



MINING MANAGEMENT LICENSING: OPPORTUNITIES AND CHALLENGES FOR INDIGENOUS COMMUNITIES

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Abstract

According to Presidential Regulation of the Republic of Indonesia Number 70 of 2023 concerning Allocation of Land for Investment, mining business permits may be granted to community organizations, as explained in Article 2 paragraph 1 letter f, Article 4 paragraph (5) letter c, Article 9, and Article 12 paragraph (1). This regulation also opens up the possibility of land allocation for various types of business entities, from small to large scale. However, one thing that is not yet clear is how indigenous communities can be more involved in mining management. That when talking about mining management permits for communities, the importance of accommodating indigenous communities is not only limited to the organizational level. Management of mineral and coal resources should contribute significantly to the economy and welfare of indigenous communities. Clear regulations are needed regarding the recognition and protection of the rights of indigenous communities as well as increasing the capacity of indigenous communities in the mining sector. This can be implemented through collaboration with BUMN in the mining sector as the aim is not only to focus on profit but also on community welfare as an agent of development.

Keywords: *Licensing; Mining Management; Culture.*

1. INTRODUCTION

The establishment of the Republic of Indonesia was based on the mandate of the Preamble to the 1945 Constitution which emphasized that the state is not only a means to achieve goals but also has the goal of realizing general welfare, as explained by Miriam Budiardjo (Budiardjo, 2003) and Imanuddin Ilmar (Ilmar, 2012). In this context, the state has the authority to grant management permits to other parties for the welfare of the people, as explained by Harun (Harun, 2019) and Satriawan (Satriawan, 2021). In implementing this constitutional mandate, the state, through the government, has the authority to grant management permits to other parties (Satriawan, 2021). Mining management is based on the aim of maximizing the prosperity of the people (Putra et al., 2023). Mining management is expected to have an economic impact on the state in supporting the country's economy, but mining management must also pay attention to the social impact on indigenous communities around the mining permit who have values of interest in land and natural resources as well as shared values of history and culture.

President of the Republic of Indonesia Number 70 of 2023 concerning Land Allocation for Investment Management shows the discourse on allocating mining business permits for community organizations as intended in Article 2 paragraph 1 letter f, Article 4 paragraph (5) letter c, Article 9, and Article 12 paragraph (1). In this presidential regulation, land allocation can also be given to village/regional-owned enterprises, cooperatives and small/medium and large scale enterprises. However, in the allocation of mining land, the potential for involvement of indigenous communities in mining management is not yet visible. The allocation of mining land as intended in the presidential regulation is still causing debate and still needs further discussion in the form of synchronizing regulations in various statutory regulations such as Law (UU) Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining as well as the Republic of Indonesia Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities.

2. RESULTS AND DISCUSSION**Position of Indigenous Peoples**

The history of indigenous peoples in Indonesia began long before independence on 17 August 1945 (Syamsudin, 2008). Indigenous communities have complex legal and social systems, which are strengthened by traditional leadership and internal conflict management structures, as explained by Jawahir Thontowi (Thontowi, 2015). The rights of indigenous peoples are recognized in the Indonesian constitution as long as they are in accordance with the progress of society and the values of the Unitary State of the Republic of Indonesia (Japri et al., 2023). The conditions for this recognition are further regulated in Article 4 of the Minister of Home Affairs Regulation Number 52 of 2014, which regulates the conditions and steps that indigenous peoples must go through to obtain legal recognition of their traditional rights. The process includes three stages: identification, verification and validation of indigenous communities (Japri et al., 2023). Based on this, constitutionally Article 18B paragraph (2) of the 1945 Constitution mandates conditions for the state to respect indigenous peoples and their traditional rights inherent in the development of indigenous peoples' lives (Dewi et al., 2020). Traditional rights of indigenous peoples include genealogical equality, territory, other customary objects, customary land, forests and rivers (Thontowi, 2015). There is an idea that the context of indigenous peoples needs to be differentiated from traditional communities. In the context of indigenous communities, which are different from customary law communities, indigenous communities have other specific structures, namely the existence of their own rules and government which are used by members of indigenous communities as a way of life (Laike, 2019).

Whereas Article 18B paragraph (2) and Article 28I paragraph (3) of the Constitution are rigid legal norms, however implementation in Sectoral Laws is often inconsistent, especially regarding the recognition of traditional rights, both material and immaterial. The traditional status and rights of indigenous peoples often do not experience significant changes, one of the reasons is the legal uncertainty that arises because these norms are more facultative than imperative. Facultative norms are complementary norms whose effectiveness depends on certain conditions, in contrast to imperative norms which have stronger coercive power in the form of orders or prohibitions (Thontowi, 2015). When national laws apply, they can sometimes conflict with local customs and societal principles of justice. To overcome this, the first step is legal harmonization through the creation and implementation of appropriate legal guidelines. Efforts to formulate legislative regulations are directed at aligning applicable laws with the values and sense of justice of local communities. This allows the prevention of legal conflicts and ensures that regulations do not conflict with respected local values. In this context, the government needs to respect local wisdom and build synergy to support indigenous communities in implementing and enforcing their laws (Japri et al., 2023).

Constitutional Court Decision Number 35/PUU-X/2012 is an important step in recognizing and protecting the rights of indigenous peoples to customary forests. This decision changed the interpretation of the Forestry Law to be more supportive of customary rights rather than just state domination of forests. In this decision, the Constitutional Court emphasized that customary forests must be interpreted as forests within the territories of indigenous peoples, and control of forests by the state must take into account the rights of indigenous peoples (Rachman & Siscawati, 2014). This decision also eliminates several paragraphs in the Forestry Law that conflict with the constitution, strengthening the legal basis for the protection of customary rights. Through this decision, the Constitutional Court not only supports social justice for indigenous peoples but also strengthens the theorization of developing human rights law that is more inclusive and pro-indigenous (Tobroni, 2016).

Opportunities and Challenges for Indigenous Peoples in Providing Mining Licensing

In connection with the state's control over natural resources, strengthening the role of BUMN in the mining sector is very important, considering that the mining sector is a strategic sector that must be controlled by the State. Based on data from the Indonesian Ministry of Energy



and Mineral Resources for 2020 (Supriyanto, 2021), Indonesia has a wealth of promising resources and reserves in the form of minerals and coal, namely:

Table. Data on Resources and Reserves in the form of Minerals and Coal for 2020

No	Types of Minerals and Coal	Resource	Reserve
1	Nickel	143 million tons	49 million tons
2	Cobalt	3.6 million tons	0.4 million tons
3	Iron	3.859 billion tonnes	927 million tonnes
4	bauxite	5.5 billion tons	3 billion tonnes
5	Alumina	1.8 billion tons	0.9 billion tons
6	Tin	2.76 million tonnes	2.72 million tons of SnO ₂
7	Copper Ore	16 billion	3 billion tonnes
8	Gold Ore	16 billion tonnes	4 billion tons
9	Silver Ore	10.4 billion tons	3.2 billion tons
10	Coal	144 billion tons	39 billion tons

Source: Dedi Supriyanto, et al. Grand Strategy for Minerals and Coal (Directions for Upstream and Downstream Development of Main Minerals and Coal Towards Advanced Indonesia). (Directorate General of Minerals and Coal, Ministry of Energy and Mineral Resources: Jakarta. 2021). Based on data on resources and reserves in the form of minerals and coal for 2020, the following describes the number of Indonesian mining business permits until 2024.

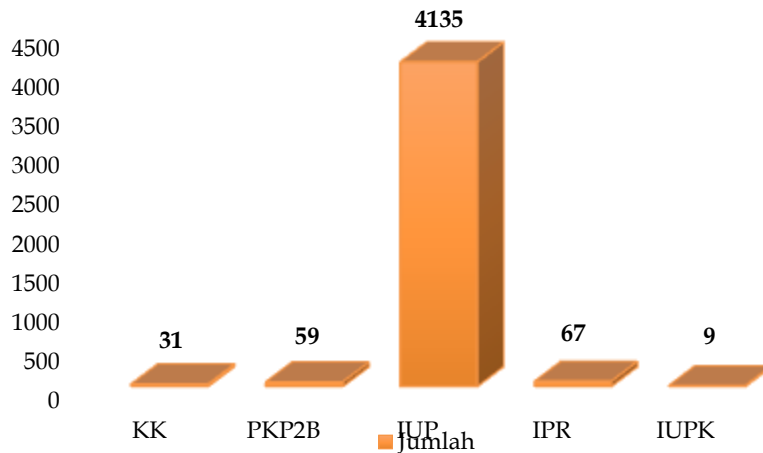
Chart. Number of Indonesian Mining Business Permits



Source: Processed from <https://databoks.katadata.co.id/datapublish/2024/03/20/govt-cabut-ribuan-izin-usaha-tambang-berapa-nomor-dalam-ini> And <https://modi.esdm.go.id/perizinan>

Based on data regarding the number of Mining Business Permits (IUP) from 2015 to 2024, it is known that there has been a significant downward trend from 2015, when the number of IUPs was at its highest point with 10,092 permits. Furthermore, in the following years there was a decline, namely in 2017 there were 9,144 permits, 8,449. The most drastic decline occurred in 2018 when the number of IUPs recorded was 5,670, and continued until it reached its lowest point in 2019 with only 3,161 permits. After that, there was a recovery in the number of permits in 2020 to 5,395, but this did not last long because in 2021 there was another decline to 5,290. In subsequent years, the figure stabilized around the 4,000s, with 4,050 permits in 2022, a slight increase to 4,070 in 2023, and in 2024 there was a slight increase to 4,135. In general, this data shows a decreasing trend in the number of IUPs throughout the decade, although at the end of the period there are indications of stabilization.

Chart. Number of Licensing by Type of Licensing in 2024



Source: <https://modi.esdm.go.id/perizinan>

Data on mining permits for 2024 shows that the type of Mining Business Permit (IUP) is the largest with a total of 4,135 permits. This indicates that IUP is the most commonly granted permit, reflecting its central role in the mining industry. Meanwhile, Contracts of Work (KK) and Coal Mining Concession Work Agreements (PKP2B) have lower numbers, namely 31 for KK and 59 for PKP2B, indicating that these types of permits are more exclusive or specific for certain mining operations. The number of Community Mining Permits (IPR) granted was 67, reflecting the existence of segments in the industry that may be geared towards smaller scale mining or operated by local businesses. Meanwhile, there are only 9 Special Mining Business Permits (IUPK), which may indicate that only a few areas or special cases require this permit, or that the barriers to obtaining an IUPK may be higher compared to other types of permits.

Overall, the distribution of these permit types may indicate the government's focus on mining regulation and how the sector is governed, with IUPs being the most widely administered permit form, indicating a push for mining that is structured and under close supervision. Overall, the global mining sector has experienced a decline in productivity of around 28% in the last decade, causing mining companies to now operate with much lower efficiency than before in extracting minerals. This prompted new mineral and coal regulations to attempt to open wider mining access, given the increasing difficulty in finding economically viable mineral deposits. In Indonesia, the existence of the Mining and Coal Law and the Job Creation Law have raised concerns about the potential for usurping traditional territories and increasing criminalization and violence. Meanwhile, the Draft Law on Indigenous Peoples has still not been passed, leaving this problem without a clear resolution (Sorik & Dwiatmoko, 2023).

That although there is no specific regulation regarding the recognition and protection of indigenous peoples, the existence of customary community regulations can be seen from more than seven national laws and regulations in Indonesia that recognize the traditional rights of indigenous peoples, including the rights to land, water and customary forest. These regulations include the Law on Agrarian Affairs, Conservation of Natural Resources, Water Resources, Forestry, Regional Government, Environmental Protection and Management, as well as the Law on Villages, which collectively guarantee the rights of indigenous peoples to traditional territories and natural resources (Rajab et al., 2022). Research conducted by Adirandi M Rajab, et al shows that in essence the Mining and Coal Law only explicitly mentions People's Mining Permits (IPR) as permits for mining activities in people's areas, without classifying that the people here include indigenous communities, with the assumption that there is a possibility of interpreting that Indigenous communities are included in the people who have the right to IPR (Rajab et al., 2022). However, there is a problem that the granting of IPR according to the Mining and Coal Law



depends on the determination of Community Mining Areas (WPR), the criteria for which are not yet clear.

This creates difficulties for indigenous communities in participating in mining in indigenous communities' territories, because existing provisions tend to limit access for indigenous communities (Rajab et al., 2022). Furthermore, Presidential Regulation of the Republic of Indonesia Number 70 of 2023 opens up the opportunity to grant permits to community organizations to manage mining land. Even though this marks a new step in regulating mining land allocation, this policy still sparks debate and is considered to require more in-depth discussion, especially in relation to synchronization with existing regulations, including Law Number 3 of 2020 which is an amendment to the Law on Mineral and Coal Mining, as well as Government Regulation Number 96 of 2021. Referring to the discourse on granting mining management permits in the presidential regulation, it needs to be noted that it is not only social organizations in general that should be the target of granting permits, but also needs to pay attention to opportunities for indigenous communities in mining management. This is as stated by Marthen B. Salinding (Salinding, 2019) that in essence the management of mineral and coal resources needs to be carried out in a way that significantly increases the contribution to the economy, not only for the benefit of business actors or related officials, but also to ensure the benefits maximum for indigenous communities. This reflects the state's recognition of the rights of indigenous peoples to these resources, with the ultimate aim of improving the welfare of indigenous peoples.

Considering the importance of providing benefits to indigenous communities in mining management, the main step that must be taken is to overcome legal issues, namely the need for clear arrangements for recognition, protection and respect for indigenous communities and their relationship with natural resources. The next step is to increase resource capacity. human resources of indigenous communities in managing the mining sector. One way that can be taken to increase the human resource capacity of indigenous communities in managing the mining sector is by involving State-Owned Enterprises that manage mining natural resources (transfer of knowledge). This is in accordance with the objectives of establishing State-Owned Enterprises as emphasized in Article 2 of Law Number 19 of 2003 concerning State-Owned Enterprises, the role of State-Owned Enterprises in the Indonesian economic system can be categorized into two types of roles, namely as agents of business and agents of development (Marisi, 2017). The existence of BUMN with its characteristics as a business entity should produce profits and have profit value for the state, besides that, BUMN also has a non-commercial function in carrying out the goals of community welfare which are the state's goals (Asnawi, 2016).

3. CONCLUSION

The discourse regarding mining management permits for the community does not only emphasize social organizations in general, but also the importance of accommodating indigenous communities. Management of mineral and coal resources must provide significant economic contributions and benefits for indigenous communities, in line with the aim of improving the welfare of indigenous communities. For this reason, there needs to be clear legal regulations regarding the recognition and protection of the rights of indigenous peoples as well as increasing the capacity of indigenous human resources in the mining sector. This can be done through collaboration with BUMN in the mining sector, in accordance with its function not only to seek profit but also to have the aim of community welfare (agent of development).

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