

EXPLORING THE CONTRACT OF WORK PERSPECTIVES IN THE INDONESIAN MINING SECTOR

DEBBY NATALIA

Doctoral of Law Program, Jayabaya University
debbynataliafan@gmail.com

FAUZIE YUSUF HASIBUAN

Jayabaya University
Fauzie_yusufhasibuan@jayabaya.ac.id

KRISTIAWANTO

Jayabaya University
kristiawanto@jayabaya.ac.id

SINEENAT SUASUNGNERN

International College, Rajamangala University of Technology Krungthep
Sineenat.s@mail.rmutk.ac.th

ABSTRACT

Indonesia is a country rich in natural resources. One of them is in the mining sector. In Indonesia, regulations concerning mining are bound in contracts of work. But currently, mining law in Indonesia uses a licensing system to be able to carry out mining exploration and exploitation. The research type used in this study is normative juridical research. Based on research results, the Contract of Work does not only regulate cooperation between foreign legal entities and Indonesian legal entities. The legal basis for the contract of work contained in Law Number 11 of 1967 has been replaced by Law Number 4 of 2009 concerning Mineral and Coal Mining. With the existence of the new regulation, the existence of Mineral and Coal Mining has had a significant impact on the mining world in Indonesia. Even though the Contract of Work was abolished and replaced by a licensing mechanism, the Contract of Work that existed before the enactment of the law is still respected by the Government of Indonesia.

KEY WORD: Contract of Work, Mining Sector

INTRODUCTION

Indonesia is a country rich in natural resources (Rumokoy, 2016), including in the mining sector such as silver, copper, gold, copper, natural gas, coal, nickel, oil and others (Nalle, 2012; Rachman, 2016; Hartana, 2017; Ahsan & Santoso, 2017). So that there is no over-exploitation of natural resources in accordance with the laws and regulations. Mining management in Indonesia is regulated based on mining laws.

Currently mining law in Indonesia uses a licensing system to be able to carry out mining exploration and exploitation. Previously, mining law in Indonesia used a

contract of work system. Contract or contracten is also called an agreement. Phenomenon that occurs in practice, that the term agreement (or contract) has different understanding and terms, causing confusion in an agreement ([Hernoko, 2010](#)).

An agreement will have legal validity if it is in line with the nature of the agreement and does not conflict with decency, and does not violate the contents of statutory regulations. An agreement is an event between parties who promise with other parties to carry out certain actions ([Hariri, 2011](#)). The agreement is seen as a legal relationship between two parties who promise or are considered to promise to do something or not do something by giving the other party the opportunity to demand the implementation of that promise ([Prodjodikoro, 2006](#)).

Contract of work is a mining concession agreement between the government of the Republic of Indonesia and foreign private companies and national private companies other than natural gas and oil ([Saleng, 2000](#); [Nalle, 2012](#); [Ahsan & Santoso, 2017](#); [Pardede, 2018](#)). Contract of work is cooperation with foreign capital in the form of a contract of work that occurs when foreign investment forms an Indonesian legal entity and this legal entity enters into cooperation with a legal entity using national capital ([Salim, 2003](#); [Santoso & Arifin, 2019](#)).

As time went on, the contract of work was amended seven times. Mining legal regulations originally referred to Law Number 11 of 1967 concerning Basic Mining Provisions, changed to Law Number 4 of 2009 and in 2020 amended to Law Number 3 of 2020 concerning Amendments to Law Number 4 2009 concerning Mineral and Coal Mining.

The change in the contract of work to a Mining Permit (IUP) is based on Article 33 paragraph (3) of the 1945 Constitution which states that: "The land and waters and the natural wealth contained in it shall be controlled by the state and utilized for the optimal welfare of the people". The affirmation that it is controlled by the state and used for the greatest prosperity of the people reflects the importance of every management and utilization can only be carried out with permission from the state and intended for the welfare of the people. In addition, the state is given the authority to regulate and supervise procedures for the management of mining materials in the form of statutory regulations ([Ahsan & Santoso, 2017](#)). Based on the provisions of Article 33 of the 1945 Constitution, in principle the state is given the task of regulating and managing natural resources in the territory of the State of Indonesia for the welfare of the people. The task of regulating and managing this is a constitutional mandate to the state ([Ahsan & Santoso, 2017](#))

METHODOLOGY

The research type used in this study is normative juridical research ([Zaini, 2011](#); [Barus, 2013](#); [Tan, 2021](#)). In normative juridical research, the approach can be carried out by means of a statute approach and a historical approach ([Suhaimi, 2018](#)). This research uses a qualitative research type ([Tan, 2021](#)), where in qualitative research requires an understanding of the norms associated with the case being studied, then described in writing or paragraphs. Data sources were compiled from primary legal materials, secondary legal materials and tertiary legal materials which were collected using a collection technique carried out by identifying legal materials. Law Number 11 of 1967 concerning Basic Mining Provisions, Law Number 4 of 2009 concerning Mineral and Coal Mining, Law

Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Stone Mining Coal, contracts of work, library books and relevant scientific journals. Data management of primary legal materials, secondary legal materials, and tertiary legal materials is analyzed qualitatively so that the presentation of the writing becomes systematic and easy to understand in order to be able to answer any research problems.

RESULTS

Contract of work laws and regulations in Indonesia were first introduced in 1967 and have lasted seven generations of contracts of work (1967-1998) until now. Although the contract of work based on Law Number 11 of 1967 has been replaced by the licensing mechanism contained in Law Number 4 of 2009, the existence of a work contract in Indonesia is still respected as a basic provision of laws and regulations. (Nefi *et al.*, 2018).

Comparison of the licensing system (Law Number 4 of 2009) and the contract system (Law Number 11 of 1967) is presented in table 1.

Table 1. Comparison of the licensing system with the contract system

Subject	Licensing System	Contract System
Legal relations	It is public in nature, a state administration legal instrument	Civil nature
Application of law	By Government	By both parties
Legal choice	Legal choice Does Not Applicable	Legal choice Applies
Legal consequences	Unilateral	Two-Party Agreement
Dispute resolution	The State Administrative Court	Arbitration
Legal certainty	More guaranteed	Two-Party Agreement
Rights and obligations	The Rights and Obligations of the Government are greater	Rights and Obligations are relatively equal between Parties
Legal sources	Statutory Regulations	The contract/agreement

DISCUSSION

The Contract of Work does not only regulate cooperation between foreign legal entities and Indonesian legal entities, but regulates: the existence of a contractual, namely a contract made by the parties; Second, there is a legal subject, namely the Indonesian government and foreign parties and/or a combination of foreign parties and Indonesian parties; Third, there are objects, namely the management and utilization of mines other than oil and natural gas; Fourth, there is a period of time in the contract (Ahsan & Santoso, 2017)

The legal basis regarding the contract of work contained in Law Number 11 of 1967 has been replaced by Law Number 4 of 2009 concerning Mineral and Coal Mining (Nalle, 2012). The existence of Mineral and Coal Mining has had a significant impact on the mining world in Indonesia (Nefi *et al.*, 2018). The abolition of the Contract of Work is one of the dominant changes in the new law (Nefi *et al.*, 2018), so that the Government realizes that changing the Contract of

Work system to a licensing system requires an adjustment period, so Article 169 of Law Number 4 of 2009 states:

At the time this Law comes into force:

Contracts of work and agreements of work for coal mining concessions that existed prior to the enactment of this Law shall remain in effect until the expiry of the contract/agreement..

The provisions contained in the articles of the contract of work and the coal mining concession work agreement as referred to in letter a shall be adjusted no later than 1 (one) year after the promulgation of this Law, except for state revenues.

The exception to state revenue as referred to in letter b is an effort to increase state revenue

Based on the provisions of Article 169 of Law Number 4 of 2009, even though the Contract of Work is abolished and replaced by a licensing mechanism, the Contract of Work that existed before the enactment of the law is still respected by the Government of Indonesia. In terms of time, the Contract of Work that has been agreed upon by the Government will not be terminated by the enactment of Law Number 4 of 2009. However, the Indonesian government made adjustments to the contract of work with new laws and regulations or renegotiation to adjust the contents of contracts and agreements so that they better fulfill justice and Indonesia's national interests. There are six main points in the renegotiation, namely (1) concession area, (1) contract extension and expiration, (3) taxes and royalties, (4) share divestment, (5) domestic management and refining, (6) priority use domestic labour, goods and services.

Even though Law Number 4 of 2009 has been amended to become Law Number 3 of 2020, Law Number 4 of 2009 is still in effect. (Fadhly, 2021).

Improvements to Law Number 4 of 2009 concerning Mineral and Coal Mining, new cargo materials added (Fadhly, 2021; Darongke *et al.*, 2022), namely: (1) arrangements related to the concept of Legal Mining Areas; (2) Mineral and Coal management authority; (3) Mineral and Coal management plan; (4) assignment to state research institutes, BUMN, regionally owned enterprises, or business entities to carry out investigations and research in the context of preparing WIUP; (5) strengthening the role of BUMN; (6) re-arrangement of permits in the exploitation of Mineral and Coal including the concept of new permits related to the exploitation of rocks for certain types or for certain purposes, as well as permits for smallholder mining; and (7) strengthening policies related to environmental management in Mining business activities, including the implementation of Reclamation and Post-mining.

CONCLUSION

Based on the research results, the authors conclude that the Contract of Work does not only regulate cooperation between foreign legal entities and Indonesian legal entities. The legal basis for the contract of work contained in Law Number 11 of 1967 has been replaced by Law Number 4 of 2009 concerning Mineral and Coal Mining. With the existence of new regulations, the existence of Mineral and Coal Mining has had a significant impact on the world of mining in Indonesia. Even though the Contract of Work was abolished and replaced by a licensing mechanism, the Contract of Work that existed before the enactment of the law is still respected by the Government of Indonesia.

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