

Legal Aspects of Company Establishment in the Field of Coal Transportation and Sales Business After the Enactment of Law Number 3 Of 2020 Concerning Amendments to Law Number 3 of 2009 Concerning Mineral and Coal Mining

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ABSTRACT

This research will examine the aspects of forming a business entity or company and the factors that must be considered when establishing a company in the coal transportation and sales industry. The purpose of this article is to investigate the concept of the structure of a company entity in Indonesian laws and regulations, as well as the legal factors that must be considered when establishing coal transportation and sales company. However, the permits must be consistent with the activities to be conducted to engage in continuous business activities and generate profits. The company's legality must be considered when establishing a company in the coal transportation and sales industry, particularly in the KBLI 2020 business field with code 46610. After obtaining a Transportation and Sales Business Permit, the company could sell coal commodities.

ABSTRAK

Penelitian ini akan mengkaji aspek-aspek pembentukan badan usaha atau perusahaan dan faktor-faktor yang harus diperhatikan dalam mendirikan perusahaan di industri pengangkutan dan penjualan batubara. Tujuan artikel ini adalah untuk mengetahui konsep struktur badan usaha dalam peraturan perundang-undangan Indonesia, serta faktor-faktor hukum yang harus dipertimbangkan ketika mendirikan perusahaan pengangkutan dan penjualan batubara. Namun izin tersebut harus sesuai dengan kegiatan yang akan dilakukan untuk melakukan kegiatan usaha yang berkelanjutan dan menghasilkan keuntungan. Legalitas perusahaan harus diperhatikan ketika mendirikan perusahaan di industri pengangkutan dan penjualan batubara, khususnya di bidang usaha KBLI 2020 dengan kode 46610. Setelah memperoleh Izin Usaha Pengangkutan dan Penjualan, perusahaan dapat menjual komoditas batubara.

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I. INTRODUCTION

To increase overall national growth and economic development in particular, as well as the rate of investment, it is necessary to expand business prospects and ensure stability and legal protection for the business world. (Herlin Budiono, 2012) In addition, not only the government as the manager of the state but also the private sector as business actors must have great enthusiasm and commitment to foster a conducive environment for business growth. Sector. (Prasetyo Tri Pamungkas,

2016) It is leveraging the Company for Your Profits Commercially. A corporation is a business organization that conducts transparent, sustainable economic operations (finance, industry and trade) and is open to generating profits (winstoogmerk). Article 33 of the 1945 Constitution, which mandates government control over critical natural resources, is relevant to the coal mining industry because it directly impacts a large population's lives. This involves maximizing the common good through optimizing the use of natural resources. Article 33 of the 1945 Constitution partially stipulates that the state "regulates the earth and water and the mineral wealth contained therein". This provision applies to industries that are "important to the state and have an impact on people's lives" and are used for the greatest prosperity of the people". Article 33 of the 1945 Constitution states: "Production branches which are important to the state and which affect the livelihood of the people are controlled by the state, and the state controls the earth and water and their natural resources. and used for the greatest good of the greatest number." Regarding the provisions of the Limited Liability Company Law, which replaced the Law from the colonial era, it turns out that the requirements of Law Number 1 of 1995 no longer meet the legal needs of society, where economic, political, and technological progress increasingly rapidly, especially in the field of the current era of globalization. The principles of excellent company management need to be revised or re-enacted by Law Number 1 of 1995 concerning Limited Liability Companies. As a result, in 2007, Law Number 40 of 2007 concerning Limited Liability Companies (UU PT) was enacted to replace Law No. Previously, so that it can be more applicable to recent legal changes and demands of society (Rambling, Nicky Yitro Mario, 2013:72). According to the PT Law, the categories of business entities include individuals, partnerships, partnerships, limited liability companies (PT) (I Gede Murdana, 2021:3) A legal or juridical entity and economics that uses capital and employees or workers to pursue profits. Establishing a company is a strategic choice; Therefore, it is very important to study various estimators, especially from an economic point of view, such as sales potential, availability of raw materials, and production capability. , 2021). In addition, a permit is required for the establishment of a business, such as the establishment of a Limited Liability Company. (Pearl Putri, 2019:21) On the other hand, Indonesia is a country with enormous natural resource potential. These natural resources consist of minerals (mining). The government has the authority to regulate, manage, and monitor the management or exploitation of minerals which is the right of state control. (Salim HS, 2006: 6) In the Indonesian mining industry, the coal transportation and sales sector remain the undisputed leader. Coal across the country. On the other hand, the mining industry is said to provide the most significant income for the country. In 2018, this sector paid Rp 46.6 trillion to the government (<https://finance.detik.com/energi/d-4391856/penerimaan-negara-dari-tambang-diclaim-tertinggi-berapa-sih>, 2021). In addition, as the primary user in Indonesia, the State Electricity Company (PLN) is still experiencing a coal shortage. -no-power-outage, 2021) Thus, the formation of a coal hauling and selling company is now ripe with opportunities.

The theory used in this analysis is the theory of legal certainty, namely by linking this theory with the concept of the structure of a business entity in Indonesian laws and regulations, as well as legal factors that must be considered when establishing a coal transportation and sales company based on the principles of justice and equality. The Law is stated in "Article 28D paragraph 1 of the 1945 Constitution of the Republic of Indonesia."

Previous research (state of the art) which has the same title as the author's research is "PERMISSION TO USE SMELTER BY FREEPORT INDONESIA LIMITED COMPANY ACCORDING TO LAW NUMBER 3 the YEAR 2020 CONCERNING MINING" written by Mely Bujani, Fransikus Tangkudung, Martin Lambonan published in the journal *Lex Administratum*, what distinguishes the research between the researcher and the author is that the researcher examines permits more specifically on the use of smelters by mining companies with the object of research being Freeport, while the authors read the legal aspects of the establishment of companies in the business of transportation and sales of Coal after the enactment of the law. Number 3 of 2020.

The problem and gap in this study are that Coal is a natural resource in Indonesia that still has scarcity, but to manage it requires a business license that the company must prepare, so in this paper, the author will analyze the legal aspects of licensing and the establishment of a stone company. Coal after the enactment of Law Number 3 of 2020 concerning Amendments to Law Number 3 of 2009 concerning Mineral and Coal Mining.

II. RESEARCH METHOD

This article uses a normative juridical approach in its research methodology. Legal normative process, namely the study of law through an analysis of literature studies. What to investigate by tracing the rules and relevant scientific literature. (Soekanto, S and Mamudji, 2001:13-14).

Primary legal sources are documents which are primary sources of law itself. The rule of law is the leading legal basis. This article was written by the Constitution and the Law of the Republic of Indonesia of 1945, as well as Law Number 3 of 2020 concerning Minerals and Coal and Law Number 40 of 2007 concerning Limited Liability Companies. All non-governmental books and journals on law are considered secondary sources. The author of this thesis on secondary legal sources such as legal dictionaries and textbooks to assist in his research.

III. RESULTS AND DISCUSSION

1. Establishment of a Limited Liability Company

In Law Number 40 of 2007 concerning Limited Liability Companies, Article 1 paragraph (1) confirms that a limited liability company is a legal entity based on an "Agreement", which means at least two people/parties establish it by the principle of agreement and not the prevailing institutional doctrine. . so far. Deal occurs when one person commits to another or when two people promise to act. (Hilman Y.Purwati, 2017:17) The agreement to form a limited liability company is stated in a notarial deed. (Nicky Jethro Maria R, 2013:72)

The elements of the company include the following, namely:

- a. Activities are permanent and ongoing, intending to protect other parties, especially customers and third parties.
- b. It is done publicly, and this is for media promotion, advertising, publication, business licensing, as well as building a positive image for the company.
- c. For the sake of financial liberalization and taxation, accounting exists.
- d. Profit-driven, the company will seek maximum profit, and if it is not profitable, it should be closed.
- e. The law is explicit when an individual or other commercial entity finds a business.

The procedures for the establishment of a Company and Limited Liability Company are regulated in Law No. 40/2007, which regulates the prerequisites and procedures for licensing as follows: (Kristiandi and Djoko Purnomo, 2018; 13)

- a. "The founders (Directors and Commissioners) consist of at least 2 or more people; "
- b. "Company Name; "
- c. "The composition of shareholders (founders must take part in shares; "
- d. "The deed of incorporation must be ratified by the Ministry of Law and Human Rights; "
- e. "Establishing the value of the authorized capital of the paid-up capital (the value of the deposited capital is at least 25% of the authorized capital); "
- f. "Company Classification:"
 - i. "PT KECIL with a Deposit Capital of more than RP 50,000,000; "
 - ii. "PT MENENGAH with a Deposit Capital of more than RP 500,000,000; ""PT BESAR with a Deposit Capital
 - iii. of more than RP 10,000,000,000; "
- g. "The management consists of at least 1 (one) Director and 1 (one) Commissioner; "

h. "Shareholders must be Indonesian citizens or legal entities made in accordance with Indonesian law; "

i. "Notarial Deed in Indonesian. "

In addition, after the passage of a new law, namely Law Number 11 of 2020 concerning Job Creation ("Job Creation Law"), there have been several changes in the conditions and process of forming a pt which is regulated starting in the fifth part of Pasal 109 of the Job Creation Law which regulates:

"One can only form a pt that only applies to micro and small enterprises (MSMEs). The new Job Creation Law has abolished the minimum capital allowed to establish a pt, previously Rp 50,000,000. "

If this rule is removed, the company will have greater leeway and ease in developing a PT. The implementation of the OSS system has made TDP obsolete, and its capabilities have been moved to NIB. Corporate licenses are now being evaluated in a new way thanks to the introduction of the Risk-Based Licensing and Job Creation Act. There are low, medium, high, and very high risk categories on the business spectrum. The saying goes, "The company must not engage in any activity that is not in accordance with its purpose." According to research (Syamsul Syawal et al., 2020),

2. Business Licensing in Indonesia

A Limited Liability Company is established in accordance with the Limited Liability Company Law. To do business and qualify for a permit under the provisions of the relevant legislation, a business license under the Investment Act is required. However, licensing is a policy tool used by the government to regulate actions that may harm the public interest. Government Agency for the Promotion of Domestic Law (2013).

The establishment of Online Single Submission (OSS) is based on the need to enforce licensing rules regulated in Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services. Business Actors in OSS obtain their permission from the OSS Institution acting on behalf of the minister, head of the institution, governor, or regent/mayor to issue the permit through a centralized electronic system. The purpose of OSS is to make it easier for business actors and investors to obtain the permits they need to operate, such as Environmental Permits, Building Requirements Permits, etc., and for business actors (individuals and companies) to register and maintain these permits. . If a corporation wants to do business in a particular country, it must first register with the relevant authority (company registration) and then apply for a permit through the OSS system, where a unique identifier known as the Taxpayer Documentation Number (TDP) will be issued. (Emy Widya, et al., 2019).

Then, when you first form a pt through the OSS Institution, it is important to think about whether KBLI regulates the type of business being run (Indonesian Business Field Standard Classification) or not. Having access to this KBLI will be very helpful in determining what type of business license pt. Currently KBLI; regulated by BPS Regulation Number 2 of 2020 concerning the Classification of Indonesian Business Standards, even though the KBLI in 2020 is regulated by the Regulation of the Head of the Central Statistics Agency Number 19 of 2017 concerning Amendments to the Regulations of the Head of the Central Statistics Agency. Central Statistics Agency Number 95 of 2015 concerning the Standard Classification of Indonesian Business Fields. As reported (Dewa Gede Indra Jaya, et al., 2020; 493).

3. Establishment of a Company in the Business Sector of Coal Transportation and Sales After the Enactment of Law Number 3 of 2020 concerning Amendments to Law Number 3 of 2009 concerning Mineral and Coal Mining

The business field of coal transportation and sales is currently one of the sectors that are in demand by entrepreneurs, this is also due to:

“Mining is one of Indonesia's most important industries because of the money it brings in through exports, the jobs it creates, the economic activity it spurs, and the money it brings into the country's federal and provincial coffers (Chandra Wijaya, et al,2019;218).”

The regulation regarding mining companies formed by the Government through Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, again concerning policies to increase the added value of minerals and coal, divestment of shares, supervision and guidance, land use, data and information. , Citizen Engagement, and continuation of operations for holders of the Contract of Work or PKP2B. The newly added charge materials are:

- a. *Mining Jurisdiction Regulations; Mineral and Coal Management Authority; Mineral and Coal Management Plan;*
- b. *In the framework of the development of WIUP, "assignment to state research institutions, state-owned enterprises, regionally controlled enterprises, or enterprise organizations to conduct investigations and research".*
- c. *Strengthening policies regarding environmental management in mining business activities, including the implementation of Reclamation and Post-Mining; and Realignment of permits in the operation of Minerals and Coal, including all concepts of new permit information relating to the operation of rocks for a particular type or for a specific purpose, as well as small-scale mining permits;"*

On the other hand, mining companies are businesses whose operations are very sensitive to the environment. However, this company has a harmful effect on humans and the environment. (Einde Evana et al, 2018; 160) In this context, it is very important to prioritize very strict legal considerations when starting a coal transport and sales company. The most important part of legality is the legitimacy and licensing of the company that has been established. Licensing is a government action that is unilateral in nature or based on laws and regulations that apply to certain events based on certain processes and standards. (S.F. Marbun and Moh. Mahmud MD, 2000) Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Law 3/2020) regulates the requirements for the business field of coal transportation and sales if the form of a company has been considered. As stated in Pasal 1 number 13c of Law 3/2020:

"A Transportation and Sale Permit is a business license granted to a company to buy, transport, and sell mineral or coal mining commodities."

In addition, to obtain a business license for the transportation and sale of coal is regulated in Pasal 35 of Law 3/2020, which states that business licensing is carried out based on the Central Government; in this case, business licenses in the form of NIB and Permits. The permit is a permit for the transportation and sale of coal in this case.

Regarding, among others, the terms of transportation and sales permits for corporations engaged in the transportation and sale of coal:

a. Letter of Application;

b. Business Identification Number;

In this case, the organization must have a KBLI which is associated with the application. The 2020 KBLI code for the coal transportation and sales industry is 46610. In addition, business actors are prohibited from holding additional KBLI in other mining and coal subsectors.

c. The composition of the Board and the list of *beneficiary owners (beneficiary ownership)*.

A person who enjoys the benefits of ownership despite the property rights in the name of another person. It also refers to one or a group of individuals who have the authority to select or influence the choice of a transaction about a particular security, such as the shares of a company, either directly or indirectly. Benefit ownership is different from legal ownership. In most cases, the rightful owner and the beneficial owner are the same. However, there are cases where the owner of a profitable property can choose to remain anonymous, legitimate or not. (Jenik Radon,2016;79)

d. Cooperation Agreement on the transportation and sale of coal.

Permit applications are submitted using the Online Licensing System of the Ministry of Energy and Mineral Resources, which can be seen in (<https://perizinan.esdm.go.id/>) as follows:

- a. They transport and sell coal produced from holders of IUP, IUPK, IUPK Advanced Operations/Agreements, and Mining Permit Requirements for Sales holders who comply with applicable laws and regulations to carry out coal production and transportation and sales operations.
- b. In accordance with the provisions of the law, build and use certain transportation and sales infrastructure, including supplies, docks and ports.

IV. CONCLUSION

What to do when it comes to forming a corporation to engage in sustainable commercial operations and make a profit; nevertheless, the permit must be in accordance with the activities to be carried out. The legality of the company must be considered when forming a company in the coal transportation and sales industry, especially in the business field of KBLI 2020 with the code 46610. After obtaining a Transportation and Sale Business License, the company is allowed to sell coal commodities.

Before forming a company, it is necessary to prepare several legal elements regarding the licensing of business establishment, including the preparation of categories and codes of KBLI for the purposes and purposes of the Company Establishment, can be suggested. PT personnel are prohibited from obtaining permits in certain industries if they have a KBLI code and category with a sub-sector. On the other hand, provisions regarding PT. Limited Liability Companies as in the Job Creation Law are not recommended and are not suitable for the coal transportation and sales industry.

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OTHER – OTHER

Kerjasama dengan pemilik IUP, IUPK Operasi Produksi, IUPK sebagai Kelanjutan Operasi Kontrak/Perjanjian, SIPB, PKP2B, IPR, KK, dan pemegang izin pengangkutan dan penjualan sejenis.

KBLI 2017, Kategori/Kode: 46610: PERDAGANGAN BESAR BAHAN BAKAR PADAT, CAIR DAN GAS DAN PRODUK YBDI: Kelompok ini mencakup usaha perdagangan besar bahan bakar gas, cair, dan padat serta produk sejenisnya, seperti minyak bumi mentah, minyak mentah, bahan bakar diesel, gasoline, bahan bakar oli, kerosin, premium, solar, minyak tanah, batu bara, arang, batu bara, ampas arang batu, bahan bakar kayu, nafta dan bahan bakar lainnya termasuk pula bahan bakar gas, seperti LPG, gas butana dan propana dan minyak semir, minyak pelumas dan produk minyak bumi yang telah dimurnikan.

LAWS AND REGULATIONS

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