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Legal Consequences of Downstreaming in The Mineral and Coal Mining Business

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ABSTRACT

This paper aims to analyze the consequences of commodity dependence, an impact on the trend of natural resources exported in raw form. On the one hand, it creates a loss factor in the loss of value opportunities in the acquisition of added value for the Indonesian state, and then it also creates too many opportunities for foreign parties in obtaining industrial raw materials. Precisely due to the liberalization of mineral exploitation and exploitation of foreign parties, many leave big social and environmental problems. The research method in this paper uses a normative legal approach supported by socio-legal, qualitative analysis of social and environmental norms. The research results are papers on the effectiveness of the downstream process so that it has resistance to the dynamics of the trade economy and global conditions. So that in the future independently to process mineral and coal natural resources and optimize the latest mineral and coal regulations and provide facilities for various Omnibuslaw management permits to create a centralized policy system and use of raw materials for domestic industries to achieve results to encourage commodity-based regional economies to influence economic growth independent which guarantees and provides benefits for the welfare of the people.

INTRODUCTION

Reviewing the provisions of Article 33 of the 1945 Constitution is always buzzing and is used as the basis for mining management in Indonesia. In fact, this has become an outdated issue and is more motivated by economic justice, ecological justice. Indeed, we can see that in several aspects of economic management related to or based on the use of land or natural resources, environmental aspects are always neglected. The environment by some anthropocentrism responds as an object that is managed optimally because humans are in the highest rank of other creatures both abiotic (inanimate objects such as mountains, forests, rivers, etc.) and also biotic (living things such as animals and plants). So it doesn't matter what happens later or creates what happens next. The history of Indonesian mining begins with Freepot's first concession rights with unlimited exploitation and can be extended at any time, making Indonesia economically and ecologically disadvantaged. (Lathif, 2017).

This agrees with the President's policy in the New Order era on the pretext that development makes us lulled. Minerals and coal contained in the jurisdiction of Indonesian mining are non-renewable natural resources as gifts from God Almighty which have an important role in fulfilling the lives of many people, therefore their management must be controlled by the State to provide added value significantly to the national economy in business. achieve prosperity and welfare of the people in a fair manner (Y Marpi, 2021). The New York Agreement which was agreed upon after the resignation of President Soekarno and then refers to President Soeharto opened wide doors for the free exploitation of Indonesia's natural resources. UU no. 1 of 1967 concerning Foreign Investment, Law no. 5 of 1967 concerning Forestry, and then Law no. 11 of 1967 seemed to be an organized law crime. How could not Law no. 1 of 1967 seems to be the opening door for mining exploitation, most of which are located in forests, where the upstream to downstream processes

require high investment costs so that the three laws mutate into octopuses that are ready to eat victims (humans and the environment) around them and finally just waiting to die (Hartana, 2017).

The effects of these mining activities are not only economic losses but also cause social unrest. For example, the search for escalation of friction between mining companies and the community, changes in the agrarian pattern of the community to mining communities, and the last thing that is always the subject of discussion is the damage and pollution of the area around the mine. Although there are efforts to repair the damage or pollution, they are still considered insufficient and do not stop the substantive thing. Provisions of Law no. 4 of 2009 concerning Mineral and Coal Mining began to open new horizons regarding the juridical aspects of managing its environmental aspects as well as being discussed about the independence of Indonesian mining. From the environmental aspect, the Law has begun to accommodate several environmental problems, although in environmental principles many have been missed, especially when we reflect on the idea of a Chain of Regulations proposed by Pelihat and Heldeweg. As one of Indonesia's sources of foreign exchange in the last few decades, the mining industry in all its forms and types has become an interesting issue and has a large dimension in the life of the Indonesian people. It is an interesting issue because when we talk about mining, the focus is on economic issues where countries and large companies (national and foreign) benefit from the process and results of mining. In this case, the state receives revenue in the form of non-tax taxes. Meanwhile, mining companies get the proceeds from the sale of excavated minerals. On the one hand, many aspects have been neglected in terms of pursuing economic benefits in the mining sector (Trisnamansyah, 2014).

For example, with the establishment of a mining company, asking the state to provide an excessive security apparatus instead of being a source of state revenue and maintaining a strategic place. However, what followed were several acts of violence that led to human rights violations committed by security forces against the surrounding community who were considered to have committed chaos or disturbance so that the life of the community in the mining area was

increasingly pressed. The state in this case has not only committed violations but has failed in terms of protecting its people. In the socio-cultural context, we can see that cultural values and local wisdom have begun to erode, replaced by the presence of heavy equipment that moves indefinitely with noise and pollution. People who used to prefer gardening and farming with a culture of association were replaced by farm laborers who worked in mining areas which were more economically promising in the short term than working in fields or rice fields. This is also supported by policies in the agricultural and food sector that are more market and yield-oriented. Besides that, what is no less important is the environmental aspect. This aspect then becomes the final criterion in determining economic policies and production processes on a macro and micro scale in the mining sector. If the damage and pollution are covered by the media and some victims are injured or even died, then only then will the Government and Regional Governments consider taking steps to deal with them. The provision in the 1945 Constitution Article 33 paragraph 3 clearly states that "The land, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". Simply put, everything that is generated from Indonesia's natural wealth is only for the Indonesian people. This is the final decision on which we embrace a welfare state. So it is not for the interests of individuals, large companies, even the state (Government) of Indonesia itself. In this case, Bagir Manan's Opinion states that state control of mining with the greatest prosperity of the people creates a state obligation, namely that all forms of exploitation of mining natural resources and the results obtained in them (natural wealth) must significantly increase the prosperity and welfare of the community (Permana, 2010).

In this matter, the state should also be able to guarantee all the rights of the people that are contained in and on the earth which can be directly produced or enjoyed directly by the people. He further stated that the state prevents all actions from any party that will cause the people to not have the opportunity or lose the rights that exist in and on the earth. These three things should become guidelines for the government and regional governments in determining the direction of policy in the mining sector (Yapiter Marpi, Erlangga, 2021). Apart from

article 33, in environmental management, Article 28H of the 1945 Constitution states that “Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to obtain health services”. In my opinion, the right to a good and healthy environment is a part of human rights besides other human rights. Of course, this is not only aimed at humans as users of the environment but also natural human rights themselves not to be damaged or polluted by irresponsible parties. Further, article 5 paragraph 1 of Law no. 23 of 1997 concerning Environmental Management states that “Everyone has the same rights to a good and healthy environment”. From some of the existing norms mentioned above, it is clear that any type of business that is related to environmental activities and has the potential to change, in this case damaging or polluting, must pay attention to the principles and norms contained in the laws and regulations above and which are related to the mining industry activities (Yuniarti, 2019).

METHODS

This research paper aims to analyze the impact of the trend of natural resources exported in raw form. On the one hand, it creates a loss factor in the loss of value opportunities in the acquisition of added value for the country of Indonesia, and then it also provides too many opportunities for foreign parties in obtaining industrial raw materials. Precisely due to the liberalization of mineral exploitation and exploitation of foreign parties, many leave big social and environmental problems. The research method in this paper is based on a normative legal approach supported socio-legally. The research results are papers on the effectiveness of the downstream process so that it has the resilience to trade dynamics and global conditions. So that in the future it will be able to independently process mineral and coal natural resources and optimize the latest mineral and coal regulations and provide facilities for various management permits in an Omnibuslaw manner to create a centralized policy system from raw materials for the domestic industry to achieve maximum results that are beneficial to mutual welfare (Tamam, 2019).

RESULTS AND DISCUSSION

The Philosophy of Mining Business Activities in Indonesia

The history of mining and energy in Indonesia begins with mining activities traditionally carried out by residents with the permission of local authorities. like, a king or a sultan. In 1602 the Dutch government formed the VOC, apart from selling spices as well as trading mining products, in 1652 scientists from Europe began to investigate various aspects of natural science. In 1850 the Dutch East Indies Government formed Dienst van het Mijnwezen (Erika, 2018).

The legal basis for this law is that with the presence of private people who have spread throughout Indonesia, IndischeMijnwet has been given mining authority. In order not to prevent other people from obtaining mining rights and the Government and the Region to manage the natural resources in the form of mining and the context of increasing national development, this law is enforced. To prepare a new mining law, in 1960 a Government Regulation in Lieu of Law (PERPU) Number 37 of 1960 concerning Mining was enacted. The legal basis for this Government Regulation in Lieu of Legislation is that the extracted materials throughout the nation's sovereignty are used for the greatest prosperity of the people, both mutually and individually (Abidin, 2017).

Since Indonesia's independence on August 17, 1945, the mining law for Dutch heritage products, Indische Mijwet, has still been enforced by making several changes and additions to suit the period of Indonesian independence. In the mining sector, the Old Order Government still enforced Indische Mijwet as mining law by undergoing several changes and adding articles to the law. It was only in 1959 that the government began to make changes to the Indische Mijwet, especially the articles regulating mining rights. Subsequently, Law Number 10 of 1959 concerning the Cancellation of Mining Rights was enacted. construction of various industrial branches and as the necessary materials (Santoso, 2019).

Mining law that applies to the government of the New Order era is Law Number 11 of 1967 concerning Basic Mining Provisions. To accelerate national economic development in realizing a just and prosperous society based on Pancasila and the

1945 Constitution, mining is managed in such a way as to become the real economic power for the present and future. The Law on Basic Mining Provisions must be in line with the ideals of the nation and national interests from a political and economic, social, and strategic point of view. In this law, mining rights, which at that time were dominated by foreign companies, provided them in the form of work contracts (COWs) in which the contract period was 35 years and could be extended for 25 years so that if it was totaled the period for one work contract was 60 years. When examined in-depth, the content of this law is centralized in nature so that it does not give the region's authority to regulate them, especially in terms of granting permits (Munnik, 1982).

With the demands for reform in all fields including the mining sector, one of which is a change in the centralistic paradigm to regional autonomy as widely as possible based on Law Number 32 of 2004 concerning Regional Government. Precisely on 12 January 2009, Law No. 4 of 2009 on Mineral and Coal Mining was enacted. This law is present in facing the challenges of the strategic environment and the effects of globalization that encourage democratization, regional autonomy, human rights, the environment, the development of information technology, intellectual property rights, and the demands of the role of the private sector and society (Butar Butar, 2010).

In line with the rolling of re (Hovav, 2003) forms pioneered by students in 1998, this has brought about fundamental changes to the rules and governance systems in Indonesia. This change is the application of a regional autonomy system, namely a government system with a decentralized approach, from the previous government system which was centralized. The legal basis for the post-reform regional autonomy system is Law No. 22 of 1999 concerning Regional Government, which was later amended to Law No.32 of 2004 concerning Regional Government, and after a judicial review by the Constitutional Court relating to the content of regional head candidates from independent channels, then it was changed to Law No. 12 of 2008. The implication of the implementation of the regional autonomy system is that the transfer of several governmental affairs which were originally the authority of the central government becomes the

authority of the regional government, except for defense and security affairs, foreign affairs, religious affairs, monetary affairs, and judiciary (Toruan, 2015).

The Branobel company based in Azerbaijan controlled world oil production at the end of the 1914 century. Since petroleum is a substance of natural origin, its presence in the environment does not need to come from routine activities or human error (for example from drilling, extraction, refining, and burning). Natural phenomena such as oil seepage are proof that petroleum can exist naturally. When burned, petroleum will produce carbon dioxide, a greenhouse gas. Along with burning coal, burning petroleum is a contributor to the increase in CO₂ in the atmosphere. This amount of CO₂ has increased rapidly in the air since the industrial revolution, so that now the level is more than 380ppmv, from previously only 180-300ppmv, so there is global warming.

Historical Development of Mining Exploitation Licenses

In the period before the Dutch came to this country, namely in the Majapahit and Sriwijaya era, the form of mining exploitation "permits" was given by the king or other royal dignitaries. The possibility is given in the oral form only, as is generally accepted in the indigenous peoples in this country. Mining permits granted by the royal dignitaries may have been given to these traditional miners officially written on PelepahLontar in Hindu or Old Javanese. But until now, no official records have been found, either in the form of fairy tales or other folk tales. Because at that time customary law prevailed which was generally unwritten. It turns out that until now it is still used as a reference or basis for cooperation in oil and gas exploitation with foreign contractors, namely "Production Sharing Contracts" (KPS) (Marpi, 2021). Has appointed this form of production sharing, which is rooted in Javanese traditional law, to replace the basic concept of the Petroleum Work Contract (KK) adopted from the 5-A Contract based on Article 5 AIndischeMijn Wet. This Petroleum Work Contract, which follows the 5-A Contract Concept, is a colonial product. Whereas since the Dutch came and controlled this country, mining permits were granted by the Sultans in Sumatra and the Kings in Java and other areas in Indonesia. Furthermore, it is given in the form of a Mining Concession,

according to the Western Civil Law Concept as regulated in the *Burgirlijk Wetboek* (BW). This Western Civil Code was brought by the Dutch from their country and enforced in this colony by Concordance. Based on *IndischeMijn Wet Stb.* 1899 No. 214. The implementation of this concession grant by the Dutch East Indies Government was carried out in the framework of determining its colonial policy and policies on the natural resources of excavated materials in Indonesia. This Dutch East Indies mining law was born, from the political developments at that time which were based on their liberalistic and capitalist thinking. The colonial policy in the mining sector has paved the way for the "Mining Concession". Furthermore, the concession's grip on the national wealth of the Indonesian nation will last for 15 years of our independence (Yusyanti, 2016).

The government's efforts to replace *Mijnwet* have started since the existence of the *Mosi Teuku Moehammad Hasan* and friends in 1951, which was followed by the formation of the State Committee for Mining Affairs (PNUP). One of the PNUP's tasks is to prepare Indonesian mining laws that are in accordance with the state of independence based on the national economy. This committee succeeded in compiling a draft mining law (RUU), but until PNUP was dissolved, this bill was never passed into law because of the many political interests at that time. After the President decreed the entry into force of the 1945 Constitution, then Indonesia had a national mining law, namely Law No.37prp of 1960 on mining. Mining can be more developed in line with the opening of the door for foreign investment according to Law No.1 of 1967 concerning Foreign Investment, so the issuance of Law No.11 of 1967 concerning Basic Provisions of Mining, replacing Law No. 37 prp of 1960. The monetary crisis in Indonesia that happened in 1997 had a broad impact on the national economy, which ended the Soeharto government in 1998 and entered a period of reform. Several important situations have changed, concerning changes in the strategic environment, among others, the spirit of regional autonomy, globalization, human rights, intellectual property rights, democratization, and the environment. These changes were anticipated by the Government in various policies so that Law No. 4 of 2009 concerning mineral and coal mining was born.

CONCLUSION

Investment is one of the supporting sectors for economic progress in every country. All countries have advantages and disadvantages to complement each other from one country to another. To cover up shortcomings and advance the economy of a country, among others, through investment, which is one of the channels of state relations, both bilaterally and multilaterally. Because investment will increase the country's income through tax revenue and reduce unemployment. The main consideration for a country to optimize the role of both foreign and domestic investment is to transform economic potential into real economic strength in the context of increasing economic growth. The role of investment is not only as of the best alternative source of development financing when compared to foreign loans, but also very important as a tool to integrate a country's economy into the global economy. In addition, investment can generate a multiplier effect on national economic development, because investment activities not only transfer capital and goods but also transfer knowledge and human capital, expand employment, develop import substitution industries to save foreign exchange, encourage non-experts. oil and gas to generate foreign exchange, transfer technology, build infrastructure, and develop disadvantaged areas.

Based on Law Number 25 of 2007 concerning Investment, it provides the benefit that Indonesia accepts investment activities in the form of foreign and domestic investment. In the consideration (preamble) letter c, that to accelerate national economic growth and realize Indonesia's political and economic sovereignty, it is necessary to increase investment for the management of economic potential to become real economic strength by using capital originating from both domestic and foreign. Some of the principles of investment that are important in demonstrating investment activities are article 3 letter j, the balance of progress and national economic unity.

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