

## Licensing of Open-pit Mining in Seblat Nature Park: Is it Appropriate?

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### ABSTRACT

There are often conflicts between economic and conservation interest such as the establishment of mining licenses in conservation area. This qualitative study aims to analyze the validity of open pit mining permit number I.315.DESDM in the conservation area of Seblat Nature Tourism Park, North Bengkulu. This study is a normative legal research that uses literature study as a data collection method. The data obtained is analyzed, systematized with deducative thinking method. The results of this study found that mining business license number I.315.DESDM is not accordance with the function of conservation areas because it contradicts Law No. 5 of 1990 and Government Regulation No. 7 of 1999 and contains juridical defects both in terms of authority and procedure. Following up on these findings, BKSDA through the Ministry of Environment and Forestry can submit a recommendation to review the mining business license (IUP) number I.315.DESDM to the Ministry of Energy and Mineral Resources (ESDM).

## 1. Introduction

Mining business licensing plays an important role in ensuring that every mining activity can run according to regulations and has fulfilled all requirements. Mining licenses that are carried out in accordance with procedures and meet the requirements set by regulations result in productive and environmentally friendly mining activities, on the other hand, if mining business licensing is carried out haphazardly, it results in various adverse impacts on environmental preservation and community social life, such as the mining license of PT Inmas Abadi which threatens the preservation of flora and fauna in the Seblat Natural Tourism Park area of North Bengkulu.

Licensing of mining activities is carried out by issuing a Mining Business License (IUP). IUP is related to the legality document for the exploitation and management of excavated materials intended for individuals or business entities (Lathif, 2017). This permit is an absolute requirement for all parties who want to carry out businesses in Indonesia, this mining permit is needed to monitor and regulate mining activities so that they run according to regulations (Dirga, 2024). IUP plays a role as an important instrument in natural resource management to ensure that all activities are within a clear and sustainable legal framework (Evinkaw, 2024). Furthermore, to have an IUP, individuals or legal entities must first have ownership of a Mining Business License Area (WIUP) obtained after participating in an area auction followed by submission of an Exploration IUP and Production Operation IUP (*Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities jo Government Regulation No. 24 of 2012 concerning Amendments to Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities*, n.d.). In practice, the issuance of IUP is often carried out haphazardly, even field facts show that there are IUP concessions in conservation forest areas such nature tourism parks.

Nature Tourism Park (TWA) itself relates to a conservation area nature that functions for nature recreation and tourism (*Law No. 5 of 1990 concerning Conservation of Natural Resources and Ecosystems*, n.d.). TWA is a nature conservation area protected by law, the existence of TWA as a conservation area plays an important role in preserving nature and biodiversity (Ramadhani et al., 2018). As a conservation area, every activity in TWA is limited activities that aim to protect genetic variation, protect ecosystems and life structures, and to preserve ecosystems and species utilization (Cristanto in Hadi, 2022). Furthermore, the law expressly prohibits all people from carrying out activities that alter the landscape in the TWA area (*Law No. 32 of 2024 concerning Amendments to Law No. 5 of 1990 concerning Conservation of Living Natural Resources and Ecosystems*, n.d.).

Unfortunately, mining licensing in Indonesia has not optimally accommodated the protection of natural sustainability and biodiversity from the impacts of mining activities. This is due to problems in mining licensing such as administrative violations in applying for mining business licenses (IUP), the rampant licensing of mining businesses in forest areas (Stranas PK, 2023). Finally, the exploitation of natural resources often overrides environmental aspects (Gunawan, 2023; Paruki & Ahmad, 2022; Prianto et al., 2019). In fact, mining business licensing must be carried out according mechanism and fulfill the specified requirements by relevant regulations to carry out productive and sustainable mining activities.

Various studies on mining business licensing in forest areas have been conducted. Such as a study entitled Coal Mining Conflict Resolution Policy in Forest Areas in East Kalimantan (Kartodihardjo et al., 2016). On the other hand, several studies on related topics have also been conducted, including an analysis of law enforcement against unlicensed mining in forest areas (Haris et al., 2023; Herman et al., 2022; Maulana & Arif Firmansyah, 2023). In line with information, studies that examine the existence of mining licenses in natural tourism park areas are relatively rare, this research is a further development of the analysis of the wetness of PT Inmas Abadi's mining license in the Seblat conservation area mentioned by Iskandar in his analysis of the validity of government actions regarding the determination and cancellation of PT Inmas Abadi's mining business license (IUP) (Iskandar, 2014), especially after the enactment of Law 23 of 2024 concerning regional government. This type of study needs to be conducted to inform the status of the validity of PT Inmas Abadi's mining license in the Seblat TWA area. In addition, the findings obtained can be a foundation for further development studies. The results can also be used to study the legal status of mining licenses in conservation areas. Therefore, this research aims to analyze the validity of PT. Inmas Abadi's mining permit number. I.315. DESDM and the suitability of the permit with the function of the area.

## 2. Method

This research uses normative legal methods to examine the validity of Mining Business License No. I-315.DESM Year 2017 owned by PT Inmas Abadi. This research is supported by primary data sources consisting of laws and regulations and copies of court decisions, as well as secondary data including journal articles, reports, news articles, books, and various other reliable sources. The data collection method is carried out by literature study, the data and information obtained are analyzed and systematized qualitatively with a deductive thinking method to produce an overview of the validity of the coal Mining Business License (IUP) owned by PT Inmas Abadi.

## 3. Main Heading of the Analysis or Results

The results of the study indicate that the Bengkulu governor's decree No. I.315.DESDM of 2017 concerning the production operation mining business license (IUP-OP) of PT Inmas Abadi is an unlawful act that violates the law can cause harm to the environment and the

general public because it is based on maladministration. Therefore, the public and the Ministry of Environment and Forestry can take administrative law remedies to revoke/cancel the KTUN.

### 3.1. IUP PT. Inmas Abadi in terms of area function

**Table 1.** Comparison of the history of the Seblat Nature Park and PT. Inmas Abadi IUP-OP establishment

Stages of Seblat Nature Park Designation	Year	PT. Inmas Abadi Coal Mine Licensing Stages	Year
Status of Production Forest with Special Functions (HPKH) for PLG (SK Minister of agriculture No.422/Kpts/Um/8/1974)	1974	Creation of WUP map with Area Code: 96MR0524 covering an area of 5, 672.49 ha by Bakosurtanal	1992
Designation HPKh PLG Seblat (SK Minister of Forestry No.658/Kpts-II/1995)	1995	Granting of mining exploration (Decree of Director General of General Mining No. 124.k/2013/DDJP/1996) for 2 years	1996
Piling temporary and definitive boundaries	1995/1996	First extension of exploration mining power (Decree of Director General of General Mining No. 206.k/23.03/DDJP/1998)	1998
Designation of Permanent production forest area with special function (HPkh) PLG Seblat covering an area 6.865 ha (Decree of the minister of Forestry No. 420/1999)	1999	Second extension of exploration mining power (Decree of General Of General Mining No. 108.k/23.01/DDJP/2000) for 2 years.	2000
Rejection of request for a review of overlapping coal exploration concessions bt the Minister of Forestry (Decree of the minister of Forestry No.S.320/Menhut-II/2008)	2008	PT. Inmas Abadi submitted an application for lisece upgrade from Exploration to Exploitation KW.96.MPR.0524 to the Regent of North Bengkulu (PT. Inmas Abadi letter No. 03/IMA/XI/01).	2001
Seblat TWA designation through Decree of the minister of Forestry No.SK.643/Menhut-II/2011	2011	The Regent of North Bengkulu granted an exploitation mining license for an area marked KWBU.0003 covering an area of 1000 ha (Decree of the Regent of North Bengkulu No. 51 of 2002) for a period of 5 years.	2002



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Change of HPkh-PLG Seblat and HPT Lebong Kandis to conservations area with TWA function	2011	PT. Inmas Abadi filed a request for a judicial review on the issue of overlapping coal exploration concessions.	2008
Seblat TWA re-designation through Decree of the minister of Forestry No.SK.643/Menhut-II/2011	2012	PT. Inmas Abadi submitted a letter requesting an extension of exploitation and exploitation activities and rejected the application for IUP at the same location by the other companies (PT. Inmas Abadi letter No. 018/INDIMINERBA/VII/2011).	2011
Area designation through Decree of the minister of Forestry No.3890/Menhut-VII/KUH/2014	2014	PT. Inmas Abadi applied for an extension of IUP-OP (Letter of PT. Inmas Abadi No. 015/SP/IA/IX/2011).	2011
Governor Bengkulu established essential ecosystem area (KEE) for the seblat landscape (Decree No. S.497.DLHK)	2017	Bengkulu Governor grants PT. Inmas Abadi application for IUP-OP extension (Bengkulu Governor Decree No. W. 421.XXV).	2011
Bengkulu governor sends letter requesting review of mining business license (IUP) of PT. Inmas Abadi	2021	Governor of Bengkulu revokes IUP-OP of PT.Inmas Abadi (Bengkulu Governor Decree No. V. 61.XXV/2012).	2012
		The Supreme Court declared the Bengkulu Governor's decree No. 61. V.61.XXV/2012 invalid and revoked the revocation of IUP-OP (Supreme Court Decision No. 222K/2013).	2013
		The Managing Director of PT. Inmas Abadi filed an objection to the designation of the Seblat TWA area.	2017
		The Governor of Bengkulu issued a mining license (Bengkulu Governor Decree No. I.315.DESDM) with a concession area of 4,051 ha.	2017
		The Director General of Forestry Planning rejected the objection filed by PT. Inmas Abadi, on the grounds that the forest area had already existed.	2018



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*Source: Processed from the Internet*

Based on Table 1. The establishment of the Seblat Nature Tourism Park (TWA) coincided with the production operation mining license (IUP-OP) of PT Inmas Abadi, although the Director General of Forestry Planning assessed that the forest area had already existed (Putra, 2018). In this regard, no previous report has been found that specifically examines the comparison of the history of the establishment of the Seblat TWA and the IUP-OP owned by PT Inmas Abadi or the study of the mining license in terms of the function of the area. However, land use/utilization in conservation forest areas has been reported as expressly prohibited (*Law No. 41/1999 on Forestry*, n.d). Also, the issue of the existence of mining licenses in conservation areas is identified as contradicting the function of the area, in addition, data shows that mining licenses in forest areas are reported to be mostly problematic (Stranas PK, 2023).

From a series of analyses conducted, the overlap of PT Inmas Abadi's IUP-OP concession land with the Seblat natural tourism park conservation area poses various threats to environmental sustainability. In line with this, the Ministry of Energy and Mineral Resources wrote that mining activities often cause significant social and environmental impacts (ESDM, 2023). Furthermore, the existence of PT Inmas Abadi's mining activities is reported to cause various potential losses to the environment and social community such as the potential to pollute the Seblat river, the potential for social conflict, the decline in the quality of the community environment, the erosion of the Seblat river, and the threat to secondary dry land cover (Wicaksono, 2023a), TWA seblat This is in line with the statement of the coordinator of saving the Seblat landscape, who explained that mining activities in the Seblat area will damage the forest, causing the destruction of the biodiversity of the Seblat TWA (Esa, 2021). Therefore, mining business licenses should not be issued in nature conservation areas because they are not in accordance with conservation principles.

Mining licenses in the Seblat conservation area were identified as violating conservation principles. The results of this study indicate that mining licensing in the Seblat TWA conservation area is wrong because it is not in line with the objectives of environmental conservation, the function of the TWA utilization zone as a nature conservation area can only be used for tourism purposes (*Law No. 5 of 1990 concerning Conservation of Natural Resources and Ecosystems*, n.d.). And can be utilized for activities referred to in PP No. 108 of 2015, so mining activities are not among the activities allowed in conservation areas such as nature tourism parks. Furthermore, coal mining activities are

reportedly generally carried out with open mining patterns that are vulnerable to changing the landscape, both physically, chemically, and biologically of the soil and usually result in damage to the earth's surface (Subardja in Hidayat, 2017). In fact, the law explicitly prohibits anyone from carrying out activities that change the landscape in the TWA area (*Law No. 32 of 2024 concerning Amendments to Law No. 5 of 1990 concerning Conservation of Natural Resources and Ecosystems*, n.d.). addition, the coal mining licence also has the potential to threaten the existence of Sumatran elephant habitat.

The existence of mining activities in the Seblat TWA area has the potential to disrupt the Sumatran elephant corridor. The elephant corridor path itself refers to the path of the Seblat elephant range area used for foraging and the path for male elephants to find females during the mating season, the Seblat elephant corridor path covers a very large area consisting of TWA Seblat, HPT Lebong Candis, Air Rami forest area, to Seblat Kerinci National Park. At the same time, Sumatran elephants are reported to need shelter in the form of canopy closure, places to obtain food, and clean water sources to live well (Redi Pirmansyah et al., 2024). Furthermore, the existence of this mining concession license is identified as overlapping with the Seblat TWA area, limited production forest (HPT) Lebong Candis covering an area of 19.150.000m<sup>2</sup> and area of 5.400.000m<sup>2</sup> is in the conversion production forest (HPK) area (Selviahaynet, 2023), which is feared to disturb the elephant corridor path, thus threatening the conservation of Seblat elephants. In fact, elephants are endangered animals that receive protection from Law No. 5 of 1990 (Fhadil & Tarmizi, 2020; Hamid et al., 2022), Sumatran elephants are also included in the types of animals that must be protected (*Government Regulation No. 7 of 1999 concerning the preservation of plant and animal species*, 1999). Therefore, PT Inmas Abadi's mining license in the Seblat TWA area was identified as violating Law No. 5 of 1990 and the forestry law, and did not pay attention to the carrying capacity of the environment.

### 3.2. Juridical study of the validity of IUP-OP PT. Inmas Abadi

**Table 2.** Comparison of the legal basis of Seblat Nature Park and PT. Inmas Abadi's IUP-OP

The Juridical Basis of Seblat Nature Park	Area	The Juridical Basis of PT.Inmas Abadi's Coal Mining License	Area	Area of Overlap
Minister of Forestry Decree No. 3890/Menhut-VII/KUH/2014	7.732,80 ha	Bengkulu Governor Decree No. I.315.DESDM Year 2017	4.051 ha	2.650 ha

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*Source: Processed from the Internet*

Based on Table 1 and Table 2, the designation of forest areas for the Seblat Nature Tourism Park (TWA) with the aim of environmental conservation precedes the licensing of mining activities. In this regard, a previous study reported that the licensing of the mining business through the Bengkulu governor's decree No. W.421.XXV of 2011 regarding the extension of PT Inmas Abadi's IUP-OP has been reported to contain defects juridical both in terms of authority, procedure, and substance. This mining license is also reported to have no environmental documents such as AMDAL, environmental management efforts (UKL) and environmental monitoring efforts (UPL) (Iskandar, 2014). In its development after the enactment of Law No. 23 of 2014 concerning Regional Government, providing a new round of IUP issuance authority, then based on the decision of the Bengkulu governor PT Inmas Abadi received a renewal of IUP- OP through SK No. I.315. DESDM 2017 which shares an area with the Seblat TWA area. In this regard, no previous report has been found that examines the validity of the permit from the aspects of authority, substance, and procedure. However, until 2023 the AMDAL of PT Inmas Abadi has reportedly not been processed by the Ministry of Environment and Forestry (Eka Putra, 2023), and the AMDAL has also been rejected by various parties (Mayasari, 2021b; Wicaksono, 2023b).

From the results of the study conducted, the issuance of a mining business license owned by PT Inmas Abadi is indicated to have maladministration and is prone to conflicts of interest. The basis of this analysis is compliance with the legal requirements of state decisions/actions, namely authority, procedure, and the content of the substance of state decisions. It is known that the elements that constitute the legal requirements of a decision are that a decision must be made by an authorized official, in accordance with procedures, and contain substance that is in accordance with the object of the decision based on legal principles and AUPB (*Law No. 30 of 2014 concerning Government Administration*, n.d.). Furthermore, to identify the validity of PT Inmas Abadi's IUP-OP, the validity requirements based on article 52 of the government administration law are analyzed as follows:

### **3.2.1 Aspects of Authority**

The authority to extend the IUP license is given to the regent, governor, or minister in accordance with their authority. Regulations governing mining in Indonesia itself include several regulations



including Law No. 48 of 2009 concerning Mineral and Coal Mining in conjunction with Government Regulation No. 22 of 2010 concerning Mining Areas in conjunction with Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities, and several government regulations amending PP No. 23 of 2010. Regarding the authority to extend licensing, the laws and regulations basically outline that the application for extension of IUP-OP is submitted to the Minister, Governor, or Regent/mayor in accordance with the authority of the relevant officials within a period of no later than 6 months and no sooner than 2 years before the expiration of the IUP period. Article 35 of Government Regulation No. 23/2010 divides the authority of the minister, governor, and regent/mayor in issuing IUP based on the coordinates of refining, processing, and mining locations. In addition, the division of authority between the central and regional governments is also regulated in Law No. 23/2014 on Regional Government (hereinafter referred to as the Regional Government Law).

Based on the Local Government Law, energy and mineral resources affairs are classified as concurrent government affairs in the form of optional government affairs. Elective government affairs themselves refer to government affairs that must be carried out by the regions according to their potential (*Law No. 23 of 2014 concerning Regional Government*, n. d.). Then article 13 of this regulation determines the criteria for government affairs which are central authority, as well as regional authority through several principles, one of which is the principle of externality. This principle determines authority based on the benefits or impacts of a government affair, if the negative impact or benefits are cross-provincial or cross-country, it becomes the authority of the central government, if the negative impact or benefits are across the city / regency area, it is the authority of the province, and if the negative impact or benefits are only within the city / regency area, it becomes the authority of the relevant region.

Regarding the authority to extend the IUP-OP of PT Inmas Abadi, it is the absolute authority of the regent of North Bengkulu because the port development plan in Central Bengkulu does not meet the requirements. As stated earlier regarding the authority of the Minister or regional head in issuing and extending IUP, the facts show that the entire WIUP area which includes the mining, refining and processing area, as well as the port location is within the administrative area of North Bengkulu regency because the application for exploitation mining power (now called IUP-OP) was submitted to and issued by the regent of North Bengkulu through SK No. 51/2002. Although PT Inmas Abadi later moved the location of the port from

North Bengkulu to Central Bengkulu regency through application letter No. 037/INDI I-BU/XII/2011 dated December 1, 2011 which was then approved through Central Bengkulu regent's letter No. 095/0923.B.4/2011, should be underlined that the results of review conducted by the assistant for economy, development and people's welfare at the Central *Bengkulu* regency secretariat stated that a special port can be built if the public port cannot serve the loading and unloading of passengers and transportation or goods (*Bengkulu State Administrative Court Decision No. 07/G/2012/PTUN-BKL*). So that the inability of public ports is an absolute requirement so that special coal ports can be built, furthermore, from the results of the port inventory in Bengkulu province, the public port of Pulau Baai is the most possible port option for coal transportation, loading and unloading activities. In line with that, Pulau Baai port is reported to be able to serve ships above 35,000 tons (Desfika, 2019; Jingga, 2012; Mabrori, 2018), both mother vessels and barges, besides that this port has also reportedly increased the capacity of ship capacity with dry bulk loading and unloading capacity from 2.4 million tons to 3.5 million tons (Desfika, 2019; Mabrori, 2018). So that the special coal port proposed by PT Inmas Abadi cannot be built because in the span of 2012-2019 Bengkulu already has a public port that is quite capable of carrying, loading, and unloading coal. Then if considering the formulation of the explanation of Article 35 paragraph (1) of Government Regulation No. 23 of 2010, concerning the port in question is "A special port or special terminal built by the holder of the Production Operation IUP", furthermore, the meaning of the phrase "...which is built ..." means that the port or special terminal must already exist when the business entity applies for an IUP-OP and not a development plan that has not been realized. So it can be concluded that the discourse on the establishment of a port in Central Bengkulu Regency cannot be a reason to state that the location of mining, refining and processing, as well as the port of PT Inmas Abadi's coal mine are located across regencies. The search results also show that the company actually knows that the authority to extend the exploitation mining power is the absolute authority of the regent of North Bengkulu, as evidenced by the extension requests that have been repeatedly rejected by the regent of North Bengkulu (*Bengkulu State Administrative Court Decision No. 07/G/2012/PTUN-BKL*). In , the principle of externality further strengthens the argument that the extension of the KP EXPLOITATION/IUP-OP of PT Inmas Abadi is a matter for the local government of North Bengkulu regency.

As stated earlier, the local government law determines the authority of a government affairs in accordance with the benefits or negative impacts caused. In this regard, mining activities are reported

to cause various environmental problems, such as deforestation, large amounts of ex-mining land, damage to marine ecosystems (Amelia Novita, 2018), ecosystem damage and human health problems (Ananda, 2022), to road damage, watershed pollution, land damage, air pollution, damage to fauna and flora, and even social impacts including the absence of community health empowerment, and changes in community behavior (Aldiansyah S. dan Nursalam L. O in Agussalim et al., 2023). In this case, PT Inmas Abadi's mining activities are considered to result in various potential negative impacts on the environment (Wicaksono, 2023a). In line with this, the President Director of Genesis Bengkulu argued that mining is not a solution to increase income and employment opportunities for local residents, instead granting production and operation licenses to PT Inmas Abadi adds to the list of flood-affected villages in Bengkulu province (Mayasari, 2021a).

It can be concluded that the negative impacts caused by coal mining activities only affect North Bengkulu regency and not across regencies, thus strengthening that the authority to extend PT Inmas Abadi's IUP-OP is the authority of the regent of North Bengkulu.

Based on the reasons previously stated, it is clear that according to the location of the mining WIUP and the scope of potential negative impacts, the authority to extend the IUP-OP of PT Inmas Abadi is the authority of the regent of North Bengkulu and not the governor. Therefore, the application for the extension of the exploitation mining power should be submitted to the regent of North Bengkulu because the governor of Bengkulu has no authority (*onbevoegdheid*) to issue the extension of the exploitation mining power/ IUP-OP submitted by PT Inmas Abadi. However, the fact that the Bengkulu governor granted the application through the Bengkulu governor's decree No. W. 421. XXV year 2011, the action of the Bengkulu governor in issuing the IUP-OP *on* behalf of PT Inmas Abadi was identified as an illegal legal action (*onrechmatigdheid*), because the governor did not have the authority in terms of territory (*onbevoegdheid ratione loci*), which made the governor's decision invalid (Iskandar, 2014). Furthermore, the Bengkulu governor's decree was the first extension of PT Inmas Abadi's IUP-OP, then in 2017 the Bengkulu governor re-issued PT Inmas Abadi's IUP-OP through Decree No. I.315.DESDM. The latest decision was also identified as an illegal legal act (*onrechmatigdheid*), because based on the arguments stated earlier, PT. Inmas Abadi's coal mine is located in the administrative area of North Bengkulu regency and does not meet the requirements to be categorized as cross-district, so that the granting of permits and extension of mining business licenses (IUP) is the absolute authority of

the regent of North Bengkulu, thus showing the use of authority that is not in line with the applicable laws and rules, so that such actions are clearly classified as illegal acts (Pratiwi et al., 2024).

### 3.2.2 Procedural Aspects

The issuance of a KTUN (*Beschikking*), must be based on correct procedures in accordance with the provisions stipulated by the basic regulations, effective, efficient, and transparent (Iskandar, 2014; Wijaya, 2017; Wijaya et al., 2019). In this regard, regulations on mineral and coal determine the flow of procedures for issuing coal mining business licenses consisting of several stages such as determining the mining area (WP), determining the mining business area (WUP), determining WIUP, auctioning WIUP and then applying for Exploration IUP and Production Operation IUP. The long mechanism of mining business licensing starts through the stage of determining the mining area.

Determining which areas will become mining license business areas (WIUP) before they are ready for auction requires several steps. First, the Minister of Energy and Mineral Resources designates an area as a mining area (WP) after coordinating with the relevant regional heads. This process includes a series of steps, including inventory of mining potential, investigation and research, as stipulated in Government Regulation (PP) No. 22/2010 Articles 2-15, then, the WP is designated as a Mining Business Area (WUP), in accordance with Articles 19 and 20. The process of determining WIUP in a WUP is carried out strictly and must follow the guidelines stipulated in Article 22 Paragraph (1), which explains that the minister determines metal mineral and/or coal WIUP after coordinating with the head of the local region. In addition, the determination of WIUP in WUP must also meet the criteria set out in Article 23 Paragraph (1), including geographical location, conservation rules, taking into account the carrying capacity of the environment, optimization of mineral and/or rock resources, and optimization of mineral and/or rock resources, and population density level. Then the WIUP that has been determined according to the procedure is auctioned to individuals or associations.

WIUP in coal and metal mineral mining is obtained through an auction process as specified in Article 8 Paragraph (3). The winner of the auction, either a legal entity, cooperative, individual, or firm and CV, as the WIUP holder submits an application for IUP in accordance with the procedures outlined by PP No. 23 of 2010, this application must be submitted immediately to the Minister / regional head according to his authority within 5 working days so that the WIUP holder can obtain an IUP. IUP itself is divided into Exploration IUP and



Production Operation IUP, Exploration IUP is issued by the authorized official to the applicant who has met the requirements, then, IUP-OP can be submitted to the Exploration IUP holder as a form of improvement, based on Article 34 Paragraph (1), further on the division of authority to grant IUP-OP is regulated in accordance with Article 35 of PP no. 23 of 2010. After the winner of the WIUP auction obtains the Production Operation IUP, only then can the related company carry out mining activities. The extension of the IUP-OP period can be carried out based on article 45 paragraph (1) which explains that the application for an extension of the IUP OP can be made by submitting an application to the Minister or regional head according to his authority within a period of no later than 6 (six) months and as soon as possible 2 (two) years before the expiration of the IUP period, and fulfilling the conditions specified in article 45 paragraph (2).

In connection with the issuance and extension of the IUP-OP owned by PT Inmas Abadi based on the results of the review according to the description previously stated, several things were found that contradicted the regulations related to minerals and coal and violated procedures, including:

1. WIUP determination is not accordance with regulations

The procedure for determining WIUP is carried out through several stages such as determining the location of the mine, and a series of stages such as inventory, exploration and research, then determining the Mining Business Area (WUP) and determining WIUP. For the determination of WIUP in WUP, the law requires the fulfillment of several criteria outlined by Article 22 paragraph of PP No. 22/2010, at least it must contain the rules of conservation and environmental carrying capacity. In fact, currently the IUP area of PT Inmas Abadi overlaps with the Seblat TWA conservation area, based on the results of the WUP Map search submitted by PT Inmas Abadi made by Bakosurtanal in 1992, coded: 96MR0524 with an area of approximately 5,672,490,000m<sup>2</sup> (Iskandar, 2014), whereas long before that since 1974 the area had become a production forest with a special function for PLG (HPKH) based on the Decree of the Minister of Agriculture which was later upgraded to HPKh PLG Seblat by the Minister of Forestry in 1995. Therefore, it should be suspected that the criteria of conservation rules and environmental carrying capacity were not carefully considered when determining WIUP by the Ministry of Energy and Mineral Resources. In addition, this shows the poor coordination between the ministry of



energy and mineral resources. Furthermore, the study results show that there is a regulatory *gap* in the issuance of IPPKH and IUP (Adrison et al., 2014).

2. The first extension of IUP- OP is contrary to Article 37 of Law. No.4/2009 jo Article 35 Paragraph (1) of Government Regulation No. 23/2010

Article 37 in conjunction with Article 35 paragraph (1) basically regulates that IUP is issued by the governor if the WIUP is located across municipalities/regencies in a province after being recommended by the local regional head. Taking into account the fact that all of PT Inmas Abadi's WIUPs are actually located within the administrative area of North Bengkulu regency and have not yet received complete recommendations from each of the local regional heads, the review results show that the IUP application is only equipped with recommendations from the acting regent of Central Bengkulu and there is no recommendation from the regent of North Bengkulu where all WIUPs are located. Therefore, the IUP extension application is not in accordance with Article 37 juncto 35 paragraph (1) (*Bengkulu State Administrative Court Decision No. 07/G/2012/PTUN-BKL*).

3. Contrary to the principles of the Minerba Law

Article 2 letters a and b of the Minerba Law outlines that coal mining is carried out based on the principles of justice, benefits and balance and the interests of the state. When considering that the IUP is granted to overlap with the forest area of the elephant training center, which in its development has turned into an animal reserve area, and also shares territory with several other areas that have received IUPs, then according to article 136 paragraph (1) of the Minerba Law in conjunction with article 100 paragraph (1) of PP. No. 23/2010, has the possibility of triggering injustice and problems that can lead to mining business conflicts in the area. So that it is clearly contrary to the principles of mining management outlined by the Minerba Law (*Bengkulu State Administrative Court Decision No. 07/G/2012/PTUN-BKL*).

4. Extension of IUP-OP that has passed the deadline

Article 45 Paragraph (1) stipulates that the extension of IUP is submitted to the minister or regional head according to his authority as soon as possible 2 (two) years and no later than 6 (six) months prior to the end of the IUP period. Noting that the power of exploitation mining has been granted by the Regent of North

Bengkulu in accordance with Decree of the Regent of North Bengkulu No. 51 of 2002 dated February 5, 2002, for a period of 5 (five) years since its establishment, based on mathematical calculations the mining power expired on February 5, 2007, but the first application for extension of the power of exploitation mining was only submitted to the Regent of North Bengkulu on November 13, 2008, which means that the power of exploitation mining has expired, thus clearly contradicting Article 45 paragraph (1) Minerba Law. Furthermore, based on the investigation, even though the mining power has expired and the extension period has passed, PT Inmas Abadi still applies for an extension and revision of the exploitation mining power adjustment to become IUP-OP 5 times but all of them were rejected, then in 2011 the governor of Bengkulu approved the extension of PT Inmas Abadi's IUP-OP. This means that in addition to being determined by unauthorized officials, the extension of the IUP-OP has passed the extension deadline of 4 years.

From the description above, it is known that the licensing and extension of PT Inmas Abadi's IUP-OP was not carried out in accordance with procedures and contrary to regulations related to mineral and coal. Regarding the IUP-OP license based on SK No. I.315.DESDM in 2017, it found that the license was also not carried out according to procedures and contrary to regulations related to mineral and coal. Based on article 120 to article 122 of the Minerba Law, if the IUP has expired and no extension is submitted or does not meet the extension requirements, the IUP holder must return the license to the Minister or regional head according to their authority. PT Inmas Abadi, as the holder of an exploitation mining license (IUP OP), should have returned the license to the Regent of North Bengkulu after the license expired on February 7, 2007 to be re- auctioned. However, company continued to extend the mining license despite the expiry of the statutory extension deadline. It was not until 2011 that the governor of Bengkulu approved the first extension of the license. Then, the permit issued by the governor of Bengkulu in 2017 is also questionable, because the IUP-OP issued by the governor of Bengkulu in 2011 was given for a period of 15 years, so if the permit is the second extension of the IUP-OP, then it is clearly premature and contrary to the procedures outlined in the Minerba Law.

Despite the validation that has been presented. The limitations of this study should be noted, although the research data were collected

from reliable sources, some of the data referenced in this study were sourced from research from the last few years, not the latest data, on the other hand, the researchers' limited access to the Bengkulu Governor's decree No. I.315.DESDM in 2017, which is the legal basis for PT.Inmas Abadi's IUP-OP, should also be noted. Therefore, the limitations of previous research data and access to bound KTUN also affect the results of this research. Conducting research using empirical research methods and involving substantial analysis of the relevant KTUN can overcome this. Further studies are recommended using data obtained directly from affected communities and involving substantial analysis of Bengkulu Governor's Decree No. I.315.DESDM.

#### 4. Conclusion

In this study, an analysis of the validity of the extension of mining business license number I.315.DESDM in 2017 was carried out. The results of the study found that the mining license violated the law on conservation of biological resources and ecosystems and threatened the preservation of Sumatran elephants because the concession land overlapped with the nature conservation area, besides that the results of the study also found that the extension of the license contained jurisdictional defects because it was issued by officials who did not have the authority and procedures were messy, therefore based on Article 56 Paragraph (1) of Law No. 30 of 2014 concerning Government Administration, the decision to extend IUP-OP number I.315.DESDM by the governor of Bengkulu is INVALID.

Noting that PT Inmas Abadi' coal mining license has resulted in a prolonged conflict with the community and the Bengkulu BKSDA, the issue of legal protection of the community environment and nature conservation forest areas must be in the spotlight. There are alternative solutions to solve this problem, including the BKSDA through the Ministry of Environment and Forestry can submit a recommendation to review the mining business license to the Ministry of Energy and Mineral Resources.

#### References

- Adrison, V., Azar, M. S., Wigjoseptina, C., Hasty, S. A., Alta, A., & Anindita, D. (2014). Pertambangan di Kawasan Konservasi: Permasalahan Regulasi dan Koordinasi. In *LPEM FEBUI* (Issue 41, pp. 1-4). Lembaga Penyelidikan Ekonomi dan Masyarakat (LPEM FEBUI).
- Agussalim, M. S., Ariana, A., & Saleh, R. (2023). Kerusakan Lingkungan Akibat Pertambangan Nikel di Kabupaten Kolaka Melalui Pendekatan Politik Lingkungan. *Palita: Journal of Social Religion Research*, 8(1), 37-48.

- <https://doi.org/10.24256/pal.v8i1.3610>
- Amelia Novita, A. (2018). Collaborative Governance dan Pengelolaan Lingkungan Hidup di Kawasan Pertambangan. *Jurnal Ilmiah Administrasi Publik*, 4(1), 27–35. <https://doi.org/10.21776/ub.jiap.2019.004.01.4>
- Ananda, Y. (2022). Kerusakan Lingkungan Akibat Kegiatan Penambangan Emas Ilegal Di Kabupaten Murung Raya, (Kalteng). *Pusat Publikasi S-1 Pendidikan IPS FKIP ULM*, 1(1), 1–11.
- Desfika, T. S. (2019). *Pelindo II Kembangkan Pelabuhan Bengkulu*. Berita Satu. <https://www.beritasatu.com/ekonomi/530607/pelindo-ii-kembangkan-pelabuhan-bengkulu>
- Dirga, A. (2024). *Mengenal Syarat IUP Tambang dan Proses Pengajuannya*. KonsultanTambang.Id. <https://konsultantambang.id/mengenal-syarat-iup-tambang-dan-proses-pengajuannya/?form=MG0AV3>
- Eka Putra, R. (2023). *Legislator Nilai AMDAL PT Inmas Abadi Belum Diproses*. RRI. <https://www.rri.co.id/bengkulu/daerah/253219/legislator-nilai-amdal-pt-inmas-abadi-belum-diproses>
- Esa. (2021). *Mengapa PT Inmas Abadi “ngotot” menambang batu bara di Bentang Seblat?* Kanopihijau Indonesia. <https://kanopihijauindonesia.or.id/mengapa-pt-inmas-abadi-ngotot-menambang-batu-bara-di-bentang-seblat/>
- ESDM, K. (2023). *Pengelolaan Pertambangan Harus Perhatikan Aspek Lingkungan*. Kementerian ESDM. <https://www.esdm.go.id/id/media-center/arsip-berita/pengelolaan-pertambangan-harus-perhatikan-aspek-lingkungan>
- Evinkaw. (2024). *Prosedur Izin Usaha Pertambangan (IUP) Secara Lengkap*. ISBC Consultant. <https://isbconsultant.com/izin-usaha-pertambangan-iup/?form=MG0AV3>
- Fhadil, M., & Tarmizi. (2020). Tindak Pidana Perburuan Gajah Sumatera yang Dilindungi (Penelitian di Wilayah Hukum Kepolisian Resor Aceh Timur). *Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana*, 4(1), 186–193.
- Gunawan, L. S. (2023). Konflik Pertambangan di Indonesia: Studi Kasus Tambang Emas Martabe dan Upaya Meningkatkan Partisipasi Masyarakat dan Penegakan Hukum dalam Industri Pertambangan. *Jurnal Pendidikan Tambusai*, 7(1), 2062–2074.
- Hadi, H. (2022). Peran Kelompok Tunak Besopok dalam Konservasi Sumber Daya Alam dan Pengembangan Wisata Alam Gunung Tunak. *Geodika: Jurnal Kajian Ilmu Dan Pendidikan Geografi*, 6(1), 132–141. <https://doi.org/10.29408/geodika.v6i1.5954>
- Hamid, A., Arlita, T., & Martunis, M. (2022). Pola Pengasuhan Gajah sumatera Di Conservation Response Unit (CRU) DAS Peusangan, Kabupaten Bener Meriah. *Jurnal Ilmiah Mahasiswa Pertanian*, 7(1), 797–807. <https://doi.org/10.17969/jimfp.v7i1.19313>
- Haris, O. K., Hidayat, S., Herman, Sanib, S. S., & Yahya, A. K. (2023).

- Pertanggungjawaban Pidana Penyalahgunaan IUP (Izin Usaha Pertambangan) yang Berimplikasi Kerusakan Hutan (Studi Kasus Putusan Nomor 181/Pid.B/LH/2022/PN.Unh.). *Halu Oleo Legal Research*, 5(1), 290-306.
- Herman, H., Kaimuddin Haris, O., Hidayat, S., Handrawan, H., Heryanti, H., & Fadli Masulili, M. (2022). Penegakan Hukum Terhadap Tindak Pidana Penambangan Mineral di Kawasan Hutan Tanpa Izin. *Halu Oleo Legal Research*, 4(1), 261-275. <https://journal.uho.ac.id/index.php/holresch/>
- Hidayat, L. (2017). Pengelolaan Lingkungan Areal Tambang Batubara (Studi Kasus Pengelolaan Air Asam Tambang (Acid Mining Drainage) di PT. Bhumi Rantau. *Jurnal ADHUM*, 7(1), 44-52.
- Iskandar. (2014). Keabsahan Tindak Pemerintah dalam Hal Penerbitan dan Pembatalan Keputusan Gubernur Bengkulu. *Jurnal Ilmu Hukum Jambi*, 5(1), 27-53.
- Jingga, R. P. A. (2012). Kedalaman alur pelabuhan Pulau Baai 13 meter. Antara Bengkulu. <https://bengkulu.antaranews.com/berita/7444/kedalaman-alur-pelabuhan-pulau-baai-13-meter>
- Kartodihardjo, H., Soedomo, S., & Sapardi, H. (2016). Kebijakan Resolusi Konflik Tambang Batu Bara di Kawasan Hutan di Kalimantan Timur (Conflict Resolution Policy on Coal Mining Businesses in Forest Areas in East Kalimantan). *Jurnal Analisis Kebijakan*, 13(1), 53-71.
- Lathif, N. (2017). Tinjauan Yuridis Tentang Kewenangan Pemerintah Provinsi Dalam Penerbitan Izin Usaha Pertambangan Batubara. *Jurnal Panorama Hukum*, 2(2), 149. <https://doi.org/10.21067/jph.v2i2.2076>
- Mabrori, A. (2018). Pelabuhan Bengkulu Mulai Disandari Kapal Besar. Berita.Com. <https://sumatra.bisnis.com/read/20181009/534/847021/pelabuhan-bengkulu-mulai-disandari-kapal-besar>
- Maulana, M. R., & Arif Firmansyah. (2023). Penegakan Hukum Terhadap Pelaku Usaha yang Menambang di Kawasan Hutan Tanpa Izin. *Jurnal Riset Ilmu Hukum*, 2, 11-16. <https://doi.org/10.29313/jrih.v3i1.1839>
- Mayasari, A. (2021a). Genesis Bengkulu minta IUP PT Inmas Abadi dicabut. ANTARA. <https://www.antaranews.com/berita/2500373/genesis-bengkulu-minta-iup-pt-inmas-abadi-dicabut>
- Mayasari, A. (2021b). Pemuda Pekal Bengkulu tolak Amdal tambang PT Inmas Abadi. Antara Bengkulu. <https://bengkulu.antaranews.com/berita/191917/pemuda-pekal-bengkulu-tolak-amdal-tambang-pt-inmas-abadi>
- Paruki, N. R. A., & Ahmad, A. (2022). Efektivitas Penegakan Hukum Tambang Ilegal. *Batulis Civil Law Review*, 3(2), 177. <https://doi.org/10.47268/ballrev.v3i2.966>
- PK, S. (2023). Konsolidasi Data Perizinan Tambang dalam Kawasan Hutan menjadi Tahap Awal Penyelesaian Tumpang Tindih. Strategi Nasional Pencegahan



- Korupsi. <https://stranaspk.id/publikasi/berita/konsolidasi-data-perizinan-tambang-dalam-kawasan-hutan-menjadi-tahap-awal-penyelesaian-tumpang-tindih>
- Pratiwi, S. A., Arfah, W. L., & Sianturi, S. (2024). Analysis of the Relationship between the Concept of Onrechtmatige Overheidsdaad and Maladministration Practices in Public Services in Indonesia. *Veteran Law Review*, 7(1), 1-8.
- Prianto, Y., Djaja, B., SH, R., & Gazali, N. B. (2019). Penegakan Hukum Pertambangan Tanpa Izin Serta Dampaknya Terhadap Konservasi Fungsi Lingkungan Hidup. *Bina Hukum Lingkungan*, 4(1), 1. <https://doi.org/10.24970/bhl.v4i1.80>
- Putra, E. I. (2018). *Perburuan, Perambahan dan Konsesi Batubara, Akankah Gajah Bengkulu Tinggal Kenangan?* Mongabay. <https://www.mongabay.co.id/2018/09/27/perburuan-perambahan-dan-konsesi-batubara-akankah-gajah-bengkulu-tinggal-kenangan/>
- Putusan Pengadilan Tata Usaha Negara Bengkulu Nomor 07/G/2012/PTUN-BKL. tertanggal 05 Juni 2012.
- Ramadhani, N. H., Pati, A., & Tulung, T. (2018). Politik Ekologi Ekowisata Di Taman Wisata Alam Batu Putih. *Jurnal Jurusan Ilmu Pemerintahan*, 1(1), 1-14.
- Redi Pirmansyah, Arifin, Z., Muhammad Farhan Pratama, Ummu Kaidah Mutmainnah, Muh. Syahri Ramadhan, & Muhammad Rasyid. (2024). Revitalisasi Konservasi Gajah Sumatera Di Way Kambas Dan Perlindungan Gajah Yang Diambang Kepunahan. *Jurnal Cahaya Mandalika* ISSN 2721-4796 (Online), 5(1), 237-245. <https://doi.org/10.36312/jcm.v5i1.2590>
- Selviahaynet. (2023). *Warga diusir, PT.Inmas Abadi Nekat Bahas AMDAL*. Yayasangenesisbengkulu. <https://yayasangenesisbengkulu.or.id/2023/05/14/warga-di-usir-pt-inmas-abadi-nekat-bahas-amdal/>
- Wicaksono, R. A. (2023a). *Enam Alasan PT Inmas Abadi Harus Keluar dari Bentang Alam Seblat*. Betahita. <https://betahita.id/news/detail/8774/enam-alasan-pt-inmas-abadi-harus-keluar-dari-bentang-alam-seblat.html?v=1695334345>
- Wicaksono, R. A. (2023b). *Koalisi Desak Menteri LHK Setop Proses Amdal PT Inmas Abadi*. Betahita. <https://betahita.id/news/detail/8808/koalisi-desak-menteri-lhk-setop-proses-amdal-pt-inmas-abadi.html?v=1704406687>
- Wijaya, A. (2017). Keabsahan Hak Guna Bangunan Terhadap Putusan PTUN Samarinda Nomor 05/G/2014/PTUN.SMD. *Jurnal Ilmu Hukum "THE JURIS"*, 1(1), 1-23.
- Wijaya, A., Liwa, M. A., Thomas, R., & Halal, M. (2019). Konsepsi Putusan Pengadilan Tata Usaha Negara Samarinda Terkait Keabsahan Hak Guna



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Undang-Undang Nomor 5 Tahun 1990 tentang Konservasi Sumber Daya Alam Hayati dan Ekosistemnya. Lembaran Negara Tahun 1990 Nomor 40. Tambahan Lembaran Negara Nomor 3419.

Undang-undang Nomor 41 Tahun 1999 tentang Kehutanan. Lembaran Negara Tahun 1999 Nomor 167.

Undang No. 4 Tahun 2009 tentang Pertambangan Mineral Dan Batubara. Lembaran Negara Tahun 2009 Nomor 4.

Undang-Undang No. 23 Tahun 2014 tentang Pemerintahan Daerah. Lembaran Negara Tahun 2014 Nomor 244.

Undang-Undang No. 30 Tahun 2014 tentang Administrasi Pemerintahan. Lembaran Negara Tahun 2014 Nomor 292.

Undang-Undang No. 32 Tahun 2024 Tentang Perubahan Atas UU No. 5 Tahun 1990 Tentang Konservasi Sumber Daya Alam Hayati dan Ekosistemnya. Lembaran Negara Tahun 2024 Nomor 138. Tambahan Lembaran Negara Nomor 6953.

Peraturan Pemerintah No. 7 Tahun 1999 tentang tentang pengawetan jenis tumbuhan dan satwa. Lembaran Negara Tahun 1999 Nomor 14.

Peraturan Pemerintah (PP) No. 22 Tahun 2010 tentang Wilayah Pertambangan. Lembaran Negara Tahun 2010 Nomor 28.

Peraturan Pemerintah (PP) No. 23 Tahun 2010 tentang Tentang Pelaksanaan Kegiatan Usaha Pertambangan Mineral Dan Batubara. Lembaran Negara Tahun 2010 Nomor 29.