

# CHAPTER I

## INTRODUCTION

### 1.1 Background

The term resources became popular in Indonesia from 1980s decade. It is shown from the used of 'resources' term in the regulations pre and post 1980s decade. In several regulations before 1980s the term of 'resources' defined as 'wealth' or 'resources' (natural). Meanwhile, after 1980s 'resources' term was used generally to indicate various connotations such as human resources, natural, and synthetic (Sumardjono, 2011). Sumardjono (2011) state that basically resources term indicates something that have economic value or could fulfilling human needs, (Mayhew in Sumardjono et al, 2011), and or some rare inputs generate utilities either through production process or not, formed as good and services (Bannock in Sumardjono et al, 2011).

Indonesia is an archipelago country that rich with natural resources, both renewable and non-renewable objects. According to the 2012 Handbook of Energy & Economic Statistic of Indonesia (written by Center for Energy and Mineral Resources Data and Information), Indonesia territorial area cover around 7.788.810.32 km<sup>2</sup>, within land area 1.910.931.32 km<sup>2</sup>, and population of 241.133.70 thousand people. Furthermore, data regarding mineral and excavated object on the latest 5 years is shown in table below:

Table I.I Mineral Production on 2008-2012

No	Year	Coal (Ton)	Bauxite (Ton)	Nickel (Ton)	Gold (Kg)	Silver (Ton)
1	2008	178.930.188	1.152.322	6.571.764	64.390	226.051
2	2009	228.806.887	935.211	5.819.565	140.488	359.451
3	2010	325.325.793	2.200.000	9.475.362	119.726	335.040
4	2011 ‘)	415.765.068	24.714.940	12.482.829	68.220	227.173
5	2012 *)	466.307.241	n.a	36.235.795	69.291	n.a

Note: \*) Periodic Number

‘) Revision

Source: Geothermal and Non-oil Mining Statistic Publication

Based on that amount of mining production, annually Indonesia gains the production amount since 2008-2012. According to Warta Mineral, Coal and Geothermal Magazine (wrote by Mineral, Coal, and Geothermal General Directory), August 7<sup>th</sup> 2010 edition, the used of coal as alternative energy gives more benefits because of its low prices, so it is suitable in developing country. Moreover, in China and India, coal dominantly roles in running the industry. Related to that condition, Indonesia has very big potentials to used mineral and coal resources to increase the economic level by producing and exporting sources of energy.

According to Warta Mineral, Coal and Geothermal Magazine also, the existence of mining industry in Indonesia till nowadays is known as one of the big devises. Moreover, if it is related to the labor aspect (employment) and the

preparedness aspect of the people nearby mining site then it would be potentially good in economy.

Coal Resources and Reserves in 2010 data, written by the Ministry of Natural and Mineral Resources, noted that distributions of coal in Indonesia are entirely dominated in 5 biggest sites which are; Borneo island has 52.100.79 million tons, Sumatera island has 52.436.57 million tons, Java island has 14.21 million tons, Sulawesi island has 233.10 million tons, Papua island has 156.8 million tons, and Halmahera island has 2.13 million tons. On that distribution amount, there are two biggest islands dominant in developing economy potentials.

Borneo Island is one of the most active areas, which mainly run the mining industry. Generally, the role of mining industry is to increase the level of employment. According to BAPPENAS (*Badan Perencana Pembangunan Nasional/ National Development Planning*) Ministry chief, it is predicted that until 2014 mining company will be generate 9,4 million employments, which covered industrial as 4.731.770, and supporting activities for infrastructure as 4.975.400. Those employments opened in 32 main activities in 6 corridors spread in Java, Sumatera, Kalimantan, Sulawesi, Bali-NTB, and Maluku-Papua Island. Almost those of employments are only available for non-agricultural sectors. However, agricultural sector labors only available for 2 corridors, which are; Sulawesi and Maluku-Papua. Meanwhile for others main activities are focused on industrial, mining, technology, and other sectors. Particularly, according to MP3EI master plan, Kalimantan is the Center for producing and processing National Mining and Energy Reserves.

Generally, mining sector is one of the main sectors that drives the economy of Indonesia. The visible indication is its contribution to the state revenue that increase every year. In addition, the mining sector also provide a multiplier effect from 1.6 to 1.9 or triggers growth in other sectors as well as provides employment opportunities for about 34 thousand direct labor (esdm, 2010).

Mining industry is one of the industries that could be lean on to improve devises. Besides to improving devises, mining industry also generate a great number of employment, also improving local income. However, to improve devises and generate a large number of employment in mining activity tend to lead environmental damage. Some mining activities attract people's attention because they cause damage, moreover illegal gold mining which ruin worker's life regarding to low competence (Yudhistira in Ahyani, M, 2011).

There are several situations that should be considered related to mining production. First regarding to environmental approach; all mining activities have their own impacts, such as; economy, social, and mainly environmental. Positive impact can be seen in the economy level, because mining industry gained the number of job vacancy, so it builds up the level both local and national economy. But the other negative possibilities also occur such as consumptive culture and social disparities. Social effect for local people surrounds the mining industry is the disharmony or social conflict between local people and competitors. Furthermore, as a consequence, conflicts between communities and mining operators over the rights of land use are common in many regions worldwide and

can become a serious threat to development and security (Maconachie. et. al in Schueler, V. et. al, 2011). Other undeniable effect of mining industry is related to environment, which decreases the environmental qualities.

Mining activity of valuable excavated object from the soil lining has been carried out since long time ago. In 50 years, basic maintenance concept relatively unchanged, the change is in the activity scale. Mining object mechanism cause mining scale getting larger. Technology development causing low rate ore extraction becomes more economical, so that larger and deeper reach earth line far below the surface. This mining activity is raising crucial environmental damage. The influence of mining activity is very significant causes surface water and ground water become polluted (Arif in Ahyani, 2011). Further information of mining negative impact noted in following table:

Table I.2 Negative Impact of Open Mining Activity Toward Ecology On Forest

No	Category	Impact
1.	Air	Human health, local farm, irrigation, climate change and flora & fauna change.
2.	Water	Water quality, irrigation, local farm, human health, flood, natural vegetation, and flora & fauna.
3.	Climate	Temperature change, particle emission, greenhouse gas mainly Carbon and CO <sub>2</sub>
4.	Flora and Fauna	High level of changes and disturbances to natural vegetation, water habitat, wildlife habitat, biodiversity, species population, and fauna food network.
5.	Soil	Erosions, flood, water supply change, waste contamination on soil.
6.	Natural Landscape	Natural landscape distraction; contaminate rivers, human health risks.

Source: Greenomics Indonesia, based on literature study and field experience (2004), in '*Mengapa Perpu No.1/2004 harus dibatalkan?*'.

The same as huge mining company, citizens involved in mining activity are pointed as the source of environmental degradation. Such as the natural landscape change, surface vegetation lost, and increasing erosion, moreover flood and dry, also other several environmental damage (Farrel, L. et. al in Ahyani, 2011). Regarding this complex problem, a whole collaboration and participation needed to engage toward this problem. All stakeholders (mining companies, governments, peoples) are responsible to monitor and control the effect of mining industry.

In order to engage those problems, local government has a very crucial role, as the controller in every mining activity. Government should cover any risks and possibilities because other than contribute large number of devises, mining industry is still a high-risked industry. First, as a controller government needs to support and re-arrange better regulations in mining sector, mainly for some regulations that contrary to the spirit of Constitution. Second, it is important to regulate the mining sector mainly regarding to investment. Deterioration of investment in mining occurred during Habibie leadership who tend to give easiness in order to attract investors which then causes the government losing control over the industry. Concrete example is in the Law No. 1 of 1967 on Foreign Investment particularly in Article 8 which gives loophole for foreign investors to take part in mining activities. Third, the government create high level of environmental management in term of mining sector. In an effort to raise awareness of the importance of reclamation of mining companies after especially

local governments in should also emphasize the final exploitation of sanctions for such violations decentralized. Fourth, create a policy in the mining sector that favor to the citizens. The local government implement mining sector without burdening the people with the complicated requirements / bureaucracy. Fifth, government provide protection to communities around mining sites. In addition to the risk of environmental damage, the mining activity is also at risk for the lives of the people living around the mining sites. So control and protection by the government is essential for the sustainability of the social life of the local community (Harjanti, 2006).

Along with the increased of mining industry in Indonesia, the roles of government also have a crucial influence, especially related to the policies that have been made. Rules are made to community not only profits for investors, but also environmental friendly. *Kontrak Kerja* should be an important object of the government's responsibility on this industry, so that not only Indonesia's natural wealth mortgaged, without control of the government. In line with the efforts of the new regulations is 'a weapon' from the government.

Law No. 1 of 1967 is one of the regulations that does not support to conservation interest and lack of optimization the production result which could be used by the State and citizen. That law then widened in the validity of Law No. 11 of 1967 of Mining Law. In every mining activity the government in that period gave significant field as mining site. Concrete example is for mining activity in the early generation. One of the mining used this facility is Freeport Indonesia

that retain almost of West Papua area and INCO that its extent covering three provinces in Sulawesi (Harjanti, 2006).

The response toward shortcomings and weaknesses that existed before that are then mixed and formulated in Mining Law (Sumardjono, Maria S. W. et al 2011). Mining Law No. 4 of 2009 on Mineral and Coal Mining (Mining Law) is the result of a re-formulation of laws governing mining techniques. Article-by-article is structured as an improvement over the previous regulations. Significant value contained in this legislation is to increase the bargaining power in the world market in the field of minerals and coal, one of them with a prohibition of the export of raw mineral materials.

In the show "Online Law Seminar of Mining Law Implementers Regulation ", Director of Business Development Mining, Bambang Gatot Ariyono in his presentation explained, some of the main principles underlying the implementation of Law No. 4 of 2009 in addition to in lieu of Law No. 11 1967 as well as to optimize the centralized state revenue, the government obviously authorizes while restoring function as central and local government regulators. "Mining Law requires the processing and refining metals in the country so as to increase the value-added products and in the national interest, the government may establish a Domestic Market Obligation (DMO) for minerals and coal," said Bambang. In line with Bambang Gatot Ariyono, Simon F. Sembiring added, other important points in Mining Law No 4 of 2009 is driving the implementation of the principles of good mining practices that prioritize the environment, lack of



certainty attempted, integrating data management and divestment of foreign mining for national party (esdm, 2010).

However, a major constraint on this legislation is the lack of coordination that makes the delay in the implementation of this regulation is the adjustment of the company for the construction of a smelter. Agus Pambagio (Observer Public Policy and Consumer Protection) stated that non-Compaction and inaccuracies regulators and legislators at the national level in the interpretation of Law No. 4 of 2009 is the main obstacle implementation of this Act. This is seen from the frequent changes government of regulation, such as Government Regulation (PP), PP No. 23/2010 for example, which is then converted to PP No. 24/2012. Similarly, the Regulation (Ministerial Regulation) Energy Mineral Resources (EMR), for example Ministerial Regulation of EMR No. 7/2012 on Added Value Through Mineral Processing and Refining Activities, converted into EMR No. 11/2012 on the Amendment EMR No. 7/2012, then changed again to ER No. 20/2013 on Added Value of Mineral Mining.

Moreover, Zenathan Adnin an economic observant from Universitas Indonesia, stated that private sector very slow in responding the policy. Regarding to the Ministerial Regulation No.1 of 2014 government dispends three years for private company to build the smelter until 2017. In addition, it was not easy and cheap to build a smelter. Until the end of 2013, Energy and Mineral Resources received at least 185 proposals to build smelter with the investment values of 555 billion US dollar. From those proposals government would select and choose the investor with enough capacity and capital (Halo Vale, 2014). Energy and Mineral

Resources Ministry noted that every smelter cost 2-10 billion USD or 1,9-9,5 trillion Rupiah, depend on its capacity.

Agus added that the Mining Permit holder is not able to build the smelter itself, because the cost needed to build a smelter is not cheap (2 trillion Rupiah), still more with annual operating costs (2 billion per year). Then crude iron ore and metal export banned since January 12, 2014, then the Work Contract holders will reduce capacity to the remaining 40% only, which is the condition of the devastating impact on layoffs and harm the State of 80 trillion/year. Director General of Mineral and Coal, Ministry of Energy and Mineral Resources, R Sukhyar said, "There is a decrease in foreign exchange and production. Obviously income from mineral mining sector to reach US \$ 11 billion in 2013, and in 2014 estimated at US \$ 6 billion," (liputan6, 2014).

According to official website of Tanah Bumbu Regency, in 2007 there were 46 legal coal mining company. Meanwhile in 2009 the amount increased significantly, Statistic Agency noted that there were 84 legal coal-mining companies. Then BAPPEDA noted in 2010 legal coal-mining company decreased into 65 companies only. The fluctuate condition about the amount of legal mining company above could be one of the impacts by Mining Law no. 4 of 2009, regarding the Government Regulation for that law that was set in 2010 as Government Regulation no. 23 of 2010. Permit system is one of the cores in thus regulation, which is the operational changes from Work Contract into Mining Business Permit.

Moreover, after the enactment of Law No. 4 of 2009 on the export prohibition raw mineral materials, a number of mining companies are forced to close its mine production activities temporary or permanently. Based on data from the Local Agency of Mining and Energy in Tanah Bumbu Regency from January to August 2014 several mining companies are prohibited operating as a result of the implementation of the Mining Law No. 4 of 2009, the following is the list of the company name:

1. PT. Bakal Makmur Sejahtera (Hematite) 50 employees
2. PT. Berau Indobara Semesta (Coal) 240 employees
3. PT. Lianggang Cemerlang (Coal) 180 employees (The company still running)
4. PT. Bintang Timur Raya (Coal) 60 employees
5. PT. Tunas Inti Abadi (Coal) 100 employees (The company still running)
6. PT. Global Borneo Resources (Coal) 100 employees
7. PT. Sino Indocoal Permata (Coal) 50 employees

According to Manpower and Transmigration Agency of South Borneo Province, along 2012 there were 97 cases of layoffs in some business sector. From 97 cases causes 943 workers lose their job. The biggest sector is mining in which there were 13 cases of mass layoffs which totally 859 workers, and 84 cases of personal layoffs. The chief of Manpower and Transmigration Agency, Antonius Simbolon in Banjarmasin stated as;

hundreds of layoffs happened because of contract termination, coal mining closed, and company efficiency were influenced by the export volume. This condition indicates unemployment, and according to Statistic Agency of

South Kalimantan Province the level increased from 5,23% became 5,25% in the end of 2012, (Rahma on Jurnas, 2013).

Related to the decreased the amount of hematite export, Tanah Bumbu major Mardani H Maming stated that “in 2014 the central government prohibit the hematite export, except when it has been processed” (Nanang in Meratus Jaya, 2013). Those provisions aimed to avoid the low-price hematite trades, because in other conditions the major planned to build a collaboration company for hematite and steel production between local company and Chinese company located in Integrated Regional Economic Development Area (KAPET), which will be ready to operate in 2016. The rationality is that in the years before it is ready to operate, the production of hematite and steel are limited and the company activities will be less.

The condition above created of a dilemma for governments, communities and mining companies. The government efforts with the publication of this law is to optimize the mining product, but on the other hand companies and mine workers are particularly at risk to stop the mining activity because the license is no longer easy. The solution expected from these problems, synchronization between the government from upstream to downstream, mining companies, and the community is needed. Especially with the principle of decentralization in the implementation of the Indonesian government, local government plays an important role in creating awareness in the management of natural resources.

Other issues to be reviewed further by researcher are about the role of local governments in dealing with the situation of the law, without neglecting to the survival of the mining company, and the risk of declined in the investment rate

in Indonesia. Furthermore, how does local government rescue workers from layoffs and the surrounding communities of economic downturn? Based on the problems above, the researcher would like to take the study further with the title: **Analysis of Local Government Responses Toward Mineral and Coal Regulation (UU Minerba) No. 4 of 2009 to Improve Investment Climate in Tanah Bumbu Regency.**

### **1.2 Problem Formulation**

Based on the problem background above researcher formulates the problem of the study as follow:

‘How does Tanah Bumbu Regency respond to the implementation of Mining law No. 4 of 2009 regarding to the investment climate?’

### **1.3 Research Goals**

The goals of this research are:

1. This study is aimed to analyze the response of Tanah Bumbu Regency toward Mining Law No.4 of 2009 implementation.
2. This study is aimed to examine the problem solution in term of Mining Law No. 4 of 2009 implementation.

### **1.4 Research Functions**

The benefits contained of this study are:

#### **1.4.1 Theoretical Benefits**

- a. This research is expected to increase knowledge and reference in the field of social and political science.

b. This research is expected to increase reference in the study of literature, new public management and public policy.

#### **1.4.2 Practical Benefits**

The practical of this study are following:

a. This study will serve as a reference for local governments to implement policy implementation, especially in the field of mining sector.

b. This study will provide new insights to mining businesses according corridor applicable laws.

c. This study will provide overview to the public in participating local governments supervise his duties as implementers of public policy.

### **1.5 Theoretical Framework**

#### **1.5.1 Local Government Response**

Based on its duty and authority, the concept of decentralization applies in Indonesia is as the power allocation from the central government to local government. Decentralization concept has enforced in Indonesia implies its fundamental basis, mainly related to fiscal policy and state administration. Rondinelli dan Cheema (1983), define decentralization as planning transfer, decision making, and or administration authority from the central government to central organization in local area, local administration unit, semi autonomy organization and company, local government or non-government organization. The different concept of decentralization decides mainly based on the authority level transferred by the central government and autonomy scale received to implement its tasks. Moreover, (Rondinelli, 2000) gives 4

decentralization dimensions explained in following table:

Table. 1.3 Decentralization category based on purpose and instrument.

No.	Decentralization Category	Objectives	Instrument
1.	Political Decentralization	To leverage the local government power and political representative in public convention.	Distinguish constitutions and regulations, developing political party, legislative bonding, build local politic institution, supporting an effective public interest group.
2.	Administrative Decentralization	Reconstructing management efficiency for public services.	De-concentration, delegation, and devolution each with difference characteristic.
3.	Fiscal Decentralization	Reconstructing financial management by decision development in arranging rational income and outcome.	Rearrange outcome, income and fiscal transfer in every government level.
4.	Economy and Market Decentralization	Conducting a better business sphere and providing goods, services according respond toward local needs and market mechanism.	Transferring government function to business organization, citizen, non-public organization through privatization and economy reinforcing through deregulation.

Source: Rondinelli (2000)

More specifically, the four main economic roles of government are the allocative, distributive, regulatory, and stabilization roles (Bailey, 1995). Local (and regional) government should generally provide services whose benefits are restricted to a single jurisdiction, for example local roads, local public transport, local parks and other leisure and recreation facilities, local (and regional) water and sewerage services. There may be some sharing of responsibilities between central and local government in such cases, either a formal separation of parts of the education service or a less formal system of influence and guidance from the center (Bailey, 1999). The existence of local government started with the decentralization. In the context of Juanda (2004) stated that decentralization as autonomies, which is process of giving the autonomy to society in the certain area (Dona, 2008).

All the categories of decentralization above entirely show how local government should decipher every state regulation and bring them into specific one. In term of managing public services, administrative decentralization in one category to manage public service and its efficiency. Basically, each category is well connected with other categories. For instance, relation between economy and market decentralization, local government should conduct better business sphere in term of increasing local economy level by conducting better public services in term of administrative sector.

According to Imawan in Haris (2007) there are three main pillars



of politics that continue reforms undertaken by the government. All three are related, such as decentralization, democratization, and good governance. decentralization is a consequence of democratization; whose goal is to build good governance from the grass roots politics. decentralization produces local government, resulting in a state of

"..., a 'superior' government assigns to responsibility, authority, or function to 'lower' government unit that is assumed to have some degree of authority." (Friedman in Haris, 2007).

However, there are some possibilities that allow for power in the given region central to the legislative level (DPRD). Real example for instance regarding the management of the mining area. Geological area, but administratively may be split into several districts (Harris, 2007).

According to the World Bank good governance is defined as "the way state power is used in managing economic and social resources for development society", while according to the UNDP good governance is defined as "the exercise of political, economic, and administrative authority to manage a nation's affairs at all levels ". Relating to the UNDP mentions nine characteristics of good governance include:

1. Participation
2. Rule of Law
3. Transparency
4. Responsiveness
5. Consensus orientation

6. Equity
7. Effectiveness and efficiency
8. Accountability
9. Strategic vision

While UNDP domain specified in the realization good governance includes three domains are:

1. State
2. Private sector
3. Society

This suggests the existence of a state where the main point in the implementation of good governance is about the 'how' of all parties in a State run their respective roles in achieving a common goal. Government is not the only subject of the executor, but the participation of the public and private sectors in contributed particularly in democratization.

The essence of a democracy is a change in the structure and order of authoritarian to democratic order. The most important thing in this case is "every decision must be shared and decentralized execution of the decision" (Harris, 2007). This means that the linkage of democratization and decentralization is strong. Decentralization can be called with a tangible manifestation of democratization as the division of authority for every area to take care of their own household. Not far from these two things decentralization also serves as the political grass

roots, especially in the scope of the area. The concept includes a clear division of roles of each of the domains referred to in the implementation of the concept of good governance. Or it could be called that decentralization is a precondition of good governance form. Besides democratization is a concept that is related to one of the characteristics of good governance: the rule of law. Because without democracy coupled with the rule of law would only lead to anarchism (Harris, 2007).

Glencoe (2008) stated there are several roles of government in term of business. The reason is because government rules promote and regulate the actions of business. The laws influence the production, selling, and pricing of goods and services. In summary, government maintain the fairness of doing business. There are two roles of government in business sector:

1. Government as Regulator, it means that government regulation aimed to protect several aspects of business. The four aspects of the economy that government regulates are:
  - a. Protecting Competition, this protection concerns about the competition that usually handled by several big companies or market, such as monopoly, and oligopoly. One of government efforts is to generate an antitrust law aimed to allow the government to break up monopolies, regulate them or take them over. According to Hughes (1994) on NPM,

without government monitor, there will be unlimited competition that may result in destruction of competition.

b. Protecting Business Agreement, one of the government efforts to protect business is by enforcing business contracts.

Contracts are needed as the legal agreement between two or more parties to conduct business.

c. Protecting Creative Properties, there are three ways to protect creative products: *Copyright*, gives artists the sole right to own their creations, such as photos, music, paintings, and books. *Patent*, a protection given by the government as a sole right to own the invention. *Trademark*, is a brand name, trade characteristic, or a combination of legal protection given by the government.

d. Regulating the Production Process, in order to protect environment, the government regulates amount of production process, mainly to avoid pollution and waste.

Only government can alleviate environmental damage, through regulation and rules (Hughes, 1994).

2. Government as Provider, society and any stakeholders pay taxes to government as its turn they will get the public services and goods. The main duty of government is to allocate the taxes and distribute them into the society.

- a. Providing Public Services, it covers society needs such as education, health care, security, post offices, roads, public transport, and others. Government gets the money to fund those all services by collecting revenues.
- b. Providing Work, government is the single largest employer in the country. Working in the governmental agencies giving a guarantee for the officers, also able to train them. Government also gives the contribution through the employment regulation that also protects the workers.
- c. Assisting Business, government as the largest consumer in the country will buy a large number of products from the production, such as military, fire trucks, public buses, and any other equipment. Moreover, government provides the subsidies for society and industries, in order to support them.

### **1.5.2 Investment Climate**

Based on Law No. 32 of 2004 article 1 verse 2, local government is governance application by the local government and Regional Representative Body based on autonomy principle and assist duty within large autonomy principle in the system and Republic Indonesia as stated in Constitution of 1945.

Powers of local government mandatory, according to Law 32 of 2004 on Local Government stated as follows:

1. Planning and developing control.
2. Planning, utilization, and control layout.
3. Conducting public order and public peace.
4. Providing public facilities and infrastructure.
5. Handling health.
6. Implementing education and human resource potential.

According to Great Dictionary of Indonesian, investment means (i) investment of capital or money in one company or project in purpose to reach profit; (ii) amount of money or capital has been invested. Meanwhile, according to Economic Law Dictionary, investment means “investment usually in long term object such as procurement of the company's assets, project long-term investment, the purchase of shares, or buy securities with the intent to benefit. Thereby according to Constitution No.25/2007 about Investment, definition of investment is a kind of investing activity, whether done domestically or foreign investment, to do business in Indonesia.

Meanwhile, Nicholas Stern (2002) define investment climate as “policy, institution, and condition or environment behavior, whether for nowadays or future time, that influence returns and risks in investment.” In this term, there are three aspects influencing investment rate, those are, (i) macro condition, (ii) infrastructure, (iii) government bureaucracy, which cover governance and government bodies. Macro condition is closely to the stability of social, politic, fiscal policy, inflation, currency rate, interest rate, and market competition. Infrastructure is related to the physical condition,

such as, road, bridge, energy, transportation system, and communication. Meanwhile bureaucracy is related to the provisions quality and constitution, government body system, and any other related policy.

Indonesian challenge towards investment entering the 21<sup>st</sup> century according to Pramono (2006) is described as four important points. *First*, domestic challenges in forms of various limitation such as capital, human resources, and technology. *Second*, foreign challenges. Entering the 21<sup>st</sup> century, world economic become more global, competition to fill the market share become sharper, amount of capital become larger. *Third*, changes between ASEAN country, and Asia Pacific as agreement consequences, of Asia Pacific Economic Cooperation (APEC) and ASEAN Free Trade Agreement (AFTA) in trade sector and investment will lead to business opportunity and investment. *Fourth*, the domestic business environment. Various constitutions considered inhibit or less conducive to investment climate in Indonesia to do various steps of regulation and deregulation.

Muchsan in Effendi (2013) mentioned that in prosperity country concept (Indonesia), there will be two important things as indications, there are; (i) government intervention toward citizen's life, and (ii) in terms of implementing government function often used the principle of discretion is often used without clear criteria. Clearly, Roscoe Pound in 1970s stated his thought that during the economic development, especially in Indonesia, public policy and investment development strategy were enacted. He argued that law and regulation on investment could be 'the balancing tool' for

investment regarding any sides' (public, private, and social) interests (Effendi, 2013).

Based on above rationalities, the government has a role to control both for increasing the economy development, also for building boundaries of interest. Seeking from the public policy perspective, government intervention covering two main aspects; (i) government as the administrator is required to protect public interest, meaning to avoid private interest harm public interest; and (ii) government as public servant is in charge to give public services. Investment law is one of government roles to guarantee the legal certainty in investment (including protection to the investor) aimed to actualize justice and or balance toward private (investor), citizens, and social interest. In relation to those considerations, investment law should contain justice principle, there are (i) investment law should be able to give fairness for related stakeholders, (ii) investment law should be able to give fairness for the investors so that government should provide easiness and investment stimulant; and (iii) investment law should protect citizens to get the benefits (Effendi, 2013).

Jeddawi (2005) stated that one aspect of the revenue source and expenditure that prospective is investment. Meanwhile, according to Muhammad Khusaini (2006) with the local autonomy, local government triggered to find the alternative source of development cost. Therefore, local government eager to be able to attract investor, so with those investments could be used as the local development support and economy development.



Meanwhile Lincoln Arsyad (2002) argued that the main object of economy development is to leverage the amount and work opportunities type for local citizen (Dona, 2008).

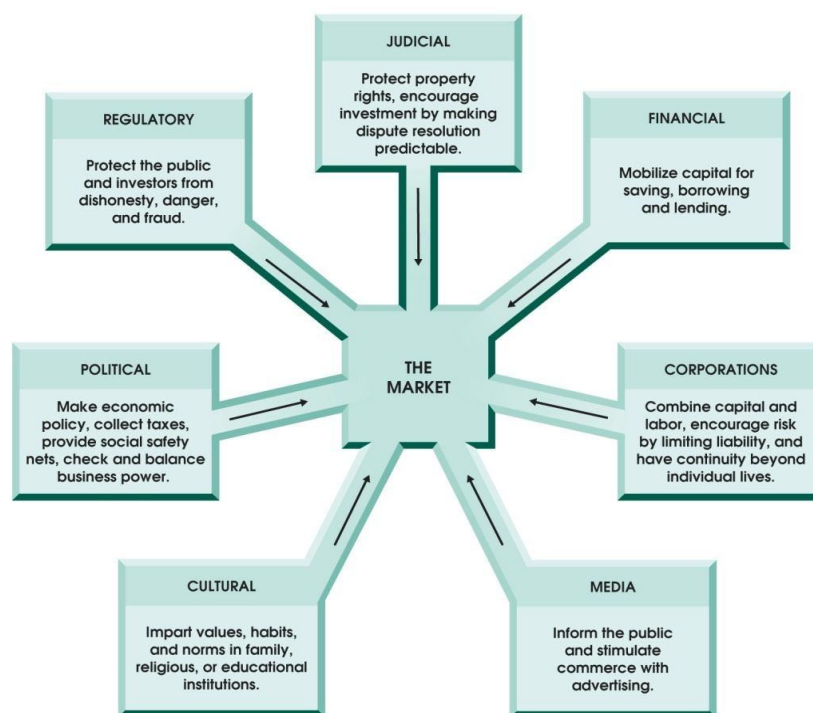
The amendment of Law No. 1 of 1967 and Law No. 6 of 1968 into one latest law namely Investment Law No. 25 of 2007 at least contains three major considerations: (i) to manage economy potential into real economy power; (ii) to give the law certainty and justice; and (iii) re-arrange older regulations because several aspects are no longer in accordance with investment development related to globalization and technology based era. Main objects of Investment Law No 25 of 2007 is to handle number of obstacles in conducting investment. Comparing previous and this law as its contents, it could be said that there were no major obstacles. However, government assumed that there were same obstacles in the implementation of previous law, so new law needs to be formulated (Effendi, 2013).

Decentralization is one principle underlying the development in local level. Besides as 'power distribution' and 'power sharing'. Mainly decentralization and local autonomy aimed to point the overall service and every single citizen in Indonesia. In relation with decentralization and local autonomy, investment climate still has some complicated problems. Gaffar Karim (2003) states that there are 10 categories of problems related to the local autonomy in Indonesia, namely; (i) central and local government relation; (ii) central and local government financial relation; (iii) 'pseudo decentralization' because of centralized logics; (iv) local politic structuring

problem; (v) the regionalism spirit intensified;(vi) effort to re-formatting relation between the level of local government; (vii) inter-local problematic relation; (viii) executive and legislative relation in local level; (ix) relation between nation and citizen in local level; (x) problems related to the institution structuring and local mechanism (Effendi, 2013).

Government's roles on business field refer to structures and processes of authoritatively make and implement policies as well as rules to regulate Business and Society. According to Steiner&Steiner (2008), there are several aspects in every institution that affect the flow of market, that is shown by the following chart explains the aspects and institutions, and how they affect the market

Chart No.1.1 Institutions Role Support Market



Source: McGraw-Hill Companies, 2008.

Four models of Business Government and Society relationship:

- Market capitalism model

This model considers market as the buffer of business and non-market forces, government interference in economic life is slight (laissez-faire).

The government regulation in Business Government and Society (BGS) relationship according to the Market Capitalism model should be limited, by means that market handling the whole BGS properly measured by profit, which private can own their own risk of investment.

- Dominance model

In this model, business and government become united and have a great number of masses, which results is the enrichment of a few at the expense of many.

- Countervailing Forces model

This model shows that government becomes one of the indicators in BGS relationships; by means how does the society interact in generate changes.

Public support as one of the aspects in business cycle very depended on social, political, and economic forces. BGS relationship as stated is continuously changing which evolve the main ideas, institutions, and processes in society.

- Stakeholder model

Stakeholder model tend to ethical theory of management in which welfare in each stakeholder. However, there is not realistic assessment of the power, and there is no single, clear, and objective measurement to evaluate

economic/ethical performance of a firm.

## **1.6 Conceptual Definition**

The concept is an important element of the research and it is the definition used by researcher to describe abstractly a social phenomenon or a natural phenomenon (Masri&Sofian, 1995). For deeper understanding of concept in this research, researcher mention several concepts, as follows:

### **1.6.1 Local Government Response**

Local Government Response refers to local government action and reaction to linkage central government, society, and other stakeholders using the authority and duty in between, in order to find an alternative way toward local area problems.

### **1.6.2 Improving Investment Climate**

Improving investment climate is the efforts to dealing with the policy, institutions, and environment behavior in order to leverage the level of investment.

## **1.7 Operational Definition**

An operational definition is a research element which notifies how to measure the variable (Singarimbun, 1995). In this research there are several points to measure the each of two variables;

### **1.7.1 Local Government Response**

This research object is to find out the local government response, how are actions and reactions are, particularly in Mining and Coal Sector. There are several categories to notify the response:

1. Regulate the Mining and Coal Sector (MCS)
2. Planning the development of MCS
3. Control the development of MCS

### **1.7.2 Improve Investment Climate**

Continuously this research object is to find out how local government improves the investment after Mining Law. Those categories are following:

1. Simplifying the Procedures of Mining and Coal Sector (MCS)
2. Providing facilities and infrastructure of MCS
3. Protecting competition among Mining and Coal Company
4. Assisting business of MCS

## **1.8 Research Methodology**

### **1.8.1 Research Type**

Generally, there are two research methods, qualitative and quantitative. Qualitative research method is a research method based on the post-positivism philosophy, used to examine natural object condition, where researcher as the key instrument, data collection technique done by triangulation (combination), data analysis is inductive/qualitative, and research result emphasizes on the meaning rather than generalization. It means that the researcher act as the main role to examine this type of research.

Meanwhile quantitative research type could be defined as a research method based on the positivism philosophy, which aims to examine certain population and sample, data collection used is research instrument, data

analysis used is quantitative/ statistic, in order to examine determined hypothesis (Sugiyono, 2014). Then quantitative research uses the population and sample to examine the case, and it also uses numbers to measure collected data.

Research method used in this research is qualitative research, according to Sugiyono (2014) shown by following conditions:

- a. The problem faced is the unclear, uncertain problem in the field. That typical problem is suitable for the qualitative method, because this type of method emphasizes processes to know more about the object.
- b. This type of research aims to understand the meaning behind the data shown. For instance, through the in-depth interview, observation, and documentation.
- c. To understand the social phenomenon, such as the complex social interaction can only be deciphered by the qualitative method. Data collection technique such as in-depth interview contributes inside the social interaction.
- d. To understand people's feeling, since it is not easy to read and understand the feeling. In data collection technique such as in-depth interview and observation, researcher can try to understand the feeling of informant.
- e. To develop theories, this method is very useful to develop the theory by gaining the information in the field.

- f. To ensure the data validity, social data sometime hard to be ensured. By qualitative method, data collected by triangulation/combine method, it guarantees data validity.
- g. To examine development of history, such as person, figure, or society can be detected by qualitative method.

According to Sugiyono (2003), based on the level of explanations there are at least 3 types of qualitative research; Descriptive, Comparative, and Associative. Descriptive type is used when the researcher try to understand one independent variable without comparing to another variable. Comparative type still uses the independent variable, but the substructure of this type is comparing some subjects or taking the different times of periods. Last, Associative type is the highest level of qualitative research type, because this type uses two or more variables, in order to understand reasons or relations through variables. This type also could develop theories, monitoring, and forecasting.

This research uses qualitative method because the problem is uncertain, and related to social aspect. The type of this research is qualitative descriptive. In addition, according to Nasir (1980), descriptive research is a research that explains, describes the systematic factual and actual information on the facts, nature and relationships between the phenomena under investigation.

### **1.8.2 Research Locations**

Locations of the research are taken in Tanah Bumbu Regency, South Borneo province. Tanah Bumbu Regency is one of successful regency in South Borneo province, which give quite contributions in mining sector. Particularly the institution as the object of this research is some government organizations which directly manage, monitor, and do the implementation of Mining Law No.4 of 2009.

### **1.8.3 Data Collection Techniques**

#### **1.8.3.1 Primary Data**

Primary data is data source that directly provides the data to the data collector (Sugiyono, 2014). Moreover, for qualitative research Marshall and Rossman in Sugiyono (2014) added that:

“the fundamental methods relied on by qualitative researchers for gathering information are, participation in the setting, direct observation, in-depth interviewing, and document review”.

To adapt the idea, methods used in this primary data are following:

#### **In-Depth Interview**

Esterberg (2002) defined interview as

a meeting of two persons to exchange information and idea through question and responses, resulting in communication and joint construction of meaning about a particular topic.

Based on the problem of this research study is classified as uncertain, and tentative. The informant would be people inside the government institution in Tanah Bumbu Regency. The main local government institution related to this research is *Dinas Pertambangan dan Energi* (Mining and Energy Agency), *Badan Lingkungan Hidup Daerah* (Environmental Agency), and



*Dinas Kehutanan dan Perkebunan* (Forestry and Plantation Agency).

Meanwhile, to encounter the data the researcher needs to gather information private companies that affected by related regulations. It is divided into three scales of the companies, which are local scale company, national scale, and international scale company.

### Observation

Nasution (1988) stated that observation is the fundamental of any science. Meanwhile, Sanafiah Faisal in Sugiyono (2014) classified observation as; participant observation, overt observation and covert observation, and unstructured observation. In participant observation, researcher needs to involve directly in daily activity of the object. In this type, observation can be useful to gather information deeper and more complete in order to create whole perception of object. The overt and covert observation is the method used by researcher in between overt and covert as the observant in the object. It is necessary in case of some secret data in the observation process. Last, unstructured observation is the observation without any systematic procedure because the focus on the research is unknown yet. Usually researcher does not know the object that would be researched.

Unstructured observation is very suitable method in this research because the focus in this research has not known yet. The researcher will observe the entire bureaucracy, and institution activity randomly in term of

gather any information of implementation of Mining Law No. 4 of 2009. Moreover, researcher will encounter the observation data from the business field and production process, mainly for Mining and Coal Sector.

### **1.8.3.2 Secondary Data**

Secondary data is the source of data that indirectly given to data collector (Sugiyono, 2014). Data collection method of secondary data is documentation. Documentation method is a method of data collection for which data is obtained from books, Internet, or other documents that support the research. The document is a record of the events that have passed. Researchers collect documents, which can be text, images, or the monumental works of someone (Sugiyono, 2012). Documentation form could be sort of information, documents, archives, books, and other documents related to the response of local government in Tanah Bumbu Regency toward the implementation of Mining Law No.4 of 2009. Moreover, to encounter the result, data could be collected through local media such as Fokus Batulicin and Warta Batulicin.

### **1.8.4 Data Analysis Techniques**

Data analysis techniques are used after the data is collected from the data collection. Data analysis is the process of systematically searching and collate the data obtained from interviews, field notes, and documentation, the way of organizing the data into categories, outlines into specific units, synthesize, organize into a pattern, choose which ones are important and which will be

studied, and make conclusions so easily understood by myself and others (Sugiyono, 2008). In the process of reserach, data analysis is important and requires precision as well as the criticality of a researcher. In the process of data analysis, reseracher use qualitative data analysis.

Broadly, data analysis aims to simplify the data into a form that is more easily read and understood so as to reach a proper conclusion and systematically arranged. The steps that will be conducted by the author in analyzing the data are as follows:

1. Data Reduction

Data reduction is means to summarize, choose the basic things, and focus on the things that are important, look for themes and patterns. Thus the reduced data will provide a clearer picture, and facilitate researchers to conduct further data collection, and look for it when needed.

The data reduction technique using triangulation technique. According to Olsen (2004);

“Triangulation is defined as the mixing of data or methods so that diverse viewpoints or standpoints cast light upon a topic. The mixing of data types, known as data triangulation, is often thought to help in validating the claims that might arise from an initial pilot study. The mixing of methodologies, e.g. mixing the use of survey data with interviews, is a more profound form of triangulation.”

In data analysis process, to examine the data, the researcher used triangulation technique. Triangulation is used to examine the following aspects:

- a. Source Triangulation

According to Moleong (2011), Source triangulation is used in comparing and checking the degree of trust toward information gathered with some other sources.

b. Method Triangulation

Method triangulation according to Patton in Moleong (2011) could be done by two strategies: (i) checking the degree of trust of research discovery by several data collection techniques. (ii) Checking the degree of trust by several data sources by the same data collection.

c. Theory Triangulation

According to Lincoln and Guba in Moleong (2011) facts could not be checked their degree of trust by only one theory, so to check the data, researcher using theory triangulation.

2. Data Display

Once the data is reduced, then the next step is to present the data. By presenting the data it will be easier to understand what is happening, and plan the next work based on what have been understand before. In conducting the data display, the narrative text in forms of graphs, matrices, networks and charts can be added as well.

3. Conclusion and Verification

The third step in the data analysis is drawing conclusions and verification. Preliminary conclusions presented still provisional, and will change if there are no strong evidence to support the next phase of data collection. But if the conclusions expressed in the early stages, supported by evidence

and consistent when researchers collect data, then credible conclusion could be taken.

## **1.9 Systematic Writing**

In order to build an overview of this research, researcher arrange the following outline as:

### **CHAPTER I: INTRODUCTION**

This chapter contains: Background, Problem Formulation, Research Goals, Research Functions, Theoretical Framework, Conceptual Definition, Operational Definition, Research Methodology and Systematic Writing.

### **CHAPTER II: OVERVIEW OF RESEARCH OBJECT**

This chapter contains the Overview of Research Object of Tanah Bumbu Regency.

### **CHAPTER III: LOCAL GOVERNMENT RESPONSE TOWARDS MINING LAW NO. 4 OF 2009 IN TANAH BUMBU REGENCY RELATED TO THE INVESTMENT RATE OF 2014**

This chapter contains data obtained from research conducted on the local Government response toward Mining Law related to the investment rate in 2014.

### **CHAPTER IV: CONCLUSION**

This chapter contains a summary analysis and recommendation from the results of the research obtained.