

POLICY DECONSTRUCTION AND LEGAL CERTAINTY AS AN EFFORT TO PROTECT INVESTORS IN ACCELERATING INVESTMENT DEVELOPMENT IN THE MINING SECTOR TOWARDS A ZERO FIVE POINT SOCIETY (5.0)

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Abstract

Investment activities in the mining sector need to be deconstructed so that the management of natural resources, especially mining, both in terms of legal material, institutions and apparatus, legal services and community legal culture can provide legal certainty as an effort to protect investors in creating accelerated development of investment in the mining sector towards the community. Five zero points (5.0), then investment activities in the mining sector which in implementation are regulated in Law of the Republic of Indonesia Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, hereinafter referred to as the Minerba Law, which can provide a legal basis for steps to reform and reorganize mineral and coal mining management and exploitation activities which are deemed to be less effective in providing legal certainty and fair legal protection.

Keywords: Policy Deconstruction, Legal Certainty, Investor Protection, Investment Development.

INTRODUCTION

The Government then issued Law Number 25 of 2007 concerning investment, especially in Article 3 paragraph (2), stating that as an expectation from the Government, a number of expectations have been determined in the law as the purpose of implementing investment. In this case, one form of the Indonesian government's commitment to guarantee and protect local and foreign investors is to issue Law Number 25 of 2007 concerning investment. (Ningrum & Sudiran, 2019)

Many hopes are hung by the Government with the issuance of the Investment Law, especially regarding increasing investment and employment to encourage better and advanced national economic growth. Implementing various provisions of the Investment Law to protect foreign investors against (probable) risks faced by foreign investors, primarily non-commercial risks. Article 4 Paragraph (2) in letter (a) of the Investment Law states that the government provides basic investment policies with equal treatment to domestic and foreign investors. Furthermore, letter (b) states that the government guarantees legal certainty and operational security for investors from the licensing process to the end of investment activities. Regarding equal treatment for all investors, stipulated explicitly in Article 6 of the Investment Law, the Government provides equal treatment to all investors from any country who carry out

investment activities in Indonesia in accordance with applicable laws and regulations. The same treatment does not apply to investors from countries with special rights under the agreement with Indonesia (Gayatri, 2010).

Such privileges include customs units, free trade areas, common markets, monetary units, institutions and similar agreements between the Government of Indonesia and foreign governments of a bilateral, regional or multilateral nature concerning definite privileges in investment administration. The essential aspect of the mining sector is one of the business sectors that was given top priority by the government before and after the issuance of the Investment Law, especially for foreign and domestic parties. The government seeks to direct and manage natural resources, including mining.

The mining sector includes petroleum, natural gas, coal, metals, tin, nickel ore, bauxite, iron sand, silver and copper concentrate (Khaireskawati et al., 2023). In managing and granting mining business licenses in Indonesia, the authority was initially handed over to each region with natural resource potential, as stated in Chapter VI of the Constitution of the Republic of Indonesia in 1945 after amendments regarding Regional Government. Article 18 paragraph (5) states, "Regional Governments exercise the widest possible autonomy, except for Government affairs which by law are determined to be the affairs of the Central Government".

Regional Autonomy itself is the autonomous region's right, authority and obligation to regulate and manage its own government affairs and local interests in accordance with laws and regulations (Moonti, 2017). However, the management of mineral and coal mining (Minerba) in Indonesia has entered a new phase. The authority to manage mineral and coal mining in the regions will be taken over by the Central Government and applied nationally (Ahmad Redi, 2022).

The issue that is so serious that it is the government's focus today is Licensing. Through the President's direction, the government is intensively encouraging investment. One of the obstacles is the problem of permits that often overlap, need to be synchronized between the centre and the regions, and are very prone to levies and bribes. Licensing also sometimes takes a long time, and the cost is very high. This also happens in mining sector licensing. The existence of government policies in the mining sector has always been in the spotlight of many parties. This is because the mineral and coal mining sector is considered very important, and this sector has the potential to attract new investment.

Many obstacles are faced to optimize the economy from the mineral and coal sector, not only from the downstream side but also from the upstream side. For investors to be interested in investing in and developing the mining business in Indonesia, the government must provide various facilities and reorganize this sector. On the upstream side, 5 licensing policies are needed, do not overlap and use clear procedures, measurable time and low costs. However, mining operations and activities must comply with social and environmental standards and fulfil obligations to the state as *good mining and corporate governance practices* (Darongke et al., 2022).

Policy deconstruction and legal certainty as an effort to protect investors in creating an acceleration of investment development in the mining sector towards a zero point society (5.0) are very vulnerable and very necessary to be deconstructed because of the many legal regulations and legal certainty that are no longer able to reach justice, especially in the Nickel and coal mineral mining sector. Moreover, investment policy regulations need to be carried out by the government to provide legal certainty, and there needs to be a renewal to create a licensing administration concept that provides convenience and cooperation contracts for mining operations in accordance with investment needs in Indonesia.

Therefore, in this study, the author focuses on the analysis of Policy and Legal Certainty as an Effort to Protect Investors, whether it can regulate thoroughly related to mining activities in Indonesia, and what is the need for a deconstruction of these regulations and regulations in order to provide legal certainty, so that the implementation of things that have been regulated in the mining law related to substance can have implications in the form of prevention or efforts to minimize problems related to investment activities.

Therefore, the author discusses and conducts analysis in scientific papers and with the title: "Policy Deconstruction and Legal Certainty as an Effort to Protect Investors in Accelerating Investment Development in the Mining Sector towards a Five Zero Point (5.0) Society". In the mining area of Nickel and Coal Minerals in Indonesia, especially in Sulawesi.

METHODS

In this study, researchers will rely on data from libraries and the internet, as well as collect information from related institutions such as the Ministry of Investment of the Republic of Indonesia, the Investment Coordinating Board (BKPM) of the Republic of Indonesia, the Ministry of Energy and Mineral Resources (ESDM) of the Republic of Indonesia, as well as from investors or mining entrepreneurs and other institutions that can contribute to the collection of research materials, including direct research on mining objects in Southeast Sulawesi. After collecting the materials and data needed, the author will analyze the material using qualitative data analysis methods. The data obtained will be described in detail and clearly in written form. This research uses a descriptive-analytical approach to describe concepts related to the theme raised. The approach method in this study is adjusted to the type of research conducted, namely normative legal research or legal research.

Data collection techniques are carried out in various ways, depending on the data source required, to ensure the data collected is accurate, precise, and representative. Data analysis in this study uses a qualitative approach, especially when examining data from literature searches. The collected legal data will be categorized and compiled systematically to be then analyzed with abstraction techniques of relevant laws and regulations to answer questions or solve problems posed in the research. This research involved related agencies such as the Ministry of Law and Human Rights of the Republic of Indonesia, the Ministry of Environment and Forestry of the Republic of Indonesia, the Ministry of Energy and Mineral Resources of the Republic of Indonesia, the Ministry of Investment / BKPM of the Republic of Indonesia, the Ministry of Trade of the Republic of Indonesia, and nickel mining areas in Sulawesi.

RESULTS AND DISCUSSION

Deconstruction is the thought of understanding the contradictions in the text and trying to rebuild the meanings already inherent in the text. The idea of deconstruction only sometimes accepts a text according to its meaning. Legal deconstruction is making fundamental, comprehensive, rapid and drastic changes. Thus, legal deconstruction must be supported by political and social movements sustainably, theoretically and practically (Restian et al., 2022). Legal deconstruction is *considered urgent* to be implemented immediately because, in fact, the power structure in society, including government, is a rigid hierarchical construction *and* is not responsive to public demands. That is why deconstruction becomes so urgent, and the construction structure changes to be more democratic, humanist-sensitive, and *responsible for* everything that needs to be accounted for before the legal public. Legal deconstruction is making fundamental, comprehensive, rapid and drastic changes. Thus, legal deconstruction must be supported sustainably by political and social movements at the theoretical and practical levels.

In order to comply with the provisions of Article 33, paragraph (2) and paragraph (3) of the 1945 Constitution, the state has made Law Number 11 of 1967 concerning Basic Provisions of Mining, which was later refined by Law Number 4 of 2009 concerning Mineral and Coal Mining (Mineral and Coal Law) and then refined again by Law Number 3 of 2020 concerning Mineral and Coal Mining (Undang-Undang & Indonesia, n.d.). The Mining Law provides a legal basis for renewing and restructuring mineral and coal mining management and exploitation activities. At least this Law has 6 (six) advantages compared to Law Number. 11 of 1967 and Law No. 4 Year 2009 (Indonesia, 2009; Sekretariat Negara, 1967). In order to comply with the provisions of Article 33, paragraph (2) and paragraph (3) of the 1945 Constitution, the state has made Law Number 11 of 1967 concerning Basic Provisions of Mining, which was later refined by Law Number 4 of 2009 concerning Mineral and Coal Mining (Mineral and Coal Law) and then refined again by Law Number 3 of 2020 concerning Mineral and Coal Mining. The Mining Law provides a legal basis for renewing and restructuring mineral and coal mining management and exploitation activities. At least this Law has 6 (six) advantages compared to Law Number 11 of 1967 and Law Number. 4. In 2009, the exploitation and management of mineral and coal mining could have been more optimal because the country's position was equal to mining companies.(Sekretariat Negara, 1967)

The state owns all mineral and coal deposits in the earth's bowels, Indonesia. The government can get permission if it thinks it is necessary and follow the rules. Giving permission is also grouped into three sections. For IUP, permits are granted to mining companies capable of mining large amounts. People's Mining Permits (IPR) are given to community groups or associations that carry out mining activities on a small scale. PUP is an agreement between a mining company and an implementing agency formed by the government. In the oil and gas industry, this Lembaga functions like BP Migas. PUP is expected to provide better legal certainty than IUP in doing business because, at this time, Indonesia still needs a good legal system.

Mineral and coal mining policy in Indonesia has undergone significant changes after the enactment of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Law No. 3 of 2020) and formed and ratified with severe problems both in terms of the formation process and the substance of the content material. These issues include formal and material, which should still need discussion on some content material from licensing, regional central legal construction in the mining business, land rights settlement, environmental management, reclamation and post-mining to supervisory issues. Prior to the change, several provisions in Law Number 4 of 2009 concerning Mineral and Coal Mining could not be operationalized, thus containing juridical problems and implementation problems, including licensing and supervision systems, settlement of land rights, and environmental management in reclamation and post-mining (Nugroho, 2020).

To develop Indonesia, we need economic support from domestic investors. However, because the investment funds available in the country are limited, the government needs funds from foreign investors. Investing money from abroad is a way to get an investment that can be used to advance development in our country. Foreign investors must consider many things before investing in Indonesia. One benefit is the state's legal protection to foreign investors. Investment of money from abroad or private companies is significant to make the economy of developed countries, especially countries that are still developing. This happens because FDI not only moves capital but can also convey helpful knowledge to people. For Indonesia and other developing countries, FDI is essential in planned national development. There can be problems between foreign investors and the government of Indonesia in terms of foreign investment activities. This can happen for several reasons, such as if the government or investors violate investment contracts, if the government revokes business licenses, if foreign companies are expropriated or nationalized, or if investor rights stipulated in the UUPM are violated.

Development priorities to improve the welfare of the people must be structured and have main objectives, including Promoting equality and the application of just, firm, and non-favourite laws, as well as protecting and respecting fundamental human rights. Ensure uniformity in the rule of law at the national and local levels to rebuild public trust in legal certainty. To achieve this goal, we need to focus on improving the country's legal system and politics. This will help tackle the corruption problem by improving the law, structure, and legal culture. We also need to improve the professionalism and quality of the justice system, as well as simplify legal processes. Ensuring that laws are applied relatively while respecting and strengthening local wisdom and customary law is essential. All this will help enrich the system of legal regulation.

Investments must be protected, regardless of the problems or risks faced by investors related to their investments in the recipient country (Anggraeni, 2023). Many things cause disputes in foreign investment, such as economic and political crises in countries that receive investment. This can hinder the implementation of investments agreed upon by foreign investors. The concept of state control over mineral and coal resources in Indonesia is based on the provisions of Article 33 paragraph (3) of the 1945 Constitution, which states, "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest benefit

to the people". Article 33, paragraph (3) becomes the doctrine of state control and simultaneously becomes Indonesia's philosophical and juridical basis for natural resource management. The mineral and coal mining sector's contribution to improving people's welfare and the aim of state control over national natural resources come from improving people's welfare.

Indonesia is currently included among the developing countries (Salma et al., 2024). One of the characteristics of developing countries is development in all fields. Investment as capital needs to be considered in carrying out development to increase development in the economic sector (Suhardini, 2015). Investment is an investment activity, either directly or indirectly, with the hope that, in the future, the capital owner will benefit from the investment. The forms of investor activity are domestic and foreign (Winata, 2018). The activity itself uses funds derived from such investors for economic activity.

The private sector seeks to make investments, and the government plays a role. For example, the government is making infrastructure improvements and adding assets. Economic development in a country is an indicator that determines the country's economic progress. The presence of investment allows the government to provide many jobs to reduce the unemployment rate in the community and improve people's welfare. This can be seen from the number of people interested in investing in the mining sector. The regions in Indonesia that produce the most are Kalimantan and Sumatra. However, coal supply in Indonesia is not only in the region but also spread across 21 provinces.

The state can use abundant mineral and coal resources to boost economic growth in the mining sector. Resulting from mining activities and using natural resources sold in the domestic market or abroad (Abidin, 2017). Mineral and coal mining is an essential and strategic part of the industry that can benefit many people's lives. As an essential part of production, the mining sector is included in the legal part of the 1945 Constitution, which explains that all natural resources in Indonesia must be utilized for the benefit of the people. Since the mineral and coal mining industry began in Indonesia, this sector has provided significant economic benefits. This attracted the interest of both private investors from outside the country and from Indonesia in developing the industry.

As a country, we must ensure and maintain security and certainty for investors so that economic growth can run well. To ensure certainty and security, a regulation is needed that regulates how the government regulates investment for the country. Legal certainty means having clear rules and no inconsistencies. However, some rules still need to be clarified and consistent with Iainnya's rules. In addition, the implementation of court decisions is also tricky. The difficulties that exist in developing countries are that they still rely on outside investors as a way to improve their economies.

However, rules and privileges govern the cultivation of money from abroad in general. However, there are different rules governing the mining sector's permits. In the mining world, we see that the existing rules could be more favorable for foreign investors because of high taxes or royalties and problems with forestry, decentralization, and the environment. To offer

these natural resources to Indonesia, we must conduct an inventory of natural resources such as minerals and coal throughout the dachah, including protected forests. In there, we will see if there are any special rules governing foreign investors in the mining industry based on Law Number 3 of 2020 concerning Mineral and Coal Mining and regulations related to mineral and coal mining.

As we know, legal protection is significant for investors before investing their money in a country. Research from international rating agencies shows that if the legal system does not work well, investors will find it difficult and may cancel their investments. The same applies to Indonesia. Suppose Indonesia wants to attract direct investment to the country. In that case, the conditions for improving the legal system, including ensuring the law can be enforced (such as enforcing contractual agreements), are very important and cannot be compromised by lagi. For investors from other countries, the contract system can guarantee more legal protection than the licensing system. The enactment of the Foreign Investment Law for 40 years provides the basis and justification for the need to amend the Law as stipulated in Law Number 11 of 1970 concerning Amendments and Supplements to Law Number I of 1967 concerning Domestic Investment as amended by Law Number 6 of 1968 concerning Foreign Investment which has become the legal basis for activities Investment in is no different, because it is no longer in line with the challenges and development of the national economy must be accelerated by the development of national laws in the field of investment that is competitive and in favour of the national interest.

CONCLUSION

The main challenges faced by the mineral and coal mining industry today are the impact of globalization, which encourages democratization, regional autonomy, human rights protection, concern for the environment, technological and information advances, and demands to increase the role of the private sector and society in natural resource management. To overcome these strategic environmental challenges and answer related problems, the government has implemented a new legal regulation, Law of the Republic of Indonesia Number 3 of 2020, concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Mineral and Coal Law). The Mining Law provides a legal basis for measures to renew and reorganize mineral and coal mining management and exploitation activities. Two main patterns in the mining business are generally used: permits and cooperation contracts. However, both patterns have their advantages and disadvantages from the stakeholders' point of view.

Along with that, every country aims to organize good governance for its people's welfare, known as the concept of the welfare state. Mining operations through cooperation contract patterns, such as Contract of Work (KK) or Coal Mining Concession Work Agreement (PKP2B), usually involve more detailed contract agreements. The abolition of the contract system in mining operations can reduce investor interest in the mining sector. However, deficiencies in the contract system, especially in the government's interest as the holder of the power to carry out its governmental functions, can be overcome by perfecting the contract terms or delegating the contractual interest to bodies established explicitly for that purpose.

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