

THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

Implementation of Mining Business License and Intergenerational Justice in Indonesia

Dr. Ismail Rumadan

Researcher, Center of Research and Development Law and Justice Supreme Court of the
Republic of Indonesia, Supreme Court of the Republic of Indonesia, Indonesia

Abstract:

Regulation on Mining Business license the revision of Law no. 4 of 2009 concerning Mining still sets aside many counter-productive problems to realize a comfortable, productive, sustainable, and just living space for the community as a form of the goal of utilizing natural resources for the greatest prosperity of the people as stipulated in Article 33 paragraph (3) of the 1945 Constitution. However, the implementation of Business license Indonesia still shows an exploitative paradigm, in which the granting of Mining Business licenses tends to facilitate all requirements for investors or mining companies. Business licenses granted to investors or mining companies are more likely to ignore the requirements of environmental protection and protection of community rights and empowerment of local communities. They tend to control an extensive mining area for a very long period. So, this tends to limit the opportunity for the next generation to enjoy the natural mineral and coal resources in their area.

Keywords: Mining business license, mineral, coal

1. Introduction

Indonesia is one of the countries with the most significant potential reserves of natural mineral resources globally.¹ The potential of natural mineral resources includes coal,² tin³, nickel⁴, gold⁵ and copper,⁶ which scattered throughout the territory of the Republic of Indonesia. The state constitutionally controls the potential of mineral and coal natural resources. The aspect of control by the state means the authority to regulate, manage and supervise the management or exploitation of minerals so that they can provide real added value to national economic growth and sustainable regional development, as well as the obligation to use them as much as possible for the prosperity of the people.⁷

However, it can be understood that the mining of natural mineral and coal resources has the potential not only to spur economic development and create new wealth but also to have great destructive power to environmental functions and can change the order and dynamics of social life⁸. Therefore, one of the essential points in the context of the use of natural resources for the benefit of the national economy must be managed based on the principles of economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity.⁹

¹FifiJunita, the foreign mining investment regime in Indonesia: regulatory risk under resource nationalism policy and how international investment treaties provide protection, Journal of Energy & Natural Resources Law, 2015 Vol 33, No 3, 241–265, pp. 241. In Ismail Rumadan, Legal Framework for Mining Management in Indonesia, in the Indonesian Book the Mining Law, Deepublish, Yogyakarta, 2020, p.1

² Based on the latest data from the Geological Agency of the Ministry of Energy and Mineral Resources (ESDM), Indonesia's coal reserves reached 26.2 billion tons. Kalimantan is listed as the region with the largest coal reserves, 14.9 billion tons, followed by Sumatra (11.2 billion) and Sulawesi (0.12 billion). In Kalimantan, the largest reserves are in East Kalimantan with 7.5 billion tons, South Kalimantan with 4.2 billion tons and Central Kalimantan with 2.1 billion tons. Meanwhile, South Sumatra is the region that has the largest reserves in Sumatra, with reserves of 8.9 billion tons, followed by Jambi with 1.1 billion tons. See more, <https://www.esdm.go.id/id/media-center/arsip-berita/cadangan-batubara-indonesia-sebesar-26-miliar-ton>, Accessed on July 10, 2020.

³ Indonesia's total tin resources in the form of ores amounted to 3,483,785,508 tons and 1,062,903 tons of metal, while Indonesia's tin reserves amounted to 1,592,208,743 tons 572,349 tons of metal. Indonesia's tin reserves are the second largest in the world after China. Center for Data and Information Technology Ministry of Energy and Mineral Resources, 2016, p.1

⁴ Based on the US Geological Survey data, Indonesia's nickel reserves reach 21 million metric tons, making Indonesia a significant world nickel, followed by Australia with nickel reserves reaching 19 million metric tons. See, <https://kemenperin.go.id/artikel/21222/Cadangan-Nikel-Melimpah-Indonesia-Dinilai-Bakal-Perkasa-di-Era-Kendaraan-Listrik>. Accessed on July 10, 2020.

⁵ The gold reserves throughout Indonesia are 3,000 tons and the resources are 6,000 tons. Two mines proven to have great potential are Grasberg in Papua, which PT Freeport Indonesia manages and West Sumbawa, by PT Newmont Nusa Tenggara. https://microsite.tempo.co/prasetiya_mulya/index-01.html. Accessed July 10, 2020.

⁶ Based on data from the Geological Agency of the Ministry of Energy and Mineral Resources, it shows that Indonesia has copper resources of 4,925 million tons of ore with copper reserves of 4,161 million tons of ore. Currently, copper is the third most crucial metal in terms of use after iron-steel and aluminum. See <https://djawaneews.com/bisnis/penghasil-tembaga/>. Accessed on July 10, 2020.

⁷ See, Article 33 of the 1945 Constitution of the Republic of Indonesia

⁸ Affolder, why study large projects? Environmental Regulation's Neglected Frontier. U.B.C. Law Review, 44(3): 2011, p.521–555

⁹ See Article 33, paragraph (4) of the 1945 Constitution.

This aspect of intergenerational justice in utilizing natural mineral and coal resources has become a significant challenge for the Indonesian government from time to time. Utilization and management of mineral mining resources, which must be carried out by considering aspects of justice and sustainability and being environmentally sound, then becomes a problem when these aspects are ignored at the level of implementation¹⁰ The issuance of a Mining Business license which is the main instrument for every business entity or individual who wants to invest in the mining sector in Indonesia is not so tightly regulated that Mining companies tend not to obey and comply with the requirements and obligations that must be met. In the implementation of investment in Mining.

The regulation on Mining Business licenses the mining law is more inclined to maximize the exploitation of natural mineral and coal resources for economic purposes while ignoring environmental aspects and sustainable development, which are benchmarks for the realization of intergenerational justice. In mining activities.

This means that the utilization of natural mineral resources and coal must have endeavored not to damage the human environment, implement a comprehensive policy, and consider future generations' needs. However, in reality, it is undeniable that the utilization of mineral and coal natural resources in meeting the needs of the national economy still leaves various problems that are counter-productive to realize a comfortable, productive, sustainable, and just living space.

Therefore, it is crucial to study in this paper the extent to which the Mining Business license is implemented as regulated in Law no. By 2020, can Mining comply with the concept of intergenerational justice in the implementation of Mining Business license in Indonesia?

2. Literature Review

2.1. The Concept of Intergenerational Justice in the Natural Resources

The concept of intergenerational equity is commonly found in discussions related to sustainable development, which is defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.¹¹ In the context of mineral resources utilization, intergenerational justice means that the current generation controls the existing natural resources as a deposit for future generations to use. This situation demands the current generation's responsibility to maintain the legacy (inheritance) as we enjoy various rights to use this earth from previous generations. The main elements of this principle are:¹²

- People from one generation to another are partners;
- The current generation does not impose the burden of development externalities on the next generation;
- Each generation inherits a wealth of natural resources and habitat quality that is more or less physically, ecologically, socially, and economically equivalent.

The criterion of assessing natural resources, especially non-renewable ones, is the criterion of efficiency, but it is also necessary to prioritize equity (equity) aspects between communities and intergeneration distribution. Because in consideration of fairness, the use of natural resources by the current generation must pay attention to the interests of future generations. Future generations also need natural resources. Would it be unfair if future generations run out of natural resources due to the current generation's excessive use of natural resources?¹³ Therefore, in the context of understanding intergenerational justice in the implementation of mining business licenses, it can encourage sustainable development if it 'increases long-term benefits (environmental, social, and/or economic) that are equal to or exceed the value that existed; before exploitation.'¹⁴ Thus, although the mining industry as a non-renewable natural resource is inherently an unsustainable activity, the industry can improve social conditions, quality of life and promote further economic development.

Intergenerational justice is nothing but an effort to synchronize, integrate, and give equal weight to the three main aspects of development: economic, socio-cultural, and environmental. This idea is that economic development, socio-cultural and environmental aspects should be viewed as closely related to each other, so that the elements of this interrelated unit should not be separated or contradicted one another.

According to A. Sonny Keraf,¹⁵ in order to achieve the three aspects of sustainable development above, three main principles are needed in their implementation, namely: The principle of democracy, as the most basic moral principle which ensures that development is carried out as a manifestation of the standard, will of the people for the common interest of all people. So, development is not carried out based on the will of the government or political parties for the benefit of the regime or party in power. The main agenda of development is the people's agenda for the sake of the people.

So, the government must ensure that the implementation of mining investment is genuinely for the common interest of all the people. Then, there is a moral and political imperative for community participation in mining

¹⁰Sekitar 70 persen kerusakan lingkungan di Indonesia

disebabkan oleh operasi pertambangan. Industri ekstraktif ini dengan mudah melabrak dan mengkaliber bagai aturan yang bertentangan dengan kepentingannya, termasuk Undang-Undang Nomor 32 Tahun 2009 tentang Pengelolaan dan Perlindungan Lingkungan Hidup (PPLH). ElokDyahMesswati, '70 Persen Kerusakan Lingkungan Akibat Operasi Tambang', baca: <https://regional.kompas.com/read/2012/09/28/17313375/70.Persen.Kerusakan.Lingkungan.akibat.Operasi.Tambang>.

¹¹World Commission on Environment and Development. (1988). Hari Depan Kita Bersama. PT Gramedia, Jakarta, p. 59.

¹²Nugroho, S.S. (2019). Hukum Sumber Daya Alam Perspektif Keadilan Inter-AntarGenerasi., Penerbit Tujuh. Cet. 1, p. 107.

¹³Rocmani, (2015). Pemanfaatan Sumber Daya Alam Dalam Perspektif Keadilan Dan HAM Dalam Era Otonomi Daerah, Prosiding Seminar Nasional Membangun Politik Hukum Sumber Daya Alam Berbasis Cita Hukum Indonesia, Undip Semarang, Thafa Media, Yogyakarta. p. 141

¹⁴ibid

¹⁵Keraf, A.S. (2006). Etika Lingkungan. Buku Kompas, Jakarta. p. 168

implementation policies as well as access to information and public accountability regarding the mining implementation agenda.

Then the principle of justice wants to ensure that all people and community groups have equal opportunities to participate in the decision-making process in developing a mining area and enjoying the mining products in their area. This principle of justice requires equal treatment for all people and community groups in implementing mining investments, mainly participating in implementing and enjoying the results of the natural resources found in their territory.

Furthermore, the concept of intergenerational justice in natural resources must adhere to the sustainable principle. This principle requires the existence of a mining business implementation plan in a long-term visionary dimension to see the positive and negative impacts of mining in all its aspects, not only in the short-term dimension. The principle of sustainability requires applying the principle of clean production by conducting a strict selection of production, technology, and management that minimizes environmental damage and waste in every mining activity.

The principle of sustainability in the end strongly supports the principle of intergenerational justice because the principle of fairness and the principle of sustainability requires all parties to be careful and wise in every mining business policy so that the short-term benefits derived from mining business activities do not cause and be paid dearly. Long-term losses that are not commensurate with the short-term benefits. The long-term losses are economic-material-physical and non-material, mental, spiritual, health, socio-cultural, and value and quality of human life.

2.2. Mining License

License is an administrative, legal instrument used by the government as the authorized party to regulate and manage activities in natural resources and minerals. As stated by SjahranBasah that a license is a one-sided state administrative, legal act which multiplies the regulations in concrete terms based on the requirements and procedures as stipulated by the provisions of the legislation.¹⁶ The license elements include juridical instruments, powers granted by laws and regulations, government organs, concrete events, procedures and requirements.

In the opinion of SjahranBasah, the first element is a license as a juridical instrument what is meant is that a license is a juridical instrument in the form of a constitutive decision and is used by the government to deal with or determine concrete events, as a license stipulation is made according to the provisions and requirements that apply to the stipulation. In general, License, in general, must meet the procedures and requirements that the government has determined as the licensee. Requirements are generally determined unilaterally by the government or statutory regulations. According to Soehino¹⁷, the conditions in the license are constitutive and conditional. Constitutive means that a specific action or behavior must be (first) determined. Conditional means that a new assessment exists and can be seen and assessed after the required action or behavior occurs.

In the context of granting license for exploitation of natural resources, for example, it means that the government takes steps and actions to regulate, manage, and at the same time supervise. In addition to statutory regulations, licensing regimes are an important factor in natural resource governance in Indonesia, particularly in Mining. This implies two things. First, licenses are the main instrument for supervising and controlling coal mining activities. Second, licenses are instruments used as a means of distributing land for Mining. Errors in granting the license will impact supervision and control and land distribution for the parties (community and mining companies).¹⁸

Technically, a mining business license is mentioned as a license to carry out a mining business. This mining business license can be granted to business entities, cooperatives and individuals who meet several requirements. For foreign investors who want to operate in Indonesia, the door is open to investing after the company first forms a company that is an Indonesian legal entity. Mining Business licenses are divided into two according to the mining stage, namely exportation and exploitation/production.

The term of the exploration mining business license for metallic minerals is a maximum of 8 years. If a mining company wants to enter a period of exploitation/production, it must again apply for a Production Operation license. According to the location of the area, the Production Operation license application can be submitted to the Minister, Governor, Mayor/Regent. The Production Operation license is granted for a maximum period of 20 years and can be extended 2 (two) times for ten years each. There are seven licenses regulated in the Mining Law. The license is Mining Business license, Exploration Production Operation license, Production Operation license, People's Mining license, Special Mining Business license, Exploration Special Mining Business license, and Production Operation Special Mining Business license.

There have been dynamics in the last ten years at the level of implementation of the authority to grant mining licenses. Law Number 4 of 2009 concerning Mining divides the authority to grant the license in three levels of government, namely district/city (if the mining location is in a district/city), province (if cross-regency/city), and central (if cross-district/city), and central (if cross-district/city) Province). This authority was later amended through Law No. 23 of 2014 concerning Regional Government, where the authority to issue the license is only with the provincial government. If the mining location is cross-provincial, the central government has the authority to issue it.

¹⁶SjahranBasah, in Susmiyati, HR. (2017) Benefit Value of Coal Mining in Forest of Natural Resource Law Perspective, Graduate Program Hasanuddin University Makassar. p. 102-104

¹⁷ Ibid.

¹⁸Mohamad Nasir, Implications of Legal Uncertainty in Licensing Governance of the Coal Mining Sector on Environmental Damage and Pollution: Case Study of East Kalimantan, Auriga Nusantara, 2020, p. 3

In 2020, through Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning, the government decided to centralize the authority to issue mining license only to the central government, such as the authority to issue license, rights and obligations of the license holder. However, based on Article 173C of the Mining Law 2020, the provincial government can still exercise its authority for a maximum of six months from the promulgation of the Law or until the implementing regulations are issued. However, this authority is limited to extending licenses, not issuing new licenses.¹⁹

Referring to the dynamics of the change in authority to grant the license, especially before the Mining Law 2020 was enacted, various Mining licensing authorities created problems in legal uncertainty triggered by three things: ambiguity, inconsistency, and incomplete regulations. Two factors cause this, first, the linkages between mining and many sectors, such as the environment, spatial planning, forestry, and several other sectors. This includes tiered regulation of each sector (central, provincial and district/city), including the mining sector before the 2020 Mining Act. The Fraser Institute, an independent research and education organization based in Canada in its annual survey of mining companies for three years, has consistently demonstrated a high degree of uncertainty in interpreting and enforcing existing regulations by the Indonesian government. The agency refers to the existence of duplication of regulations and inconsistencies.²⁰

Several other studies have also shown similar findings. Fünfgeld²¹; O'Callaghan and Vivoda²² also noted are several regulatory inconsistencies between central, provincial, and local governments and between various agencies at these levels of government. Devi and Prayogo²³ Argue that legal uncertainty arises because of the absence of implementing regulations or confusing technical directions due to lack of clarity, while legal ambiguity is caused by 'competition' between regulations. In addition, there are different interpretations given by various parties, which can create significant problems for investors.

The second factor is the political and economic interests behind the preparation of the regulation. In this case, pressure groups with political or economic agendas influence lawmakers in drafting coal mining regulations. The effort or process to intervene in such policies or regulations is known as regulatory capture.²⁴ The space to influence the legislative process can be traced from the point of view of legal politics, where Law is perceived as a political product that regards regulation as a formalization or crystallization of interacting and competing for political will.²⁵

The conditions mentioned above illustrate that the aspects of the authority given to the government in issuing Mining Business licenses are still overlapping and have conditions with various practical interests, especially the interests of business actors who have access to the government so that considerations are made for the interests of the community in the utilization of natural mineral resources and coal and long-term interests seem neglected.

3. Mining Business License Implementation and Inter-Generational Justice

The beginning of the change in the mining law which replaced the Contract of Work regime with the licensing regime, which then resulted in the delegation of authority to grant Mining Business license from the central government to local governments as regulated in Government Regulation Number 75 of 2001 concerning Delegation of Mining Authority to Local Governments is the implementing regulation of Law No. 22 of 1999 concerning Regional Government, this is where the mining licensing boom occurs.²⁶ Based on data in 2001, mining licenses recorded by the central government are known to be only 750 licenses, but with the transfer of authority to grant the license in the era of decentralization, the number of mineral and coal licenses grew uncontrollably than 8,000 in 2008.²⁷

The figure mentioned above increased more significantly to more than 10,900 in the 2010 to 2014 range. Of this figure, 40% of were coal Mining Business license with a total area of 16.2 million hectares²⁸. Meanwhile, the area for the Coal Mining Concession Work Agreements is around 1.95 million hectares.²⁹ Then after the issuance of the Mining Law Number 4 of 2009, the Director-General of Mining responded by issuing two Circulars for a moratorium on the issuance of a new Mining Business Licence, namely:

- Circulars for a moratorium Number 03/2009 dated January 30, 2009, concerning Mining Licensing Before issuing Government Regulation as the Implementation of Law Number 4/2009. These Circulars for a moratorium are

¹⁹ Ibid

²⁰ See three surveys conducted by the Fraser Institute in succession (2017, 2018, and 2019). Jackson, T. and Green, K. P., Fraser Institute Annual Survey of Mining Companies 2016, 2017; Stedman, A. and Green, K. P., Fraser Institute Annual Survey of Mining Companies 2017, 2018; Stedman, A. and Green, K. P., Fraser Institute Annual Survey of Mining Companies 2018, 2019. Dalam, Mohamad Nasir, Implications of Legal Uncertainty in Licensing Governance ..., Ibid, p. 4

²¹ Fünfgeld, A. (2016). The State of Coal Mining in East Kalimantan: Towards a Political Ecology of Local Stateness. ASEAS: Österreichische Zeitschrift für Südostasienwissenschaften, 9. 147–162. <https://doi.org/10.14764/10.ASEAS-2016.1-9>.

²² Vlado, V and Callaghan, T. O. (2017). Regimes, Mining Investment and Regulatory Risk in the Asia-Pacific Region: Comparative Evaluation and Policy Implications in O'Callaghan, T. and Graetz, G. (eds), Mining in the Asia-Pacific, The Political Economy of the Asia Pacific. Springer International Publishing.

²³ Devi, B. and Prayogo, D. (2013). Mining and Development in Indonesia: An Overview of the Regulatory Framework and Policies. International Mining for Development Centre. Perth: International Mining for Development Centre, University of Western Australia.

²⁴ Dal Bó, E. (2006). Regulatory Capture: A Review'. Oxford Review of Economic Policy. 22(2). Summer. Pages 203–225. <https://doi.org/10.1093/oxrep/grj013>, p. 203–225.

²⁵ Mahfud MD, M., Politik Hukum di Indonesia, 2nd edition, Pustaka LP3ES Indonesia, Jakarta, 1998; Borges, M. R. (2017). Regulation and Regulatory Capture. XIV International Colloquium-Papers. National Funds through FCT. p. 1–18

²⁶ Budiono, A. and Rizky A. W. (2017). Penataan Izin Batubara dalam Koordinasi dan Supervisi KPK. Publish What You Pay Indonesia, p. 3.

²⁷ Ibid

²⁸ Directorate General of Mineral and Coal, 2013

²⁹ Directorate General of Planning, 2014

addressed to all governors and regents/mayors to temporarily stop the issuance of new Mining Business license until the issuance of a Government Regulation (Point 2 of the Circular);

- Circulars for a moratorium Number 08/2012 concerning Temporary Suspension of Issuance of New Mining Licence until the Determination of Mining Areas. The Circular confirms the moratorium was issued three years from the Circulars for a moratorium. No. 03/2009 to be exact, on March 6, 2012, and is addressed to governors and regents/mayors throughout Indonesia. With the issuance of the Circulars for a moratorium, governors and regents/mayors throughout Indonesia are asked to stop the issuance of a new Mining Business license until a Mining Areas is stipulated.

The two Circulars for a moratorium are guidelines for the Provincial and Regency/City Mining Services throughout Indonesia to implement a moratorium (temporary suspension) of Mining Business Licence. For regional heads who violate, there will be strict sanctions imposed, even can be punished. Meanwhile, for companies that violate, all business licenses will be revoked by the Ministry of Energy and Mineral Resources.

According to Sawitri (2013), unfortunately, the moratorium in practice in some areas is often 'tricked' by the date of the mining license application being backdated, as if the Mining Business license application was submitted before 2009. This is so that the application for a mining license can be processed immediately without must go through an auction.

Status	Coal Mining Business License (December 2014)		Coal Mining Business License (April 2017)	
	Exploration	Production Operation	Exploration	Production Operation
CNC	1.391	1.028	899	1.300
Non-CNC	991	382	535	236
Sub Total	2.382	1.410	1.434	1/536
Total	3.792		2.97	

Table 1:Recapitulation of CnC and Non-CnC Coal Mining Business license Indonesia, 2014 and 2017

Source: Directorate General of Mineral and Coal, 2014 & 2017

Mining business licenses were then regulated in Law No. 4 of 2009 concerning Mining as an amendment to Law No. 11 of 1967 concerning Basic Mining Provisions. This Law regulates several main things regarding Mining Business Licence, namely;

- Article 36 paragraph (1) stipulates that, 'Mining Business licenseconsists of two stages: (a) Exploration Mining Business license includes general investigation, exploration, and feasibility study activities; (b) Production Operation Mining license covers construction, mining, processing and refining activities, as well as transportation and sales.'
- Article 37 stipulates related to the authorities in granting Mining Business license, which reads, 'Mining Business license is granted by: (a) the regent/mayor if the Mining Business license area is in one regency/municipal area; (b) the governor if the Mining Business license area has located across regencies/municipalities within 1 (one) province after obtaining a recommendation from the local regent/mayor by the provisions of the legislation; and (c) the Minister if the Mining Business license area is in a cross-provincial area after obtaining a recommendation from the local governor and regent/mayor by the provisions of the legislation'.
- Article 38 stipulates that Mining Business licenses are granted to business entities, cooperatives and individuals.
- Article 40 paragraph (1) reads that 'Mining Business license as referred to in Article 36 paragraph (1) is granted for 1 (one) type of coal mineral. 'Mining Business license.'
- Concerning the Mining Business license period, Exploration Mining Business license is regulated in Article 42, namely, (a) Exploration Mining Business license for metal mineral mining with a maximum period of 8 (eight) years; (b) Exploration Mining Business license for mining of non-metallic minerals with a period of 3 (three) years and certain types of non-metallic minerals with a maximum period of 7 (seven) years; (c) Exploration Mining Business license for rock mining with a maximum period of 3 (three) years; (d) Exploration Mining Business licensefor coal mining with a maximum period of 7 (seven) years. The period of Mining Business licenseProduction Operation is regulated in Article 47, namely, (a) Mining Business licenseProduction Operation for metal mineral mining with a maximum period of 20 (twenty) years and can be extended 2 (two) times for 10 (ten) years each; (b) Production Operation Mining Business licensefor non-metal mineral mining with a maximum period of 10 (ten) years and can be extended 2 (two) times for 5 (five) years each; (c) Production Operation Mining Business license for mining of certain types of non-metallic minerals with a maximum period of 20 (twenty) years and can be extended 2 (two) times for 10 (ten) years each; (d) Production Operation Mining Business license for rock mining with a maximum period of 5 (five) years and can be extended 2 (two) times for 5 (five) years each; (e) Production Operation Mining Business license for coal mining with a maximum period of 20 (twenty) years and can be extended 2 (two) times for 10 (ten) years each.
- Concerning the People's Mining license is a license to carry out mining business in a people's mining area with a limited area and investment.
- Article 68 paragraph (1) states, 'The area of 1 (one) the People's Mining license that can be granted to (a) individuals is at most 1 (one) hectare; (b) community groups of at most 5 (five) hectares; and/or (c) cooperatives of a maximum of 10 (ten) hectares'. The People's Mining license period is 5 (five) years and can be extended.

- Special Mining Business license is a license to carry out mining business in a particular mining business license area. Article 74 paragraph (1) reads, 'The Minister grants special Mining Business license with due regard to regional interests.' Special Mining Business license is granted for 1 (one) type of metal mineral or coal in 1 (one) Special Mining Business License Area.

In implementing these various provisions as regulated above, according to several experts, Law Number 4 of 2009 is oriented towards increasing production and conservation of mineral and coal resources. According to Maria S.W. Sumardjono, that Law no. 4/2009 is oriented towards increasing production, which is an effort to produce as much mineral and coal as possible, which can be seen from several aspects, namely; First, the placement of minerals and coal as one of the components driving economic growth. This is stated in the section 'Considering letter b of Law no. 4/2009,' which became his philosophical foundation which reads: 'minerals and coal are resources to contribute to national economic growth and sustainable regional development.' Second, Article 18 of Law no. 4/2009 determines the optimization of the results of mineral and coal resources that can be produced. This implies that the number of products produced must be optimal, i.e., as high as possible to contribute to economic growth.³⁰

Orientation of Law no. 4/2009 apart from increasing production, it is also oriented towards conservation. According to Maria S.W. Sumardjono et al., conservation means the sustainability of mineral and coal resources themselves and their utilization. The sustainability of mineral and coal resources means that their availability is guaranteed by not overexploiting them. Efforts to maintain its sustainability are carried out, including the principle of balance, sustainability, and environmental insight in the management of mineral and coal resources, as stated in Article 2 of Law no. 4/2009. Second, one of the objectives of mineral and coal management is to ensure the benefits of mining in a sustainable and environmentally sound manner, as stipulated in Article 3 of Law no. 4 in 2009.

Although the mining business license has been regulated through Law no. 4 of 2009, but in its implementation, this Law often contradicts Law no. 32 of 2009 concerning Environmental Management and Protection. Mining operations cause around 70 percent of environmental damage in Indonesia. This extractive industry easily violates and circumvents various regulations that conflict with its interests, including Law No. 32 of 2009. Nearly 34 percent of Indonesia's land area has been handed over to corporations through 10,235 Mining licenses. That does not include license for large-scale plantations, oil and gas working areas, geothermal, and mining excavations C. Coastal and marine areas are also not spared from exploitation, more than 16 points of reclamation, mining of sand, iron sand, and being a dumping ground for PT. Newmont and PT. Freeport Indonesia.³¹ Likewise, at least 3.97 million hectares of protected forest areas are threatened by mining, including biodiversity and severely damaged watersheds, which have increased in the last ten years. Of the approximately 4,000 watersheds in Indonesia, 108 watersheds were severely damaged.³²

Environmental damage also occurs in the implementation of mining licenses in the coal sector. At least 12 coal mining business licenses are indicated to be included in conservation and protected forest areas for which there is no clear follow-up. Data from the Genesis Foundation and the National Mining Advocacy Network shows that only eight coal mining companies have fulfilled their obligation to pay reclamation and post-mining guarantees in the Bengkulu area. The rest of many mining companies did not pay reclamation and post-mining guarantees. This obligation has been explicitly regulated in Law No. 4 of 2009 concerning Minerals and Coal.³³

In the course of Law no. 4 of 2009 was then revised and stipulated as Law no. 3 of 2020 concerning Amendments to Law no. 4 of 2009 concerning Minerals and Coal. The amendment to this Law was to increase investment in Mining, but this change later created controversy among the public because the change process was closed and swift and did not meet reasonable law formulation requirements. The new coal and minerals law is highly exploitative, depending on the dirty energy source of coal.

Researcher of the Institute For Development of Economics and Finance (INDEF), Abra El Talattov, said three crucial things would be affected by the ratification of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mining, namely from the economic and governance side, from the social side, and the environmental side.³⁴ The new Miner and Coal Law will degrade the objectives to be achieved from 3 significant aspects related to economic utilization, empowerment of community social life and environmental aspects, which are essential points in intergenerational justice in sustainable development.

The existence of the new Mining Law will instead bring about decentralization of authority both in terms of licensing and supervision. The authority previously owned by the regional government can benefit the community in the mining area. In Article 4 Paragraph (2) of Law Number 4 of 2009, which reads, 'The control of minerals and coal by the state as referred to in paragraph (1) is carried out by the Government and/or regional governments', amended in Article 4 paragraph (2) of Law Number 3 of 2020 becomes 'The State Control of Mineral and Coal as referred to in paragraph (1) is carried out by the Central Government by the provisions of this Law'.

The amendment to the new mineral and coal law also includes a new form of mining business license in the form of a Rock Mining license. Companies may even mine in rivers with a maximum area of 100 hectares. Some privileges are given to mining corporations, where land tenure rights are being extended, creating new problems, land banking. In

³⁰In Messwati, E.D. (2020). 70 Persen Kerusakan Lingkungan akibat Operasi Tambang 'see further in, <https://regional.kompas.com/read/2012/09/28/17313375/70.Persen.Kerusakan.Lingkungan.akibat.Operasi.Tambang>.

³¹Kustiadi, P.P. (2012). Media Communication and Outreach Jaringan Advokasi Tambang (Jatam). Jakarta.

³²Hendry, D. (2017). Kerusakan Lingkungan Akibat Tambang Batubara Terus Berlanjut. Apa Solusinya? <https://www.mongabay.co.id/2017/05/17/kerusakan-lingkungan-akibat-tambang-batubara-terus-berlanjut-apa-solusinya/>.

³³Ibid

³⁴Bangsa, R.P. Ini Dampak Krusial Undang-Undang Minerba baru, <https://www.gatra.com/detail/news/488066/ekonomi/ini-dampak-krusial-undang-undang-minerba-baru>, accessed on July 22, 2021

addition, companies holding Contracts of Work and Coal Mining Concession Work Agreements can automatically extend their operations for 2 x 10 years without going through the determination of the State Reserve Area, which is followed by the auction of the Special Mining Business Licence Area. Companies holding Special Mining Business Licences can also apply for mining support areas outside the company's concession itself.³⁵ The amendments to the new mining law have the potential to create intergenerational inequality because the granting of facilities to extend a mining business license has a very long-time limit.

Concerning the rights of the community to land and the environment that is used as a mining area, this Law seriously threatens the rights of the community when they speak out against mining activities that harm their rights, even though the community should have heard their rights when a mining company wants to implement in the area. The same threat also applies to communities in areas surrounding the mines, which are easily criminalized and punished, even under this Mining Law, and additional punishments can be imposed, namely confiscation of goods and paying compensation.³⁶

The reality of the regulation of Mining Business license in Law no. 3 of 2020 concerning Mining, it can be said that the hope to realize an intergenerational justice in the use of natural resources is undoubtedly impossible to materialize because the spirit of regulating Mining Business license in the revision of the Mineral and Coal Law is based on the spirit to exploit natural resources. Nature for the economic interests of the owners of capital, without heeding the aspects of sustainable development and intergenerational justice, including economic interests, aspects of community empowerment, and protection of environmental functions.³⁷

Amendments to the Mining Law, which regulates Mining Business license, should be in line with the long-term objectives of utilizing natural mineral and coal resources, including environmental sustainability, conservation of mineral resources, and preservation of the rights of local communities. It is not possible to compensate or correct for the financial benefits derived from mining investments. Therefore, there is no other way but to carry out mining investments by applying sustainable development principles that focus on the realization of intergenerational justice so that short-term goals in the form of financial benefits do not neglect the long-term interests of preserving environmental functions preserving the joints of life. Only then can the mandate of Article 3 paragraph (3) of the 1945 Constitution create the greatest prosperity of the people be realized.

The essence of sustainable development in the utilization of mineral and coal resources is to strive so that mineral and coal resources can provide optimal benefits for humans today without compromising the interests of future generations. This is what is said to be a form of fulfillment of intergenerational justice. Because considering that minerals and coal are non-renewable natural resources, the time available to achieve long-term goals for the benefit of the community is limited. Therefore, it is necessary to establish an intermediate goal that must be achieved during mineral and coal resources exploitation. These intermediate goals should be defined as sustainable human development goals that will be implemented in mineral and coal resource management policies.

The exploitation of natural mineral and coal resources must create the initial conditions and capabilities so that the community can continue development after the mineral resources have been exploited. Creating initial conditions and processes for sustainable community capacity building is what is meant as a process of social transformation. In other words, applying the principle of sustainable human development in the exploitation of natural mineral resources and coal is to create a process of sustainable social transformation.

The social transformation will be achieved if mining management policies can direct the investment process and mining activities can create short-term benefits for the community's ability as capital for the sustainable welfare of future generations. The essence of intergenerational justice in the implementation of Mining Business licenses is related to equity and sustainability aspects. The aspect of equity is the right to get equal opportunities in terms of financial income and in services in the community, for example, opportunities in education. In the context of intergenerational justice in the utilization of mineral and coal resources, equal opportunities for all people must be an aspect that needs to be considered. Meanwhile, the sustainability aspect is the continuity of fulfillment between generations. This means that meeting the needs of the present generation must not ignore the needs of future generations.

4. Conclusion

Based on the results of the study described above, it can be concluded that the implementation of Mining Business licenses in Indonesia still shows an exploitative paradigm, in which the granting of Mining Business licenses tends to facilitate all requirements for investors or mining companies. Business licenses granted to investors or mining companies are more likely to ignore the requirements of environmental protection and protection and empowerment of local communities and tend to control an extensive mining area for a very long period. So, this tends to limit the opportunity for

³⁵ Article 83 states that particular mining business licenses Production Operations, which are integrated with coal development and/or utilization activities, are given 30 years and guaranteed to extend ten years.

³⁶ Article 136 paragraph 2 stipulates a criminal sentence of 1 year and a fine of Rp. 100,000,000 for 'everyone' who interferes with mining business activities. The potential for criminalization is based on data from the Mining Advocacy Network (Jatam), which recorded that during 2014-2019 there were 71 cases involving the community, mining companies, and the government. Komnas HAM RI. (2020). See, Komnas HAM Urges Mining Conflict Resolution. (<https://www.komnasham.go.id/index.php/news/2020/1/7/1299/komnas-ham-Desak-penyelesaian-konflik-pertambangan.html>)

³⁷ The Mineral and Coal Law is one package of the legalization process with the Job Creation Law. It is related to environmental issues. Changes in the Job Creation Law that amend the provisions of the Environmental Protection and Management Law, especially regarding Amdal and environmental permits, are considered a weakness that threatens natural sustainability; moreover, environmental impact analysis is only for high-risk projects, while the basis for determining low or high-risk projects has not precise arrangement until now. There is also concern that this rule change can quickly issue an Amdal of low quality because publishing this Amdal is without public control. Community participation is the 'soul' in the issuance of Amdal. See the Institute for the Study and Advocacy of Judicial Independence, <https://leip.or.id/diskusi-publik-izin-lingkungan-hidup-uu-ciptaker/>. Access on July 22, 2021

the next generation to enjoy the natural mineral and coal resources in their area. Massive Mining Business license without being properly controlled has resulted in mining areas being foreign entities for the community and a source of social turmoil that has destructive power to the life structure of the community. Under these conditions, it is undoubtedly complicated to ensure intergenerational justice in implementing Mining Business licenses in Indonesia.

What needs to be conducted so that the implementation of the Mining Business license maintains intergenerational justice is the need to integrate the concepts and tools of environmental management and social development into the Mining legal framework, which provides strict requirements for every mining business permit issued by a mining company. Government. An analysis of environmental impacts should be a mandatory requirement for every mining company that obtains a mining business license. Then as much as possible, the community must be involved in every plan to implement a mining business license in their area.

5. References

- i. Affolder. (2011). Why study large projects? Environmental Regulation's Neglected Frontier. *U.B.C. Law Review*, 44(3).
- ii. Bangsa, R.P. (2020). Ini Dampak Krusial Undang-Undang Minerba baru, <https://www.gatra.com/detail/news/488066/ekonomi/ini-dampak-krusial-undang-undang-minerba-baru>
- iii. Budiono, A. and Rizky A. W. (2017). *Penataan Izin Batubara dalam Koordinasi dan Supervisi KPK*. Publish What You Pay Indonesia.
- iv. Borges, M. R. (2017). *Regulation and Regulatory Capture*. XIV International Colloquium-Papers. National Funds through FCT.
- v. Dal Bó, E. (2006). Regulatory Capture: A Review'. *Oxford Review of Economic Policy*. 22 (2). Summer. Pages 203–225. <https://doi.org/10.1093/oxrep/grj013>
- vi. Devi, B. and Prayogo, D. (2013). *Mining and Development in Indonesia: An Overview of the Regulatory Framework and Policies*. International Mining for Development Centre. Perth: International Mining for Development Centre, University of Western Australia.
- vii. Fifi Junita. (2015). The foreign mining investment regime in Indonesia: regulatory risk under resource nationalism policy and how international investment treaties provide protection. *Journal of Energy & Natural Resources Law*. 33:3, 241-265, DOI: 10.1080/02646811.2015.1057028.
- viii. Fünfgeld, A. (2016). The State of Coal Mining in East Kalimantan: Towards a Political Ecology of Local Stateness. *ASEAS: Österreichische Zeitschrift für Südostasienwissenschaften*, 9, 147–162. <https://doi.org/10.14764/10.ASEAS-2016.1-9>
- ix. Hendry, D. (2017). *Kerusakan Lingkungan Akibat Tambang Batubara Terus Berlanjut*. Apa Solusinya? <https://www.mongabay.co.id/2017/05/17/kerusakan-lingkungan-akibat-tambang-batubara-terus-berlanjut-apa-solusinya/>
- x. Jackson, T. and Green, K. P. (2016). *Survey of Mining Companies*, Fraser Institute Annual.
- xi. Kementerian Energi dan Sumber Daya Mineral (2018). Cadangan Batubara Indonesia Sebesar 26 Miliar Ton. <https://www.esdm.go.id/id/media-center/arsip-berita/cadangan-batubara-indonesia-sebesar-26-miliar-ton>.
- xii. Keraf, A.S. (2006). *Etika Lingkungan*. Buku Kompas, Jakarta.
- xiii. Komnas HAM. (2020). *Desak Penyelesaian Konflik Pertambangan*. (<https://www.komnasham.go.id/index.php/news/2020/1/7/1299/komnas-ham-desak-penyelesaian-konflik-pertambangan.html>)
- xiv. Kustiadi, P.P. (2012). *Media Communication and Outreach Jaringan Advokasi Tambang (Jatam)*. Jakarta. Lembaga Kajian dan Advokasi Independensi Peradilan. (2021). <https://leip.or.id/diskusi-publik-izin-lingkungan-hidup-uu-ciptaker/>.
- xv. Mahfud, MD. (1998). *Politik Hukum di Indonesia*, 2nd edition, Pustaka LP3ES Indonesia, Jakarta.
- xvi. Messwati, E.D. (2020). 70 Persen Kerusakan Lingkungan akibat Operasi Tambang'. <https://regional.kompas.com/read/2012/09/28/17313375/70.Persen.Kerusakan.Lingkungan.akibat.Operasi.Tambang>.
- xvii. Mohamad Nasir. (2020). *Implikasi Ketidakpastian Hukum Tata Kelola Perizinan Sektor Pertambangan Batubara terhadap Kerusakan dan Pencemaran Lingkungan Hidup: Studi Kasus Kalimantan Timur*. Auriga Nusantara. 2020.
- xviii. Nugroho, S.S. (2019). *Hukum Sumber Daya Alam Perspektif Keadilan Inter-Antar Generasi*, Penerbit Tujuh. Cet. 1.
- xix. Rocmani. (2015). *Pemanfaatan Sumber Daya Alam Dalam Perspektif Keadilan Dan HAM Dalam Era Otonomi Daerah*, Prosiding Seminar Nasional Membangun Politik Hukum Sumber Daya Alam Berbasis Cita Hukum Indonesia. Undip Semarang. Thafa Media. Yogyakarta.
- xx. Rumadan, I. (2020). *Kerangka Hukum Pengelolaan Pertambangan Mineral dan Batubara di Indonesia*. in Indonesia the Mining Law. Deepublish. Yogyakarta.
- xxi. Stedman, A. and Green, K. P. (2018). *Survey of Mining Companies 2018*. Fraser Institute Annual.

- xxii. Susmiyati, H.R. (2017). *Benefit Value of Coal Mining in Forest of Natural Resource Law Perspektif*. Program Pascasarjana Universitas Hasanuddin Makassar.
- xxiii. Vlado, V and Callaghan, T. O. (2017). *Regimes, Mining Investment and Regulatory Risk in the Asia-Pacific Region: Comparative Evaluation and Policy Implications* in O'Callaghan, T. and Graetz, G. (eds), *Mining in the Asia-Pacific, The Political Economy of the Asia Pacific*. Springer International Publishing.
- xxiv. World Commission on Environment and Development. (1988). *Hari Depan Kita Bersama*. PT Gramedia. Jakarta.
- xxv. 1945 Constitution of the Republic of Indonesia.
- xxvi. Law Number 4 of 2009 concerning Mineral and Coal Mining.
- xxvii. Law No. 3 of 2020 Amendment to Law No. 4. Year 2009 concerning Mineral and Coal Mining.