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Implications of Changing the Terminology of a Contract of Work to a Mining Business Permit for Mineral and Coal Mining

Achmad Beni Candra  

Advocate at Law Office A.B. Law & Partners

 alkhawarizmicandra@gmail.com

ABSTRACT

The existence of a paradigm that has changed from being young to investing has created various opinions on Law Number 3 of 2020 concerning Minerals and Coal. So, it is necessary to make a comprehensive study that examines the implications of changing the terminology of a

contract of work to a mining business permit (IUP). For this reason, researchers can formulate two problem formulations, first, how are the differences between contracts of work and mining business permits (IUP) in Indonesia. Second, what are the implications of changing the contract of work into a mining business permit (IUP) for mineral and coal mining in Indonesia. This research is normative juridical research using a statutory approach and a conceptual approach. The results show that the term contract of work has a long history with changing regulatory concepts, where in Law Number 3 of 2020 there is a cut in regional authority, as well as a change in the contract of work regime which was changed to a mining business permit regime. These changes also have implications for the economic, social, cultural, and environmental sectors. Therefore, the central government must be able to ensure that these changes are also able to have a positive impact on the welfare of the people in the region, both economic, social and cultural welfare in the region.

Keywords: *Terminology; Contract of Work; Mining license; Impact*

INTRODUCTION

The earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. That is the sound of Article 33 paragraph (3) of the 1945 Constitution which was ratified on Saturday, August 18, 1945. As the supreme law, the 1945 Constitution must be used as a guide in the administration of a country, not least in the administration and management of natural resources existing in Indonesia. The purpose of the formation of the law is to optimally protect the economic interests of the people and the strategic interests of the nation and be able to become a catalyst for the welfare of the people. As a country that is geographically located in the tropics and surrounded by many volcanoes, it is not wrong if then Indonesia has a lot of natural wealth, both on land and in the ocean. Therefore, if the abundant

natural wealth can be managed properly by the Government, then Indonesia can become one of the world's economic powers. Reflecting on Japan, which after its defeat in the second world war suffered many losses and severe environmental damage due to the atomic bombs dropped by the allies, has now transformed into one of the world's economic powers that are respected by various countries. It is not impossible if Indonesia is also capable and even has the potential to exceed what has been achieved by Japan at this time with the various advantages possessed by Indonesia.

In terms of energy resources, Indonesia has three types of fossil energy resources that can be utilized for national energy needs, namely oil, natural gas, and coal. Based on data released by the Central Statistics Agency (BPS) the quantity of fossil energy resource stocks owned by Indonesia at the end of 2014 and 2018 in terms of oil and coal resources that are classified as class A experienced an increase in-stock quantity. Meanwhile, class A natural gas resources decreased by 9.21 percent. This condition is also not only for class A resources, natural resources belonging to class B, namely resources that have the potential to be exploited commercially also experience a decrease in-stock quantity. Not only natural gas, but class B oil resources also experienced a decrease in stock, and only coal resources experienced an increase in stock for the B class. This can be seen in Table 1.

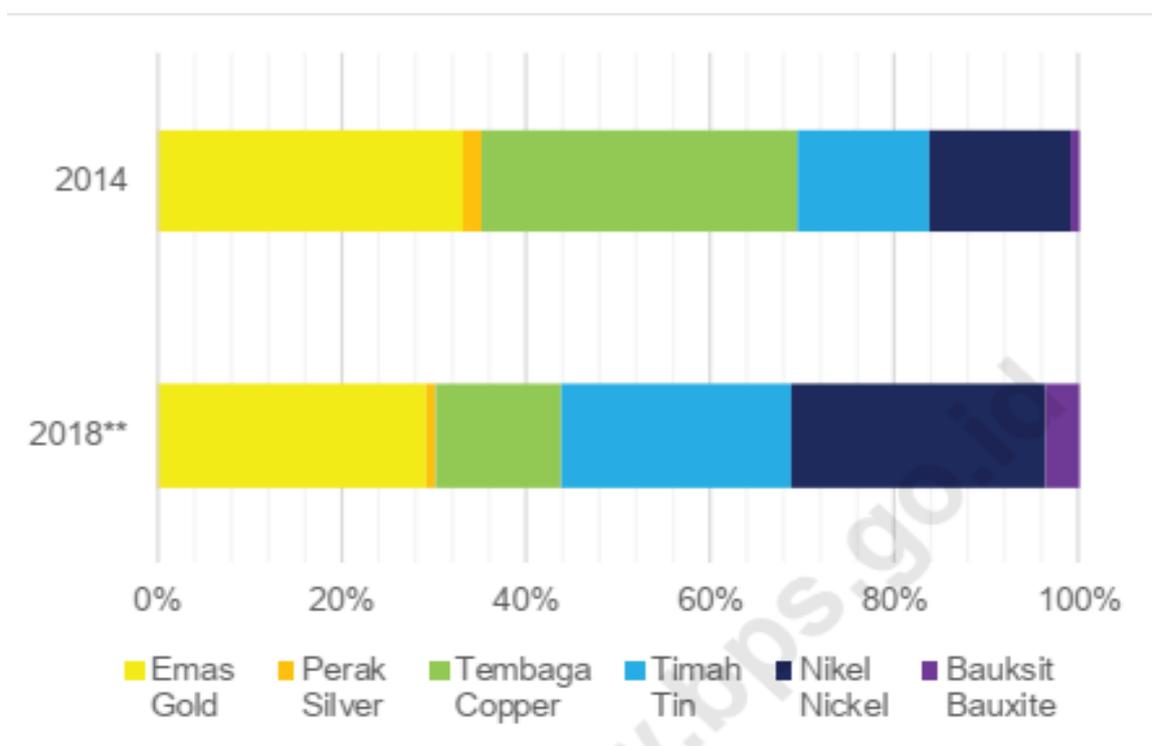
TABLE 1 Year-End Stock of Energy Resources in Indonesia by Class (physical unit), 2014 and 2018

| Jenis Sumber Daya Energi <i>Type of Energy Resources</i> | Kelas / Class | | | |
|---|---------------|---------|---------|---------|
| | A | | B | |
| | 2014 | 2018** | 2014 | 2018** |
| (1) | (2) | (3) | (4) | (5) |
| Minyak bumi (juta barrel) <i>Crude oil (thousand barrel)</i> | 7 375 | 7 512 | 140 182 | 138 729 |
| Gas alam (BSCF) <i>Natural gas (BSCF)</i> | 149 299 | 135 550 | 982 312 | 788 160 |
| Batubara (juta ton) <i>Coal (million ton)</i> | 32 385 | 39 891 | 124 797 | 151 399 |

Source: Central Bureau of Statistics (BPS)

From a monetary perspective, there have been significant changes to the composition of mineral and energy resource values between 2014-2018. In this case, coal resources have increased quite sharply. In 2014, coal resources had a monetary value of 38 percent of the total energy resources. But in 2018 the value was almost 60 percent. This condition can be seen in Table 2.

TABLE 2 Proportion of Monetary Value of Indonesian Mineral Assets, 2014 and 2018



Source: Badan Pusat Statistik (BPS)

This fact shows that the value of natural wealth owned by Indonesia is still large enough to be used as a catalyst for development. However, this can only be achieved if the management system is fully aimed at the interests of the nation and state. For this reason, it is necessary to have an optimal, effective and efficient management system so that it can encourage and support the development, as well as the independence of the development of an independent national industry based on Mineral resources and/or Coal energy. However, in its development, the existing

legal basis, namely Law Number 4 of 2009 concerning Mineral and Coal Mining and its implementing regulations, still cannot answer the problems and actual conditions in the implementation of the Mineral and Coal Mining business, including cross-sectoral problems between the Mining sector and the mining sector non-mining. In all, mining cities have made a substantial contribution to the development of the world economy through supplying minerals, but due to the intertwined social, economic, and environmental issues, they are faced with serious hindrances and challenges toward sustainable development.¹

Therefore, a new law was issued, namely Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. On this legal basis Mining Business is an activity within the framework of Mineral or Coal exploitation which includes the stages of general investigation, exploration, feasibility study, construction, mining, processing and or refining or development and/or utilization, transportation, and sales, as well as post-mining activities which are then contracted works are also regulated in the law. The Contract of Work or what is often abbreviated as KK is an agreement between the government and an Indonesian legal entity company that acts to carry out mineral mining business activities. In its implementation, the contract of work as stated in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining reaps many pros and cons.

Some people believe that the changes in Law Number 3 of 2020, might have liberalized Indonesia's economic wealth which should be used for the full interest of the nation and state to foreign parties. This of course would be contrary to Article 33 paragraph (1) of the 1945 Constitution which states that the national economy is structured as a joint effort based on the principle of kinship. This principle is a collective principle (togetherness) that can be interpreted in the present context, namely brotherhood, humanism, and humanity. This means that the economy is

¹ Jiaqi Guo Wenting Jiao, Xiaosen Zhang, Changhong Li, "Sustainable Transition of Mining Cities in China : Literature Review and Policy Analysis," *Resources Policy* xxx, no. xxxx (2020): xxx, <https://doi.org/https://doi.org/10.1016/j.resourpol.2020.101867>.

not seen as a form of liberal competition that is left to the Western-style market mechanism, but there are moral nuances and similarities in it. On the other hand, some parties argue that the changes that occur in Law Number 3 of 2020 will be able to accommodate the interests of the nation and state, especially in the management and utilization of mineral and coal natural resources. As Vale stated, "This mining project is important to the economy of the region due to its potential for income generation, job creation, and high iron ore production with environmentally friendly conditions compared to previous mining projects in the region."²

In the case of mineral and coal mining contracts of work where changes seem forced during the COVID-19 pandemic, various speculations have arisen. In Article 169A paragraph (1) Law Number 3 of 2020 concerning Minerals and Coal states that "KK and PKP2B as referred to in Article 169 are guaranteed an extension to IUPK 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 receive 2 (two) extensions in the form of IUPK as Continuation of Operations for each Contract/Agreement for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the KK or PKP2B by considering efforts to increase revenue country.
- b. Contracts/agreements that have obtained the first extension are guaranteed to be given a second extension in the form of an IUPK 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 taking into account efforts to increase state revenues.

The changing paradigm of youth investing which seems to weaken state sovereignty in the management of natural resources, especially on

² VALE, "Code of Ethical Conduct," accessed July 15, 2021, http://www.vale.com/SiteCollectionDocuments/CodigoEtica/assets/docs/EN_CodigoConductaEtica_VF.pdf.

mineral and coal resources, creates various views and opinions on Law Number 3 of 2020 concerning Mineral and Coal. Based on the above thoughts, it is necessary to make a comprehensive study that examines the implications of changing the terminology of a contract of work to a Mining Business Permit (IUP) in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. For this purpose, the researcher can formulate two problem formulations, first, what are the differences between a contract of work and a mining business permit (IUP) in Indonesia.

METHOD

This research is normative juridical research using a statutory approach and a conceptual approach.³ While the conceptual approach is carried out by examining all the views and doctrines that develop in the science of law, especially civil law so that researchers will be able to find ideas that give birth to legal definitions, legal concepts, and concepts. legal principles about mineral and coal mining contracts of work. By using this approach, in the end, the researcher can analyze the principle of the contract of work in the legislation (Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining), as well as being able to analyze the impact of the contract of work on mining. minerals and coal in Indonesia.

In this study, the primary legal material used is Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining and the Civil Code (KUH Perdata), along with its implementing regulations. While secondary legal materials are obtained from journals, books, jurisprudence (legal decisions), and articles related to mineral and coal mining contracts of work.

³ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revi (Jakarta: Penedamedia Group, 2005). p. 83.

The data collection method used in this study uses the method of documentation (documentary) (Burhan Bugin, 2001: 152). The documentation method is a data collection technique that is not directly shown to the research subject. This document is in the form of written legal materials and objects related to a particular activity/event. The documents used in this regulation are statutory regulations, opinions of legal experts (doctrine), journals, and articles related to the contract of work.

The data analysis technique used is content analysis, with the assumption that the analysis always displays three conditions, namely objectivity, systematic approach, and generalization.

RESULTS & DISCUSSION

I. CONTRACT OF WORK ARRANGEMENTS

A. History of Contract of Work Arrangements

The journey of the current contract of work regulatory system in Indonesia, which has been changed to the terminology of mining business permits, has experienced various dynamics in its journey. The laws and regulations governing contracts of work can be reviewed and read in the following various laws and regulations:

1. Law Number 1 of 1967 concerning Foreign Investment in conjunction with Law Number 11 of 1970 concerning Amendments and Supplements to Law Number 1 of 1967 concerning Foreign Investment.
2. Law Number 6 of 1968 concerning Domestic Investment in conjunction with Law Number 12 of 1970 concerning Amendments and Supplements to Law Number 6 of 1968 concerning Domestic Investment.
3. Article 10 of Law Number 11 of 1967 concerning Basic Mining Provisions. 3 things are regulated in Article 10 of Law Number 11 of 1967 concerning Basic Mining Provisions, namely: a. The

government/minister can appoint contractors to carry out work related to exploration and exploitation; b. The agreement is stated in the form of a work contract; c. The momentum of the agreement after being ratified by the government. In Article 1 of the Decree of the Minister of Mining and Energy Number 1409.K/201/M.PE/1996 concerning Procedures for Processing the Granting of Mining Authorizations, Principle Permits, Contracts of Work and Coal Mining Concession Work Agreements, it has been determined that the Contract of Work (KK) is "an agreement between the Government of the Republic of Indonesia and a foreign private company or a joint venture between foreign and national (in the context of PMA) for mineral exploitation by referring to Law No. 1 of 1967 concerning Foreign Investment and Law No. 11 of 1967 concerning Provisions". General Mining Principles". Furthermore, in article 1 number 1 Decree of the Minister of Energy and Mineral Resources Number 1614 of 2004 concerning Guidelines for Processing Applications for Contracts of Work and Coal Mining Concession Work Agreements in the context of foreign investment. In that provision, it is called the definition of a contract of work. Contract of work (COW) is an "agreement between the Indonesian government and a company incorporated as an Indonesian legal entity in the context of foreign investment to carry out the mining business of minerals, excluding petroleum, natural gas, geothermal, radioactive, and coal".

4. Law Number 4 the Year 2009 concerning Mineral and Coal Mining.
5. In this Law, there are main adjustments that become the strength for the regulation of the coal mining business model, namely the provisions regarding the licensing model. In the previous law, the business model applied was still using the contract regime. Meanwhile, Law 4 of 2009 uses a business license regime. Since 2009 this has begun to change the term contract of work becomes a mining business permit (IUP). As the implementing regulation, Government Regulation No. 23 of 2010, which was later amended by Government Regulation no. 24 of 2012 and Government Regulation No. 1 of 2017.

In the provisions of the 2017 PP, the terminology of the Contract of Work began to be changed to a Special Mining Business Permit (IUPK).

6. Changes to the contract of work arrangement will then occur again. In-Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, it is stated that a contract of work is an agreement between the government and an Indonesian legal entity company to carry out Mineral Mining Business activities.

The various changes in the arrangement of the contract of work are inseparable from the dynamics of legal politics in Indonesia. For example, since the issuance of Government Regulation no. 1 of 2017 which requires that Contract of Work (KK) holders change their status to Special Mining Business Permits (IUPK) to export concentrates (minerals that have been processed but have not yet reached the refining stage). If the use of the contract of work regime is still used, the state does not even have a bargaining position to regulate the legal relationship between mining companies and natural resources owned by the state. Not to mention related to the issue of royalties which seem to castrate the sovereignty of the state in the management of its natural resources. Moreover, it is also possible that maintaining the concept of a contract of work, will only enrich mining companies and impoverish the country with disproportionate fees for services. The use of licensing terminology will give the state a higher position, where the state plays a role in granting permits to miners who have met the criteria and requirements to carry out mining activities. In this context, the state is not present as a direct implementer or manager. However, it only performs supervisory and management functions by granting permission to other parties to carry out mining management. This has implications for the management function (*beheersdaad*) as mandated by the constitution cannot be implemented. Therefore, a strategic reflection of what China is doing through several approaches. They derived three main policy approaches to diversify economic structure, including extended industry, substitute industry, and circular economy. Through

two case studies, they concluded that an innovation-driven development strategy and the incorporation of a shrinkage plan with balanced considerations of economic, environmental, and social issues are crucial in policymaking.⁴

With this change, it is expected to be able to prosper the people as mandated by Article 33 paragraph (3) of the 1945 Constitution, "Earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people". This effort to improve the welfare of the people is also elaborated in Article 2 paragraph (2) of the BAL where the scope of the State's Right to Control includes: a) Regulating and administering the allocation, use, supply, and maintenance of the earth, water, and space; b) Determine and regulate legal relations between people and the earth, water, and space; c) Determine and regulate legal relationships between people and legal relationships concerning the earth, water, and space. Efforts to control the state over its natural resources are also a form of state protection against state interests. As stated by Ruggie "On the other hand, embedded liberalism also allowed states sufficient discretion in domestic policymaking to cushion their economies and citizens from the more adverse effects of international liberalization."⁵

This is inseparable from the role of the state for the welfare of the people as stated by Richard A Posner⁶ who stated that: "...as for the positive role of economic analysis of law, the attempt to explain legal rules and outcomes as they are rather than to change them to make them better". According to the point of view of positivism is to explain the rules of law and its goal of change for the better. Furthermore, the efficiency theory of common as a system to maximize the wealth of society is added. This

⁴ Wenting Jiao, Xiaosen Zhang, Changhong Li, "Sustainable Transition of Mining Cities in China : Literature Review and Policy Analysis." p. 7

⁵ Jeffrey Mcgee and Jens Steffek, "The Copenhagen Turn in Global Climate Governance and the Contentious History of Differentiation in International Law," *Journal of Environme Ntal Law* 28 (2016): 37–63, <https://doi.org/doi: 10.1093/jel/eqw003>.

⁶ Darminto Hartono, *Economic Analysis of Law Atas Putusan KPPU Tetap* (Jakarta: Fakultas Hukum UI, Lembaga Study Hukum dan Ekonomi, 2009). 18.

analysis is oriented towards efficiency which in principle improves the welfare of the community. Another opinion was also expressed by Jeremy Bentham who stated that the purpose of the law is to provide the greatest benefit and happiness to as many citizens as possible. So, the concept puts benefit as the main goal of the law. The measure is the greatest happiness for as many people as possible. Assessment of good or bad, fair or not this law depends on whether the law can give happiness to humans or not. The benefit is defined the same as happiness.

B. Concept of Contract of Work and Mining Business Permit

Referring to Article 1 letter 6a of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining it is stated that a contract of work is an agreement between the government and an Indonesian legal entity company to carry out Mineral Mining Business activities. Contract (contract, contract) can also be called an agreement. However, according to Subekti, the definition of a contract is narrower than an agreement because a contract requires that it is always in written form, while an agreement other than in writing can be done orally. Therefore, contract law is a species of contract law.⁷ Generally, in the mining sector, the term contract of work is known.

The term contract of work is a translation from English, namely the word work of contract or it can be interpreted that foreign capital cooperation in the form of a contract of work occurs when foreign investment forms an Indonesian legal entity and this legal entity cooperates with a legal entity that uses national capital.⁸ A different opinion was conveyed by Suharyati Hartono who stated that a contract of work is a contract between the Government of Indonesia and a company with an Indonesian legal entity, to carry out the mining business of

⁷ S Abrar, *Hukum Pertambangan* (Yogyakarta: UII Press, 2004).

⁸ H. S Salim, *Hukum Pertambangan Di Indonesia* (Jakarta: Raja Grafindo Persada, 2005). 63.

minerals. Meanwhile, according to Nanang Sudrajat, the definition of a contract of work is the legality of exploitation of minerals intended for foreign investors, through Foreign Investment (PMA) facilities.⁹ In Article 1 of the Decree of the Minister of Mining and Energy Number 1409.K/201/M.PE/1996 concerning Procedures for Processing the Granting of Mining Authorizations, Principle Permits, Contracts of Work and Coal Mining Concession Work Agreements, the definition of a Contract of Work (KK) is an agreement between the Government of the Republic of Indonesia and a foreign private company or a foreign and national joint venture (in the context of PMA) for mineral exploitation.¹⁰ Referring to this definition, a contract of work is constructed as an agreement. Where the subject of the agreement is the Government of Indonesia with foreign private companies or joint ventures between foreign companies and national companies.

The object is mineral exploitation. Another definition of a contract of work can be read in Article 1 point 1 of the Decree of the Minister of Energy and Mineral Resources 1614 No. 2004 concerning Guidelines for Processing Applications for Contracts of Work and Coal Mining Concession Agreements in the Context of Foreign Investment. In this provision, the Contract of Work (COW) is an agreement between the Government of Indonesia and an Indonesian legal entity in the context of foreign investment to carry out the mining business of minerals, excluding oil, natural gas, geothermal, radioactive and coal. According to Salim, the definition of a contract of work needs to be refined so that what is meant by a contract of work is an agreement made between the Indonesian government and a foreign contractor solely and/or a joint venture between domestic legal entities to carry out exploration and exploitation activities in the general mining sector, under the terms time agreed upon by both

⁹ N.Sudrajat, *Teori Dan Praktik Pertambangan Indonesia* (Yogyakarta: Pustaka Yustisia, 2013). 67

¹⁰ N Trihastuti, *Hukum Kontrak Karya: Pola Kerjasama Pengusahaan Pertambangan Indonesia* (Malang: Setara Press, 2013). 50.

parties.¹¹ So that can be described the substantive elements of the contract of work in the form of:

1. The existence of a contractual, namely an agreement made by the parties;
2. The existence of legal subjects, namely the Government of Indonesia/regional government (province/district/city) with foreign contractors solely and/or groups between foreign parties and Indonesian parties;
3. The existence of objects, namely exploration and exploitation;
4. In the general mining sector, and
5. There is a period in the contract.¹²

Permits are one of the most widely used instruments in administrative law, to guide the behavior of citizens.¹³ Apart from this definition, licensing can also be defined as a dispensation permit or release/exemption from a prohibition. Referring to Article 1 point 7 states that a Mining Business Permit, hereinafter referred to as IUP, is a permit to carry out a Mining Business. Referring to the terminology of licensing, it can be interpreted that licensing is the granting of legality to a person or business actor/certain activity, either in the form of a license or a business registration certificate. As for the definition of Mining Business as referred to in Article 1 point 6, namely "Mining business is an activity in the context of mineral or coal control which includes the stages of an investigation, exploration, feasibility study, construction, mining, management and purification of transportation and sales as well as post-mining".

So it can be concluded that the meaning of Mining Business Permit (IUP) in its entirety is a permit for carry out activities in the context of mineral or coal exploitation which include the stages of general investigation activities (knowing regional geological conditions and indications of mineralization), exploration (activities to obtain detailed, accurate information about the shape, location, distribution, dimensions,

¹¹ Salim, *Hukum Pertambangan Di Indonesia*. 129.

¹² *Ibid.*

¹³ Philipus and M.Hadjon, *Pengantar Hukum Perizinan* (Surabaya: Yuridika, 1993). 2.

quality and measured resources from minerals and information on the social and environmental environment), feasibility studies (activities to obtain detailed information on all aspects related to determining the economic and technical feasibility of a mining business, including environmental impact analysis and post-mining planning), construction (activities to carry out mining of all facilities production operations, including environmental impact control), mining (activities to produce minerals and/or coal and their associated minerals), processing and refining (activities to improve the quality of minerals and/or coal and utilize and obtain associated minerals), transportation and sales (activities to transferring mineral mining products and/or selling these products), as well as post-mining (planned and systematic activities, and continuing after the end or part of mining business activities to restore natural environmental functions and social functions according to local conditions throughout the mining area.

C. Changes in Contract of Work Arrangements to Mining Business Permits

The occurrence of dynamics in the regulation of contracts of work and mining business permits in Indonesia is certainly based on several considerations, which with these changes also have implications for the regulatory system therein. These changes include cutting regional authority, which was originally regulated in Law Number 4 of 2009, which authorizes the issuance of mining permits by the provincial government as well as district and city governments, according to the location of the mine. However, Law Number 3 of 2020 removes the provisions of Article 7 and Article 8 in Law Number 4 of 2009, which regulates the authority of local governments in mining governance. Article 6 of Government Regulation no. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities stipulates that an IUP is granted by the Minister, governor, or Regent/Mayor by their respective authorities. IUP is granted to:

1. Business entities, which can be in the form of private companies, State-Owned Enterprises, or Regional-Owned Enterprises;
2. Cooperatives; and
3. Individuals, which can be individuals who are Indonesian citizens, firm companies, or limited partnership companies.

However, Article 35 paragraph (1) of Law Number 3 of 2020 states "Mining businesses are carried out based on a Business License from the Central Government." Furthermore, in paragraph (4) it is stated that "The Central Government may delegate the authority to grant business licenses as referred to in paragraph (2) to the Provincial Government by the provisions of the legislation. This change has implications for regional authorities in issuing permits in the mining sector. Local governments are no longer able to issue permits for mining business activities. However, this change does not necessarily change the regional authority in terms of licensing. Article 35 paragraph (4) of Law Number 3 of 2020 states that the Central government can delegate the authority to grant business permits to the Provincial Government by the provisions of the legislation. In addition to changes to a regional authority.

The contract of work regime was also changed to the mining business permit regime. In Article 1 point 13bit is stated that "IUPK as Continuation of Contract/Agreement Operation is a business license granted as an extension after the completion of the Contract of Work or Concession of Work Agreement. Coal Mining. The article is re-elaborated in Article 169A paragraph (1) which states "KK and PKP2B as referred to in Article 169 are given a guarantee of extension to IUPK 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 as a Continuation of Operations for each Contract/Agreement for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the KK or PKP2B by considering efforts to increase revenue country.

- b. Contracts/agreements that have obtained the first extension are guaranteed to be given a second extension in the form of an IUPK 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 by considering efforts to increase state revenues.

According to research conducted by Rizkyana Zaffrindra Putri and Lita Tyesta A.L.W, the change in the authority to grant Mining Business Permits (IUP) was based on several reasons, namely:

- a. There are many legal irregularities in the licensing sector at the Regency/City government level;
- b. Low legal certainty and investment certainty for investors.¹⁴

D. Implications of Changing the Terminology of a Contract of Work to a Mining Business License

Changes that occur in mineral and coal mining regulations have implications for the mining and the Indonesian economy. The implications can cover the economic, social, cultural, and environmental sectors. This is also done by various countries. Mining stakeholders around the world have grown increasingly wary of conventional approaches to mineral development, which at their worst have been associated with adverse environmental impacts, social and cultural disruption, and local economic instability. Stakeholders now demand that companies align themselves more closely with the tenets of sustainable development, of which increased community participation in decision making is a central goal. The industry has in many cases responded positively to these demands, having recognized the old ways of doing business are no longer an option

¹⁴ Lita Tyesta A L W Putri, Rizkyana Zaffrindra, "Kajian Politik Hukum Tentang Perubahan Kewenangan Pemberian Izin Usaha Pertambangan Mineral Dan Batubara," *Jurnal Law Reform* 11, no. 2 (2015): 203.

if the sector is to remain viable.¹⁵ In this case, there is a paradigm shift in the arrangement of the contract of work, which previously still used a pear-to-pear contract of work regime and used the realm of private law. Changed with the permit regime where the government has a better bargaining position than the contract of work regime. However, it must also be linear with the interests of the state as the main paradigm, not foreign interests.

Therefore, the law must be the commander-in-chief so that the state's sovereignty over its natural resources can be used for the greatest prosperity of the people. Reflecting on the experience of the New Order where the existence of the law was damaged by the authorities who defended the economic interests of developed countries and conglomerates and the interests of multinational corporations. For this reason, legal certainty and protection are needed for all parties,¹⁶ both the community and the state as well as foreign investors so that the benefits can be felt by all parties. All of them have just realized the importance of legal authority to create a conducive economic climate and to attract investment. Establishing the Pancasila economic system as an Indonesian economic system is not easy, because for hundreds of years we have consumed a liberal quality economic law system or served the interests of capitalist countries.¹⁷

The use of Article 8 of Law Number 1 of 1967 concerning Foreign Investment stipulates that: (1) foreign investment in the mining sector is

¹⁵ B. Barton, "Underlying Concepts and Theoretical Issues in Public Participation in Resources Development," *Human Rights in Natural Resource Development: Public Participation in the Sustainable Development of Mining and Energy Resources*, 2002, 77–119.

¹⁶ Prita Amalia Putri, Resha Roshana, An-An Chandrawulan, "Peringkat Arus Investasi Indonesia Dalam Kerangka Asean-China Free Trade Agreement (Perbandingan Dengan Singapura, Malaysia, Thailand, Dan Vietnam) Ditinjau Dari Prinsip Fair and Equitable Treatment," *Jurnal Hukum & Pembangunan* 48, no. 2 (2018): 275, <https://doi.org/http://dx.doi.org/10.21143/jhp.vol48.no2.1664>.

¹⁷ Adi Sulistyono, "Pembangunan Hukum Ekonomi Untuk Mendukung Pencapaian Indonesia 2030," in *Pidato Pengukuhan Guru Besar Hukum Ekonomi Pada Fakultas Hukum Universitas Sebelas Maret Surakarta* (Surakarta: Universitas Sebelas Maret Surakarta, 2007), 23.

based on cooperation with the Government based on a contract of work or another form by the applicable laws and regulations; and (2) The system of cooperation based on a contract of work or in other forms can be implemented in other business fields to be determined by the Government. Furthermore, in Law Number 11 of 1967 concerning the Basic Provisions of Mining, the regulation in the PMA Law is emphasized by the existence of the same substance in Article 10 of Law no. 11 of 1967 which states: (1) The Minister may appoint another party as a contractor if necessary to carry out works that have not been or cannot be carried out by the relevant Government Agency or State Company as the holder of the mining authorization; (2) In entering into work agreements with contractors, Government Agencies or State Companies must adhere to the guidelines, instructions, and conditions given by the Minister; (3) The work agreement shall come into force after being ratified by the Government after consulting with the House of Representatives when it concerns the exploitation of class a as long as the minerals specified in Article 13 of Law no. 11 of 1967 and/or whose work agreement is in the form of foreign investment. From here, foreign parties can enter and carry out mining activities in Indonesia. In the Minerba Law, the conditions for mineral and coal mining agreements are not limited to national or foreign companies, as long as the company is an Indonesian legal entity, they are allowed to participate in mining activities.

The dilemma begins to emerge when the state, as the owner of natural resources in Indonesia, has a weak bargaining position for its natural wealth. In the contract of work PT. Freeport, for example, the state only gets a revenue sharing of 1% (one percent), then based on Government Regulation Number 9 of 2012 concerning Types and Tariffs of Non-Tax State Revenues applicable at the Ministry of Energy and Mineral Resources, PT Freeport's royalties changed to 3.75% (three-point seventy-five percent) for gold and silver, and copper. However, the state revenue that should have been obtained in 2013 was only paid by PT. Freeport in 2014. Here it can be seen that the sovereignty of the state looks weak in dealing with foreign companies. Although currently PT Freeport 51%

shares have been controlled by PT Indonesia Asahan Aluminum (Inalum) which is a state-owned company. However, the realization of state revenues from PT Freeport Indonesia is still very far from the target set at the beginning of 2020. Based on the data as reported by Mining Industry Indonesia (MIND ID), as of May this year Freeport's total contribution to the new country was US\$ 117.6 million or 18 percent of the target planned in the 2020 Budget Work Plan (RKAB) of US\$ 650.9 million.

The change in the mining contract of work into a mining business permit is one of the state's efforts to protect its natural wealth. The principle of a market economy as the fruit of Adam Smith's thought, which forbids government intervention because the market is considered capable of mediating itself, needs to be reduced to a system based on Pancasila economic principles in Article 33 paragraph (1).

This neoliberal view will not prosper the people as the legal owners of natural wealth in their country. But it only impoverishes the country and causes future environmental impacts. In a speech dated June 1, 1945 Bung Karno once said "If we truly understand, remember, and love the Indonesian people, let us accept the principle of political equality and in the economic field we must establish equality, meaning good common welfare". Bung Karno's school of thought related to "People's Sovereignty" can also be explored in the Preamble of the 1945 Constitution, Article 33 and its explanations, as well as Articles 23, 27 paragraphs (2), 31 and 34, which can briefly mean that public goods and services must be controlled, regulated, is intended and utilized for the highest prosperity of the people at large, without any dictation by the market mechanism.

Historically, the issue of the struggle between the mercantilists who tried to protect national economic interests against the industrialists who refused to protect the state's wealth had existed since the early 19th century. Where the climax point of this struggle for understanding is the struggle for markets and energy and production resources. The fruit of the failure of neo-classical understanding eventually gave birth to the notion of market liberalization and the birth of the Washington Consensus which can be summarized as (1) the prohibition of subsidizing the people and

financing the provision and management of public goods and services through the term fiscal discipline; (2) if the government is already involved in providing public services, then it must be sold to the private sector or what is known as privatization; and (3) liberalizing all economic sectors by imposing the principle of non-discrimination between foreign players and national players. According to the National Bureau of Economic Research, 33 economic crises from 1854 to 2007 were caused by the failure of the neoliberal economy. In his study of political economy and development sociology, he stated that neoliberal economics has always faced failures in overcoming budgeting, poverty, and inequality. With the change in mining management in Indonesia, which previously used a contract of work system and was updated with a mining business permit system, in this context the state is not present as a direct executor or manager. However, it only performs supervisory and management functions by granting permission to other parties to carry out mining management.

The form of the contract of work, which is a standard agreement, should provide a greater share of profits and bargaining position to Indonesia. It does not even provide a balanced bargaining position with mining companies. For example, in the case of PT Freeport where according to Prof. Hikmahanto Juhana The extension of Freeport's Contract of Work II carried out by the Government of Indonesia has not undergone much improvement to provide significant additional financial benefits for the Indonesian side. The only changes that occur are in terms of share ownership and terms of taxation. Meanwhile, the number of royalties did not change at all, although there has been a change in the number of gold reserves. The main goal of mining companies is nothing but exploitation of natural resources and subjugation of local people, both socio-culturally and economically-politically.¹⁸ As things stand, in most mining communities in developing countries, there is a level of

¹⁸ Marulak Pardede, "Implementasi Hukum Kontrak Karya Pertambangan Terhadap Kedaulatan Negara," *Jurnal Penelitian Hukum DE JURE* 18, no. 1 (2018): 17.

dissatisfaction, disaffection, and destabilization.¹⁹ Even a study conducted by Bonita Meyersfeld said that "Mining as an instrument of development and poverty reduction is indeed Mythology".²⁰

In addition to changing the terminology of the contract of work into a business license. Other implications also arise in connection with the taking over of local government power in the administration of mining permits, which has implications for disaster risk mitigation in the regions. Where the regions certainly understand more about the components of hazard (hazard), (vulnerabilities), and capacities (capacities) in each province and district/city within their jurisdiction. Hazard components are natural phenomena that can cause disasters such as earthquakes, tsunamis, volcanic eruptions, floods, and others. The vulnerability components are (1) physical condition, (2) socio-cultural, (3) economic, and (4) vulnerable environment exposed to disasters.

The presence of extractive industries such as mineral and coal mining also has an impact on non-natural risk factors, as well as on environmental changes due to extractive industries which have an impact on increasing vulnerability as well as the capacity of residents in dealing with disasters. According to a report released by the Mining Advocacy Network (JATAM) shows that the revision of Law no. 4 of 2009 has now changed to Law no. 3 of 2020 concerning Minerals and Coal shows that many changes in the Minerba Law and the Job Creation Law and their derivative regulations have an impact on workers, the wider community and people in the closest circle of extractive investments.

Likewise, in the context of a disaster, some articles and paragraphs in the two regulations also increase the risk and vulnerability to living spaces, local ecosystems, and residents who are the target of investment.²¹

¹⁹ Kolk and Van Tulder, "Shell Is a Favourite Example of Exploitative Business Operations in the Developing World," n.d., 798.

²⁰ Meyersfeld and Bonita, "Empty Promises and the Myth of Mining : Does Mining Lead to Pro-Poor Development ?," *Business and Human Rights Journal* 2, no. 2013 (2006): 31–53.

²¹ Zamzami Arlinus Merah Johansyah, Ahmad Saini, Ahmad Ashov Birry Melky Nahar, "Bencana Yang Diundangkan: Bagaimana Potret Awal Investasi Ekstraktif

Contemporary use in mining links social license to perceptions that locally-impacted communities hold about a company's activities and the impact those activities have on local culture, environment, economy, and livelihoods. Therefore, efforts to grant permits must also find a point of equilibrium between understanding that local perceptions or responses can determine a company's ability to access land, water, and other financial and human resources for mineral exploration, extraction, and processing and transfer to markets.²²

CONCLUSION

Changes to the terms of the contract of work. A Contract of Work is defined as an agreement made between the Government of Indonesia and a foreign contractor solely and/or a joint venture between domestic legal entities to carry out exploration and exploitation activities in the general mining sector, by the period agreed by both parties. Referring to Article 1 letter 6a of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining it is stated that a contract of work is an agreement between the government and an Indonesian legal entity company to carry out Mineral Mining Business activities. According to Salim, the definition of a contract of work needs to be refined so that what is meant by a contract of work is an agreement made between the Indonesian government and a foreign contractor solely and/or a joint venture between domestic legal entities to carry out exploration and exploitation activities in the general mining sector, by the terms time agreed upon by both parties. So that can be described the substantive elements of the contract of work in the form of:

Energy Kotor Dan Keselamatan Rakyat Dikawasan Resiko Bencana Indonesia," Seri Pertama (Jakarta Selatan Baca selengkapnya di artikel: Home <https://www.jatam.org/en>, 2021).36.

²² Deanna Kemp John R. Owen n, "Social Licence and Mining: A Critical Perspective," *Resources Policy*, 2012, 3, <https://doi.org/http://dx.doi.org/10.1016/j.resourpol.2012.06.016>.

1. The existence of a contractual, namely an agreement made by the parties;
2. The existence of legal subjects, namely the Government of Indonesia/regional government (province/district/city) with foreign contractors solely and/or groups between foreign parties and Indonesian parties;
3. The existence of objects, namely exploration and exploitation;
4. In the general mining sector, and
5. There is a period in the contract.

Permits are one of the most widely used instruments in administrative law, to guide the behavior of citizens. Apart from this definition, licensing can also be defined as a dispensation permit or release/exemption from a prohibition. Referring to Article 1 point 7 states that a Mining Business Permit, hereinafter referred to as IUP, is a permit to carry out a Mining Business. So it can be concluded that the meaning of Mining Business Permit (IUP) in its entirety is a permit to carry out activities in the context of mineral or coal exploitation which includes the stages of general investigation activities (knowing regional geological conditions and indications of mineralization), exploration (activities to obtain detailed information, careful about the shape, location, distribution, dimensions, quality and measurable resources of the excavated materials as well as information on the social and environmental environment), feasibility studies (activities to obtain detailed information on all related aspects to determine the economic and technical feasibility of a mining business, including environmental impact analysis and post-mining planning), construction (activities to carry out mining of all production operating facilities, including environmental impact control), mining (activities to produce minerals and/or coal and associated minerals), mining processing and refining (activities to improve the quality of minerals and/or coal and utilize and obtain associated minerals), transportation and sales (activities to move mineral and/or selling products), and post-mining (planned and systematic activities, and continue after end or part of mining business activities to restore the

natural environment and social functions according to local conditions of the entire mining area. The emergence of changes in terminology in the regulation of coal mining in Indonesia also has implications for various regulations in it. These changes include cutting regional authority, which was originally regulated in Law Number 4 of 2009, which authorizes the issuance of mining permits by the provincial government as well as district and city governments, according to the location of the mine. However, Law Number 3 of 2020 removes the provisions of Article 7 and Article 8 in Law Number 4 of 2009, which regulates the authority of local governments in mining governance. In addition to changes to a regional authority. The contract of work regime was also changed to the mining business permit regime. Article 1-point 13b states that "IUPK as Continuation of Contract/Agreement Operation is a business license granted as an extension after the completion of the Contract of Work or Coal Mining Concession Work Agreement. The article is re-elaborated in Article 169A paragraph (1) which states "KK and PKP2B as referred to in Article 169 are guaranteed an extension to IUPK as Continuation of Contract/Agreement Operations after fulfilling the requirements with the provisions. In addition to these implications, other impacts arise after the change in terminology on the substance of the regulations contained therein. Other implications also arise in the form of impacts on the economic, social, cultural, and environmental sectors. Mining stakeholders around the world have grown increasingly wary of conventional approaches to mineral development, which at their worst have been associated with adverse environmental impacts, social and cultural disruption, and local economic instability. Stakeholders now demand that companies align themselves more closely with the tenets of sustainable development, of which increased community participation in decision making is a central goal. The industry has in many cases responded positively to these demands, having recognized the old ways of doing business are no longer an option if the sector is to remain viable.

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About Author(s)

Achmad Beni Chandra is an Advocate at Law Office A.B. Law & Partners, Indonesia. He also enrolled as a Postgraduate Student, Master of Laws, at the Faculty of Law Universitas Negeri Semarang, Indonesia.