



Regulation of Group Company Expansion Restrictions in the Coal Mining Sector Viewed from Indonesian Laws and Regulations

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Abstract

The growth of coal mining business in the last ten years in The Indoensia region must certainly be balanced with the fulfillment of the prevailing laws and regulations. So in this article will be discussed about the legislation that specifically regulates the restriction of expansion of group companies, especially in the coal mining sector in Indonesia. The result of this study is Law No. 4 of 2009 on Mineral and Coal Mining provides restriction arrangements for group companies, namely IUP or IUPK holders are prohibited from involving subsidiaries and/or affiliates in the field of mining services in the mining business area they are working in, except with the permission of the Minister. The maximum area ownership of IUP in group companies is not limited.

Abstrak

Pertumbuhan bisnis pertambangan batubara dalam kurun waktu sepuluh tahun terakhir di wilayah Indoensia tentunya harus diimbangi dengan pemenuhan ketentuan perundang-undangan yang berlaku. Sehingga dalam artikel ini akan dibahas mengenai peraturan perundang-undangan yang mengatur secara khusus mengenai pembatasan ekspansi perusahaan *group* khususnya pada sector pertambangan batubara di Indonesia. Hasil penelitian ini yakni Undang-Undang No. 4 Tahun 2009 Tentang Pertambangan Mineral dan Batubara memberikan pengaturan pembatasan perusahaan *group* yaitu pemegang IUP atau IUPK dilarang melibatkan anak perusahaan dan/atau afiliasinya dalam bidang usaha jasa pertambangan di wilayah usaha pertambangan yang diusahakannya, kecuali dengan izin Menteri. Adapun kepemilikan luas maksimal IUP dalam perusahaan *group* tidak dibatasi.

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A. PRELIMINARY

Coal is one of the important energy commodities in Indonesia. Mining has been going on since the Dutch colonial period. Coal mining by the Dutch Colonial was first carried out on the islands of Kalimantan and Sumatra, which are currently the main coal producers in Indonesia (Irwandy, 2014, p. 37).

The current demand for coal supply in Indonesia is predicted to increase because of the total 35,000 MW power plants to be built by the government in collaboration with the private sector, the majority (65%) of these power plants are Steam Power Plants (PLTU). Through this additional PLTU development, Indonesia needs \pm 200 million tons of coal every year. Indonesia is one of the largest coal producers and exporters in the world. The results of resource calculations conducted by the Center for Coal and Geothermal Mineral Resources, Ministry of Energy and Mineral Resources show that Indonesia's coal resources up to 2015 amounted to 126,609.34 million tons of coal, while coal reserves amounted to 32,263.68 million tons (Dhany, 2015).

The huge increase in consumption was due to the large demand for coal as an energy source for power generation, especially to meet the power plants covered by the 35,000 MW program. It is not surprising that in line with this the number of coal mining companies in Indonesia has grown rapidly, especially in recent years (Dhany, 2015).

Companies engaged in mining in Indonesia are usually in the form of groups. The group companies continue to expand their business in the coal mining sector. With the aim of obtaining a return on investment and contributing to the improvement of the wider economic and social environment. The method that can be used to form a group company is by conducting a merger, acquisition or forming a new company. Companies expand through mergers, acquisitions or form new companies with the intention of reducing competing companies or reducing competition. In addition, expansion through mergers, acquisitions or forming new companies will encourage companies to have larger types of businesses without having to do it from scratch.

As one of the energy commodities of strategic value for the national interest, the management of the coal mining industry must refer to Article 33 of the 1945 Constitution which mandates state control over strategic natural resources and is related to the livelihoods of many people. This also includes the orientation of the use of natural resources, namely for the greatest prosperity of the people. Article 33 of the 1945 Constitution states that: "Production branches which are important for the state and which affect the livelihood of the people are controlled by the state; and the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people".

In addition to the 1945 Constitution, there are other laws that regulate the use of resources and strategic industries, namely Law no. 5 of 1960 concerning Basic Agrarian Regulations (UUPA) and Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

Article 2 paragraphs (1), (2) and (3) UUPA No. 5 of 1960 states:

1. Based on the provisions in Article 33 paragraph 3 of the Constitution and the matters referred to in Article 1, the earth, water and space, including the natural resources contained therein, are at the highest level controlled

- by the state, as an organization of power for the entire people.
2. The state's right of control as referred to in paragraph 1 of this Article authorizes: a. regulate and administer the designation, use, supply and maintenance of the earth, water and space; b. determine and regulate legal relations between people and the earth, water and space; c. determine and regulate legal relations between people and legal actions concerning earth, water and space.
 3. The authority stemming from the state's right to control in paragraph 2 of this Article is used to achieve the greatest prosperity of the people in the sense of nationality, welfare and independence in an independent, sovereign, just and prosperous Indonesian society and legal state".

Meanwhile, Article 51 of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition very clearly states that:

"Monopoly and/or concentration of activities related to the production and/or marketing of goods and or services that affect the livelihood of many people as well as production branches that are important to the state are regulated by law and organized by State-Owned Enterprises and/or agencies or institutions that established or appointed by the Government".

The laws mentioned above, namely Article 33 of the 1945 Constitution, Article 2 of the UUPA 1960 and Article 51 of Law no. 5 of 1999 has the same emphasis and special attention on the management and utilization of natural resources in Indonesia. There are 2 (two) important things that are the emphasis and special attention of the three laws, namely:

1. Branches of strategic production, natural wealth, and marketing of goods or services that have an impact on the livelihood of the people must be controlled, utilized and managed by the state, and in their management, the state may appoint BUMN or other state institutions.
2. The main purpose of the control, utilization and management of the state is to be used for the greatest prosperity of the people.

However, the facts on the ground show that the management of the coal mining industry (including strategic natural resources) in Indonesia seems to ignore the existence of Article 33 of the 1945 Constitution. In fact, Article 33 of the 1945 Constitution is the legacy of the founding fathers to regulate the national economy. One of the evidences showing this can be seen in the upstream sector of the coal mining industry which is controlled by national and foreign private companies, not by the state or state-owned enterprises (BUMN).

B. DISCUSSION

Regulation of Group Company Expansion Restrictions in the Coal Mining Sector

As it is known that currently many companies are trying to expand or develop their business with different motives and backgrounds. Of course, in this business development process there must be a limitation as a filter, so that not all companies can expand at will, thus there will be no surge in business expansion.

The surge in business expansion will not only disrupt macroeconomic stability because many large companies will make themselves into a group or group

of companies, so that unfair competition will occur and hinder the development of small and medium scale companies to develop because all business lines have been controlled by the company. big. In addition, if there is a large surge in business expansion, then it is certain that large companies that expand must previously need capital and try to obtain capital injections, either through the banking sector or through syndication of other companies, but if this business development is not managed properly then the potential for return on capital, either to banks or a syndicate of several companies will be constrained and can even crash. If it is stuck, it is certain that there will be a legal case in the form of bankruptcy and then the assets will be auctioned off. This can make the image of the Indonesian economy bad in the eyes of the international community.

Business expansion through corporate action activities in its implementation must be limited by the presence of signs through laws and regulations as a limit or filter that covers all corporate action activities so that the newly formed company resulting from the expansion can comply or meet the applicable regulations, especially the laws and regulations that applicable in Indonesia, in this case the author wants to observe or review the restrictions on group company expansion in terms of the laws and regulations in the coal mining sector, including:

1. Expansion of Group Companies in view of Law Number 40 of 2007 concerning Limited Liability Companies

Law No. 40 of 2007 concerning Limited Liability Companies does not explain specifically and in depth regarding the implementation of group company construction in Indonesia. Law No. 40 of 2007 concerning Limited Liability Companies is not intended to regulate group companies. Law No. 40 of 2007 concerning Limited Liability Companies more regulates a single company.

Law No. 4 of 2009 concerning Mineral and Coal Mining, provides strict regulations on limiting the expansion of group companies, namely in terms of the use of mining service companies. IUP or IUPK holders are prohibited from involving their subsidiaries and/or affiliates in the mining service business sector in the mining business area they operate, except with the permission of the Minister. Meanwhile, the ownership of the maximum IUP area as a result of the expansion of group companies is not explicitly regulated in this Law.

Law No. 40 of 2007 concerning Limited Liability Companies only regulates that within a group company, one legal entity cannot use a name that has been legally used by another legal entity. This is regulated in Article 16 explaining that: "The company may not use a name that has been used legally by another company or is essentially the same as the name of another company". Thus, business actors can create as many companies as they want without a certain quantity limit. In addition, the period or age of formation of a company is also not limited in the company's budget. The applicant can even make the company term for life in the company's articles of association.

2. Expansion of Group Companies in view of Law Number 4 of 2009 concerning Mineral and Coal Mining

In Law no. 4 of 2009 concerning Mineral and Coal Mining Article 36 paragraph (1) explains that the Mining Business Permit (IUP) consists of two stages, namely:

- a. Exploration IUP, which includes general investigation, exploration, and

feasibility studies;

- b. Production Operation IUP, covering construction, mining, processing and refining activities, as well as transportation and sales.

Furthermore, it is also explained in Article 36 paragraph (2) of the Law that the holder of an Exploration IUP and the holder of a Production Operation IUP can carry out part or all of the activities. This means that IUP holders, both exploration and production operations, have the freedom to carry out their business activities, depending on the financial capabilities, human resources and technology of the IUP holders.

As for the legal subject of granting IUP in Law no. 4 of 2009 are business entities, cooperatives, and individuals. Furthermore, in terms of obtaining a Mining Business Permit, Law no. 4 of 2009 does not limit the acquisition of the number of IUPs for coal exploration and mining operations for coal production by group companies. Each business entity can only be granted one mineral and coal WIUP. IUP holders who find other minerals in the WIUP they manage are given priority to exploit them. Thus, if the IUP holder is able to find other minerals in the WIUP he has managed, then the company or legal entity has priority or priority to exploit other minerals. The granting of more than one WIUP of coal to a business entity can only be made by a business entity that has gone public.

In terms of the use of mining service companies, there are restrictions on group companies in Law no. 4 of 2009. The regulation is regulated in Article 126 paragraph (1), namely: "IUP or IUPK holders are prohibited from involving their subsidiaries and/or affiliates in the mining service business sector in the mining business area they operate, except with the permission of the Minister".

3. Expansion of Group Companies in view of Law Number 25 of 2007 concerning Investment

In Indonesia, investment or investment is regulated in Law no. 25 of 2007 concerning Investment. Investment is all forms of investment activities, both by domestic investors and foreign investors to conduct business in the territory of the Republic of Indonesia. Investment itself can be divided into 2 (two) parts, namely:

- a. Domestic investment is an investment activity to conduct business in the territory of the Republic of Indonesia carried out by domestic investors using domestic capital.
- b. Foreign investment is an investment activity to conduct business in the territory of the Republic of Indonesia carried out by foreign investors, both those who use foreign capital wholly or in joint ventures with domestic investors.

In carrying out its activities, the government provides equal treatment to all investors from any country conducting investment activities in Indonesia in accordance with the provisions of laws and regulations. However, this treatment does not apply to investors from a country that obtains special rights based on an agreement with Indonesia. Domestic investors and foreign investors investing in the form of a limited liability company are prohibited from entering into agreements and/or statements confirming that share ownership in a limited liability company is for and on behalf of other people.

In a juridical study of Law No. 25 of 2007 concerning Investment, the authors found that there were restrictions on business expansion for investors, namely regarding business fields and land rights.

4. Expansion of Group Companies in view of Law Number 5 of 1960 concerning Basic Agrarian Regulations

The agrarian law that applies to earth, water and space is customary law, as long as it does not conflict with national and state interests, which is based on national unity, with Indonesian socialism and with the regulations contained in Law 5 of 1960 and with regulations other legislation, everything by heeding the elements that rely on religious law.

In Law 5 of 1960, the government seeks to regulate efforts in the agrarian field in such a way that it increases the production and prosperity of the people and guarantees for every Indonesian citizen a standard of living in accordance with human dignity, both for himself and his family. In addition, the Government can prevent the existence of businesses in the agrarian field from organizations and/or business entities and individuals that are private monopolies.

5. Expansion of Group Companies Judging from Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition

Law No. 5 of 1999 does not aim to protect business competition for the sake of competition itself, while the objectives of the establishment of this Law are:

- a. Maintaining the public interest and increasing the efficiency of the national economy as one of the efforts to improve people's welfare;
- b. Creating a conducive business climate through the regulation of fair business competition, so as to ensure the certainty of equal business opportunities for large business actors, medium business actors, and small business actors;
- c. Prevent monopolistic practices and or unfair business competition caused by business actors; and
- d. Creating effectiveness and efficiency in business activities.

Law No. 5 of 1999 can and must assist in realizing the economic structure as referred to in Article 33 of the 1945 Constitution. In the elucidation of Article 33 paragraph 1 of the 1945 Constitution, which states that "The economy is governed by cooperation based on the principle of gotong royong", contains the idea of economic democracy, which is meant into Article 2 of Law no. 5 of 1999 that "business actors in Indonesia in carrying out their business activities are based on economic democracy by taking into account the balance between the interests of business actors and the public interest".

Therefore, company expansion is not prohibited in Law No. 5 of 1999. What is prohibited in this law is the activity or result of the company's expansion that can lead to monopolistic practices and unfair business competition. In this case the author focuses on 2 (two) things that are prohibited activities in Law No. 5 of 1999 which are directly related to company expansion, namely prohibited activities and dominant positions.

C. CONCLUSION

The restrictions on the expansion of group companies in the coal mining sector can be viewed from the legislation in Indonesia, among others through the Expansion of Group Companies. 40 of 2007 concerning Limited Liability Companies, Group Company Expansion Judging from Law no. 4 of 2009 concerning Mineral and Coal Mining, Expansion of Group Companies Judging from Law no. 25 of 2007

concerning Investment, Expansion of Group Companies Judging from Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles, and Expansion of Group Companies in view of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

BIBLIOGRAPHY

- Dhany, R. R. (2015, Mei 4). *Resmikan Proyek Listrik 35.000 MW, Jokowi : Ini Bukan Proyek Ambisius*. Diambil kembali dari DetikFinance:
<http://finance.detik.com/read/2015/05/04/125155/2904887/1034/resmikan-proyek-listrik-35000-mw-jokowi-ini-bukan-proyek-ambisius>
- Irwandy, A. (2014). *Batubara Indonesia*. Jakarta: PT. Gramedia Pustaka Utama.
- Undang-Undang Dasar Tahun 1945
- Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA) (lembaran Negara No. 104 dan Tambahan Lembaran Negara No. 2043)
- Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 33, Tambahan Lembaran Negara Nomor 3817).
- Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal (Lembaran Negara Republik Indonesia Tahun 2007 Nomor 67, Tambahan Lembaran Negara Republik Indonesia Nomor 4724).
- Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (Lembaran Negara Republik Indonesia. Tahun 2007 Nomor 106, Tambahan Lembaran Negara. Republik Indonesia Nomor 4756).
- Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral dan Batubara (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 4, Tambahan. Lembaran Negara Republik Indonesia Nomor 4959).