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Reexamining the Legal Framework of the Job Creation Act in Relation to Increased Infrastructure Investment in the Maluku Islands Region

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Abstract

Infrastructure investment is essential for regional economic growth; however, the implementation of Indonesia's Job Creation Law in archipelagic regions such as Maluku presents legal and regulatory challenges. This study aimed to examine the legal framework governing infrastructure investment under Law Number 6 of 2023 and formulate a more responsive legal reconstruction that accommodates the geographical, ecological, and socio-cultural characteristics of the Maluku Islands. The study employed a normative juridical method using statutory, conceptual, and case approaches. Primary, secondary, and tertiary legal materials were collected through literature reviews and analyzed qualitatively through legal interpretation and argumentation. The findings showed that risk-based business licensing, land acquisition, and environmental protection provisions remained oriented toward mainland conditions and inadequately addressed small-island ecosystem vulnerability, regional isolation, customary law, and communal land rights. The Banda Neira Port case demonstrated that these regulatory weaknesses contributed to legal uncertainty, land conflicts, project delays, and environmental risks. The study concluded that legal reform should incorporate an archipelagic ecosystem vulnerability index and a regional isolation index, strengthen customary deliberation mechanisms in land acquisition processes, provide compensation that reflects the social and cultural values of communal land, and require Environmental Impact Assessments (EIAs) for infrastructure projects affecting ecologically sensitive island and coastal areas to ensure equitable development.

INTRODUCTION

Infrastructure development is one of the primary prerequisites for regional economic growth, including in archipelagic areas such as Maluku Province, which consists of more than one thousand islands with distinctive geographical, ecological, and socio-cultural characteristics (Hariri et al., 2022). Through Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law), the Government of Indonesia introduced legal reforms in the areas of risk-based business licensing, land acquisition, and environmental protection to accelerate and increase investment, including infrastructure investment. Normatively, the Job Creation Law was expected to provide legal certainty, ease of doing business, and fairness across all regions of Indonesia, including archipelagic regions that have historically faced limited accessibility and infrastructure development challenges (Budiartha, 2020; Farnsworth, 2010; Hershkoff, 1998; Pratama & Arum, 2024; Putri, 2026).

However, the reality presents a different situation. The regulation of risk levels under Government Regulation Number 5 of 2021 remained based on general parameters, such as

population density and business scale, without adequately considering the vulnerability of small-island ecosystems, regional isolation, or the existence of customary law governing communal (ulayat) land tenure. This condition has affected infrastructure projects in Maluku, including the Banda Neira Port Project, which may be classified at a lower risk level than similar projects in Java despite the greater ecological sensitivity of Maluku's coastal ecosystems. Furthermore, the land acquisition provisions under Articles 88–120 of the Job Creation Law, which expand the scope of public interest, accelerate the land acquisition process, and establish compensation mechanisms based on the Tax Object Sale Value (Nilai Jual Objek Pajak), have encountered challenges in practice due to customary decision-making mechanisms (saniri negeri) and the recognition of communal land rights held by the Kapitan Clan Indigenous Community over the project site. These conditions have contributed to disputes that delayed project completion for several years (Ghannouchi, 2022; Ibrahim, 2016; Raza & Ahmed, 2025).

The gap between legal expectations and practical implementation represents a fundamental issue in legal studies, particularly in assessing the effectiveness of legal norms (Rahman & Tuhumury, 2024; Saleh et al., 2025). On the one hand, law is viewed as an ideal system of rules that embodies the values of legal certainty, justice, and utility pursued by lawmakers. On the other hand, social reality reflects how these norms operate in practice, including whether they are implemented, complied with, or encounter deviations. The wider the gap between legal ideals and their implementation, the lower the effectiveness of the legal framework, because a norm that appears ideal in written form does not automatically achieve its objectives without appropriate institutional structures and compatibility with the social conditions it regulates. In the context of the Job Creation Law, the intended objective was to establish a certain, fair, and sustainable investment climate throughout Indonesia, including the Maluku archipelago (Hadi et al., 2023; Jayawibawa, 2024). However, practical conditions indicate that these legal norms were primarily formulated from a mainland-oriented perspective, resulting in legal uncertainty, agrarian conflicts with indigenous communities, and potential coastal environmental degradation when applied in archipelagic regions.

Previous studies on the Job Creation Law have generally focused on labor regulation, general ease of doing business, or environmental implications in mainland regions. However, limited studies have specifically examined how risk-based licensing, land acquisition, and environmental protection provisions under the Job Creation Law interact with the characteristics of archipelagic regions and the existence of customary law, particularly in relation to infrastructure development disputes such as the Banda Neira Port Project in Maluku. This research gap represents the academic basis and urgency of this study. Unlike previous research that has primarily identified normative problems, this article further proposes a contextual reconstruction of legal arrangements for archipelagic regions in regulating infrastructure investment in Maluku.

To analyze these issues, this study employed four complementary theoretical foundations. First, Gustav Radbruch's theory of legal certainty was used to assess the extent to which the provisions of the Job Creation Law provided normative clarity, regulatory consistency, and legal protection guarantees for parties involved in infrastructure investment in archipelagic regions (Johnstone, 2007; Llewellyn, 2006; Menkel Meadow, 2007; Murphy, 2010; Philpott, 2012). Second, Jeremy Bentham's theory of legal utility, which views law as

an instrument for achieving the greatest benefit for society, was used to analyze whether the simplification of licensing, land acquisition, and environmental regulations under the Job Creation Law produced balanced benefits among infrastructure investment growth, environmental protection, and community welfare in archipelagic regions (Johnstone, 2007; Llewellyn, 2006; Menkel Meadow, 2007; Murphy, 2010; Philpott, 2012). Third, the theory of progressive law developed by Philip Nonet and Philip Selznick and further developed by Satjipto Rahardjo served as a basis for emphasizing that law must adapt to changing societal needs and avoid excessive formalistic application of legal norms. Fourth, Mahfud MD's theory of legal politics was used to examine the policy direction underlying the formulation of the Job Creation Law (Johnstone, 2007; Llewellyn, 2006; Menkel Meadow, 2007; Murphy, 2010; Philpott, 2012). Through the perspective of legal politics, this study analyzed whether the regulatory choices adopted by lawmakers proportionally accommodated national development objectives, including the interests of archipelagic regions as integral parts of the Unitary State of the Republic of Indonesia.

Based on the foregoing discussion, this article aimed to analyze the legal arrangements under the Job Creation Law in relation to increasing infrastructure investment in the archipelagic region of Maluku and to formulate a legal reconstruction that is more responsive to the region's geographical, ecological, and socio-cultural characteristics. The proposed reconstruction is expected to serve as a reference for improving infrastructure investment policies in archipelagic regions of Indonesia more broadly.

METHOD

This study employed a normative juridical research method to analyze legal norms governing the enhancement of infrastructure investment in archipelagic regions under Law Number 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law. The study applied statutory, conceptual, and case approaches. The statutory approach examined laws and regulations related to investment, infrastructure development, and archipelagic regional development. The conceptual approach analyzed legal concepts related to legal certainty, investment, regional development, and regulatory fairness, while the case approach examined the implementation of legal norms through relevant court decisions and investment practices to evaluate the effectiveness of existing regulations (Johnstone, 2007; Llewellyn, 2006; Menkel Meadow, 2007; Murphy, 2010; Philpott, 2012).

The legal materials consisted of primary, secondary, and tertiary legal sources. Primary legal sources included relevant laws, regulations, and court decisions, while secondary legal sources comprised books, scholarly journal articles, research findings, and expert opinions. Tertiary legal sources included legal dictionaries, encyclopedias, and other supporting references. The legal materials were collected through literature reviews and analyzed qualitatively using legal interpretation and argumentation methods to identify legal issues, evaluate existing regulations, and formulate a reconstruction of legal arrangements that could support increased infrastructure investment in the Maluku archipelagic region while ensuring legal certainty and equitable development.

RESULTS AND DISCUSSION

Legal Arrangements Under the Job Creation Law for Increasing Infrastructure Investment in the Maluku Archipelago

Article 12: Risk-Based Business Licensing

One of the fundamental changes introduced by Law Number 6 of 2023 on Job Creation is the adoption of a risk-based approach to business licensing under Article 12, under which licensing is granted according to the level of risk a business activity poses—classified as low, low-medium, high-medium, or high risk—rather than solely by business type, with the aim of simplifying licensing bureaucracy and creating a more efficient investment climate. However, the Law does not provide an operational definition of "risk," leaving its scope unclear and its classification highly dependent on implementing regulations and government interpretation, which undermines predictability for infrastructure investors.

Risk criteria are instead delegated to Government Regulation Number 5 of 2021, whose general parameters—investment value, workforce size, and potential impact on health, safety, and the environment—do not account for archipelagic characteristics such as geographic isolation, small-island ecosystem vulnerability, infrastructure limitations, or customary law. Consequently, infrastructure projects in outer small islands are frequently classified as "medium" risk requiring only a standard certificate, while comparable projects in Java, despite less sensitive ecosystems, are classified as "high" risk requiring full permits and comprehensive environmental impact assessments (AMDAL)—a clear example of mainland-oriented bias, since regions with more sensitive ecosystems, such as Maluku, should logically receive stricter rather than looser oversight (Johnstone, 2007; Llewellyn, 2006; Menkel Meadow, 2007; Murphy, 2010; Philpott, 2012).

Assessed against Gustav Radbruch's theory of legal certainty, which requires clarity of norms, predictability, and freedom from divergent interpretation, Article 12's undefined "risk level" concept—compounded by risk parameters at the government-regulation level that ignore archipelagic characteristics—fails to provide equal legal certainty across Indonesia's regions. Viewed through Satjipto Rahardjo's progressive law theory, while the Online Single Submission (OSS) reform is commendable for cutting bureaucratic red tape, progressive law places human welfare, not mere administrative efficiency, at the center of legal purpose; a risk-based system that disregards customary communities and ecological vulnerability therefore loses its progressive character by prioritizing accelerated investment over protection of directly affected communities (Johnstone, 2007; Llewellyn, 2006; Menkel Meadow, 2007; Murphy, 2010; Philpott, 2012).

Articles 88–120: Land Acquisition

Articles 88–120 substantially amend Law Number 2 of 2012 on Land Acquisition for Development in the Public Interest, with significant implications for indigenous communities' rights over customary (ulayat) land. Article 154 broadens the definition of "public interest" beyond clearly public projects (toll roads, ports, airports, hospitals, schools) to include privately funded projects that receive government support—making it easier for private investors in Maluku to invoke "public interest" to access expedited land acquisition mechanisms, leaving customary communities with weak bargaining positions.

Article 156 shortens the maximum land acquisition period from 583 days (about 1.6 years) to 249 days (about 8 months) by eliminating steps previously important for public participation and negotiation—a change poorly suited to Maluku, where customary decision-making through the saniri negeri (customary deliberative council) requires weeks or months to reach consensus. Article 158 shifts compensation from independently assessed market value to the Tax Object Sale Value (NJOP), which in remote areas like Maluku can be 5–10 times lower than market value; in the Banda Neira Port case, NJOP was set at IDR 150,000 per square meter against a market value of IDR 1–2 million per square meter, prompting customary communities to reject compensation that disregards the social, cultural, and spiritual value of ulayat land. Article 160 shifts dispute resolution from the courts to arbitration, which is faster and cheaper but more closed and less protective of weaker parties who lack the resources and expertise arbitration demands.

From the perspective of legal-certainty theory, the broadened "public interest" concept blurs the boundary between public and private projects and opens room for abuse, while shortened timelines undermine procedural certainty for communities reliant on customary deliberation. Assessed against Jeremy Bentham's utilitarian theory, accelerated land acquisition delivers infrastructure and investment benefits, but these gains rarely translate into improved welfare for the indigenous communities who lose their land, so the law's benefit remains partial rather than reflecting "the greatest happiness of the greatest number." Under John Rawls's justice-as-fairness framework, the state owes greater protection to the most vulnerable groups; since indigenous communities depend on ulayat land for their livelihood, cultural identity, and communal continuity, accelerating land acquisition without adequate participation or culturally reflective compensation falls short of both distributive and substantive justice (Johnstone, 2007; Llewellyn, 2006; Menkel Meadow, 2007; Murphy, 2010; Philpott, 2012).

Articles 41–87: Environmental Protection

Articles 41–87 amend Law Number 32 of 2009 on Environmental Protection and Management, most significantly by shifting many projects from the comprehensive AMDAL (Environmental Impact Analysis) process to the simpler UKL-UPL (Environmental Management and Monitoring Effort) framework. Previously, AMDAL was mandatory for any project expected to have a significant environmental impact and required 6–12 months with broad public participation, including affected communities, NGOs, and independent experts. Under the Job Creation Law, AMDAL is required only for high-risk projects, while medium-risk projects—including many infrastructure projects—need only the simpler UKL-UPL, which can be self-prepared by the project proponent without independent experts or broad public participation.

Analysis of Government Regulation Number 22 of 2021 shows that infrastructure projects in Maluku are frequently classified as "medium risk" based on population density, sufficient for UKL-UPL, whereas comparable projects in Java are classified as "high risk" and require full AMDAL—again reflecting mainland bias. Population density, the dominant parameter, favors densely populated Java while ignoring that Maluku's coral reefs, mangroves, seagrass meadows, and endemic species make its ecosystems far more sensitive and any ecological damage far harder to reverse; logically, the more sensitive Maluku ecosystem should receive stricter, not looser, environmental oversight.

From the standpoint of legal-certainty theory, using administrative indicators such as population density and business scale—without regard to archipelagic ecological characteristics—fails to guarantee adequate legal certainty, allowing projects with major potential impact on Maluku's coastal ecosystems to face lighter environmental requirements than comparable projects elsewhere. Under utility theory, licensing simplification brings efficiency and faster development, but that economic benefit is not optimally realized if eased investment increases the risk of damaging ecosystems that coastal communities depend on for their livelihoods. From the perspective of distributive and ecological justice, using population density as the primary risk parameter means less-populated but ecologically more vulnerable regions receive weaker environmental protection, so island communities bear a disproportionate share of environmental-damage risk relative to the development benefits they receive; environmental protection under the Job Creation Law should therefore weigh not only investment efficiency but also intergenerational justice in safeguarding the ecosystems on which indigenous and coastal communities depend.

Implementation of the Job Creation Law in Increasing Infrastructure Investment: The Banda Neira Port Project

The Banda Neira Port development project, a National Strategic Project located on Banda Island, Central Maluku Regency, Maluku Province, carries not only economic significance but also historical and cultural weight given the island's role as a 16th–18th century nutmeg and mace trading hub. The IDR 320 billion project is financed through a collaborative scheme comprising 60% from the State Budget (APBN) and 20% each from the Maluku Provincial and Central Maluku Regency budgets (APBD), with PT Pelabuhan Indonesia IV (Persero) serving as both investor and main contractor over a planned three-year period (2022–2024). As of September 2024, however, the project remained significantly delayed, with physical progress at only 73% against the targeted 100%.

Technically, the project encompasses a 150-meter, −8-meter-deep pier, a 2,000-square-meter passenger terminal, 100-vehicle parking, a 2-kilometer access road, and loading facilities including cranes and conveyor belts dedicated to nutmeg, the region's flagship commodity. Its stakeholder configuration is similarly extensive, spanning central government bodies (the Ministry of Transportation, the Ministry of Public Works and Housing, and the Ministry of Investment/BKPM), the Maluku Provincial and Central Maluku Regency governments, contractor PT Wijaya Karya (Persero) Tbk, the Banda Island indigenous community organized under the Marga Kapitan customary institution, and NGOs including Walhi Maluku and JATAM Maluku, who monitored the project's environmental and social dimensions.

Conflict Timeline

The project's conflict dynamics trace back to 2021, when the Central Maluku Regency government included it in the 2021–2026 Regional Medium-Term Development Plan; an independent feasibility study at that stage identified a 5-hectare land requirement categorized as "state land" under the prevailing spatial plan—a categorization that later proved to be the root of the project's fundamental problems. Initial community outreach in January–March 2022 was met with enthusiasm over anticipated economic benefits, but was not accompanied by complete impact information, as the environmental impact assessment (AMDAL) had not yet been finalized.

Problems surfaced during land acquisition between April and December 2022, when field verification revealed that 85% of the required land was claimed by the Marga Kapitan indigenous community as communal ulayat land—contradicting the planning documents' designation of unclaimed state land. This discrepancy triggered escalating conflict in January–March 2023, marked by demonstrations demanding that the project be halted, that formal customary dialogue be held through the saniri negeri, and that Marga Kapitan's ulayat rights be formally recognized; initial mediation by the Regency government failed, largely because it engaged select individuals rather than the formal customary institution.

The failed mediation led PT Pelabuhan Indonesia IV to temporarily halt the project in April 2023, by which point physical progress stood at only 45% against a targeted 60%, with initial estimated losses of IDR 50 billion, largely from land purchases later claimed as ulayat land. The Maluku Provincial Government subsequently formed a cross-agency mediation team (May 2023–August 2024) involving the Investment Office, Transportation Office, and the Maluku Customary Institution; although this team facilitated meetings between the Regency government and Marga Kapitan, negotiations remained deadlocked over a fundamental paradigm gap—the government favoring NJOP-based financial compensation, and the indigenous community prioritizing recognition of ulayat rights over monetary compensation alone—leaving the project stalled at 73% progress as of September 2024.

Legal Analysis

Analyzed through Gustav Radbruch's theory of legal certainty, the case shows that Job Creation Law implementation has not achieved legal certainty in land acquisition involving customary territory: compensation provisions are oriented toward individually held land assessable via NJOP, while the communal nature of ulayat land receives inadequate regulation, leaving government and investors unable to anticipate indigenous claims even where land is administratively categorized as state land.

Viewed through Hans Kelsen's legal theory, the dispute reflects the meeting of two systems of differing legitimacy—state law and customary law Depari. (2024). While the Job Creation Law formally ranks higher within the national legal hierarchy, this construction does not fully reflect social reality in the Maluku archipelago, where land legitimacy for indigenous communities derives not from state recognition but from customary norms passed down through generations; the dispute is therefore not merely a matter of which norm ranks higher, but of recognizing a living legal system still practiced by indigenous communities, requiring an approach that accommodates legal pluralism.

Under Moh. Mahfud MD's theory of legal politics, the dispute reveals a mainland bias in the Job Creation Law's formulation and implementation: land acquisition provisions are built around mainland characteristics dominated by individual land ownership with administrative certainty through land titles, then applied uniformly nationwide without accounting for archipelagic regions that still recognize communal customary land tenure—so that administratively unregistered land is treated as state land even as indigenous communities regard it as ulayat land carrying historical, social, cultural, and spiritual value, reinforcing the argument that mainland-oriented development legal politics risks producing injustice in infrastructure investment across Indonesia's island regions, particularly Maluku.

Social, Economic, and Environmental Impacts

The project's delay has produced consequences well beyond the legal dispute itself. Socially, the dispute has polarized the Banda Neira community between those who support the port for its expected connectivity, employment, and economic growth, and those who oppose it over fears of losing ulayat rights, shrinking indigenous living space, and eroding customary values, while insufficient community involvement from the outset has strained relations between the Regency government and customary institutions and heightened distrust.

Economically, the prolonged delay has cost investors who have already committed funds to land acquisition amid legal uncertainty from emerging ulayat claims, cost the regional government funds spent on land clearance without the anticipated infrastructure being realized, and cost the community the anticipated economic benefits of the port—new jobs, increased trade activity, tourism growth, and higher incomes from related economic activity.

Environmentally, even preparatory activities ahead of full construction have already altered the coastal ecosystem, including damage to nearby coral reefs—a matter of particular concern given coral reefs' role in sustaining marine biodiversity and supporting coastal communities dependent on fisheries and marine tourism, with the risk of further environmental damage growing if construction proceeds without a comprehensive environmental study that accounts for the archipelago's ecological carrying capacity. Altogether, these findings indicate that infrastructure development in archipelagic regions requires not only legal certainty in land tenure but also adequate environmental protection, so that development benefits can be sustained without sacrificing local natural resources and community livelihoods.

CONCLUSION

The legal framework established by Law Number 6 of 2023 concerning Job Creation is not yet fully capable of supporting increased infrastructure investment in the Maluku archipelago region. Although the regulation aims to facilitate ease of doing business and enhance legal certainty through streamlined licensing processes, its substantive provisions rely on a generalized approach that does not adequately accommodate the specific characteristics of archipelagic regions. This limitation is evident in the regulations governing risk-based business licensing, land acquisition, and environmental protection, which do not sufficiently consider regional isolation, the vulnerability of coastal and small-island ecosystems, or the role of customary law and communal land rights (hak ulayat) in infrastructure development. Therefore, the legal framework requires refinement through the incorporation of an archipelagic ecosystem vulnerability index and a regional isolation index as parameters for determining business licensing risk levels; the strengthening of customary deliberation (musyawarah adat) as a mandatory stage in land acquisition processes, accompanied by compensation mechanisms that consider the social, cultural, and economic values of communal land; and the explicit requirement for Environmental Impact Assessments (Analisis Mengenai Dampak Lingkungan [AMDAL]) for infrastructure projects that may affect ecologically sensitive coastal and small-island ecosystems. The reconstruction of these regulations is expected to promote infrastructure investment policies that are more adaptive to the characteristics of archipelagic regions, provide more effective protection for communities and the environment, and establish a balance among economic development objectives, environmental sustainability, and respect for the rights of customary law communities.

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