulations as opposed to Law.¹⁸

More than that, it was recorded that there were 15 attempts to review the Law on the National Education System Law, the BHP Law, and the Higher Education Law were submitted to the Constitutional Court (MK) during the period 2005–2018¹⁹. The high number of requests for judicial review indicates that a number of laws in the education sector have the potential to cause constitutional harm to society. The Constitutional Court decisions, one of which later canceled the BHP Law, also influenced the development of the regulatory construction of the Indonesian education system. In addition to the substance problems in each of these laws, which are similar to those in other strategic sectors, the issue of education regulation that is constantly complained of in the field is the disharmony between the products of the laws and regulations. One of them is related to teacher recruitment in the regions. Based on Government Regulation Number 48 of 2005 concerning Appointment of Honorary Staff to Candidates for Civil Servants, local governments are no longer allowed to recruit teachers with the honorary staff scheme.²⁰

The prohibition was later strengthened by Government Regulation Number 49 of 2018 concerning Government Employee Management with Work Agreements²¹. This means that the teacher recruitment mechanism only depends on the recruitment system for the State Civil Service (SCS). This could hamper the fulfillment of the needs of teachers in the regions, given that the SCS teacher recruitment process is carried out not on the basis of the needs of teachers in schools, but based on the allocation of the education budget in the APBN each year.²² In fact, Article 41 of the National Education System Law requires local governments to ensure the availability of teachers and teaching staff at education units in their respective regions. Still related to the division of authority between the central and regional governments, according to Fajri Siregar, the regional governments have so far not been able to bring campuses in their respective regions closer to the context of local development. As a result, the implementation of higher education in the regions has not contributed to local economic development. This role should be enlarged by rearranging the division of authority related to management — in this case higher education funding in the regions. The current regulation is considered unable

¹⁵ Ibid

¹⁶ Albertus Adit and Yohanes Enggar Mustusilo, "Only 11 PTNs Have Legal Entity Status, Ministry of Education and Culture Encourages Other PTNs to Become PTN-BH," *Kompas.com* <<https://edukasi.kompas.com/>>

¹⁷ Rosser, loc. cit

¹⁸ Indonesia, Law Number 20 of 2003 concerning the National Education System, Article 24 paragraph (4)

¹⁹ Center for Indonesian Law and Policy Studies, loc. cit.

²⁰ Indonesia, Government Regulation Number 48 of 2005 concerning the Appointment of Personnel

²¹ Indonesia, Government Regulation Number 49 of 2018 concerning Government Employee Management with Work Agreements, article 96.

²² Shintia Revina, "The recruitment process as ASN makes teachers in Indonesia of low quality," *The Conversation* <<https://theconversation.com/proses-rekrutmen-sebagai-asn-membuat-guru-di-indonesia-berkualitas-rendah-143443>>, 25 August 2020.

to accommodate this logic because it is still oriented towards centralized higher education funding, without any regulation regarding the division of authority with local governments.²³

ANALYSIS RELATED TO EDUCATION ISSUES IN THE JOB CREATION ACT

The substance of the Job Creation Law which regulates education issues is indeed undergoing significant changes. Initially, the draft was circulating during the discussion process, Paragraph 12 entitled "Education, and Culture" contains 7 articles, namely Articles 67–73. After being passed into law, that paragraph consisted of only two articles, namely Article 65 which regulates business licensing in the education sector and Article 66 which contains amendments to the Law Number 33 of 2009 concerning Film.

Even though it is only one article, the material related to the education sector listed in Article 65 provides differentiation of treatment for formal education providers. In the explanation part, it is said that Article 65 is intended for formal education institutions in Special Economic Zones (SEZ). This means that every formal education provider in SEZ is required to go through the business licensing mechanism regulated in the Job Creation Law. Meanwhile, formal educational institutions outside of SEZ continue to follow the old regulations which contain permit provisions for educational units, namely the National Education System Law, the Higher Education Law, the Teacher and Lecturer Law, the Medical Education Law, and Law Number 18 Year 2019 concerning Islamic Boarding Schools. However, the elucidation of the article also states that managers of educational units outside SEZ can voluntarily use the business licensing mechanism regulated in the Job Creation Law, among others, for the process of spatial suitability, environmental approval, and building standards. Meanwhile, the licensing process for the management of an education unit is sufficient through the agency that oversees the education unit, namely the Ministry of Education and Culture for the establishment of the unit primary, secondary and tertiary education, as well as the Ministry of Religion for the establishment of Islamic boarding schools.²⁴

Table 1. Comparison between Paragraph 12 "Education and Culture" in the Job Creation Bill and Law no. 11 of 2020 concerning Job Creation

Draft Job Creation Bill February 2020 version	UU no. 11 of 2020 about Job Creation
<p>Article 67 To provide convenience for the community, especially business actors, in obtaining business licenses from the sector Education and Culture, this Law changes, removes, or sets new regulations for several provisions stipulated in:</p> <ul style="list-style-type: none"> a. National Education System Law b. Higher Education Law c. Teacher and Lecturer Law d. Medical Education Law e. Midwifery Law f. Film Law 	<p>Article 65 Implementation of licensing in the sector education can be done through Business Licensing as referred to in this Law. Further provisions for the implementation of licensing in the education sector as referred to in paragraph (1) is regulated in Government regulations. Art 66 Contains changes to the Film Law.</p>

²³ Fajri Siregar, "Education in the Job Creation Bill," explained in the Omnibus Discussion Series Vol. 3 "Education in the Job Creation Bill: For Investment or the Future of Generations?" on July 20, 2020 <<https://pshk.or.id/aktiviti/seri-diskusi-omnibus-vol-3-education/>>.

²⁴ Fajri Siregar, "Education in the Job Creation Bill," explained in the Omnibus Discussion Series Vol. 3 "Education in the Job Creation Bill: For Investment or the Future of Generations?" on July 20, 2020 <<https://pshk.or.id/aktiviti/seri-diskusi-omnibus-vol-3-education/>>.

Art 68 Contains changes to the National Education System Law.	
Art 69 Contains changes to the Higher Education Law.	
Article 70 Contains changes to the Teacher and Lecturer Law.	
Art 71 Contains changes to the Medical Education Law	
Article 72 Contains changes to the Midwifery Law.	
Art 73 Contains changes to the Film Law	

Table 2. Types of education sector licensing, mechanisms and legal basis
its implementation is based on the Elucidation of Article 65 of Law no. 11 of 2020 concerning Job Creation

Type of Permit	Licensing Mechanism
Establishment and management of units formal education in KEK.	Follow the business licensing process regulated in the Job Creation Law.
Other permissions related to management of formal education units in the SEZ.	Follow the business licensing process regulated in the Job Creation Law
Establishment and management of units outside formal and non-formal education KEK.	Registration through that ministry carry out government affairs in education or religion, according to level and the type of education unit based on: a. The National Education System Law; b. Higher Education Law; c. Teacher and Lecturer Law; d. Medical Education Law; or e. Islamic Boarding School Law
Other licenses related to the management of formal and non-formal education units outside of KEK include, among others, the process of conformity to spatial planning, environmental approval, and building standards.	Can follow the business licensing process which is regulated in the Job Creation Law.

However, the explanation of the article also states that managers of educational units outside SEZ can voluntarily use the business licensing mechanism regulated in the Job Creation Law, among others, is for the process of conformity to spatial planning, environmental approval, and building standards.²⁵ Meanwhile, the licensing process for the management of an educational unit is sufficient through the agency that oversees the education unit, namely the Ministry of Education and Culture for the establishment of primary, secondary and tertiary education units, and the Ministry of Religion for the establishment of Islamic boarding schools.²⁶

By referring to the explanation of Article 65, the education sector licensing mechanism is regulated in the Regulation of the Minister of Education and Culture Number 25 of 2018 concerning Licensing Doing Electronic Business in the Education and Culture Sector becomes invalid.²⁷ The Minister of Education and Culture itself regulates the integration of education sector licensing through a registration mechanism to obtain a Business Identification Number

²⁵ Ibid.

²⁶ Ibid.

²⁷ Indonesia, Law Number 11 of 2020 concerning Job Creation, article 181

(BIN) issued by the Online Single Submission (OSS) Institute²⁸. Referring to the said Regulation of the Minister of Education and Culture, the electronic business licensing mechanism is the only route available to all educational unit administrators, with types of licensing covering: (a) permission to establish formal education units run by the community; (b) license to add and change skills program at Vocational High Schools (SMK); (c) operational permit for Cooperative Education Unit (CEU); (d) license to provide non-formal education; and (e) license to provide non-formal education with foreign capital²⁹. The clause on the integration of licensing into the education sector in the business licensing mechanism is also included in the draft of the Job Creation Bill and has drawn a lot of criticism from education observers. With this merger, the education sector that is implemented on a non-profit basis, is placed in one regime, which is the same as for profit-oriented business licensing. In the Job Creation Law that has been passed, this clause is no longer found. This had a positive impact because the education sector licensing process was returned to the agency responsible for education. However, Article 65 of the Job Creation Law actually distinguishes the special licensing mechanism for education providers located in SEZ areas so that it still opens opportunities for educational commercialization.

The existence of this article will create a gap in access to education in the community because the different licensing mechanisms for educational units have the opportunity to create differences in school standards and quality. Institutions that provide educational units in the SEZ area have great opportunities for cooperation with investors, so they can guarantee the delivery of quality education. In return, education providers will charge high fees from participants students. On the other hand, education units outside the S area only depend on government subsidies or other limited resources, making it difficult to ensure the quality of delivery education can be equivalent to the quality of the education in the SEZ area. A similar situation has occurred when the Indonesian education system implemented the International Standard School Pilot Scheme (ISSPS) and the International Standard School (ISS). At that time, the quality of schools seemed to be differentiated between regular and general schools, RSBI and SBI. Only students from families who are financially well off can access education at RSBI and SBI, while students outside these categories only have the opportunity to be accepted into regular schools. Article 50 paragraph (3) of the National Education System Law which became the legal basis for the scheme was finally cancelled by the Constitutional Court in 2013. At that time, the Constitutional Court argued that “caste classification” in educational institutions was discriminatory and against the constitution.³⁰

Currently, 15 SEZs are scattered from the west to the east of the Indonesian territory, providing privileges in the form of infrastructure operation, providing facilities and incentives, and ease of investing.³¹ However, based on Law Number 39 of 2009 concerning Special Economic Zones, the government can designate an area as a SEZ with or without going through a proposal process. This means that if at present the gap in access to education only occurs in areas around the 15 SEZs, in the future this gap will expand to more areas as the number of new SEZs increases.

²⁸ Indonesia, Regulation of the Minister of Education and Culture Number 25 of 2018 concerning Electronically Integrated Business Licensing for the Education and Culture Sector, article 7.

²⁹ Ibid, Article 4

³⁰ Alfian Putra Abdi, "The Job Creation Law perpetuates the Education Gap," *Tirto.id* <<https://tirto.id/uu-cipta-kerja-melanggengkan-kes-Gap-pendidikan-f5NH>>, 12 October 2020.

³¹ National Council for the Special Economic Zones of the Republic of Indonesia, “SEZ Distribution Map,” <[KEK.go.id https://kek.go.id/peta-sebaran-kek](https://kek.go.id/peta-sebaran-kek)>, accessed on 9 November 2020.

CLOSING

As the main prerequisite for ensuring quality human resources, education is a strategic sector that can support the government's ambition to accelerate investment. Unfortunately, the provisions related to education contained in the Job Creation Law do not reflect the need to improve the quality of education in Indonesia. Instead of providing answers to the problem of the low quality of education, the Job Creation Law actually dwarfs the issue of education as an economic commodity. Based on an analysis of regulatory issues related to education and the regulation of the education sector in the Job Creation Law, here are some notes that should be taken into account.

First, as a regulation aimed at creating new job opportunities, the Job Creation Law does not provide a solution to the problem of teacher shortages in the regions. The obligation of local governments to ensure the availability of teachers at each education unit in the regions is hampered by the prohibition against recruiting honorary staff. When referring to the purpose of establishing the Job Creation Law, this problem should be resolved through a more friendly arrangement for prospective teaching staff and providing more certainty for education unit administrators in the regions.

Second, as a regulation directed at efforts to improve the state economy, the Job Creation Law does not at all talk about optimizing the role of universities for economic development at the local level. Through an omnibus approach, the Government should be able to use the Job Creation Law to improve provisions regarding the division of authority for education management between the central and local governments, so that local governments can further enhance their role. That way, tertiary institutions in the regions can be closer to the local context and can take a role in supporting economic development in the regions.

Third, the existence of Article 65 of the Job Creation Law which distinguishes the education sector licensing mechanism for Special Economic Zones (SEZ) has the potential to create gaps in access to education for the community. This article proves that the state is not consistent in implementing the non-profit principle in the provision of education. Although the elucidation of the article states that the management of educational units remains non-profit and cannot be equated with the management of business activities that are profit in nature, the substance of the article shows the opposite.

Even though it is only regulated in one article, the slightest change will have a broad impact on the country's paradigm in managing and building the Indonesian education system. Therefore, regulating the education sector should be discussed in depth through the amendment to the National Education System Law, not in the Job Creation Law. The Amendment Bill on the National Education System Law itself has been included in the 2020 Priority National Legislation Program (Prolegnas), and is still eligible to re-enter into Priorities for 2021 so that it can be discussed immediately.

In the end, the regulation of the education sector in the Job Creation Law does not contribute anything to the effort to organize regulations related to education. Not only does it include provisions that have the potential to generate commercialization of education and impede public access to education, this Law also creates uncertainty in the implementation of licensing in the education sector because it is further regulated in a Government Regulation. Considering the experience of the Job Creation Law which was formed by ignoring the principle of openness and minimal stakeholder participation, the public must be increasingly vigilant so as not to be

left behind for a second time in the process of forming implementing regulations - including Government Regulations related to the education sector.