

CHAPTER II

OVERVIEW OF RESEARCH OBJECT

2.1 Overview of Tanah Bumbu Regency

2.1.1 Geographic

Tanah Bumbu Regency is located between 2052'-3047' South Latitude, and from 115° 15' to 116° 04' East Longitude. Tanah Bumbu Regency is one of 13 Regencies in South Borneo Province. The regency is located in south east of Borneo Island. Territorial borders of Tanah Bumbu Regency are:

North and East Boundaries	:Kotabaru Regency
South Boundaries	:Java Ocean
West Boundaries	:Banjar and Tanah Laut Regency

The capital city of Tanah Bumbu Regency is Batulicin. The regency is divided into 10 districts, i.e. Kusan Hilir, Sungai Loban, Satui, Kusan Hulu, Batulicin, Karang Bintang, Simpang Empat, Mantewe, Kuranji and Angsana District. The last five are new districts since the middle of 2005.

Total area of Tanah Bumbu Regency is 5.066,96 km² (or 506.696 Hectares) or 13,50 percent of the total area of South Borneo Province. Kusan Hulu district become the biggest district with 31,76 percent of total area. On the contrary Kuranji is the smallest district. The order from the biggest to smallest after Kusan Hulu are Mantewe, Satui, Kusan Hilir, Sungai Loban, Simpang Empat, Angsana, Batulicin, Karang Bintang dan Kuranji district.

The altitude of this region more than 100 meters was 31,01 percent of total

area. It has a mountain range, a part of Meratus Mountain range. The total number Mountain are 18 mountains, such as Maringin, Mengili, Baturaya and Gara Kuniyit Mountains. The highest reaches more than 600 meters from marine surface.

Most part of Tanah Bumbu region is jungle, it is about 319.470 Ha or 63,05 percent of total area of Tanah Bumbu Regency. Only 19,56 percent or 99.111 Ha has been used for paddy agriculture and plantation. The people of Tanah Bumbu lived in 7.831 Ha for settlement. The rest of the area are for mining, and fishpond.

Meteorology Station of Stagen Kotabaru has collected data about climate. During 2010, Relative Humidity in Tanah Bumbu Regency was between 86 and 93 percent, with maximum Relative Humidity happened in July and August that was 98 percent, and the minimum was in February was 76 percent. Meanwhile, the average of temperature in 2010 ranged from 26,1⁰ C and 27,3⁰ C, with the maximum temperature was 34,2⁰ October, on the contrary minimum was 15,4⁰ C in June.

Table 2.1
Area of Tanah Bumbu Regency Based on District in 2010

District	Area (Km2)	Percentage (%)
1. Kusan Hilir	401,54	7,92
2. Sungai Loban	358,41	7,07
3. Satui	876,58	17,30
4. Angsana	151,54	2,99
5. Kusan Hulu	1.609,39	31,76
6. Kuranji	110,24	2,18
7. Batulicin	127,71	2,52
8. Karang Bintang	118,02	2,33
9. Simpang Empat	302,32	5,97
10. Mantewe	1.011,21	19,96
Tanah Bumbu	5.066,96	100,00
Kalimantan Selatan	37.530,52	13,50

Source: Government of Tanah Bumbu Regency

2.1.2 Government and Politics

In 2010 Tanah Bumbu Regency is divided into 10 districts, with 145 villages. The capital city of the regency is Batulicin. Among of the total villages, 17 of them are the new villages. Kusan Hilir District that has 34

villages and 1 sub-district the district which has the largest number of village. Meanwhile Kuranji District only has 6 villages.

The government in Tanah Bumbu Regency has an organizational structure. In 2010, the structure consists of one secretary of the Region, Secretariat of Legislative Council, 14 services, 6 boards and 2 technical offices. Besides them, there were 10 district office, and technical office for Amanah Husada Hospital and PDAM (Water Supply Company) of Tanah Bumbu.

The composition of Legislative Council in 2010, were different from composition before. It seems on Number of legislative member. There were 35 members, and they formed 8 fractions. *Golkar*, *Hanura* and *PDIP* parties each of them has 6 members. *PPP*, *Bintang Reformasi* and *PKS* each of them have 3 members. Other parties were *Kedaulatan Amanat Rakyat* and *Fraksi Demokrat Indonesia Raya*.

34 out of 35 legislative members were men. Only one is woman from *Kedaulatan Amanat Rakyat* fraction. The activities of Legislative Council consist of council bar, visit, monitoring and consultations. In 2010, there were 236 times council. One of the councils is Committee plenary which was 82 times. For the rare council is Special Committee Meeting and Honorable Council Meeting were 0 times. Visits were 9 times, that 5 times of them were outside South Borneo Province. The others are monitoring, consultations, and which were study each 14, 9, and 7 times respectively.

2.1.3 Population and Manpower

According to the result of population projection in 2010, total of Tanah Bumbu population was 267.929 people, distributed in 10 districts. High-density population was concentrated in Simpang Empat, Satui and Kusan Hilir district. Meanwhile in 2013 based on the result of population projection from the Central Statistic Board (BPS) the number of indigenous population reached about 295.358.

Manpower is one of capital in the development dynamics. The total number and the composition of manpower will change in parallel with demographic process. In 2013, 1.071 job seeker registered in Social Manpower and Transmigration Department. A total 225 people have gained employment. Meanwhile in the formal sector in 2011, there were 7911 employees scattered administration on regional secretariat, Local Parliament Secretariat, Office, Office Agency, and other technical units. Of the amount 4.320 civil servants, 28 employees, 1187 PTT general and special PTT 2.099 people. Most of Civil Servants were in group III (45.4%) and functional status (63.77%). Among the functional positions are teachers as many as 2.181 people.

Chart 2.1

Population Percentage in Tanah Bumbu Regency Based on District in 2010

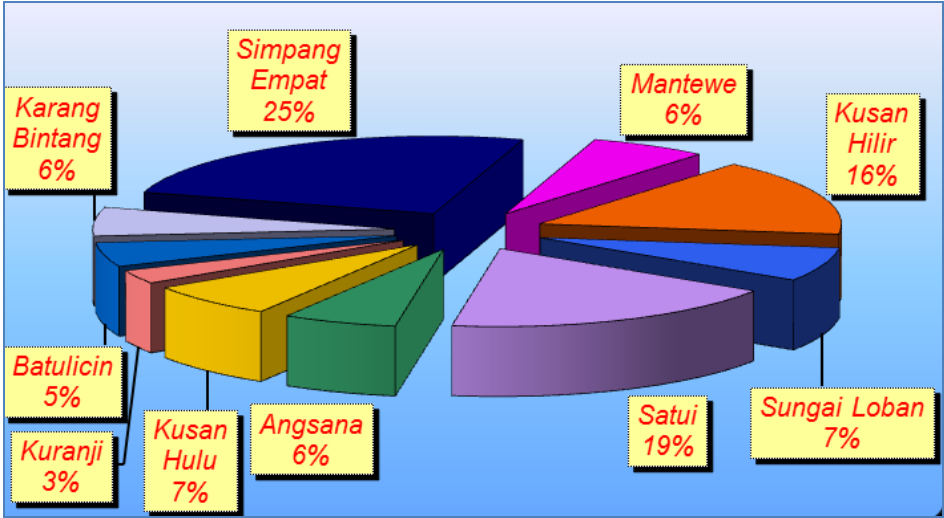


Table 2.2

Density by District in 2010

District	Population	Area (Km ²)	Density
1. Kusan Hilir	42.829	401,54	107
2. Sungai Loban	18.867	358,41	53
3. Satui	49.252	876,58	56
4. Angsana	16.347	151,54	108
5. Kusan Hulu	18.910	1.609,39	12
6. Kuranji	7.558	110,24	69
7. Batulicin	13.430	127,71	105
8. Karang Bintang	15.894	118,02	135
9. Simpang Empat	67.909	302,32	225
10. Mantewe	16.833	1.011,21	17
Tanah Bumbu	267.929	5.066,96	53

Source: Statistic of Tanah Bumbu Regency

2.1.4 Social (Education, Health, Religion)

One of factor that supports regional development is education of their societies. Therefore, to increase the quality of education, one of the effort is by building of education facilities i.e. school building. So hopefully it will give great opportunity to people aged 7 – 18 years old to learn at schools.

Education Facilities in Tanah Bumbu Regency until 2010 are 149 kindergarten buildings, 188 elementary school buildings, 54 junior high school buildings, 12 senior high schools and 11 vocational high school buildings.

At Elementary School level there are 31.690 students, at Junior High School there are 9.858 student, Senior High School and Vocational High School each of them are 3.090 and 3.163 students. The number at higher-level education was decreased compared to lower level education. It might be caused by broken off school.

Besides, there are education facilities that are managed by Religion Affair Ministry of Tanah Bumbu Regency. In 2010, there are 12 units of Religion Elementary School buildings, 21 units Religion Junior High School buildings and 10 units Senior High School buildings, in 10 districts.

Meanwhile the goals of development in health sector attained by giving health service, in such a way that Tanah Bumbu become be health and prosperous. In Tanah Bumbu Regency has one General Hospital, Amanah Husada Hospital, 14 Public Health Centers, 9 sub Public Health Centers and 167 Integrated Service Post for baby under 5 years old. Besides, every district is completed one or more cars for Public Health Centre services.

Other aspects of health services are the availability of medic, paramedic and other health worker. Until year 2010, there were 32 general doctors, 6 dentists, 189 nurses and 143 midwives. Besides it, there were 277 traditional midwives in some villages. Amanah Husada hospital is a hospital of Tanah Bumbu Government for public health service. The largest number of disease had suffered by outpatients were *Infeksi Saluran Pernafasan Atas*, were 930 cases.

According to Nation Unity, People – Women Protection, and Family Planning Service of Tanah Bumbu Regency, in 2010 there were 54.529 Elligible Couples and 43.094 Active Acceptors. The largest number of Contraception used by Active Acceptors are pills and then needle, each of them 23.795 and 15.126 Acceptors.

Religious life and faith to The God are always enhanced. In such ways that support national development. Seeing that condition, It's necessary for having some religious facilities for each religion. The majority of Tanah Bumbu people are Muslims. However there are also Christian, Hindu and Buddhist. In Tanah Bumbu Regency, there are 242 Mosques, 436 small Mosques (do not use for Friday prayer), 4 Churches, and 21 Temples.

2.1.5 Agriculture

Tanah Bumbu Regency is an agricultural region, because land utilization is more than 30 percent for agriculture. And then, even 40 percent and over the total population work in that sector. Generally, the condition of Tanah Bumbu Regency is similar with the region surrounds it. Paddy in dry season are sub

sector propped up the production of food crop in Tanah Bumbu Regency. The total production of Paddy (wet land paddy and dry land paddy) in 2010 was 98.720 tons. Kusan Hilir district has the largest production of paddy that is 41.586 tons.

The largest production of second crop in dry season in 2010 was Cassava, reached up to 5.662 tons. Almost of second crop in dry season are in Sungai Loban and Kusan Hulu Districts.

In Tanah Bumbu regency during 2010, legume commodity is supporting the largest total production which is reached to 3.645 tons. Meanwhile, in the same year the largest production of fruits was banana reached to 4.156 tons.

Nowadays, rubber and oil palm is main commodity product of sub sector in Tanah Bumbu. The total of production of them were 10.332,51 tons' crude of rubber and 527.098,50 tons of oil palm. Satui and Kusan Hulu districts have the largest number of oil palm. Meanwhile, Kusan Hulu and Sungai Loban districts have the largest number of smallholder crude rubber.

Tanah Bumbu region has a big potency of fishery sub sector in regional economics. All of districts in Tanah Bumbu regency has at least one type of fishery, marine fishery or inland fishery. Kusan Hilir has produced 7.371,30 tons of fish. In 2010, the total of fishery production of Tanah Bumbu regency was 24.192,61 tons. A great number of them, 90 percent was marine fishery.

The largest number of livestock population in 2010 was cow, that reached to 31.605 cows. Almost of them are in Sungai Loban district. Meanwhile, the largest number of poultry population was local chicken that 478.619 heads.

2.1.6 Industry and Trading

During 2010 Tanah Bumbu Regency had many kind of industries that registered by Industry, Trade and Cooperative Service of Tanah Bumbu Regency. The largest numbers of them are workshops, which are 37 companies. Industry, Trade and Cooperative Service of Tanah Bumbu Regency during 2010 had issued 580 TDP and 541 SIUP (Permit).

On market facilities, there were 24 markets registered by Building, Market and Cleaning Service of Tanah Bumbu Regency. Eight of them are handled by Tanah Bumbu Regency Government, and 13 village markets and two private markets were distributed in 10 districts

Cooperate is one of the most common form of business in Tanah Bumbu Regency. The purpose of corporate is to improve the welfare of members. There are many kind of cooperates in Tanah Bumbu Regency. Mainly, they were Various Business Cooperatives reached 80 units. Totally, Tanah Bumbu Regency in 2010 had built 209 cooperates with 36.663 members and save IDR 91.943.504.450,00.

The commodity of excavated object in Tanah Bumbu Regency is still become popular industry until 2010. Tanah Bumbu Regency has big stock of coals, marbles, phosphate, andesite, and kaolin. Tanah Bumbu Regency is potentially very good for the mining mainly coal mining industry either low calorie or high calorie. The domestic market covers Java, Bali, and Nusa Tenggara, and international market covers China and India as the main costumers.

2.1.7 Investment Potency

Based on the draft of Investment Potential (*Potensi Investasi*) arranged by the BP3MD there are some potential resources in Tanah Bumbu Regency that government could be very supportive for the development plan in five years' period. The human resources as in the 305,825 people with the natural resources such as mining object and land the whole potential could be used as the main capital for increase and support the local development. BP3MD noted there are some potential sectors following:

A. Mining Sector

Since 2005, Indonesia is stated as one of the biggest thermal coal exporter. The quality of the coal in Indonesia is medium (in between 5100 and 6100 Cal/gr) and the low quality under 5100 Cal/gr. South Borneo is the one of the coal chamber in Indonesia beside South Sumatera and East Kalimantan. In South Kalimantan the producers are small and large companies. It is recorded that since 2006 until 2013 the number of production, export, and consumption of coal in Indonesia are increasing every year. In Tanah Bumbu Regency coal is the mainstay product. Beside, the industrial development of coal briquettes is also located in Tanah Bumbu Regency.

B. Plantation Sector

Indonesia is the widest country for rubber plantation, covering 3,29 million hectares. That condition is supported by the soil and climate in certain areas in Indonesia. In addition, according to *Gabungan*

Perusahaan Karet Indonesia-GAPKINDO (Association of Rubber Company in Indonesia) it is noted that the rubber plantation area in Indonesia in 2010 is covering 3.445 million hectares and it is predicted that it will be expanded until 5.000 million hectares in 2011.

Rubber export in Indonesia for 20 years has shown would significantly increasing number from 788.292 tons in 1975 to 1.324.295 tons in 1995, in which this amount reach \$ 1.962,8 million or 5.6% from the non-oil & gas revenue. The price and the market of rubber are always fluctuating since the existence of synthetic rubber. However, since the industry no longer use the synthetic one because the quality of elasticity is not enough then the natural one is raising again. The demand itself also affected by the global economy mainly for the vehicles production.

Palm oil is a commodity which has an important role in the Indonesian economy, because it is a commodity export earner beyond oil and gas. Besides export opportunities, the domestic market is still quite large. Palm oil can be used as the main ingredient industry fractionation (especially the oil industry), specialty fats (coca butter substitute), margarine / shortening, oleo chemical and soap. Beside those conventional products, palm oil is also one of the ingredients that can be used as source of fuel / energy (biodiesel) renewable fuel to replace petroleum derived from thinner stock. Oil palm plantations is one of the flagship sector for Indonesia. In 2009, the area of oil palm in Indonesia reached 7.51 million hectares with the production of 18.64 million tons

of palm oil and 3.47 million tons of palm kernel. Results obtained plantation of Big Private Plantation (PBS), *Perkebunan Rakyat* (PR) and Plantations of the State (PBN).

The results of the financial analysis conducted on natural rubber commodities show that the cultivation of rubber is very feasible to be developed in Tanah Bumbu Regency. From the technical aspect and cultivation, this commodity is relatively easy to manage, where harvesting rubber is relatively simple, only sometime investors are less informed about the development of rubber cultivation. Through a pattern of self-help, community farmers develop rubber and oil palm independently for the provision of land and seed procurement and maintenance. However, for marketing, the farmers sell them to large company plasma or palm oil processing company in Tanah Bumbu.

Meanwhile, through a pattern of plasma, plasma farmers cooperate with a company in which farmers become owners of the land, while companies in addition provide seed financing and handle lawn care also act as the buyer of the production. Until 2012 the development of the plantation sector both rubber and oil palm contribute greatly in the development of Tanah Bumbu Regency. This is an evident from the progress and quality of life experienced by plantation farming communities in several villages in Tanah Bumbu. It is visible from several aspects such as ownership of decent housing, vehicles and students who are able to pursue higher education.

In this case the government of Tanah Bumbu also contributes in terms of innovation in the form of a rubber processing plant and oil formulation to establish cooperation between local governments and developer's plasma rubber and palm oil. For palm oil processing factory which officially began its construction on February 2, 2013. PT Batulicin Agro Sentosa and Tanah Bumbu regency government to cooperate in making a breakthrough in the form of Crude Palm Oil (CPO). Earlier, in March 2012 the local government built a rubber processing factory in cooperation with PT PTPN XIII Coral Star, the local government through PT Nusantara Batulicin built a rubber processing factory production of plantation residents of Bumi Bersujud farmers.

2.2 Overview of Mining Law No. 4 of 2009

2.2.1 Definition of Mining Law No.4 of 2009

Mining Law is a law regulates excavation or mining process of objects and minerals (Encyclopedia Indonesia, tt: 1349). Thus definition only relies on excavating activities, or mining processes. In this definition also it is not intended for the relation between government and law subject.

Meanwhile Blacklaw Dictionary defines Mining Law as “the act of appropriating claim (parcel of land containing precious metal in its soil or rock) according to certain established rule” (Black law Dictionary, 1982: 847). It means that Mining Law is a special provision to rule mining right (part of soil contains of valuable metal or rocks) according to the defined

regulations (Salim, 2005).

Finally Salim (2005) conclude those definitions into one whole definition of Mining Law, which is:

“overall rules of law governing authority in the management of excavated materials (mining) and regulate the legal relationship between the State and the person or legal entity in the management and utilization of minerals (mining).”

2.2.2 Background of The Mining Law No. 4 of 2009

Mining Law No. 4 of 2009 is a response to the Law 11, 1967 where the legislation does not favor the conservation of the environment and do not optimize the results of excavation. Moreover Chalid Mohammad argued:

"the main fault orientation policy and mining in Indonesia stems from Law No. 1 of 1967 concerning Foreign Investment-which followed the signing contract of work (COW) between the Government of Indonesia and Freeport McMoran. “Followed by Law No. 11 of 1967 about the Mining Provisions”, Muhammad in Salim (2005).

Since then, Indonesia opt-oriented legal political power of large capital and exploitation. Of its own policies, the government finally trapped in a lower position than the most common capital position. As a result, the government cannot act decisively against the mining companies which should be obedient to be followed (Salim, 2005).

2.2.3 Contents of Mining Law No. 4 of 2009

According to Sumardjono (2011) Regulation No. 4 of 2009 is a revision form of Regulation No. 11 of 1967 on Basic Mining Provisions. Amount of changes and development in this regulation could be seen in aspects of:

2.2.3.1 Orientation

Mining Law provides equal attention to increase production on the one hand conservation of mineral and coal resources and environment. Balanced attention is not only on the level of legal principles and objectives, but also in more concrete elaboration in terms of the following description:

a. Production Enhancement Orientation.

This orientation is focused on increasing amount of mineral and coal production. Some conditions regarding thus effort are: *First*, placing mineral and coal as the one of crucial component economic developing movement. *Second*, mineral and coal mining activity implementation supposed to be run based on the principal of efficient, effective, and competitive. *Third*, production amount supposed to be optimize as high to contribute the economy development. Verse 18 decides mineral resources criteria as Mining Company Area (MCA) in between optimizing mineral and coal result. *Fourth*, to support production enhancement it is required for miners to using proper mining technology and huge number of capital. This requirement stated on Verse 28 and 96 that require miners to apply proper mining technique that purposed to increase the number of production.

b. Conservation Oriented.

Orientation refers to the utilization of natural resources comes along with a backup control by not exploit it excessively. Such efforts include: *First*, balance principal, continuity and based on environmental in managing mineral and coal resources. Those principles contained in Verse 2 is aimed as

the direction to decide further regulations, whether in Mineral and Coal Regulation or its implementation regulation. *Second*, one of the purposes of mineral and coal management is to guarantee mining sustainably benefit and based on natural environment as stated in Verse 3. *Third*, in between the criteria set as a starting point to decide the Mining Company Area (WUP) is a possibility conservation value implementation and guarantee of carrying capacity of the environment as specified in Article 18 and Article 28; Fourth, the presence of obligations by businesses related to the conservation, namely: (1) the obligation to perform reclamation and post-mining environmental monitoring, including the need to create a plan of reclamation as well as providing funds for reclamation and post-mining guarantee fund as defined in Article 96; (2) manage the leftover mining in accordance with the environmental quality standards before the remains are released into the open air; (3) businesses are required to preserve function and carrying capacity of water resources contained in the Mining Business Area (MBA); (4) shall temporarily suspend mining operations when conditions environmental capacity business area can not bear anymore due to mining activity, especially if there is a report of the public as defined in Article 113.

2.2.3.2 Alignments

a. Access to do Mining Business

The principle of Mineral and Coal Regulation the area is divided into three categories, which are: First, Mining Business Area given access to both state-owned enterprises or local enterprises and private enterprises,

cooperatives, and individuals. Secondly, the National Allocation Region that gave rise to the strategic nature Special Mining Business Area. SMBA seek access is only granted to a business entity incorporated under the law of that SOEs or local government or private enterprises. Third, the Society Mining Areas, which is access is granted to local exertion and cooperative. The locals were given access can be either individual businesses or business groups. Cooperatives given access are those cooperatives which are locals.

b. Access to Use the Mining Results

Mineral and Coal Regulation give chance openly to any of groups to taste the benefits of mining business result, through: *First*, Government and Local Government. *Second*, the miners will gain profits from mineral and coal mining activity. National business entity gives chance to transfer of shares from foreign business entity. Those transfer is based on the provision Verse 112 after foreign business entity run its mining business for five years. *Third*, citizens who lives nearby the mining site have access to: (1) do mining business in Citizen Mining Area in its domicile; (2) be worker in mining business based on Verse 106; (3) be involved as the partner of big mining enterprises based in Verse 107; (4) have empowering program as stated in Verse 95 and 108 which is based on real program and consulted to Government or Local Government and related citizens; (5) be a service provider mainly for general exploration or fact collection done by mining business doer.

2.2.3.3 Management and Management Implementation

Decentralization spirit as stated in the fundamental in this Mineral and Coal Regulation, which placed local government as Local Representative Body have crucial role. In some condition those stakeholders authorize the State implementation. Local Government authority is stated clearly in verse 7 and 8. Beside, autonomy given to Local Government, there are several issues that should be consulted with Central Government in: (a) Verse 29 related to determine Special Mining Business Area; (b) determining wide and border Special Mining Business Area; (c) Special Mining Business Legal by ministry regarding local interest.

2.2.3.4 Human Right Protection

Human right protection in this Regulation mainly has two ideas which are: *First*, citizens who negatively affected directly by the mining activity as stated in Verse 145 should be protected in form of right entitlement to obtain adequate compensation and right entitlement to filed a lawsuit into the court; *Second*, citizens who owned field potentially contain mineral and coal based on Verse 135 reserve to agreement before mining activities conducted.

2.2.3.5 Good Governance Arrangement

Good Governance Arrangement has its attention in Mineral and Coal Regulation, in several provisions there are:

a. Participation Principle

Participation Principle is defined as: (1) in determining the mining area, as stated in Verse 10 citizens, should be asked by the opinions

especially for they who lives surrounds the determined mining location; (2) citizens as stated in Verse 95, are also involved in empowering program structuring. In term to reach the compatibility of prioritizing citizens needs; (3) based on Verse 113 is to consider citizens interpretation regarding the environmental support capacity condition in mining location including its proposal to stop the mining activity temporary.

b. Transparency Principle

Transparency principle defined in Verse 23, 64, and 85 is related to the Government or Local Government obligation to publish openly to citizens about: (1) Citizens Mining Area Planning; (2) Mining Business activity planning in Mining Business Area Permit; (3) To allocate Mining Business Permit that have been published by Government and Local Government.

c. Accountability Principle

Accountability Principle definition is related to condition of; miners obligation to do reclamation after mining activity is finish, obligation to pay the compensation to citizens who are affected negatively from the mining activity, damaged environmental reclamation caused by mining activity.

2.2.3.6 People and Natural Resources (Mineral and Coal) Relation

People, whether legal and private are allowed to access mineral and

coal potential, based on certain law and regulations. The relation between regulation and people generally with the mineral and coal according to Mineral and Coal Regulation uncertainty based on Work Contract used by the exist regulation nowadays. However, Work Contract which is existed and available as Mineral and Coal Regulation is still valid until the Work Contract ends.

There are several permits regarding to its mining area empowering, which are: *First*, Mining Business Permit is given to conduct a business in Mining Business Area whether for exploration or production operation; *Second*, Special Mining Business Permit is given to run a business in Special Mining Business Area whether for exploration or production operation; *Third*, Citizen Mining Permit is given to empower mining in Citizen Mining Area which its regulation is determined further by the Local Government; *Fourth*, Temporary Load Permit and Trading is given to Mining Business Permit stakeholder to trade mineral and coal.

Mining Business Permit and Special Mining Business Permit conducted by several conditions as follow: (a) those permit could not be transferred; (b) shares ownership transferable after exploration activity in certain level and should be informed to Ministry/Governor/Major also its shares transfer does not against with the constitution regulation.

2.2.3.7 State and Natural Resources (Mineral and Coal) Relation

Mining Law placing mineral and coal resources as Indonesian worthy, which authorized by state to maximally citizen's prosperity, as stated in Verse

4. The term of national wealth means that mineral and coal resources is owned by the entire of Indonesia. Its management regulation framework aims to reach the people prosperity.

Meanwhile there is other explanation of both Mining Law No. 4 of 2009 and No. 11 1967 from Natakusumah (2011). Mining Law No. 4 of 2009 is a substantial change of law No. 11 of 1967. There are things that are very different between the two.

- a. First, from the administration and management authority mining, Law No. 11 of 1967 is more focused on centralized administration and management, while Law No. 4 of 2009 over dividing responsibilities between central and local governments so that local governments have more authorities. This happens because the spirit of decentralization.
- b. Secondly, in terms of mineral classification, Law No 11 of 1967 classification divides minerals into a strategic mineral, vital minerals, and other minerals. While Law No. 4 of 2009 divides it into coal and mineral, which is subdivided into radioactive minerals, metallic minerals, nonmetallic minerals and rocks.
- c. Third, in terms of the types of licenses granted, Act No. 11 of 1967 divides it into *Kuasa Pertambangan* (KP), *Pertambangan Rakyat* (PR), and the agreement of Work (CoW (KK) and Coal Mining Work Agreement). At Mining Law No. 11 of 1967, there are still families and (*Perjanjian Kontrak Perusahaan Pertambangan Batubara*) PKP2B which an agreement between the company and the

government. In KK and PKP2B, governments and companies to agree in detail all aspects of mining. While in Law No. 4 of 2009, there is only the form of a permit, it is no longer in the form of the agreement. License type there is a Mining Permit (IUP), the People's Mining Permit (IPR), and Special Mining Permit effort (IUPK). KK form and PKP2B already eliminated.

d. Fourth, if it is seen from the system of concessions, in the Law No. 11 of 1967, the company can apply for a concession. Meanwhile, the Law No. 4 of 2009 granting coal and metal mining concessions must use a tender system. It is only for non-metal mining and the rocks that still use the system of application.

e. Fifth, in terms of participant, Law No. 11 of 1967 to divide it into domestic and foreign participants. Domestic participants may have KP, KK, and PKP2B. Foreign participants only have KK and PKP2B. while Law No. 4 of 2009, more seeking the legal form of the company that will mine, which is a legal entity in Indonesia, cooperatives, and individuals.

f. Sixth, from the concession, formerly in Law No. 11 of 1967, a period of exploration and production is not specifically defined. However, some families and PKP2B have exploration period of 4-12 years and 30-50 years of production. While in Law No. 4 of 2009, the exploration period is conducted for 3-8 years and 20 years of production, which can be extended by the renewal period depends on

the type of mineral (certain minerals can be extended two times in 10 years).

g. Seventh, in Law No. 11 of 1967, does not specify the obligations domestic market. While in Law No. 4 of 2009, the central government can determine the level of production set for domestic needs.

h. Eighth, in Law No. 4 of 2009, the mining company's obligations are stated more detailed, namely the financial liability, environmental, safety, partnership, and the obligation to conduct activities that provide value added to mine. While in Law No. 11 of 1967, there are only financial and environmental liabilities.

i. Ninth, from the mining area. In the new mining law, in the explanation of Article 53 and 56, the area of the mining operations and production is limited to a maximum of 25,000 ha, for metallic mineral mines, and a maximum of 5,000 ha, for nonmetallic mineral. While the area of the holders of KK and PKP2B is more than that. In the transitional provisions of Law No. 4 of 2009, there is indeed a transitional provision in Article 169 which states that KK and mining concession agreement which has existed before the new law will remain in effect until the expiration of the contract / agreement. It has been adjusted no later than one year since the Act No. 4 of 2009. This transitional clause creates uncertainty for mining companies, especially for families and PKP2B holders. First, regarding taxation embracing *lex specialis* system for the holder of KK and BPKP2B

means applies exclusively to the holder of the contract / agreement, and they are not follow the rules of general taxation, unless stipulated in the work contract. While the new mining law, it has not been mentioned specifically regarding the taxation aspects. Plus, in the new mining law article 129 it is obligated to pay 10% of the net profits to the State. It is a thing that never existed before the new mining law. In the transitional Mining Law No. 4 of 2009, it is uncertain whether it will be applied to holders of KK or PKP2B or not. The second, from the mining area. Transitional regulation does mention the possibility of an area is not reduced, but there is no certainty not shortlisted, namely when the plan submitted by the holder KK or PKP2B are not approved by the government. In the new mining law, does not mentioned that factors will be taken into consideration that there are uncertainties government approval. Both aspects above are the important factors for the Integration of mine, because it relates to the calculation of investment. Businesses in the mining sector requires huge investments and because it needs a proper legal certainty, so that mining companies can plan investments properly.