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Reconstructing corporate obligations for community plantation development after Indonesia's Job Creation Law

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Abstract
The obligation of plantation companies to facilitate community plantation development constitutes an important legal instrument for distributing the economic benefits of plantation activities to surrounding communities. Following the enactment of the Job Creation Law, this obligation has undergone significant regulatory changes, particularly concerning the obligated entities, land sources, and implementation mechanisms. This study aims to analyse the regulation of corporate obligations to facilitate community plantation development after the enactment of the Job Creation Law and to compare it with the previous regulatory framework. This study employs a normative juridical method using statutory, conceptual, and comparative approaches. The post Job Creation Law framework continues to raise legal issues concerning the calculation of the 20 percent obligation, land availability and legal status, beneficiary determination, financing, supervision, and sanctions. The post Job Creation Law framework establishes a more detailed structure of corporate obligations through Government Regulation Number 26 of 2021 and Minister of Agriculture Regulation Number 18 of 2021, including credit, profit-sharing, financing, and partnership mechanisms. However, its effectiveness remains constrained by implementation challenges and insufficient protection of community interests. Therefore, a reconstruction of corporate obligations is necessary through measurable standards, meaningful community participation, transparent land determination, outcome-based supervision, and effective legal remedies.

Keywords: Corporate obligations, oil palm plantations, Job Creation Law

Introduction

The plantation sector occupies a strategic position in Indonesia's economic development. Within the palm oil plantation sector, it has contributed to job creation, regional economic activities, export revenues, and the development of downstream industries. Nevertheless, the expansion of palm oil plantations has also generated various legal and socioeconomic issues, particularly those concerning land tenure, community participation, the distribution of economic benefits, and agrarian conflicts. The development of large-scale plantation companies has created relationships that are not always balanced between companies and surrounding communities. In general, companies have greater access to capital, technology, markets, legal expertise, and institutional resources. By contrast, local communities often have weaker bargaining positions when negotiating the utilization of land and the distribution of economic benefits derived from plantation activities.

Indonesian law seeks to address these disparities through policies concerning the development of community plantations. The underlying principle is that communities surrounding plantation areas should not merely bear the social and environmental impacts of plantation activities but should also derive economic benefits from such activities. The obligation to facilitate the development of community plantations must be distinguished from corporate social responsibility (CSR). CSR may encompass various forms of corporate responsibility toward communities and the environment, whereas the obligation to develop community plantations derives directly from legislation governing the plantation sector and constitutes a specific legal obligation imposed upon plantation companies.

Law Number 39 of 2014 concerning Plantations constitutes one of the important legal bases governing this obligation. Article 58 paragraph (1) initially stipulated that plantation companies obtaining a Plantation Business License (Izin Usaha Perkebunan or IUP) or a Plantation Business License for Cultivation (Izin Usaha Perkebunan untuk Budi Daya or IUP-B) were required to facilitate the development of plantations for surrounding communities covering at least 20 percent of the total plantation area cultivated by the company. However, in practice, this obligation has not always been implemented effectively. Several studies on the development of plasma plantations have identified problems relating to implementation, government oversight, and the inadequate enforcement of sanctions against companies that have failed to fulfil their obligations. The implementation of a community plantation development policy through a partnership scheme in East Barito Regency demonstrates that, in principle, the policy can be accepted by both companies and local communities. Nevertheless, the involvement of local governments in imposing sanctions on companies that have failed to fulfil their obligations to develop community plantations remains weak. This indicates that the existence of a statutory obligation does not, in itself, guarantee its effective implementation.

Method

This study employs a normative juridical method using a statutory approach. The statutory approach is applied to analyse Law Number 39 of 2014 concerning Plantations as well as Law Number 11 of 2020 concerning Job Creation. The primary legal materials consist of statutory regulations. The secondary legal materials comprise scientific journals, academic research, theses, institutional reports, and literature related to plantation governance and smallholder development. The analysis is conducted qualitatively and prescriptively by identifying gaps and weaknesses in the

existing legal framework and subsequently formulating a model for legal reconstruction.

Materials

The Job Creation Law refers to Law Number 11 of 2020 concerning Job Creation, which was enacted to simplify various regulations in order to promote investment, create employment opportunities, and improve the ease of doing business in Indonesia. Subsequently, Law Number 11 of 2020 was enacted as Law Number 6 of 2023, following the issuance of Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 by the Government. The Job Creation Law adopts an omnibus law approach, namely, an approach that amends or harmonizes numerous provisions contained in various laws simultaneously.

Significant changes subsequently occurred following the enactment of the Job Creation Law. Law Number 11 of 2020 amended several provisions of Law Number 39 of 2014 concerning Plantations, including Article 58. The amendment to Article 58 is significant because it altered both the subject of the obligation and the basis for calculating the 20 percent obligation. Following the amendment, plantation companies obtaining business licensing for cultivation, where all or part of the land originates from areas designated for other uses outside "Hak Guna Usaha" (HGU) and/or areas resulting from the release of forest areas, are required to facilitate the development of community plantations covering at least 20 percent of the relevant land area.

This amendment raises an important legal issue, whether the Job Creation Law merely modified the technical aspects of implementing the 20 percent obligation or, instead, fundamentally altered the legal construction of the obligation imposed on plantation companies. This question has become increasingly important because, following the enactment of the Job Creation Law, the regulation of community plantation development is no longer contained in a single statutory provision but is distributed across the amended Plantation Law, Government Regulation Number 26 of 2021 concerning the Implementation of the Agricultural Sector, and Regulation of the Minister of Agriculture Number 18 of 2021 concerning the Facilitation of Community Plantation Development in Surrounding Areas.

Government Regulation Number 26 of 2021 provides further regulation concerning the obligation to facilitate community plantation development, including provisions governing the 20 percent obligation and the period for its implementation. Meanwhile, Regulation of the Minister of Agriculture Number 18 of 2021 provides more detailed regulation concerning the stages and procedures for facilitating community plantation development. Under this Ministerial Regulation, the facilitation of community plantation development consists of a preparation stage and an implementation stage. The preparation stage includes, among other activities, socialization, identification of prospective land, identification of prospective smallholders, establishment of smallholder institutions, fulfilment of administrative requirements, determination of prospective smallholders and prospective land, and the formulation of cooperation agreements.

Accordingly, following the enactment of the Job Creation Law, the obligation to develop community plantations has evolved from a relatively general statutory provision into a more structured legal and administrative process. Nevertheless, the existence of more detailed regulations has not completely resolved the underlying legal issues. Questions remain concerning how the 20 percent obligation should be calculated, how land should be determined where overlapping claims exist, who is legally entitled to become a beneficiary, how financing risks should be allocated between companies and communities, and what constitutes corporate legal compliance.

These issues are significant because compliance can be examined from two perspectives. First, formal compliance, which occurs when a company has fulfilled administrative requirements, such as conducting socialization activities, preparing lists of prospective smallholders, identifying land, executing cooperation agreements, and submitting reports. Second, substantive compliance, which occurs when communities actually obtain productive plantations, receive reasonable economic benefits, and have meaningful participation in the management of the plantations.

Results

1. The Job Creation Law

One of the State's roles in promoting the welfare of its citizens is reflected in the imposition of an obligation on plantation companies to facilitate the development of community plantations. This obligation was initially introduced in the early 1980s under the Perkebunan Inti Rakyat (PIR) scheme, or nucleus estate–smallholder scheme. Over time, the obligation to facilitate the development of community plantations, commonly referred to as plasma plantations, was further institutionalized through Law Number 18 of 2004 concerning Plantations, which was subsequently amended by Law Number 39 of 2014. The obligation was also regulated through its implementing regulations, including Regulation of the Minister of Agriculture Number 26 of 2007 concerning Guidelines for Plantation Business Licensing, which was subsequently amended by Regulation of the Minister of Agriculture Number 98 of 2013.

Currently, the regulatory framework governing the obligation to facilitate the development of plasma plantations has been amended through Law Number 11 of 2020 concerning Job Creation, as subsequently amended through Government Regulation in Lieu of Law Number 2 of 2022 and enacted as Law Number 6 of 2023. The obligation is further elaborated in its implementing regulations, namely Government Regulation Number 26 of 2021 concerning the Implementation of the Agricultural Sector and Regulation of the Minister of Agriculture Number 18 of 2021 concerning the Facilitation of Community Plantation Development in Surrounding Areas. These regulations are expected to promote a sense of justice for local communities while providing legal certainty for plantation companies, thereby creating a secure and conducive investment climate.

The comparison of the provisions concerning the obligation to facilitate the development of community plantations in Law Number 39 of 2014 concerning Plantations and Law Number 11 of 2020 concerning Job Creation, as subsequently amended through Government Regulation in Lieu of Law Number 2 of 2022 and enacted as Law Number 6 of 2023, is presented below:

Article	Law No. 39 of 2014 Concerning Plantations	Law No. 11 of 2022
Article 58	▪ Paragraph (1): A plantation company holding a Plantation Business License (Izin Usaha Perkebunan or IUP) or a Plantation Business License for Cultivation (Izin Usaha Perkebunan untuk Budi Daya or IUP-B) is required to facilitate the development of community plantations in surrounding areas covering at least 20% of the total plantation area cultivated by the plantation company. ▪ Paragraph (2): The facilitation of community plantation development as referred to in paragraph (1) may be carried out through credit schemes, profit-sharing arrangements, or other forms of financing agreed upon in accordance with the provisions of laws and regulations. ▪ Paragraph (3): The obligation to facilitate plantation development as referred to in paragraph (1) must be fulfilled no later than three (3) years after the granting of the Right of Cultivation (Hak Guna Usaha or HGU). ▪ Paragraph (4): The facilitation of community plantation development as referred to in paragraph (1) must be reported to the central government and regional governments in accordance with their respective authorities.	▪ Paragraph (1): A plantation company obtaining a business license for cultivation, where all or part of the land originates from: a. other-use areas (Area Penggunaan Lain) located outside the Right of Cultivation (Hak Guna Usaha or HGU); and/or b. Areas originating from the release of forest areas, is required to facilitate the development of community plantations in surrounding areas covering 20% (twenty percent) of the relevant land area. ▪ Paragraph (2): The facilitation of community plantation development as referred to in paragraph (1) may be carried out through credit schemes, profit-sharing arrangements, other forms of partnership, or other forms of financing agreed upon in accordance with the provisions of laws and regulations. ▪ Paragraph (3): The obligation to facilitate plantation development as referred to in paragraph (1) must be fulfilled no later than three (3) years after the granting of the Right of Cultivation (Hak Guna Usaha or HGU). ▪ Paragraph (4): The facilitation of community plantation development as referred to in paragraph (1) must be reported to the central government and regional governments in accordance with their respective authorities.

Based on the comparison above, it can be observed that there are differences and amendments to paragraphs (1) and (2) of Article 58, particularly concerning plantation companies that have obtained business licensing for cultivation where all or part of the land originates from other-use areas located outside the Right of Cultivation (Hak Guna Usaha or HGU) and/or areas originating from the release of forest areas. Such companies are required to facilitate the development of community plantations in surrounding areas covering 20% (twenty percent) of the relevant land area. In addition, a new provision regulates other forms of partnership that plantation companies may implement in fulfilling their obligation to facilitate the development of community plantations.

Under Regulation of the Minister of Agriculture of the Republic of Indonesia Number 98/Permentan/OT.140/9/2013 concerning Guidelines for Plantation Business Licensing, Article 15 paragraph (1) stipulates that "plantation companies applying for a Plantation Business License for Cultivation (IUP-B) or Plantation Business License (IUP) covering an area of 250 (two hundred and fifty) hectares or more are required to facilitate the development of community plantations in surrounding areas covering at least 20% (twenty percent) of the area covered by the IUP-B or IUP.

However, the aforementioned provisions are not yet fully aligned with regulations in the land sector, which also establish the obligation to facilitate the development of plasma plantations as one of the requirements for plantation companies to obtain land rights in the form of a Right of Cultivation (HGU). This requirement is stipulated in Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for the Determination of Management Rights and Land Rights. Article 82 paragraph (1) provides that, where the applicant is a legal entity in the form of a limited liability company, including a state-owned or regionally owned enterprise, and the land is intended for plantation purposes, the applicant is required to facilitate the development of community plantations in surrounding areas covering 20% (twenty percent) of the land area for which the HGU is being applied, for the benefit of surrounding communities.

Paragraph (2) provides that, where the obligation to develop community plantations as referred to in paragraph (1) has not yet been fulfilled, the obligation to facilitate community plantation development shall be implemented upon the extension or renewal of the land right. Paragraph (3) provides that the obligation to facilitate community plantations in surrounding areas as referred to in paragraph (1) shall be implemented in accordance with the provisions of laws and regulations governing the plantation sector.

Prior to the enactment of the Job Creation Law, Article 58 paragraph (1) of Law Number 39 of 2014 required plantation companies holding an IUP or IUP-B to facilitate the development of community plantations in surrounding areas covering at least 20% of the total plantation area cultivated by the company. This provision had three principal characteristics. First, the subject of the obligation was determined on the basis of the company's possession of an IUP or IUP-B. Second, the obligation was established quantitatively, namely at a minimum of 20%. Third, the basis for calculation was linked to the total plantation area cultivated by the company. This legal construction was relatively broad because it did not specifically distinguish the obligation based on the origin or legal status of the plantation land.

Government Regulation Number 26 of 2021 constitutes an important instrument for bridging the statutory obligation and its technical implementation. The regulation governs the administration of the agricultural sector and provides further provisions concerning the facilitation of community plantation development. It reinforces the obligation to develop community plantations within the post–Job Creation Law legal framework and provides the basis for more detailed regulation through Regulation of the Minister of Agriculture Number 18 of 2021. This is important because legal obligations require not only substantive standards but also clear procedures and implementation time limits. Plantation companies should not be permitted to

indefinitely postpone the development of community plantations while continuing to derive economic benefits from their plantation activities.

2. Legal Issues Following the Enactment of the Job Creation Law

The first issue concerns the modification and narrowing of the subjects subject to the obligation. Following the amendment to Article 58, the obligation is linked to the origin of the land. This raises a normative question: Should communities located around plantation areas receive different levels of legal protection merely because the origin of the company's land differs? From the perspective of distributive justice, this issue requires further examination. The social impacts of plantation activities may be experienced by communities regardless of the legal status or origin of the company's land. Therefore, such differentiation must be supported by a clear policy rationale.

The second issue concerns the basis for calculating the obligation. In simple terms:

$$20\% \times \text{land area serving as the basis for the obligation} = \text{Minimum area of community plantations}$$

However, it must be clearly determined what is meant by the relevant land area. Should it be based on the area specified in the business license, the HGU area, the area actually planted, the area designated for other uses (Area Penggunaan Lain), or the area resulting from the release of forest areas. Without clear criteria, the potential for disputes among companies, communities, and government authorities will remain high.

3. Reconstruction of Corporate Obligations

Companies should be required to transparently disclose the basis for calculating the 20% obligation. Such calculations should be integrated with business licensing, land administration documents, HGU documentation, and plans for community plantation development. Before commencing plantation operations, companies should be required to prepare a community plantation development plan approved by the government. At a minimum, the plan should specify the location, area, beneficiaries, financing arrangements, development schedule, institutional framework, management scheme, and projected economic benefits.

4. Community Plantations as an Instrument of Distributive Justice

The obligation to develop community plantations can be understood as an instrument of distributive justice. Plantation companies derive economic benefits through access to land and natural resources. At the same time, local communities may experience various social impacts arising from plantation activities. The 20% obligation constitutes one mechanism for distributing a portion of these economic benefits to surrounding communities.

However, distributive justice is not merely a matter of land allocation. For example, a community may receive plantation land equivalent to 20% of the relevant area but simultaneously bear excessive debt, lack control over plantation management, have limited access to information concerning fresh fruit bunch (FFB) prices, lack knowledge of the cost structure, and receive only a small proportion of the economic benefits. Under such circumstances, formal compliance may have been achieved, but distributive justice has not necessarily been realized. Therefore, legal reconstruction should shift the regulatory focus from merely fulfilling the 20% land allocation requirement toward ensuring effective participation and equitable economic benefits for the communities concerned.

Conclusion

The obligation of plantation companies to facilitate the development of community plantations has undergone significant changes following the enactment of the Job Creation Law. Prior to the Job Creation Law, Article 58 of Law Number 39 of 2014 generally required plantation companies holding an IUP or IUP-B to facilitate the development of community plantations covering at least 20% of the total plantation area cultivated by the company. Following the enactment of the Job Creation Law, the legal construction of this obligation was modified by linking it to business licensing for cultivation and to specific origins of the company's land. At the same time, the regulatory framework has become more detailed through Government Regulation Number 26 of 2021 and Regulation of the Minister of Agriculture Number 18 of 2021.

Accordingly, the current regulatory framework reflects both legal continuity and transformation. Continuity is evident in the retention of the 20% principle and the financing and partnership mechanisms. Transformation, meanwhile, is reflected in the introduction of criteria concerning the origin of the land, more detailed implementation procedures, and a strengthened role for the government in facilitating community plantation development.

Nevertheless, several legal issues remain, including the basis for calculating the 20% obligation, land availability, the determination of beneficiaries, financing mechanisms, contractual protection, government oversight, and law enforcement. Therefore, a reconstruction of the corporate obligation is necessary. The 20% requirement may be retained as a minimum quantitative standard but should be complemented by substantive standards concerning legal certainty over land, transparency in calculation, legitimacy of beneficiaries, adequate financing, meaningful community participation, productive plantation development, transparency in the distribution of economic benefits, and effective government oversight.

Accordingly, the concept of corporate compliance should shift from merely asking whether a company has fulfilled the administrative requirement of allocating 20% of the relevant land to determining whether the company has actually realized the legal, economic, and social objectives underlying the obligation to develop community plantations. This approach can strengthen legal certainty for plantation companies while simultaneously enhancing legal protection and the welfare of communities surrounding plantation areas.

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