

ANALYSIS OF LAW ENFORCEMENT AGAINST COAL MINING BUSINESSES IN INDONESIA IN THE CONDITION OF THE COVID-19 PANDEMIC

By Bagus Teguh

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ANALYSIS OF LAW ENFORCEMENT AGAINST COAL MINING
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PANDEMIC

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ABSTRACT

Mining is a natural resource with great potential in Indonesia, which in addition to having economic value is also closely related to environmental ecosystems and people's lives. In terms of economic value, mining supports the entry of funds into the APBN and APBD which are used to finance state expenditures and local government funding, especially during the Covid-19 Pandemic, which requires very large financing. In terms of ecosystems, because mining is an element in the ecosystem to support the environment.

In relation to people's lives, mining maintains stability and safety from environmental damage and improves welfare. With such an important role, of course, in carrying out a mining business, it must be carried out carefully, as determined by the law. The general public or entrepreneurs are allowed to carry out mining businesses with license from authorized officials and pay attention to good mining principles (good mining principles), to avoid illegal mining businesses. Based on Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining, Article 35 paragraph (3) regulates business license which include IUP (permanent business license), IUPK (special mining business license), IUPK as a

continuation of Contract/Agreement Operations, IPR (people mining license), SIPB, Assignment license, Transportation and Sales license, IUJP, and IUP for Sales.

² In the provisions of Article 35 Paragraph (1) of Law no. 3 of 2020 states that: the authority to grant license in the mining sector is granted based on business license from the Central Government. Furthermore, the Central Government may delegate the authority to grant Business Licensing to the Provincial Government in accordance with the laws and regulations. In today's reality, there are many violations in various license in Indonesia, both regarding illegal businesses, the validity of the license owned and in relation to legal rules concerning the validity of these license. Besides that, there are still many overlap license cases. Under these conditions, law enforcement is very much needed to overcome the juridical problems caused by the illegal mining business. The government as the official or agency authorized to issue decisions on mining permit/license must be responsible for the granting of these mining license and their law enforcement in the event of a violation.

INTRODUCTION

Mining is a very abundant natural resource in Indonesia, which not only has economic value but also ¹⁸ environmental and social ecosystem value. With such a potential role, the mineral and coal mining business must be carried out carefully by following the provisions of laws and regulations, general principles of good governance or general principles of good mining. The economic value of the mining aspect is that it provides a large ¹⁹ financial income to support the state budget. Realization of state revenues in the Mineral and Coal Mining sector as of September 6, 2021 is 42.36 trillion ¹⁵ or 108.36 percent of the 2021 target, or around 80 to 85 percent of PNBP in the Mineral and Coal Mining sector.

The APBN is intended to finance state expenditures in administering government, including the need for handling the Covid-19 pandemic, which requires large costs and requires the government to harmonize the handling of the pandemic and the recovery of the economy which has been slumped due to the Covid-19 pandemic.

¹⁷ In Presidential Regulation No. 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Coping the Covid-19 Pandemic, Article 17 paragraph states that funding for the procurement of Covid-19 vaccines and the implementation of vaccinations by the government is borne by the State Budget.

¹ Environmental values in the aspect of mineral and coal mining are the carrying capacity of environmental ⁷ ecosystems for the safety of people's lives in Indonesia. In this regard, Law no. 32 of 2009 concerning Environmental Protection and Management, which was later amended by Law no. 11 of 2021 concerning Job Creation ²⁴ Likewise, the existing technical regulations were changed through PP No. 22 of 2021 concerning the Implementation of Environmental Protection and Management. Based on PP No. 22 of 2021 there is a change in the nomenclature of environmental permits to environmental approvals. Environmental Impact Analysis (AMDAL) is a prerequisite for the issuance of environmental approvals. Environmental approval is a prerequisite for the issuance of business permits in the mining sector.

The most basic thing in the preparation of the AMDAL after the enactment of the Job Creation Law was related to community participation in the preparation of the AMDAL which was limited to people who were directly affected by business activities, so that participatory environmental protection efforts were difficult to realize. In Article 1 point 4 PP No. 22 of 2021 stipulates that environmental approval is a decision on environmental feasibility or a statement of ability to manage the environment that has received approval from the central government or regional government.¹

Community Social Values, mining concerns the livelihood, welfare and right to a better life of community members as stipulated in the 1945 Constitution of the Republic of Indonesia. Various types of mines can be managed with the steps or procedures as specified in Law no. 4 of 2009 concerning Mineral and Coal Mining, which was amended by Law no. 3 of 2020. There are several types of mining businesses that can be carried out by obtaining a license in advance.

In Article 34 paragraph (1) of Law no. 4 of 2009 states that mining businesses are grouped into:

- a. Mineral Mining
- b. Coal Mining

Article 34 paragraph (2) states that mineral mining as referred to in paragraph (1.a) is classified into:

- a. Radioactive Mineral Mining
- b. Metal Mineral Mining
- c. Non-Metal Mineral Mining
- d. Rock Mining

With respect to the various types of mining above, business or activity may be carried out by obtaining a license as referred to in Article 35 paragraph (3) which includes:

- a. IUP (Mining Business License)
- b. IUPK (Special Mining Business License)
- c. IUPK as a continuation of Contract/Agreement Operation
- d. 32R (People Business License)
- e. SIPB
- f. Assignment License
- g. Transport and Sales License.
- h. IUJP
- i. IUP for Sales

In reality, there are still many mining cases, both regarding the validity of mining permits, or about illegal mining businesses. In the study of administrative law, illegal mining includes 2 things:

¹ Neville, B. & Bell, J. (1998). French Administrative Law.

- a. Mining business activities do not have a license
- b. Mining activities are not in accordance with applicable laws and regulations
- c. This activity is not in accordance with the general principles of good governance or the principles of good mining.

In connection with the large number of juridical cases in the Illegal Mining Business, law enforcement is urgently needed, both in terms of supervision and sanctions. The government in this case is responsible for law enforcement in the event of a mining business violation.

Motivation of writing this study is to measure how government regulate regarding the mining business in Indonesia. The effectivity of the regulation and the impact will be measured as to find the best solution available to address all the issues related to mining business in Indonesia.

METHODOLOGY

In writing this article, the methodology is carried out in a normative juridical way which analyzes juridical norms in the application of applicable laws and regulations that are supported by juridical facts regarding mining businesses and law enforcement. This writing approach is an approach to existing laws, concepts and theories, which are related to the mining business. This writing is carried out in a multi-disciplinary manner consisting of administrative law, mining law, environmental law and health law.

LITERATURE REVIEW

Mining business is a business activity that must be carried out by obtaining a license. Mining business license are carried out by authorized officials. License is the approval of the authorized official. License is one of the instruments used in administrative law. The government uses License as a juridical means to regulate people's behavior. License is an agreement issued by the government to citizens to act in accordance with applicable legal provisions.

In the provisions of Article 35 paragraph (1) of Law no. 3 of 2020 concerning Amendments to Law No. 4 of 2009 states that the official authorized to issue license in the mineral and coal mining sector is the central government, which can be delegated to the provincial government in accordance with Article 35 Paragraph (4). In this case, the official authorized to issue a mining business license is also obliged to account for what has been done based on that authority. In administrative law, authority is always attached to responsibility. There is no irresponsible use of authority.

The government's responsibility in issuing license can be in the form of personal responsibility and position responsibility. Personal responsibility relates to personal mistakes, job responsibilities relate to the legitimacy in the use of authority to issue mining business licensing. In French legal concepts, it is said to be a *faute personnelle* and a *faute de service*.²

² Spelt, M. & Berge, J. (1995). *Inleiding Vergunningen Recht*.

² Mineral and Coal mining business can only be carried out if the community, entrepreneur, certain agency or institution has obtained the mining business permit from the authorized official. In reality there are cases of illegal licensing, in the scope of not having a permit, there are defects in granting permits or not paying attention to the general principles of good governance or the principles of good mining.

Nationally, in 2021 there have been 7851 mining business per ²³ legal problems (Source modi.esdm.go.id/permissions). The number of cases in the mineral and coal mining business requires fair handling and settlement, as determined by laws and regulations. In this regard, fair is meant to be treated equally under the same conditions and treated differently under different conditions.³

¹ Cases that occur in the mineral and ¹⁰ mining business, both illegal mining, as well as businesses that are contrary to statutory regulations, general principles ³ good governance or good mining principles, then for the implemen²⁰tion of Law no. 4 of 2009 which has been amended by Law no. 3 of 2020 and Law No. 32 of 2009 concerning Environmental Protection and Management, as well as PP No. 27 of 2012 concerning Environmental Licensing. The government must enforce the law. Law enforcement in this study is an element in administrative law, which consists of supervision and sanctions.

Administrative Law has elements includ¹⁴ government supervision or control. This is as stated by William Wade that: Administrative Law⁶ is the law related to the control of governmental power. Administrative law is concerned with the nature of powers of public authorities and, especially, with the manner of their exercise.⁴ Sanctions given in mineral and coal mining businesses illegally in administrative law can be given administrative sanctions that accumulate internally or externally.⁵

There is a ¹ difference in the character of sanctions in the event that there are violations in the mineral and coal mining business, namely that crim¹inal sanctions in administrative law are ultimum remedium. In terms of law enforcement in the mining business, both the supervision aspect and the imposition of sanctions are carried out properly, this will increase investment and increase state income, which is used to finance state expenditures such as handling Covid-19 and its recovery, costs for improving public health, for the welfare of the people. community life, and to maintain environmental safety and sustainability.

The exploitation of mineral and coal natural resources, at the initial stage was interpreted as an enterprise that had economic value with an economic approach alone, but now it has developed into a non-economic approach.⁶

³ Anthony, ³⁵ (1995). Analytic Jurisprudence Anthology.

⁴ Jacobini, B. (1991). An Introduction to Comparative Administrative Law.

⁵ Hadjon, M. et al. (1994). Pengantar Hukum Administrasi Indonesia.

⁶ Hadjon, M. & Muhjad, H. (2019). Korupsi, Pemilu dan Sumber Daya Alam.

Juridical Cases for Mining Business Permits

Nationally, cases that occurred in Indonesia in 2021 were 7851 with details:⁷

No	Type	Number of Permits
1	KK (Contract of Work)	31
2	PKP2B	66
3	IUP (Mining Business License)	5285
4	IPR (People's Mining License)	97
5	IUPK (Special Mining Business License)	4
6	IUPOPK Transport	1590
7	IUPOPK Purification	85
8	IUJP	693

Source: modi.esdm.go.id/perizinan.

Legal Cases Regarding IUP in Southeast Sulawesi, November 2021

1. IUP metal mineral and coal mining as many as 262 cases
2. IUP rock metal minerals as much as 114

Source: modi.esdm.go.id/perizinan.

Revocation of Mining Business Permits by President Jokowi, because the company after many years of being granted license did not submit a Work Plan, a total of 2078, with a distribution in various provinces, namely :

<p>13 Bengkulu Province, Jambi Province, South Sumatra Province, Banten Province, West Java Province, Central Java Province, Yogyakarta Special Region, East Java Province, West Kalimantan Province, Bangka Belitung Islands, Riau Province, East Kalimantan Province, Central Kalimantan Province, South Kalimantan Province, Gorontalo Province, Central Sulawesi Province, Southeast Sulawesi Province.</p>

Source: CNBCIndonesia.com

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 Based on the sources above, according to the Directorate General of Mineral and Coal of the Ministry of Energy and Mineral Resources, of the revoked Mining Business License, 1776 of them are mineral mining companies, including Metal Minerals, Non-Metal Minerals and Rocks. Juridical problems that occur regarding mining businesses, not only related to unlicensed mining businesses, but also related to the legality of mining business license, transfer of mining business permits, neglect of licenses that have been granted for years, mining license overlap, conflicts of norms in granting mining business license, conflicts authority and granting of Mining Business license, contrary to applicable legal regulations, there is maladministration in granting license,

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⁷ Ministry of Energy and Mineral Resources. Mineral One Data Indonesia. Retrieved from www.modi.esdm.go.id/perizinan

contrary to general principles of good governance or not in accordance with good mining principles.

Settlement of legal cases concerning mining businesses is included in the realm ³ Administrative Law, Criminal Law and Civil Law, therefore the settlement can be to the State Administrative Court, the State Court or by using a non-litigation pattern. Illegal Mining Business Cases dominate in cases that go to district courts, as many as 293 in 2020. There are 17 cases of Mining Business Permits submitted to the Jakarta State Administrative Court in 2021. Below are examples of cases of Illegal Mining Business and Mining Business with Permits.

Lawsuit to the District Court.

The lawsuit filed to the Nabire District Court, between PT. Pacific Mining Jaya is domiciled at Ruko Boutique Office Park, Kebun Blank, Kemayoran, Central Jakarta as the plaintiff against PT. Inco Bersatu Internasional, where Legari Village, Biha Village RT 005 / RW 002, Makimi District, Nabire Regency, Papua Province is the defendant.⁸

Position Case:

The Plaintiff is a corporate legal entity engaged in mining, one of which IUP (Mining Business Permit), Exploration is located and or covers the Makimi district, Musairo river, Nabire Regency – Papua, the area where the defendant carries out mining activities without rights. Plaintiffs where one of the aquo business activities has a legal basis, namely the decision of the Governor of Papua No. 065 – 42 of 2011 which stipulates that PT. Pacific Mining Jaya was granted an exploration mining business license covering an area of 26,000 hectares, the permit granted was related to the gold commodity³. Then the legality of the plaintiff was strengthened by the provisions of the regulation of the Minister of Energy and Mineral Resources No. 43 of 2015 concerning the Evaluation of the Issuance of Mineral and Coal Mining Business License, according to these provisions the plaintiff is a corporate legal entity that has obtained a clean and clear status from the government, so that its legal status as the owner of an exploration permit is legally valid.

This case is a form of violation of an unlicensed mining business or illegal mining as decided by the court that the defendant had carried out an act of exploring gold mines without rights.⁹

⁸ Directory Mahkamah Agung RI Putusan PN NABIRE Nomor 11/Pdt.G/2019/PN

Nab Tanggal 23 April 2020.

⁹ Directory of the Supreme Court of the Republic of Indonesia PN NABIRE Decision Number 11/Pdt.G/2019/PN Nab Dated April 23, 2020

Lawsuit to the State Administrative Court.

A lawsuit filed to the Palembang State Administrative Court by a mining company against the revocation of the Production Operation Mining Business License, PT Tubindo Energi.

Position Case:

On April 25, 2013, PT Tubindo Energi obtained a production operation mining license based on the decision of the Banyuasin Regent No. 424/KPTS/TAMBEN/2013. On March 10, 2017 the Governor of South Sumatra Province revoked the production operation mining business permit with Decree NO. 196/KPTS/DESDM/2017. On November 25, 2019 PT Tubindo Energi just found out about the revocation of the Decree. The object of the dispute has never been submitted to PT Tubindo Energi.

The reasons for the revocation were that there were arrears of fixed fees, did not attend the verification invitation, and there was an underpayment. The Court is of the opinion that the object of the dispute, both in terms of formal, procedural and material substance, is contrary to the prevailing laws and regulations and the AUPB, especially the principles of accuracy and openness.

The court decided by decision No. 11/G/2020/PTUN.PLG, granted the plaintiff's claim in its entirety declaring the object of dispute null and void, requiring the defendant to withdraw the object of dispute and punishing the defendant to pay court fees in the amount of Rp. 219,000, - (two hundred and nineteen thousand rupiah).¹⁰ The lawsuit to the PTUN Palembang concerns the form of giving a decision by the government on a mining business permit, which was later revoked for irrational reasons. Based on the number of cases in the mining business above, it shows that the government's role in handling and law enforcement in the mining business is still not optimal.

The Urgency of Law Enforcement in Mining Business

Law enforcement is very important for various fields of law, such as administrative law, constitutional law, civil law, criminal law and other fields of law. With so many cases in the mining business, both related to mining business licensing, as well as regarding the control of illegal mines, it is very important to enforce the law as well as possible.

The urgency of law enforcement in the mining business is to control the use of government authority in issuing mining business license. Law enforcement is also very important to take action against illegal mining business activities. In addition, law enforcement is intended to ensure legal certainty that the mining business is carried out properly as determined by the laws and regulations.

¹⁰ PUSHEP Researcher Team, Jakarta 23 July 2021.

Basic Concepts of Enforcement of Administrative Law

The meaning of law enforcement is an effort to uphold legal norms as a guide for acting in society or for the government in carrying out government duties. Administrative law enforcement consists of supervision and sanctions.

- 1. Supervision → Preventive
- 2. Application of Sanctions → Repressive

In the context of supervision, for example on licensing Brian John and Katrine Thompson say this:

“Many activities are the subject of some form of governmental licensing control. Although this is usually to seek to enforce or maintain standards, in some cases the main purpose may simply be to raise revenue or perhaps just to regulate the number of persons engaged in activity.”¹¹ In the field of Administrative Law, supervision and sanctions are closely related to authority, because within the authority, supervision is also attached to the instrument of supervision.

Supervision must always be carried out on authorized officials, both at the central and regional levels. The ratio of the supervision is because there is a limit to the authority possessed by officials, whether it is attribution authority, delegation authority or mandate authority. Another thing concerning supervision is related to the principle of "responsibility", that the use of authority¹⁴ must always be accounted for. William Wade says: Administration Law⁶ is the law related to the **control** of governmental **power**. Administrative law is concerned with the nature of powers of public authorities and, especially, with the manner of their exercise.¹²

³⁶
In relation to this supervision, several provisions in Law no. 30 of 2014 concerning Government Administration states;

Article 52 paragraph (1) that the official authorized to make decisions is obliged to supervise the validity of his decisions in relation to:

- a. Made according to procedures
- b. Substance in accordance with the object of the decision.

¹
In Law No. 4 of 2009 concerning Mineral and Coal Mining, in Article 6.d, one of the authorities of the government is to establish a Mineral and Coal licensing system. Article 6.h stipulates the government's authority in granting IUP, fostering, resolving community conflicts, supervising Mining Operations Production operations that directly impact the environment across provinces, and/or in a sea area more than 12 miles from the coastline.

²²
¹¹ Seerden, Rene & Stroink, F. (2002). Administrative Law of the European Union, its Member States and United States.

¹² Jacobini, B. (1991). An Introduction to Comparative Administrative Law.

Article 140 of Law no. 3 of 2020 stipulates that the Minister supervises the implementation of mining business activities carried out by IUP, IUPK, IUPK holders as Continuation of Contract/Agreement Operations, IPR, SIPB, Transport and Sales License, and IUJP.

Mining business activities are also related to the human environment; therefore, the granting of mining business permits must be supervised so as not to damage the human environment as regulated in Article 71 and Article 72 of Law no. 32 of 2009 concerning Environmental Protection and Management. Supervisor environmental sustainability in the mining business is the authority of the Minister, Governor and Regent or Mayor.

Sanctions

Sanctions are a repressive element of law enforcement, to provide punishment in the event of a violation or crime in mining business activities. Administrative Law classifies the types of sanctions, namely:

- real coercion by the government (*bestuursdwang*)
- imposition of forced money by the government (*dwangsom*)
- recall of favorable decisions (permits, payments, subsidies)
- imposition of administrative fines
- special shapes

The application of administrative sanctions can be cumulative, which includes internal accumulation and external accumulation. Internal accumulation: is the application of more than one administrative sanction or more than two administrative sanctions. For example, the imposition of sanctions in the form of forced money, is enforced simultaneously with the revocation of decisions on mining business license. External accumulation: is the application of administrative sanctions together with other sanctions. For criminal sanctions, the preference for administrative sanctions applies → criminal sanctions are *ultimum remedium*.

In violation of mining business, administrative sanctions or criminal sanctions can be given, depending on the problem. In the event that the mining business involves unlicensed or illegal business, criminal sanctions may be imposed. When it comes to the issue of the legality of license in the mining business. There are different characters in the administration of administrative sanctions, with the provision of criminal sanctions. The character of giving administrative sanctions is repatriation or recovery, meaning that by giving sanctions it is intended to improve conditions that are not good, to become good. The giving of criminal sanctions has the character of giving sorrow to people who do bad deeds. Thus, it does not correct the bad situation.

CONCLUSION

Mining business is a natural resource management activity that has economic value, high environmental ecosystem value and social value regarding human rights. The mining business has great potential as a contributor to the APBN which is used to finance state expenditures in administering the government,

one of which is during the Covid-19 pandemic, which is for the costs of handling the pandemic that is still happening and for the cost of recovering health and the economy which has been slumped by the pandemic. The income of funds to the State Budget from the mineral and coal mining sector in 2021 is 42.36 trillion or 108.36 percent of the mining sector's income.

There are still many violations and crimes in the mining business, regarding unlicensed businesses, legality of business licenses owned, conflicting norms in granting license, transfer ³¹ license owned and other social problems. The situation that arises with the number of cases in the mining business sector requires law enforcement to avoid violations in the mining business. In relation to law enforcement, monitoring and ⁴ imposing sanctions are important elements to evaluate the implementation of mining business activities.

Of the mining business cases ³⁷ nationally, in 2021 it will reach 7851 cases. With regard to this situation, the President of the Republic of Indonesia has revoked mining business licenses as many as 2078, because they did not carry out activities or did not provide a work plan report after the business license was obtained for many years. In addition, there are also many licensing cases that are submitted to the General Court and the State Administrative Court.

At the Jakarta Administrative Court in 2021, there were 13 cases of business license lawsuits. In the General Court there are 293, most of which are related to business activities without a license. From the description above, it can be stated that law enforcement on mining business activities in Indonesia has not been implemented optimally. This can disrupt investment, and affect mining sector revenues to the state budget, most of which is allocated for handling and overcoming Covid-19, health and economic recovery in Indonesia.

1 RECOMMENDATION

The Mineral and Coal mining business is a form of business that has potential for state revenue, but the mining business is also related to ⁵ the safety and welfare of the local community as a human right guaranteed by the 1945 Constitution of the Republic of Indonesia. Mineral and Coal mining business is related to the activities of managing and utilizing non-renewable natural resources, therefore the following steps are needed:

1. Strict action is needed by the government against Mineral and Coal mining businesses that are carried out without a permit.
2. The granting of a Mineral and Coal Mining Business Permit must be granted in a careful manner with due observance of the prevailing laws and regulations, general principles of good governance and good mining principles, which are environmentally sustainable.
3. Law enforcement in mining business activities must be carried out continuously, especially regarding the legality of license issued by the government. Providing convenience in doing business does not mean facilitating activities that require the legality of license.
4. The government periodically evaluates the Mineral and Coal business activities to avoid violations and crimes that may occur.

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