

Legal of Permission Folk Mining in Indonesia

Derita Prapti Rahayu

Faculty of Law, Universitas Bangka Belitung, Indonesia
E-mail Coresponden: itha82017@gmail.com

Faisal

Faculty of Law, Universitas Bangka Belitung, Indonesia

Info Artikel

Received: 13/01/2020

Revised: 14/02/2020

Accepted: 09/03/2021

Keywords:

Legal, Permission Folk Mining, Indonesia.

Kata Kunci:

Legal, Permission Folk Mining, Indonesia.

P-ISSN: 1412-310x

E-ISSN: 2656-3797

Abstract

Juridically the people's mining is recognized in the law. This paper will discuss the regulation of people's mining permits in Indonesia that permission on folk mining regulated on the act number 04 year 2009 about coal mineral. The criteria and nature of community mining are the mining business activities of the local people, carried out simply and in a small way, not using sophisticated equipment, the production is sufficient for the daily needs of the miners, the extent is very limited. IPR is given for a maximum period of 5 (five) years and can be extended. Regents / mayors give IPR especially to local residents, both individuals and community groups and / or cooperatives, (2) Regents / mayors can delegate the authority to administer IPR as referred to in paragraph (1) to the Camat in accordance with the provisions of the legislation, ((3) To obtain an IPR as referred to in paragraph (1), the applicant must submit a request letter to the regent / mayor.

Abstrak

Secara yuridis penambangan rakyat diakui dalam hukum. Makalah ini akan membahas peraturan izin penambangan rakyat di Indonesia bahwa izin penambangan rakyat diatur pada undang-undang nomor 04 tahun 2009 tentang mineral batubara. Kriteria dan sifat penambangan masyarakat adalah kegiatan usaha penambangan masyarakat setempat, dilakukan secara sederhana dan kecil-kecilan, tidak menggunakan peralatan canggih, produksinya cukup untuk kebutuhan sehari-hari para penambang, luasnya sangat terbatas. HKI diberikan untuk jangka waktu maksimum 5 (lima) tahun dan dapat diperpanjang. Bupati / walikota memberikan HKI khususnya kepada warga setempat, baik perorangan maupun kelompok masyarakat dan / atau koperasi, (2) Bupati / walikota dapat mendelegasikan wewenang untuk mengelola HKI sebagaimana dimaksud pada ayat (1) kepada Camat sesuai dengan ketentuan peraturan perundang-undangan, (3) Untuk mendapatkan IPR sebagaimana dimaksud pada ayat (1), pemohon harus menyerahkan surat permintaan kepada bupati / walikota.

INTRODUCTION

Indonesia is a country that has a wealth of natural resources. The wealth of natural resources is a gift from God Almighty, who duly maintained and preserved. Natural resources is one basic capital in national economic development,¹ therefore it must be utilized as much as possible for the interests of the people and pay attention environmental sustainability. In the 1945 Constitution Article 33, paragraph (3), it is found that the earth, and water and natural resources contained

¹Franky Butar Butar, Penegakan Hukum Lingkungan di Bidang Pertambangan, *Yuridika* Vol. 25 No. 2, May–August 2010, p. 151-152

therein are controlled by the state and used for as much as possible for the prosperity of the people.² With respect to the meaning of the sentence controlled by the state, Sutedi argues that the state sovereignty over the wealth of natural resources, but the ultimate goal of management natural wealth is in the form of mineral and coal resources and minerals. Mineral and coal mining is regulated in Law Number 4 Year 2009 About Mineral and Coal Mining.³

Law Number 4 of 2009 concerning Mineral and Mining Coal replaces Law Number 11 of 1967 concerning Mining Base Provisions, which are expected to have an impact on economic development in Indonesia. Law number 4 of 2009 concerning Mineral and coal mining is also expected to create an industrial climate which is more conducive and restores public confidence in investment Indonesian mining. Economic growth is part of economic development. Economic growth is an indicator (benchmark) of development success the economy of a country or a region, economic growth must be analyzed the level of development from year to year increases high or stable, and must also seen which sectors (primary, secondary, or tertiary sectors) occur significant growth.⁴

Rapid population growth has various implications field. This rapid population increase has put pressure on the sector the provision of labor facilities which cannot be accommodated from the sector agriculture. So to expand employment opportunities, the industrial sector needs to be improved both in quality and quantity. Increasing gradually in various ways the industrial sector will gradually no longer be dependence on foreign production in meeting the needs of life. Mining is part or all of the stages of activities in the framework research, management and exploitation of minerals or coal which includes public provision, exploration, feasibility study, construction, mining, management and refining, transportation, sales, and post-mining activities.⁵

Mining business is an activity in the context of mastery of minerals, or coal in the context of exploiting minerals or coal in the framework penguasaan which includes stages of the activities of general inquiry, exploration, study feasibility, construction, mining, processing and refining, transportation, and sales, as well as post-mining.⁶ Determination of Mining Areas after coordination with local government and consult with the Council government Indonesian People's Representative. Guidance and supervision of implementation management of mineral and coal mining carried out by regional government. Mining areas as part of national spatial planning is the basis for determining mining activities. The region Mining is determined by the Government after coordinating with the Council People's Representative of the Republic of Indonesia. Determination

²This country has a complex history. In the period of less than three decades, Nauru has turned from the richest country in the world into one of the poorest country in the world. The country's wealth is obtained from phosphate mining, can be looked up at <https://www.idntimes.com/news/world/siti-anisah-2/fakta-negara-nauru-c1c2>

³Bridget Lewis, "Environmental Rights or a Right to the Environment? Exploring the Nexus between Human Rights and Environmental Protection", *Macquarie Journal of International and Comparative Environmental Law*, Vol. 8 No. 1, 2012, p. 36-47.

⁴Jaelani A.K, Handayani I.G.A.K.R, Isharyanto, "Regulation of Regional Government on Halal Tourism Destinations in West Nusa Tenggara Province after Constitutional Court Decision Number 137/PUU-XIII/2015", *Proceeding Atlantis Press: Advances in Social Science, Education and Humanities Research*, Volume 358, Tahun 2019.

⁵Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, "Executability of the Constitutional Court Decision Regarding Grace Period In The Formulation Of Legislation", *International Journal of Advanced Science and Technology* Vol. 28, No. 15, (2019). P. 816-823

⁶Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, "Development of Tourism Based on Geographic Indication Towards To Welfare State", *International Journal of Advanced Science and Technology* Vol. 29, No. 3s, (2020). Page. 1227-1234.

of Mining Areas implemented in a transparent, participatory, and responsible manner integrated with attention.⁷

Implementation of Regional Autonomy under law Number 22 of 1999 on Regional Government, especially regarding the Law management and utilization of mining minerals for the welfare of the people in the area. Legal basis in Article 10 of Local Government Act 1999 which states, regional empowered to manage national resources available in the region.

One of the potential national resources that exist in the area are mineral resources. Mineral is a natural resource that is not renewable (unrenewable resources) to look for alternative sustainability so that affected communities can continue to be independent without leaning on the resources in question. Management of natural resources should be wisely so that the wheel of development in the community and region as well as national continue to benefit from the resources with the mining business.⁸ This nature has an important meaning for the welfare of the people.

Gallian goods mining exploitation is an opportunity and hope for the people to get welfare only comes once. Minerals are also an asset for the people to use in the process of improving welfare. When the opportunity to use these assets only once terlewatka, this means that the people have lost assets forever. Similarly, mining, mineral exploitation should bring benefits (return on assets) is optimal for the welfare of the people.⁹

RESEARCH METHODS

The type of research used in compiling this paper is normative legal research. Normative legal research places more emphasis on library research. In the study of normative law, law is seen as a good norm that is positive (*iusconstitutum*) or those that have not been positivated (*ius constituendum*)¹⁰ Therefore in normative legal research the data source is only secondary data, which consists of primary legal materials, secondary legal materials and tertiary legal materials. Secondary legal material used to help understand various legal concepts in primary legal material, analysis.¹¹ Primary legal materials are assisted by secondary legal materials obtained from various sources both journals, books, papers, and other scientific works on the concepts and arrangements of mining law and the law for mining permits in Indonesia. Data collection is done by library research.¹²

DISCUSSION

The law is generally associated as a whole of rules or methods in a shared life, all about the behavior that applies in a shared life that can be enforced by a sanction.¹³ People's Mining Permit (IPR) as a legal basis for conducting mining business, meaning that without having an IPR the

⁷Lego Karjoko, I Gusti Ayu Ketut Rachmi Handayani & Adi Sulistiyono, "Setting of Plantation Land Area Limitation Based on Social Function Principles of Land Cultivation Rights to Realize Social Welfare-Promoting Plantation", *Jurnal Dinamika Hukum*, Volume 17, Nomor 1 Tahun 2017.

⁸Nanik Trihastuti, *Corporate Responsibility Foreign Investment in Mining Minerals Sustainable Development Linked Composition Composition Article Search Google Indonesian Welfare State*, hearts Capita Selecta Law Welcomed Anniversary to 50, Fak. Undip law, Semarang, 2007, p. 163

⁹Abrar Saleng, *Mining Law*, UII Press, Jogjakarta, 2004, p. 111, pp. 130

¹⁰Soetandyo Wignjosobroto, dalam Derita Prapti Rahayu, Delik Izin Lingkungan yang Terabaikan, *Jurnal Yudisial* Vol. 8 No. 2 Agustus 2015, p. 217

¹¹Derita Prapti Rahayu, *Metode Penelitian Hukum*, Thafa Media, Yogyakarta 2020, p. 88

¹²Lego Karjoko, Hasmonel, "Aspek Keadilan Pemberian Hak Guna Bangunan di Atas Hak Milik", *Prosiding Seminar Nasional*, Fakultas Ilmu Sosial dan Ilmu Politik, Universitas Terbuka UTCC, 26 Agustus 2015.

¹³Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bhakti, Bandung, 2000, p. 53

community cannot carry out mining activities,¹⁴ community mining is a mining that is classified as small scale mining.¹⁵

Simply, permissions are given meaning as government action in the form of agreements. Motive or purpose of the permissions focused more on the object of licensing protection. Motivation or purpose of licensing is also related to the security of the subject or the receiving party as a part of the licensing laws. Permits must also provide legal certainty for the individuals who are subject to a licensing or beneficiary with respect to the sustainability of effort activities or is the object of licensing other parties' disorders. The active role of the government to give effect to the daily life of the community at large can be found in the Constitution of the Republic of Indonesia in 1945, which apparently confirms the control of government interference in people's lives and the controlling includes the social, political and economic, cultural and environmental fields. It can be seen from the Articles relating to it, such as Article 23, Article 26, Article 27, Article 28, Article 29, Article 32, Article 33, which the government entered into arrangements that people act by existing regulations.¹⁶

In Indonesia, permission on folk mining regulated on the act number 04 year 2009 about coal mineral. The criteria and nature of community mining are the mining business activities of the local people, carried out simply and in a small way, not using sophisticated equipment, the production is sufficient for the daily needs of the miners, the extent is very limited. IPR is given for a maximum period of 5 (five) years and can be extended. Due to the above reasons and the variety of special characteristics of the region, the Minister of Mines and Energy has the authority to issue people's mining permits, delegated to the Governor of the Level I Regional Head where the relevant minerals are available and the Governor also gives his authority to the Regent the Head of the Regional Level Region II.¹⁷

The community can participate in mining management through granting permission folk mining. Lothar Guilding suggests some basis for public participation is as follows;¹⁸

a. Giving Information to the Government

Public participation will primarily add specific knowledge about a problem either derived from specialized knowledge society itself and of the expert opinion requested by the community. Furthermore, the role of the community is important and not negligible in order to provide information to the government about the problems and consequences arising from the actions planned by the government. Thus the government can find out there are a variety of interests that can be affected by such action and Noteworthy

b. Increasing the public's willingness to accept decisions

Community participation in decision *pengambilan* process will reduce the likelihood of conflict as long as the public participation undertaken at the right time and effective. It should be understood that the decision will never satisfy all interests, all groups or all members of

¹⁴ Sajuti Thalib, dalam Abrar Saleng, *Kuasa Pertambangan Dalam Perspektif Hukum Administrasi Negara*, dalam Dimensi-Dimensi Pemikiran hukum Administrasi Negara, UII Pres, Yogyakarta, 2001, p. 441

¹⁵ Meggi Okka Hadi Miharja, *Implikasi Hukum terkait Pertambangan Rakyat dalam bidang Minerba di Indonesia*, Privat Law, edisi 07, Januari-Juni 2015, p. 97

¹⁶ Derita Prapti Rahayu, Esmi Warasih Pujirahayu, and FX. Adji Samekto, Institutional Territory on Folk Mining in Indonesia, IOP Conf. Series: Earth and Environmental Science 175 (2018) 012186 doi :10.1088/1755-1315/175/1/012186, 2018, p. 2

¹⁷ Lego Karjoko, I Gusti Ayu Ketut Rachmi Handayani & Adi Sulistiyono, "Setting of Plantation Land Area Limitation Based on Social Function Principles of Land Cultivation Rights to Realize Social Welfare-Promoting Plantation", *Jurnal Dinamika Hukum*, Volume 17, Nomor 1 Tahun 2017.

¹⁸ Rachmadi Usman, *Principles of Environmental Law National*, Academic Pressindo Jakarta, 1993, p.38

the community but the community's willingness to accept the government's decision will be improved.

c. Assist Legal Protection

When a final decision is made by taking into account the decision takes place, then in many cases there will be no need to remand to the court, it is usually the case focuses on a particular activity. Thus not opened an opportunity to suggest and consider other alternatives.

Instead in the decision-making process alternative can be discussed at least to a certain degree . In addition there are several forms of administrative acts such as granting permission for activities associated with contaminants (pollutants) until the Act can postpone the civil suit associated with the provision of the certain period of time . If a decision can have consequences so far , it is expected that the order to each person who will be affected by decisions that need to be notified and have the opportunity to file objections before the decision was taken.

In conjunction with this public participation it has been argued that the system of representative government with the right to the benefit of the people . Also put forward the argument that the the system of representative government, public participation in administrative decision-making process would be problematic because the validity of democratic citizens as individuals , groups or organizations who participated in the decision-making process is not carried or lifted democratically . public participation can be seen to help the state and its institutions in order to carry out his duties in a way that is more acceptable and effective.

The existence of folk Mining legally recognized. it is in Law Number 4 of 2009 on Mineral and Coal, one of which is the People's Mining Permit (IPR) which permits to carry out mining operations in areas with extensive artisanal mining areas and limited investment.¹⁹ Permission of folk mining is a legal basis for doing folk mining effort,the meaning is without Permission of folk mining means should not be doing mining effort.²⁰

CONCLUSION

Regents / mayors give IPR especially to local residents, both individuals and community groups and / or cooperatives, (2) Regents / mayors can delegate the authority to administer IPR as referred to in paragraph (1) to the Camat in accordance with the provisions of the legislation, ((3) To obtain an IPR as referred to in paragraph (1), the applicant must submit a request letter to the regent / mayor.

REFERENCES

- Abildanwa, T. (2016), Mediasi Penal Sebagai Upaya Dalam Rangka Pembaharuan Hukum Pidana Di Indonesia Berbasis Arvita Hastarini, "Keabsahan Perjanjian Kerja yang dilakukan Anak di Bawah Umur", *Jurnal Wacana Hukum*, Volume 25, Nomor 2, Tahun 2019.
- Indah Putri Rahmawati, "Kontruksi Pajak Lingkungan di Indonesia", *Jurnal Wacana Hukum*, Volume 25, Nomor 2 (2019)
- Jaelani A.K, Basuki U, "Problematika Pelaksanaan Putusan Mahkamah Konstitusi Nomor 100/PUU-XI/2013 dalam Mendudukkan Pancasila Sebagai Dasar Negara", *Jurnal Wacana Hukum*, Volume 24, Nomor 2 Tahun 2018.

¹⁹ Article 1 paragraph 10 of Act 4 of 2009 on Mineral and Coal jo Pasal 11 (2) of act No. 11 of 1967

²⁰ Mining effort is the work done by a person or legal entity to take minerals from the earth in the Indonesian mining law for the benefit of man, Sajuti Talib, hearts Abrar Saleng, Mining Rights In State Administrative Law Perspective, hearts Dimensions THINKING law of the State Administration, UII Pres, Yogyakarta, 2001, p. 441

- Bambang Ali dan Abdul Kadir Jaelani, “Menggagas Constitutional Complaint dalam Konstitusi Indonesia dan Politik Hukum Islam”, *Jurnal Wacana Hukum*, Volume 24, Nomor 1 Tahun 2018.
- Arifin Ma’ruf, “Kedudukan Asas Kebebasan Berkontrak dalam Kebijakan Kemitraan Kehutanan”, *Jurnal Wacana Hukum*, Volume 25, Nomor 1 Tahun 2019.
- Jaelani A.K, “Pengembangan Destinasi Pariwisata Halal pada Era Otonomi Luas di Provinsi Nusa Tenggara Barat”, *Jurnal Parivisata*, Vol.V, No.1, April 2018.
- Karjoko L, Nurjanah Y, “The Legality of Freehold Title and Legal Implications Against of Land Makers Officers (The Study of Freehold Title Issuance Number 1576/Nusukan Village, Banjarsari Sub-District, Surakarta City, Central Java)”, *International Journal of Scientific and Technology Research* 8(10), 2019.
- Jaelani A.K, Handayani I.G.A.K.R, Isharyanto, “Regulation of Regional Government on Halal Tourism Destinations in West Nusa Tenggara Province after Constitutional Court Decision Number 137/PUU-XIII/2015”, *Proceeding Atlantis Press: Advances in Social Science, Education and Humanities Research*, Volume 358, Tahun 2019.
- Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, “Executability of the Constitutional Court Decision Regarding Grace Period In The Formulation Of Legislation”, *International Journal of Advanced Science and Technology* Vol. 28, No. 15, (2019). Page. 816-823
- Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, “Development of Tourism Based on Geographic Indication Towards To Welfare State”, *International Journal of Advanced Science and Technology* Vol. 29, No. 3s, (2020). Page. 1227-1234.
- Lego Karjoko, “Aspek Keadilan Alih Fungsi Lahan Pertanian Ke Non Pertanian (Studi Kecamatan Nguter Kabupaten Sukoharjo)”, *Jurnal Repertorium*, Volume IV No.2 Juli-Desember 2017.
- Lego Karjoko, Hasmonel, “Aspek Keadilan Pemberian Hak Guna Bangunan di Atas Hak Milik”, *Prosiding Seminar Nasional*, Fakultas Ilmu Sosial dan Ilmu Politik, Universitas Terbuka UTCC, 26 Agustus 2015.
- Lego Karjoko, I Gusti Ayu Ketut Rachmi Handayani & Adi Sulistiyono, “Setting of Plantation Land Area Limitation Based on Social Function Principles of Land Cultivation Rights to Realize Social Welfare-Promoting Plantation”, *Jurnal Dinamika Hukum*, Volume 17, Nomor 1 Tahun 2017.
- Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, “Development of Tourism Based on Geographic Indication Towards To Welfare State”, *International Journal of Advanced Science and Technology* Vol. 29, No. 3s, (2020). Page. 1227-1234.