

## State Favoritism in Licensing Mining Services Business to Domestic Companies

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### ABSTRACT

**Background.** We often hear about the involvement of foreign companies/investments in the energy and mineral mining business, discussions about foreign investment are always a conversation and the spotlight of various parties.

**Purpose.** the purpose of this study is to measure the extent of the benefits obtained if the exploitation / exploitation of natural resources, especially mineral natural resource mining, is left to foreign investors, what reasons underlie the state to open opportunities for foreign investment to manage the wealth of Indonesian mining, energy and mineral products.

**Method.** This research is a normative legal research using two approaches, namely conceptual approach, and statute approach.

**Results.** The state is entrusted by all Indonesian people through the 45 Constitution to control all natural resources and be used to the greatest extent for the prosperity of the people.

**Conclusion.** The regulation of this mandate must of course be based on legislation as a foothold for implementing the law so that the direction of natural resource management does not deviate from the basic norm, which is controlled by the state and for the prosperity of the people.

### KEYWORDS

Mining, Enterprise, Investor

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### INTRODUCTION

As a sovereign state, the state is obliged to regulate control and manage natural resources in its territory for the national interest (Ren dkk., 2019). In this case, the state has the policy to make regulations and preferences to domestic companies in the management and exploitation of mineral resources (Wankhade dkk., 2022). Prioritizing the granting of mining licenses to domestic companies means creating jobs, encouraging the growth of the domestic mining industry, increasing skills, which in turn makes a positive contribution to economic growth.

The state as the holder of power over natural resources will sort and select companies that are eligible to manage these natural resources (Zhou dkk., 2020), of course companies that have fulfilled the administrative requirements of the permit (Koehnken dkk., 2020) . Permits are one of the government's decisions and actions in the implementation of government administration. Permits and licenses are part of administrative law (Lucini dkk., 2020). Licensing cannot be separated from legal

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actions carried out by bodies and/or officials who issue decisions and/or certain legal actions, because they are attached to authority and authority (Agboola dkk., 2020). This must be reflected in every regulation made by the state regarding business licensing arrangements,

Licenses should be a parameter for the growth and development of an investment or investment in a region (Tao dkk., 2020). Ease in the licensing process is a barometer of the state's partiality to industries / companies that will start their business (Li dkk., 2019). In fact, permits have become an instrument to seek personal gain for unscrupulous officials by misusing their positions.

With the enactment of regional autonomy (Zabel dkk., 2019), this licensing is increasingly flourishing where the regions make permits as a tool to create various types of licenses and sources of PAD (Ali dkk., 2021). In the end, the essence of licensing to conduct business is lost, becoming a long, complicated service process, with many agencies involved, and far from transparent, efficient, and cheap public services (Di Maria dkk., 2020). These practices certainly hamper capital investment and investment that will enter to do business (Balla dkk., 2019), because of the long and convoluted bureaucracy and long process (Ding dkk., 2020). These problems must have a solution that is practical, simple, efficient, transparent, and cuts the processing time).

## RESEARCH METHODOLOGY

This research is a normative legal research using two approaches, namely conceptual approach, and statutory approach (Aniyikaiye dkk., 2019). The analysis technique used for legal materials that have been collected to resolve the issues raised in this research is carried out with descriptive techniques and qualitative interpretation.

## RESULT AND DISCUSSION

### Regulation on Natural Resources

Article 33 paragraph (3) of the Constitution of the Republic of Indonesia stipulates that "The land and water and the natural resources contained therein shall be under the control of the state and shall be used for the greatest prosperity of the people" (Guo & Zheng, 2019). This constitutional norm has provided the direction of national natural resource development, which is controlled by the state for the prosperity of the people. The two principles above are a unity that cannot be separated from one another (Manouseli dkk., 2019). The separation of the two will actually be counterproductive to the intended concept of state control and can lead to a monopoly of natural resources by capital owners or foreign parties whose profits will only run abroad and be enjoyed by a handful of people and not for the people and development of Indonesia.

The Constitutional Court interprets "controlled by the state" to include the meaning of control by the state in a broad sense which is sourced and derived from the conception of the sovereignty of the Indonesian people over all sources of wealth "earth and water and natural resources contained therein" (Ai dkk., 2020), including the notion of public ownership by the collectivity of the people over the sources of wealth referred to (Tosun & Debus, 2021). The people collectively are constructed by the 1945 Constitution of the Republic of Indonesia to mandate the state to make policies (beleid) and actions of management (bestuursdaad), regulation (regelendaad), management (beheersdaad) and supervision (toezichthoudensdaad) for the purpose of the greatest prosperity of the people.

Indonesia's abundant natural resources, both renewable and non-renewable, are a gift from God Almighty that must be optimized for the welfare of the people (Sahasranamam dkk., 2019). Therefore, the management of natural resources has an important meaning and strategic position in

order to support national development for the present and the future (Bimbo dkk., 2020). The importance of natural resource management in the form of mineral and coal mining materials can be seen from the dictum weighing Law Number 4 of 2009, which according to Dwi Haryadi contains several things, namely:

- a. Important role to fulfill the lives of many people;
- b. Controlled by the state for the prosperity of the people;
- c. Encourage the national and regional economy in a sustainable manner;
- d. Management is independent, reliable, transparent, competitive, efficient, and environmentally sound.

In the General Elucidation of Law No. 4/2009 on Mineral and Coal Mining, the main points of thought regarding the regulation of mineral and coal natural resources are described, namely:

- a. Mineral and coal as non-renewable resources are controlled by the state and their development and utilization are carried out by the Government and local governments together with business actors.
- b. The Government further provides opportunities for business entities incorporated in Indonesia, cooperatives, individuals, and local communities to carry out mineral and coal exploitation based on licenses, which in line with regional autonomy, are granted by the Government and / or local governments in accordance with their respective authorities.
- c. Or local communities are also given the opportunity to conduct mining businesses in accordance with regulated licenses.

Although in practice there are often obstacles, such as long bureaucratization of licensing, extortion by unscrupulous people and overlapping policies between related sectors. The spirit of regional autonomy is apparent in current mining regulations (Wewerinke-Singh & Salili, 2020). Provincial/district/city governments are authorized to issue mining licenses and make mining-related local regulations (Bátorfy & Urbán, 2020). The centralization of mining in the past has now shifted to mining decentralization with the aim of providing authority to the regions to manage their natural resources to contribute to regional development (Tao dkk., 2020). Mining businesses must also provide economic and social benefits, as well as accelerate regional development and encourage the economic activities of communities / small and medium entrepreneurs and encourage the growth of mining support industries (Rivera Pichardo dkk., 2022). In order to ensure sustainable development, mining must be carried out with due regard to environmental principles, transparency, and community participation.

Haryadi (2018) added that besides Green Constitution, Green Legislation and Green Budgeting are important to be synergized and implemented, Green Culture is the main element in realizing environmentally sound development. Without this, the three strategies above will not be optimal, because there is no public and institutional participation.

### **Mining service business for domestic companies**

According to PP No. 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities, Mining is part or all stages of activities in the context of managing and exploiting minerals or coal which includes general investigation, exploration, feasibility studies, construction, mining, processing and/or refining or development and/or utilization, transportation and sales, as well as post-mining activities and Mining Service Business is a core mining service business activity related to the stages and/or parts of Mining Business activities.

Mining Service business activities as referred to above include consulting services; planning, and implementation (Bátorfy & Urbán, 2020). Consultation and planning activities are carried out after fulfilling the provisions of Business Licensing in the form of standard certificates. Includes

(Ebekozen dkk., 2020): (Vide: Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities)

- a. General Investigation is a stage of mining activities to determine regional geological conditions and indications of mineralization.
- b. Exploration is a stage of Mining Business activities to obtain detailed and thorough information about the location, shape, dimensions, distribution, quality and measurable resources of excavated materials, as well as information about the social and environmental environment.
- c. Feasibility Study is a stage of Mining Business activities to obtain detailed information on all related aspects to determine
- d. economic and technical feasibility of Mining Business, including environmental impact analysis and post-mining planning.
- e. Production Operation is a stage of Mining Business activities which includes construction, mining,
- f. processing and/or refining, or development and/or utilization, including transportation and sales, as well as means of environmental impact control in accordance with the results of the feasibility study.
- g. Construction is a Mining Business activity to carry out the construction of all production operation facilities, including environmental impact control.
- h. Mining is an activity to produce Mineral and/or Coal and its associated Minerals.
- i. Processing is an effort to improve the quality of Mineral mining commodities to produce products with physical and chemical properties that do not change from the nature of the original mining commodities for refining or becoming industrial raw materials.
- j. Refining is an effort to improve the quality of Mineral mining commodities through physical and chemical processes as well as further refining processes to produce products with different physical and chemical properties from the original mining commodities to metal products as industrial raw materials.
- k. Development and/or Utilization are efforts to improve the quality of coal with or without changing the physical or chemical properties of the original coal.
- l. Transportation is a Mining Business activity to move Mineral and/or Coal from the mining area and/or place of Processing and/or Refining to the place of conversion.
- m. Sales is a Mining Business activity to sell Mineral or Coal Mining products.
- n. Business Entity is any legal entity engaged in the field of Mining established under Indonesian law and domiciled within the territory of the Unitary State of the Republic of Indonesia.

The implementation of consulting services (Chen dkk., 2019); planning, and implementation activities are carried out after obtaining IUJP (Mining Services Business License) by sticking to the principle of using local and/or national Mining Services companies (Corona dkk., 2019). By always paying attention to the proximity of the location of Mining Business activities with the existence of Mining Service companies in regencies / cities, provinces, and other provinces; and paying attention to the status of Mining Service companies as domestic investment companies, except in the event that there are no local and / or national Mining Service companies, holders of IUP or IUPK can use Mining Service companies incorporated in Indonesia in the context of foreign investment.

According to PP No. 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities, IUJP is a license granted to carry out core mining service business activities related to stages and / or parts of Mining Business activities In principle, holders of Mining Business License / IUP or IUPK are required to have a Special Mining Business license must use local and / or national Mining Service companies.

The use of Mining Service companies incorporated in Indonesia in the context of foreign investment can be done after the holder of IUP or IUPK makes an announcement to the local and / or national mass media but there are no local and / or national Mining Service companies that are technically and / or financially capable, while still providing part of the Mining Service business work obtained to other parties (local / domestic) and must prioritize the use of local contractors and local labor.

Agreeing with the above regulation, the author agrees that mining activities should not be fully carried out by foreign investors, there are many types of mining business services that must be carried out by local companies (Wainaina dkk., 2020). This is the function of justice and equity.

The results of natural resource mining that flow abroad and become a source of state revenue are also expected to encourage the growth and development of local domestic companies engaged in the mining service business that employs residents around the mine and gets economic benefits from the mining service business in the vicinity (Huang dkk., 2019). The legal basis that Mining Service Business can only be done by local companies:

- a. Article 137 of Government Regulation PP No. 96 of 2021 dated September 09, 2021 concerning the Implementation of Mineral and Coal Mining Business Activities
- b. Article 138 of Government Regulation PP No. 96 of 2021 dated September 09, 2021 concerning the Implementation of Mineral and Coal Mining Business Activities
- c. Article 72 Minister of Energy and Mineral Resources Regulation No. 7 of 2020

## CONCLUSION

Regulations from the state regarding the requirement for Mining Business Services activities to remain in the principle of using local and/or national Mining Services companies, is one of the state's alignments to protect domestic companies / domestic investment. By always paying attention to the proximity of the location of Mining Business activities to the existence of Mining Service companies in regencies / cities, provinces, and other provinces, it reflects that this regulation is an effort to increase Regional Original Revenue which leads to prosperity in the mining area of origin.

The exception to the regulation that mining service business requires the use of a Mining Service company with domestic investment status, is if there is no local and/or national Mining Service company that is technically and/or financially capable. In the event that there are no local and/or national Mining Service companies, IUP or IUPK holders can use Mining Service companies incorporated in Indonesia in the context of foreign investment.

The use of Mining Service companies incorporated in Indonesia in the context of foreign investment can be done after the holder of IUP or IUPK makes an announcement to the local and/or national mass media but, while still providing part of the Mining Service business work obtained to other parties (local / domestic) and must prioritize the use of local contractors and local labor.

An additional regulation that the state can provide to domestic companies in the field of Mining Business Services is to provide special preferences or incentives. This can be in the form of preferences in the licensing process, access to certain mining areas, or favorable tax incentives, in addition to technical guidance to improve the capabilities of domestic companies: both in terms of technical capabilities and capabilities in order to compete fairly in the mining industry.

## AUTHORS' CONTRIBUTION

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

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