

The Legal Aspects Of Regulating The Submission Of Mining Business Permits In The Perspective Of The Mineral And Coal Mining Law

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Abstract : This research explores the impacts of changes in the Mineral and Coal Mining Law, specifically from Law No. 4 of 2009 to Law No. 3 of 2020, on the mining sector in Indonesia. The background includes concerns about the potential centralization of authority, the removal of social responsibilities from mining companies, and perceived biases in environmental management favoring mining corporations. The methodology employed a normative approach, analyzing legislative changes and relevant literature to understand their implications. The findings indicate that the centralization of authority could pose challenges to the efficient and effective management of mining activities across Indonesia. The elimination of social responsibilities from mining companies may worsen the social and economic conditions of communities around mining areas. Environmental management dynamics, particularly those favoring mining companies, especially regarding reclamation plan requirements, could jeopardize environmental sustainability. In conclusion, changes in the Mineral and Coal Mining Law have significant implications for Indonesia's mining sector. Key challenges include the potential hindrance to efficient management due to centralization, the exacerbation of community welfare issues through the removal of social responsibilities, and environmental management dynamics that might threaten ecological sustainability. Continuous evaluation and adjustments within the regulatory framework are essential to strike a balance between encouraging investment, protecting communities, and preserving the environment in the Indonesian mining sector.

Key Words : *Mineral and Coal Mining Law; Centralization of Authority; Mining Permits; Environmental Management Dynamics;*

1. Introduction

Indonesia, as a megabiodiversity country with abundant natural resources, has directed its attention towards the utilization of mineral resources as one of the main pillars of national development (Nasir et al., 2023). The principle of state sovereignty over land, water, and natural resources, as stipulated in the 1945 Constitution of the Republic of Indonesia (UUD 1945), provides the legal basis for the management of these natural resources with the primary goal of achieving the prosperity of the people (Marilang, 2016). Within the regulatory framework, Law Number 3 of 2020 concerning Mineral and Coal Mining plays a central role in regulating and overseeing mineral resource exploitation activities in Indonesia. The stages of mining, including general investigation, exploration, construction, mining, processing, and post-mining activities, have undergone significant transformation following the enactment of this law (Yanto et al., 2023). This legislative transformation is not merely limited to technical changes in the mining sector. Instead, it involves a series of holistic transformations that encompass economic, governance, social, and environmental aspects.

A prominent researcher, Abra El Talattov, from the Institute for Development of Economics and Finance (INDEF), carefully identifies the impacts of these changes in three critical main dimensions (Bill Sullivan et al., 2013). First, in the economic and governance dimension, regulatory changes have significant implications for the economic structure of the mining sector. Shifts in authority and changes in regulatory mechanisms can alter investment dynamics, capital flows, and the overall economic responsibility of the mining sector. Second, the social dimension becomes a critical focus in these regulatory changes. Social implications include changes in community dynamics around mining areas, potential social conflicts, and alterations in job structures and profit distribution at the local level. These impacts can be significant in assessing community well-being and may create resistance to such changes (Farisi, 2022). Third, changes in the environmental dimension encompass their influence on environmental sustainability. Environmental implications include adjustments in reclamation practices, ecological impact regulations, and waste management policies. This transformation has the potential to reshape approaches to ecosystem recovery and environmental impact mitigation from mining activities.

In the evolution of mining, since the enactment of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, and Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities, understanding the implications of these regulatory changes has become crucial, especially in the context of the transfer of authority from regional governments to the central government, significantly influencing licensing and supervision policies in mining areas (Yanto et al., 2023). Although this restructuring effort aims to create a more conducive investment climate, careful attention must be focused on its impact on the well-being of communities around mining areas.

In other words, this process culminates with the establishment of the Mineral and Coal Mining Law, which concretely reinstates the dominance of the central government in managing the mining sector. The clarity in Article 4, Paragraph (2) of the Mineral and Coal Mining Law marks a trend of recentralization in Indonesia's legal and policy framework for mining. Therefore, there is a need for a comprehensive evaluation of the social, economic, and environmental impacts of these regulatory changes (Sanduan, 2022).

Holistically, these regulatory changes indicate an imbalance toward environmental conservation and appear to deviate from the primary goal of improving the well-being of the broader society. There are significant risks associated with the enactment of the Mineral and Coal Mining Law, encompassing four main issues. Firstly, communities lose the capacity to voice objections to the Central Government, as mining authority and

jurisdiction now lie under the central government. Regional governments no longer have the authority to take action against mining companies that violate regulations, such as revoking Mining Business Permits (IUP) (Ibrahim, 2023). This rule is not rational within the framework of good governance, where local communities residing in mining areas lose control over the negative impacts of mining activities, both environmentally and in terms of land dispute conflicts.

Secondly, criminal penalties pose a serious threat to individuals opposing mining companies. As stipulated in Article 162 of the Mineral and Coal Mining Law, which states that anyone obstructing or disrupting mining activities conducted by the holder of IUP, IUPK, IPR, or SIPB that meets the requirements as specified in Article 136 paragraph (2) shall be punished with imprisonment for a maximum of 1 (one) year or a fine of up to Rp100,000,000.00 (one hundred million Indonesian rupiahs). While providing legal support for mining companies, this article also opens the potential for the criminalization of communities seeking to protect their environment from the impacts of mining.

Thirdly, mining companies seem to be "indulged" by the Mineral and Coal Mining Law. This is evident in the wording of Article 96 letter b, which states the management and monitoring of the mining environment, including Reclamation and/or Post-mining activities. A significant leniency is apparent as companies are only required to perform one of the land rehabilitation obligations, either through reclamation or post-mining activities. More crucially, Article 169A asserts that a mining company proven not to fulfill land rehabilitation obligations can still extend its contract permit, guaranteed by the Work Plan and Budget (KK) and the Mining Business License (PKP2B), for two additional periods of 10 years each, citing the justification of enhancing state revenue. This can be interpreted as an incentive for mining companies to not prioritize environmental responsibilities.

Fourthly, the Mineral and Coal Mining Law serves as the optimal ticket for mining companies' exploitation, potentially triggering dishonesty and corruption. The community lacks the means to combat the losses they endure, as their objections are considered criminal acts. This provision contradicts Article 28H paragraph (1) of the 1945 Constitution, which recognizes human rights to life and a good and healthy environment, as well as Law No. 32 of 2009 on Environmental Protection and Management, which prohibits the criminalization of environmental activists. In other words, communities advocating for environmental sustainability should not be subject to criminal or civil charges.

Based on the description above, the main implications of the opening of the door to recentralization in Indonesia's legal and policy framework for mining are evident. The impacts of the enactment of the Mineral and Coal Mining Law in 2020 are observed in

the natural resources sector and the increase in fines for companies that fail to conduct reclamation and empower communities. However, attention to post-mining areas has proven to be weak, especially in East Kalimantan, where approximately 50% of the affected areas have not been reclaimed. Therefore, this research aims to investigate and analyze the holistic impacts of Law Number 3 of 2020 on the mining sector, with a focus on economic, governance, social, and environmental aspects. With a deep understanding of these regulatory changes, this research is expected to make a substantial contribution to formulating sustainable policies for mineral resource management in Indonesia.

2. Research Method

This research employs a normative method, or in other terms, a juridical-normative method, which involves an approach to legal regulations to identify *norma das sollen* and its implementation *das sein* in society (Ako & Olawuyi, 1970). The main focus of this research is on the legal aspects of mining business permit applications. The analysis is conducted by finding relevant supporting data during the implementation of the Mineral and Coal Mining Law in the mining sector, identifying policy weaknesses that lead to various problems, and evaluating solution efforts undertaken by both the central and regional governments. Data sources for this research include secondary data such as legal regulations, books, journals, articles, and other scholarly works that are credible and academically accountable. This is intended to produce an integrated, comprehensive research that provides substantial benefits (Benuf & Azhar, 2020).

3. Result and Discussion

The Transition from Contract of Work-Based Mining Regime to Licensing

Indonesia has undergone a significant shift in its mining regulatory framework, moving away from the Contract of Work (CoW) system to a licensing approach. The CoW system, established in the 1967 Mining Law, involved long-term agreements between the government and mining companies, raising concerns about resource exploitation and environmental sustainability. The transition to a licensing system, marked by the 2020 Mineral and Coal Mining Law, aims to enhance government control, transparency, and environmental responsibility (Yanto & Hikmah, 2023).

The new licensing system introduced specific permits like the Mining Business License (IUP), emphasizing adherence to stricter environmental standards (Basuki & Irwanda, 2018). This shift signifies a move towards a more regulated and structured mining sector (Haryadi et al., 2022). The impact of this transition is felt by various stakeholders, including mining companies, local communities, and the government. While streamlining administrative processes and enhancing local participation, the licensing system places more responsibility on companies to comply with environmental regulations (Yanto, 2022). Challenges arise as companies accustomed to the CoW system

must adjust operational strategies, and the government needs to ensure effective implementation and enforcement of new regulations. Despite challenges, the transition offers opportunities for sustainable development, improved revenue distribution, and enhanced environmental protection.

Since the enactment of Law Number 4 of 2009 concerning Mineral and Coal Mining (Mining Law 2009), Indonesia adopted a licensing regime as the method of regulating the mining sector (AMINUDDIN KASIM et al., 2023). The primary goal of this change is to enhance government control over mining activities, optimize the utilization of mineral resources, and reduce potential conflicts that may arise from long-term contracts, such as the previous Contract of Work (CoW) system. The adoption of the licensing regime aims to provide flexibility and clarity in mining regulation by granting permits to companies through a more structured process. Consequently, the government has a more effective tool to control, monitor, and evaluate mining activities, while companies are expected to adapt more easily to changes in market conditions and the environment.

The effectiveness of the licensing regime since the Mining Law 2009 can be measured through several developments. First, the issuance of permits through this system is expected to provide legal certainty and reduce potential conflicts between the government and mining companies. Second, stricter standards related to the environment and mining land rehabilitation indicate greater attention to sustainability and ecological impacts. However, there are criticisms of this licensing regime, particularly regarding law enforcement and monitoring, which are often considered suboptimal. Some issues, such as limited company accountability for post-mining rehabilitation, remain challenges that need to be addressed to improve the overall effectiveness of the mining licensing system in Indonesia. Continuing on, the licensing regime introduced by the Mining Law 2009 has facilitated a more systematic approach to the granting of mining permits, promoting transparency and accountability in the industry. The transition aimed to strike a balance between attracting investment and ensuring responsible resource management.

One notable achievement of the licensing system is the improved focus on environmental and social considerations. The regulations set forth by the law necessitate companies to adhere to stringent environmental standards and demonstrate commitment to land rehabilitation post-mining activities. This shift reflects a growing awareness of the importance of sustainable practices in the mining sector. Despite these positive developments, challenges persist. Enforcement mechanisms and monitoring capabilities have faced criticism for being insufficient, leading to concerns about compliance by mining companies. The government's capacity to oversee and enforce regulations effectively remains crucial for the success of the licensing regime. Furthermore, ongoing adjustments and refinements to the regulatory framework are

essential to address emerging issues and enhance the effectiveness of the licensing system. Regular evaluations, stakeholder consultations, and technological advancements in monitoring can contribute to a more robust and adaptive regulatory environment.

Regulation for Submitting IUP Applications in Law No. 3 of 2020 concerning Mineral and Coal The enactment of Law Number 3 of 2020 amending Law Number 4 of 2009 on Mineral and Coal Mining is perceived as riddled with challenges (Aqila Herdinyanto Sanjaya, 2023). The shift towards centralization, withdrawal of local oversight, and the simplified issuance of investment permits have triggered widespread resistance from communities feeling adversely affected. They seek to protect their local environments in mining areas, but these efforts are met with criminal penalties. According to Abra El Talattov, a researcher from the Institute for Development of Economics and Finance (INDEF), the impact of Law Number 3 of 2020 can be categorized into three dimensions: Economic and Governance, Social, and Environmental.

1. Economic and Governance Dimension

The new Mining Law is seen as introducing centralization of authority in licensing and supervision. This contrasts with the previous authority held by regional governments, which could benefit local communities around mining areas. The shift in authority from regional to central government is evident in Article 4 Paragraph (2), indicating a departure from the decentralized approach of the prior law. The centralization is justified under the pretext of creating a more conducive investment climate.

2. Social Dimension

The social responsibility of Mining Business License (IUP) and Special Mining Business License (IUPK) holders is diminished under Law Number 3 of 2020. This removal of social responsibilities exacerbates socio-economic conditions in affected communities.

3. Environmental Dimension

The government's approach to environmental management is criticized for being too lenient on mining companies regarding mandatory reclamation after mining activities. Article 99 Paragraph (1) of Law Number 3 of 2020 states that IUP or IUPK holders are obliged to prepare and submit Reclamation and/or post-mining plans. This is a departure from the previous law (Law Number 4 of 2009), which required the submission of these plans when applying for Operational Production IUP or IUPK.

The new Mining Law is perceived to bring about a centralization of authority, affecting both the licensing and oversight aspects (Insarullah et al., 2019). Previously, regional governments held authority, which could benefit communities around mining areas. In Article 4, Paragraph (2) of Law Number 4 of 2009, it stated, "The control of

minerals and coal by the state as referred to in paragraph (1) is carried out by the Government and/or regional governments." However, in Article 4, Paragraph (2) of Law Number 3 of 2020, it was changed to, "The control of Minerals and Coal by the state as referred to in paragraph (1) is carried out by the Central Government in accordance with the provisions of this Law." Unfortunately, with the new Mining Law, most of the authority has been taken over by the central government under the pretext of creating a more conducive investment climate. However, the central government may not necessarily have the adequate capacity and capabilities to handle the licensing and oversight processes for mining areas throughout Indonesia.

Additionally, social responsibilities of Mining Business License (IUP) and Special Mining Business License (IUPK) holders have been eliminated by Law Number 3 of 2020. This removal is expected to exacerbate socio-economic conditions in communities (Syamsudin, 2023). Concerning environmental management, the government appears to favor mining companies by not compelling them to undertake reclamation for completed mining activities. Article 99, Paragraph (1) of Law Number 3 of 2020 stipulates that "IUP or IUPK holders must prepare and submit Reclamation and/or post-mining plans," whereas Article 99, Paragraph (1) of Law Number 4 of 2009 stated, "Every IUP and IUPK holder must submit Reclamation and post-mining plans when applying for Operational Production IUP or IUPK."

Analyzing Article 99, the writer observes a fundamental change in the new law. The key change is that the old law required IUP and IUPK holders to submit reclamation plans when applying for Operational Production IUP or IUPK, whereas the new law does not require the submission of reclamation plans before applying for Operational Production IUP or IUPK. The enactment of Law Number 3 of 2020, amending Law Number 4 of 2009 on Mineral and Coal Mining, introduces a centralization of authority, affecting both licensing and oversight aspects. The shift from the prior decentralized approach, where regional governments played a role in mineral and coal management, to centralization under the new law raises concerns. While the intention is to create a more investment-friendly climate, potential drawbacks include the central government's limitations in efficiently managing and overseeing diverse mining activities across Indonesia's vast archipelago.

Simultaneously, the elimination of social responsibilities from Mining Business License (IUP) and Special Mining Business License (IUPK) holders, as mandated by Law Number 3 of 2020, raises concerns about the well-being of communities surrounding mining areas. The absence of these social obligations may negatively impact the socio-economic conditions of local residents, signaling a potential setback in community development.

The perceived leniency towards mining companies in environmental management, particularly in the requirement for reclamation plans, is another notable change. Shifting the responsibility to third parties might result in less stringent oversight and control over the post-mining environmental rehabilitation process. This could lead to insufficient measures to mitigate the ecological impact of mining activities.

Moreover, the modification in Article 99 signifies a significant shift in the regulatory approach. Requiring IUP and IUPK holders to submit reclamation plans only after obtaining Operational Production permits, as opposed to during the application process, could potentially weaken the upfront commitment to environmental rehabilitation. This change may impact the effectiveness of environmental conservation efforts in mining areas.

These changes in the Mining Law raise potential challenges and concerns related to the centralization of authority, elimination of social responsibilities, environmental management dynamics, and changes in reclamation plan submission. Continuous evaluation and adjustments to the regulatory framework are imperative to strike a balance between fostering investment and ensuring responsible and sustainable mining practices in Indonesia.

4. Conclusion

The amendments introduced by Law Number 3 of 2020 to the Mineral and Coal Mining Law have brought about a significant transformation in the regulatory landscape of Indonesia's mining sector. The centralization of authority, particularly the shift from regional to central government control, raises concerns about the effective management and oversight of diverse mining activities across the archipelago. While the intention is to enhance the investment climate, potential challenges in capacity and efficiency at the central level must be carefully addressed to ensure sustainable and responsible mining practices. Furthermore, the removal of social responsibilities from Mining Business License (IUP) and Special Mining Business License (IUPK) holders poses a threat to the socio-economic well-being of communities surrounding mining areas. This shift may hinder community development and exacerbate existing challenges, necessitating a comprehensive approach to balance economic interests with social welfare. The alterations in environmental management dynamics, particularly the perceived leniency towards mining companies in reclamation plan requirements, raise environmental sustainability concerns. Shifting the responsibility to third parties could compromise the effectiveness of post-mining environmental rehabilitation efforts, potentially leading to insufficient measures to mitigate the ecological impact of mining activities. Overall,

continuous evaluation and adjustments to the regulatory framework are crucial to strike a harmonious balance between fostering investment, protecting communities, and ensuring the long-term environmental health of Indonesia's mining sector.

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