

## CHAPTER ONE

### INTRODUCTION

#### A. Background

In the last 5 years, according to the Ministry of Energy and Mineral Resources, there have been 2.700 Mining Business Licenses (IUP) issued for Kalimantan Island, 991 for Sumatra Island, and 119 for Papua. Kalimantan is the first largest coal mining in Indonesia and is one of the six economic routes that the government relies on as a center for production and management of mining products.<sup>1</sup> The Ministry of Energy and Mineral Resources noted that more than 10.300 mining business permits in Indonesia and 6.400 mining business permits have been clean and clear by the government.<sup>2</sup>

Minerals and coal play very important role in the implementation of development in a country, therefore it is pertinent to be managed and utilized properly for the benefit of development and the prosperity of the community. The results of the management and utilization of state minerals and coal will bring benefit to the country in term of taxes.<sup>3</sup> This is in line with Article 33 of the 1945 Constitution which states that, "*Land and water and the natural*

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<sup>1</sup> Ahmad Zaini, "Pengaruh Kekayaan Sumberdaya Alam Batubara terhadap Ketimpangan Pendapatan di Provinsi Kalimantan Timur", *Jurnal Borneo Administrator*, Vol 13 No 2 (2017), p. 112.

<sup>2</sup> Databoks, 2016, *Jumlah Kepemilikan Izin Usaha Pertambangan Batubara di Indonesia*, <https://databoks.katadata.co.id/datapublish/2016/08/16/jumlah-kepemilikan-izin-usaha-pertambangan-batubara-di-indonesia>, accessed on November 4, 2020, at 11.25 PM.

<sup>3</sup> Victor Imanuel Williamson Nalle, "Hak Menguasai Negara atas Mineral dan Batubara pasca Berlakunya Undang-Undang Minerba", *Jurnal Konstitusi*, Vol 9 No 3 (2016), p. 481.

*resources contained therein are controlled by the state and used for the greatest welfare of the people.*” The article above is the basis for state to control over natural resources in the jurisdiction of Indonesia.<sup>4</sup> This article also emphasizes that there are 3 elements of state control over natural resources, namely the earth, water and natural resources contained therein.<sup>5</sup> In Article 4 paragraph (1) of the Law Number 4 of 2009 concerning Mineral and Coal Mining, it is stated that, *“Mineral and coal as non-renewable natural resources are national assets controlled by the state for the greatest welfare of the people”*. The government takes full control on natural resources in the mining sector, namely the Ministry of Energy and Mineral Resources and at the regional level, it is carried out by the regional government.<sup>6</sup>

The use of natural resources is the responsibility of the state,<sup>7</sup> where through the right to control the state has the authority to make regulations and policies on the use of the environment and natural resources. Article 33 paragraph (3) and paragraph (4) affirm that the prosperity of the community is prioritized, without neglecting individual prosperity.<sup>8</sup> The national economy is

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<sup>4</sup> Tri Hayati, “Hak Penguasaan Negara terhadap Sumber Daya Alam dan Implikasinya terhadap Bentuk Pengusahaan Pertambangan”, *Jurnal Hukum dan Pembangunan*, Vol 49 No 3 (2019), p. 769.

<sup>5</sup> Ahmad Redi, “Dinamika Konsepsi Penguasaan Negara atas Sumber Daya Alam, *Jurnal Konstitusi*, Vol 12 No 2 (2016), p. 402.

<sup>6</sup> Lilis Supriatin & Suwari Akhmaddhian, “Kewenangan Perizinan Usaha Pertambangan Pasca Berlakunya Undang-Undang Pemerintah Daerah, *UNIFIKSASI: Jurnal Ilmu Hukum*, Vol 4 No 2 (2017), p. 69.

<sup>7</sup> Julius Sembiring, “Hak Menguasai Negara atas Sumber Daya Agraria”, *BHUMI: Jurnal Agraria dan Pertanahan*, Vol 2 No 2 (2016), p. 120.

<sup>8</sup> Fuad Hasan & Lukman Santoso, “Tinjauan Pasal 33 UUD 1945 terhadap Praktik Kontrak Karya di Indonesia”, *Justicia Islamica: Jurnal Kajian Hukum dan Sosial*, Vol 14 No 1 (2017), p. 57.

organized based on economic democracy, prosperity for all people.<sup>9</sup> Therefore, it is important that all state industries, public companies, and other major businesses that have major roles in the society must be controlled by the state. If this cannot be implemented, then the industry in Indonesia will be controlled by entrepreneurs and the community gets nothing except the damage of natural resource and the environment.

The Impact of mining is more often known as an activity that causes many problems compared to benefits, for example mining waste that pollutes the community, ex-mining pits that are not closed again, and logging of forests to expand mining land.<sup>10</sup> Although there are many benefits from mining activities, such as opening isolated areas, a source of regional original income, creating jobs, and becoming a source of foreign exchange for the country.<sup>11</sup> Therefore, it is important to have post-mining arrangements to give responsibility to mining entrepreneurs. However, in fact, there has been a change in regulations related to post-mining rights and obligations as regulated in the Law Number 3 of 2020 concerning Amendments to the Law Number 4 of 2009 concerning Mineral and Coal Mining.

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<sup>9</sup> Asep Bambang Hermanto, "Politik Hukum dalam Demokrasi Ekonomi Indonesia", *Jurnal Hukum dan Bisnis (Selisik)*, Vol 4 No 1 (2018), p. 20.

<sup>10</sup> Abdul Hafiz, 2016, "Dampak Izin Pertambangan Batubara bagi Lingkungan Masyarakat Kelurahan Sempaja Timur Kecamatan Samarinda Utara", *Jurnal Universitas Mulawarman*, Vol 4 No 4 (2016), p. 1655.

<sup>11</sup> Ilmi Hakim, "Dampak Kebijakan Pertambangan Batubara bagi Masyarakat Bengkuring Kelurahan Sempaja Selatan Kecamatan Samarinda Utara", *Jurnal Universitas Mulawarman*, Vol 2 No 2 (2014), p. 1733.

The existence of the Law Number 3 of 2020 requires mining entrepreneurs to carry out post-mining reclamation,<sup>12</sup> in the Law Number 4 of 2009 investors who do not carry out post-mining reclamation are only given administrative sanctions. The Law Number 3 of 2020 gives the government the authority to impose criminal sanctions on investors who do not carry out post-mining reclamation.<sup>13</sup> The purpose of the reclamation process is to cover abandoned mine pits<sup>14</sup> to prevent environmental pollution.

As stated in the considerations of the Law Number 3 of 2020 letter b, one of the considerations for changes related to mineral and coal mining is the implementation of mining business activities that are still constrained by the authority between the central government and local governments, licensing , protection of affected communities, mining data and information, supervision, and sanctions, so that the operation of mineral and coal mining is not effective and cannot provide added value optimally. After the amendment, there were significant differences between the previous law and the new law regarding post-mining rights and obligations as well as the political legality of the provisions of the amendment.

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<sup>12</sup> Agus Umar & Hijriani, “Ambiguitas Penerapan Sanksi Kegiatan Reklamasi dan Pascatambang”, *DE LEGA LATA: Jurnal Ilmu Hukum*, Vol 6 No 1 (2021), p. 100.

<sup>13</sup> *Ibid.*

<sup>14</sup> Nabila Nisa, 2020, “Perlindungan Hukum terhadap Anak pada Lingkungan Pasca Aktivitas Tambang Batubara di Kota Samarinda”, *QONUN: Jurnal Hukum Islam dan Perundang-Undangan*, Vol 4 No 1 (2020), p. 47.

Based on the research background above, the researcher is interested in conducting research with the title **LEGAL POLITICS OF PROVISIONS ON POST-MINING RIGHTS AND OBLIGATIONS OF MINING ENTREPRENEURS: A COMPARATIVE STUDY BETWEEN THE LAW NUMBER 4 OF 2009 AND THE LAW NUMBER 3 OF 2020 CONCERNING MINERALS AND COAL MINING.**

#### **B. Research Problem**

Based on the above background, the researcher formulates the following problems:

1. What are the post-mining rights and obligations of mining entrepreneurs according to the Law Number 4 of 2009 and the Law Number 3 of 2020?
2. What are the legal politics behind the provisions regarding the post-mining rights and obligations of the mining entrepreneurs in the Law Number 4 of 2009 and the Law Number 3 of 2020?

#### **C. Objectives of Research**

1. To identify the rights and obligations of mining entrepreneurs in the Law Number 4 of 2009 and the Law Number 3 of 2020.
2. To analyze the legal politics behind the provisions regarding the post mining rights and obligations of the mining entrepreneurs in the Law Number 4 of 2009 and the Law Number 3 of 2020.

## **D. Benefits of Research**

### 1. Theoretical Aspects

This research will contribute to the development of legal science, especially in post-mining rights and obligations based on the Law Number 4 of 2009 and the Law Number 3 of 2020 concerning Mineral and Coal Mining.

### 2. Practical Aspects

This research will propose several recommendations to policy makers for better legal policies in the future related to post-mining rights and obligations for mining entrepreneurs.