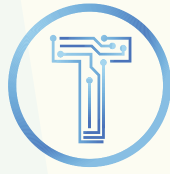

TECHNIUM

SOCIAL SCIENCES JOURNAL

Vol. 27, 2022

A new decade for social changes

www.techniumscience.com

TECHNIUM SOCIAL SCIENCES JOURNAL
Technium Social Sciences Journal
Vol. 27, 379-383, January, 2022
ISSN: 2668-7798
www.techniumscience.com

Policy renewal of Indonesian mineral and coal smelters for Global Impact

M. Fadly Fitri, I Nyoman N, Slamet Suhartono, Budiarsih

Faculty of Law, Universitas 17 Agustus 1945 Surabaya

mochammadfadly96@gmail.com

Abstract. This research is normative law. The rule of law gives the highest supremacy to a country in providing welfare and forming legal norms, the ratification of GATT through Law No.7 of 1994 concerning Ratification of the Agreement Establishing The World Trade Organization (ADDITIONAL TO STATE GAZETTE OF THE REPUBLIC OF INDONESIA NO. 3564) is the rule of law that has the highest supremacy, the result is to comply with the ratified GATT legal norms where the related parties of the public contract agreement can exercise the right to test for *inconsistencies*.

Keywords. policy; mineral and coal, impact

Introduction

Natural resources have an important meaning in a state's sovereignty and as a form of public ownership that must be managed sustainably based on the philosophical mandate, basic constitution and consequent statutory regulations. The Indonesian philosophy of "social justice for all the Indonesian people" is a philosophy that is guided by the basic constitution of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia in which the Earth, water and natural resources contained in the territory of the Republic of Indonesia are controlled by the state and for the greatest prosperity of the people. Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining (Act No. 4-2009) is legislation as a norm that specifically regulates mineral and coal mining governance. In terms of implementation, the government issues Government Regulation No. 20 of 2003 has been amended through Government Regulation no.8 of 2018 concerning the Fifth Amendment to Government Regulation No. 20 of 2003 concerning the Implementation of Law No. 4-2009 which is referred to as the Mineral and Coal Government Regulation. To describe the government regulations, the Minister of Energy and Human Resources Regulation (PERMENESDM) was issued.

From the perspective of Indonesian mining history, the journey of forming laws governing the mining of mineral and coal minerals as well as oil and gas has existed since the Dutch East Indies through the *Indische Mijnwet* 1819 (Mining Law), the Dutch East Indies declared control over minerals and metals as well as. The form of operational norms was issued by a mining ordinance *(Mijnrdonnantie)* in 1906 which was later revised in 1910 by stipulating

Technium Social Sciences Journal
Vol. 27, 379-383, January, 2022
ISSN: 2668-7798
www.techniumscience.com

Article 5a of the *Indische Mijnwet*, which became the basis for an agreement which is often called a "5a *contract*" in which the government essentially enters into an agreement with legal subjects in the form of individuals or companies, contracts that have been agreed and signed by the government with (legal subjects) can only come into force after ratification through law Act No. 11 of 1967 concerning Basic Mining Provisions, hereinafter referred to as the Basic Mining Law, Government Regulation No. 32 of 1969 concerning the Implementation of Law No. 11 of 1967 concerning Basic Mining Provisions and later revised through Law No. 4-2009.

Since the era of the 1945-1967 independence revolution, mining governance, especially mineral and coal, still refers to the laws and regulations for the products of the Dutch East Indies *Indische Mijnwet* 1819 (Mining Law) with the implementing regulations for the mining ordinance *(Mijnrdonnantie)* in 1906 which was later revised in 1910. In this era, "contracts" have become a legal norm between the government and mining business actors (corporations). The era of reform, namely the issuance of Law No. 4-2009 is a milestone in the start of the renewal of mining governance law, not determined through norms established by the government together with corporations ("contracts") but in the form of public law, more precisely administrative law with the main focus being the norms of permissibility or permits, this places the position of the state or government as a determinant in mining governance regulations.

Sustainable development according to the Decree of the People's Consultative Assembly No. IV/MPR/1999 Regarding the Outlines of State Policy, the term for sustainable development that focuses on the environment, which is based on Law No. 23 of 1997 concerning Environmental Management.(Maryunani, 2018) The provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia give power to the state to "control" and use existing *natural resources* for the greatest prosperity of the people. The understanding of the greatest prosperity of the people is that it is the people who must receive the benefits of prosperity from the *natural resources* that exist in Indonesia.

In terms of the government's position on renewing the legal obligations of the mineral and coal mining smelters above, they are in a much more sovereign position and their *legal standing* is higher than other legal subjects. For a business actor's corporate perspective, this is considered as something that has an impact on inequality in legal subjects. The role of corporations in implementing Law No. 4-2009 implements the rights and obligations of these legal norms with the consequence of guarantees, legal protection and some conveniences.

The urgency of renewing the legal obligations of smelters/smelters of mineral and coal mining is based on the spirit of *nationalism recauses* in the political field, increasing added value for the economy, the need and availability of industrial raw materials (downstream), where the law provides certainty, justice and benefits with a positive *multiplayer effect*. The fundamental objective and main determinant that provides guidance for State decision makers in determining foreign decisions.(Jati, 2018) Based on these considerations, the researcher focuses on whether the renewal of the Mineral and Coal Mining Law policy on domestic smelter development is a conflict in the regulations of the General Agreement on Tariffs and Trade and the World Trade Organization?

Method

This research is normative law.(Tomy Michael, 2021)

Discussion

The concept of renewing the Mineral and Coal Mining Law policy on the development of domestic smelters

The policy direction for the management and exploitation of natural resources in national development is oriented towards increasing the added value of natural products, as an effort to develop natural resource-based industries, while still paying attention to and prioritizing environmental conservation activities in sustainable national development.

To encourage the development of downstream industries by accelerating the construction of nickel *smelter* projects in the Sulawesi region, based on data reported by the Geological Agency, in July 2020, the amount of nickel ore resources owned by Indonesia reached 11,887 million tons. From this amount, it is known that 5,094 million tons are inferred, 5,094 million tons are indicated, 2,626 tons are measured, and 228 million tons are *hypothetical*. Total nickel ore/ore reserves reached 4,346 million tons. A total of 3,360 million tons are proven reserves, and 986 million tons are estimated reserves. The total amount of metal resources reaches 174 million tons and the total reserves reach 68 million tons, the greatest potential for nickel is currently most widely spread in Southeast Sulawesi, Central Sulawesi, and North Maluku, for the largest amount in Indonesia.(*Https://Duniatambang.Co.Id/Berita/Read/1402/Strategi-Pemerintah-Percepat-Hilirisasi-Nikel-Sebagai-Bagian-Dari-Proyek-Strategi-Nasional, Diakses Pada Tanggal 16 Desember 2020*, n.d.)

The legal policy for the mineral and coal downstream industry is regulated according to Law No. 4-2009 and Law No. 5 of 1984 concerning Industry (Law No. 5-1984). Minerals and coal are *non-renewable natural resources* where governance must be controlled by the State with the aim of providing added value significantly increasing the income of the economic sector and at the same time providing a *multiplayer effect*. While Law No. 5-1984 mandates that the downstream industry should be improved in a balanced and integrated manner, one of which is optimizing all natural resources.

The capacity of the steel industry, which currently reaches 19 million tons per trillion, still requires 46 million tons of *iron ore* to get an increase in added value of US$ 15 billion per year, compared to selling it in the form of *iron ore* which only generates US$ 2.3 billion/year. The added value obtained is USS 12.7 billion or equivalent to Rp. 114.4 trillion every year. Meanwhile, *iron ore* reserves are around 115 million tons, fully exported on a large scale. In 2011 *iron ore* exports reached thirteen tons, an increase of seven times compared to 2008 (before the enactment of Law No. 4-2009). Currently, the growth of new investments that process iron ore into *sponge iron* and *pig iron* with a production capacity of 2.9 million tons per year, as well as new investments that produce *slabs* and *plates* with a production capacity of 3 million tons per year. The bauxite/alumina industry is the second most important component after the *still* industry. However, currently there is no investment that processes bauxite raw materials into alumina. The national downstream aluminum industry still requires 600,000 tons of aluminum *ingots*, most of which (83%) are imported commodities. Up to now, bauxite reserves have been recorded as covering 180,000,000 tons. The estimated reserves will run out within the next 4 to 5 years if bauxite export control is not carried out, which will result in not growing the domestic aluminum industry.(*Https://Kemenperin.Go.Id/Artikel/7682/Kode-Etik, 22 Januari 2021*, n.d.)

The decade of the enactment of the Basic Mining Law, which is *capital oriented* and centralized, doesn't add value to mining business activities for the growth of the national economy and to increase the country's income and foreign exchange the development of the

TECHNIUM SOCIAL SCIENCES JOURNAL
Technium Social Sciences Journal
Vol. 27, 379-383, January, 2022
ISSN: 2668-7798
www.techniumscience.com

global economy that demands adjustment and high competitiveness in the international community, along with the development of a sustainable development paradigm, changes are made in mining business regulations through the spirit of *nationalism* in controlling natural resources by enacting Law No. 4-2009.

If examined from the process of preparing the Draft Law No. 4-2009, it can be observed that the main argument or the urgency to form Law No. 4-2009, which is more progressive, prioritizes the interests of the nation and state in the utilization of mineral resources for the prosperity of the people through added value.

According to the Academic Paper, there are important arguments as to why it is necessary to form a Bill on Mineral and Coal Mining, which is stated as follows: “Until now, the issue of added value has not received any attention. *Forward* and *backward linkage* of the mining industry is still low. The issue of local content until now almost all components of the mining industry 90% come from imported components. Likewise, the downstream industry obtains raw materials by importing semi-finished mining materials from abroad, while the same mining materials from Indonesia are sold at low prices”.(Pusat Penelitian, Informasi, 2004)

Urgency of Legal Obligation for Processing and Refining Development *(smelter)*

The downstream mining policy as referred to above is a mandate from Article 102 jo 103 of Law No. 4-2009 and PERMENESDM No. 7 of 2012. All mining corporations holding Mining Business Permits or special Mining Business Permits are required to build smelters as a means of processing or refining raw mineral materials (concentrates), also giving the option of building their own or in collaboration with Permit holders. Mining Business or other Special Mining Business Permits, or with other companies.

The increase in added value of minerals and coal is not only intended as an effort to increase the income of all those who are directly or indirectly related to the processing of the mining system, not only limited to increasing state income, but this concept in the future is also aimed at increasing the bargaining power of the state in trading transactions with other countries consumer countries. This effort also fulfills the availability of basic components (raw materials) for Indonesia's downstream industry, because domestic mineral processing and refining activities can be directed to support the independence and resilience of the national economy in the long term.(*Agus Sugiono, “Kebutuhan Dan Penyediaan Energi Di Inustri Smelter Tembaga”, Http://Www.Researchgate.Net/Publication/264784649 Badan Pengkajian Dan Penerapan Teknologi, 10 Juni 2020*, n.d.)

The idea of the spirit of *nationalism resources*, Indonesia's *natural resources* are asset sovereignty with the nature of *non-renewable resources*, thus the "right to control the state" Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is the foundation. The rule of law of a State is to have supreme supremacy over any form of contract. Indonesia as a member of the World Trade Organization which has ratified the General Agreement on Tariffs and Trade is also seen as the rule of law.

Article XI basically prohibits the existence of restrictions on goods or export commodities, except for goods produced by agriculture, fisheries, livestock or goods that have similarities that can be substituted or substitute goods. The norms of *Article XI* in the form of a ban on export restrictions above are actually in accordance with the Indonesian regulations mentioned above. Act No. 4-2009 (Article 102.103) PERMENESDM No. 11 of 2019 concerning the Second Amendment to the Regulation of the Minister of Energy and Mineral Resources jo No. 25 of 2018 concerning Mineral and Coal Mining Business Article 62A.

Technium Social Sciences Journal
Vol. 27, 379-383, January, 2022
ISSN: 2668-7798
www.techniumscience.com

The essence of the prohibition of *raw materials* is not seen as a prohibition or limitation of quantity, but "export with conditions" or referred to as a hypothetical *imperative norm* where an obligation is subject to certain conditions.(Faiz, n.d.) These conditions are in the form of behavior to carry out management and purification (smelter process), the results of the *smelter* can of course be exported. This has been regulated by PERMENESDM No. 154 K/30/MEM/2019, the difference in these restrictions does not lie in quantity but in quality. How much nickel demand for the European Union is still being met with much better quality and quantity.

On the basis of the above, the legal position of the European Union in bringing this issue to a formal legal basis can be justified, but from a substance perspective, there are no restrictions or prohibitions on exports in terms of quantity. The fact that the European Union is guided by the quantity of *raw material*, Indonesia is not the only nickel exporter, there are several options for countries that still export *raw material* if the policy of renewing mining law on *smelters* is considered by the European Union as a form of *inconsistency* in the application of *article XI* GATT is inappropriate, substantially gives meaning to the sovereignty of the State to form laws and regulations (sovereignty of law) on the protection and management of minerals and coal which constitute asset sovereignty.

Conclusion

The rule of law gives the highest supremacy to a country in providing welfare and forming legal norms, the ratification of GATT through Law No. 7 of 1994 concerning Ratification of the Agreement Establishing The World Trade Organization (ADDITIONAL TO STATE GAZETTE OF THE REPUBLIC OF INDONESIA NO. 3564) is the rule of law that has the highest supremacy, the result is to comply with the ratified GATT legal norms where the related parties of the public contract agreement can exercise the right to test for *inconsistencies*.

References

[1] *Agus Sugiono, "Kebutuhan dan Penyediaan Energi di Inustri Smelter Tembaga", http://www.researchgate.net/publication/264784649 Badan Pengkajian dan Penerapan Teknologi, 10 Juni 2020*. (n.d.).

[2] Faiz, F. (n.d.). *Materi Kuliah Filsafat Utilitarian*.

[3] *https://duniatambang.co.id/Berita/read/1402/Strategi-Pemerintah-Percepat-Hilirisasi-Nikel-Sebagai-Bagian-dari-Proyek-Strategi-Nasional, diakses pada tanggal 16 Desember 2020*. (n.d.).

[4] *https://kemenperin.go.id/artikel/7682/kode-etik, 22 Januari 2021*. (n.d.).

[5] Jati, W. R. (2018). *Nasionalisme Pertambangan di Indonesia*. Yayasan Pustaka Obor Indonesia.

[6] Maryunani. (2018). *Pengelolaan Sumberdaya Alam dan Pembangunan Eonomi Secara Berkelanjutan*.

[7] Pusat Penelitian, Informasi, dan D. D. R. (2004). *Naskah Akademik Rancangan Undang-Undang tentang Pertambangan Mineral dan Batubara*.

[8] Tomy Michael, R. D. A. D. and. (2021). SPACE TOURISM ACTIVITIES OVERVIEW OF INTERNATIONAL LAW. *Journal of International Trade, Logistics and Law*, *7*(Num. 1), 8–12.