



## The Extension of the Special Business Mining License (IUPK) under The Law No. 3 of 2020 of the Coal and Mineral Mining: Pro or Cons?

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### Abstract

The enactment of Law No. 3 of 2020 to amend the Law No. 4 of 2009 of the Coal and Mineral Mining has reaping various controversies lately. One needs to be highlighted from the several issues that were raised in disparately, inter alia, the insertion of provision pertaining to the guarantee of the extension of the KK and PK2PB in the form of IUPK under Article 169 of the New Mining Law. Whereas the former law stipulated that when the contract period has expired the land will be handed over to the State and auctioned, however, the latter law instead “guaranteed” the investors will directly get the aforementioned IUPK. The bizareness of such provision is indeed thought-provoking to be examined from both sides; the government as the regulator and from the people of Indonesia who is ought, constitutionally, to have the utmost prosperity from the exploitation of the natural resources pursuant to principles that needs to be contained therein. Ergo, it is expected that this writing can provide answers in a satisfied manner regarding the fulfillment of philosophical consideration within Article 169 of the New Mining Law.

**Keywords:** Coal and Mineral Mining Law; IUPK; Natural Resources.

### A. Introduction

In the year of 2020, Indonesia had officially enacted the amendment the Law Number 4 of 2009 of the Coal and Mineral Mining Law (“the 2009 Mining Law”) into the Law Number 3 of 2020 of the Coal and Mineral Mining Law (“the New Mining Law Amendment”) causing many criticisms not only from the investors or the observers of the coal and mineral mining itself but also from the public view that is ought, constitutionally, to have the utmost prosperity from the exploitation of the natural resources. Every stakeholders has their own interests to fight for their rights to be fulfilled taking into account that the issue of the coal and mineral mining due to its interrelation with the natural resources and environment. These interests overlap making the government, as the policy maker, should always play a role to be the mediator and governed that accommodate the aforementioned overlapping interests without prioritizing its own interest.

The provision to enact a statutory regulation in Indonesia is well established under the Law No. 12 of 2011 of the Establishment of Legislation (“the Establishment of Legislation Law”). Prof. Bagir Manan sets forth that decentness of such statutory regulation can be seen by virtue of the fulfillment of underlying basis, *inter alia*,

philosophically, sociologically, and juridical.<sup>1</sup> As accordance to the Establishment of Legislation Law, the philosophical basis made up as a basis or rationale in which it portrays the statutory regulation that was formed in conformity with the view of life, the awareness, and the legal ideals and that includes the mystical atmosphere and the national philosophy expressed in the Pancasila and the Preamble of the Constitution of the Republic of Indonesia 1945 (“the Constitution”).<sup>2</sup> One of the main objectives that is incorporated within the preamble of the Constitution is to “promote the general welfare.” Thus, with the existence of the New Mining Law that is certainly shall be included from this provision, indeed it is thought-provoking to examine whether the amendment of the New Mining Law are truly aimed at accelerating the public welfare or what interests, veritably, underlie this amendment of the aforesaid Law.

Additionally, it needs to be further examining regarding the plea, which is seemingly true, that the New Mining Law is not fully substantiated with the States economical principle, namely the principle of economic democracy. The said principle is stipulated under Article 33 of the Constitution, which in essence, the economic development in regards to the coal and mineral mining is obliged to comply with the spirit of economic democracy due to its valuable objective *i.e.*, a just and prosperous society based on Pancasila. Further, “the land, waters, as well as the natural resources therein are to be controlled by the State to be exploited to the utmost prosperity of the people of Indonesia.” These provision shows that the natural resources, *in casu* the coal and mineral mining, has its privilege to be controlled by the States, instead of the foreign investors.<sup>3</sup>

The amendment of the New Mining Law, Article 169A to be precise, determined that both the holders of the Contract of Work (“KK”) and the Coal Mining Exploitation Work Agreement (“PKP2B”) whose contracts will be expired, is guaranteed to be extended of two period, approximately 10 (ten) years each, in the form of a Special Mining Business License (“IUPK”). This provision illustrates various problems since on one hand, the government has the its duty to encouraging the investors to invest in this sector, nonetheless, on the other hand, this Article raised a question pertaining with the principles mentioned above.

Prior to this writing, several articles had been made regarding the polemic of the New Mining Law. First, the “Polemic of the Revision of the Mining Law in the Dynamics of Indonesian State Administration” written by Imas Novita Juaningsih in Law and Justice Bulletin Volume 3 Number 3 of 2020. The writing focuses on the problem of the amendment of the New Mining Law in general, the fulfillment of formal requirements, and several criticisms against the promulgation of the New Mining Law in the midst of the Covid-19 Pandemic.

Based on the description above, the author is interested to further examining the New Mining Law since there has been no research that specifically and comprehensively discusses the basis for the government of Indonesia to guarantee the extension of the KK and PKP2B in the form of IUPK pertaining to the the fulfillment of the philosophical consideration, the principle of economic democracy, and the State’s rights to control its own natural resources. The purpose of this paper is to answer the

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<sup>1</sup> Bagir Manan, *Dasar-dasar Perundang-undangan Indonesia*, Jakarta: Ind-Hill.Co, 1992, pp. 57.

<sup>2</sup> First Attachment of the Law No. 12 of 2011 of the Establishment of Legislation under the Academic Paper Systematics section.

<sup>3</sup> Article 33 Paragraph (2) and (3) of the Constitution of the Republic of Indonesia of 1945 last amended 2002.

guarantee of the extension to IUPK in pinpointing the formation of a decent legislation and also conformity with those related principles.

## **B. Research Methodology**

This research utilizes the normative legal theory, namely the legal research approach carried out by examining some literature or secondary data as the main research material.<sup>4</sup> *In casu*, the research will be conceptualized as what is written in the regulation established or a law that is construed as a rule or norm as the idealization of human behavior that is deemed to be appropriate.<sup>5</sup> Thus, by applying the normative legal theory it is expected to provide answers on the philosophical basis, which is presumed to be unfounded, within the Law No. 3 of 2020 of Mineral and Coal Mining.

The secondary data is the type of data that will be studied within this research using several document studies or literatures. The primary legal materials have a binding nature consisting of basic norms and rules stipulated in regulations, court decisions, conventions, and other regulations from another country. Further, the secondary legal materials are legal materials that are derived from the existing sources. Lastly, the tertiary legal materials are materials, which complements the primary and secondary legal materials.<sup>6</sup> Said data will be processed using qualitative normative techniques in order to examine the primary legal materials regarding the underlying philosophical basis of the Law No. 3 of 2020 of the Mineral and Coal Mining. Therefore, the results of this research are qualitative to conclude the problems pertaining to the underlying philosophical basis of the Law No. 3 of 2020 of the Mineral and Coal Mining.

## **C. Results and Discussion**

After almost four years of discussion, the enactment of the New Mining Law to amend the Law No. 4 of 2009 of Mineral and Coal Mining has finally come into effect. The amendment introduces numerous changes; *inter alia*, the guarantee for the continuation of KK and PKP2B operation to be extended in the form of IUPK for the Continuity of Operation of Contract or Agreement.<sup>7</sup> This provision is the most anticipated change in the amendment of the forenamed Law.<sup>8</sup> Hence, the KK and PKP2B exist under the 2009 Mining Law would still be considered valid and will be given assurance or guarantee for the extension of KK and PKP2B by means of IUPK with the following details according to Article 169A of the New Mining Law:<sup>9</sup>

- *The KK and PKP2B that have never been extended guaranteed an extension twice in the form of IPOK as the Continuity of Operation of Contract or Agreement for*

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<sup>4</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: PT. RajaGrafindo Persada, 2003, pp. 13-14.

<sup>5</sup> Amiruddin and H. Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Jakarta: PT. Raja Grafindo Persada, 2006, pp. 118.

<sup>6</sup> Hasan, M. Iqbal, *Pokok-pokok Materi Metodologi Penelitian dan Aplikasinya*, Bogor: Ghalia Indonesia, 2002, pp. 58.

<sup>7</sup> SSEK Indonesian Legal Consultants, "Indonesia Introduces Significant Changes to Mining Law", <https://www.ssek.com/blog/indonesia-introduces-significant-changes-to-mining-law> retrieved from 1 November 2020

<sup>8</sup> Assegaf Hamzah & Partners, "Amandmenet to Mining Law: Resolution at Last?", <https://www.ahp.id/client-update-29-June-2020> 1 November 2020

<sup>9</sup> Article 169A of the Law No. 3 of 2020 of the Coal and Mineral Mining

*maximum 10 (ten) years each period whilst taking into account the effort to increase the State's revenue.*

- *If the KK and PKP2B have been extended once, the second extension guaranteed to be given with a maximum period of 10 (ten) years whilst taking into account the effort to increase the State's revenue.*

From the Government's point of view, this new provision is heavily required for Indonesia itself. As accordance to the academic draft of the said Law, the extension of the KK and PKP2B that is conducted long before the contract expires aims to provide the legal certainty, the general principle in which Indonesia is strongly adamant about,<sup>10</sup> that certainly will have a positive impact towards the economy of Indonesia. No definition has succeed to define the substantial meaning of the principle of legal certainty,<sup>11</sup> yet pursuant to the *prima facie* definition by the court's decision in the Parliament v. Council, the principle of legal certainty requires that rules of law must be clear, precise, and predictable In their effect so that interested parties can ascertain their position and the legal relationship.<sup>12</sup> When the certainty pertaining the contract extension in the mining sector is given right away only by then the certainty of the use of domestic goods and services related to those activities can be provided in order for local labor and productivity to be improved.

Mining companies do need that certainty for the extension of contract to prepare before actually continuing the mining process, bearing in mind that it took quite a long time to prepare related matters i.e., the equipment and the human resources of the company.<sup>13</sup> Therefore, to guarantee the fundamental principle of legal certainty the government decided to govern the extension of KK and PKP2B in the form of IUPK under the New Mining Law.

Furthermore, the concept of State's control towards the natural resources, particularly the coal and mining, is stipulated under Article 33 paragraph (2) and (3) of the Constitution of the Republic of Indonesia of 1945 that "production sectors which are vital to the State and affect the livelihood of a considerable part of the population are to be controlled by the State." Further, "the land, waters, as well as the natural resources therein are to be controlled by the State to be exploited to the utmost prosperity of the people of Indonesia."<sup>14</sup> The appropriate interpretation towards the terminology of "controlled by the State" can be seen under the Constitutional Court of Indonesia's Decision No. 002/PUU-I-2003. The Decision explains that the said concept needs to be viewed from the concept of the sovereignty of Indonesian people, which mandates the State for the ultimate purpose of the prosperity of the people.<sup>15</sup>

Under the 2009 Mining Law, which the KK established, the State is not a party to make arrangements for the legal relationship between mining companies and the natural resources. Instead, it made the aforementioned legal relationship with the company. Moreover, in regards to the royalty matters that are adopted in the KK, seems to undermine the sovereignty of the State over its own resources. This will lead to the mining companies reaping the profits from the natural resources, which supposedly

<sup>10</sup> E. Utrecht and Moh. Saleh Djindang, *Pengantar Dalam Hukum Indonesia*, Jakarta:, PT. Ichtiar Baru, 1983, pp. 78

<sup>11</sup> T. Tridimas, *The General Principle of EC Law*, Oxford: Oxford University Press, 2000 pp. 164

<sup>12</sup> Judgement in Parliament v Council, C-48/14, EU:C:2015:91, para. 45

<sup>13</sup> Academic Draft of the Law No. 3 of 2020 to amend the Law No. 4 of 2009 of the Coal and Mineral Mining, the House of Representatives of the Republic of Indonesia, 2018, pp. 36

<sup>14</sup> Article 33 Paragraph (2) and (3) of the Constitution of the Republic of Indonesia of 1945 last amended 2002.

<sup>15</sup> Constitutional Court of Indonesia's Decision No. 002/PUU-I-2003 pp. 208

belongs to the people and used for the utmost prosperity of the People of Indonesia. Therefore, the concept of *license* under the IUPK gives a higher position to the State, where the State gives permission to the qualified parties to conduct mining activities in Indonesia.<sup>16</sup> The government itself has assured that the extension of the KK and PKP2B is not *per se* “guaranteed” since the Minister of Energy and Mineral Resources of Indonesia will still have to consider several factors in the issuance of IUPK. Thus, it is well established the urgency to amend the concept of KK under the 2009 Mining Law into the form of IPUK under the New Mining Law.

However, in reality, those seemingly convincing and ideal purposes are not as what it is expected to be. Many criticisms came from the enactment of the New Mining Law not only from the investors or the observers of the coal and mineral mining itself but also from the public view, who, as previously mentioned above, has the privilege to have the utmost prosperity from the exploitation of Indonesia’s natural resources.

One needs to be highlighted in the New Mining Law pertaining the extension of KK and PKP2B in the form of IUPK that is not fully substantiated with the underlying philosophical basis of Article 33 of the Constitution of the Republic of Indonesia of 1945 contains the principle of economic democracy. The concept of the principle of economic democracy has been taught from our founding father of Indonesia. Soekarno himself has imposed that the democracy designated for Indonesia is the economy democracy for the People of Indonesia, rather for the scantily elite interests.<sup>17</sup> Hatta further reaffirms this notion that the democracy economy is much needed in order to carrying out the equality of the people.<sup>18</sup> Conceding this principle from the so-called *difference principle* that was well established by John Rawls. He asserted that the State should install institutions due to the creation of *fair equality opportunity*.<sup>19</sup> Bearing in mind those principle, this concept of IUPK seemingly makes private sector, especially those foreign ones, have the permission to exploit the natural resources of Indonesia that is ought, constitutionally, for the utmost prosperity of the people.<sup>20</sup> *Ergo*, the amendment within the extension of KK and PKP2B in the form of IUPK is clearly not corroborated with the principle of the economic democracy adhered to by Indonesia.

The abundance of Indonesia's natural resources has to be managed and exploited for the utmost prosperity of the people of Indonesia. partially has been used as well as possible and another part has not been explored yet to fulfilled the needs of livelihoods. Thus, the role of State is necessary to maximizing the exploitation of the said resources by means of enactment of regulation and the law enforcement of the environmental law infringement.

Mining, as one of the natural resources, still can be potentially exploited for the nation. the spread of national resources in Indonesia such as in Sumatera with its oil, coal, tin and others. Then in Java Island with iron ore, granite and others. Kalimantan have its famous petroleum and coal. There is Sulawesi with phosphate, nickel, copper, and others. As well as Papua which holds gold, silver, and many more. More specifically,

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<sup>16</sup> Academic Draft of the Law No. 3 of 2020 to amend the Law No. 4 of 2009 of the Coal and Mineral Mining, the House of Representatives of the Republic of Indonesia, 2018, pp. 6

<sup>17</sup> Sukarno, *Dibawah Bendera Revolusi*, Jakarta: Banana Books, 2016, pp. 139

<sup>18</sup> Hatta M, *Demokrasi Kita*, Jakarta: Panji Masyarakat, 1960, pp. 23

<sup>19</sup> Rawls, John, *Justice as Fairness: A Restatement*, Cambridge: The Belknap Press of Harvard University Press, 2001, pp. 171

<sup>20</sup> Pinter Politik, UU Minerba Baru Menurut UUD 1945, <https://pinterpolitik.com/uu-minerba-baru-menurut-uud-1945> 1 November 2020

the coal reserves spread across 21 provinces with a total of 147.6 billion tonnes.<sup>21</sup> The province with the largest coal reserves in Indonesia is located in South Sumatera with 50.2 billion tons. when viewed from the island, the island of Kalimantan is still When viewed from the island, the island of Kalimantan is still the first source with a total of 90.9 billion tonnes spread over 4 provinces. Another source added that the allocation of mineral and coal revenue-sharing (DBH) funds in the 2019 State Budget (APBN) was mostly pocketed by East Kutai, Kutai Kartanegara, Mimika, Berau, Balangan, Tanah Bumbu, Paser, West Kutai, Samarinda, and Muara Enim.<sup>22</sup> This has resulted in minerals and coal being the favorite sectors for investors to invest in this sector.

In 2019, the demand for coal has increased the most because many of the Electric Steam Power Plants (PLTU) have started operating, amounting to 98.55 million tons. The main mineral production, namely silver and nickel-processed products, has increased, while gold, tin, copper and nickel matte have decreased compared to the previous year.<sup>23</sup> Even the Ministry of Energy and Mineral Resources has set a Mining investment target of 103 trillion in 2020.

The explanation above shows how strategic the position of mineral and coal is in driving the wheels of the national economy. This is what causes urgency regulations regarding mineral and coal management so that the mineral and coal products are actually used for the interests of the people, not investors, nor the government. Mining is subject to the management basis set forth in Article 33 paragraph (3) of the Constitution reads, "The earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

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Referring to the article, it can be seen that the word used is 'state', not 'government'. The term government refers to state administrators, namely the central government and local governments, while Article 33 uses the word 'state' which means an organ that has sovereignty and can carry out legal actions both externally and internally. So that it can be interpreted that the actor in question is the central government, although in practice the regional government has its own role in mineral and coal management.<sup>24</sup> Being controlled by the state shows that the state has the authority right over mineral and coal. It is necessary to distinguish between control rights and ownership rights. State control is not the same as ownership of mineral and coal because mineral rights belong to all Indonesian people. This ownership is reflected

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<sup>21</sup> Ministry of Energy and Mineral Resources Republic of Indonesia, Potensi dengan Jumlah Cadangan Batu Bara Terbesar, <https://databoks.katadata.co.id/datapublish/2020/02/06/provinsi-dengan-jumlah-cadangan-batu-bara-terbesar>, (accessed on 29 November 2020).

<sup>22</sup> Agustiyanti, Presidential Regulation of State Budget 2019, CNN Indonesia, Daerah-daerah yang Kaya dari Mineral dan Batu Bara, <https://www.cnnindonesia.com/ekonomi/20181213150743-88-353413/daerah-daerah-yang-kaya-dari-mineral-dan-batu-bara>, (accessed on 28 November 2020)

<sup>23</sup> Ministry of Energy and Mineral Resources Regulation No. 16 of 2020 of the Strategic Plan of the Ministry of Energy and Mineral Resources in the year of 2020-2024.

<sup>24</sup> Tri Haryati, "Hak Penguasaan Negara Terhadap Sumber Daya Alam dan Implikasinya Terhadap Bentuk Pengusahaan Pertambangan", *Jurnal Hukum dan Pembangunan Tahun ke-49*, No.3, 2019, pp.770.

in the purpose of exploiting natural resources for the maximum benefit of the people. This means that this ownership is public ownership by the collectivity of the people.<sup>25</sup> Based on the social contract theory, the people, as owners, give part of their rights in terms of managing natural resources to the state. This mining right is implemented by the Government, in this case the Minister of Energy and Mineral Resources.

According to Prof. Bagir Manan, the existence of a link between "the right to control the state" and "being used as much as possible for the prosperity of the people", imposes an obligation on the state in terms of:<sup>26</sup>

1. All uses of the earth, water and natural resources must significantly increase the prosperity and welfare of the people;
2. Protect and guarantee people's rights to land, water and natural resources that can be enjoyed directly by the people;
3. Prevent actions that cause people to lose their opportunities or rights in enjoying natural resources.

One manifestation of the right to control the state is the effort to shift KK and PKP2B towards mining business permits. The contract regime in KK and PKP2B places the government and investors on an equal footing. This raises criticism that the government only gets royalties from the mining activities of foreign companies so they can exploit Indonesia's natural resources.<sup>27</sup> Meanwhile, the licensing regime places the government above investors, thus reflecting the state's sovereignty over control of mineral and coal. So it can be concluded that minerals and coal, as part of natural resources, play an important role for the livelihood of many people so that they are subject to Article 33 of the Constitution, which in essence has the right to be controlled by the state to be used for the greatest prosperity of the people.

This leads us to another aspect that is as controversial as the previous one. The amendment of the New Mining Law, especially the Article 169 of it, rendering the mining company that earlier has a license can extend its contract without conducting an auction and/or returning to the State when the contract has expired. The role of the State here, as accordance to the Article 33 of the Constitution, represented by the State-Owned Enterprise ("**BUMN**") or the Regional-Owned Enterprise ("**BUMD**"),<sup>28</sup> is in reality, controlled by foreign companies that have been guaranteed, explicitly under Article 169 of the New Mineral Law. This illustrates to be detrimental to the State as a whole. The importance of BUMN is guaranteed under Article 2 paragraph (1) of the Law No. 19 of 2003 of the State-Owned Enterprise (the BUMN Law) namely to contribute to the development of the national economy in general and the State's revenue in particular to carry out public benefits in the form of provision of goods and services of high quality and adequately for the fulfillment of the livelihoods of Indonesia.<sup>29</sup> Whilst, BUMD as accordance to Article 331 paragraph (4) of the Law No. 23 of 2014 of the Regional Government ("**the Regional Government Law**") aims to

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<sup>25</sup> *Ibid*, pp.779.

<sup>26</sup> Bagir Manan, *Pertumbuhan dan Perkembangan Konstitusi Suatu Negara*, Bandung: Mandar Maju, 1995, pp. 12.

<sup>27</sup> Victor Imanuel Williamson Nalle, "Hak Atas Menguasai Negara Atas Mineral dan Batubara Pasca Berlakunya Undang-Undang Minerba", *Jurnal Konstitusi*, Vol. 9, No. 3, 2012, pp. 479.

<sup>28</sup> Reka Dewantara, "Rekonseptualisasi Asas Demokrasi Ekonomi dalam Konstitusi Indonesia", *ARENA HUKUM* Volume 7, Nomor 2 (Agustus 2014), pp. 198.

<sup>29</sup> Article 2 paragraph (1) of the Law No. 19 of 2003 of the State-Owned Enterprise

provide prosperity for the development of the regional economy by taking into account the conditions, characteristics and potential of the region concerned.<sup>30</sup>

Bearing in mind that the principle of the coal and mineral mining management as stipulated under Article 2 of the 2009 Mining Law *inter alia* (b) taking sides with the interest of the nation. We can conclude that the provision meaning that the exploitation of coal and mineral not only enjoyed by private sectors, but also the national interest in the form of BUMN and BUMD which have an important role as the supervisors who control the activities.<sup>31</sup> This can affect the economy of a region since to extend without any action conducted will only make the private sector easier to exploit even more.

In addition, the provision under Article 169 of the New Mining Law will inevitably damage the environment surrounding that leads to mining holes in densely populated areas and will leave toxic water and heavy metals. In Indonesia, there are at least 3.092 mining pits that have been left without recovery have occurred in 2018 pursuant to the Mine Hole Reclamation Policy Paper in Indonesia.<sup>32</sup> Not only that, in 2019, there are around 70 (seventy) percent of mine holes that have not yet been reclaimed by the holders of IUP. with a total of 1,735 mine pits in East Kalimantan. Other areas also have mine pits without recovery, South Kalimantan with 814 holes, South Sumatra 163, Central Kalimantan 163, Jambi 59 and Bengkulu 54. Then followed by North Kalimantan with 44 mining holes, West Sumatra 22, Riau 19, Lampung 9, Aceh 6, Banten 2 and South Sulawesi with 2 mine pits.<sup>33</sup>

Regardless that there is a provision stated under Article 96 of the New Mining Law for mining companies to conduct reclamation and the post mining activity, nonetheless, the sanction towards those infringement are only in administrative nature *i.e.*, written warning, termination of activities, or revocation of license.<sup>34</sup> Furthermore, Article 99 of the New Mining Law also nullified the requirements to reclamation plan or the post mining activities plan before issuing the IUPK, which is replaced by the ambivalent of obligation to compile and submit without any legal certainty regarding the handover time.<sup>35</sup>

As a result of this obscurity provision will unavoidable damage the environment without considering the good will of the mining companies to carry out reclamation or post mining activities as such, instead these companies are guaranteed to extend their license to keep stabbing our own homeland.

## D. Conclusion

Based on the explanation above, we can take the conclusion that the amendment of the New Mining Law caused pros and contras. The State as the largest organ is mandated by the Constitution to control the wealth of natural resources, including the minerals and coal. The right to control is different with right to own. Ownership rights

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<sup>30</sup> Article 331 paragraph (4) of the Law No. 23 of 2014 of the Regional Government

<sup>31</sup> PUSHEP, "Peran BUMN di Sektor Pertambangan dalam Perspektif Konstitusi dan Kemanfaatan", <https://pushep.or.id/peran-bumn-di-sektor-pertambangan-dalam-perspektif-konstitusi-dan-kemanfaatan/> (accessed on 29 November 2020)

<sup>32</sup> May Rahmadi, "Nasib Lubang Tambang di Bawah Revisi UU Minerba", <https://www.ekuatorial.com/id/2020/06/nasib-lubang-tambang-di-bawah-revisi-uu-minerba/#!/map=4847&story=post-48624&loc=-7.16766295086783,107.72712707519531,11> (accessed on 29 November 2020)

<sup>33</sup> Vincent Fabian Thomas, "Jatam Sebut 70 Persen Lubang Tambang Belum Direklamasi", [https://tirto.id/dnkt https://tirto.id/jatam-sebut-70-persen-lubang-tambang-belum-direklamasi-dnkt](https://tirto.id/dnkt-https://tirto.id/jatam-sebut-70-persen-lubang-tambang-belum-direklamasi-dnkt) (accessed on 29 November 2020)

<sup>34</sup> Article 96 of the Law No. 3 of 2020 of the Coal and Mineral Mining

<sup>35</sup> Article 99 of the Law No. 3 of 2020 of the Coal and Mineral Mining



belong to the people, whereas the right to control places the state in control and management of natural resource of their people. Mineral and coal should be controlled by the state and should minimize foreign parties' role in managing Indonesia's natural resources. This implies that the regulation regarding the guarantee of extension of KK and PKP2B in the form IUPK as an additional Article in the amendment of the New Mining Law is not in accordance with the spirit of the right to control the state since the foreign parties have the greater share in the management of minerals and coal.

From the Government's point of view, this new provision is heavily required for Indonesia itself. As accordance to the academic draft of the said Law, the extension of the KK and PKP2B that is conducted long before the contract expires aims to provide the legal certainty. Mining companies do need that certainty for the extension of contract to prepare before actually continuing the mining process, bearing in mind that it took quite a long time to prepare related matter. Therefore, to guarantee the fundamental principle of legal certainty the government decided to govern the extension of KK and PKP2B in the form of IUPK under the New Mining Law.

Furthermore, the concept of State's control towards the natural resources, particularly the coal and mining, is stipulated under Article 33 paragraph (2) and (3) of the Constitution. Under the 2009 Mining Law, which the KK established, the State is not a party to make arrangements for the legal relationship between mining companies and the natural resources. Instead, it made the aforementioned legal relationship with the company.

One needs to be highlighted in the New Mining Law pertaining the extension of KK and PKP2B in the form of IUPK that is not fully substantiated with the underlying philosophical basis of Article 33 of the Constitution contains the principle of economic democracy. The role of the State, as accordance to the Article 33 of the Constitution, represented by the BUMN and BUMD, is in reality, controlled by foreign companies that have been guaranteed, explicitly under Article 169 of the New Mineral Law. In addition, the provision under Article 169 of the New Mining Law will inevitably damage the environment surrounding that leads to mining holes in densely populated areas and will leave toxic water and heavy metals.

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