



## Discourse Study on Minerals and Coal: Licensing Regulations and Compliance of Government Apparatus

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### **Abstract**

Based on the findings of the study, it can be concluded that the Mining Business Licensing Arrangements After Law Number 3 of 2020 Concerning Minerals and Coal Concerning Amendments to Law Number 4 of 2009 Concerning Minerals and Coal demonstrates an inconsistency between lower regulations and higher regulations because, in Law Number 3 of 2020 Concerning Minerals and Coal, the Minister of Energy and Mineral Resources of the Republic of Indonesia is given the authority to issue licenses for mining businesses. Indonesia. In this instance, the issuance of mining business permits for both minerals and coal demonstrates disobedience of the Ministry of Investment / Investment Coordinating Board of the Republic of Indonesia in implementing Law Number 3 of 2020 regarding Amendments to Law Number 4 of 2009 regarding Minerals and Coal.

**Keywords:** *Government Compliance; Business Licensing*

### **Introduction**

Both living natural resources and nonliving natural resources abound in Indonesia. Indonesia's natural wealth can be found on the earth's surface, in the earth's interior, at sea, and in the air. Renewable natural and nonrenewable natural resources are the two major groups of natural resources based on their availability. The Unitary State of the Republic of Indonesia is located on three collisions of the earth's crust: the Eurasian Continental plate, the Indian-Australian Continental plate, and the Pacific Ocean plate. These collisions have given rise to a geological structure rich in potential natural resources in the form of coal and minerals (Adrian Sutedi, 2012).

In general, the mining industry significantly contributes to national economic growth. Coal, a strategic mineral that is a source of energy within the mining jurisdiction of Indonesia and a gift from God Almighty, plays a crucial role in meeting the needs of many people. In order to provide real added value to the national economy and promote the prosperity and well-being of the people in a just manner, the

state must control the management of mineral and coal mining. Sustainably, coal mining business activities contribute significantly to national economic growth and regional development. For this reason, the management of coal mining must be conducted with forethought and caution to ensure balance and sustainability.

The economic development of the coal mining industry has yielded substantial results, both as a source of domestic energy and foreign exchange for the state. In this age of globalization, every nation's economy is based on industrial activities that utilize the nation's natural resources. In order to compete with other nations and advance their economy, this is done. Consequently, numerous private and public companies process coal mining products for manufacturing.

In Indonesia, the emergence of coal mining industries has both positive and negative effects on society and the nation. The existence of the coal mining industry has many positive effects, including creating jobs for the community, using mining products to meet domestic and international market demand, and contributing mining exports to the country's income and economic growth. In addition, the Indonesian mining industry can attract foreign investment. It is undeniable that the majority of mining activities and the presence of mining companies in an area will have a systematic effect on the economic aspects of the local community, both directly and indirectly.

This can be seen in the surrounding community who work for the mining company due to the recruitment of workers by the company to support operational activities. Includes managerial, mining technical, operational technical, and supporting staff. In addition, the coal mining industry as a supplier of energy needs will directly impact increasing and fulfilling the demand for electricity supply, households, and informal industrial activities. Coal mining industry activities will stimulate the development of companies that use the mining materials themselves, which will have a sustainable impact on infrastructure needs.

The discussion on mineral and coal mining is fascinating due to the issuance of permits to legal entities, business entities, and individuals who wish to conduct mineral and coal mining operations. Initially, through Law Number 4 of 2009 Concerning Minerals and Coal, the authority to issue permits rested with the Provincial Government; however, since the issuance of Law Number 3 of 2020 Concerning Amendments to Law Number 4 of 2009 Concerning Minerals and Coal, the authority to issue permits now resides with the National Government. In addition to the Central Government assuming the authority to issue permits, there have been changes in the issuance of permits, particularly mining contracts of work agreements. In Indonesia, they have taken the form of a time-bound Contract of Work for the past 30 years. The party signing this contract is the minister of general mining as the government's representative with authority to authorize mining. However, the contract of work agreement has been abolished and replaced by the issuance of a particular mining business permit (IUPK).

Taking over the authority to issue and revoke mining business permits from the Ministry of Energy and Mineral Resources by the Ministry of Investment and the Investment Coordinating Board (BKPM) is a fascinating matter to study and conduct research on so that later a correct formulation will be found according to the law which government agency is has the right to issue or revoke the said mining business permit. This article examines and analyzes the Arrangements for Mining Business Licensing and Compliance with the Ministry of Investment/Investment Coordinating Board of the Republic of Indonesia After the Enactment of Law Number 3 of 2020 Regarding Minerals and Coal Concerning Amendments to Law Number 4 of 2009 Regarding Minerals and Coal.

## ***Methodology***

This study employs normative legal research, which can be interpreted as a scientific procedure to discover the truth based on the scientific logic of law from a normative vantage point. According to Johnny Ibrahim (2012) the normative aspect that will be studied is the legal basis governing the authority to issue and revoke mining business licenses from the Ministry of Energy and Mineral Resources by the Ministry of Investment and the Investment Coordinating Board (BKPM), as well as the existence of inconsistencies with the Government Apparatus' Compliance with Law Number 3 the Year 2020 Concerning Amendments to Law Number 4 of 2009 Concerning Minerals and Coal, to study and analyze the legality of the normative aspect.

## ***Results and Discussion***

### **1. Mining Business Licensing Arrangements After Law Number 3 of 2020 concerning Minerals and Coal Regarding Amendments to Law Number 4 of 2009 concerning Minerals and Coal**

Prior to the enactment of Law Number 4 of 2009 concerning Minerals and Coal, the central government had the authority to manage mineral and coal mining natural resources. This is because the government system, before the enactment of Law 4 of 2009, was centralized, meaning that everything related to mineral and coal mining, both related to the determination of mining authorization permits, work contracts, work agreements, coal mining concessions, and others, the official authorized to issue permits is the minister, in this case, the Minister of Energy and Mineral Resources. However, since Law Number 4 of 2009, authority in granting permits has been handed over to local governments (provincial, district/city) and central government in accordance with their powers.

Decentralization in the amendments to the 1945 Constitution of the Republic of Indonesia was prompted by a desire to accommodate populist zeal in the fight for the common good. The amendments to Article 18 of the 1945 Constitution of the Republic of Indonesia became the legal foundation for implementing regional autonomy, which became one of the national priorities during the reform era. The granting of authority to regional governments to issue business licenses in mineral and coal mining matters is a legal consequence of regional autonomy. Regional governments are permitted to exercise as much autonomy as possible, except for government affairs governed by law as central government affairs.

Along with the principles, goals, and ideals contained in the law regarding the implementation of the mineral and coal mining business, it must always be geared toward enhancing the community's well-being by paying close attention to the growing aspirations of society. The mineral and coal mining industry are one of the economic activities that contribute to the welfare of the Indonesian populace. The definition of mining in article 1 point 1 of Law Number 4 of 2009 concerning Mineral and Coal Mining, from now on referred to as the Minerba Law, is part or all of the stages of activities in the context of research, management, and exploitation of minerals and coal which includes general investigations, exploration, studies feasibility, construction, mining, processing, and refining, transportation and sales, as well as post-mining activities. The objective of the mining business is to extract minerals from the earth. Mining is one of the potential natural resources that can be utilized as a source of foreign exchange for nations.

Prior to the issuance of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, the regulation of mineral and coal mining permits used Law Number 4 of 2009 concerning Mineral Coal Mining and also used Government Regulation Number 8 2018 concerning the Fifth Amendment to Government Regulation Number 23 of 2010 concerning Implementation of Mineral and Coal Mining Business Activities.

Before Law Number 4 of 2009 was abolished and replaced with the Mineral and Coal Law, an agency or individual had to first ask permission from the local district or city government if they wanted to carry out mining activities in an area. Later, the regional government in each mining location has the task of conducting guidance, conflict resolution, and even supervision of mining businesses. With the role of the local government, if there is a conflict between a mining company and the community around the mine, the local government can play a role of a mediator. Mineral and coal mining business actors conducting mining business must obtain a Mining Business Permit, from now on referred to as IUP. The definition of IUP in Article 1 point 7 of Law Number 4 of 2009 concerning Minerba is a permit to conduct a mining business. IUP is granted to business entities, cooperatives, and individuals.

In managing natural resources, the government should refer to the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), which mandates that the state shall control the earth and water, as well as the natural resources contained therein, and use them as much as possible for the prosperity of the people. Returning to the mandate of Article 33, paragraph 3, of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court provides an interpretation of the clause "controlled by the state" that includes the meaning of control by the state in a broad sense originating and deriving from the concept of the sovereignty of the Indonesian people over all sources of wealth "earth and water and the natural wealth contained therein, including the concept of public ownership." The 1945 Constitution provides the state with a mandate to carry out its functions of implementing policies (beleid) and management actions (bestuursdaad), regulation (regelendaad), management (beheersdaad), and oversight (toezicht houden daad).

The state's position as the owner of minerals results in the state having to regulate the designation and use of minerals for the prosperity of society so that the state controls minerals. The purpose of control by the state (government) is for the national wealth to be utilized for the greatest prosperity of all Indonesian people. Thus, individuals, communities, and business actors, even if they have rights over a piece of land, do not have the right to control or own the minerals contained therein.

The state has a position as the owner of minerals, causing the state to make laws and regulations governing minerals and coal, namely Law number 11 of 1967 concerning Principles of Mining which was subsequently amended by Law Number 4 of 2009 concerning Minerals and Coal and last amended by Law Number 3 of 2020 concerning Law Number 4 of 2009 concerning Minerals and Coal.

## **2. Compliance with the Ministry of Investment/Investment Coordinating Board of the Republic of Indonesia in Implementing Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Minerals and Coal.**

The Minister of Investment/Investment Coordinating Board of the Republic of Indonesia has revoked the Production Operational Mining Business License (IUP OP) for approximately 2018 IUP OP from January 2022 to June 2022. The IUP OP that was revoked was a mining company that did not utilize or even abuses permission from the government. This was known based on a press conference held on January 7, 2022, by the Minister of Investment/Head of the Investment Coordinating Board of the Republic of Indonesia (BKPM RI) Bahlil Lahadalia, who said that after the revocation, permits, and subsequent business management would be given to credible companies, as well as various community groups and business groups. The transfer of permits and business management will later be transferred to these parties according to regulations issued by the Ministry of Investment/BKPM of the Republic of Indonesia. Community groups, religious organizations, as well as Regional Owned Enterprises (BUMD) that will manage businesses whose permits have been revoked, and before the rights to manage mining business permits are granted to these organizations, will first be selected by the Ministry of Investment/BKPM of the Republic of Indonesia. Indonesia. The Minister of Investment reported that his party had revoked 2,065 Mining Business Permits (IUP) as of August 2022. The revocation of IUP has

reached 98.4 percent of the target of 2,078 IUP and Regional Owned Enterprises (BUMD) that will manage businesses whose permits have been revoked. Before the rights to manage mining business permits are granted to these organizations, they will first be selected by the Ministry of Investment/BKPM of the Republic of Indonesia. The Minister of Investment reported that his party had revoked 2,065 Mining Business Permits (IUP) as of August 2022. The revocation of IUP has reached 98.4 percent of the target of 2,078 IUP and Regional Owned Enterprises (BUMD) that will manage businesses whose permits have been revoked. Before the rights to manage mining business permits are granted to these organizations, they will first be selected by the Ministry of Investment/BKPM of the Republic of Indonesia. The Minister of Investment reported that his party had revoked 2,065 Mining Business Permits (IUP) as of August 2022. The revocation of IUP has reached 98.4 percent of the target of 2,078 IUP.

Most of the reasons for the revocation needed to be clarified status and the non-operation of various companies that had pocketed government permits. Revocation is carried out after an in-depth review and study. According to a statement by President Joko Widodo in a press conference at the Bogor Presidential Palace on January 6, 2022, "permits that have been granted for years but have not been carried out have caused the exploitation of natural resources to be held hostage to improve people's welfare." In addition, the government revoked as many as 192 forestry sectors permits covering an area of 3,126,439 hectares. These licenses were revoked for being inactive, not making a work plan, and being neglected. Then the abandoned plantation use rights (HGU) covering an area of 43,448 hectares were also revoked. Of this area, as many as 25. Twelve legal entities own one hundred twenty-eight hectares, and the remaining 9,320 hectares are part of the neglected HGU belonging to 24 legal entities. President Joko Widodo also said that improving and controlling these permits was an integral part of improving the governance of issuing mining and forestry permits and other permits.

Licenses (issuance and revocation of mineral and coal mining business permits) have been issued by the Investment Coordinating Board of the Republic of Indonesia (BKPM RI) and the Minister of Energy and Mineral Resources since the implementation of Law Number 3 of 2020. This is by the Regulation of the Minister of Energy and Mineral Resources regarding Amendments to the Regulation of the Minister of Energy and Mineral Resources No. 25 of 2015 concerning Delegation of Authority for Granting Licenses in the Mineral and Coal Mining Sector in the context of implementing One Stop Services to the Head of the Investment Coordinating Board of the Republic of Indonesia.

Aside from the aspect of authority delegated by the Minister of Energy and Mineral Resources to the Minister of Investment/Investment Coordinating Board of the Republic of Indonesia (BKPM RI) regarding the authority to issue and revoke mining business licenses contrary to Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Minerals and Coal, it was determined that the Minister of Investment/BKPM of the Republic of Indonesia in exercising his authority did not violate the law.

Furthermore, The Director General of Mineral and Coal (Minerba) of the Ministry of Energy and Mineral Resources said that all licensing processes are currently centralized at the Ministry of Investment/BKPM through the Online Single Submission (OSS) service. However, in the context of the revocation of mining permits, there is Presidential Decree Number 1 of 2022. Through this Presidential Decree, the President formed the Task Force for Land Use and Investment Arrangement. Meanwhile, in forming the Task Force, the Chair of the Task Force is the Minister of Investment/Head of the Investment Coordinating Board (BKPM). At the same time, the Minister of Energy and Mineral Resources is a Member. The one who revoked this was the task force, which the Minister of Investment chaired the task force. So, the revocation mechanism is through the task force that has been formed. Previously, business actors needed clarification over the policies that the government had made in the process of revoking mining permits. Moreover, Meanwhile, the minister revokes the mining business license (IUP) and

special mining business permit (IUPK) if the company violates the following provisions: a. IUP or IUPK holders do not fulfill the obligations set out in the IUP or IUP and the provisions of laws and regulations. B. Holders of IUP or IUPK commit criminal acts as referred to in this law. c. IUP or IUPK holders are declared bankrupt. Then the second legal basis is Government Regulation (PP) Number 96 of 2021 article 185. In this regulation, administrative sanctions are in the form of a. Written warning b. Temporary suspension of part or all activities, exploration, or production operations c. Revocation of IUP, IUPK, IPR, SIPB, or IUP for sales. The term article 3 point b provides a recommendation to the Ministry of Investment or the head of BKPM to revoke the mining business license.

### **Conclusions**

Based on the preceding description, it can be concluded that the Mining Business Licensing Arrangements After Law Number 3 of 2020 Concerning Minerals and Coal Regarding Amendments to Law Number 4 of 2009 Concerning Minerals and Coal Becomes Effective demonstrates that there is an inconsistency between lower regulations and higher regulations because in Law Number 3 of 2020 Concerning Minerals and Coal Concerning Amendments to Law Number 4 of 2009 Concerning Minerals and Coal the requirements for a mining business license.

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