International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 12-11-2021, Accepted: 26-11-2021, Published: 13-12-2021
Volume 7, Issue 6, 2021, Page No. 111-116

Reconstruction of natural resource management regulations in the coal mining sector to add value for national and regional economic growth based on justice

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Abstract
Natural resource management cannot be separated from the influence of legal politics. Thus, legal politics can be interpreted as the direction of legal policies to be achieved in the management of natural resources to create a sustainable environment and avoid environmental damage due to mismanagement in the framework of development. The approach method used in this research is juridical empirical. The empirical juridical method in this study reviews and views and analyzes the problems that are the object of research, namely the reconstruction of legal politics in natural resource management in the coal mining sector to provide added value for national economic growth based on the value of justice.
The results of this study are (1) Weaknesses that arise in the legal politics of natural resource management in the coal mining sector to provide added value to national economic growth include those related to institutions and apparatus, legal services, and weaknesses in terms of legal culture, which have not yet become a structured pattern in making various policies and issuance of permits is the participation of the public. (2) The legal political reconstruction of natural resource management in the coal mining sector to provide added value to national economic growth based on the value of justice, namely that the Coal and Mineral (*Minerba*) Law has ordered that the provisions of Article 102, Article 103 paragraph (2) and Article 104 paragraph (1) to continue to carry out processing and refining in the country. With the point of view of just legal certainty, this provision is aimed at the people's right to obtain prosperity or welfare from the natural wealth of this nation and for legislators can predict the state income received with the provisions made at that time.

Keywords: reconstruction, political law, natural resources, coal, value of justice

Introduction

Indonesia's natural resources must be managed properly, especially minerals and coal that are non-renewable natural resources. Natural resource management must also pay attention to the environment so that there is no damage to the earth, especially in Indonesia for the sake of sustainability for the welfare of its people.
The management of natural resources cannot be separated from the influence of legal politics. The determination of legal politics is stated in the constitution of the 1945 Constitution, especially CHAPTER IV National economy and social welfare article 33 which consists of 5 paragraphs (Jimly Asshiddiqie,2010). The constitution gives the authority that the control of natural resources in Indonesia by the State is carried out by the government or local governments. The wealth of natural resources in Indonesia has an important role in meeting the needs of many people, therefore its management must be controlled by the State.
In Article 33 paragraphs (3), (4), and (5) of the 1945 Constitution, there are important things that become state legal policies in the utilization of natural resources and environmental management, including the welfare of the people as the philosophical and sociological basis for all activities. The use of natural resources is the responsibility of the state, where through the right to control the state makes rules and policies for the use of the environment and natural resources.
Legal politics must be oriented to values related to the state's goals in regulating certain things. Likewise, corporate behavior in exploiting natural resources is not only aimed at the personal or corporate needs and interests of the owners of capital, but should pay attention to environmental sustainability, but in reality, there are many perpetrators of criminal acts of forest and environmental destruction who carry out business activities, one of which is mining. by exploiting natural resources on a large scale carried out by corporations.
Mining commodity entrepreneurs are required to carry out domestic processing and refining before selling abroad (export). Especially for holders of Mining Business Permits (IUP) and Special Mining Business Permits (IUPK). The processing and refining activities are one of the efforts promoted by the government so that mining products obtained from domestic mining get added value (Gatot Supramono,2012).This provision is also strengthened in Article 103 of Law Number 3 of 2020 concerning Minerals and Coal. To obtain that then a processing and refining unit known as a "smelter" is used. This unit serves to increase the metal content until the metal reaches the desired level or meets the standard as the final raw material.
The construction of a smelter processing and refining unit is an obligation for IUP and IUPK holders. The development of a domestic "smelter" unit must be carried out so that the mandate of the law runs according to the expectations of the Indonesian people. The emphasis must be stated in *Article 103 paragraph 1*. Where the holders of Production Operation IUP, Production Operation IUPK, and Special Production Operation IUP for processing or refining,

processing or refining ore (raw material or ore), concentrates, or mineral intermediate products originating from abroad, for cooperation plans with suppliers must obtain prior approval from the minister.

In practice, it is still found that the implementation of regional autonomy is not following regional autonomy. Because regions are competing to find revenue for their regions, many permits are issued without following environmental protection and optimization of resource utilization. Charges imposed on permit applicants are often unfounded. Individuals also take advantage of permits to be traded. Whoever is closest to the giver of permission, is the first to get permission. This is one of the factors of overlapping mining areas. Coal mining business activities are always related to their habitat environments, such as soil, water, and plants. Therefore, one of the fundamental factors that cannot be avoided when exploiting the coal mine is environmental degradation. Management of mining resources that are not guided by ecological principles can cause great environmental damage. Coal mining activities must be accompanied by good environmental management, which must lead to ensuring environmental preservation, as referred to in Article 1 point 2 of Law Number 32 of 2009 concerning Environmental Protection and Management. With the emphasis on protection efforts, in addition to the word environmental management, Law Number 32 of 2009 pays serious attention to regulatory rules aimed at providing guarantees for the realization of sustainable development and ensuring that the environment can be protected from businesses or activities that cause damage and environmental pollution. However, there are many disasters because of the exploitation of coal mining business activities on a large scale by business actors for purely economic purposes to seek maximum profit without paying attention to forest, environmental, and socio-cultural sustainability. This happens inseparable from the issuance of permits by authorized officials to coal mining business actors, so easily that it has led to the rise of coal mining permit mafias who play with irresponsible officials. The granting of the authority to grant IUPs to local governments without the readiness of a clear framework of reference for a clear national mining policy strategy can lead to increasingly uncontrolled mining management and exploitation in the regions. Concerning several shortcomings of the Coal and Mineral (*Minerba*) Law, it is deemed urgent to revise this Law so that there is a clear and measurable direction, policy, and strategy for the national mining sector (Juaningsih, 2020). The utilization of coal resources is very important as a tool that supports the economy and sustainable development both regionally and on a national scale. However, in practice there are still many conflicts between investors and the people, making the main problem that must be solved, in addition to the regional authority being taken over by the center, it creates its problem regarding mining supervision. That the existence of mining is in regional areas and supervision is in the center, this inequality has led to mal-administration at the licensing level, this opportunity is used by rogue elements related to smuggling of the online system permits to the center, and the Coal and Mineral (*Minerba*) sector of the Provincial ESDM Office is difficult to monitor because the entrepreneur without notifying and there is already a permit on the Coal and Mineral (*Minerba*) One Data Indonesia (MODI) system. According to Article 104 paragraph (3) of Law Number 4 of 2009, which regulates the prohibition of processing and refining mining products that do not have an IUP, IPR, or IUPK. This means that those who can carry out processing and refining are IUP and IUPK holders (Salim, 2004). It is different from the previous system, which is the contract system. Where the government cannot unilaterally cancel all contracts made between the government and contractors or other parties. Considering that the system currently being implemented is an administrative licensing system, then for IPR, IUP, and also IUPK holders who commit violations can be subject to sanctions in the form of administrative sanctions. The imposition of administrative sanctions is also applied if there is a violation of the provisions for processing and refining in the country.

The existence of Law Number 4 of 2009 concerning Mineral and Coal Mining that now has been changed to Law Number 3 of 2020 concerning Coal and Mineral (*Minerba*) has an impact on providing protection, but on the other hand, it causes losses to the community. Where the Production Operation activities have carried out processing and purification. The holders of IUP and IUPK are obliged to guarantee the application of environmental quality standards and standards following the characteristics of a region. The holders of IUP and IUPK are also obliged to preserve the function and carrying capacity of the water resources concerned by the provisions of laws and regulations. Article 103 of the Coal and Mineral (*Minerba*) Law stipulates that holders of IUP and IUPK Production Operations are required to process and purify mining products domestically. In this case, the holder may cooperate with business entities, cooperatives, or individuals who have obtained an IUP or IUPK for processing and purification issued by the Minister, governor, regent/mayor under their respective authorities.This problem is what urges the author to study it further in a research with the main problem as follows:

1. What are the current Weaknesses that arise in the regulation of natural resource management in the mineral and coal mining sector to provide added value for national and regional economic growth?
2. How is the reconstruction of natural resource management regulations in the mineral and coal mining sector to provide added value for national and regional economic growth based on the value of justice?

Method of Research

The research paradigm used in this dissertation is the Constructivism Paradigm, which is a theoretical approach to communication. The research conducted by the author is more aimed at the legal approach and the case approach. The research will be conducted using sociological or empirical legal research methods (Amiruddin & Zainal,2004). The empirical juridical method in this study reviews and sees and analyzes the problems that become the object of research (Pratama, 2020), which is the political reconstruction of natural resource management laws in the coal mining sector to provide added value for national economic growth based on the value of justice.

Research Result and Discussion

1. **The Current Weakness That Arise in The Regulation of Natural Resource Management in The Mineral and Coal Mining Sector to Provide Added value for National and Regional Economic Growth**

Coal mining businesses and activity in Indonesia become an

important public discussion when various problems arise, especially those related to environmental damage, threats to human safety, and public welfare. The demand and supply mechanism for coal makes coal extraction for export become a fast and inexpensive way to increase revenue. This is suspected to be one of the causes of the massive destructive power of coal mining businesses and/or activities. On the other hand, the issue of effectiveness in policies and the application of environmental regulation instruments as well as the supervision that controls the rate of damage is considered no longer comparable to the pace of the economic engine of the use of natural resources on this one.

Currently, the implementation of policies and instruments for environmental protection and management in businesses and/or activities still relies on the results of the Environmental Impact Analysis (*Amdal*) or Environmental Management Efforts/Environmental Monitoring Efforts (UKL/UPL). Depending on the scale of the environmental impact caused, then becomes the basis for the issuance of Environmental Permits, by the Minister, Governor, or Regent/Mayor according to their authority. This is because policies and other important regulatory instruments at the planning stage are still not fully enforced.

The absence of standard criteria for soil damage in other parts has caused many mining practices to be not carried out right according to the rules of environmental protection and management. This vacancy causes regulations regarding the procedures for stripping, managing stripped land, and even reclamation formats as an effort to restore environmental functions to be the burden of Environmental Permits.

Realizing this dilemmatic condition, in the process of forming a Government Regulation derived from Law Number 32 of 2009, the Ministry of Environment (at that time) took the initiative to encourage the completion of 2 (two) RPPs for Ecosystem Protection, namely the RPP on Protection and Management of Peat Ecosystems (later designated as PP 71/2014) and the RPP on Protection and Management of Karst Ecosystems (which until now have not been established as PP).

The implementation of Law Number 32 of 2009 must be recognized that the formation of government regulations derived from Law 32 of 2009 is still faced with various problems. One of the biggest is the tug of war between the economy and the environment. If the scenario for the formation of the derivative RPP runs smoothly, it can be expected that various problems that arise in the coal mining business and/or activities can be addressed as well as possible. Planning for the utilization of natural resources of coal will be carried out by taking into account the highest added value economically while ensuring that the extraction policy minimizes social and ecological impacts. The application of science, knowledge, and technology contained in the environmental protection and management plan is a prerequisite for obtaining the highest added value, including ensuring the safety and welfare of the people as well as the sustainability of the natural service system (Chandra, 2021).

In the aspect of control, the availability of a complete instrument followed by the application of a combination of instruments for prevention, mitigation, and restoration of environmental functions is necessary to ensure that the peak burden of this control element is not borne only by one or two instruments. The effectiveness of controlling these various instruments must also be strengthened by a system for monitoring environmental quality and monitoring the compliance of business actors and/or activities as well as competent and consistent law enforcement.

The goal of development is to at least improve people's welfare. Except for the mining sector, the amount of investment is not commensurate with the problems caused, ranging from environmental, welfare, socio-cultural issues to human rights violations. The number of problems that emerged later, could not be separated from the state administrators who prioritized statistical figures to pursue the achievement of macroeconomic growth. Breaking the signs of justice and the principles of good governance. Not surprisingly, participation is often simplified to the extent of approval in the land compensation process. It was also simplified with representatives of parties who do not necessarily represent the people concerned.

Law Number 23 of 2014 concerning Regional Government changes the authority in managing natural resources to become the authority of the provincial government. This is different from Law Number 32 of 2004 concerning regional governments which give a greater portion of authority to regional governments in managing natural resources in their territories, causing overlaps in terms of authority.

In Article 8 Paragraph (1) letter b and letter c of Law Number 4 of 2009 it is stated that the authority of district/city governments in the management of mineral and coal mining, which is: granting Mining Business Permits (IUP) and People's Mining Permits (IPR)), in fostering, resolving community conflicts and supervising Mining Businesses and Mining Businesses for production operations whose activities are located in regencies/municipalities and/or sea areas up to 4 (four) miles, so there is no longer any authority for districts/cities to issue permits in the mining business. This not only creates legal uncertainty but also ambiguity.

In addition, in the category of legal services related to licensing, especially regarding the issue of overlapping coal mining permits issued by regional heads, which cause the increasing number of permits to make several regional heads suspects of corruption/bribery in licensing cases. With the extent of permits issued, there is a lack of supervision over coal mining business activities, this causes the increase of the amount of damage in forests and the environment which is causing the forests to become bald and mud floods that damage residents' crops and harm the economy and health of the surrounding community. the right to normal and healthy life is deprived of it because it is felt that there is no justice between businessmen, officials, and the local community.

In the perspective of Regional Autonomy, the implementation of good governance is very important to realize an effective, efficient, independent, and free local government of corruption, collusion, and nepotism (KKN). This is also supported by the enactment of Law Number 32 of 2004, the latest is Law Number 23 of 2014 concerning Regional Government. Therefore, when viewed from the principles of good governance (Widodo,2018) in managing strategic coal mining natural resources in Indonesia, the principles of transparency, accountability, participation, and justice/law have not been applied properly. Based on this principle, the granting of mining permits should be followed by openness in the form of easy access to information for the public on the process of granting mining permits and

also in seeing the impact of granting these permits. In the aspect of internal control within the government, it is not running effectively, so that many areas have overlapping mining areas between one mining permit and another mining permit or with other forest and land-based business permits. Therefore, external supervision is needed as well as coordination and supervision carried out by external institutions such as in the form of coordination and supervision (*korsup*) facilitated by the Corruption Eradication Commission for licensing in the mining sector (Mundzir,2018). The category of legal services discussed is related to licensing, especially regarding the issue of overlapping coal mining permits issued by regional heads. This can be seen from two aspects, namely the aspect of public information and the aspect of internal control.

In addition, there is no mining data that is easily accessible and monitored by the community. The absence of transparency regarding mining business licensing data not only makes legal services in the licensing sector experience uncertainty but also becomes a source of land tenure conflicts. For companies that want to invest in mining, they need accurate data regarding the location of potential mining areas to ensure that no other permit has been granted on it. For the community, the disclosure of mining information guarantees their right to be able to participate and avoid the impacts of mining that can affect their lives.

The licensing stage also raises land disputes. In some cases, the government suddenly claims that the lands inhabited by the community are government lands (HGU, TNI/Polri, Jawatan, etc.), or become protected forest areas, nature reserves, to National Parks. Land disputes involving companies and companies can also occur. There is no transparent process in granting permits and unilateral, accompanied by incomplete data, permits granted overlap with the concessions of other mining companies, and of course with protected and conservation forest areas.

In the category of community legal culture, the discussion relates to the role of the community in supervising mining activities is important. In analyzing and evaluating this matter, it is seen from three aspects, namely aspects of public understanding, public information, and law enforcement, and aspects of community participation. But although The Coal and Mineral (*Minerba*) Law regulates many things regarding the rights and participation of the community in the mining sector these are not yet widely known by the people living around the mining area (Rahmawan, 2020). This happened because the socialization activities that had been carried out so far are not well targeted to raise public awareness about the advantages and disadvantages of having mining into their lives. This eventually led to a lot of community rejection of mining activities carried out in their area

2. Reconstruction of Natural Resource Management Regulation in The Mineral and Coal Mining Sector to Provide Added value for National and Regional Economic Growth Based on The Value of Justice

Minerals and coal located within the territory of the State of the Republic of Indonesia are non-renewable natural resources and wealth as gifts from God Almighty, which have an important role and fulfill the needs of many people therefore mineral and coal are controlled by the State to support sustainable national development to realize absorbing the widest possible Indonesian workforce, facilitating, protecting, and empowering cooperatives and micro, small and medium enterprises, improving the investment ecosystem, and accelerating national strategic projects.

Mineral and coal mining business activities have an important role related to the convenience, protection, and empowerment of cooperatives and micro, small and medium enterprises, improvement of the investment ecosystem, and acceleration of national strategic projects, including increased protection and welfare.

In Indonesia itself, to develop and protect mining and mineral business activities, legislation is formed to regulate it. Regulations regarding mineral and coal mining are currently regulated in Law Number 3 of 2020 which is an amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (Coal and Mineral (*Minerba*)) in the implementation of mineral and coal mining, management, and management, and licensing authority Regarding the control of mineral and coal, where the functions of policy, regulation, administration, management, and supervision are carried out by the central government.

In Law Number 3 of 2020 Related to Article 102, Article 103, and Article 104 of the Coal and Mineral (*Minerba*) Law, these are interrelated and complementary provisions, so these provisions have been locked down including all nickel and bauxite that must be managed and purified domestically. However, the Minister of Energy and Mineral Resources Regulation No. 5 of 2017 shows the impression, breaks, and provides opportunities for Nickel with the content of < 1.7% and Bauxite at 42% which is excluded. Thus, Article 10 paragraph (2), and Article 10 paragraph (3) of this Regulation of the Minister of Energy and Mineral Resources contradicts Article 102 and Article 103 of the Coal and Mineral (*Minerba*) Law which regulates overall Mineral and Coal Resources without exception.

Provisions for the next 5 years after the Regulation of the Minister of Energy and Mineral Resources, indicate the granting of concessions and privileges to the holders of nickel Production Operation IUP, nickel Production Operation IUPK, Production Operation IUP specifically for nickel processing and/or refining, and other parties conducting processing and/or refining. This is also contrary to the principle of legal certainty, including what is constitutionally guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which stipulates: "Everyone has the right to ... fair legal certainty" ...". With the essence of legal certainty being placed as a constitutional right, everyone has several meanings, namely: it is a protection for everyone from all arbitrariness from the authorities; the form of limitation of power to prevent arbitrary actions of the rulers; everyone understands what his rights and obligations are, gives a prediction of the next action.

In this regard, the Coal and Mineral (*Minerba*) Law has ordered that the provisions of Article 102, Article 103 paragraph (2), and Article 104 paragraph (1) continue to carry out domestic processing and refining. With the eyes of fair legal certainty, these provisions are aimed at the right of the people to obtain prosperity or welfare from the natural wealth of this nation and even legislators can predict the state income received with the provisions made at that time. However, the existence of Article 10 paragraph (2) and Article 10 paragraph (3) of the Minister of Energy and Mineral Resources No. 5 of 2017 is against the principle of

legal certainty.

Therefore, based on the description above, the reconstruction as intended by the author is as follows :

a. Article 102 paragraph (1) needs to be reconstructed into *"IUP or IUPK holders at the stage of Production Operation activities are obligated to increase the added value of Minerals in Mining Business activities through: a. Processing and Purification for metal mineral mining commodities; b. Processing for non-metal mineral mining commodities; and/or c. Processing for rock mining commodities".*
b. Article 102 paragraph (2) needs to be reconstructed into *"The holder of an IUP or IUPK at the stage of Production Operation activities may undertake the Development and/or Utilization of Coal".*
c. Article 102 paragraph (3)) needs to be reconstructed into *"The increase in the added value of Minerals through Processing and/or Purification activities as referred to in paragraph (1) must meet the minimum limits for Processing and/or Purification, taking into account, among other things: a. increase in economic value; and/or b. market needs".*
d. Article 102 paragraph (4)) needs to be reconstructed into *"Further provisions regarding the minimum limit for Processing and/or Purification shall be regulated by or based on a Government Regulation"*
e. Article 103 paragraph (2) needs to be reconstructed into *"In the event that the IUP or IUPK holder at the Production Operation activity stage has carried out Processing and/or Purification as referred to in paragraph (1), the Government guarantees the continuity of the utilization of the Processing and/or Purification results."* This change can cause the policy of the regulation that requires domestic processing and refining in its implementation to be very beneficial and will cause a multiflyer-effect from the economic side, including increasing state revenues and increasing employment opportunities in the domestic smelter industry.
f. Article 104 paragraph (1)) needs to be reconstructed into *"IUP or IUPK holders at the Production Operation activity stage as referred to in Article 103 can carry out Processing and/or Purification themselves in an integrated manner or cooperate with: a. holders of IUP or other IUPK at the stage of Production Operation activities that have integrated Processing and/or Purification facilities; or b. other parties conducting Processing and/or Purification business activities that are not integrated with Mining activities whose licenses are issued based on the provisions of laws and regulations in the industrial sector. "* This change is made with the aim that the mining activities carried out by Production Operation IUP holders can sell abroad without going through domestic refining activities.
g. Article 170A of Law 3 of 2020 needs to be reconstructed into *"(1) Holders of KK, Production Operation IUP, or metal Mineral Production Operation IUPK who: a. has carried out Processing and Purification activities; b. in the process of developing Processing and/or Purification facilities; and/or c. has entered into Processing and/or Purification cooperation with the holder of Production Operation IUP, other Production Operation IUPK, or Production Operation IUP specifically for Processing and Purification or other parties conducting Processing and/or Purification activities, may sell certain unrefined metal Mineral products certain amount abroad within a maximum period of 3 (three) years since this Law comes into force."*

Conclusion

1. Weaknesses that arise in the regulation of natural resource management in the coal mining sector to provide added value for national economic growth are related to institutions and apparatus, legal services, where the only authorized permit-giving apparatus are the Governor and the Central Government. It is conceivable that the Governor, who is in the province, must grant permits to remote regencies and villages that are very far away. This of course will cause problems in the field and weaknesses in terms of legal culture, which is still not a structured pattern in making various policies and issuing permits in community participation. This eventually led to the community's rejection of mining activities carried out in their area. Weaknesses arising from the various problems mentioned above, what is certain is the occurrence of environmental damage and environmental pollution. In addition, there have been massive irregularities in state finances carried out by local government officials (this is proven by the regent's appointment as a suspect in a corruption case). The environmental damage has indeed been felt massively, so it is necessary to reorganize the granting of mining permits. There is also a need for clear law enforcement on the implementation of mining activities so that various policies can be implemented effectively.
2. Reconstruction of regulations on natural resource management in the coal mining sector to provide added value for national economic growth based on the value of justice, namely that the Coal and Mineral (*Minerba*) Law has ordered that the provisions of Article 102, Article 103 paragraph (2) and Article 104 paragraph (1) to continue to carry out processing and refining in the country. With the eyes of fair legal certainty, the provisions are aimed at the right of the people to obtain prosperity or welfare from the natural wealth of this nation and even legislators can predict the state income received with the provisions made at that time, then there is a contradiction with the provisions of Article 170A of Law 3 of 2020: *"(1) Holders of KK, Production Operation IUP, or metal Mineral Production Operation IUPK who: a. has carried out Processing and Purification activities; b. in the process of developing Processing and/or Purification facilities; and/or c. has entered into Processing and/or Purification cooperation with the holder of Production Operation IUP, other Production Operation IUPK, or Production Operation IUP specifically for Processing and Purification or other parties conducting Processing and/or Purification activities, may sell certain unrefined metal Mineral products certain amount abroad within a maximum period of 3 (three) years since this Law comes into force."*

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