

Legal Vacuum in Issuance and Revocation of Mining Business Permits

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ABSTRACT

Background: The management of Indonesia's abundant natural resources, particularly through mining activities, is closely tied to the issuance of permits governed by regulations such as the Mineral and Coal Law and its derivative laws. However, challenges like regulatory uncertainty, overlapping authority between central and regional governments, and inconsistent law enforcement create a legal vacuum that hinders the effectiveness of permit issuance and revocation.

Objectives: This study aims to analyze the mechanisms for issuing and revoking mining business permits in Indonesia. It also seeks to identify legal challenges and provide recommendations to strengthen the legal framework and ensure effective implementation.

Methods: This research employs a normative legal approach, focusing on the analysis of laws, regulations, and case studies related to mining business permits. Secondary data were analyzed qualitatively to evaluate the consistency and effectiveness of the legal framework.

Research Findings: The findings reveal that the issuance and revocation processes are plagued by unclear regulations and fragmented governance. These issues result in regulatory inefficiencies and weak law enforcement, impeding sustainable resource management.

Conclusion: To address the legal vacuum, reforms are required to ensure clarity, eliminate overlapping authority, and improve law enforcement. Strengthening the legal framework will enhance the management and regulation of mining permits in Indonesia.

KEYWORDS

Indonesia, Law Enforcement, Legal Vacuum, Mining Permits, Regulatory Challenges.

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INTRODUCTION

The concept of state control over mineral and coal resources in Indonesia is based on the provisions of Article 33 paragraph (3) of the 1945 Constitution, which states that “The land, water, and natural resources contained therein are controlled by the state and used to the greatest extent possible for the prosperity of the people. This provision is the philosophical basis as well as the legal basis for the management of natural resources in Indonesia. Economic development aims to improve the welfare of the people through the application of the principles of economic democracy while maintaining a balance between national economic growth and stability.



The relationship between the state, the business world, and society is regulated based on the principles of economic democracy and the concept of a social market economy), which regulates the interaction between the state, business actors, and society. The business world needs to develop harmoniously by building a balanced relationship between the government and society. To prevent domination by one party, the relationship between them must be interdependent and supportive.

Economic development aims to improve people's welfare through the application of the principles of economic democracy, while maintaining a balance between national economic growth and stability (Gatto, 2020). The relationship between the state, the business world, and society is regulated based on the principles of economic democracy and the concept of a social market economy, which regulates the interaction between the state, business actors, and society (Yang dkk., 2021). The business world needs to develop harmoniously by building a balanced relationship between the government and society. To prevent domination by one party, the relationship between them must be interdependent and supportive. Regulations related to mining have not explicitly defined mining law (Ahmad dkk., 2021). Therefore, mining is not only seen as a product of state law but also as part of social norms and behavior, including local wisdom, as well as attitudes and values adopted by the community around the mining area. Mining law must be comprehensive, regulating all stages of mining activities from pre-mining to post-mining, and based on social justice in the management of natural resources (Luo dkk., 2022). This principle includes the use of natural resource management results as much as possible for the prosperity of the people, sustainable development, and environmental protection.

Mining is defined as the activity of extracting valuable and economically valuable mineral deposits from the earth, either mechanically or manually, which is carried out on the earth's surface, below the earth's surface, or below the water's surface (Xu dkk., 2022). Meanwhile, a mining company is an entity that carries out production activities through a series of stages, starting from general investigations, exploration, feasibility studies, construction, mining, processing and refining, transportation, and sales, to post-mining activities (Kirikkaleli dkk., 2022). Mineral and coal resources contained in the Indonesian mining jurisdiction are non-renewable natural resources and are gifts from God Almighty (Karaman dkk., 2021). This wealth plays an important role in meeting the needs of the wider community, so its management must be controlled by the state to provide real added value to the national economy, as well as achieve prosperity and welfare of the people in a just manner. In addition, mining business activities contribute significantly to national economic growth and sustainable regional development.

Comprehensive regulations regarding mining activities are regulated in a legal instrument, namely Law Number 4 of 2009 concerning Mineral and Coal Mining (UU Minerba) (Jia dkk., 2022). Mining law serves as a basis for environmental protection related to mining activities, which includes stages ranging from general investigations, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, to reclamation and rehabilitation. The state as the largest organizational entity that has an important role in the economic and social welfare of its people (Chai dkk., 2021). This role is aimed at achieving common goals. Economic welfare and social welfare of the community can be achieved through fair management of natural resources to support economic activities. The Company has an important role in improving the economic welfare of the community and encouraging economic growth. Companies that play an important role in national economic development include the mining sector (Dong dkk., 2020). The mining industry is a company engaged in the management of natural resources in the mining sector, the results of which are used for the benefit of the Indonesian people to support economic growth and improve community welfare.

In the mining sector, a permit to carry out mining activities is called a Mining Business Permit (IUP) as regulated in the Mineral and Coal Law (Alvarado dkk., 2021). IUP is granted to permit holders to carry out business activities within the Mining Business Permit Area (WIUP) (F. Ahmed dkk., 2022). As part of administrative order, the regional government, namely the Governor, Regent, or Minister, is given the authority to issue mining permits to the areas under their authority, as regulated in the Mineral and Coal Mining Law.

RESEARCH METHODOLOGY

In this study, the research method of the statute approach or statue approach or can also be called normative legal research is a process to find a legal rule, legal principles, (Wang dkk., 2023) or legal doctrines in order to answer the legal issues used in discussing the process of issuing mining business permits, as well as the procedure for revoking permits if there is a violation of the applicable provisions. (Y. Liu dkk., 2022) The case approach is an approach that is carried out by analyzing, examining, and using it as a guideline for legal problems to find out the revocation of mining permits. Then, the conceptual approach is an approach carried out starting from the views and patterns of doctrine or thoughts of experts that have developed in legal science (Y. Liu dkk., 2022). The various approaches and legal research presented will answer the process of issuing mining business permits, as well as the procedure for revoking permits if there is a violation of applicable provisions.

RESULT AND DISCUSSION

Process of Issuing Mining Business Permits and Revocation of Permits in the Event of Violation of Applicable Provisions

According to Law Number 4 of 2009, the Regent, Governor, and Minister are given the authority to issue permits related to mining in accordance with the Mining Business Permit Area (WIUP) which is their authority. As a form of administrative order, the regional government has the authority to issue mining permits in accordance with the areas regulated by their authority. Based on Article 35 of Law 4/2009, mining business permits are divided into three types, namely People's Mining Permits, Mining Business Permits (IUP), and Special Mining Permits (IPK). Mining Business Permits (IUP) are a form of administrative order related to business management and utilization of natural resources, which are issued to national business entities, private companies, foreign business entities, and cooperatives. (Osei & Kim, 2020) Law 4/2009 also divides Mining Business Permits (IUP) into several categories, namely Mining Business Permits (IUP) are permits granted for the implementation of mining activities.

Mining permits in Indonesia are categorized into several types based on their purpose and scope of activities. An Exploration IUP (Mining Business Permit) is issued for the initial exploration stage before mining operations begin, with a maximum validity of 8 years. The Production Operation IUP allows companies to conduct core mining activities for up to 20 years, extendable for two additional periods. A People's Mining Permit (IPR) is issued for small-scale mining activities managed by local communities under specific restrictions. Meanwhile, the Special Mining Business Permit (IUPK) applies to designated mining areas, with subcategories such as the Exploration IUPK for pre-production exploration and the Production Operation IUPK for core mining activities in these special zones.

For the issuance of a Production Operation IUP, applicants must fulfill four key elements: administrative, technical, environmental, and financial. Administrative requirements differ based on the applicant's legal status. Business entities, cooperatives, individuals, and firms must submit an

application letter, identity documentation, NPWP (tax ID), proof of residence, and other relevant documents, including previous Exploration IUPs. Contact information and digital copies of all documents are also required. Technical requirements include regional maps adhering to GIS standards, exploration reports, and approved feasibility studies. Environmental requirements involve statements of compliance with environmental laws, permits from related authorities, and reclamation plans to restore the natural landscape. Lastly, financial requirements include audited financial reports, proof of tax submissions for the past two years, and evidence of fixed contribution payments for the last three years. These comprehensive requirements ensure that mining activities are conducted responsibly and in compliance with Indonesian laws.

There is an example of a mining permit owned by PT Tambang Mas Sangihe (TMS). The mining business permit owned by PT Tambang Mas Sangihe (TMS) is based on Ministerial Decree Number 163. K / MB.04 / DJB of 2021, which regulates the granting of a Mining Business Permit (IUP) for Production Operations. This permit is granted after the completion of the Exploration IUP stage, as stipulated in Article 1 Paragraph 9 of Law Number 4 of 2009 concerning Mineral and Coal Mining. The area granted the permit covers 4,200 hectares, with an active mining area of 65.48 hectares in the Sangihe Islands, North Sulawesi Province. The issuance of this decree indicates that PT TMS has obtained a permit to proceed to the production and processing stage of natural resources. This permit is an approval from the government to address certain circumstances that may conflict with the provisions of laws and regulations. Before this permit is issued, PT TMS must go through a process that includes an environmental impact assessment, known as an AMDAL. Looking at the mining area permit granted to PT TMS on Sangihe Island, which includes a protected forest area, the activity has the potential to have a negative impact on the environment. This is included in the scope of Article 23 letter E, which states that “procedures and activities that can have an impact on the management of natural resource conservation zones and/or protection of cultural heritage.” Therefore, the preparation of the Environmental Impact Analysis (AMDAL) must be carried out carefully for the sake of the survival of humans and the environment that interacts with it. AMDAL can be understood as the management of natural resource management, which shows that nature management must be carried out through a managerial approach. In environmental management, this approach prioritizes human skills in managing the environment, so the term “environmentally friendly” emerged. AMDAL not only discusses the analysis of biogeophysical and chemical aspects but also includes social elements of the community and the comfort of the affected community.

Decree Number 163.K/MB.04/DJB of 2021, which is valid from January 29, 2021, to January 28, 2054, has shocked local residents. This is due to the lack of transparency of information during the application process to the issuance of the permit, where residents only know that the permit has been issued. The company also offered compensation for land compensation to residents of IDR 5,000 per square meter. Questions also arose regarding the Environmental Impact Analysis (AMDAL) in the decree, especially regarding the government’s reasons for issuing a mining business permit for an area of 42,000 hectares, while the area of Sangihe Island is only 736 km². This means that more than half of the island’s area is included in the mining permit area, which also includes residential areas and part of the protected forest on Sangihe Island. To preserve the existence of endangered animals, the government has issued Government Regulation Number 7 of 1999 which includes a list of species categorized as protected animals. The establishment of the 3,549-hectare Sahendaruman Protected Forest on Sangir Besar Island and the 24,669-hectare Karakelang Wildlife Sanctuary, as well as the 9,000-hectare Protected Forest on Karakelang Island, as a preservation forest zone in the Sangihe Islands, aims to protect and develop the Talaud parrot,

which is an important variety in the Sangihe-Talaud Islands. The Decree of the Minister of Forestry Number 57 of 2008 concerning the Strategic Command for the Conservation of National Varieties 2008-2018 explains the condition of the Talaud parrot which is under threat of extinction, so this bird is included in the category of animals that receive high priority for rescue and preservation efforts. In terms of issuance, of course, there are obstacles, namely, the Mining Business Permit (IUP) application process in Indonesia is often faced with challenges in the form of complicated bureaucracy. This convoluted bureaucracy consists of various steps that must be followed by the applicant, starting from collecting documents, and filling out forms, to submitting to various related government agencies. Each step in the process can take a long time, and unclear requirements often make it difficult for applicants to meet all applicable provisions. One of the main causes of complicated bureaucracy is the large number of government agencies involved in the IUP issuance process. The application for an IUP not only involves the Ministry of Energy and Mineral Resources (ESDM) but also involves various other agencies, including local governments, environmental agencies, and other related agencies. Poor coordination between these agencies often leads to overlapping data collection and document submission, which in turn can slow down the decision-making process. Furthermore, each agency may have different procedures and requirements, which adds to the complexity of the process. IUP applicants must be able to navigate and understand a variety of different regulations, which are often technical and difficult to understand. In addition, unexpected regulatory changes can create uncertainty, requiring applicants to adapt to new requirements that may emerge in the middle of the application process. This not only drains time but also resources and costs for applicants. This complicated bureaucracy not only hinders applicants from obtaining permits but also has the potential to reduce investor interest in the mining sector. Uncertainty and delays in issuing permits can make investors think twice about investing in sectors that require permits. Therefore, there needs to be an effort from the government to simplify bureaucratic procedures, including streamlining the steps required for submitting an IUP and improving coordination between the agencies involved. This simplification is expected to speed up the permit issuance process, which will ultimately support the growth of the mining sector and broader investment in Indonesia.

In addition, the lack of coordination between government agencies in the process of issuing Mining Business Permits (IUP) is one of the significant obstacles faced by applicants. The IUP issuance process involves various agencies, including the Ministry of Energy and Mineral Resources (ESDM), local governments, and agencies that focus on environmental protection. Each agency has different responsibilities and roles in this process, but the lack of communication and collaboration between them can cause a number of problems that hinder the efficiency of permit issuance. (Do & Kim, 2020) One impact of the lack of coordination is the duplication of work. For example, applicants may be asked to collect and submit the same documents multiple times to multiple agencies. This not only increases the workload for applicants but also slows down the permit application process. In the absence of an integrated information system between agencies, applicants must go through the same process multiple times, which can ultimately lead to delays in permit issuance. In addition, the lack of clarity in the process flow and responsibilities of each agency often creates confusion among applicants. They may not know which agency to submit certain documents to or who to contact for more information. This uncertainty can prolong the time required to complete the IUP application process and, in turn, hinder investment in the mining sector. This lack of coordination can also lead to inconsistent decisions between agencies. For example, one agency may approve a document while another agency rejects it or requests additional changes. This lack of alignment in policies and requirements creates greater complexity and

uncertainty for applicants, which can result in failure to meet all the requirements necessary to obtain an IUP.

For mining companies that hold permits in the form of IUP or IUPK from the government, there are a number of obligations as a form of corporate responsibility to the state. Some of the obligations that must be carried out by companies holding IUP or IUPK include: (Saqib, 2022) implementing good mining engineering standards; implementing and empowering local community economic development; preparing and submitting land restoration (reclamation) documents and activity plans after the company ceases operating; submitting guarantee funds for reclamation; managing and supervising mining areas; managing and refining minerals produced from mining activities in Indonesia; divestment of shares in stages; and implementing local community development and empowerment. More than fifty criminal acts regulated by the Constitution and classified as economic crimes have been identified. The legal provisions for criminal sanctions are usually set out at the end of the relevant law, after the provisions on “state administrative law.” This is because economic crimes are basically within the scope of state administrative law or government policy in the economic field (Usman dkk., 2022). However, to ensure compliance with the administrative regulations contained in the law, state administrative law needs to be supported by criminal law, which is referred to as the last resort. In other words, this is accepted as the last step or “ultimum remedium” in the concept of criminal law.

According to Prof. Andi Hamzah, economic crimes refer to “criminal acts in the economic sector which are special crimes in criminal law, with material regulated in special laws. Economic criminal law is part of criminal law with its own characteristics, namely economic characteristics”. (C.-Y. Cheng dkk., 2021) The Energy and Mineral Resources Law is one of the regulations that regulate economic crimes in the economic sector, especially those related to mining activities, as regulated in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining in terms of revocation of mining permits. In business, the term “bankruptcy” refers to a condition in which a debtor has difficulty in fulfilling his debt payment obligations. The term “bankruptcy” comes from the Dutch word “pailit” which means bankruptcy. Bankruptcy is the process of collecting, registering, and optimizing the assets of a debtor who has failed to pay, which are then distributed to creditors. Regarding the requirements for being declared bankrupt, companies that have a Mining Business License (IUP) or Special Mining Business License (IUPK) must also meet these provisions. A creditor can file a bankruptcy petition if they meet the requirements set by law. These requirements include a debtor who has two or more creditors, a petition for a declaration of bankruptcy, and a number of debts that have matured and can still be collected. (Guo dkk., 2023) The debtors who fail to pay and are declared bankrupt by the commercial court after experiencing financial difficulties. Then, the debtor’s assets can be distributed to creditors. Bankruptcy status in a company will only apply after a decision from the commercial court, either based on a creditor’s application or on the court’s own initiative. In accordance with the law or court decision, all assets or property of a company declared bankrupt must be sold to pay off debts to creditors.

The government has the right to revoke IUP and IUPK permits from mining companies that are declared bankrupt after a final commercial court decision. Revocation of the permit is considered more beneficial and fair from an economic perspective because the land that has been granted a permit can be reallocated to another company’s IUP holder. This is considered more beneficial than continuing to grant a permit to a company that has been declared bankrupt by the court (Aluko & Ibrahim, 2020). Granting IUP to a new company is expected to generate revenue for the state and empower the community around the IUP area so that it can improve the community’s

economy and encourage overall economic growth. The government's authority and powers are regulated in Law Number 30 of 2014 concerning Government Administration. Authority refers to the rights or powers held by government agencies and/or officials or other state administrators to act in the realm of public law. Meanwhile, government authority, also known as authority, is the power held by government agencies and/or officials or other state administrators to make decisions and/or take actions in government affairs.

The principle of legality (*legaliteitsbeginsel* or *het beginsel van wetmatigheid van bestuur*) is a basic principle of the concept of a state of law. This principle implies that government authority comes from legislation, which means that the source of this authority must be regulated in law. Theoretically, there are three ways in which law can grant authority, namely through attribution, delegation, and mandate. (Hassan dkk., 2022) According to H.D. van Wijk/Willem Konijnenbelt, delegation is "the delegation of government authority from one government organ to another government organ". Referring to the provisions of Article 1 number 30 of Law No. 30 of 2014, delegation is defined as the delegation of authority from a higher government agency and/or official to a lower government agency and/or official, where responsibility and accountability are fully transferred to the recipient of the delegation. This provision confirms that the delegation of authority becomes legally valid if it is determined based on applicable laws and regulations.

Government agencies and/or officials who obtain authority through delegation must meet certain criteria, namely the delegation of authority must be carried out by a government agency or official to another government agency and/or official, and is stipulated in a Government Regulation, (L. Cheng & Zhang, 2020) Presidential Regulation, and/or Regional Regulation, and is a previously existing delegation of authority. Based on the provisions of the delegation requirements stipulated in the law, the delegation authority held by the Head of the Investment Coordinating Board (BKPM) to issue and/or revoke Mining Business Licenses (IUP) must be carried out in the form of delegation of authority regulated by a Government Regulation and/or Presidential Regulation. However, the basis for the delegation authority held by the Head of BKPM to issue and/or revoke IUP has not been regulated in the provisions of the applicable Government Regulation and/or Presidential Regulation..

In early 2022, the government carried out a mass revocation of Mining Business Permits (IUP) and Special Mining Business Permits (IUPK) as a sanction against Business Entities holding permits that do not comply with the stipulated obligations. This action aims to correct the inequality of justice, address environmental damage, and accelerate investment and coal utilization. This step is regulated in Presidential Decree Number 1 of 2022 and explained in the Presidential Press Statement on January 6, 2022, where the revocation of IUP/IUPK is carried out through the formation of a BKPM Task Force (Satgas) led by the BKPM Minister of Investment (Pålsson dkk., 2024). This policy was implemented to fulfill the constitutional mandate, especially Article 33 paragraph (3) of the 1945 Constitution concerning the utilization of Indonesia's natural resources for the prosperity of the people. Furthermore, Presidential Regulation Number 70 of 2023 concerning Land Allocation for Investment Arrangement (Presidential Regulation No. 70/2023) also forms the basis for the formation of the BKPM Task Force. Based on Article 3 letter of Presidential Decree No. 1/2022 in conjunction with Article 2 paragraph (1) of Presidential Decree No. 70/2023, the BKPM Task Force has several tasks, including providing recommendations for the revocation of business permits in the mining, plantation, and forestry business sectors to the relevant Minister based on an evaluation of the results of data management from members; mapping and determining land use policies due to permit revocation; classifying and determining land use fairly; providing licensing facilities and convenience for village/regional-owned businesses,

community group organizations, and small and medium-sized businesses in the region; providing opportunities for new business actors to obtain land use; and coordinating and synergizing land use and investment planning for the welfare of the people.

Regarding the authority to revoke permits by the organizer, namely the Minister of BKPM, the delegation of authority to grant and revoke mining permits is carried out from the Ministry of Energy and Mineral Resources (ESDM) to the Ministry of BKPM, which applies in accordance with the concept of *Contrarius Actus* regarding the authority of the holder of executive government power in granting and revoking permits. (Z. Ahmed dkk., 2021) This is regulated in the Regulation of the Minister of ESDM Number 19 of 2020 concerning Amendments to ESDM Regulation Number 25 of 2015 concerning Delegation of Authority to Grant Licensing in the Mineral and Coal Mining Sector in the Framework of Implementing Integrated One-Stop Services to the Head of the Investment Coordinating Board (ESDM Regulation 19/2020). Based on Article 13 of Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration, which has been amended by Law Number 11 of 2020 concerning Job Creation, the delegation of authority should be carried out in the form of delegation of authority regulated by Government Regulations, Presidential Regulations, and/or Regional Regulations. In this case, the Presidential Decree cannot be considered to have the same validity as the Presidential Regulation, and in Presidential Decree No. 70/2023 it is not clearly regulated regarding the authority of the Minister of BKPM as the organizer who can grant and revoke mining permits. Therefore, the revocation of the Permit by the Minister of BKPM, based on the description above, can be said to be legally flawed and is a government action that is not included in its authority (*Onbevoegdheid ratione materiae*).

Furthermore, regarding the revocation procedure carried out by the BKPM Task Force, based on Article 151 paragraph (2) of the Minerba Law, revocation of a Permit is a form of administrative sanction. In addition, Article 185 paragraph (2) of Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities (PP No. 96/2021) in conjunction with Article 95 paragraph (2) of the Regulation of the Minister of Energy and Mineral Resources Number 25 of 2015 which has been amended by Regulation of the Minister of Energy and Mineral Resources Number 19 of 2020, explains that there are stages in imposing sanctions for revoking a Permit, which begins with a written warning, followed by a temporary suspension of some or all business activities, where revocation of the Permit should be the last step. In addition, Article 188 of PP No. 96/2021 in conjunction with Article 100 of the Regulation of the Minister of Energy and Mineral Resources No. 7/2020 states that direct revocation of a permit without giving a written warning and/or temporary suspension can only be carried out under certain circumstances, namely when the company commits a criminal offense; (Bai dkk., 2022) there are government evaluation results that indicate environmental damage or non-compliance with good mining engineering principles; or when the company is declared bankrupt. According to the statement given in a press conference by the Head of the BKPM Task Force, namely the Minister of BKPM, on April 25, 2022, the criteria for direct revocation of a permit by the BKPM Task Force differ from the provisions of existing regulations, which include: companies that are declared bankrupt; the validity period of the permit has expired; there has been a Forest Area Borrow-Use Permit (IPPKH), but has not submitted a Work Plan and Budget (RKAB) (as of June 2021); a permit that is complete but there are no activities in the field; the permit owner is unclear; and a permit that is only used as collateral at the bank without being realized.

The implementation of the procedure for issuing a letter of revocation of an IUP and the evaluation parameters used as the basis for the recommendation for revocation of the permit by the BKPM Task Force has also been regulated in Article 3 of Presidential Regulation No. 70/2023.

Based on the description above, direct revocation carried out by the BKPM Task Force can only be carried out if the results of the BKPM Task Force's evaluation meet the requirements in Article 188 of PP No. 96/2021 in conjunction with Article 100 of ESDM Regulation No. 7/2020 in a hierarchical manner (closed cumulative). If there are reasons outside of these regulations, administrative sanctions as regulated in Article 151 paragraph (2) of the Minerba Law and Article 188 of PP No. 96/2021 in conjunction with Article 95 paragraph (2) of ESDM Regulation No. 7/2020 must be prioritized for implementation (*premium remedium*). As a neutral legal subject, the government must be able to provide protection to its citizens. (Z. Ahmed dkk., 2022) This legal protection includes preventive and repressive aspects. The government has the authority to choose the appropriate type of legal protection, including in terms of environmental protection. One method of protection that can be applied is through preventive measures or licensing. The legal protection provided must be fair and non-discriminatory, so the government must ensure convenience for all legal subjects, including investors who are trying to obtain their rights to run a business. However, many mining companies are facing problems and have not even made a profit, even though they continue exploration activities that require a lot of time and money. Therefore, government decisions must be based on strong philosophical, sociological, and legal foundations. From a legal perspective, it is necessary to question the rules used as the basis for the decision.

Legal Loopholes in the Issuance and Revocation of Mining Business Permits

The issue of post-mining land is a problem that requires serious attention, especially considering the lack of regulations regarding the legal status of the land. Based on an interview with the Head of the Regional Office of the National Land Agency (Kakanwil BPN) on May 30, 2012, Arie Yuriwin stated the need for a policy that regulates the status and fate of post-mining land. The existing facts show that the policy must be introduced immediately considering several problems that arise in the field. First, the land authorities have not yet dared to issue land title certificates for former Mining Authorization (KP) or Mining Business Permit (IUP) land, even though mining activities have been completed and reclamation has been carried out. There are indications that reclamation is often used as a reason to claim the initial legal relationship to the land, with the aim that KP/IUP holders can apply for post-mining land rights. In fact, legally, reclamation does not give priority to KP/IUP holders to apply for post-mining land rights (Jahanshahi dkk., 2021). The status of the land is state land uncontrolled by any party. Therefore, it has become the domain of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Ministry of ATR/BPN).

The issue of issuing certificates of land rights for former Mining Authorities (KP) or Mining Business Permits (IUP) has become a significant issue in post-mining land management. Until now, land authorities, including the National Land Agency (BPN), have not dared to issue land rights certificates in the area, even though mining activities have ended and the reclamation process has been carried out in accordance with the provisions. This is due to legal uncertainty regarding the status of post-mining land and the absence of regulations that specifically regulate the rights to the land. There are indications that the reclamation process is often used by KP or IUP holders as a basis for claiming initial legal relations over ex-mining land. KP/IUP holders hope that the reclamation they have carried out can be used as a basis for submitting an application for rights to the land. However, legally, reclamation does not give KP/IUP holders special privileges or priority in obtaining rights to post-mining land (J. Liu dkk., 2021). The reclamation process is an obligation that must be carried out by KP/IUP holders to restore the environment, not as a basis for claiming rights to the land. Former mining land that has been reclaimed is, legally, state land that is not under the control of any individual or entity, including former KP/IUP holders. As state land, its status

falls under the domain of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Ministry of ATR/BPN). Therefore, the land must be managed in accordance with applicable provisions, and every application for post-mining land rights must go through a legitimate and transparent legal procedure, without any privileges for certain parties simply because they have carried out reclamation.

Second, there is also a phenomenon where KP/IUP holders who have completed mining activities but still have active KP/IUP permits to use the land for other businesses, such as plantations. This action is not legally valid because KP/IUP is not a land right that can be used as a basis for authority to utilize the land. The use of the land for interests other than mining without a clear legal basis creates a conflict of interest and abuse of authority. So, it is important to emphasize that in the Draft Land Law that is currently being prepared, the status of post-mining land must be confirmed as state land which automatically becomes the domain of the Ministry of ATR/BPN after mining activities end. This applies to the note that the land is held by the KP/IUP holder before the mining activities are carried out. The clarity of this regulation is needed to prevent disputes and provide legal certainty for all parties involved in the management of post-mining land. The phenomenon where Mining Authorization (KP) or Mining Business Permit (IUP) holders who have completed mining activities but still have active permits often use the ex-mining land for other businesses, such as plantations (Han dkk., 2021). This action is clearly not legally valid. KP or IUP are only permitted to carry out mining activities, not land rights that can be used as a basis for claiming or utilizing land for other purposes. Utilization of post-mining land for activities outside of mining without a clear legal basis creates a conflict of interest and has the potential for abuse of authority by the permit holder. The use of ex-mining land for plantations or other activities without legal land rights violates the principles of state land management. KP/IUP does not provide ownership rights or land use rights outside the mining context. Land used for activities other than mining should be subject to applicable land regulations, and KP/IUP holders must comply with the applicable licensing process to obtain official rights if they wish to use the land for other purposes. Without this, this illegal use of land risks creating legal uncertainty, land abuse, and injustice for other parties who may have an interest in the land. It is important for the Draft Land Law (RUU) that is currently being prepared to explicitly regulate the status of post-mining land. Land used for mining activities, after the activity ends, must automatically return to state land, which is fully under the authority of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Kementerian ATR/BPN) (Tutak dkk., 2020). This affirmation is important to provide legal certainty and prevent potential conflicts of ownership or use of land by parties who previously held mining permits. In addition, this provision must also ensure that the status of post-mining land can only change if the land has been released by the KP/IUP holder before mining activities begin. Without release, the land is still considered part of state land, and its use must go through legal procedures based on applicable land laws. The clarity of this regulation is important to maintain good land governance and prevent legal disputes in the future.

CONCLUSION

The process of issuing Mining Business Permits (IUP) in Indonesia faces several significant obstacles, which have the potential to hinder investment and effective management of natural resources. Based on Law Number 4 of 2009, IUPs are divided into several categories, including Exploration IUPs and Production Operation IUPs, each of which has strict administrative, technical, environmental, and financial requirements. However, in practice, complexity and complicated bureaucracy often hinder the smooth submission of permits. Lack of coordination between

government agencies is one of the main problems. The IUP issuance process involves many institutions, such as the Ministry of Energy and Mineral Resources (ESDM) and local governments, each of which has different procedures and requirements. This not only causes duplication of work and unclear process flows but also extends the time required to obtain permits. In addition, regulatory uncertainty that often arises can reduce investor interest in investing in the mining sector. Case examples such as the permit issued to PT Tambang Mas Sangihe (TMS) show that non-transparent processes and lack of information can cause dissatisfaction in the community. Therefore, real efforts are needed from the government to simplify bureaucratic procedures and improve coordination between agencies. Thus, it is hoped that the IUP issuance process can run more efficiently and transparently, which will ultimately encourage sustainable mining sector growth and benefit the community and the environment. Companies holding Mining Business Permits (IUP) or Special Mining Business Permits (IUPK) have a number of obligations that must be complied with as a responsibility to the state and the community. These obligations include the implementation of good mining engineering standards, empowering the local community economy, and preparing reclamation documents. Regarding violations of obligations, economic crimes in the mining sector are regulated in the Energy and Mineral Resources Law, which provides sanctions for violators. If a company is declared bankrupt, the government has the right to revoke the mining permit, so that the existing land can be allocated to other companies to increase state revenue and empower the community. Revocation of permits must also be carried out in accordance with legal procedures stipulated in the legislation, where the authority to revoke must come from clear regulations. The application of sanctions must go through the appropriate stages and not be carried out carelessly. Therefore, it is important for the government to ensure that the policies taken are based on fair, transparent considerations and in accordance with legal principles.

Post-mining land management requires clear and firm regulations to avoid conflicts of interest and abuse of authority. The status of post-mining land, both those that have been reclaimed and those that still have active permits, must be confirmed as state land under the authority of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN). Holders of Mining Authorization (KP) or Mining Business Permits (IUP) do not have priority rights to post-mining land simply because they have carried out reclamation, and the use of the land for purposes other than mining must be subject to applicable land regulations. The affirmation in the Draft Land Law currently being prepared is important to provide legal certainty and prevent land disputes in the future.

AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.

Author 2: Conceptualization; Data curation; In-vestigation.

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