



Fair Mining Legal Policy for Investors Regarding Unilateral Revocation of Licenses by The Government Post The Enforcement of Law Number 3 Of 2020

Velinka Permatasari¹

¹Faculty of Law, University of Indonesia, E-mail: Velinkave@gmail.com

ARTICLE INFO

Keywords:

Mining Law, Investment Law, Licensing

How to cite:

Permatasari, Velinka. (2023). Fair Mining Legal Policy for Investors Regarding Unilateral Revocation of Licences by The Government Post The Enforcement of Law Number 3 of 2020. *Veteran Law Review*. 6(2). 223-240.

Received: 2023-09-27

Revised: 2023-11-08

Accepted: 2023-11-27

ABSTRACT

This research will emphasize the discussion of the Government must be fair in its attitude and provide convenience for all legal subjects, including investors who are trying to obtain their rights in running a business. However, this is not reflected in the attitude of the Government or BKPM which revokes mining licenses to business actors without any clarity. As in Decision Number 215/G/2022/PTUN.JKT. The research method used is normative legal research. The results showed that IUP revocation is the last resort for companies that have been manifestly unable to fulfill their legal obligations, after being given warning sanctions and termination of exploration activities / production operations either partially or completely. As for the procedure for revocation of IUP, IUP cannot be immediately revoked without going through the procedure of written warning and temporary suspension first, which is also regulated in Article 188 of PP 96 of 2021. In the case of the State Administrative Court Decision No. 215/G/2022/PTUN.JKT, it is known that BKPM issued a Decree of Revocation of Permit of the Government of the Republic of Indonesia Number 20220218-01-35400 regarding the Revocation of Mining Business License to PT Megatop Inti Selaras without a warning letter for 3 (three) times as regulated in Article 186. The actions taken by the BKPM are not in line with Article 183 of Government Regulation No. 96 of 2021.

1. Introduction

The government as a neutral legal subject must be able to provide protection for its citizens. The legal protection in question can be categorized as preventive and repressive legal protection. Legal protection can be implemented by the Government and the Government can choose appropriate legal protection to guarantee legal protection in terms of Environmental Protection. One of the steps that can be implemented to provide legal protection for the environment is through prevention or through licensing. The legal protection provided by the Government in this case must be fair and must not be taken lightly. This means that the Government must be fair in its behavior and provide convenience for all legal subjects, including in this case investors who are trying to obtain their rights in running a business.

Indonesia is a country rich in world-caliber mining materials.¹ Mining or excavated materials are controlled by the state and state control rights contain the authority to regulate, administer and supervise the management or exploitation of minerals, and contain the obligation to use them to the greatest extent possible for the prosperity of the people. Coal mineral mining business activities are mining business activities other than geothermal, oil and natural gas and groundwater, which have an important role in providing real added value to national economic growth and sustainable regional development. Since Mijnwet 1899 and until Indonesia's independence, the laws and regulations in the mining sector have not experienced any significant changes. The regulations at the end of the 20th century only changed 68 years later when Law no. 11 of 1967 concerning General Mining Principles. Due to the vital nature of mining, special regulations are needed to regulate it. So in 2020 the Government issued Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (hereinafter abbreviated to the Minerba Law). The fundamental changes in this Law start from the authority for mining permits, permit extensions, regulation of People's Mining Permits, and also in terms of environmental aspects, downstreaming, divestment, to the regulatory process which is claimed to strengthen State-Owned Enterprises.

Minerals and coal contained in the Indonesian mining jurisdiction are non-renewable natural resources as a gift from God Almighty which have an important role in fulfilling the lives of many people, therefore their management must be controlled by the State to provide real added value to the national economy in efforts to achieve prosperity and welfare of the people in a fair manner. This is in line with Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. So it can be formulated that the state has sovereignty over its natural resources, including the mineral and coal mining sector which has great potential to drive development programs in Indonesia.² Mining is an industry that originates from mineral minerals that are processed and separated from unnecessary follow-up materials. The Mineral and Coal Law is the main law and regulation of other legal instruments in Indonesia which regulate mining in Indonesia. The Minerba Law should be able to function according to the aims and functions of the law to provide regulation, limit and also provide benefits. Law is essentially a series of regulations regarding people's behavior as a society, aimed at safety, happiness and order in society.³ However, this is not reflected in the attitude of the

¹ Simon F. Sembiring. (2009). *Jalan Baru Untuk Tambang: Mengalirkan Berkah bagi Anak Bangsa*. Jakarta: Gramedia. hlm. 3.

² Nabila Zulfa Humaira dan Hendro Saptono Budi Gutami. (2017). "Implikasi Yuridis Undang-Undang Nomor 4 tahun 2009 tentang Pertambangan Mineral dan Batubara terhadap Kontrak Karya Pertambangan antara Pemerintah Indonesia dengan PT. Freeport Indonesia". *Diponegoro Law Journal*. 6(2). hlm. 7.

³ Jimly Asshidiqie dan Ali Safa'at. (2006). *Teori Hans Kelsen tentang Hukum*. Jakarta: Sekjen dan Kepaiteraan MK RI. hlm. 13.

Government or the Investment Coordinating Board which revokes mining permits from business actors without any clarity. For example, a legal process has been carried out through filing a lawsuit at the State Administrative Court Number 215/G/2022/PTUN.JKT where the Plaintiff is PT Megatop Inti Selaras which is represented by its attorney and the Defendant is the Investment Coordinating Board. State Administrative Court Decision Number 215/G/2022/PTUN.JKT with the object of the dispute being the Decree of the Head of the Investment Coordinating Board/on behalf of the Minister of Energy and Mineral Resources Number: 20220218-01-35400 dated 18 February 2022 regarding Revocation of Business Licenses Mining Production Operations (“IUP OP”) on behalf of PT Megatop Inti Selaras. The Investment Coordinating Board (hereinafter abbreviated to BKPM) has issued a dispute object which the Plaintiff considers violating the Plaintiff's rights as a mining business actor.

The Plaintiff as a Company holding a Mining Business License at the Production Operation activity stage has obtained a Clear and Clean (CNC) Certificate as stated in CNC Certificate Number 422/Min/33B/2012 dated 7 December 2012 issued by the Director General of Minerals and Coal regarding the granting of a CNC Certificate to PT Megatop Inti Selaras is based on the Decree of the Regent of Cianjur Number 503/Tmb1926/DPSDA.P at the Production Operation IUP stage with metal mineral/Iron Sand commodities. However, on February 18 2022, the Defendant has sent an Electronic Decision in the a quo case. The object of the TUN Lawsuit Dispute to the Plaintiff is the Revocation of the Mining Business License to the Plaintiff, which in this case is based on the Plaintiff not fulfilling the obligations stipulated in the IUP and the provisions of the statutory regulations as follows. referred to in Article 119 of Law 3/2020 so that it can give authority to the Defendant to revoke the Plaintiff's Mining Business License, which in this case is the revocation of the Mining Business License in accordance with Decree Number 503/Tmb1926/DPSDA.P dated 7 July 2010 concerning Business License Approval Mining Production Operations to PT Megatop Inti in line with the Regional Code issued by the Regent of Cianjur with the business location of Agrabinta Regency, Sindangbarang, Cidaun, Prov. West Java, but in the Dispute Object of the TUN A quo Lawsuit the Defendant did not explain what obligations were not fulfilled by the Plaintiff as required to be explained based on the Legislative Regulations.

The unilateral decision made by BKPM in this case certainly resulted in losses for PT Megatop Inti Selaras. This is because PT Megatop Inti Selaras cannot carry out mining business activities in mining areas as per the permit initially

obtained by PT Megatop Inti Selaras. Not only PT Megatop Inti Selaras, but almost 1,000 mining permits have been revoked by BKPM unilaterally.⁴

Indonesia's superior advantage in the Natural Resources sector then gives rise to problems that cannot be stopped, one of which is the lack of supervision and weakness of law enforcement officials as well as an indifferent attitude and carrying out duties and responsibilities that are not in accordance with the mandate of the law which is a fundamental problem. Law Number 3 of 2020 concerning Amendments to Law Number 3 of 2020 concerning Minerals and Coal has not been able to create conditions that are conducive to strengthening attitudes towards mining business actors who play naughty and do not comply with the provisions of the applicable laws and regulations.

2. Method

In preparing this thesis, the research was included in the type of normative research. The concept of normative research holds that law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate. The approaches taken in this research are the statutory approach and the case approach.⁵ The legal approach is done by reviewing all laws and regulations that are related to the legal issue being addressed.

This research uses data analysis techniques with deductive logic, deductive logic or processing legal materials in a deductive way, namely explaining something that is general in nature and then drawing it to a more specific conclusion.⁶

3. Results & Analysis

3.1. Investment Policy to Improve Investment Friendly Climate and Ease of Doing Business Through Revocation of Mining Business Permits

One of the noble ideals of the Indonesian nation is to advance general welfare, as stated in paragraph 4 of the 1945 Constitution. One of the means that can be used to achieve this goal is through development institutions.⁷ It cannot be denied that the implementation of national development requires the disbursement of large amounts of funds. If we only rely on funding sources from the Government, it will be very difficult to realize the noble ideals of this

⁴ Anomi, BKPM Cabut 1.118 Izin Usaha Pertambangan 224 Perusahaan Keberatan, diakses melalui <https://www.merdeka.com/uang/bkpm-cabut-1118-izin-usaha-pertambangan-224-perusahaan-keberatan.html>, diakses pada tanggal 10 Oktober 2023.

⁵ Herman, et al. (2022). "Penegakan Hukum Terhadap Tindak Pidana Penambangan Mineral di Kawasan Hutan Tanpa Izin." *Halu Oleo Legal Research*. 4(2): 261-275.

⁶ Zainuddin Ali. (2016). *Metode Penelitian Hukum*. Jakarta: Sinar Grafika. hlm. 22.

⁷ Sentosa Sembiring. (2010). *Hukum Investasi*. Bandung: Nuansa Aulia. hlm. 33.

nation. For this reason, Indonesia needs to look for alternative sources of funding outside the government, one of which is through investment.⁸

A common problem in developing countries is the imbalance between high funding needs and domestic ability to provide relatively small funding sources. Income in developing countries is usually relatively low, this causes countries to lack capital to finance development. Domestic capital savings alone are not enough to meet national development financing, therefore apart from domestic investment, Indonesia also needs capital inflows from abroad (foreign direct investment).⁹

The entry of foreign investment into Indonesia, as a means of raising funds for economic development, is an ideal alternative when compared to withdrawing other international funds such as foreign loans (off share loans), because foreign direct investment does not contain many risks such as fluctuations in money exchange rates, especially against the US dollar which causes the principal or interest debt to swell and does not reduce Indonesia's foreign exchange wealth.¹⁰ Capital obtained from foreign investment is not only in the form of fresh funds, but also includes the transfer of technology, skills and human resources.¹¹ Foreign capital also opens up opportunities for local entrepreneurs to expand their business wings through collaboration with international companies. Thus, the presence of foreign investment is really needed by developing countries to accelerate economic development.¹² Kumar and Pradhan in their study examined the impact of foreign investment on economic growth in 107 developing countries during the period 1980-1999.

In the early stages, incoming foreign investment had a negative impact on domestic competition, which often had difficulty balancing the capabilities of foreign companies. However, in the long term, foreign investment has been proven to have a positive impact through the externalities brought by its presence.¹³ This is related to the ability of the workforce to absorb new technology brought by foreign investment. Second, trade. Foreign investment

⁸ *Ibid.*, hlm. 33-34.

⁹ Asri Febriana dan Masyhudi Muqorobbin. (2014). "Investasi Asing Langsung di Indonesia dan Faktor- Faktor yang Mempengaruhinya". *Jurnal Ekonomi dan Studi Pembangunan*. 15(2). hlm.110.

¹⁰ Syprianus Aristeus. (2017). "Globalisasi, Perdagangan Bebas, Penanaman Modal Dan Pelayanan Terpadu Satu Pintu." *Jurnal Penelitian Hukum De Jure*. 17(2). hlm. 211.

¹¹ Rahmi Jened. (2016). *Teori dan Kebijakan Hukum Investasi Langsung (Direct Investment)*. Jakarta: Kencana. hlm. 95.

¹² Alam, Farhan. (2020). "Ekonomi Politik Investasi Perusahaan Multinasional di Era Pemerintahan Joko Widodo." *Politika: Jurnal Ilmu Politik*. 11(2): 131-147.

¹³ Nagesh Kumar dan Jaya Prakash Pradhan. (2002). "Foreign Direct Investment, Externalities and Economic Growth in Developing Countries: Some Empirical Explorations and Implications for WTO Negotiations on Investment." *Research and Information System Discussion Paper*. 27. hlm. 23-24.

also provides benefits to export activities. Foreign investment is generally from international companies so that on average they enter export-oriented industries. Third, labor absorption and skill levels. The high investment rate will have an impact on the absorption of more and more productive labor.¹⁴ Fourth, transfer of technology and knowledge. Fifth, linkages and spillovers in domestic industry, which can only be achieved if companies in that industry have sufficient ability to absorb foreign investment technology and skills. These five things confirm that capital originating from foreign investment is an instrument that is really needed by Indonesia as a developing country. It is hoped that this will bring prosperity and benefits to all Indonesian people.¹⁵

In the Mining Sector, the government issued Law 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. After Law Number 3 of 2020 was passed, regulations related to the authority to manage Mineral and Coal are the rights and obligations of the Central Government through the functions of policy, regulation, administration, management and supervision, as well as having the authority to determine the amount of production, sales and prices of metallic minerals, certain types of nonmetals and coal.¹⁶

The governance of licensing for mineral and coal mining business activities is currently undergoing a transformation towards the era of digitalization. This transformation is an effort to make the licensing process more effective, as well as taking advantage of technological advances and at the same time indicates that current mining governance is more advanced than before. To submit a business permit application or mining business permit area application, it can be sent and processed online by visiting the Ministry of Energy and Mineral Resources website or by sending an email.

It should be understood that the legal basis for mining permits refers to the provisions of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Furthermore, Government Regulation Number 24 of 2018 concerning Electronic Integrated Business Licensing Services (Online Single Submission); and refers to the provisions of the Regulation of the Minister of Energy and Mineral Resources and Coal; Not only that, the Ministry of Energy and Mineral Resources (ESDM) also plans to simplify the process of applying for mining exploration permits and production

¹⁴ Sri Yani Kusumasturi. (2008). "Penanaman Modal Asing dan Pertumbuhan Industri di ASEAN, China, India, dan Korea Selatan 1999-2004." *Jurnal Ekonomi dan Bisnis Indonesia*. 23(3): 243 - 265.

¹⁵ Sentosa Sembiring. *Hukum Investasi*. hlm. 4.

¹⁶ Aslam Abd. Kadir, Rudi Hardi. (2015). "Peranan Pemerintah Dalam Penertiban Penambangan Ilegal Nikel di Kabupaten Kolaka Utara." *Jurnal Ilmu Pemerintahan*. 5(2). hlm. 6.

permits by making the two into one licensing package. This is intended to reduce the processing time for permits related to the mining sector.

Even though the Ministry of Energy and Mineral Resources has made it easy to apply for permits that utilize the digital era 4.0, a number of records are still found. Some of these notes include, among others, the lack of socialization and assistance from Law Number 3 of 2020 regarding the authority that was originally in the Provincial Government becoming the authority of the Central Government, so that many entrepreneurs in the regions still do not understand the management mechanisms in the Central Government. Apart from that, the existence of a Data Centralization System in the MODI MINERBA ESDM system has made several entrepreneurs confused because several regional Mining Business Licenses are still not registered in the MODI system.

Regarding the readiness of the Central Government (Director General of Energy and Mineral Resources) which still has to maximize services considering that all control is in the Central Government such as Approval of Work Plans and Budgets (RKAB). Improving or maximizing data system services (MODI MINERBA) is very important because considering that licensing activities in the mining sector often receive the spotlight because it is an important part of the concept of state control rights.

Another thing that is also important to know is the elements of licensing. The licensing element that needs to be interpreted is that licensing is a juridical instrument. A permit is a juridical instrument in the form of a decree which is constitutive and which is used by the government to deal with or determine concrete events. In licensing, permits are statutory regulations. Making and issuing permits is a legal act and this authority is granted by statutory regulations. The issuance of this permit is carried out by the licensing department of a government agency or organization. Government organizations are organizations that carry out government affairs both at the central and regional levels from the highest body to the lowest body with the authority to give permits.

In the licensing element there are concrete events. This concrete event means an event that occurred at a certain time, certain person, certain place and certain legal facts. Apart from these elements, in licensing there are also elements of procedures and requirements for permit applications which must follow certain procedures and which are determined by the government as the permit giver. Then in the regulations related to the management of mining permits, the government determines the Mining Legal Area (WHP) policy. The concept of

Mining Legal Area includes air space, sea space (space within the earth), land beneath waters, and the continental shelf.¹⁷

The legal mining area is not for mining activities, but rather is a space for investigation and research to determine the potential of minerals and coal. This is the basis or basis for determining mining business activities. All regions of Indonesia as long as there is availability of minerals and coal that have economic value for mining can be sought to control them because they fall within the legal mining area. Even though all control over Mineral and Coal management is held by the Central Government, Regional Governments still have the authority to determine mining areas as part of the national spatial planning. It has been written clearly in Article 9 of Law Number 3 of 2020 which explains that mining areas are determined by the Central Government "After being determined" by the Provincial Government.

If you want to explore this area, its status must be changed to a Mining Area (WP) by involving the local government, community and in accordance with the spatial plan. Mining Area (WP) is an area that has mineral potential and can be mined. After obtaining Mining Area (WP) status, the next process is that the Mining Area status must become a Mining Business Area (WUP). Where a Mining Business Area is part of a Mining Area that already has available data, potential, and/or geological information, the Mining Business Area must then be developed into a Mining Business Permit Area (WIUP), where WIUP is the area given to Mining Business Permit holders for carry out exploration and production activities.

The government guarantees that holders of Mining Business Permits (IUP) and Special Mining Business Permits (IUPK) obtain permit extensions and continued operations. Not only that, the Government also guarantees the extension of permits and Continuation of Work Contract Operations (KK) or Coal Mining Concession Work Agreements (PKP2B) to become IUPK as Continuation of Operations by taking into account efforts to increase state revenues. The guarantee for the extension of the operating permit which was originally regulated in Law Number 4 of 2009 stated with the clause "can be extended" was changed to "guaranteed" in Law Number 3 of 2020. This can be seen in Article 47, Article 83 and Article 169, Articles 169 A and 169B.

Licensing for mining business activities is now issued by the Investment Coordinating Board (BKPM). This is based on the Regulation of the Minister of Energy and Mineral Resources concerning Amendments to Regulation of the Minister of Energy and Mineral Resources No. 25 of 2015 concerning Delegation

¹⁷ Dida Rachma Wandayati, Nur Rahmadayana Siregar. (2020). "Wilayah Pertambangan Pasca Undang-Undang No.3 Tahun 2020 Tentang Pertambangan Mineral dan Batubara Di Meja Yang Akan Datang". *Paradigma Jurnal Multidisipliner Mahasiswa Pascasarjana*. 5(1).

of Authority to Grant Licensing in the Mineral and Coal Mining Sector in the Context of Implementing One-Stop Integrated Services to the Head of the Investment Coordinating Board. In Law Number 3 of 2020, in the mining activity stages there is a process of increasing added value, namely "processing and/or refining or development and/or utilization".

In Articles 102 and 103 of Law Number 4 of 2009, it is stated that holders of Mining Business Permits (IUP) and Special Mining Business Permits (IUPK) at the production operations stage are obliged to increase the added value of minerals in mining business activities through processing and refining commodities. metal mineral mines; and/or processing for rock mining commodities, as well as developing or utilizing coal commodities. This downstreaming must be carried out domestically, especially for permit holders in the mineral subsector.

In Law Number 4 of 2009 concerning Mineral and Coal Mining, the paradigm used is decentralization, where there is a large involvement and role of Regional Government in the mining sector.¹⁸ However, in Law Number 3 of 2020 concerning Mineral and Coal Mining, the paradigm used is actually centralized, where licensing and supervision of Mineral and Coal mining activities are drawn to the center.

Licensing issues, of course, clearly fall within the scope of state administrative law. Where there is a philosophy, namely Why does someone want to mine need a permit? This philosophy means that the act of mining is destructive, so he really needs permission to destroy it. This is what then becomes out of sync when the paradigm changes, where to obtain or obtain a permit to carry out a Mineral and Coal Mining activity the process becomes easier.

In Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities (PP 96 of 2021), which is the implementation of the 2020 Minerba Law, is regulated in Article 185, Article 186, Article 187, Article 188. Furthermore, revocation of the IUP is the last resort in giving administrative sanctions to IUP holders and why before revoking an IUP a written warning and temporary suspension must first be given. The reasons are:

1. According to statutory regulations, the application of IUP revocation sanctions is a last resort for IUP holders who violate their obligations as regulated in Articles 185 to 188 PP No. 96 of 2021, namely through the imposition of sanctions in stages, except for IUP holders who commit

¹⁸ Anton.F. Susanto. (2007). *Hukum dari Cosilence Menuju Paradigma Hukum Konstruktif Transgresif*. Bandung: Refika Aditama. hlm. 63.

- criminal acts, have caused environmental damage and do not apply good mining engineering principles, and are declared bankrupt;
2. In terms of statutory regulations, this is in accordance with the provisions in Law Number 30 of 2014 concerning Government Administration (UU No. 30 of 2014)
 3. Philosophically, the imposition of sanctions is an effort to provide guidance and supervision by the government to IUP holders.

As a guidance effort, every violation committed by an IUP holder must begin with wise guidance efforts considering that the impact of revoking an IUP for a company will cause huge losses for the company, workers, communities around the mine, regional government and the central government. The company will potentially be subject to civil liability with other parties who are bound by the rights and obligations of the mining sector, which if the IUP is revoked will result in potential default by the IUP holder. Likewise, workers will lose their jobs, including reduced state revenues from fixed fees/loan-to-use forest area fees/regional levies, and various other impacts for companies, workers, communities and the government. For this reason, revocation of an IUP is a last resort for companies that are clearly still unable to fulfill their legal obligations, after being given warning sanctions and stopping their exploration/production activities, either partially or completely.

Regarding the IUP revocation procedure, an IUP cannot be immediately revoked without first going through a written warning and temporary suspension procedure. Before the sanctions for revoking an IUP are applied, the IUP holder must first be subject to a written warning and termination of activities in whole or in part. Sanctions for revoking an IUP can only be imposed immediately if: the IUP holder commits a criminal act, the IUP holder has caused environmental damage and has not implemented good mining engineering principles, and the IUP holder is declared bankrupt (Article 188 PP 96 of 2021).

For an IUP that does not meet certain conditions as stated in article 188 of Government Regulation Number 96 of 2021, the IUP cannot be immediately revoked without first going through a written warning and temporary suspension procedure. IUP revocation procedures for violations other than those referred to in Article 188 PP No. 96 of 2021, must be carried out with a mechanism for imposing sanctions in stages, starting from giving a written warning, terminating activities, then if the IUP holder still does not fulfill his obligations, he will be subject to revocation of the IUP.

The legal consequence if an IUP is immediately revoked without going through a written warning and temporary suspension procedure first is that the revocation of the IUP is declared procedurally defective so that it can be cancelled, as regulated in Article 71 of Law no. 30 of 2014. In the provisions of

Article 100 of Minister of Energy and Mineral Resources Regulation No. 7 of 2020, the Minister of Energy and Mineral Resources can revoke an IUP without being preceded by sanctions in the form of a written warning and temporary suspension of part or all business activities. However, ESDM Ministerial Regulation No. 7 of 2020, this has juridical problems, namely:

1. Minister of Energy and Mineral Resources Regulation No. 7 of 2020 is an implementation of Government Regulation Number 23 of 2010, as seen in the Consideration of letter c of Minister of Energy and Mineral Resources Regulation No. 7 of 2020, namely: that based on the considerations as intended in letters a and b, as well as to implement the provisions of Article 127 of Law Number 4 of 2009 concerning Mineral and Coal Mining, the provisions of Article 21 paragraph (4), Article 38 paragraph (4) Government Regulation Number 22 of 2010 concerning Mining Areas, and the provisions of Article 19, Article 27 paragraph (2), Article 41, Article 44 paragraph (5), Article 61, Article 68, Article 83, and Article 105 of Government Regulation Number 23 of the Year 2010 concerning the Implementation of Mineral and Coal Mining Business Activities as has been amended several times, most recently by Government Regulation Number 8 of 2018 concerning the Fifth Amendment to Government Regulation Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities, it is necessary to stipulate a Regulation of the Minister of Energy and Resources Mineral regarding Procedures for Granting Areas, Licensing and Reporting to Mineral and Coal Mining Business Activities. In fact, PP no. 23 of 2010 as amended several times, most recently by Government Regulation Number 8 of 2018, as amended several times, most recently by Government Regulation Number 8 of 2018, which has been revoked and declared invalid by Article 200 PP No. 96 of 2021. Thus, Ministerial Regulation no. 7 of 2020 which is the implementation of PP no. 23 of 2010 can no longer be used as a legal basis considering the regulations that were the basis for the formation of Ministerial Decree no. 7 of 2020 has been revoked and declared invalid.
2. Article 100 Ministerial Regulation No. 7 of 2020 is in conflict with higher regulations, namely Articles 185 to Article 188 of PP No. 96 of 2021, so as a legal principle, lower statutory regulations (Regulation of the Minister of Energy and Mineral Resources No. 7 of 2020), especially if they are no longer in force, cannot conflict with higher statutory regulations (PP No. 96 of 2021)
3. In substance, Article 100 of Minister of Energy and Mineral Resources Regulation No. 7 of 2010, cannot be interpreted haphazardly, for example the provisions of Article 100 number 3 regarding the revocation of an IUP can be carried out for administrative violations as intended in Article 93 of this ministerial regulation. Article 93 of Minister of Energy and Mineral Resources Regulation No. 7 of 2020 contains: "Guidelines for implementing

the preparation, submission, evaluation, and/or approval of changes to the Annual RKAB and reports are stipulated in a Ministerial Decree." This norm is still unclear and creates uncertainty regarding fair law, including a Ministerial Decree which is the implementation of this Article, which currently does not exist. If there is, the Ministerial Decree used will be the 2018 Ministerial Decree, namely ESDM Ministerial Decree No. 1806 K/30/MEM/2018 concerning Implementation Guidelines for Preparation, Evaluation, Approval of Work Plans and Budgets, as well as Reports on Mineral and Coal Mining Business Activities

4. Furthermore, Article 100 number 4 of Minister of Energy and Mineral Resources Regulation No. 7 of 2020 regarding revocation of IUPs can be carried out based on the results of the evaluation of IUP issuance carried out by the Minister/governor in accordance with their authority. It is clear that the evaluation of IUP revocation is in accordance with Article 100 point 4 of Minister of Energy and Mineral Resources Regulation No. 7 of 2020 concerning the results of the evaluation of IUP issuance carried out by the Minister. In terms of mining law, the evaluation of the issuance of this IUP concerns the provisions of Article 31 PP No. 96 of 2020, namely that IUPs are given to Business Entities, Cooperatives, individual companies after fulfilling administrative, technical, environmental and financial requirements. Provisions of Article 100 number 4 of Minister of Energy and Mineral Resources Regulation No. 7 of 2020 does not target IUPs that have been issued and are carrying out business activities, but IUPs that are deemed not to comply with administrative, technical, environmental and financial requirements, the explanation of which is in Articles 32 to Article 35 of PP No. 96 of 2020.

Thus, Minister of Energy and Mineral Resources Regulation No. 7 of 2020 cannot be the legal basis for revoking an IUP. The IUP revocation procedure is only based on and in accordance with the provisions in Article 185 to Article 188 PP No. 96 of 2020. Minerba Law 2020 and PP no. 96 of 2020 is the main legal basis which is the legal basis for the imposition of sanctions on IUP holders.¹⁹

Law Number 3 of 2020 concerning Mineral and Coal Mining, which contains revisions to the previous Mineral and Coal Law, has many pros and cons for the community and workers in the mineral and coal sector and also causes losses in terms of Natural Resources (SDA). This is due to the benefits that arise for the government as well as making it easier for a mining company in the process of extending and providing convenience in terms of the separation of authority that occurs between the Central Government and Regional Governments. However, this is considered odd, because this decision has a negative impact on

¹⁹ Darongke, Friskilia, Dientje Rumimpunu, and Sarah Roeroe. (2022). "Efektivitas Undang-Undang Nomor 3 Tahun 2020 dalam Pemberian Izin Usaha Pertambangan Mineral di Indonesia." *Lex Privatum*. 10(3).

several parties, such as the ease for mining companies to extend contracts which allows them to cheat.

In the new Mining and Coal Law, the IUPK time limit is also considered illogical and gives the impression of the Government's partiality towards large companies. In fact, it eliminates opportunities for private companies which are new players in the mining sector. This is what shows the existence of an oligarchy maintained by the state. Where the state or government deliberately creates inequality across generations. So, for example, a mining area that previously could be managed for a relatively short period of time, and could be re-auctioned, but with the new Minerba Law providing automation for a very long extension, it can even be extended again if there are downstream provisions.

It is felt that the new Minerba Law will actually present a recentralization of authority both in terms of licensing and supervision. In fact, the authority previously held by regional governments can provide benefits to communities in areas surrounding mining areas. In Article 4 Paragraph (2) of Law Number 4 of 2009 which reads "Control of minerals and coal by the state as intended in paragraph (1) is carried out by the Government and/or regional government", amended in Article 4 paragraph (2) of the Law Law Number 3 of 2020 states "Control of Minerals and Coal by the state as intended in paragraph (1) is carried out by the Central Government in accordance with the provisions of this Law". So that up to now the Regional Government and the decentralization era and the autonomy era have had authority, where they should be able to maintain the mandate of that authority well, but with the new Minerba Law, most of that authority has been taken over by the center under the pretext of wanting to creating a more conducive investment climate. In fact, the Central Government does not necessarily have sufficient ability and capacity to carry out the licensing and supervision process for mining areas throughout Indonesia. Then, the social responsibilities of Mining Business Permit (IUP) and Special Mining Business Permit (IUPK) holders are abolished by Law Number 3 of 2020. So, it will actually worsen socio-economic conditions in society.

Where in article 83 point (h) Law Number 3 of 2020 reads "the period for Coal Production Operation activities which are integrated with Coal Development and/or Utilization activities is given a period of 30 (thirty) years and is guaranteed to obtain an extension of 10 (ten) years each time it is extended after fulfilling the requirements in accordance with the provisions of the statutory regulations." In fact, Article 83 (g) of Law Number 4 of 2009 states "the period for IUPK for Metal Mineral or Coal Production Operations can be granted for a maximum of 20 (twenty) years and can be extended 2 (two) times, 10 (ten) each.) year".

3.2. Kebijakan Hukum Pertambangan Yang Berkeadilan Bagi Investor Atas Pencabutan Izin Sepihak Oleh Pemerintah Pasca Berlakunya Uu No 3 Tahun 2020

As previously explained, there have been several changes to legal provisions related to licensing in the mining sector in Indonesia. One of them is regarding the authority to revoke mining business permits. In the 2020 Minerba Law. Revocation of an IUP is the last resort for companies that are clearly still unable to fulfill their legal obligations, after being given a warning sanction and stopping their exploration/production activities, either partially or completely. Regarding the procedure for revoking an IUP, an IUP cannot be immediately revoked without first going through a written warning and temporary suspension procedure which is also regulated in Article 188 PP 96 of 2021.

In the case of State Administrative Court Decision No. 215/G/2022/PTUN.JKT, it is known that BKPM issued a Decree on the Revocation of the Republic of Indonesia Government Permit Number 20220218-01- 35400 dated 18 February 2022 regarding the Revocation of Mining Business Permits to PT Megatop Inti Selaras without any 3 (three) warning letters. times as regulated in Article 186. However, in relation to submitting the RKAB and not getting approval for the RKAB from the Minister, this is not a reason for revoking the IUP immediately without going through a written warning mechanism and temporary suspension of activities as regulated in a limited manner in Article 188 PP No. 96 of 2021. Violations of RKAB obligations can be subject to sanctions up to the revocation of the IUP, after which the IUP holder is subject to administrative sanctions, a written warning and temporary suspension of business activities.

Apart from that, based on evidence P-4.2.1. s.d. P-4.2.3.B it is proven that the Plaintiff has submitted the 2021 RKAB via the Plaintiff's email (mis21legal@gmail.com) to the official email of the Directorate General of Mineral and Coal, Ministry of Energy and Mineral Resources (djmb@esdm.go.id) and copied to the email subditopm@esdm.go. id and it is proven that the Plaintiff has submitted the 2022 RKAB via the Plaintiff's email (mis21legal@gmail.com) to the official email of the Directorate General of Mineral and Coal, Ministry of Energy and Mineral Resources (djmb@esdm.go.id) and copied to the email subditopm@esdm.go.id.

Basically, the legal basis for the revocation of the Mining Decree, namely Article 119 of Law no. 3 of 2020 concerning Amendments to Law no. 4 of 2009 concerning Mineral and Coal Mining. Indeed, one of the obligations of mining permit holders is to submit the Annual RKAB, which if not implemented is considered inactive and can be given administrative sanctions in the form of permit revocation. However, the problem in this case was that the Plaintiff had submitted the Annual RKAB via email. So it is not appropriate to consider that

the plaintiff has had his mining permit revoked because he has not carried out activities based on Article 185 PP No. 96 of 2021.

The unilateral decision made by BKPM in this case certainly resulted in losses for PT Megatop Inti Selaras. This is because PT Megatop Inti Selaras cannot carry out mining business activities in mining areas as per the permit initially obtained by PT Megatop Inti Selaras. Not only PT Megatop Inti Selaras, but almost 1,000 mining permits have been revoked by BKPM unilaterally.

The actions carried out by BKPM in this case are certainly not in line with Article 183 of Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities, which violates the General Principles of Good Government (AUPB) and also the rights of the Plaintiff as Mining business permit holders who are protected by statutory regulations. Not only that, the revocation of the permit also violates the provisions of Articles 95, 97 and 98 of the Minister of Energy and Mineral Resources Regulation No. 7 of 2020 concerning Procedures for Granting Areas, Licensing and Reporting to Mineral and Coal Mining Business Activities. It has been stated in it that written warnings are given 3 (three) times with a period of 30 (thirty) calendar days in each warning letter, in the event that the IUP Holder after the warning has not carried out its obligations then it will be subject to administrative sanctions in the form of temporary, partial or all exploration activities or production operations within a period of 60 calendar days from the end of the third written warning before the IUP OP is revoked. In this case PT. Megatop Inti Selaras never received a warning letter regarding the revocation.

Indonesia's superior advantage in the Natural Resources sector then gives rise to problems that cannot be stopped, one of which is the lack of supervision and weakness of law enforcement officials as well as an indifferent attitude and carrying out duties and responsibilities that are not in accordance with the mandate of the law which is a fundamental problem. Law Number 3 of 2020 concerning Amendments to Law Number 3 of 2020 concerning Minerals and Coal has not been able to create conditions that are conducive to strengthening attitudes towards mining business actors who play naughty and do not comply with the provisions of the applicable laws and regulations.

The government as a neutral legal subject must be able to provide protection for its citizens. The legal protection in question can be categorized as preventive and repressive legal protection. Legal protection can be implemented by the Government and the Government can choose appropriate legal protection to guarantee legal protection in terms of Environmental Protection. One of the steps that can be implemented to provide legal protection for the environment is through prevention or through licensing. The legal protection provided by the Government in this case must be fair and must not be taken lightly. This means that the Government must be fair in its behavior and provide

convenience for all legal subjects, including in this case investors who are trying to obtain their rights in running a business.

As is known, there are many problems with mining companies in this case not even being able to make a profit. However, that doesn't mean they don't want to do activities. While carrying out exploration activities. However, exploration activities require a lot of time and money.

Furthermore, based on Minerba Law no. 3 of 2020, the issuance and revocation of IUPs may only be carried out by the Minister of Energy and Mineral Resources. So BKPM's decision to revoke the IUP has no legal basis. When making decisions, the government needs to have at least three strong foundations, namely philosophical, sociological and juridical. In revoking the IUP in this case, the government did not fulfill these grounds. Because it seems as if "suddenly" mining companies have had their permits revoked so there is no philosophy.

From a juridical perspective, it is necessary to question the rules that form the basis of the decision. One of the characteristics of a rule of law state is that there is a state administrative court. The people have the right to correct the decisions of officials or public bodies. So the revocation through the Minister of Investment is still not in accordance with the current laws and regulations. The president must also follow the provisions of the law. The Minerba Law regulates the Minister of Energy and Mineral Resources who issues and revokes IUPs. If you want to give authority to BKPM there must also be a law regarding the revocation of IUPs by BKPM.

4. Conclusion

Revocation of an IUP is a last resort for companies that are clearly still unable to fulfill their legal obligations, after being given warning sanctions and stopping their exploration/production activities, either partially or completely. Regarding the procedure for revoking an IUP, an IUP cannot be immediately revoked without first going through a written warning and temporary suspension procedure which is also regulated in Article 188 PP 96 of 2021.

In the case of State Administrative Court Decision No. 215/G/2022/PTUN.JKT, it is known that BKPM issued a Decree on Revocation of the Republic of Indonesia Government Permit Number 20220218-01- 35400 dated 18 February 2022 regarding the Revocation of Mining Business Permits to PT Megatop Inti Selaras without any 3 (three) warning letters. times as regulated in Article 186. The actions carried out by BKPM in this case are certainly not in line with Article 183 of Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities. Apart from that, it also violates the provisions of Articles 95, 97 and 98 of the Minister of

Energy and Mineral Resources Regulation. No. 7 of 2020 concerning Procedures for Granting Areas, Licensing and Reporting to Mineral and Coal Mining Business Activities.

References

- Alam, Farhan. (2020). "Ekonomi Politik Investasi Perusahaan Multinasional di Era Pemerintahan Joko Widodo." *Politika: Jurnal Ilmu Politik*. 11(2): 131-147.
- Ali, Zainuddin. (2016). *Metode Penelitian Hukum*. Jakarta: Sinar Grafika.
- Anomi, BKPM. Cabut 1.118 Izin Usaha Pertambangan 224 Perusahaan Keberatan, diakses melalui <https://www.merdeka.com/uang/bkpm-cabut-1118-izin-usaha-pertambangan-224-perusahaan-keberatan.html>, diakses pada tanggal 10 Oktober 2023.
- Aristeus, Syprianus. (2017). "Globalisasi, Perdagangan Bebas, Penanaman Modal Dan Pelayanan Terpadu Satu Pintu." *Jurnal Penelitian Hukum De Jure*. 17(2).
- Asshidiqie, Jimly dan Ali Safa'at, (2006). *Teori Hans Kelsen tentang Hukum*. Jakarta: Sekjen dan Kepaiteraan MK RI.
- Darongke, Friskilia, Dientje Rumimpunu, and Sarah Roeroe. (2022). "Efektivitas Undang-Undang Nomor 3 Tahun 2020 dalam Pemberian Izin Usaha Pertambangan Mineral di Indonesia." *Lex Privatum*. 10(3).
- Febriana, Asri dan Masyhudi Muqorobbin. (2014). "Investasi Asing Langsung di Indonesia dan Faktor- Faktor yang Mempengaruhinya." *Jurnal Ekonomi dan Studi Pembangunan*. 15(2).
- Humaira, Nabila Zulfa dan Hendro Saptono Budi Gutami. (2017). "Implikasi Yuridis Undang-Undang Nomor 4 tahun 2009 tentang Pertambangan Mineral dan Batubara terhadap Kontrak Karya Pertambangan antara Pemerintah Indonesia dengan PT. Freeport Indonesia." *Diponegoro Law Journal*. 6(2).
- Herman, et al. (2022). "Penegakan Hukum Terhadap Tindak Pidana Penambangan Mineral di Kawasan Hutan Tanpa Izin." *Halu Oleo Legal Research*. 4(2): 261-275.

- Nagesh Kumar dan Jaya Prakash Pradhan. (2002). "Foreign Direct Investment, Externalities and Economic Growth in Developing Countries: Some Empirical Explorations and Implications for WTO Negotiations on Investment." *Research and Information System Discussion Paper 27*.
- Kusumasturi, Sri Yani. (2008). "Penanaman Modal Asing dan Pertumbuhan Industri di ASEAN, China, India, dan Korea Selatan 1999-2004." *Jurnal Ekonomi dan Bisnis Indonesia*. 23(3): 243 - 265.
- Kadir, Aslam Abd., dan Rudi Hardi. (2015). "Peranan Pemerintah Dalam Penertiban Penambangan Ilegal Nikel di Kabupaten Kolaka Utara." *Jurnal Ilmu Pemerintahan*. 5(2).
- Rahmi Jened. (2016). *Teori dan Kebijakan Hukum Investasi Langsung (Direct Investment)*. Jakarta: Kencana.
- Sembiring, Simon F. (2009). *Jalan Baru Untuk Tambang: Mengalirkan Berkah bagi Anak Bangsa*. Jakarta: Gramedia.
- Sembiring, Sentosa. (2010). *Hukum Investasi*. Bandung: Nuansa Aulia.
- Susanto, Anton F. (2007). *Hukum dari Cosilence Menuju Paradigma Hukum Konstruktif Transgresif*. Bandung: Refika Aditama
- Wandayati, Dida Rachma dan Nur Rahmadayana Siregar. (2020). "Wilayah Pertambangan Pasca Undang-Undang No.3 Tahun 2020 Tentang Pertambangan Mineral dan Batubara Di Meja Yang Akan Datang." *Paradigma Jurnal Multidisipliner Mahasiswa Pascasarjana*. 5(1).