

**Working
Paper**

**Natural Resource
Governance
Problematics and
Law Enforcement
Challenges In
Natural Resources
Sectors In South
Kalimantan**

**AHMAD FIKRI HADIN
ERWIN NATOSMAL OEMAR**

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Editorial Team:

Mumu Muhajir

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Putut Aryo Saputro

C. Bregas Pranoto

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ABSTRACT

As a province rich in natural resources, particularly mining resources, South Kalimantan is not without environmental problems. There are three issues in natural resources governance, and particularly mining in the province: lack of clarity over mining rules with sectoral policies frequently changing; relations between capital investors and politicians in regional head elections impacting on policies; and a lack of oversight by the authorities.

Law enforcement is key, and at the same time a challenge to spurring good natural resources governance in South Kalimantan. Laws should be enforced as unlicensed mining is frequently left unchallenged. Further, selective law enforcement and state capture are symptomatic of the symbiotic interactions and mutualism between capital investors and candidates in regional head elections. These present significant challenges to law enforcers maximizing their authority.

Key words: South Kalimantan, problematics, challenges, law enforcement



Ahmad Fikri Hadin

The author is a lecturer in State Administration Law at the ULM Faculty of Law and researcher with the ULM Anti-Corruption and Good Governance Study Center (PARANG).

Erwin Natosmal Oemar

Associate researcher with Auriga Nusantara since December 2019. He worked for the Indonesian Legal Roundtable (2012-2019). Active on the board of the Indonesian National Secretariat of the Public Interest Lawyer Network (PIL-Net).





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I. Introduction

As a province rich in natural resources, particularly mining resources, South Kalimantan is not without environmental problems. Not all mining companies operating in the province, be they large-scale or small-scale operations, are willing to take responsibility for improving the concessions they operate in. Many companies leave their mining excavation sites open without covering them over once operations have ceased. At least six districts in South Kalimantan province, i.e., Tapin, Balangan, Tabalong, Tanah Laut, Tanah Bumbu and Kotabaru have become centers for coal mining.¹

Of these coal producing districts, Tanah Bumbu has issued the most mining licenses. Citing 2015 data from the Tanah Bumbu Central Statistics Agency (BPS) and South Kalimantan One-Stop Investment and Integrated Services Office (PMTSP), of the 160 companies in South Kalimantan holding mining business licenses (IUPs) and producing 61,717,236 tons of coal,² the largest portion was produced by Tanah Bumbu district at 24,312,169 tons, or approximately 40 percent of total

production from all IUP license holders in South Kalimantan.³

Despite the province being known as a store of natural resources, and especially coal, Chair of Commission VII of the Republic of Indonesia House of Representatives, Gus Irawan Pasaribu said South Kalimantan is one of the provinces facing the worst environmental problems as a result of natural resources overexploitation. The huge scale of mining activities in the province has caused degradation and a fall in water quality. This is because 41 percent of the Meratus forest and other forest estates in South Kalimantan are subject to mining licenses despite containing thousands of kilometers of rivers.⁴

In addition, South Kalimantan has one of the highest Gini index inequality coefficients in Kalimantan.⁵ Despite improving in 2019⁶,

¹ Banjarmasin Tribun News, Environmental Degradation Could Worsen, 2016, accessed on 20 October 2020, at: <https://banjarmasin.tribunnews.com/2016/12/30/kerusakan-alam-bisa-makin-parah>.

² South Kalimantan One-Stop Investment and Integrated Services Office (PMTSP), Mining Potential, undated, accessed on 20 October 2020, at: <https://dpmptsp.kalselprov.go.id/potensi-pertambangan/>

³ Tanah Bumbu Central Statistics Agency (BPS), 2017, Coal Production by IUP-OP License Holding Companies by Mining Location Subdistrict in Tanah Bumbu District 2015, accessed on 20 October 2020, at: <https://tanahbumbukab.bps.go.id/statictable/2017/06/13/911/produksi-batubara-perusahaan-pemegang-izin-usaha-pertambangan-operasi-produksi-iup-op-menurut-kecamatan-lokasi-penambangan-di-kabupaten-tanah-bumbu-2015.html>

⁴ Commission VII, Republic of Indonesia House of Representatives (DPR-RI), 2019, Mining in South Kalimantan Must Exercise Caution, accessed on 20 October 2020, at: <http://www.dpr.go.id/berita/detail/id/25470/t/Penambangan+di+Kalsel+Harus+Bijak>

⁵ Diananta, *Earnings Inequality in Kalsel Worst in Kalimantan*, Kumparan, adapted from Banjarhits, 2018, accessed on 20 October 2020, at: <https://kumparan.com/banjarhits/ketimpangan-pendapatan-di-kalsel-terburuk-se-kalimantan/full>

⁶ Dwi Hadya Jayani, 2019, *This is the Province with the Highest Inequality*, Databoks, accessed on 20 October 2020, at:

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data from previous years (2017⁷ and 2018⁸) showed inequality in the province was the worst of all provinces in Kalimantan. Yet the province is the second largest coal producer in Indonesia.⁹

In reference to Law No. 23/2014 on Regional Government, regional heads have the freedom to develop their regions. District governments were afforded the authority to grant mining business licenses (IUPs) before that authority was withdrawn by the central government through Law No. 3/2020 on Mineral and Coal Mining (the new mining law). District governments using their authority to grant IUP mining licenses was always problematic. Based on Ministry of Energy and Mineral Resources data for March 2013, only 5,502 of 10,809 IUPs were declared 'clean and clear'. This means the remaining 5,307 licenses were problematic or 'not clean and clear'.¹⁰

This was reiterated in a study by the Directorate General for Mineral and Coal Mining concluding that many regional governments had issued IUP licenses haphazardly. More than 50 percent of all IUPs issued and recorded by the Directorate General for Mineral and Coal Mining fell under the category 'not clean and clear'. This meant, half of IUPs were problematic, proving that regional governments produced many 'illegal' IUPs and created 'little bosses'

in the regions.¹¹

To bring order to the province's chaotic mining sector, South Kalimantan Governor, Sahbirin Noor revoked 425 IUPs in 2017. Steps to rationalize the mining sector announced by the Head of South Kalimantan Provincial Energy and Mineral Resources Office, Hanif Faisol Nurofiq, began with the revocation of hundreds of problematic mining licenses that failed to meet *clean and clear* (CnC) requirements. Of the 789 IUP mining licenses in South Kalimantan, 425 failed to do so.¹²

This licensing rationalization was in line with Corruption Eradication Commission (KPK) efforts to address problematic business licensing in natural resources sectors. KPK felt it was necessary to pay attention to the mining sector to maximize prevention and coordination authority, as its data indicated potential corruption in the issuing of 3,966 problematic mining business licenses. KPK provided an example in a corruption case involving former Tanah Laut District Head, Adriansyah, who was found guilty of receiving bribes in issuing IUP licenses.¹³

Problems with natural resources governance in South Kalimantan also occurred in 2018, where the Indonesian Forum for Environment (WALHI) filed a lawsuit in the Jakarta State Administration Court against the Ministry of Energy and Mineral Resources for issuing

<https://databoks.katadata.co.id/datapublish/2019/07/15/inilah-provinsi-dengan-ketimpangan-tertinggi>

⁷ Diananta, *Op. cit.*

⁸ Bank Indonesia, *Regional Economic and Financial Study (KEKR) South Kalimantan Province: August 2018*, Bank Indonesia, Jakarta, 2018.

⁹ Denny Susanto, *South Kalimantan Limits Coal Production*, accessed on 20 October 2020, at: <https://mediaindonesia.com/nusantara/256425/kalsel-batasi-produksi-batu-bara>

¹⁰ Muhamad Nasarudin, *Directorate General for Mineral and Coal Mining Strategic Activities 2013*, *Warta Minerba* magazine, Edition XV, April 2013, p. 7, accessed on 22 September 2020, at: <http://www.minerba.esdm.go.id/library/content/file/28935->

<Publikasi/008f75e938deed453b91c2a3caa236a42013-11-08-20-03-45.pdf>.

¹¹ Ferdy Hasiman, *Mining Monsters: Squeezing Life Space from NTT Communities*, JPIC OFM, Jakarta, 2013, p. 12.

¹² Transparency International Indonesia (TII), 2016, *Provision of Mining Business Licenses Prone to Corruption*, accessed on 9 September 2020, at: <https://ti.or.id/pemberian-izin-usaha-pertambangan-rawan-korupsi/>

¹³ Aghnia Azkia, *KPK Investigates Potential Corruption in 3,966 Problematic Mining Licenses*, CNN Indonesia, 2016, accessed on 20 October 2020, at: <https://www.cnnindonesia.com/nasional/20160215142653-12-110995/kpk-usut-potensi-korupsi-3966-izin-tambang-bermasalah>

Introductions

a production operations license to PT Mantimin Coal Mining (PT MCM) despite the concession's location in a karst region established through Regional Regulation No. 13/2016 on Hulu Sungai Tengah District Spatial Plan for 2016–2036 as an area where mining is prohibited because it is a water source for the regional water company and residents of three districts in South Kalimantan (Tabalong, Balangan and Hulu Sungai Tengah).¹⁴

Also, there was a conflict between PT Sebuku Iron Lateritic Ores (SILO) and PT Multi Sarana Agro Mandiri (MSAM). SILO, which had iron ore mining licenses for three of its subsidiaries on Sebuku Island, Tanah Laut district, felt PT MSAM was operating in its concession, adjacent to a coal mining area belonging to SILO. There were indications of security forces and important people in South Kalimantan being involved in the resolution of the case.¹⁵

From these cases and the ensuing public attention, it became clear there are problems with natural resources governance in South Kalimantan: mining business license bribery,¹⁶ civil cases involving problems with mining licenses,¹⁷ and disagreements between two large mining companies.¹⁸ From there, this paper focuses on factors causing natural resource governance problematics and challenges to law enforcement in natural resources sectors in South Kalimantan.

¹⁴ Press Release, WALHI Bangka Belitung, 2018, WALHI Urges Mines Minister to Revoke New Coal Mining Licenses Threatening Community Management Regions, accessed on 22 September 2020, at: <https://www.walhi.or.id/walhi-desak-menteri-esdm-membatalkan-izin-operasi-produksi-pertambangan-batubaru-baru-karena-mengancam-wilayah-kelola-rakyat-2>

¹⁵ Majalah Tempo, Mine Wars, Star Wars, accessed on 9 September 2020 at: <https://kolom.tempo.co/read/1077261/perang-tambang-perang-bintang/full&view=ok>

¹⁶ An IUP license provision bribery case in 2015 involving former Tanah Laut District Head, Adriansyah and PT Mitra Mahu Sukses

¹⁷ Community civil lawsuit against PT Mantimin Coal Mining (MCM) over its license issuing process not involving communities in regions impacted by its coal mining operations.

¹⁸ Civil case between PT Sebuku Iron Lateritic Ores (PT SILO) and PT Multi Sarana Agro Mandiri (PT MSAM). Conflict between the two companies arose when SILO claimed MSAM was operating on part of its concession area.

II. Methodology

The approach used in this paper is an empirical juridical method, which approaches problems through applicable positive law and connects it to realities on the ground.¹⁹ The authors combine a normative approach with an empirical juridical approach so empirical data can reinforce its arguments. The laws used are primary sources, covering Law No. 32/2009 on Environmental Protection and Management, Law No. 4/2009 on Mineral

and Coal Mining, and Law No. 23/2014 on Regional Government. Secondary sources originate from books, scientific journals, newspaper articles, and open source, publicly accessible information relating to the issues being researched.

¹⁹ Paulus Hadisuprpto, *Legal Science (A Review Approach)*, presented during a Stadium Generale in the Jambi University Legal Science Masters Program, on 23 May 2009, p. 16.

III. Results and Analysis

A. The role of government

The management of natural resources – such as those in the forestry, plantations, mining, maritime and fisheries sectors – falling under regional authority has frequently led to problems as regional policies in natural resources governance tend to be exploitative in nature giving rise to serious environmental and social issues. On the other side, regional governments are too dependent on natural resources for revenues in administering government. Without clear and measured regulation of natural resources governance, efforts to ensure people’s wellbeing in the regions will be hard to realize.

In the context of management of non-renewable natural resources like coal, regional governments’ exploitative use of authority has had direct impacts on environmental resilience and quality, including contamination, environmental degradation, the wiping out of various natural resources, and loss of natural resource potential that should have been utilized and developed sustainably. Therefore, it is hard to refute the correlation between environmental degradation and regional governments’ recklessness in granting business licenses to investors.

Moving on from this phenomenon, Law No.

23/2014 on Regional Government tried to restructure governance in natural resources sectors by ‘withdrawing’ district/municipal government authority and ‘transferring’ it to provincial and central governments. This transfer was intended to make administration in natural resources sectors much cleaner, more accountable, effective and efficient, and to ensure environmental conservation and sustainable utilization of natural resources.

Unfortunately, considered more deeply, natural resources governance problems in South Kalimantan are not only an issue of the central-regional authority debate. Many factors and variables have played a part in shaping, or are the causes of poor natural resources governance in the province. These are: regional election systems still being rife with money politics, encouraging elected regional leaders to “sell” their authority through various policies; the prevailing mentality among actors of the state; the nature of the election monitoring system, which remains hierarchical (vertical) with minimal community participation (horizontal); as well as a number of other variables.

The question is whether the transfer of authority over natural resources governance from district/municipal to

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provincial and central governments will have an impact in making natural resources governance sustainable. Looking at a number of cases in South Kalimantan, like the case of PT Mantimin Coal Mining (PT MCM)'s production operations license, of course the tug-o-war between central and regional authority over natural resources governance still needs to be reviewed empirically. Even before evaluations of regional authority over natural resources governance under the Regional Government Law had been completed, Law No. 3/2020 on Amendments to the Mineral and Coal Mining Law was passed. The new law returns mineral and mining governance to the central government, like the model in the New Order era.

Consequently, we can conclude that another contributory factor to problems with natural resources governance in South Kalimantan and other regions are regulatory disharmony and disagreement between the relevant authorities due to rapid changes in regulation causing complications for stakeholders and even the government itself in designing natural resources governance business processes, particularly in the mining sector.

B. Investors in regional elections

It is already an open secret that leaders and businesspeople frequently make use of coal mining issues in contestations of regional head direct elections (*Pilkada*) in South Kalimantan. These actors work as *play makers* who organize the patterns of attack and rhythms of political play in South

Kalimantan.²⁰ Therefore, it is no surprise when following such elections these *play makers* play a *shadow government* role while at the same time becoming *client-businesspeople* or business cronies of regional leaders who monopolize economic sources, particularly mining businesses and regional infrastructure development projects in "gratuity politics".²¹

Most regional leaders have close relationships with mining business owners. Elected regional leaders get support from and/or have backgrounds as mining business owners who control local business and political networks that can stretch to Jakarta.²² Consequently, the capitalization of natural resources and political pragmatism encourage local political actors to use "*money politics*" or vote buying to influence voters in regional head elections.

One negative effect of these patron-client relations is the uncontrolled conversion of land from forest to plantations, such as the massive expansion of oil palm estates. Since the onset of the regional autonomy era, forest conversion permits have been fertile ground for regional heads and regional authorities to rake in profits. The mining sector has been no exception.²³ One *modus operandi* is to make IUP mining licensing processes arenas for negotiating

²⁰ Muhamad Uhaib As'ad, *When Natural Resources Become an Arena for Corruption and Political Conspiracy for Actors in the Era of Democratization (Understanding Local Political Dynamics in South Kalimantan) In: Corruption, Elections and Natural Resources*, Genta Publishing, 2019, p. 195.

²¹ *Ibid.*

²² Hadiz VR, *Localizing Power in Post-Authoritarian Indonesia: A Southeast Asia Perspective*. Stanford University Press, Stanford, 2010.

²³ Oksana, *Effects of Forest Conversion for Oil Palm Estates on Soil Chemistry*, *Jurnal Agroteknologi*, Vol. 3 No. 1, August 2012, p. 29.

leaders and businesses' interests.

Hidayat²⁴ discovered leaders conspiring with businesspeople in making use of coal mining management issues in South Kalimantan for their political interests in regional head direct elections. Local elites also play a role in conspiring with businesspeople by using kinship networks (*patronage*) to secure economic and political power. One such example is the management of mining in Tanah Bumbu district relating to the large numbers of IUP licenses issued by the district government, in this instance the Tanah Bumbu District Mining Office.²⁵

C. Lack of oversight

Law No. 4/2009 on Mineral and Coal Mining (the Coal Mining Law) stipulates that environmental protection and management is a systematic and integrated effort carried out to preserve environmental functions and prevent environmental pollution and/or degradation, and covers planning, utilization, control, maintenance, oversight, and law enforcement.²⁶ In other words, this series of activities constitutes a singular entity for achieving the goals of environmental management and conservation.

Nevertheless, in the context of state authority managing coal mining, the State has the right and the freedom to carry out planning, arrangement, utilization, recovery, oversight and control over coal mining

operations. This authority, distributed to central and regional government to manage and originating from the State's control right, should be used to the greatest benefit of the people, in terms of happiness, wellbeing, and independence in the community and an independent, sovereign, just and prosperous Indonesian constitutional state.

Hence, environment permits are pre-requisites to, and at the same time, instruments of oversight that must be met with business responsibility in order to obtain IUP licenses. Therefore, when mining operations have commenced, sectoral institutions related to affairs of the environment also have obligations to monitor environmental management for the mining business licenses they issue.

Referring to the Academic Draft of the Environmental Protection and Management Law (NA-RUUPPLH), environmental management is carried out based on the principle of State responsibility, principles of preservation and sustainability, and principles of utility, justice and participation. In other words, despite the academic draft not mentioning the principle of integration explicitly, it is contained implicitly in Law No. 32/2009 on Environmental Protection and Management, as the following excerpt from its academic draft shows:²⁷

'The environmental management law forms the basis of reference for any activity that will impact upon the environment. Therefore, provisions in any other laws regulating such activities,

²⁴ Hidayat, S., Susanto, H., Erman, E., Soesilowati, E.S. & Usman, T.S., *Local-Level Business and Politics: Businesspeople, Leaders, and Post-Election Regional Government Administration*, Indonesian Institute of Sciences (LIPI) Press, Jakarta, 2006, p. 382.

²⁵ *Ibid.*

²⁶ Article 1 point 2 of the Environmental Protection and Management Law.

²⁷ Academic Draft of the Environmental Protection and Management Law. Chapter III on Content and Linkages to Positive Law.

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for instance, mining, plantations, forestry, fisheries, manufacturing industries, transport, etc. should be formulated and applied in harmony with the environmental management law. Conversely, formulation and application of the environmental management law must consider other aspects to foster development that integrates ecological, economic and social aspects (sustainable development).'

The meaning of this integration principle can be found in the Elucidation of Article 2 letter d of the Environmental Protection and Management Law, which states that, *"environmental protection and management are carried out by integrating various elements or synergizing various related components"*.²⁸ As an overarching law governing the environment, the Environmental Protection and Management Law recognizes 2 (two) types of permits, namely: environment permits and business and/or activity licenses. Both permit types fall within the realm of the Environmental Protection and Management Law and are subject to its regulatory regime.

Consequently, the rationale for integrated licensing in natural resources sectors should rest on every article regulated by the Environmental Protection and Management Law, whether it be the definition of environment provided under Article 1 number 1; the definition of environmental protection and management under Article 1 number 2; sustainable development under Article 1 number 3; or Strategic Environmental

Reviews (KLHS) under Article 1 number 10.²⁹ Unfortunately, implementation of the ideal set of norms in this law remains distant, and in natural resources governance they are still considered separate.

²⁸ Elucidation of Article 2 letter d of the Environmental Protection and Management Law.

²⁹ Article 1 number 1 of the Environmental Protection and Management Law stipulates, "Environment is a spatial entity with all objects, forces, conditions, and living creatures therein, including humans and their behaviors, which affects nature itself, the continuation of life, and wellbeing of humans and other living creatures."

Article 1 number 2 of this law stipulates, "Environmental protection and management is a systematic and integrated effort carried out to preserve environmental functions and prevent environmental pollution and/or degradation, and covers planning, utilization, control, maintenance, oversight, and law enforcement.

Article 1 number 3 of this law stipulates, "Sustainable development is a conscious and planned effort that integrates environmental, social, and economic aspects into a development strategy to ensure the integrity of the environment and the safety, capacity, wellbeing and quality of life for current and future generations.

Article 1 number 10 of this law stipulates, "Strategic Environmental Reviews, hereinafter abbreviated to KLHS, are series of systematic, comprehensive and participatory analyses for ensuring sustainable management principles have become the integrated basis in the development of a region and/or policy, plan and/or program."

IV. Law Enforcement Challenges in Natural Resources Sectors in South Kalimantan

A. Unlicensed mining left unchallenged

In 2016, The Corruption Eradication Commission (KPK) together with the South Kalimantan Provincial Energy and Minerals Resources Office and Ombudsman Conducted and unannounced inspection and discovered illegal mining ongoing in Tanah Laut district, South Kalimantan.³⁰ Despite uncovering real losses resulting from unlicensed mining (PETI), to this day there has yet to be any clear law enforcement action in follow up to the inspection.

Illegal mining has already caused numerous negative impacts, such as environmental degradation, loss of coal, loss of government authority, and losses of revenues for State and regional treasuries. The lack of action against such activities also causes a domino effect on other sectors with rules on storage, ports, trade, unhealthy competition between official and unofficial prices in coal trading, and damage to public roads (state, provincial,

district and village roads) from overladen trucks transporting coal.

Not only that, the different treatment for those miners with and those without licenses also causes resentment among holders of official IUP licenses not involved in unlicensed mining. In a series of chain reactions, the disregard for enforcing the law against those involved in unlicensed mining operations also damages the investment climate and investors' faith in natural resources governance in South Kalimantan.

B. Corruption and selective enforcement

It is hard not to see that corruption in natural resources sectors, both in forestry and mining, is already structured. Using the pretense of regional autonomy, forest conversion permits and mining licenses are sold off to corporations. Former KPK Head, La Ode Syarif, said this corruption in natural resources sectors is sometimes influenced by *state capture*, explaining that:

"What is state capture exactly? One, the government facilitating damage and misappropriation with policies

³⁰ Banjarmasin Post, KPK Investigates Illegal Mining in Tanah Laut, Regional Police Admit Not Knowing, accessed on 10 September 2020, at <https://banjarmasin.tribunnews.com/2019/08/01/kpk-sidak-pekerja-pt-jbg-lakukan-penambangan-liar-di-tanahlaut-pihak-polda-kalsel-mengaku-tak-tahu>.

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and regulations. Two, letting crimes in plain sight go, doing nothing, like in the settlement area by Greenpeace in East Kalimantan. Three, getting personal gain from the environment and natural resources companies. Are these three features present in Indonesia? Ring any bells?”³¹

Quoting Muhammad Uhaib’s terminology, the issuing of hundreds of IUP licenses in South Kalimantan constitutes a “conspiracy” through a mining mafia involving regional leaders and mining companies.³² Such indications are visible from several things: *First*, licenses being issued without consideration for regional spatial plans or the carrying capacity of the natural environment, many of which lead to conflicts between communities and mining companies, and wholesale clearance of protection forest estates; *Second*, licenses being issued in the run up to district head or gubernatorial elections; *Third*, thousands of overlapping permits being left to drag on and becoming arenas for financial negotiations between leaders and businesspeople; and *Fourth*, allowing violations of the law to go unchallenged in large cases that catch the public eye and result in losses to the State from corruption, collusion and nepotism, and leaving mining sector mafias to continue unabated.³³

Though in normative terms, Article 37 of the 2009 Coal Mining Law already explains procedures and those responsible for issuing IUPs:

- a. District heads/mayors when mining license concession areas are located inside one district/municipal region;
- b. Governors when mining license concession areas are located across district/municipal regions inside 1 (one) province after receiving recommendations from the relevant district heads/mayors in accordance with provisions in legislation;
- c. The Minister when mining license concession areas are located across provinces after receiving recommendations from the relevant district heads/mayors and governors in accordance with provisions in legislation.

Meanwhile, Article 36 paragraph (1) of the Mineral and Coal Mining Law explains that IUP licenses comprise two stages:

- a. Exploration IUPs cover investigation and exploration activities as well as feasibility studies.
- b. Production Operations IUPs cover construction, mining, processing activities, as well as housing, transportation and sales.

Therefore, prior to carrying out mining operations, a license applicant should obtain an Exploration Stage IUP beforehand. After passing this process within a predetermined timeframe, the applicant should then immediately undertake exploration, including a general investigation and

³¹ Ibnu Hariyanto, Laode Syarif Calls on KPK to be Serious in Handling Cases of Corruption in Natural Resources Sectors, Detik.Com., accessed on 10 September 2020, at: <https://news.detik.com/berita/d-5004553/laode-syarif-minta-kpk-serius-tangani-perkara-korupsi-di-sektor-sda/>

³² Muhammad Uhaib As’ad, *When Natural Resources Become an Arena for Corruption and Political Conspiracy for Actors in the Era of Democratization (Understanding Local Political Dynamics in South Kalimantan)* In: *Corruption, Elections and Natural Resources*, Genta Publishing, 2019, p. 201.

³³ *Ibid.*

drilling, and later prepare an Exploration Document and Feasibility Study Document. If the feasibility study is approved, then an application submission to secure a Production Operations IUP license must include environmental management and monitoring (UKL-UPL) documents and an environmental impact assessment (*Amdal*) from the Regional Environment Office (BLHD). A company's eligibility for an IUP license is determined by a technical team through examination stages, and an IUP can be granted to a business entity, corporation or individual.

Reading the processes for a business to secure an IUP above, mining governance problems in South Kalimantan can be divided into upstream and downstream issues. Upstream, problems arise as the result of incompatibility between mining business processes and the environment licensing system due to policymakers' inconsistency in applying environmental concepts and their definitions in their work spheres. Whereas downstream, problems are with law enforcement, particularly law enforcement linked to state capture.

Problems with law enforcement have become increasingly apparent with the increasing numbers of fatalities in the region. Despite there being no concrete data on numbers of fatalities in South Kalimantan, referencing JATAM data, it is clear that in Indonesia, South Kalimantan is second only to East Kalimantan in terms of numbers of open mining pits, with 814.³⁴ Open mining pits in the province are distributed across

eight districts. Bumbu district has the most with 264, followed by Tanah Laut district with 223, and Banjar district with 117.³⁵

Though, since 2010, Indonesia has already had rules under Government Regulation No. 78/2010 on Post-Mining Reclamation obligating companies to close open mining pits (reclamation) within 30 calendar days of cessation of mining operations. The technicalities of implementing this regulation are laid out in Minister of Energy and Mineral Resources Regulation No. 7/2014 on Reclamation and Post-Mining Implementation in Mineral and Coal Mining Business Operations.³⁶ Despite this ministerial regulation stipulating a number of administrative sanctions, from written warnings to license revocation, it contains a strange provision, under which reclamation can be carried out in other forms, including tourism, water provision, or cultivation. A study by the Mining Advocacy Network (JATAM), meanwhile, shows water from ex mining pits containing hazardous heavy metals that can cause cancer and tremors/loss of balance.³⁷

³⁴ Whisnupaksa Kridangkara, 143 Children Die in Vain in Open Mining Pits, Solopos.Com, 2019, accessed on 20 October 2020, at: <https://www.solopos.com/143-anak-mati-sia-sia-di-lubang-tambang-979216>

³⁵ WALHI South Kalimantan, Post-Mining Pits are Death Traps for South Kalimantan Residents, WALHIkalsel.Com., 2020, accessed on 20 October 2020, at: <https://walhikalsel.or.id/lubang-pasca-tambang-destinasi-maut-warga-kalsel/>

³⁶ Article 21 of Government Regulation No. 78/2010 on Post-Mining Reclamation

³⁷ Budhi Hartono. 2015. *Danger, Water in Mining Pits Contains Dangerous Metals*, Tribun Kaltim, accessed on 20 October at: <https://kaltim.tribunnews.com/2015/12/31/bahaya-air-kolam-bekas-tambang-batu-bara-mengandung-logam-berat/>

V. Conclusions

The lack of integration in the regulation of coal mining licensing is indicated by the sectoral arrangement of authority in terms of requirements, procedures, time, and costs of organizing permits making mining license issuing processes long winded and complicated. It is this that provides room for mining license applicants to bribe those officials authorized to issue licenses. Therefore, clear, strict and comprehensive regulatory systems connected to environmental protection and management need to be developed to ensure legal certainty as the basis for environmental protection, natural resources management and mining activities. One way is through the development of an integrated coal mining licensing system.

Companies with IUPs and UKL-UPL documents should always be monitored, and any companies committing violations should have their licenses revoked. Whereas sanctioning mining companies operating without IUP licenses should be the responsibility of law enforcement authorities. Law enforcers should be serious in carrying out their duties as mandated under legislation, and not be selective in enforcing the law against mining companies that break the rules.

In relation to environmental degradation, any mistakes should not just be passed on to the Environment Agency (BLH). BLH is only one of a number of stakeholders associated with mining governance. Law enforcers with authority should take strict measures against companies committing violations, particularly those operating without licenses.



AURIGA NUSANTARA

SEKRETARIAT GAKKUM-SDA

Jl. Siaga II No. 42A, Pejaten Barat
Jakarta Selatan