

The Essence of a Joint Operational Agreement in Nickel Mining Business

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ABSTRACT

This study uses a normative legal research type using several approaches: the statute approach, the conceptual approach, the case approach, and the comparative approach. The essence of State control over mineral and coal resources does not mean "owned", but this definition gives the state the authority to regulate and administer the fibre to control the utilization of nickel mining management both individually and in groups for the realization of social justice. The state holds and makes legal rules regarding cooperation agreements (JO) involving between countries, private and individual. The cooperation agreement (JO) in the nickel mining sector essentially contains two objectives: the fulfilment of legal justice and legal certainty. The murder of judge is aimed at parties, including third parties in the cooperation agreement. In the construction of a cooperation agreement (JO) with legal certainty, several articles contain aspects of justice with standard confidence in allocation and distribution. The provisions of Article 3 letter e emphasize that the management of mineral and coal mining aims to increase the income of local, regional and state communities, as well as create employment opportunities for the most generous welfare of the people and this can be realized through a mutual agreement in the nickel mining sector. The principle of legal certainty also includes strengthening standard rules and norms in the cooperation agreement (JO) in the nickel mining sector to protect the parties' interests, which have not been regulated comprehensively in statutory regulations. The protection, fulfilment, advancement and enforcement of JO for the parties in the future will result in good state mining operations and the implementation of fair people's prosperity to achieve complete human development independence according to the Pancasila mandate the 1945 Constitution.

1. Introduction

Mining production activities in empirical practice always involve two parties between the IUP owner and the miner (in this dissertation the joint operational work agreement between the IUP owner and the miner calls it the term Joint Operational and abbreviated as JO) which involves the private sector and the private sector (Dawley, 2020). The problem that then arises in the JO is that the object in the form of production land managed by miners does not follow what is contained in the IUP. As a result, the miners experience losses. Also, the fulfilment of royalties raises problems in JO where the JO clause does not rigorously address conditions according to the Law where rights and obligations are difficult to fulfil due to detrimental to the IUP owner (Sipayung, 2019). The losses suffered by IUP owners and miners are more due to the parties' weaknesses in understanding the JO's rights and obligations towards the object and to the fulfilment of achievements in the form of royalties (Hakim, 2020).

Losses suffered by miners connected with the management of mining objects and losses experienced by IUP owners related to royalties are due to weaknesses in making JO agreement clauses that have not touched substance matters either the item or the fulfilment of royalties (Sudirman, n.d.). Thus, there needs to be a JO agreement concept that the government legally standardizes through new norms, including formal and material aspects in the JO clause (Godfrey et al., 2014).

Another problem related to JO If examined in the context of statutory regulations, there is a vacuum of norms. In-Law Number 4 of 2009 concerning Mineral and Coal Mining and Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (RI, 2020). The absence of norms referred to in mining regulations is that they are not regulated about third parties' interests, in this case, the miners, consequently there is no guarantee of legal certainty protection for miners in the JO agreement. In empirical practice, third parties' involvement in mining management is very often found; this is because not all IUP owners have the financial capacity to carry out mining management independently. Hence, they require the role of third parties as owners of capital. Weak guarantees of legal uncertainty for a third party have the potential for the third party to experience losses in the JO agreement (McCulloch, 2014).

The legal vacuum's impact is not only experienced by third parties but also intrinsically by IUP holders. This is well evidenced in Law Number 4 of 2009 concerning Mineral and Coal Mining and Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining which do not regulate standardization and criteria for third parties who can meet the formal and material requirements to become a third party in the Joint Venture with the IUP Owner. The purpose of setting the criteria and standardization of third parties in the mine management cooperation agreement with IUP owners is axiologically aimed at ensuring legal certainty for IUP owners so that there are no future losses due to the inability of miners to manage mining land.

Practitioners and mining experts have conveyed the problem of lack of norms related to the regulation of third parties and IUP owners in JO in mining discussions, seminars and workshops to be included in Law Number 3 of 2020 concerning amendments to Law Number 4 of 2009 concerning Mineral Mining and Coal, but this did not get a response from the legislators so that it seemed that the Law was enforced. The legislators should pay attention to the aspects of legal, political interests in the mining sector which are oriented towards the value of the welfare of the community and the parties involved in mining management considering that the mining sector is an essential pillar in ensuring protection, advancement, fulfilment and enforcement of the welfare of the community in various sectors. The formulation of the problem in this research will be formulated as follows: What is the Essence of the Operational Cooperation Agreement (JO) in the Nickel Mining Business?

2. Methodology

This study uses a typology of normative legal research, especially about the Essence of Operational Cooperation Agreement (JO) in Nickel Mining Business in Indonesia (Leeuw & Schmeets, 2016). The study uses several approaches, namely the statutory system, the conceptual approach, the case approach, and the comparative approach (Benson et al., 2015).

3. Results and Discussion

3.1 The Essence of State Ownership of Nickel

The principles adopted in the management of Minerva are based on externality, accountability and efficiency, where the implementation must provide the maximum economic and social benefits for the welfare of the community (Alfred, 2018). Also, mining regulations regulate conservation principles in the context of sustainable development related to mining and coal mineral resources and also accommodate the interests of the community because they provide space for community participation, both individuals and legal entities, in managing natural resources and the environment in a sustainable manner (LAVIAN CHANDRA, 2020).

The Minerva Law has also fulfilled the principle of synchronization with other statutory regulations, particularly regarding the use of land for mining business activities, where it is emphasized that the granting of permits for mining business areas does not cover land rights so that mining business permits can only be implemented after obtaining approval from the holder of land rights following the provisions of the applicable regulations (Yıldız, 2020).

The concept of State power over land has been established in article 2 paragraph (1), and ayat (2) UUPA, which reads: "Based on the provisions in article 33 paragraph (3) of the constitution and matters as referred to in article 1, the earth, water and space, including the natural resources contained therein are at the highest level controlled by the State, as the powerful organization of all the people".

The essence of State control over land does not mean "owned", but it means that it gives the First State the authority to regulate and administer its allocation, use, supply and maintenance (Mansfield, 2007). Second Determine and hold the rights that can be had over (part of) the earth, water and space of the akasa. Third Determine and regulate legal relationships between people and legal actions concerning land, water and space. Meanwhile, controlling the state is to achieve the greatest possible prosperity for the people, in the sense of Happiness, Prosperity and Independence in society and the Indonesian constitutional state which is sovereign, just and prosperous (Zainuddin & Ulya, 2018).

In customary Law there are also characteristics of tenure rights over ancestral land, namely: first, the absence of absolute ownership, second, inclusive control, third, the prohibition of buying and selling land (even if it is for land that has been personally controlled) and fourth, it has more respect for humans. And its work compared to land. These four characteristics are interrelated, based on the central paradigm that land is a unique resource, unlike other economic resources. Due to its limited amount, the land must be used legally and must be able to provide welfare for all people on earth. For this reason, land should not be used as a free-market commodity.

3.2 The Essence of the Cooperation Agreement in the Nickel Mining Sector in the Legal Positivism Approach

In the Mineral and Coal Mining Law, mining entrepreneurs' total royalty must pay 10% (Hilson et al., 2017). Article 129 Paragraph (1) states, the holder of a Special Mining Business Permit (IUPK) for production operations for metal mineral and coal mining is obliged to pay 4% to the government and 6% to the local government from the net profit since production. The regional government's share is then further divided into the provincial government to receive 1% quota, the producing district/city government 2.5% (Article 129 paragraph (2)). The rationing shows that the central government still gets the largest share, while the provincial government has the least.

Regardless of the division, this obligation could be bad news for mining entrepreneurs. The reason is 10% of the profits is not small. Not to mention that they have to pay other fees stipulated in the Mineral and Coal Mining Law. That's why some say Article 129 is controversial. Besides appearing at the end of the discussion, this article is also not an initiative from the government.

Law Number 4 of 2009 concerning Mineral and Coal Mining and its implementing regulations has not addressed the actual problems and conditions in implementing Mineral and Coal Mining exploitation, including cross-sectoral issues between the mining and non-mining sectors. Based on this, it is necessary to improve Law Number 4 of 2009 concerning Mineral and Coal Mining to provide legal certainty in the management and exploitation of Mineral and Coal Mining for business actors in the Mineral and Coal sector (Redi, 2017).

As an improvement to Law Number 4 of 2009 concerning Mineral and Coal Mining, in Law Number 3 of 2020, the new content added to this Law are: 1) Regulations related to the concept of Legal Mining Areas; 2) Mineral and Coal management authority; 3) Mineral and Coal management plan; 4) Assignment of state research institutes, BUMN, regionally owned enterprises, or Business Entities to conduct Investigation and Research in the framework of preparing WIUP; 5) Strengthening the role of BUMN; 6) Restructuring permits in the exploitation of Mineral and Coal, including the concept of new licenses related to exploitation of rocks for certain types or specific purposes, as well as permits for community mining; and 7) Strengthening policies about environmental management in Mining business activities, including the implementation of Reclamation and Post-mining.

Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerva Law) was issued with several legal defects, namely violations of the law-making process. Several violations were violated and negated by the DPR and the government informing this Law.

What has not been regulated in Law No.3 of 2020 concerning Minerva is that the model and form of an Operational Cooperation (JO) contract/agreement specifically for nickel mining has not been accommodated. This means that Law No.3 of 2020 still adopts a model and form of Contract of Work (KK) specifically for gold, copper and silver mining.

Contract of Work (KK), Coal Mining Entrepreneur Cooperation Agreement (PKP2B) and Mining Concession (KP) are not the delegation of the absolute power of mining materials from the state to contractors, but cooperation between the state and contractors in terms of exploitation of mining materials. In terms of contractual relations, the Indonesian government's involvement, represented by the Minister of Energy and Natural Resources as a party to the contract, is one of the attractions for investors.

This is due to pride and can also provide legal certainty. In the doctrine of restrictive state immunity, the state has immunity from the court's jurisdiction only for some instances or disputes. In this case, State actions can be classified into two forms, namely: *Jure Imperii* is actions of the state relating solely to State sovereignty (Government acts); *Jure gestionis*, namely the state's commercial activities (commercial activity).

3.3 Legal certainty policy guarantees on cooperation agreements in the nickel mining sector

According to Sudikno Mertokusumo, legal certainty is justifiable protection against arbitrary action, which means that a person will obtain something that is expected in certain circumstances (Mertokusumo, 2007). Based on the official translation from the National Legal Development Agency (BPHN), it is stated that legal certainty (*rechtszekerheid*) is a guarantee for community members that the Law will be applied correctly and fairly, while in the Big Indonesian Dictionary, it is stated that legal certainty is a legal instrument of a country that is capable of guarantee the rights and obligations of every citizen.

According to Jimmy Ashiddiqie, in Law, there must be justice, and legal certainty and legal certainty is essential so that people are not confused. Still, fairness and legal certainty are two sides of one currency (ASHIDDIQIE et al., 2018). Justice and legal certainty need not be contested. The sentence must not be cut, meaning that justice must be synonymous with fair confidence. If this uncertainty occurs, there will be an injustice for many people. Do not because you want to bring justice to one person, but instead create injustice for many people. In addition to having legal certainty, Law's purpose is to create fairness and order. Justice, legal certainty, and order must be realized simultaneously to create a peaceful life.

In the mining sector, it is necessary to guarantee mining operation so that it can provide certainty for investors and companies (Campbell, 2012). A company to be able to run its business requires sufficient capital. The first time a company obtains wealth, it is called authorized capital from the company founders (Colombo & Grilli, 2005). If the company is a limited liability company, all of its founders are obliged to subscribe to the shares because its capital consists of a certain amount.

The founders of the company who put capital into the company and the capital according to Law number 40 of 2007 can be in the form of money or goods. Because the founders put their capital into the company, they are called capital investors. After the capital is invested in the company, the founder's position is also a shareholder of the company who has a vote in the GMS and is entitled to receive dividends in the form of (Lazonick, 2017).

Through a Joint Operational contract, every investor investing in Indonesia has the rights, obligations, and responsibilities as stipulated in Law no. 25 of 2007, specifically to provide legal certainty, to reinforce investors' commitments to implement sound corporate principles governance, to give corporate social respect. The regulation of investor responsibility is needed to promote a healthy business competition climate, increase environmental responsibility, fulfil workers' rights and obligations, and encourage investor compliance with laws and regulations.

Based on the description of the research results, it can be concluded that the essence of JO in nickel mining management is regulated in Article 33 of the 1945 Constitution. Power is born from the state's principle of control where the control has two philosophical meanings, namely individual control taken from the ideological regime of libertarian philosophy. And the importance of a collective philosophy of power that was born from a socialist philosophical government, all of which lead to mining management aimed at realizing the welfare of the community which could be of benefit to development growth in all sectors to achieve social justice for all Indonesian people in the mining sector.

The cooperation agreement (JO) in Indonesia's mining management is oriented towards two principles: fulfilling justice and the direction of democracy. JO which is oriented towards justice contains three pillars, namely first, the post of protection for the sustainability of human resources in the future, second, the pillar of security for indigenous peoples and marginalized communities, third, strengthening the legal system of legal protection for the two posts above in management mining through cooperation which is made both between State and State, State and private, private and private, personal with individuals, and between individuals and individuals. Whereas JO which is oriented towards killing, protecting, advancing and enforcing in the nickel mining sector contains three pillars, namely first, while JO which is oriented towards killing, protecting, promoting and implementing in the nickel mining sector includes three pillars, JO must be oriented towards protecting rights human rights (HAM) at all levels of the contract agreement, Second, easy access to permits while still emphasizing legal, moral responsibility through strengthening the Rule of Law for parties. Third, prevention of corruption and environmental losses caused by nickel mining.

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4. Conclusion

This study concludes that the cooperation agreement (JO) in the nickel mining sector essentially contains two principles: fulfilling justice and the direction of democracy. JO which is oriented towards justice includes three pillars, namely first, the post of protection for the sustainability of human resources in the future, second, the pillar of security for indigenous peoples and marginalized communities, third, strengthening the legal system of legal protection for the two posts above in management mining through cooperation which is made both between State and State, State and private, private and private, personal with individuals, and between individuals and individuals. Whereas JO, which is oriented towards killing, protection, advancement, and enforcement in the nickel mining sector contains three pillars, JO must first be oriented towards protecting human rights (HAM) at all levels of contract agreements. Second, easy access to permits while still emphasizing moral responsibility. Through strengthening the Rule of Law for the parties, the third prevention of corruption and losses in the environmental sector caused by nickel mining.

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