

Legal Certainty-Based Implementation of Exploration and Exploitation Authorization Permits in Iron Sand Mines

Lalu Muhammad Fadil^{1*}, Nurjannah Septyanun², Yulias Erwin³, Rina Rohayu Harun⁴

^{1,2,3,4}Master of Law Study Program, Muhammadiyah University of Mataram, Mataram, Indonesia
lalu.muhammad.fadil.sh@gmail.com¹, nurjannahs@ummat.ac.id², yuliaserwin@gmail.com³,
rina@ummat.ac.id⁴

Abstract

Iron sand mining in the Dedalpak Block began in 2009 where the authority to grant mining permits ranging from mining business permits (IUP) exploration to mining business permits (IUP) for production operations was issued by the Regent of East Lombok by adhering to article 37 of Law Number 4 of 2009. However, with the enactment of Law Number 32 of 2014 Challenging Regional Governments, the authority of the iron sand mining permit was taken by the NTB Provincial Government, then with the presence of Law Number 3 of 2020 the authority for iron sand mining business licenses by PT. AMG was taken over by the Centre. In its implementation, iron sand mining by PT. AMG with the enactment of Law Number 3 of 2020 has a significant impact on the mining licensing process for iron sand production in the Dedalpak block of East Lombok, where the central government through the Director General of Energy and Mineral Resources requires thirteen conditions so that the IUP for production operations can be obtained by PT. AMG. The company, however, has not been able to meet five requirements, so its license was suspended. Another impact, the community in the Dedalpak block circle resisted by going to race through a series of protests for the mining to be closed, because it caused a large environmental impact.

Keywords: Mining Business License, Mining, Iron sand

INTRODUCTION

Indonesia's natural resource wealth includes mining, agriculture, plantations, animal husbandry, fisheries and so on. In utilizing these natural resources, the State has the authority to manage all available potential and utilize it as best as possible for the interests of its people in accordance with what is regulated in the 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3) which states as follows: "Earth, water and the natural resources contained therein are controlled by the State and used as much as possible for the prosperity of the people." (Indonesian Constitution of 1945, 2000). Natural wealth in Indonesia cannot only be utilized by some people, all people must be able to enjoy Indonesia's natural wealth within existing regulations (Khakim, 2014).

A mining business area is a part of a mining area that has available data, potential and/or geological information (Khakim, 2014). Law Number 4 of 2009 concerning mineral and coal mining Article 34 paragraph (1) explains that mining businesses are grouped into coal mining and mineral mining (Law Number 4 of 2009 concerning Mineral and Coal Mining, 2009).

The mining business referred to in the law also explains and regulates mining business permits (IUP). A mining business permit (IUP) is a permit to carry out a mining business (Law Number 4 of 2009 concerning Mineral and Coal Mining, 2009). In the latest amendment to Law no. 3 of 2020 concerning Amendments to Law no. 4 of 2009 concerning Mineral and Coal Mining, stipulation dated 20 May 2020, explains that licensing authority is given attributively to the central government for all existing business permits, then the authority to grant these permits can be delegated to regional governments even though previously in Law No. 4 of 2009 regional governments have the authority to grant permits attributively in the Law, which is certainly not a delegation from the central government.

Granting IUPs is the government's authority, coupled with guidance, resolving community conflicts and supervising mining businesses. The authorized government in this case is the central government through the minister. In accordance with Law no. 3 of 2020 in conjunction with Law no. 4 of 2009 which deleted articles related to the authority of provincial governments and district governments in the management of mineral and coal mining. Articles deleted in Law no. 4 of 2009 are Article 7 and Article 8, containing the same authority between the central government, provincial government and district government in terms of granting IUPs, guidance, resolving community conflicts and supervising mining businesses. (Law Number 4 of 2009 concerning Mineral and Coal Mining, 2009).

The deletion of Articles 7 and 8 was replaced by inserting one chapter, namely Chapter IVA concerning mineral and coal management plans, the contents of which are Article 8A and Article 8B. This article explains that the authority to carry out mineral and coal management planning is completely handed over to the central government, through the minister. Regional governments, namely provincial governments, only have the authority to determine mining areas (WP), which are then handed over to the central government to be determined and consulted with the People's Representative Council of the Republic of Indonesia (Law Number 4 of 2009 concerning Mineral and Coal Mining, 2009). This means that there is no longer any authority for regional governments, both provincial and district governments, to grant mining business permits (IUP), as stated in Law no. 4 of 2009.

In West Nusa Tenggara, especially in East Lombok Regency, specifically in Dedap Pak Hamlet, Pohgading Village, Pringgabaya District, mining which has occurred from 2008 until now, has resulted in serious environmental damage to the mining area, especially destroying the rice fields and gardens of the surrounding community. This situation gave rise to rejection from the community and resulted in many losses and casualties, both from the community and from elements of the government and law enforcement officials.

The beach in Dedap Pak Hamlet contains abundant iron sand and is very useful for material and building business needs. Since then, the iron sand mine in Dedap Pak Hamlet has

become the target of investors, including PT. AMG (PT Anugrah Mitra Graha). With the entry and operation of this iron sand mining company, it can change the entire structure of people's lives, where previously they were in a peaceful environment, they were disturbed by the presence of unknown foreigners who spoke a language they did not understand.

Not only on Sumbawa Island, Lombok Island also has abundant natural mining resources, one of which is right on the beach of Dedalpak Hamlet, Pohgading Village, Pringgabaya District, East Lombok Regency. This village is where mining operations carried out by PT. Anugrah Mitra Graha (PT. AMG). Currently, the condition of the Dedalpak coastline, Pohgading village, Pringgabaya District, which is the location of an iron sand mine, is planned for reclamation activities or restoring the condition of beaches damaged by iron sand mining activities.(East, 2023).

PT. Anugrah Mitra Graha (PT. AMG) started entering and carrying out mining operations in 2011. They obtained permission with the issuance of decision letter No: 2821/503/PPT.11/2011 which related to increasing the Exploration IUP to become an IUP for production operations of iron sand and minerals. minerals in the Dedalpak Block, Pohgading Village, Pringgabaya District, East Lombok Regency. PT. AMG has received an official mining permit from the Regional Government, but the community continues to reject it, because the community feels they have never been involved in the AMDAL study regarding the feasibility of mining to be carried out by PT. AMG.

On the other hand, residents admitted that they would continue to fight to reject it as the community had done several years ago. Rejection will continue until the government revokes PT AMG's permit. This refusal is due to the fact that the negative impacts resulting from iron sand mining are quite large. The rejection was not because some previous agreement items were not fulfilled by the company. Because indeed, he said that the people of Pohgading had never made any agreement with PT AMG, because the people had never been involved from the start. Even when discussing the Environmental Impact Analysis (AMDAL), the community loudly refused to ratify it(Lombok, 2019).

RESEARCH METHODS

The approach method used in this research is a normative juridical approach, namely an approach that seeks to synchronize the legal provisions that apply in legal protection of norms or other legal regulations with their relation to the application of these legal regulations in practice in the field.(Khudzaifah Dimyati, 2016). In this research, the problem approaches used are the conceptual approach, the statutory approach and the case approach.(Muhaimin, 2020). The data sources used in this research are data consisting of 3 (three) sources of legal materials, namely: a.) primary legal materials; b.) secondary legal materials; and c.) tertiary legal materials.

DISCUSSION

The phenomenon of legal uncertainty in the mining sector arises in aspects of mismanagement in mining area management, community demands for injustice in mining management, weak and inconsistent law enforcement, as well as various other problems related to the applicable legal system. The problem of legal certainty regarding investment in the mining sector, especially regarding coal mining business permits, often involves legal uncertainty. The impact of this legal uncertainty is a decline in domestic mining investment. This can be seen in the last few years that there has been no large-scale foreign investment entering Indonesia(Hartana, 2017). The principle of legal certainty that in a rule of law, the basis for the implementation of state power, prioritizes the basis of statutory regulations, justice and propriety in every policy(Atmadja, 2018).

The principle of legal certainty (*rechtmatigheid*), this principle is reviewed from a juridical perspective. The principle of legal certainty, in fact the existence of this principle is interpreted as a situation where the law is certain because of the concrete strength of the law in question. The existence of the principle of legal certainty is a form of protection for justice seekers (seekers of justice) against arbitrary actions, which means that a person will and can obtain something they hope for in certain circumstances.(KAGAMI, 2021).

Regulations that are synergistic with the needs of society, both national and international, should be implemented, without reducing the authority and sovereignty of our country. Problems or conflicts that exist in society must immediately find solutions that bring about balanced justice. The regulations created will of course be implemented in society, as the legal subject itself. Good regulations certainly have the principle of legal certainty, the principle of justice and the principle of benefit in them(Nurjannah Septyanun, Julmansyah, Riina Rohayu Harun, Indra Jaya, 2023).

Mining is an activity of extracting deposits of valuable and economically valuable minerals from within the earth's crust, either mechanically or manually, on the earth's surface, below the earth's surface and below the water surface. The results of this activity include oil and gas, coal, iron sand, tin ore, nickel ore, bauxite ore, copper ore, gold ore, silver and manganese ore. Excavation is an activity that includes the retrieval of all types of excavated items. Minerals are chemical elements, minerals and all kinds of rocks which are natural deposits (excluding metals, coal, oil and gas and radioactive materials).Indonesia is a country that has abundant natural resources, so it is necessary to regulate the use of these natural resources. This regulation is regulated in a law so that it is not misused. The philosophical basis for natural resource management in Indonesia is article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Therefore, the government is trying to improve this condition by issuing a new law, namely Law no. 4 of 2009 concerning Mineral and Coal Mining.

In relation to environmental problems, permits are one of the efforts to prevent environmental damage through environmental permit system policies. Environmental permits and their requirements must be made based on juridical measures that take into account the individual circumstances of industrial activities that have an impact on environmental management measures(Lestari & Djanggih, 2019). A mining authorization permit is a form of granting authority by the state to parties who meet the requirements to carry out a mining business(Hayati, 2019). Even fartherPermission is an agreement from the authorities based on law or government regulations to, in certain circumstances, deviate from the provisions of statutory prohibitions. By giving permission, the authorities allow the person who requests it to carry out certain actions that are actually prohibited. This concerns the permissibility of an action which in the public interest requires special supervision over it.

One of Indonesia's natural resources that is mined is iron sand. In East Lombok itself, the mining process has been carried out by PT.AMG since 2009. In the process of fulfilling the mining authorization permit, of course PT.AMG must fulfill all the requirements regulated by the government. In regulating mining authorization permits, the East Lombok Regency Government in 2009 in issuing mining authorization permits was guided by Law Number 4 of 1967 concerning basic mining provisions, and for processing IUPs (mining business permits) using the rules in Law Number 4 of 2009, in accordance with the Law paragraph (1) letters a and b, mining business permits are granted in two stages, namely the first stage, exploration mining business permit and the second stage, production mining business permit. The authority to issue an IUP in law number 4 of 2009 if the mining area is in a district/city area, then the authority to issue the IUP rests with the Regent/Mayor.

Based on existing regulations in law number 4 of 2009, PT. Anugrah Mitra Graha, to carry out iron sand mining in Dedalpak Hamlet, Pohgading Village, Pringgabaya District, submitted an application letter Number: 002/AMG-Jkt/HD/11/2008 dated 5 November 2008 regarding the authorization to mine iron sand, then based on this letter and the existing regulations the permit exploration was issued by the Regent of East Lombok Regency through the Decree of the Head of the Integrated Licensing Services Agency of East Lombok Regency Number: 02/503/PPT.I/I/2009 dated January 5 2009 concerning the granting of iron sand exploration mining authorization permits in Dedalpak Hamlet, Pohgading Village, Pringgabaya District with area of 2,018 Ha and validity period of 12 (twelve) months.

When it was felt that the exploration process for iron sand mining in Dedalpak by PT. AMG was still not finished, they submitted a letter requesting an extension of the exploration permit in accordance with the regulations in force on November 26 2009 with Number: 008/AMG-Jkt/HD/11/2009 regarding application for an extension of the authority to explore iron sand mining and the East Lombok Regency Government granted permission to extend the authority to explore iron sand mining in Dedalpak Hamlet, Pohgading Village, Pringgabaya District, East Lombok Regency through the Decree of the Regent of East Lombok Number: 500/18/EKO/2010 dated January 4 2010 with an extensive 2,018 Ha and validity period of 6 (six).

To obtain approval for a Mining Business Permit (IUP) for Exploration of iron sand minerals and accompanying minerals in Dedalpak Hamlet, Pohgading Village, PT. AMG through its director on November 26 2009 sent an application letter with Number: 008/AMG-Jkt/HD/11/2009. Then, the East Lombok Regency Government on April 28 2010 issued an exploration mining business permit (IUP) for PT AMG through East Lombok Regent Decree Number: 3832.A/503/PPT.I/V/2010 concerning approval of mining business permits (IUP) exploration of iron sand minerals (fe) and its accompanying minerals (dmp) in Dedalpak Hamlet, Pohgading Village, Pringgabaya District to PT. April 27 2010 regarding adjustments to the exploration KP of PT Anugrah Mitra Graha.

After the exploration process by PT. It was deemed that AMG was sufficient and met the requirements to carry out production, so PT AMG sent a letter of application for the issuance of a mining business permit (IUP) for the production operation of mining iron sand and its accompanying minerals in the Dedalpak block to the East Lombok Regency Government. The East Lombok Regency Government issued a production mining business permit (IUP) to PT AMG through the Decree of the Regent of East Lombok Number: 2821/503/PPT.II/2011 concerning Approval of upgrading the exploration Mining Business License (IUP) to an operational Mining Business License (IUP). production of iron sand minerals (fe) and its accompanying minerals (dmp) in the Dedalpak block, Pringgabaya District and Labuhan Haji District, East Lombok Regency To PT. Anugrah Mitra Graha with a production operation IUP validity period of 15 (fifteen) years starting from 2011 and expires in 2026, has fulfilled the provisions of article 47 paragraph (1) of Law Number 4 of 2009 which states that: "Production operation IUP for metal mineral mining can be granted for a maximum period of 20 (twenty) years and can be extended by 2 (two) times 10 (ten) years each".

With the enactment of Law Number 3 of 2020 concerning mineral and coal mining on June 3 2020, there are changes to the regulatory authority in granting IUPs. Related to this change, there is a very urgent matter regarding who has the authority to issue permits for mineral and coal mining, namely the authority to issue IUPs for both exploration and production processes lies with the central government, this is in accordance with the provisions contained in article 173C of the Law Number 3 of 2020.

The IUP for iron sand production operations by PT AMG with the enactment of Law Number 3 of 2020 can still be implemented with the obligation to fulfill the 13 requirements contained in Minister of Energy and Mineral Resources Regulation Number 7 of 2020

concerning procedures for granting areas, permits and reporting on mining business activities, where One of the requirements that has not been fulfilled is the submission of the Work Plan and Budget Document (RKAB). However, in its implementation PT. AMG has not fulfilled all the requirements in the regulations, one of which is regarding the RKAB. PT.AMG was asked by the center to immediately complete all requirements in order to be able to carry out production and was written to immediately submit the RKAB by the Directorate General of Mineral and Coal on June 24 2021 regarding the deadline for submitting the RKAB no later than July 15 2021. On July 27 2022 the Directorate The General of Mineral and Coal submitted a response letter to PT AMG's 2022 RKAB approval request for IUP Decree Number 2821/503/PPT/11/2011, in which response the central government through the Indonesian Ministry of Energy and Mineral Resources rejected PT AMG's 2022 RKAB approval request. AMG because it does not meet the specified requirements.

CONCLUSION

The regulation of iron sand mining authorization permits in East Lombok is based on Law No. 4 of 2009 in conjunction with Law No. 3 of 2020 concerning mineral and coal, where in 2009 the East Lombok Regency government, in this case the Regent of East Lombok, issued an exploration authorization permit in accordance with the authority granted by Law No. 4 of 2009, then the exploration authorization permit was extended in 2010. In the same year PT.AMG obtained an Exploration IUP from the East Lombok Regional government as the authority that issued the exploration IUP Permit and in 2011 the exploration IUP was upgraded to a Production Operations IUP by East Lombok Regional Government after PT.AMG fulfills the requirements in accordance with applicable regulations. However, with the enactment of Law No. 3 of 2020, all regulations regarding the authority to issue IUPs for both exploration and production operations rest with the central government, so that all arrangements for iron sand mining authorization permits rest with the central government.

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