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INDONESIAN MINING REGULATIONS SHIFT AS A POTENTIAL SECTOR IN DEVELOPING THE ECONOMY

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Abstract

Law/regulation on mining play a significant role, because mining sector is a potential sector for developing the economy of Indonesian. Law on Mining underwent several amendments, namely the era of Law Number 11 of 1967, Law Number 4 of 2009 and Law Number 3 of 2020. This article will analyze shiftss in mining sector regulations from each of these eras. This article uses normative juridical methods, with statutory, contextual, historical, and comparative approaches, and is analyzed qualitatively. The results of the study show that between Law No. 11 of 1967 to Law No. 4 of 2009 and Law no. 3 of 2020 underwent a change, namely from a centralized arrangement, where the mining sector holding power became a matter for the central government to decentralization, handed over to local governments. Another change is in the field of relations between the government and capital or investors, the contract of work model becomes licensing. The impact on the contract of work model is that the state is positioned as a 'party' to the contract, while in terms of licensing the government has a position that tends to be stronger. This Amendment Contract is adapted to Indonesian conditions and the protection of Article 33 of the Indonesian constitution.

Keywords: Mining, Mining, Permit, Work, Contract

INTRODUCTION

Indonesia was formed as a result of the collision of two large earth’s plates, namely the Pacific Plate in the North and the Australian Plate in the South, the collision resulted in the formation of volcanic arcs, which in simple terms support the formation of gold and other metal mineralization in Indonesia,[1] so that Indonesia has abundant mineral[2]

[1] Sujono, *Geologi Dan Mula Jadi Emas* (Bandung: Puslitbang Mineral dan Batubara, 2004).

[2] Salim HS, *Hukum Pertambangan Di Indonesia*, Revisi III (Jakarta: PT Rajagrafindo Persada, 2007).

resources. Mining resources include chemical elements, minerals, ores, and kinds of stones including precious stones which are natural deposits.[3] Mining resource was categorized as *nonre-newable*,[4] tend to have relatively higher risks and higher environmental impact compared to other commodities exploitation in general.[5]

Coal mining as one of the utilizations of natural resources was basically part of the implementation of economic development which in essence refers to a goal, which is to improve people's welfare.[6] The level of people's welfare was inseparable from economic conditions, and could be measured through; (1) income level; (2) settlement conditions; (3) education; and (4) healthness. [7] Mining management needs to pay attention to various aspects, starting from business potential, the environment, people's welfare to aspects of state sovereignty. Mining as a natural resource has great potential for the national economy,[8] therefore its management cannot be separated from state control. Mining resource needs to be managed carefully while paying attention to the welfare of the people. People's welfare is something that cannot be separated from the management of Indonesia's natural resources as well as mentioned in Article 33, paragraph (3) Constitution of Indonesia.[9]

The state regulates matters related to mining in national regulations, namely Law Number 4 of 2009 concerning Mineral and Coal Mining (hereinafter referred to as Law No. 4 of 2009). Previously, before Law no. 4 of 2009, mining matters are regulated in Law No. 11 of 1967 concerning Basic Mining Provisions (hereinafter referred to as Law No. 1 of 1967). The constitutional legal base for the formation of the Mining Law, both Law no. 11 of 1967 and Law No.4 of 2009 is Article 33 of the 1945 Constitution of the Republic of Indonesia. Article 33 of Indonesia Constitution contains the direction of the Indonesia's economic development, however, there are differences between Article 33 of

[3] Salim HS, *Hukum Pertambangan Di Indonesia*, Revisi III (Jakarta: PT Rajagrafindo Persada, 2007).

[4] Fenty U Puluhulawa, 'Kewenangan Perizinan Dalam Pengelolaan Lingkungan Pada Usaha Pertambangan', *Jurnal Legalitas*, vol 3 no 2.56, 5–14 <http://download.portalgaruda.org/article.php?article=40591&val=3585>.

[5] Adrian Sutedi, *Hukum Pertambangan* (Jakarta: Sinar Grafika, 2011); Noviayanti Darc, Jeanne Manik, 'Pengelolaan Pertambangan Yang Berdampak Lingkungan Di Indonesia', *Jurnal Promine*, 1.1 (2013) <https://journal.ubb.ac.id/index.php/promine/article/view/64>.

[6] Nurul Listiyani, 'Dampak Pertambangan Terhadap Lingkungan Hidup Di Kalimantan Selatan Dan Implikasinya Bago Hak-Hak Warga Negara', *Al'Adl*, 9.1 (2017), 67–86.

[7] Ninik Srijani, Kadeni, 'Peran UMKM (Usaha Mikro Kecil Menengah) Dalam Meningkatkan Kesejahteraan Masyarakat', *EQUILIBRIUM : Jurnal Ilmiah Ekonomi Dan Pembelajarannya*, 8.2 (2020), 191 <https://doi.org/10.25273/equilibrium.v8i2.7118>.

[8] Fenty U. Puluhulawa and Amanda Adelina Harun, 'Biodiversity Protection from the Impact of Illegal Gold Mining for Sustainability', in *IOP Conference Series: Earth and Environmental Science*, 2020, DXIX <https://doi.org/10.1088/1755-1315/519/1/012031>.

[9] Article 33 paragraph (3) Indonesia Constitution said "The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people."

Indonesia Constitution in the era of Law no. 11 of 1967 compared to the era of Law no. 4 of 2009. The difference was in how the Article 33 interpreted.

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia emphasizes several important points, state's control; and people's prosperity. Bagir Manan, formulates the scope of the meaning of "state control" (also could be translated in government's control) mean control in a form identical to ownership by the state, in which the state through the national government becomes the holder of power to determine the rights over it including water, earth, and other natural resources in it.[10] Besides, Article 33 paragraph (3) also states "to be used for the greatest prosperity of the people". This means that all natural resource management activities must be oriented towards the prosperity of the people. The important points above should be reflected in various laws related to natural resource management, including the Mining Law.

UU no. 11 of 1967 is currently not valid because it has been replaced by Law no. 4 2004.[11] There are number of differences between Law no. 11 of 1967 with Law no. 4 of 2009. One of the most prominent is the change in the contract of work system in Law no. 11 of 1967 to the mining permittion system in Law no. 4 of 2009. The permit system is considered to reflect more state sovereignty when compared to the contract of work system. Apart from shifts from the contract of work to permits, there are several other differences to Indonesian mining regulations. In the contract of work system, the government and mining companies have certain agreements regarding mining operations. Meanwhile, in the permit system, companies must obtain permits from the government to carry out their mining operations. The permit system considered reflective of state sovereignty and the principle of "being controlled by the state" as stipulated in Article 33 paragraph (3) of Indonesia Constitution. However, this shift also creates new challenges and problems. Mining companies must adapt to new regulations affecting their operations. For example, the process of obtaining a permit can be more complex and time-consuming than the contract of work system.

Besides, this regulatory shift also has a direct impact on the management model of the mining sector in Indonesia. This sector has an important role in the country's economy, both in terms of contribution to GDP and job creation. Therefore, changes in mining regulations can have a significant impact on the sector and the country's economy. However, the impact of this shift in mining regulations has not been fully understood and measured. More research and analysis needed to evaluate the long-term effects of these changes. In this context, it is necessary to emphasize that the main purpose of mining regulations is to ensure that mining activities can contribute as much as possible to the prosperity of the people, as emphasized by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

Thus, a comprehensive analysis and evaluation of these regulatory shift is essential.

[10] GDH Wibowo and FHU Mataram, 'Aspek Hukum Dan Kelembagaan Dalam Peningkatan Efisiensi Dan Efektivitas Pengelolaan Wilayah Pesisir', *Jurnal Hukum*, 2009 <http://law.uii.ac.id/images/stories/Jurnal Hukum/Gatot Dwi Hendro W.pdf>.

[11] This is in accordance with the principle of *'lex posterior derogate legi priori'* which means that the enforcement of old regulations will be replaced by new regulations, in the sense that the two regulations are equal and regulate the same things.

This is not only to understand the impact that this change will bring, but also to ensure that mining regulations in Indonesia can fulfill their constitutional purpose of creating people's prosperity. Therefore, this article discusses changes in the management model of the mining sector as a potential sector in building an economy based on mining law in Indonesia.

RESEARCH METHOD

This research is categorized into the type of normative legal research, this is based on the issues and or themes discussed as research topics. The research approach used is philosophical and analytical, namely research that focuses on rational, critical, and philosophical analytical views, and ends with conclusions that aim to produce new findings as answers to the main problems that have been determined.[12] This research will be analyzed using descriptive analytical methods, through describing the applicable laws and regulations related to legal theory and positive law enforcement practices related to the problem.[13]

RESULT AND DISCUSSION

Management Of Mine Resources In The Era Of Act No. 11 Year 1967

History shows that mining activities in Indonesia have been carried out since before Dutch colonialism.[14] Mining in Indonesia has been carried out since the Hindu kingdoms of Sriwijaya and Majapahit.[15] Mining has been carried out since the Bronze Age, where our ancestors mined and processed metal ore as the basic material for making tools used in everyday life.[16] Activities related to mining carried out during the Bronze Age were metallurgy [17] howver it was done in more simple way. [18]

The explanation above shows that awareness of mining potential has been realized before the colonial era. In the era of colonialism, the Dutch government regulated mining

[12] Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi* (Bandung: Alfabeta, 2017).

[13] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media Group, 2011).

[14] Siti Rahmana, 'Pengaruh Pendirian Perusahaan Pertambangan Emas Kolonial Belanda Di Lebong Tahun 1897-1930', *Jurnal Aghinya Stiesnu Bengkulu*, 1.1 (2018), 74–86 <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ejournal.stiesnu-bengkulu.ac.id/index.php/aghniya/article/viewFile/8/6>.

[15] BPHN, 'No Title' <http://www.bphn.go.id/data/documents/7aetambang.pdf>.

[16] *Ibid*.

[17] Metallurgy is the science dealing with metals and their formation.

Mishbah Khoiruddin Zuhri, 'Analisis Metalurgi Menurut Ilmu Kimia Dan', *Prosiding Konferensi Integrasi Interkoneksi Islam Dan Sains*, 4 (2022), 364–69 <https://ejournal.uin-suka.ac.id/saintek/kiiis/article/view/3188>.

[18] Jogi Tjiptadi Soedarjono, *Hukum Pertambangan*, 2006.

with Indische Mijn Wet (IMJ).[19] The implementation of Indische Mijn Wet ended with Government Regulation in Lieu of Law (Perppu) No. 37 of 1960 concerning Mining. In the same year, Government Regulation in Lieu of Law (Perppu) Number 44 of 1960 concerning Oil and Natural Gas was issued. Perppu No. 37 of 1960 was replaced by Law no. 11 of 1967. Law no. 11 of 1967 was issued during the New Order era, under the leadership of President Soeharto. President Soeharto is known as the Father of Indonesian Development, because during President Soeharto's reign Indonesia's economic development progressed rapidly.[20]Law No. 11 of 1967 became the legal base for the management of Indonesia's mineral resources which was based on the Indonesia Constitution. Law no. 11 of 1967 was born as one of the catalysts for national economic development.

Indonesia's as a 'young country' at that time was still experiencing obstacles in developing its economy. One of the problems was in the field of funding or finance. Young country usually was not yet sufficiently well-established in the financial sector, thus hindering the government's mobility. The method used at that time to overcome problems in the financial sector was foreign investment. Foreign investment is an instant way to get an injection of funds. Indonesia with its wealth of natural resources will easily attract foreign investors to invest.

Investment opportunities in Indonesia were opened in 1967 with the issuance of Law no. 1 of 1967 concerning Foreign Investment (PMA), which was followed by Law no. 1 of 1968 concerning Domestic Investment. 1967 was the beginning of Indonesia's economic development. [21] These two laws became capital for Indonesia to start the era of industrialization as the main sector driving economic growth.[22] Law no. 11 of 1967 concerning Basic Mining Provisions was born in the same year as Law no. 1 of 1967 concerning Foreign Investment, in order to attract foreign investors in the mining sector.

Law no. 11 of 1967 has a legal basis Article 33 of the Indonesian Constitution. Article 33 of Indonesian Constitution when Law no. 11 of 1967 was issued still consisting of 3 (three) articles, they are: [23]

(1) The economy is structured as a joint venture based on the principle of kinship.

[19] Abrar Saleng, *Hukum Pertambangan* (Yogyakarta: UII Press, 2004).

[20] Muhammad Zoher Hilm, 'Dominasi Soeharto, Monopoli Usaha Oleh Birokrat Dan Pengusaha', *JUPE : Jurnal Pendidikan Mandala*, 4.5 (2019) <https://doi.org/10.58258/jupe.v4i5.1272>; Badan Perencanaan Pembangunan Nasional Republik Indonesia, *Indonesia 2045 Berdaulat, Maju, Adil , Dan Makmur*, *Sistem Manajemen Pengetahuan*, 2019, XXXII <https://www.bappenas.go.id/files%0A/Visi Indonesia 2045/Dokumen%0Alengkap 2045_final.>.

[21] Badan Perencanaan Pembangunan Nasional Republik Indonesia, XXXII.

[22] Ratih Lestari, 'Pasal 33 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Dan Penerapannya Dari Masa Ke Masa Sejak Era Pemerintahan Soekarno, Soeharto, Dan Era Reformasi', *Adil: Jurnal Hukum*, 4.1 (2012).

[23] Article 33 Indonesia Constitution before amaendment.

(2) The branches of production which are important for the state and affect the life of the people at large are controlled by the state.

(3) Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

The formulation of Article 33 of Indonesian Constitution above was a formulation before amendments to the constitution were made. The formulation of Article 33 above is Article 33 which is the legal basis of Law no. 11 of 1967. There are several important points contained in Law no. 11 of 1967;[24]

a. Minerals contained in Indonesian mining laws are national assets controlled by the state and used for the prosperity of the Indonesian people;
b. Minerals are divided into 3 groups, namely strategic, vital, and non-strategic and vital minerals;
c. Strategic and vital minerals are regulated by the minister in charge of mining duties, while non-strategic and vital minerals are regulated by the first-level local government where the minerals are located;
d. Strategic minerals may only be mined by the government or state-owned companies, while vital and non-strategic and vital minerals can be exploited by the government and private companies that meet the requirements;
e. The mining business includes general survey activities, exploration, exploitation, processing and refining, transportation and sales.
f. Mining business activities for strategic and vital minerals based on the Ministerial Decree concerning Mining Authorization Permits. Meanwhile, minerals that are not strategic and vital based on the Regional Mining Permit;
g. In the implementation of mining activities can be carried out by contractors based on a Work Agreement ratified by the Government together with the legislative.
h. Small reserves can be managed by the people or private parties;
i. Mining authorization holders are required to compensate land, pay fixed fees and/or fees related to mining business activities.
j. Mining authorization holders are required to return the land in such a way that it does not cause disease or harm to the surrounding community.

Law no. 11 of 1967 consists of 37 articles. The scope of mining resources regulated by this Law includes chemical elements of minerals, ores, and all kinds of rocks including precious stones which are natural deposits. [25] Based on the formulation above, that Law no. 11 of 1967 regulates resources in general and, not specific to certain types. Mining materials as mentioned above, are classified into 3 (three) types of groups, namely the strategic mineral group; group of vital minerals; and non-strategic and non-vital mineral groups. Especially for strategic and vital types of mining materials, management authority

[24] Yossa Yonathan Hutajulu, 'Undang-Undang Pertambangan Nomor 11 Tahun 1967 Vs Nomor 4 Tahun 2009', *Jurnal Teknik Pertambangan*, 12.1 (2016), 64–72.

[25] Article 2 number (2), Law No. 11 of 1967 on Basic Mining Provisions

lies with the Minister, while for non-strategic and non-vital categories, it is at the Level I Regional Government.

UU no. 11 of 1967 has a centralized pattern. The Indonesian government in 1967 was indeed centralized,[26] where most government affairs are carried out by the national government. This centralized nature is reflected in Law no. 11 of 1967, where mining-related affairs are in the hands of the central government. In Article 4 of Law no. 11 of 1967 states that the control of minerals is carried out by the government, namely the Minister and the Level I Regional Government. An application to obtain mining authorization is submitted to the central government, this is in accordance with Article 17 paragraph (1) of Law no. 11 of 1967 "A request to obtain mining authorization is submitted to the Minister". The centralized style of government as reflected in Law no. 11 of 1967 is not only seen in the control of mining, but also in the field of supervision. Supervision of mining management is carried out by the Minister. The implementation of mining supervision is also regulated further by using Government Regulations.

Law no. 11 of 1967 which regulates general and non-specific, and is still centralized, apart from that there is one thing that is most highlighted in mining regulation by Law no. 11 of 1967, namely the contract of work model. The contract of work is a model regulated by the Indonesian government in relation to the relationship between the state and foreign investors, as stipulated in Law no. 1 of 1967 concerning Foreign Investment. The relationship between mining companies or foreign investors and the Indonesian government is based on a contract of work system.[27] Contracts of work provide the possibility for foreign investors to operate mines with the status of a contractor to the Indonesian government.[28] The legal basis for the contract of work is contained in Article 10 of Law no. 11 of 1967.

The model of contract of work offered through Law no. 1 of 1967 and Law no. 11 of 1967 to foreign investors using the principle of the 'contract'. The contract requires equality of the parties in the contract, so that there is an opportunity for fair negotiations, as well as demonstrating the operation of a mechanism for the exchange of rights and obligations that are proportional. [29] The principle of equality between parties is what later

[26] Herry Porda Nugroho Putro, 'UJIAN NASIONALISME INDONESIA PADA AWAL REFORMASI (Suara Dari Surat Kabar)', in *Prosiding Seminar Nasional Pembelajaran Sejarah Di Tengah Perubahan*, ed. by Dewa Agung Gede Agung (Malang, 2020) <https://osf.io/z9bef/download>.

[27] Article 8 paragraph (1) Law No 1 of 1967 on Foreign Investment "Foreign investment in the mining sector is based on a cooperation with the Government on the basis of a contract of work or other form in accordance with the applicable laws and regulations."

[28] Terjemahan dari: "It allowed foreign investors to operate mines under the status of contractor to the Indonesian government."

Kosim Gandataruna and Kirsty Haymon, 'A Dream Denied? Mining Legislation and the Constitution in Indonesia', *Bulletin of Indonesian Economic Studies*, 47.2 (2011), 221–31 <https://doi.org/10.1080/00074918.2011.585951>.

[29] Agus Yudha Hernoko, 'Asas Proporsionalitas Sebagai Landasan Pertukaran Hak Dan Kewajiban Para Pihak Dalam Kontrak Komersial', *Jurnal Hukum Dan Peradilan*, 5.3 (2016), 447 <https://doi.org/10.25216/jhp.5.3.2016.447-466>.

became controversial. The equality of the parties in the contract of work with this special treatment considered to be not appropriate with the national sovereignty.[30] The government as a party that has the "right to control" does not appear as a powerful party, instead it tends to state sovereignty bound by a contract of work.

Law no. 11 of 1967 legal basis is Article 33 of Indonesia Constitution. The meaning of Article 33 of Indonesia Constitution as a constitutional base at that time became a very crucial position. In 1967, economic politics was oriented towards economic growth using foreign capital support, either through debt from abroad or foreign direct investment.[31] Economic development in that era tended to be liberal, which in turn had an impact on the creation of social inequality in society.[32] Law no. 11 of 1967 was later replaced by Law no. 4 in 2009.

Seeing the discussion related to Law no. 11 of 1967, there is a tendency for Law no. 11 of 1967 based on the philosophy of liberalism. Liberalism is philosophy that prioritizes the individual as the creator and determinant of his actions, so the success and failure are determined by the individual himself, through the actions and choices of these actions.[33] The government according to liberalism is neutral towards the concepts adopted and chosen by its citizens, and government intervention to support one of the values or life choices and ignores other values or life choices, violates and limits individual autonomy, which is the value of liberalism.[34]

Law No. 11 of 1967 which was born during the Orde Baru (President Soeharto Era) has centralistic government, with a focus on economic growth supported by foreign capital. This is reflected in the approach to mining regulation in which the central government holds full control over this sector. At that time, the relationship between foreign investors and the government was based on the contract of work model, in which the foreign investors operated as contractors for the government. As the conditions described create a fair (in an equal sense) and proportional working relationship between the government and foreign investors, this approach has drawn criticism. Equality in contracts of work is often seen as a limitation on state sovereignty, with the government appearing as the less dominant party. In this case, the role and position of the state as the party with the "right to control" becomes blurred. This condition inversely proportional to article 33 of the Indonesia Condition, as its base. This article reflects the concept of a sovereign state and is responsible for the utilization of natural resources for the prosperity of the people. However, in 1967, Indonesia adopted a more liberal approach to the economy, focusing on economic growth with the help of foreign investment.

[30] Hikmahanto Juwana, Kuliah Hukum Pembangunan, 18 Februari 2017

[31] Lestari.

[32] Lestari.

[33] Ridha Aida, 'Liberalisme Dan Komunitarianisme: Konsep Tentang Individu Dan Komunitas', *Jurnal Demokrasi*, 4.2 (2005), 95–106 <http://ejournal.unp.ac.id/index.php/jd/article/view/1063>.

[34] Aida.

Based on this, it seems clear that Law no. 11 of 1967 has a strong philosophical basis in liberalism, which gives priority to individuals and prioritizes fair and proportional interactions between the government and foreign investors. However, this liberalism also causes several challenges and criticisms, especially regarding the role and sovereignty of the state in the management of natural resources.

Regulation Of The Mining Sector In The Era Of Act NO. 4 OF 2009 And Act No. 3 Year 2020

In 2009, Law no. 4 of 2009 on Mineral and Coal Mining. UU no. 4 of 2009 was born and replaced the enactment of Law no. 11 of 1967 according to principle *of lex posteriori derogate legi priori*, means the new-law will replace the old-law which is equal and regulates the same things. The existence of Law no. 4 of 2009 amendments to Law No. 11 of 1967. This has an impact on mining businesses in Indonesia. In 2020, Law No. 3 of 2020 on Amendments of Law no. 4 of 2009 on Mineral and Coal Mining with the aim of amending several provisions contained in Law no. 4 in 2009, in the other word, Law No. 4 of 2009 is applicable, except the articles have been change in Law No. 3 of 2020.

Amendment of Law no. 11 of 1967 to Law no. 4 of 2009 was influenced by several conditions. The existence of decentralization of government power which took place since January 1, 2001 prompted changes to the old mining law, Law no. 11 of 1967. Law no. 11 of 1967 is a mining law that was born in the centralized government, therefore the centralistic government pattern is also reflected in it. Changes in government system from centralized to decentralized impact on Law no. 11 of 1967 is no longer suitable. Decentralization means transfer of government power from the central government toward regional governments based on regional autonomy. Logemann argues, decentralization means that there is power to act independently (*vrije beweging*) which is given to state units that self-govern their area, power based on self-initiative called autonomy, which Van Vollenhoven calls *eigenmeesterschap*. [35]

The detailed comparison of these changes can be seen in the table below:

Table 1. Comparison of Law No. 11 of 1967 and Law no. 4 of 2009

No	Legal Base	Changes	Implications	Analyzis
1	Law No. 11 of 1967	Centralized style, with mining-related affairs in the hands of the central government	Give strong control to the central government in mining management, but reduce the role of local governments and local communities	This centralized approach can strengthen the power and control of the central government, but it can also create social injustice and conflict with local

[35] Reynold Simandjuntak, 'Negara Kesatuan Republik Indonesia Perspektif Yuridis Konstitusional', *De Jure, Syariah Dan Hukum*, 07.01 (2015), 57–67.

No	Legal Base	Changes	Implications	Analyzis
				governments and local communities
2	Law No. 4 of 2009	The change from the contract of work system to a permit (lisence) system gives regional governments and local communities a bigger role in mining management	It is expected to improve people's welfare by strengthening local control and benefits over mining resources, as well as reducing conflicts between the central government, local governments, and local communities	This more decentralized and participatory approach can strengthen national sovereignty and local democracy, but it also requires strong oversight and accountability mechanisms to prevent abuse and corruption
3	Law No. 4 of 2009	Abolition of the contract of work model, which gave foreign investors the right to operate mines as contractors for the Indonesian government	Can strengthen national sovereignty and reduce dependence on foreign investment, but can also reduce foreign investment and affect economic growth	The abolition of the contract of work can be considered as a good step in strengthening national sovereignty, but it can also have an impact on foreign investment and economic growth if it is not accompanied by policies that support a healthy and fair investment climate.

Law no. 4 of 2009 brought about major changes by introducing a licensing system that gave regional governments and local communities a bigger role in mining management. This change is expected to improve people's welfare and reduce conflicts in mining management. However, these changes also require strong monitoring and accountability to prevent power abuse and corruption. This change can be considered as an important step to strengthen national sovereignty. However, on the other hand, this change also has the potential to reduce interest of foreign investment.

Decentralization impacts in the relationship between the national government and the regional government, as well as changing some of the behavior of the Indonesian people which previously only focused on one national government.[36] The purpose of decentralization is expediting development that is spread throughout the country and in harmony with political development and national unity, democratizing and improving the

[36] Simandjuntak.

welfare of the community in the regional level, [37] this also applicable in mining sector. It is hoped that granting regional autonomy in the mining sector can provide welfare and build the independence of the region. Compare to centralistic government which requires uniformity of local government organizational systems and project management in each region, and consequences to regional government dependence toward national government. [38]

There are several points that have amendment of Law no. 11 of 1967 to Law no. 4 of 2009, related to the implementation of the principle of control by the government; grouping of mining materials; authority over mining management; mining area; legal basis of mining business; obligations of mining business actors; guidance and supervision; and transitional provisions. The principle of state control in the mining law, both in Law no. 11 of 1967 and Law no. 4 of 2009 cannot be separated from the constitutional basis of the two laws, Article 3, paragraph 3, Indonesia Constitution. There are important points contained in Article 33 paragraph (3), 'control by the government' and 'use of natural resources for the greatest prosperity'. Article 33 of Indonesia Constitution justifies the exploitation of natural resources based on philosophical considerations (the basic spirit of the economy is joint ventures and kinship), political (preventing monopoly and oligopoly that are detrimental to the state), economic (efficiency and effectiveness), and for the sake of general welfare and the greatest prosperity of the people. [39]

Law No. 4 of 2009 marks a new era in the mining sector where there are new provisions indicating a paradigm shift in the management of mineral and coal resources, namely related to the relationship between the state and investors, especially to foreign investment. [40] The most highlighted change in the changes to the Mining Law is the mining business model. In Law no. 4 of 2009 and Law no. 3 of 2020 the mining business model is based on permits, while the previous law was based on contract of work.[41]

[37] Wasisto Raharjo Jati, 'Inkonsistensi Paradigma Otonomi Daerah Di Indonesia: Dilema Sentralisasi Atau Desentralisasi', *Jurnal Konstitusi*, 9.4 (2012), 743–73.

[38] Syamsuddin Haris, *Desentralisasi Dan Otonomi Daerah Desentralisasi, Demokratisasi, & Akuntabilitas Pemerintah Daerah*, ed. by Syamsuddin Haris (LIPI Press, 2007).

[39] J. Ronald Mawuntu, 'Konsep Penguasaan Negara Berdasarkan Pasal 33 UUD 1945 Dan Putusan Mahkamah Konstitusi', *Jurnal Hukum Unsrat*, XX.3 (2012), 86–95.

[40] Victor Imanuel Williamson Nalle, 'Hak Menguasai Negara Atas Mineral Dan Batubara Pasca Berlakunya Undang-Undang Minerba', *JurnaI Konstitusi*, 9.3 (2012), 473–94 <http://scholar.google.co.id/scholar?hl=id&q=mineral+dan+batubara&btnG=#7>.

[41] In comparison, Australia, Canada, South Africa, and Chile are some of the countries that have unique mining management systems. Australia and Canada have licensing systems that are regulated by state or provincial governments, not the federal government. This is a form of decentralization in mining management. In contrast, South Africa with the "Mineral and Petroleum Resources Development Act" of 2002 confirmed state sovereignty over all mineral and petroleum resources, but companies can still carry out mining activities through a licensing system granted by the government. In Chile, mineral resources are considered state property, and the government has the right to award contracts to private companies to mine. K. Evans, *Mineral Law in Australia* (Cheltenham: Edward Elgar Publishing, 2014); R. Hodge, *Mining Law in Canada* (Vancouver: UBC Press, 2017); L. Claassens, *Law, Order and Mining Rights in South Africa*

Contract of work is essentially an agreement between a mining company for mineral minerals (other than coal, petroleum, natural gas, geothermal and radioactive materials) with an Indonesian legal entity and the Indonesian government. [42] Law No. 4 of 2009 and Law no. 3 of 2020 uses the permittion model (licensing model) as the basis for the legality of mining businesses. In Article 35, mining business permits are divided into 3 (three) types; Mining Business Permit; Artisanal Small Scale Mining Permit (IPR); Special Mining Business Permit.

The shift of mining business model from the contract of work to the mining business permit is considered as an implication of the existence of a philosophy of state sovereignty and people's welfare in mining management.[43] The management of mineral and coal mining must be controlled by the state in order to provide real added value to the national economy in order to achieve prosperity and welfare of the people in a just manner. [44] Mining business permit considered more reflective of state control over the management of mining resources for the greatest prosperity of the people. The government is in a position as the 'license giver' and mining companies as the 'permit recipient'. Meanwhile, in the contract of work, the relationship that arises between the government and mining companies is a contractual private relationship. [45] In a contractual relationship, both the mining company and the government are considered as equal parties in the contract, [46] and government as a party that has the "right to control" does not appear as a powerful party, instead it tends to state sovereignty bound by a contract of work. In contracts of work, the government's position with investors is equal/equal, while in the licensing system the government's position is higher than that of investors, where the government plays the role of regulator. [47]

Based on the explanation above, Law no. 4 of 2009 has a mixed philosophical between liberalism and socialism. In the Mining Business Permit contained in Law no. 4 of 2009, the state's position is not equal to mining companies as permit's recipients. Mining companies no longer have individual autonomy as freely as possible, but are

(Johannesburg: Wits University Press, 2016); M. Copper, *Mining in Chile: The Role of the State and Market Dynamics* (Santiago: University of Chile Press, 2018).

[42] Septine Fadia Saleh, Ismail; Restika, Nisa; Putri, 'Implikasi Keberadaan Undang-Undang Nomor 4 Tahun 2009 Bagi Sekto Pertambangan Batubara', *Privat Law*, II.5 (2014), 52–57.

[43] Saleh, Ismail; Restika, Nisa; Putri.

[44] Tri Hayati, *Era Baru Hukum Pertambangan: Di Bawah Rezim UU No.4 Tahun 2009* (Jakarta: Yayasan Pustaka Obor Indonesia, 2015).

[45] Nalle.

[46] Abdul Rokhim, 'Hubungan Kontraktual Antara Pemerintah Dan Kontraktor Swasta Dalam Kontrak Pertambangan Minyak Bumi Dan Gas', *Rechtidee*, 12.1 (2007); Amanda Adelina Harun, 'Imunitas Aset Negara Dalam Perjanjian Antara Bumn (Badan Usaha Milik Negara) Dengan Pihak Asing Dalam Perspektif Hukum Internasional', *Thesis* (Universitas Islam Indonesia, 2018) <http://journals.sagepub.com/doi/10.1177/1120700020921110%0Ahttps://doi.org/10.1016/j.reuma.2018.06.001%0Ahttps://doi.org/10.1016/j.arth.2018.03.044%0Ahttps://reader.elsevier.com/reader/sd/pii/S1063458420300078?token=C039B8B13922A2079230DC9AF11A333E295FCD8>.

[47] Saleh, Ismail; Restika, Nisa; Putri.

limited by the existence of state power, so it is different from Law no. 11 of 1967 based on a contract, where the state is considered equal as a contracting party. The emergence of state intervention in the mining sector does not preclude private ownership. This means that, it is necessary to increase transparency, create a fair transition mechanism, outreach to increase government capacity, are important steps to implement. Appropriate and consistent handling, it is hoped that the mining sector can operate more efficiently and sustainably, minimize negative impacts, while maximizing benefits for society and the national economy. The involvement of all parties, including the government, mining companies and the community, is very important in this process.

CONCLUSION

Mining sector in Indonesia has undergone a significant transformation in line with changes in regulations. The contract of work system in Law no. 11 of 1967, was replaced by a permit system in Law no. 4 of 2009. This shift reflects Indonesia's efforts to increase state sovereignty in the management of natural resources while maximizing the benefits of mining for the welfare of the people. The decentralization of mining policy to the local government is also an important aspect of this change, providing opportunities for regions in Indonesia to have a greater influence in the mining resources management. However, these changes also present challenges, including the need to increase local government capacity in managing and supervising the mining sector. Along with this transition, it is important for Indonesia to balance between maximizing the economic benefits from the mining sector and ensuring sustainable and equitable management of natural resources. Furthermore, transparency and accountability in the process of granting mining permits must also be improved to prevent potential corruption and ensure fairness and sustainability in the mining sector.

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