

# Efectiveness of The Mining Business License to Protect The Sustainability of The Environmentl

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## **Efectiveness of The Mining Business License to Protect The Sustainability of The Environment**

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**Abstract:** Mining business permits as a substitute for a work contract as outlined in the Ministerial Regulation and Mineral Resources of the Republic of Indonesia No. 26 of 2018 concerning Implementation of Good Mining Principles and Supervision of Mineral and Coal Mining. This change in form from contract to permit is actually one of the means to ensure that there is government oversight of investors so as not to do things that are detrimental, especially things that can damage the environment. Based on this background, the problem of this paper is the characteristics of the mining business license and its role in preserving the mining. The laws and regulations regarding registration and licensing in investment procedures are already good, it's just that there is a need for tightening in the supervision of investment implementation in the field. In addition, community participation also needs to be increased in preserving this environment.

**Keywords:** Mining Bussines Permit, Law Enforcement, Preserving, Enviromental

### **1. Introduction**

Whereas in Article 1, number 1 of Law No. 25 of 2007 concerning Investment, from now on referred to as the Investment Law, is all forms of investment activities either by domestic investors or foreign investors to conduct business in the Republic territory. Indonesia. Several impacts from making this Investment can arise, either as a negative impact or a positive impact. The adverse effects that may occur are environmental damage, especially in investments in the form of mining businesses.

An example is the Buyat Bay case by PT. Newmont Monahasa In 2004, the issue of mercury waste in Aceh by PT. Exxon Mobil Oil Indonesia in 2005, and the possibility of Montara oil in the Timor Sea by PT. TEP Australia (Ashmore Cartier) in 2009. Another company that is considered to have contributed to environmental pollution and destruction is PT. Freeport. PT Freeport invested in 1991. (Astuti, 2018)

PT. Freeport has a mine at the top of a mountain at an altitude of 4270 meters, with the lowest temperature reaching 2 degrees Celsius. This makes the mining site have a high level of vulnerability to landslides, which have occurred in 2004-2017.

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Another impact is deforestation and pollution, where tailings are dumped directly into the Agabagong River and then shrink into the Aikwa River and into the Arafura Sea, which causes flooding that destroys most of the lowland forests and threatens the city of Timika. (Astuti, 2018) Arrangements to prevent these impacts are related to laws and regulations governing mining businesses. From now on, the rule is the 1945 Constitution, referred to as the 1945 Constitution, the 1950 Provisional Constitution, from now on referred to as the 1950 UUDS, the Letter of the Indonesian Parliament No.Agd.1446 / RM / DPRRI / 1951, Law No. 78 of 1958 concerning Foreign Investment, Law No. 10 of 1959 concerning the Cancellation of Mining Rights, Law No. 37 Prp. 1960 concerning Mining, Constitutional Court Decision No.01-021-022 / PUU-I / 2003, Law on Investment, Law No. 32 of 2004 concerning Regional Government, from now on referred to as the Otda Law, and Law No. 3 of 2020 in conjunction with Law No. 4 of 2009 concerning Mineral and Coal Mining, from now on referred to as the Minerba Law. Government Regulation No. 55/2010 concerning Guidance and Supervision for the Implementation of Mineral and Coal Mining Business Management, starting from now referred to as PP Mining, Government Regulation No. 23/2010 concerning Regulation of the Minister of Energy and Mineral Resources RI No. 26/2018 concerning Implementation of Good Mining Principles and Supervision of Mineral and Coal Mining, hereinafter referred to Permen ESDM Minerba. These arrangements are made to prevent environmental damage from occurring.

## 2. Theoretical Framework and Hypothesis Development

Regulations regarding mining made always undergo improvements from before because they feel that there are still deficiencies in their implementation. Of course, problems caused by a lack of rules have been made and related to law enforcers' performance.

### 3. Research Method

<sup>13</sup> This research is a normative juridical research or literature law research by examining existing literature. (Soekonto and Mamudji, 2015), so that the initial stage was to search for legal materials. Both primary standard material in the form of statutory regulations or secondary material which can be in the form of books, journals, or other everyday materials for carrying out literature studies or traditional materials obtained from field studies, namely by conducting surveys or interviews with parties related to research, namely at the office of the Investment Coordinating Board.

After obtaining the data obtained from the research results, the next thing to do is collect and categorize legal materials. This study uses two approaches to conduct analysis. Then the categorization is carried out based on the statutory and conceptual approach to the rules. Analysis of legal materials is carried out after this categorization exists. The final result that is expected after the research is that there is a regulatory concept related to granting permits for profitable mining businesses to prevent environmental damage.

### 4. Results and Discussion

#### Procedures for Obtaining Mining Permits

<sup>4</sup> The Minerba Law regulates mining activities that were later derived in the form of a Government Regulation, one of which is Government Regulation No. 23/2010 concerning the Implementation of Mineral and Coal Mining Business Activities, from now on referred to as PP Minerba.

Granting of Mining Business Permits, from now on referred to as IUP, rocks based on PP Minerba are carried out through a regional application. According to their authority, application for the area means that every party, business entity, cooperative or individual wishing to have an IUP must apply to the Minister, Governor, or Regent/mayor. The division of authority is as follows: 1. <sup>25</sup> The Minister of Energy and Mineral Resources for applications for areas located across provincial areas or sea areas more than 12 miles from the coastline and mining in the mineral and coal sector;

The governor, for an application for a region located across regency / municipal areas within; 1. province or a sea area of 4 to 12 miles; 2. Regent / Mayor for application for locations within one district/city or sea area up to 4 miles. Rock mineral IUP is granted by the Minister of Energy and Mineral Resources, Governor or Regent / Mayor following their respective authorities based on submitted business entities, cooperatives, and individuals. IUP is granted in 2: Granting Mining Business Permit from now on referred to as WIUP, and Granting IUP.

Procedures for submitting rock WIUP : 1. Business entities, cooperatives, or individuals offer regional applications to obtain rock WIUP to the Minister, Governor, or Regent / Mayor according to their respective authority; 2. Before granting a WIUP, the Minister must recommend the Governor or the Regent/mayor. The Governor must obtain a suggestion from the Regent / Mayor; 3. An application for WIUP that has previously met the requirements for geographic latitude and longitude coordinates following the applicable national geographic information system provisions and has paid for the area reservation and map, shall receive priority to obtain WIUP; 4. The Minister, Governor or Regent / Mayor, within 10 working days after receiving the application, is obliged to give a decision to accept or reject the WIUP application; 5. The decision to take is submitted to the WIUP applicant, accompanied by submitting a WIUP map along with the WIUP boundaries and coordinates. The decision to refuse must be submitted in writing to the WIUP applicant, along with the reasons for rejection.

Rock IUP consists of Exploration IUP and Production Operation IUP, including administrative, technical, environmental, and financial requirements. Exploration IUP is granted by a. The Minister WIUP is located in cross-provincial areas or sea areas more than 12 miles from the coastline or for those carrying out coal mining; b. Governor, for WIUP that is within the cross regency/city within one province or sea area 4-12 miles from the coastline; c. Regent / Mayor, for WIUP located within one regency/municipality or sea area up to 4 miles from the coastline.

Exploration IUP is granted based on applications from business entities, cooperatives, and individuals that have obtained WIUP and meet the requirements.



The Governor submits the issuance of the rock WIUP map submitted by business entities, cooperatives, or individuals to the governor or regent/mayor to obtain recommendations for the assignment of an exploration IUP. The governor or regent/mayor shall provide a request within five working days from the receipt of evidence of submitting the rock mineral WIUP map.

Business entities, cooperatives, or individuals who have obtained a WIUP map and boundaries and coordinates within five working days after the issuance of the rock mineral WIUP map must apply to an Exploration IUP to the Minister, Governor, or Regent / Mayor and must fulfill the requirements.

Suppose a business entity, cooperative, or individual does not submit an IUP application within five working days. In that case, it is deemed to have resigned, and the area reserve money belongs to the Government or regional Government, and the WIUP becomes an open area.

Production Operation IUP is granted by a. Regent / Mayor if the mining location, processing, and refining location and the port are within one regency/city or sea area up to 4 miles from the coastline; b. Governor, if the mining location, processing, and refining location and the port are located in different regencies/municipalities within one province or sea area up to 12 miles from the coastline after receiving a recommendation from the Regent / Mayor; c. The Minister, if the mining location, processing, and refining location, and the port area in a different provincial area or the sea area are more than 12 miles from the coastline after receiving a recommendation from the local Governor and Regent / Mayor.

A Production Operation IUP is granted to business entities, cooperatives, and individuals as an increase in exploration activities that meet the requirements where the Exploration IUP holder is guaranteed to obtain a Production Operation IUP as an increase by submitting an application fulfilling the requirements for an increase in production operations.

The holder of a Production Operation IUP can apply for an area outside the WIUP to the Minister, Governor, or Regent / Mayor to support his mining business. Within six months of obtaining a Production Operation IUP, the Production Operation IUP

holder must provide an area boundary mark on the WIUP. The WIUP location other mining commodities are found that are not mineral associations granted in the IUP, and the Production Operation IUP holder will have the priority to exploit them by forming a new business entity. The application for the extension of the Production Operation IUP is submitted to the Minister, Governor, or Regent / Mayor at the latest two years and no later than six months before the expiration of the IUP.

The holder of a Production Operation IUP can only be given an extension two times and must return the Production Operation WIUP and convey the presence of rock mineral reserves and potential to the Minister, Governor, or Regent / Mayor. The Minister, Governor, or Regent / Mayor may reject the application for Production Operation IUP extension if the Production Operation IUP holder based on the evaluation results does not show a good production operation performance.

### **Implementation of Licensing Procedures for the Environment**

Efforts have been made to protect the environment from the mining business's impacts following the environmental principles in the Capital Investment Law, as stated in Article 2. Can be seen from the changes in laws and regulations regarding mining.

The latest regulations can be seen in the rule regarding preventive protection, namely protection before the occurrence of a violation has been carried out when applying for a license where there are two types of permits, namely IUP linked to IUP Exploration and IUP Production Operation. Before using IUP for operating production, then it must already have IUP for Exploration.

It is related to general investigations of regional geological conditions and indications of mineralization, exploration. To obtain detailed and accurate information about the location, shape, dimensions, quality distribution, and measured resources of mineral details regarding the social and environmental environment as well as a detailed feasibility study to determine the economic, economic and technical feasibility of a mining business, as well as an analysis of environmental impacts and mining products. With the obligation to have an Exploration IUP, it is hoped that

before carrying out Production Operations, it is known whether this mining will have a positive impact on mining or not. Besides having benefits for prospective miners in understanding the impact on the environment, it is also a reference for authorized institutions to grant permits to consider the reports received for the issuance of Production Operation IUP. Also, without the existence of an Exploration IUP, criminal penalties remain.

The government also carried out this preventive protection with the issuance of a new Minerba Law, namely Law 3 of 2020, in which the central government, in consultation with the DPR, issued a national policy to prioritize mineral and coal for domestic interests and coal and determine the amount of production and sale of mineral prices. Also, the new regulations for the issuance, supervision, and guidance of IUP and WIUP related to coal minerals will be implemented by the government.

The guidance in mining is related to providing guidelines and standards for implementing mining business management, direction, supervision, consultation, education, training, planning, research, development, monitoring, and evaluation of mining operations in the mineral and coal sector. It can apply guidelines and management implementation standards that do not cause environmental damage.

Supervision related to the implementation of mining activities, based on PP Mining, is carried out in two ways: evaluating the plan report and inspection of the IUP location. In which the supervision is carried out within one year. So that in this case, if there is a violation, it will be possible to take action in the form of a written warning immediately, termination of operation, or revocation of license. So, in this case, repressive protection is related to environmental impact protection.

Another regulation that is also environmental protection is filing a lawsuit from the community who feels the impact of ecological damage as contained in Article 91 and Article 92 of Law No. 32 of 2009 concerning Environmental Protection and Management.

## 5. Conclusion, Implication and Limitation

### 5.1. Conclusion

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Regulations related to mining have been fully regulated regarding environmental protection, whether it is preventive or repressive protection. Whether in issuing permits, guidance, or concerning supervision to criminal sanctions and filing lawsuits reduces the ecological damage caused by mining. To further reduce the impact, it would be better if the maintenance carried out is increased to more than once a year and so that its implementation is more transparent so that the public can know the results.

### *5.2. Implication and Limitation*

This research is limited to how related laws and regulations are related to mining to protect the impact of existing environmental damage.

To find there is protection against environmental damage related to mining operations.

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