

Government Policy in Mining Field to Encourage Indonesian Economy and Support Industrial Revolution 4.0

Surizki Febrianto¹, Suparto²

^{1,2} Universitas Islam Riau, Pekanbaru - Indonesia
surizkifebrianto@law.uir.ac.id

Abstract-As a developing country, Indonesia which is heading towards developed countries is required to make efforts to accelerate economic growth. One way to do is to invite the investors to invest their capital in Indonesia, both domestic investors and foreign investors as contained in the Law of Republic Indonesia No. 25 of 2007 concerning Investment. One of the business sectors that can be improved in the context of improving the economy is mining. Related to the mining sector, Indonesia has the potential and superiority compared to other countries because of the First; Indonesia is a country that has the most complete mineral wealth in the world. The Second; Indonesia has relatively large and diverse types of energy sources, ranging from petroleum, gas, coal and other renewable energy sources. From the above, it must be known that the processing needs to be closely monitored by the government from upstream to downstream in mining activities, so that it has an impact on improving the Indonesian economy. On the one hand, indeed in terms of raw material and commodity trade, Indonesia holds a key position. This study using normative legal research methods by means of library research. This government policy in the mining sector will have a positive impact on the government and employers because the added value of semi-finished mining materials is higher, increasing state revenues from the tax and non-tax sectors, opening employment and encouraging the economic development of communities around the region where investors invest and supporting the 4.0 industrial revolution.

Keywords-Policy, Investment, Mining, Economy, Industrial Revolution 4.0.

I. INTRODUCTION

Based on Law No. 4 of 2009 concerning The Mining of Mineral and Coal is non-renewable natural wealth as a gift from God Almighty which has an important role in fulfilling the lives of many people, therefore management must be controlled by the State to provide added value significantly. Therefore, the management of mines and minerals must add value to the national economy. To achieve this, the management of mineral mining must be based on benefits, justice and balance and alignments with the interests of the nation and state.

Mineral and coal mining activities which are mining business activities outside geothermal, oil and gas and ground water have an important role in providing tangible added value to national economic growth and sustainable regional development. In line with this, the government

continues to make efforts to encourage business people to continue to improve themselves and make breakthroughs so that they can boost the added value of Indonesian mines and minerals to a position that can prosper the people and determine the trade in the world's mines and minerals. The government's good intention in encouraging business people to increase the added value of the said mines and minerals, as stated in Law No. 4 of 2009 concerning Mineral and Coal Mining (Minerba), in which the Act has regulated the obligation to process and refine mines and minerals which are implemented no later than 5 (five) years after the said Act was promulgated on January 12, 2009 so that the processing and refining applies mining and minerals fell in January 2014. As a result of the promulgation of Law No. 4 of 2009, there has been a large increase in national mineral ore exports in the last 3 years.

In order to control mineral ore exports and encourage downstream industries, the government has issued Government Regulation (PP) No. 23 of 2010 which has been amended by PP No. 24 of 2012 concerning the implementation of Mineral and Coal mining business activities. Furthermore, several related regulations were issued such as Minister of Energy and Mineral Resources Regulation No. 7 of 2012 which was subsequently refined by 2 ESDM Ministerial Decree No. 11 of 2012 concerning Increasing Mineral Value Added through Mineral Purification and Management (smelter) activities, in which the basic material contained stated that mining companies can export mineral ores abroad before 2004 if it has obtained a recommendation from the Minister of Energy and Mineral Resources. Other related regulations that have been issued in order to support the implementation of the Minerba Law, are the Minister of Trade Regulation No. 29 of 2012 concerning the provisions on mining product exports and Minister of Finance Regulation No. 75 of 2012 concerning Determination of Goods subject to Export Levy and Customs Tariff.

In connection with these various problems, and based on the Request for Cooperation Letter of mining and mineral studies from the Directorate of Industrial and Mining Exports (DG of Daglu) Number: 1022 / DAGLU.3.4 / ND / 8/2013 dated August 13, 2013, the Center for Foreign Trade Policy will evaluating the impact of the policy in question, especially relating to the

prohibition of exports in the form of ore (raw material or ores) on mining and mineral commodities that will take effect in January 2014.

This is in accordance with the explanation of Charles Himawan, he said that : "These regulations are sometimes so numerous that they cause obscurity of applicable laws. To utilize multinational capital to the maximum, it requires legal clarity. Furthermore, it was stated, if the authoritative law means the law that is obeyed by people, both the person who made the law and the person against whom the law was intended, it will be seen here the connection between humans and law "[1].

That in the collection of regulations and policies on the existence of mines and minerals in Indonesia, based on Article 33 of the 1945 Constitution the mandate is that the earth, water and natural resources contained therein be controlled by the state and utilized as much as possible for the prosperity of the people. The mandate of the 1945 Constitution is the foundation of mining and energy development to utilize the potential wealth of mineral and energy resources that are optimally owned in supporting sustainable national development. The mines, minerals and coal contained in the Indonesian legal jurisdiction are non-renewable natural wealth as the gift of God Almighty which has an important role in fulfilling the lives of many people. Therefore, the management must be controlled by the State to provide real added value to the national economy in an effort to achieve prosperity and equitable welfare of the people.

In the last three years after Law No. 4 of 2009 was published, nationally there were several types of mine ore and minerals whose realization has increased massively, including nickel ore exports increasing by 800%, iron ore increasing by 700%, and bauxite ore increasing by 500%. In order to control mineral ore exports and encourage downstream industries, the government issued a number of related regulations, including ESDM Ministerial Regulation No. 7 of 2012 as amended by PerMen No. 11 of 2012, Regulation of the Minister of Trade No. 29 of 2012 concerning Provisions on the Export of Mining Products and Regulation of the Minister of Finance No. 75 of 2012 concerning Determination of Export Prices for Calculation of Export Levy. The government requires export duties for 14 mining minerals including copper, gold, silver, tin, lead, chromium, molybdenum, platinum, bauxite, iron ore, iron sand, nickel, manganese, and antimony with an export duty range to be collected ranging from 20 % to 50% depending on the type of mineral.

ESDM Ministerial Regulation No. 7 of 2012 was issued in order to secure the implementation of the mandate of Law No. 4 of 2009 concerning Mineral and Coal Mining, specifically related to the obligation to process and refine minerals in the country no later than January 12, 2014. Then, Ministerial Regulation 07 of 2012 was amended based on RI Minister of Energy and Mineral Resources Regulation No. 11 of 2012 dated May

16, 2012 which states that mining companies can export mineral ore or ore in this case nickel abroad before 2014 if they have obtained a recommendation from the Minister of Energy and Mineral Resources c.q Director General. These recommendations will be provided with the following conditions:

- (1) Status of Production Operation IUP and IPR clear and clean in the sense that each mining company is required to have an approved Production Operation IUP.
- (2) Mining companies must pay off financial obligations to the state.
- (3) Mining companies must submit work plans and or cooperation in the management and / or refining of minerals in the country.
- (4) Mining companies must sign an integrity pact.

Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia No. 26 of 2018 concerning the Implementation of Good Mining Principles and Mineral and Coal Mining Supervision, has stipulated based on the above laws and regulations as well as other relevant laws and regulations, this Ministerial Regulation is referred to as a Mining Business Permit hereinafter abbreviated as IUP, Special Mining Business License hereinafter abbreviated as IUPK, Mining Business License Area, hereinafter referred to as WIUP, Special Mining Business License Area, hereinafter referred to as WIUPK, People's Mining Permit hereinafter abbreviated as IPR, Mineral, Coal, General Investigation, Exploration, Feasibility Study, Construction, Transportation, and Sales is as referred to in Law Number 4 of 2009 concerning Mineral and Coal Mining.

Welcoming the ban on the export of raw materials for mining and minerals in January 2014, there were 15 (fifteen) companies that stated readiness for processing and refining facilities that would be operational in 2014. Of the 15 companies, there were 6 companies that have prepared themselves with the progress of mining and mineral refining and processing facilities reached 100% to operate in 2014. Of the 6 (six) mining companies, including PT. Delta Prima Steel and PT. Meratur Jaya Iron Steel with its production in the form of Sponge Iron, PT. Indo Ferro with the production of Pig Iron, PT. Batutua Tembaga Raya with the results of processing in the form of Cupper Chatode, PT. Indotama Ferro Alloys and PT. Century Metalindo with the processing of Silica Manganese. Meanwhile, for the other 9 companies the progress of processing and refining readiness facilities to operate in 2014 is still below 75% [2].

II. RESEARCH METHOD

This study using normative legal research methods by means of library research. The data used are secondary data, namely Law Number 4 of 2009 concerning Mineral and Coal Mining, Republic of Indonesia Law Number 25 of 2007 concerning Investment, Minister of Energy and Mineral Resources of the Republic of Indonesia Number

26 of 2018 concerning Implementation of Mining Rules Good and Mineral and Coal Mining Supervision, journals, books and related laws and regulations.

Data analysis is done qualitatively. The analysis starts from data collection, this data is then presented by means of selecting, classifying systematically, logically and juridically to find out the specific description related to the problems in the research, after which the author makes an interpretation or interpretation. Then the authors compare with the theory and concepts of secondary data consisting of scientific books, journals, and related legislation and legal opinions from legal experts.

III. FINDINGS AND DISCUSSION

Based on Article 25 Paragraph (4) of Law Number 25 of 2007 the definition of an investment is all forms of investment activities, both by domestic investment and foreign investment to conduct business in the territory of the Republic of Indonesia. The explanation in the article emphasizes the focus point on its activities, namely investing. Investment activities can be carried out either by foreign parties or domestic parties [3].

Conducting investment business activities is treated as a form of business entity. The choice of the form of a business entity will influence business development, forms of accountability, access to capital, profit sharing, company dissolution, and others. Developing countries need national development capital through investment, so that the presence of investors cannot be avoided. The problem of the presence of investors is strongly influenced by the internal conditions of the country, such as economic stability, state politics, and law enforcement. To achieve this, the government and the community are expected to create a conducive climate for investment for the growth of Indonesia's national industry.

In order to accelerate national economic development and realize Indonesian political and economic sovereignty, an increase in investment is needed to process economic potential into real economic strength by using capital originating from both domestic and foreign countries. Facing changes in the global economy and Indonesia's participation in various international cooperation needs to be created an investment climate that is conducive, promotive, provides legal certainty, justice and efficiency while still taking into account national economic interests. Law Number 1 of 1967 concerning Foreign Investment as amended by Act Number 11 of 1970 concerning Amendments and Additions to Law Number 1 of 1967 concerning Foreign Investment and Law Number 6 of 1968 concerning Domestic Investment as amended by Law Number 12 of 1970 concerning Amendments and Additions to Law Number 6 of 1968 concerning Domestic Investment, it needs to be replaced because it is no longer in line with the need for accelerating economic development and the development of national law, especially in the field of investment. Based on the above considerations was born the Republic

of Indonesia Law Number 25 of 2007 concerning Investment.

The state as the holder of the right to control natural resources in Indonesia gives authority to the government to carry out natural resource management through the granting of licenses, licenses and concessions. The authority to manage mineral and coal natural resources is contained in Law Number 4 of 2009 concerning Mineral and Coal mining (Minerba Law) and its implementation regulations, mainly Government Regulation Number 23 of 2010 concerning Mineral and Coal mining business activities (hereinafter referred to as PP No. 23 of 2010) as amended several times, most recently by Government Regulation Number 77 of 2014 concerning the Second Amendment to Government Regulation Number 23 of 2010.

The licensing authority in the Minerba Act is divided into the authority of the central government, provincial government and district / city government. The authority approach is based on an administrative area approach, ie permits by the Minister of Energy and Mineral Resources include authority whose location, benefits and impacts are cross-provincial, the governor includes authority whose location, benefits and impacts are across regencies / cities, and regents / mayors locations, benefits, and the impact is in one district / city. In this case the issuance of the investment law and for the achievement of the objectives of the investment in Indonesia investment activities are classified into three major parts based on their form, namely direct investment, portfolio investment, and indirect investment[4].

In terms of investment, business opportunities in the field of Mining Processing are attractive for investors to invest and conduct business activities in Indonesia. There are two things that enable Indonesia to develop into an advanced industrial country. First; Indonesia is a country that has the most complete mineral wealth in the world, although it is not the world's main actor in all raw materials, but Indonesia has almost the most important mineral sources. Second, Indonesia has relatively large and diverse types of energy sources, ranging from petroleum, gas, coal and other renewable energy sources.

However, until now Indonesia has not been able to develop its industry properly, because the exploited mineral mining products in the bowels of Indonesia are still exported in the form of raw materials with very low added value. On the one hand, indeed in terms of raw material and commodity trade, Indonesia holds a key position. But most mining companies have tied mining product sales contracts with developed countries, so that Indonesia cannot control the price of its mining commodities.

The creation of a conducive investment climate through legal adjustments related to capital investment, provision of licensing and non-licensing incentives and

elimination of legal and non-legal barriers in investment is an effort that can and needs to be carried out to be able to take advantage of the opportunities and win intense competition. in increasing investment activities.

In relation to regional autonomy, the role of regional governments (both provinces and districts / cities) has become more important and strategic in line with the legal provisions regarding regional autonomy and the spirit of decentralization[5]. For example, concerning foreign investment (PMA), which in the initial stages of investment is under the authority of the central government, in the next stage it can be given to local governments, if it has been equipped with adequate legislation[6]. Thus, the role of law is important in investment, as a guideline that can provide justice and legal certainty to related parties. Often stated that law is one of the important factors in attracting investment to a country or region, therefore, the law can create a climate that supports investors, including PMA.

In this case there are several factors that are considered by investors before committing or not making investments in a country or region, namely the risks faced in that country (country risk), long bureaucracy (red tape), transparency and legal certainty, provisions technology transfer, guarantee and protection of investment, employment, availability of infrastructure, the existence of natural resources, market access, ease of taxation and effectiveness in dispute resolution[7]. For this reason, it is specifically necessary to continue efforts to simplify the licensing process related to investment, the opening of previously closed fields, including FDI, increase the ease of investment both tax and non-tax, establishment and development of areas for investment, improvement of legal provisions and enforcement including in dispute resolution, institutional improvement for service improvement, and opening up the possibility of greater foreign share ownership[8].

The number of legal rules of investment is not guaranteed to create a favorable investment climate, as there may be provisions that there is less guarantee the interests of the owners of capital, because the substance it needs only set briefly, and often also occur overlap between provisions from one another and do not in accordance with the order of the applicable legislation[9].

Starting from the issuance of Law Number 4 of 2009 on 12 January 2013 concerning Mineral and Coal Mining, where the basic material contained in this Act regulates the removal of mineral and coal mining products and prohibits the export of raw materials until 2014. Therefore, this Law mandates the construction of *smelters* so that domestic mining production can be processed before being exported. The purpose of the Minerba Law is intended, so that Indonesia can feel the added value of mining and mineral products so that it can boost gross domestic product and absorb labor. Based on the mandate of Law No. 4 of 2009 referred to, it will become effective

in January 2014 for metal mineral mining commodities, nonmetallic minerals and rocks in the form of raw materials (*raw material / ores*).

In the context of implementing various articles in the Minerba Act, the government then issued Government Regulation (PP) No.23 of 2010 dated February 1, 2010 concerning the Implementation of Mineral and Coal Mining Business Activities, in which this regulation implies that holders of Mining Business Permits (IUP) operations production and Special Mining Business Permit (IUPK) Production operations must prioritize the needs of minerals and / or coal for domestic interests. Therefore, in supporting the development of domestic industries, it is necessary to restructure the issuance of mining business licenses for non-metallic minerals and rocks. Furthermore, in order to provide greater opportunities for Indonesian participants to participate more in mineral and coal mining activities and in order to provide legal certainty for holders of Coal Mining Concession Work Contracts and Work Agreements intending to carry out an extension in the form of a Mining Business License, PP No. 24 of 2012 dated 21 February 2012 concerning Amendment to Government Regulation Number 23 of 2010 concerning Implementation of Mineral and Coal Mining Business Activities.

Besides that, in order to increase the effectiveness of controlling mineral ore exports and encourage downstream industries, the government has issued various regulations such as Minister of Permanent Regulation ESDM No. 7 of 2012 which was later amended by ESDM Regulation No. 11 of 2012 concerning Increasing Mineral Value Added through Mineral Processing and Purification Activities. Increasing Added Value and processing obligations with minimum processing limits, this is done with Mineral Processing and Purification Activities which include processing and refining metal minerals, processing non-metal minerals and rock processing, as well as processing and refining certain metal minerals, processing non-metallic minerals certain, and certain rock processing must meet the minimum processing limits.

Meanwhile, in order to increase the effectiveness of the export regulation of several types of mining products, the government through the Ministry of Trade has also issued Permendag No. 29 / M-AG / PER / 5/2012 as amended by Permendag No. 52 / M-AG / PER / 8/2012 concerning Provisions on the Export of Mining Products, where this regulation regulates matters relating to procedures and permits for the implementation of export activities of various types of mining products by considering the necessity to meet minimum processing limits.

IV. CONCLUSION

Implication of the lack of a smelter, the first is that government revenues from the mining sector can be in the form of tax revenues (PPh), non-tax revenues (mining

royalties), and deadrent (land rent). This revenue has the potential to drop if Minerba mine production decreases. Second, the reduction in mine production will have implications for reducing labor. With the ban on the export of raw materials, workers must be prepared to lose their jobs. Reduction of labor will also occur in companies supporting mining activities, such as shipping and heavy equipment. Third, if raw material exports decline due to export restrictions, the trade balance will be more deficit. This will have an impact on the weakening of the rupiah exchange rate which boosts import costs. The high cost of imports will affect a number of products that still rely on imported components. The Minerba Act has been stipulated since 2009, but until now the removal program has been in place. The government has not succeeded in creating a business climate that makes investor interested in building a smelter industry in Indonesia.

REFERENCES

- [1] C. H. Charles, *Law As Commander*, Cet 1, Penerbit Kompas, Jakarta, 2003.
- [2] Salim HS and Budi Sutrisno, *Investment Law in Indonesia*, Raja Grafindo Persada, Jakarta, 2008.
- [3] H. F. Noor, *Investment: Business Financial Management and Community Economic Development*, Jakarta: Index, 2009.
- [4] D. J. Rachbini, *Architecture of Indonesian Investment Law (Analysis of Political Economy)*, Index, Jakarta, 2008.
- [5] Supanca, Ida Bagus Rahmadi, *Legal Framework and / or Direct Investment Policy in Indonesia*, Jakarta: Ghalis Indonesia, 2005.
- [6] J. Sihombing, *Investment Law in Indonesia*, Alumni, Bandung, 2009, Page 156 and 162.
- [7] Interview with the Director of PT. Citra Properasri Mandiri in January 2016.
- [8] A. Saleng, *Mining Law*, Yogyakarta: UII Press, 2004.