Coal Mining Investment Opportunities in Indonesia on Government Regulation Number 3 of The Year 2020 Concerning Mineral and Coal Mining

Andy S. Batubara¹*

¹ University of Muhammadiyah Tangerang
*andy.batubara@yahoo.com.sg

Abstract

The coal mining industry has part of the important economic role to support National Budgeting government, therefor need to support haven’t overlapped by the regulation, to support easy in permitted so it will able to feel more the value-added for government, nation, and society. The coal mining industry still has an important role in supporting the State Budget, for that it needs to be supported through non–overlapping regulations, providing convenience in licensing so that the benefits for the nation, state and society can be felt.

Key words: coal mining, legal certainty, investment

Introduction

The nature of the research in this paper is descriptive which is carried out with a normative juridical approach. The types and sources of data used are data secondary. Data collection is carried out mainly by document study techniques (library research and online research) by taking an inventory of the required secondary data, both in the form of primary, secondary, and tertiary legal materials, then conducting historical searches and synchronization between these legal materials.

The primary legal materials used consist of statutory regulations, especially those relating to the preparation of laws and regulations and the role of law in economic development. Secondary legal materials that will be used include scientific works, research results, and literature related to the substance of the research. Tertiary legal materials, namely materials that support primary and secondary legal material information, including data from newspapers, journals, dictionaries, encyclopedias

Results & Discussion

On May 12, 2020, the Central Representative Council (DPR) – Republic of Indonesia (RI) has just passed the new Mineral and Coal (Minerba Law), namely Government Regulation Number 3 of the Year 2020, concerning Government Regulation Number 4 of the Year 2009. (Risano, 2020) APBI (Association of Indonesian Coal Entrepreneurs)/ICMA is of the opinion that the issuance of this new law will provide legal certainty and investment for business actors,
but also strictly regulates the company’s obligations in carrying out post-reclamation reclamation. mines as well as financial and fiscal obligations to the state. So that the state will get more revenue contributions from business actors and the arrangement of environmental obligations and reclamation and community development will also be better. (Amaly, 2016)

There are concerns from mining businesses that the issuance of this new law will have a negative impact on the extension of the contract of work and PKP2B (Coal Mining Concession Work Agreement). In fact, by issuing this law, it is precisely to guarantee the rights of business actors to extend their contracts/agreements. The right to obtain the extension is also the spirit of Article 169 paragraphs (a) and (b) Government Regulation Number 4 of the Year 2009. (Hayati, 2015a) Based on the law, the government issued PP. 77 of 2014, which also guarantees the extension of KK/PKP2B (Coal Mining Concession Work Agreement) holders which will be converted into IUPK OP (Special Mining Business Permit) after the contract/agreement period ends. (Pratama & Budiharto, 2016) Therefore, the mining law is more of a “confirmation” from the legislators that the extension of the CoW/PKP2B (Coal Mining Concession Work Agreement) is guaranteed to address the concerns of several community groups.

At least for "existing investors" business actors who are currently carrying out their activities, both KK/PKP2B (Coal Mining Concession Work Agreement) and IUP/IUPK (Special Mining Business License) holders will invest to continue their long-term investment plans within the corridors of the applicable laws and regulations. (Awaliyah, 2016)

The increasing demand for coal has consequences in the context of rising global temperatures that cause climate change and local air pollution. Indonesia’s emissions from the energy sector are estimated to increase 3 (three) times from 168 million tons of CO2e to 498 tons of CO2e in by 2030. In 2014, the carbon intensity for power generation was 738 grCO2/kWh, significantly higher than the world average of 567 gCO2/kWh (ADB, 2018). (Haryadi & Suciyanti, 2018)

In addition, Indonesia has committed to reducing 29% of GHG emissions from BAU by 2030, 11% of these emissions come from the energy sector, according to the Indonesia National Determined Contribution. Regardless of the external costs of coal–fired power plants, coal is a cheap source of energy to support Indonesia’s economic development. (Munir, 2019) Environmental damage and health problems (especially respiratory diseases) are two significant external costs. However, in its development, this coal investment puts pressure on Indonesia to transition to the sector from a high–carbon fossil–based system to a low–carbon renewable energy system. On the other hand, the cost of renewable energy has decreased at an unprecedented rate. When renewable energy reaches grid parity, the use of coal energy will decrease significantly. (Kholid, 2015)

Judging from the non-tax state revenue sector which is commonly called PNBP (Non-Tax State Revenue), the Ministry of Energy and Mineral Resources (ESDM) noted that the achievement of Non–Tax State Revenue (PNBP) from the energy and coal mineral mining (minerba) sector reached Rp. 172.9 trillion in 2019. (FINANCE, 2014) The 2019 PNBP achievement is 96% of the 2019 APBN target of Rp 214.3 trillion. From this achievement, the mineral and coal sector mineral and coal (minerba) contributed Rp 44.8 trillion in PNBP. In 2020, the government targets PNBP of Rp 181.7 trillion from the oil and gas sector and of Rp 127.3 trillion. Then the mineral and coal sector of Rp 44.4 trillion. In 2020, it is estimated that Non–Tax State Revenue (PNBP) from the mineral and coal sector will decrease by 20% compared to 2019 which reached Rp 44.8 trillion, while the largest PNBP producer contribution is coal producers. (Sukmalalana & Ridwan, 2020) From the figures above, it can be concluded that coal mining investment in particular still contributes greatly to the state and the welfare of society. On the other hand, the Corruption Eradication Commission (KPK) noted that since the legal supervision of Minerba was echoed. Reception Non–Tax State (PNBP) from the Mineral and Coal (Minerba) sector increased from Rp 5 trillion as of March 2013 to Rp 11.3 trillion as of March 2014. The Corruption Eradication Commission (KPK) itself noted that the potential state financial losses from the mineral and coal sector due to regulatory incompatibility reached Rp 35.6 trillion 1.79 million US dollars. (Yuntho et al., 2014)

Problems faced and may hinder coal mining investment include:

**Mining regulations/regulations are still overlapping.**

There are regulations under it such as PP and Permen. For example PP No. 23 of 2010, concerning the Implementation of Mineral and Coal Mining Business Activities, where later the extension of the PKP2B (Coal Mining Concession Work Agreement) holder will be given in the form of a Special Mining Business License (IUPK), which explains that the production period of a mining company is 20 (twenty) years and can be extended. (Budairi, 2019) Meanwhile, based on Article 75 paragraph 3 of Law (UU) Number 4 of 2009 concerning Mineral and Coal, ex–PKP2B (Coal Mining Concession Work Agreement) mining areas must be returned to the state, then the area is prioritized to be given to SOEs. Meanwhile, based on Article 75 paragraph 4 of the Law, it is also regulated that private business entities can only obtain IUPK (Special Mining Business License) through auction. However, in Article 30 of the PKP2B (Coal Mining Concession Work Agreement) which existed before the Minerba Law, the PKP2B (Coal Mining Concession Work Agreement) holder has the right to obtain a 20–year extension without an auction. Article 169 of the Minerba Law also guarantees that the PKP2B (Coal Mining Concession Work Agreement) that existed before the enactment of
the Minerba Law will remain in effect until the expiration of the contract, including its extension. (Hayati, 2015b) And in article 169 A of Government Regulation Number 3 of the Year 2020 paragraph (1) explains: KK and PKP2B (Coal Mining Concession Work Agreement) as referred to in Article 169 are given a guarantee of extension to IUPK (Special Mining Business License) as Continuation of Contract/Agreement Operations after fulfilling the requirements with the following conditions:

a. Contracts/agreements that have not yet received an extension are guaranteed to get 2 (two) extensions in the form of IUPK (Special Mining Business License) as Continuation of Operations Contracts/Agreements each for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the KK or PKP2B (Coal Mining Concession Work Agreement) by considering efforts to increase state revenues.

b. Contracts/agreements that have obtained the first extension are guaranteed to be given a second extension in the form of an IUPK (Special Mining Business License) as a Continuation of Contract/Agreement Operations for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the first extension of KK or PKP2B (Coal Mining Concession Work Agreement) by considering efforts to increase state revenues. (Mundzir et al., 2020).

This lack of clarity regarding the extension of the exploitation period clearly confuses business actors in coal mining, especially if it is associated with legal certainty, this will provide multiple interpretations.

**Transition of the Coal Sector is Difficult Because it is Closely Related to Politics**

The Indonesian coal industry has close ties and links to the political system at the regional and national levels. The entire supply chain from industry is a major source of revenue at the provincial and local levels and contributes to local development. Several Indonesian political elites also have close ties to the coal mining business in this country. Regional elites have benefited even more since the decentralization of mining permits, which resulted in an increase in the number of mining permits granted between 2001 and 2008. In 2001, the number of mining permits issued by the central government was around 750 and the number increased significantly to over 8,000 by the end of 2008. During 2010 – 2014, nearly 3,000 mining permits were issued, bringing the total to 10,900. Of this huge amount, 40% are IUPs (Mining Business Permits) for coal with a total area of 16.2 million ha. Actual production in the area continues to increase, reaching 557 million tons in 2018. (Retnoningsih & Nurhayati, 2019) In the same year, the government even allowed miners to increase coal production to more than 100 million tons exceeding the target of the Ministry of Energy and Mineral Resources to offset the policy of limiting the price of Domestic Market Obligations.

**Regulating the role of the Government as a Regulatory Agency for State Assets.**

In 2019, the Ministry of Energy and Mineral Resources (ESDM) recorded that the realization of Non–Tax State Revenue (PNBP) from the energy and mining sectors reached Rp. 217.5 trillion. This figure accounts for 53.4% of national PNBP. And if detailed, PNBP deposits from the oil and gas sub-sector reached Rp 163.4 trillion. From the mineral and coal sectors of Rp 50 trillion, for the new and renewable energy sector, energy conservation was recorded at Rp 2.3 trillion and others Rp 1.8 trillion. This achievement increased compared to the 2018 State Budget of 181% of Rp 120.5 trillion. This figure illustrates that the role of the mining industry still has a significant role. So seen from the economics of law, of course, this sector must have clear support both in terms of regulation, at the center and at the local level, local government revenues including elements of the Muspida, community/customary leaders, NGOs (Social Society Institutions) so that the investment climate is getting better well in this mining sector. (Sukmalalana & Ridwan, 2020)

**Equal Distribution of Business Opportunities in the Regions**

Based on the understanding and analysis of the problem formulation in the previous description, the authors conclude that the mining sector still has an important role in maintaining the stability of the country’s foreign exchange and medium and long–term development. Because when viewed from the potential for coal reserves to be exploited, it is around 22.6 billion tons with a fairly long period of time.

Furthermore, to provide a better attraction for foreign investors to come to Indonesia, the making and time of enforcement of legal products in the form of Laws, Presidential Regulations, Ministerial Regulations, and so on should provide good opportunities for investors, not overlapping and even hindering the arrival of investors.

The role of the Government as regulator of state assets must be visible and transparent, so that the Central Government or Regional Governments have good coordination in regulating and managing state revenues, specifically state finances in the physical distribution of regional development, including infrastructure and regional budgets as well as in the closest line. from the mine site.
This mining investment opportunity will also be reflected in business opportunities in the community, such as: in Gorontalo the gold mine is not closed because the business actors are people who prioritize labor intensive, so the role of the Regional Mining Service in collaboration with elements of the Regional Environmental Service must actively provide education, counseling and socialization on how to exploit gold in the right way by paying attention to K3 (Occupational Health and Safety), and how to maintain AMDAL (Environmental Impact Analysis) on the water, soil and air environment.

The role of CSR (Corporate Social Responsibility) which has been budgeted for by a mining company every year, must be felt by the benefits and usefulness for the community in "ring" 1 (one), where the mining company exploits/produces. Because this is a tangible form of the benefits of a mining company in the area, ranging from education, social culture, agriculture, fisheries or animal husbandry where all of them are used for:

a. Increasing the human resource capacity of the community;
b. Improving the welfare of the surrounding community;
c. Improving the sustainability of both the environment or physical as well as social and cultural surrounding the company;
d. The construction and maintenance of public facilities and community facilities of a social nature that are useful for the community, especially those around the company’s location.

References


