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## COAL MINING INVESTMENT OPPORTUNITIES IN INDONESIA ON GOVERNMENT REGULATION NUMBER 3 OF THE YEAR 2020 CONCERNING MINERAL AND COAL MINING

Andy S Batu Bara<sup>1</sup>, Amiludin<sup>2</sup>, Muhammad Asmawi<sup>3</sup>, and Edi Sofwan<sup>4</sup>

<sup>1,2</sup> Universitas Muhammadiyah Tangerang

Jl. Perintis Kemerdekaan No 1/33 Cikokol Babakan Kota Tangerang

<sup>3</sup>Universitas Banten Jaya

Jl. Ciwaru II No. 73 Kota Serang-Banten

<sup>4</sup>Universitas Pamulang

Jl. Surya Kencana No. 1 Pamulang - Tangerang Selatan

\* Correspondence email: andy\_batubara@yahoo.com.sg

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**ABSTRACT** The coal mining industry still has an important role in supporting the APBD (Regional Development and Expenditure Budget), and the State Expenditure Development Budget, especially for potential areas that still have large coal reserves such as in East Kalimantan, South Sumatra, Kalimantan South, and Central Kalimantan, but in the existing regulations there are still overlapping regulations, specifically the Mineral and Coal Mining Law, namely; Law Number. 3 of 2020 with government regulations Number 23 of 2010. For this reason, the Central and Regional Governments, as well as Legislative institutions, must have a clear commitment to support so that both domestic and foreign investors are interested in investing in coal mining in Indonesia, as part of the regulator's function to provide legal certainty, in addition to the authority of the Head of Regions are too quick to issue mining operating permits at the Mining Business Permit level, exceeding the Ministry of Energy and Mineral Resources' target to offset the policy of limiting prices for Domestic Market Obligations. Ideally, with the issuance of the Mineral and Coal Mining Law and the regulations under it, they must support each other, so that later it will lead to and provide convenience in licensing and its benefits for the nation, state and society can be felt, especially for local communities around the mine site and local government revenues.

**KEYWORDS:** Coal Mining, Mineral and Mining Law, Legal certainty, Investment

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### INTRODUCTION

Coal has been at the center of Indonesia's energy policy since the late 1970s.(Arif, 2014) Although Indonesia's coal reserves are not the largest in the world, the amount of coal reserves is relatively significant compared to other fossil precursor resources. Total coal reserves are 22.6 billion tonnes or 2.2% of total global reserves. (Andriani, 2016) Driven by the abundance of coal reserves, the government has set a policy to increase the use of coal as a power plant as stated in various National Energy Policy documents issued since the 1980s. (Arif, 2014) In the 2014 National Energy Policy, coal is targeted to contribute 30% of the total

national primary energy mix by 2025 where the total energy supply is estimated to reach 400 million tons of oil equivalent (TOE). (Ruslan, 2021) Not only for electricity, but the government also plans to use coal as a substitute for oil and LPG for transportation and cooking. (Kurniawati, 2017)

On the other hand, Indonesia's electricity consumption has increased by about 26% in the last 4 (four) years, from 812 kWh per capita in 2014 to 1,021 kWh per capita in 2017. (Rosadi & Amar, 2019) Electricity, Indonesia is very dependent on fossil power plants. (Kumara, 2010) More than 88% of the electricity generated, comes from fossil fuels, about 60% from coal, 22% from natural gas, and 6% from oil, and only 12% is generated from renewable energy. (Afin & Kiono, 2021) Based on the latest State Electricity Company Electricity Supply Business Plan, published in February 2019, the need for coal for power generation is estimated to increase from 90 million tons currently to 150-160 million in 2028-2030. (Miladyah, 2020) This forecast has changed dramatically in the last 4 (four) years and the latest figure is 25% lower than the 2015-2024 Electricity Supply Business Plan. (Haryadi & Suciyantri, 2018)

Most of Indonesia's coal sources and production are spread over 4 (four) of 34 provinces, namely: East Kalimantan, Central Sumatra and South Sumatra, South Kalimantan, and Central Kalimantan. The Kutai, Tarakan, and Barito coal basins located in East Kalimantan have medium quality coal (calorific value between 5,100-6,100 kcal/kg) while the Central Sumatra and The South have low-quality coal reserves (calorific value < 5,100 kcal) (Adiatma et al., 2018). (Nasrudin, 2013)

Coal has a substantial contribution to the local economy in the four provinces. In East Kalimantan, the coal sector contributed about 35% of the province's GDP (Gross Domestic Product) in 2017. (Retnoningsih & Nurhayati, 2019) Adding oil and gas to this amount accounts for almost half of the province's GDP. This indicates that East Kalimantan is very dependent on fossil fuels. The same condition can be found in the province of South Kalimantan. Although South Kalimantan has a lower GDP than East Kalimantan, the contribution of South Kalimantan's coal sector is quite high, ranging from 19-26% of the province's GDP in the last 5 (five) years. Given the large share of GDP from the coal sector as well as the gap between the development of the coal sector and other sectors in the two provinces, the coal transition could have a greater impact on the economic, social, and political environment. (Aswandi & Kuncoro, 2002)

## METHODOLOGY

The nature of the research in this paper is descriptive which is carried out with a normative juridical approach.(Irianto & Shidarta, 2011) The types and sources of data used are data secondary. Data collection is carried out mainly by document study techniques (library research and online research) by taking an inventory of the required secondary data, both in the form of primary, secondary, and tertiary legal materials, then conducting historical searches and synchronization between these legal materials.

The primary legal materials used consist of statutory regulations, especially those relating to the preparation of laws and regulations and the role of law in economic development. Secondary legal materials that will be used include scientific works, research results, and literature related to the substance of the research. Tertiary legal materials, namely materials that support primary and secondary legal material information, including data from newspapers, journals, dictionaries, encyclopedias.(Ishaq, 2017)

## RESULTS AND DISCUSSION

On May 12, 2020, the Central Representative Council Republic of Indonesia has just passed the new Mineral and Coal (Mineral and Coal Mining Law Law), namely Government Regulation Number 3 of the Year 2020, concerning Government Regulation Number 4 of the Year 2009. (Risano, 2020). Association of Indonesian Coal Entrepreneurs is of the opinion that the issuance of this new law will provide legal certainty and investment for business actors, but also strictly regulates the company's obligations in carrying out post-reclamation reclamation. mines as well as financial and fiscal obligations to the state. So that the state will get more revenue contributions from business actors and the arrangement of environmental obligations and reclamation and community development will also be better.(Amaly, 2016)

There are concerns from mining businesses that the issuance of this new law will have a negative impact on the extension of the contract of work and Coal Mining Concession Work Agreement). In fact, by issuing this law, it is precisely to guarantee the rights of business actors to extend their contracts/agreements. The right to obtain the extension is also the spirit of Article 169 paragraphs (a) and (b) Government Regulation Number 4 of the Year 2009. (Hayati, 2015)Based on the law, the government issued Government Regulation Number 77 of 2014 which also guarantees the extension of Coal Mining Concession Work Agreement holders which will be converted into IUPK OP (Special Mining Business Permit) after the contract/agreement period ends. (Pratama & Budiharto, 2016) Therefore, the mining law is more of a “confirmation” from the legislators that the extension of the CoW

(Coal Mining Concession Work Agreement) is guaranteed to address the concerns of several community groups.

At least for "existing investors" business actors who are currently carrying out their activities, both Coal Mining Concession Work Agreement and Special Mining Business License holders will invest to continue their long-term investment plans within the corridors of the applicable laws and regulations.(Awaliyah, 2016)

The increasing demand for coal has consequences in the context of rising global temperatures that cause climate change and local air pollution. Indonesia's emissions from the energy sector are estimated to increase 3 (three) times from 168 million tons of CO<sub>2</sub>e to 498 tons of CO<sub>2</sub>e in by 2030. In 2014, the carbon intensity for power generation was 738 grCO<sub>2</sub>/kWh, significantly higher than the world average of 567 gCO<sub>2</sub>/kWh (ADB, 2018). (Haryadi & Suciyanti, 2018)

In addition, Indonesia has committed to reducing 29% of GHG emissions from BAU by 2030, 11% of these emissions come from the energy sector, according to the Indonesia National Determined Contribution. Regardless of the external costs of coal-fired power plants, coal is a cheap source of energy to support Indonesia's economic development. (Munir, 2019) Environmental damage and health problems (especially respiratory diseases) are two significant external costs. However, in its development, this coal investment puts pressure on Indonesia to transition to the sector from a high-carbon fossil-based system to a low-carbon renewable energy system. On the other hand, the cost of renewable energy has decreased at an unprecedented rate. When renewable energy reaches grid parity, the use of coal energy will decrease significantly.(Kholiq, 2015)

Judging from the non-tax state revenue sector which is commonly called PNB (Non-Tax State Revenue), the Ministry of Energy and Mineral Resources (ESDM) noted that the achievement of Non-Tax State Revenue from the energy and coal mineral mining (Mineral and Coal Mining Law) sector reached Rp. 172.9 trillion in 2019. The 2019 PNB achievement is 96% of the 2019 APBN target of Rp 214.3 trillion. From this achievement, the mineral and coal sector mineral and coal (Mineral and Coal Mining Law) contributed Rp 44.8 trillion in PNB. In 2020, the government targets PNB of Rp 181.7 trillion from the oil and gas sector of Rp 127.3 trillion. Then the mineral and coal sector of Rp 44.4 trillion. In 2020, it is estimated that Non-Tax State Revenue (PNB) from the mineral and coal sector will decrease by 20% compared to 2019 which reached Rp 44.8 trillion, while the largest PNB producer contribution is coal producers.(Sukmalalana & Ridwan, 2020) From the figures above, it can be concluded that coal mining investment in particular still contributes greatly to the state and the welfare of society. On the other hand, the Corruption Eradication Commission (KPK)

noted that since the legal supervision of Mineral and Coal Mining Law was echoed. Reception Non-Tax State (PNBP) from the Mineral and Coal (Mineral and Coal Mining Law) sector increased from Rp 5 trillion as of March 2013 to Rp 11.3 trillion as of March 2014. The Corruption Eradication Commission (KPK) itself noted that the potential state financial losses from the mineral and coal sector due to regulatory incompatibility reached Rp 35.6 trillion 1.79 million US dollars. (*Yuntho et al., 2014*)

Problems faced and may hinder coal mining investment include:

1. Mining regulations/regulations are still overlapping.

There are regulations under it such as PP and Permen. For example PP No. 23 of 2010, concerning the Implementation of Mineral and Coal Mining Business Activities, where later the extension of the PKP2B (Coal Mining Concession Work Agreement) holder will be given in the form of a Special Mining Business License (IUPK), which explains that the production period of a mining company is 20 (twenty) years and can be extended. (Budairi, 2019) Meanwhile, based on Article 75 paragraph 3 of Law (UU) Number 4 of 2009 concerning Mineral and Coal, ex-PKP2B (Coal Mining Concession Work Agreement) mining areas must be returned to the state, then the area is prioritized to be given to SOEs. Meanwhile, based on Article 75 paragraph 4 of the Law, it is also regulated that private business entities can only obtain IUPK (Special Mining Business License) through auction. However, in Article 30 of the PKP2B (Coal Mining Concession Work Agreement) which existed before the Mineral and Coal Mining Law Law, the PKP2B (Coal Mining Concession Work Agreement) holder has the right to obtain a 20-year extension without an auction. Article 169 of the Mineral and Coal Mining Law Law also guarantees that the PKP2B (Coal Mining Concession Work Agreement) that existed before the enactment of the Mineral and Coal Mining Law Law will remain in effect until the expiration of the contract, including its extension. (Hayati, 2015b) And in article 169 A of Government Regulation Number 3 of the Year 2020 paragraph (1) explains: KK and PKP2B (Coal Mining Concession Work Agreement) as referred to in Article 169 are given a guarantee of extension to IUPK (Special Mining Business License) as Continuation of Contract/Agreement Operations after fulfilling the requirements with the following conditions:

- a. Contracts/agreements that have not yet received an extension are guaranteed to get 2 (two) extensions in the form of IUPK (Special Mining Business License) as Continuation of Operations Contracts/Agreements

each for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the KK or PKP2B (Coal Mining Concession Work Agreement) by considering efforts to increase state revenues.

- b. contracts/agreements that have obtained the first extension are guaranteed to be given a second extension in the form of an IUPK (Special Mining Business License) as a Continuation of Contract/Agreement Operations for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the first extension of KK or PKP2B (Coal Mining Concession Work Agreement) by considering efforts to increase state revenues. (Mundzir *et al.*, 2020). This lack of clarity regarding the extension of the exploitation period clearly confuses business actors in coal mining, especially if it is associated with legal certainty, this will provide multiple interpretations.
2. Transition of the coal sector is difficult because it is closely related to politics. The Indonesian coal industry has close ties and links to the political system at the regional and national levels. The entire supply chain from industry is a major source of revenue at the provincial and local levels and contributes to local development. Several Indonesian political elites also have close ties to the coal mining business in this country. Regional elites have benefited even more since the decentralization of mining permits, which resulted in an increase in the number of mining permits granted between 2001 and 2008. In 2001, the number of mining permits issued by the central government was around 750 and the number increased significantly to over 8,000 by the end of 2008. During 2010 – 2014, nearly 3,000 mining permits were issued, bringing the total to 10,900. Of this huge amount, 40% are IUPs (Mining Business Permits) for coal with a total area of 16.2 million ha. Actual production in the area continues to increase, reaching 557 million tons in 2018. (Retnoningsih & Nurhayati, 2019) In the same year, the government even allowed miners to increase coal production to more than 100 million tons exceeding the target of the Ministry of Energy and Mineral Resources to offset the policy of limiting the price of Domestic Market Obligations.
3. Regulating the role of the Government as a regulatory agency for state assets. In 2019, the Ministry of Energy and Mineral Resources (ESDM) recorded that the realization of Non-Tax State Revenue (PNBP) from the energy and mining sectors

reached Rp. 217.5 trillion. This figure accounts for 53.4% of national PNBP. And if detailed, PNBP deposits from the oil and gas sub-sector reached Rp 163.4 trillion. From the mineral and coal sectors of Rp 50 trillion, for the new and renewable energy sector, energy conservation was recorded at Rp 2.3 trillion and others Rp 1.8 trillion. This achievement increased compared to the 2018 State Budget of 181% of Rp 120.5 trillion. This figure illustrates that the role of the mining industry still has a significant role. So seen from the economics of law, of course, this sector must have clear support both in terms of regulation, at the center and at the local level, local government revenues including elements of the Muspida, community/customary leaders, NGOs (Social Society Institutions) so that the investment climate is getting better well in this mining sector. (Sukmalalana & Ridwan, 2020)

4. Equal distribution of business opportunities in the regions.

The area where the mining location carries out production/exploitation can certainly feel the benefits. The benefits of mining in everyday life can be easily observed, such as in copper mineral products which are used as the basic material for conducting electricity (conductors), coal products which are used as fuel for power plants, aluminum for the packaging industry, and nickel which is used as a raw material. rechargeable battery. (Apriyanto & Harini, 2013; Simanjuntak, 2015) This includes being able to improve the economic level of the community due to the high absorption of human resources in the sector. One way is through the CSR (Corporate Social Responsibility) program, mining companies have an obligation to improve the welfare of the community. company in a village or sub-district is very meaningful for improving the welfare of the community in the environment, starting from the education, economic, socio-cultural, agriculture, livestock sectors. Electricity enters the villages, distribution of food needs such as side dishes can be supplied from local villages, which of course follows the health standards or needs of the company. (Harjanto, 2013; Subhan & Deviyanti, 2017) The world of education, starting with the construction of PAUD (Early Childhood Education), Kindergarten (Kindergarten), elementary and junior high schools, is very supportive of the underdevelopment of children aged and young (coral cadets). Assistance programs for Honorary Teachers, assistance with educational equipment, uniforms are all facts that can be enjoyed by the community. In the socio-cultural field, starting from the construction of houses of worship such as prayer rooms, churches, and even religious places of worship,

mass circumcision, honorarium assistance for religious leaders, contributions during major religious celebrations, all of these have a positive impact on the existence of a mining company. In the field of agriculture or animal husbandry, companies can bring in experts to provide counseling on how to farm in a modern way, selecting superior seeds for a plant, including choosing superior seeds for livestock according to the ecosystem in the area.

## CONCLUSION

Based on the understanding and analysis of the problem formulation in the previous description, the authors conclude that the mining sector still has an important role in maintaining the stability of the country's foreign exchange and medium and long-term development. Because when viewed from the potential for coal reserves to be exploited, it is around 22.6 billion tons with a fairly long period of time.

Furthermore, to provide a better attraction for foreign investors to come to Indonesia, the making and time of enforcement of legal products in the form of Laws, Presidential Regulations, Ministerial Regulations, and so on should provide good opportunities for investors, not overlapping and even hindering the arrival of investors.

The role of the Government as regulator of state assets must be visible and transparent, so that the Central Government or Regional Governments have good coordination in regulating and managing state revenues, specifically state finances in the physical distribution of regional development, including infrastructure and regional budgets as well as in the closest line. from the mine site.

This mining investment opportunity will also be reflected in business opportunities in the community, such as: in Gorontalo the gold mine is not closed because the business actors are people who prioritize labor intensive, so the role of the Regional Mining Service in collaboration with elements of the Regional Environmental Service must actively provide education, counseling and socialization on how to exploit gold in the right way by paying attention to K3 (Occupational Health and Safety), and how to maintain AMDAL (Environmental Impact Analysis) on the water, soil and air environment.

The role of CSR (Corporate Social Responsibility) which has been budgeted for by a mining company every year, it must be felt by the benefits and usefulness for the community in "ring" 1 (one), where the mining company exploits/produces. Because this is a tangible form of the benefits of a mining company in the area, ranging from



education, social culture, agriculture, fisheries or animal husbandry where all of them are used for:

- a. Increasing the human resource capacity of the community;
- b. Improving the welfare of the surrounding community;
- c. Improving the sustainability of both the environment or physical as well as social and cultural surrounding the company;
- d. The construction and maintenance of public facilities and community facilities of a social nature that are useful for the community, especially those around the company's location.

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