

# Mapping of Stakeholder Legal Interests in Mineral and Coal Mining Investments in Indonesia

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## ABSTRACT

Mining investment raises the controversy of the interest in its implementation. The controversies shown are economic development versus environmental conservation, national interests versus local benefits, and also community transformation versus cultural preservation and protection of indigenous right of people. This conversion often occurs since there is no regulation to regulate the differences of interest between the actors involved in implementing mineral and coal mining investments. Law Number 3 in 2020 with regard to Mineral and Coal Mining ease the interests of investors and central government, while the interests of local governments and the interests of local communities are neglected. This unequal arrangement of interests can result in inharmonious relationship between investors, the central government, on the one hand, and the local government and the community on the other. To maintain and respect the existence of each party, the government should revise the Mineral and Coal Law.

**Keywords:** *Coal, Interests of the parties, Mineral, Mining.*

## 1. INTRODUCTION

Throughout the twentieth century, the mining and minerals industry paced various criticisms for the harsh working conditions, massive environmental damage, and the deterioration of social life living around mining areas. This criticism arises since mining investment in several countries, especially in developing countries, is not transparent and it seems closed from community participation and involvement.

Mining investment often raises the controversy of interest in its implementation. The controversies often shown are the development of economy versus conservation of environment, national interests versus local benefits, and community transformation versus cultural preservation and also protection of indigenous rights. This controversy often occurs because no regulations regulate and reconcile differences of interest between the actors involved and affected in mining investments.

Furthermore, the most often affected by mining activities are the local community, the general public, and the local indigenous community. Mineral and Coal Law Number 3 in 2020 does not regulate how the community is involved in mining activities. The community is threatened with criminal sanctions if it makes a protest or

demands related to their rights to the land and the environment used in the mining activities.

Regarding these problems, this study tries to regulate the mapping of the legal interests of the parties involved in the implementation of mining investment in Indonesia based on the 2020 Coal Mineral Law. The legal interest in question is how the legal instruments provided to protect the parties' interests involved, either directly or indirectly, in implementing mining investments in an area?

## 2. LEGAL FRAMEWORK FOR MINERAL AND COAL MANAGEMENT

The legal framework that operates in the community activity realizes the legal ideals regulated in the most fundamental legal rules. The Mineral and Coal Law is as the legal instrument in the technical position to regulate the use of mineral and coal natural resources as the translation of provisions of Article 33 in the 1945 Law, so that, its regulation can give the meaning of justice, use (*doelmatigheid*) and legal certainty.

Article 33 in the 1945 Constitution of the Republic of Indonesia (UUD 1945) is as the main joint that becomes the constitutional basis for the management of Mineral and Coal for the community's prosperity. The formulation of Article 33 in the 1945 Constitution not

only gives the instructions on the structure of the economy and the authority to organize the economic activities and natural resources contained, but also reflects the ideals and beliefs that are fought for by the leaders of the nation.

The basis for the management of Mineral and Coal is also managed in the Decree of the People Consultative Assembly of Indonesia Number IV/MPR RI/1999 concerning the Outlines of State Policy in 1999-2004, Especially Chapter IV Policy Direction Letter H Natural Resources and environment Number 4 states that;

Article 33 in the Constitution 1945, the position of the people in construction of the Mineral and Coal Law, becomes the core thing. The regulation with regard to the utilization of natural resources of mineral and coal for the sake of the interests and fulfillment of the people's welfare;

- a. These natural resources provide benefits to the people
- b. Distribution of the use of natural resources equally for people;
- c. The level of community participation in establishing the benefits of natural resource management;
- d. Respect for the rights of people from generation to generation in using natural resources.

### **3. MAPPING OF STAKEHOLDER LEGAL INTERESTS IN MINERAL AND COAL INVESTMENT**

The mapping of the legal interests of stakeholders in the implementation of mineral and coal mining investments is about the mapping of the parties who have interests in the presence of mining investments in the local area. The parties are:

#### 1. Investors

Investors is about gaining territory that would later be an economic mining investment area to make sure the feasible return on the investment.

#### 2. Central government:

The Central Government has the interest in obtaining tax and foreign exchange from mining investment and interests in its position to save the national and international interests.

#### 3. Local government

Regional Governments who represent the interests of the regions where mineral and coal mining investments are located to get the tax revenue from mining investments so that they can assist to Regional Original Income (PAD), as well as in their position as government administrators who are accountable to the community in protecting the rights of the people.

Another provision that gives the facilities for mining companies is coal mining which integrated with development and/or utilization activities for 30 years and guaranteed to obtain the extension of 10 years each time it is extended after fulfilling the requirements. Article 1 number 13b stipulates that the company whose contract period expires will extend its license. So, the mining company that operates will get the guarantee of automatic license renewal without any other conditions.

Allocation of mineral and coal mining areas is about the beginning of the investment process that will maintain the success of the development of the mining industry sector. The management of mineral and coal mining resources can run effectively and efficiently. It is necessary to use the spatial management approach. Various interests including interests related to property rights above ground level, investment returns, and interests related to the negative impacts of mining activities in the area. All of these interests need to be accommodated and protected in the investment allocation process.

### **4. CONCLUSION**

Law Number 3 in 2020 concerning amendments to Law Number 4 in 2009 concerning Mineral and Coal Mining is about the legal instrument that has not balanced the parties' interests in implementing mineral and coal mining investments in an area or region. The Mineral and Coal Law in 2020 is to regulate the interests of investors or mining companies with the Central Government, while the legal interests of the management and utilization rights of minerals and coal in the interests of local governments and local communities are ignored. The gap in regulating interests to manage mineral and coal natural resources is undoubtedly a very fragile foundation. It can cause disharmony in relations between the parties involved in implementing mineral and coal mining investments in the region or region. This regulatory gap also results in the local government and local community not maximizing the mineral and coal natural resources in their area as a source of regional funding for economic development for the welfare and prosperity of the people in the region.

### **REFERENCES**

- [1] Ahsana Nadiyya, Ayu Putri Rainah Petung Banjaransari dan Heni Rosida, Measuring The Mineral And Coal Mining Law on The Vulnerability of Protecting The Rights of Indigenous Peoples, *Rewang Rencang : Jurnal Hukum Lex Generalis*. Vol.2. No.3 (Maret 2021)
- [2] Anguelovski, I., Understanding the Dynamics of Community Engagement of Corporations in Communities: The Iterative Relationship Between Dialogue
- [3] Processes and Local Protest at the Tintaya Copper Mine in Peru. *Society & Natural Resources* 24, 2011.

- [4] Arellano-Yanguas, J., 2011. Lihat juga, Aggravating the Resource Curse: Decentralisation, Mining and Conflict in Peru. *Journal of Development Studies* 47, 617–638.
- [5] Bagir Manan, *Pertumbuhan dan Perkembangan Konstitusi Suatu Negara*, (Bandung: Mandar Maju, 1995).
- [6] Bill Sullivan, Christian Teo Purwono & Partners, *Mining Law & Regulatory Practice in Indonesia*, A Primary Reference Source, Published by John Wiley & Sons Singapore Pte. Ltd, 2013.
- [7] Helza Nova Lita dan Fatmie Utarie Nasution, *Perlindungan Hukum Masyarakat Adat di Wilayah Pertambangan*, *Lex Journalica* Volume 10 Nomor 3, Desember 2013.
- [8] Indonesian Center for Environmental Law, *Beberapa Kritik Hukum Terhadap Perubahan, UU No. 4 Tahun 2009 Tentang Mineral dan Batubara*, icel.or.id.
- [9] Ismail Rumadan, *Kerangka Hukum Pengelolaan Pertambangan Mineral dan Batu Bara di Indonesia*, dalam, *Indonesia The Mining Law Review*, Telaah atas Kebijakan Hukum Pertambangan di Indonesia Pasca Perubahan UU Minerel dan Batu Bara, Deepublish, Yogyakarta, 2020.
- [10] James S. Phillips, *The rights of indigenous peoples under international Law*, *Global Bioethics*, Vol. 26 No. 2, May 2015.
- [11] Jennifer McKay and Balbir Bhasin, *Mining Law and Policy in Indonesia: Issues in Current Practice that Need Reform*, *Journal of Energy & Natural Resources Law* Vol 19 No 4 2001.
- [12] Moffat, K., Boughen, N., Airong Zhang, Lacey, J., Fleming, D., Uribe, K., 2014a. Chilean attitudes toward mining Citizen Survey – 2014 Results.
- [13] Muazzin, *Hak Masyarakat Adat (Indigenous Peoples) atas Sumber Daya Alam: Perspektif Hukum Internasional*, *Padjadjaran Jurnal Ilmu Hukum*, Volume 1 - No 2 - Tahun 2014.
- [14] Nabilla Desyalika Putri dan Dian Agung Wicaksono, *Implikasi Legislasi Pengambilalihan Kewenangan Di Bidang Pertambangan Mineral Dan Batubara Oleh Pemerintah Pusat (Legislation Implication Of The Takeover Authority In Mineral And Coal Mining By The Central Government)*, *Jurnal Legislasi Indonesia*, Vol. 13 N0. 01 - Maret 2016.
- [15] Novi Maryani, *Kewenangan Pemerintah Daerah Dalam Penertiban Pertambangan Dikawasan Taman Nasional Nani Wartabone Ditinjau Dari Hukum Lingkungan*, *Jurnal Ilmiah Mahasiswa Universitas Surabaya* Vol.2 No.1, 2013.
- [16] Suyanto Edi Wibowo, *Memahami Makna Pasal 33 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Perihal Penguasaan oleh Negara Terhadap Sumber Daya Alam*, *Journal Legislasi Indonesia*, Vol. 12, No. 4, 2015.
- [17] Prno, J., *An analysis of factors leading to establishing a social license to operate in the mining industry*. *Resources Policy* 2013.
- [18] Aliansi Masyarakat Adat Nusantara, *5 Masalah UU Minerba Bagi Masyarakat Adat*, diakses dari <http://www.aman.or.id/2020/06/5-masalah-uu-minerba-bagi-masyarakat-adat/>.
- [19] Filemon Agung, *Tak hanya wewenang, penerimaan daerah berpotensi hilang dalam omnibus law minerba*, <https://industri.kontan.co.id/news/tak-hanya-wewenang-penerimaan-daerah-berpotensi-hilang-dalam-omnibus-law-minerba>. Accessed date 4 Juli 2021,
- [20] Syailendra Persada, '4 Kali Amandemen UUD 1945, Ini Perubahannya', *Tempo*, 12 August 2019, <https://nasional.tempo.co/read/1234816/4-kali-amandemen-uud-1945-ini-perubahannya>, downloaded pada 26 Mei 2020.
- [21] Ermy Ardhyanti, *Anomali Konflik Pertambangan dan Pemenuhan Hak-hak Masyarakat Adat di Indonesia*, <http://article33.or.id/id/opini/anomali-konflik-pertambangan-dan-pemenuhan-hak-hak-masyarakat-adat-di-indonesia/>. Accessed date 4 Juli 2021.
- [22] *The Constitution of the Republic of Indonesia Law No. 4 of 2009, concerning Mineral and Coal Mining*.