

# **Local Government Responses Toward Mining Law No 4 of 2009 to Improve Investment Climate in Tanah Bumbu Regency of 2014**

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## **Abstract**

*Natural resources management in Indonesia became a dilemma to implement Mining Law No 4 of 2009. This law basically regulates several crucial things toward mining industry such as the permit, export, and smelter for metal mining companies. Local government as the implementer of this law has a major role to be a bridge between mining companies to central government, mainly to avoid unemployment and to keep improving investment climate. From this study has been found that local government of Tanah Bumbu Regency could not get along the problem and not proactive to tackle the investment problem. Meanwhile in between the implementation of this law, there is a latest Decentralization Law No 23 of 2014 regulate the delegation of Mineral and Coal section to provincial level. Last but not least local politic as usual could not be easy to avoid.*

## **A. INTRODUCTION**

The term of resources became popular in Indonesia from 1980s decade. It has shown from the used of 'resources' term in the regulations pre and post 1980s decade. In several regulations before 1980s term of 'resources' defined as 'wealth' or 'resources' (natural). Meanwhile, after 1980s 'resources' term became used generally to indicate various connotations such as human resources, natural, and synthetic (Maria, 2011). Indonesia is an archipelago country, rich of natural resources, both renewable and non-renewable object. According to the 2012 Handbook of Energy & Economic Statistic of Indonesia (wrote by Center for Energy and Mineral Resources Data and Information), Indonesia territorial area cover around 7.788.810.32 km<sup>2</sup>, within land area 1.910.931.32 km<sup>2</sup>, and population of 241.133.70 thousand people.

Coal Resources and Reserves on 2010 data written by the Ministry of Natural and Mineral Resources note the distribution of coal in Indonesia entirely, dominate in 5 biggest sites which are; Kalimantan island has 52.100.79 million tons, Sumatera island has 52.436.57 million tons, Java island has 14.21 million tons, Sulawesi island has 233.10 million tons, Papua island has 156.8 million tons, and Halmahera island 2.13 million tons. On that distribution amount, there are two biggest islands dominant in developing economy potentials.

Generally, mining sector will be as the one of main sector drive the economy of Indonesia. The visible indication of contribution of the state revenue increased every year. In addition, the mining sector also provide a multiplier effect from 1.6 to 1.9 or to trigger growth in other sectors as well as providing employment opportunities for about 34 thousand direct labour. Mining industry is one of industry that could be lean on improving devises. Beside to improving devises mining industry also generate great number of employment, also improving local income. Otherwise to improve devise and generate large number of employment mining activity tends to environmental damage. Some mining activity attract people attention because of its damage, moreover gold mining without permit or illegal also will damage worker life regarding to low competence, without government's control Yudhistira in Ahyani, M (2011).

In Indonesia mainly the mining laws were amend for at least three times. The first regulation is the Mining Law No 1 of 1967. This is the first law in regulate mining sector. This mining law is not supportive to environmental conservation and lack of production result optimization. In this law, government regulate the Working Contract (Kontrak Karya) as the contract between mining company and government. This contract is contained by the arrangement by both sides regarding to the technical terms mainly mining area in certain period. Meanwhile the law has been widened by law No 11 of 1967 as the government gave the significant area to several massive mining companies. The mining companies are Freeport Indonesia that retain in almost area of West Papua, and INCO extended in 3 provinces in Sulawesi Island. Then the latest law is Mining Law No 4 of 2009 structured as an improvement over previous regulations. It

mainly contained some points as the environmental conservation and mining product optimization.

There are several major points to regulate in Mining Law No 4 of 2009 as; first the contract has been reformed by the Mining Permit (IUP) that should be renew every 5 years. Second, government ban the raw mining object without ant upgrading process. Third, government obligate the mining companies to do upgrading by build the smelter mainly for the iron and metal mining companies.

Otherwise to implement the law is not easy because there are some constraints such as lack of coordination of the central government to local government. Because this law courage local government as the the implementer of the law. Other than that, the mining company itself mainly iron and metal mining companies forced to stop their production activity due to smelter which costs very expensive. This condition also affected number of layoffs and local economy degradation. There are several iron mining companies stopped to do their production activity since the implementation of Mining Law No 4 of 2009 started in January 12<sup>th</sup> 2014. Director General of Mineral and Coal, Ministry of Energy and Mineral Resources, R Sukhyar said, "There is a decrease in foreign exchange and production. Obviously income from mineral mining sector to reach US \$ 11 billion in 2013, and in 2014 was estimated at US \$ 6 billion," (liputan6).

From those impacts of the Mining Law No 4 of 2009 implementation, local government as the implementer should be proactive to engage to several conditions. There are mainly for local economy, local revenue, investment, and layoffs in mining industry. This paper will explain result of the research of which is stated as the main points in local area. In Tanah Bumbu Regency, South Kalimantan Province. This research is aimed to clarify several conditions done by local government due to Mining Law No 4 of 2009 implementation, namely; regulate the mining and coal sector (MCS), simplify the procedures of mining industry, planning the development of MCS, and control the development of MCS. The research has been done in 2014-2015 in Tanah Bumbu Regency by in-depth interview and observation as the data collection method and data reduction by triangulation then describe in descriptive analysis. The research has been done in

local government in Tanah Bumbu Regency mainly in three different government institutions (BAPPEDA, Distamben, and BPPPMD), two iron ore mining companies (Yiwan Mining and Meratus Jaya Iron Steel), and one coal company. For additional information, the observation covering the whole area of Tanah Bumbu Regency.

## B. RESULT

### 1. Regulate Mining Coal Sector (MCS)

Based on the result founded in three main government institutions there are numerous facts regarding to the Mining Law implementation. Different institution stated different area of authority and main impact of the Mining Law. For BAPPEDA and BPPPMD are less affected by the implementation. Meanwhile for Distamben as technical implementer who has authority to refer mining company information to central government (Ministry Level) some major impacts its authority, could be seen in the table below;

Table 1.1 Local Institution Response Toward Mining Law Implementation

<i>No</i>	<i>Aspect</i>	<i>BAPPEDA</i>	<i>Distamben</i>	<i>BPPPMD</i>
1.	Impact	There is no major effect of implementation of Mining Law	The implementation of Mining Law affecting the system and function of this institution.	The implementation of Mining Law is not really affecting the investment, except on the iron ore mining investment
2.	Key Factor	No major changes of	There are some changes as the	No significant changed in the

		function in BAPPEDA	direct implementer	job desk except the statistic of investment
3.	Recommendation	Mining Engineer is necessary for every mining company	Mining company should be more cooperative to responding the new regulation	To maximize the natural resources potential, the use of high technology is necessary

Meanwhile, for re-regulate the regulation local government of Tanah Bumbu Regency tend to face the difficulties because of the latest Decentralization Law No 23 of 2014. Mainly this regulation concern on the authority of central and local government especially regency and provincial. In term of the mineral and coal section Decentralization Law regulate the regency authority to provincial level. As in Mining Law No 4 of 2009 authority broke down from the central government to provincial and regency direct to the central government based on mining location. Since in October 2014 local government started to hands up the authority to provincial level for mining and coal sector except the geothermal permit only.

## 2. Planning the Development of MCS

There are several issues regarding to technical mining industry to develop Mining and Coal Sector. Coal mining is the biggest potential in the area, followed by iron ore. Generally, Indonesia is now an exporter for thermal coal. Almost of the coal is exported is the medium quality (between 5100 and 6100 Cal/gram), low quality (under 5100 Cal/gram) which exported annually to India and China. The stock of coal in Indonesia are spread in three main areas; South Sumatera, South Borneo, and East Borneo. In South Borneo mainly in Tanah Bumbu Regency, coal mining is the mainstay industry. In 2012 Tanah Bumbu

produced 24.096.296,521 Metric Ton of coal (*Potensi Investasi 2014*, by BPPMD).

To develop such potential, the local government of Tanah Bumbu needs to concern about the technology of mining production. It is stated by Arif Fadillah (chairman of BP3MD) that to increase the investment and to attract investor, the local government should support the mining technology in Tanah Bumbu, especially to facilitate every mining company to use more efficient technology in that sense (*Interview: August 13rd 2015*).

Meanwhile the technology used in the coal mining company is hauling technique, which called as the open pit mining. This mining system is digging the site that has been explored then collect the object by hauling them manually by trucks to the stockpile. Meanwhile more effective technique is by conveyor as stated by Sutarno (Operational Director of Jhonlin Baratama Coal Mining Company, in September 20<sup>th</sup> 2015). He also added that there is only few coal mining companies in South Borneo using this technique, one of those is located in Sungai Danau Regency. Generally, this mining method is difficult to be applied by mining company because it needs huge amount of investment. Briefly about this mining technique, mining company is no longer using trucks and vehicles to transport the coal, otherwise they use the long transporter machine along the way, from the mining directly to the stockpile and port. Besides needed a large amount of investment, this technique needs more maintenance monitoring.

### 3. Control the Development of MCS

The development of MCS in Tanah Bumbu Regency is one of the main objects of the local government. To control the mining industry in Tanah Bumbu Regency, Distamben is focusing on the fuel distribution, and captive power based on the regulation. Based on the observation in August-September 2015 fuel in Tanah Bumbu Regency is also became the major problem, it is proven as the queue in every fuel station was always long and terrible. This phenomenon is not because lack of distribution, but people now that it is one of the practice by collectors and locals. Collectors are usually collect diesel fuel when the

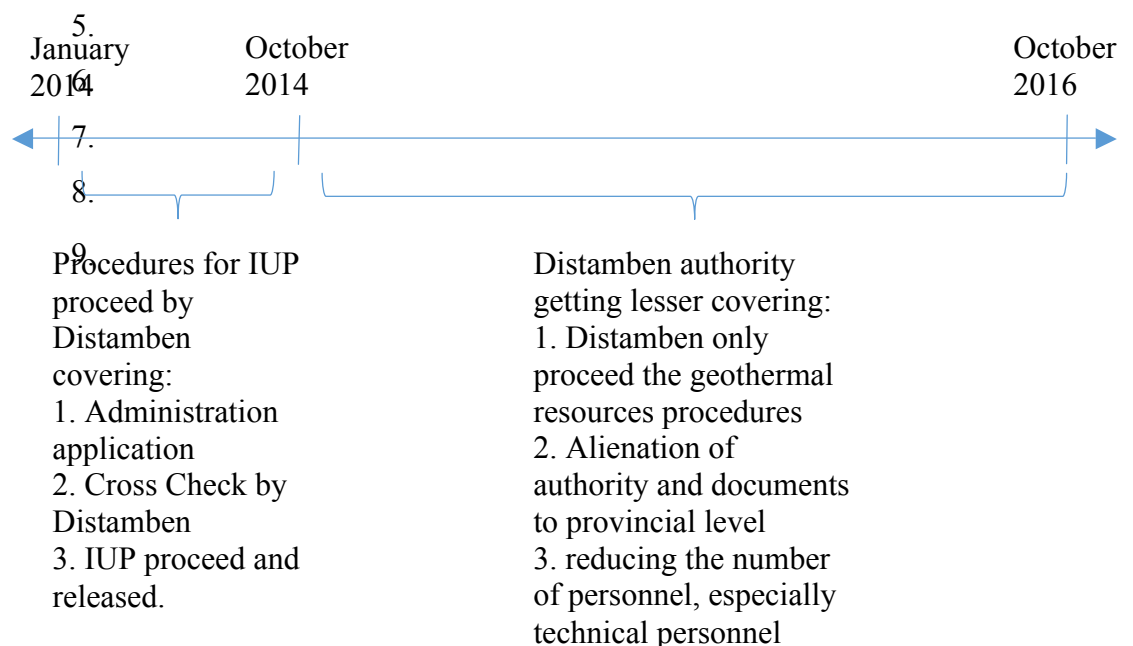
distribution came to the station, of course it happens with some contributions of the apparatus. The type of the fuel they collected is usually diesel type because the consumption of diesel is more than premium. Then collectors collect as much as they could and sell it in very higher price. The normal price of diesel is 6,900 Rupiahs/liter in September 2015 and they sell it in between 7,500-10,000 Rupiahs/ liter. That reality caused a very long queue in every station even though collectors selling their fuel stock nearby the fuel station. It is very harmful for the people in industry mainly for medium-small industry using their trucks or vehicles that need diesel. The security of fuel is not a new phenomenon in Tanah Bumbu Regency, moreover in most of South Borneo. There are four fuel pump in Tanah Bumbu Regency but all of them always put the sign that diesel is sold out everyday afternoon. The difficulties Distamben in facing this problem is about local apparatus that involved in this practice. Some informations stated that the people behind collector or collector itself is local police.

#### 4. Simplify the procedure of MCS

Due to simplify the procedure of MCS mainly mining permit, local government could not be able to implement it since the latest Decentralization Law No 23 of 2014. In the meantime local government implement Mining Law for only less than one year as seen as the figure below;

Figure 1.1

Procedures for IUP before and after Decentralization Law no 23 of 2014



Since the Decentralization Law No 23 of 2014 started to implement, local government are in charge to deliver authority by hand up some technical documents of mining sector mainly for Distamben. Beside on that, Distamben would restructuring the personnel, according to Sukma, a Distamben officer (interview 14<sup>th</sup> September 2015) that Distamben will be mutata some mining inspectors from Tanah Bumbu Regency to South Kalimantan Province because of the authority transfer. However other Distamben officer or personnel will be placed in other institutions which needs more human resources.

On the other side Distamben in doing their tasks is based on the Regent Regulation No. 21 of 2008 is valid until the Strategic Plan period 2011-2015. Which basically need to consider the newest Mining Law to do the tasks. This mean that there was no major change to doing the tasks or procedures because the Regulation itself never been updated since the Regent changed in 2011. This is shown that this institution moves very passively in doing change or responding the latest Mining Law. Meanwhile, there are some points regarding to the Decentralization Law No 23 of 2014 and its impacts to regency and provincial level authority in dealing with the procedures issuance shown by tables below:

Table 1.2

Regency and Provincial Level Authority based on Mining Law No 4 of 2009

Regency Level Authority	Provincial Level Authority
<ul style="list-style-type: none"> <li>- - fostering on the operations, mining technology, as well as capital and marketing</li> <li>- Control of Occupational Health and Safety (K3), post-mining reclamation</li> <li>- Mine inspectors assigned to carry out technical tasks field</li> <li>- Record production of every mining company</li> <li>- Guidance and control of the People's Mining (UPR)</li> <li>- Determination of the People Mining Areas (WPR)</li> <li>Issuance of Mining Permit</li> </ul>	<ul style="list-style-type: none"> <li>- Delegate authority of the minister to carry out supervision and oversight in the province</li> <li>- Publishing IUP (exploration and production operations) if the Regional Mining License (WIUP) in inter-district / city in the province after receiving a recommendation from the regent / mayor</li> </ul>



(exploration and production operation) in one area of regency / city	
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Meanwhile since October 2014, Decentralization Law started to be implemented means authority shifted from local government to provincial level. Major authority could be defined by the table below:

Table 1.3 Regency and Provincial Level Authority based on Decentralization Law No 23 of 2014

Regency Level Authority	Provincial Level Authority
<ul style="list-style-type: none"> <li>- Issuance of licenses direct use of geothermal energy in district / city</li> </ul>	<ul style="list-style-type: none"> <li>- Determination WIUP non-metallic minerals and rocks in one of the provinces</li> <li>- <b>Issuance of IUP in the context of domestic investments (metals, non-metals, coal, and rock)</b></li> <li>- <b>People Mining License issuance (IPR) for non-metallic mineral commodities, metals, coal, and rock</b></li> <li>- Pricing benchmark non-metallic minerals and rocks</li> <li>- <b>Publishing IUP Production Operation specifically for processing and refining License Mining Services (IUDP) and registered letters in the framework of domestic investment</b></li> </ul>

#### 5. Providing facilities and infrastructure of MCS

Facilities and infrastructure is the most important aspect in developing the mining industry. To transport the result of the mining object, every mining company should have an easy access especially to the port. In terms of exporting the mining object should be sent to the port load it into a tugboat then it is sent it

to the mother vessel to export. To do this cycle is not easy if the location of the mining company is far from the port because it needs high cost. Such as stated by Khosim (Operational Manager of Yiwang Mining) as “a company will not be able to build a smelter is because the operational investment for smelter is too high, investor would not be investing because other than the smelter itself, the company should be providing the operational facility such as road, electricity, port, and access needed” he added that investment needed for a smelter is 1 trillion rupiahs, besides, they should pay more cost for the facilities and infrastructure for another 1 trillion rupiahs (*Interview: September 2015*).

According to Mahyuni (chairman of BAPPEDA) the mining companies are “too lazy” to build the smelter, because basically the smelter will bring more efficiency by adding more value for their product and also provide more work opportunities (*Interview: August 2015*).

Khosim also stated that actually there were some discussions and socialization held by the private sector and mining company (Yiwang Mining) to discuss several issues related to the implementation of Mining Law. That was held by the geology board, industry board, and several government institutions but it never finds any solution. Finally, the government let the companies seeking their own solution (*Interview: September 2015*).

#### 6. Protecting Competition among Mining and Coal Companies

The competition among mining companies are still occurs, especially between the local companies. Arif Fadillah said that ‘the competition is still occurring since the local companies is growing, and being complicated by the local politic. Most of the local leaders own the companies, and it is quite massive company. For instance, the political practice in local area tend to give more easy access for local leaders’ companies’. Moreover, he also added that local regulation already regulates in term of mining company’s competition. Nepotism is also the other problem in Tanah Bumbu Regency, it can be seen from the fact that the leading local mining company owner have a good relation with the local leader. Therefore, the intention of the BP3MD have no major role in the investment service (*Interview, September 2015*).

## 7. Assisting Business of MCS

In terms of assisting the business of private companies, the local government still focuses on protecting more the small-medium industry. Especially outside of mining sector. This is shown by BP3MD assist the local Karaoke business. Arif stated that BP3MD help that company because the police forcibly seal the place on charge of not having the permit, in that case BP3MD succeed to tackle and handle the case, assisting the company in terms of law protection. However, because BPPPMD only oblige the company which value less than or 10 billion rupiahs, so almost of mining companies are not under protection of BP3MD.

On the other hand Distamben have more role in assisting the mining industry. This is because Distamben role is more focused and technical in mining sector than other institutions. According to Mulyadi (Distamben) 'Distamben only assists the central government to implement the regulation. Moreover, since the newest law for decentralization or local authority in Law No 23 of 2014 enacted the local government roles are not very clear yet. Since October 2014 local government (Regency) could not be freely to conduct or run the governance. Distamben itself need to wait for the next level of implementation of the decentralization law, now the status for local government (Regency) is in between ruling or not. Such as to release the IUP (Mining Permit) since it is no longer in Distamben authority. The other consideration for this regulation is difficulties that come from the small scale mining such as sand mining and other small scale mining if they need to apply the permit in the provincial level' (*Interview, September 2015*).

## C. CONCLUSION

1. Regulation in response to the Mining Law No. 4 of 2009 has not been carried out by local governments of Tanah Bumbu Regency. The evident is from institutions that have not been able to formulate the regulation as an alternative measure. This is because the relevant institutions have not

been able to act proactively in offering solutions to the problems arising from the Mining Law No. 4 of 2009. In addition, the latest regulation of Decentralization No. 23 of 2014 regulates the authority of local governments in the mining and energy sectors. This regulation reduces the authority of local governments in carrying out technical work in mining and energy.

2. Plans for construction of mining and energy have been implemented. The evident is from the cooperation of local government and local mining company in improving the local economy. However, within the last 5 years, Distamben IUP has not been able to publish it in accordance with the targets set in the Strategic Plan (Plan). This is because the global economy that affect the world price of mineral and coal so that it gives impact on growth of mineral and coal mining industry.
3. In order to protect the mining industry, Distamben does not focus on tackling illegal mining adverse impact on the environment and detrimental to the survival of the State. In addition, Distamben is being focused in the field of fuel distribution in Tanah Bumbu Regency.
4. In performing its role as implementers of Mining Law, Distamben and related institutions have not been able to simplify the procedure for the issuance of an IUP mining entrepreneurs. The latest decentralization law No. 23 of 2014 is the main obstacle in the mining district governments. So that local governments no longer have the authority to implement the Mining Law. As from October 2014 implementation of the

Decentralization Law Distamben given for two years for the alienation process documentation.

5. The practice of local politics is still an important issue in Tanah Bumbu Regency, especially in the mining industry. So that it becomes the most difficult thing to control because of the fraud that has been structured is difficult to detect.
6. Local governments and BPMPD still focus on small and medium industries, as BPPPM only provide services investment licenses with a value below 10 billion rupiah. Moreover, because since the last 5 years of mineral and coal prices decline globally so that the adversely affects the mining industry in Tanah Bumbu Regency. This situation has implications for the transfer of the mining sector into the plantation and fishery.