

The Effect of Domestic Market Obligation (DMO) Policy on Assurance of Domestic Energy Supply Requirements for Power Generating and National Coal Using Industry

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Abstract

Mineral and coal mining is one of non-renewable natural resources and has an important role to fulfill the lives of many people, therefore, its management, whether the ruling system, implementation, supervision and evaluation shall be well accounted for. It is hoped that the blessing of God Almighty could have a value added upon the economic development, create job fields, empower communities, and other multiplier effects. This writing discussed three main points, that are (1) how to regulate energy management in Indonesia in order to meet the domestic needs; (2) how is the national coal mining reserve and resources situation; (3) how is the realization of the Domestic Market Obligation policy in Indonesia. The research method used in this writing is normative legal research method. The analytic method used is qualitative and specified in descriptive research. The research concludes that the concept of establishing the current Domestic Market Obligation policy needs to be reexamined as a government legal policy that its main objective to optimize domestic demand without harming the industrial sector which also implies an increase in electricity rates.

Keywords

coal management; domestic market obligation; legal politic



I. Introduction

The Constitution of the Republic of Indonesia Article 33 paragraph (3) stipulates that "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". This constitutional policy has provided a direction for the development of national natural resources, which are controlled by the state for the prosperity of the people.

According to Aristotle, basically a good state is a state that is governed by a constitution and has the rule of law, where he states that there are three elements if a government is a constitutional government, namely the government is carried out in the public interest, carried out based on the law referring to the provisions of the constitution. general provisions and not laws that are made arbitrarily or violate conventions and the constitution, and the government is carried out at the will of the people.

Indonesia is a legal state based on Pancasila, where each state base in this world has a different foundation from one another. The concept of Pancasila law has its own identity. This legal concept is influenced by the philosophy of life as a nation and state adopted by the citizens of that country. The elements of the Pancasila state law include the protection of human rights, the separation of powers, the administration of government based on statutory regulations (law) and the existence of a State Administrative Court and the rule of law. This is to emphasize that the management of natural resources as the natural wealth of a country on the basis of the gift of God Almighty can be fully controlled by the state

which is intended as much as possible for the prosperity of the people. Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

Law in Indonesia is the basis for the implementation of all state power. To emphasize that all behavior and power must be subject to laws and regulations, then in article 7 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is stated that all citizens have the same position before the law and government and are obliged to uphold the law and government without exception. Thus, it can be said that the Indonesian state fulfills the elements to be called a state of law.

Referring to the explanation of the 1945 Constitution, the term used at that time was *rechtsstaat*. However, Indonesia is a nation that has its own characteristics that are different from every other country in the world.

Prof. Satjipto Rahardjo in his book entitled "State of Law that Makes Its People Happy" states that the state is not only a legal, social, and political building, but also a cultural building in it. So that the conception of a state of law that exists in Indonesia should also not adhere to the concept of a *rechtsstaat* or rule of law, but form a new legal state concept originating from the views and philosophy of life of the Indonesian nation which is known as the state of Pancasila law.

Rule of law can be defined as a system in which the laws are understood by the public, clear in meaning, and applied equally to everyone. The law protects and supports the civil and political liberties that have gained status as universal human rights over the last half century. In particular, anyone suspected of a crime has the right to a prompt hearing and the presumption of innocence until found guilty.

The main institutions of the legal system, including the courts, the prosecutor's office, and the police, must be fair, competent and efficient. Judges are impartial and independent, not influenced or manipulated by politics. Perhaps most importantly, the government is unified in an overarching legal framework, its officials accept that the law will be applied to their own behavior, and the government strives to be law-abiding.

Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia states that the earth, water and natural resources therein are controlled by the state and must be used for the greatest prosperity of the people. Regarding the article, the founding fathers of the State of Indonesia have different opinions in interpreting the article. Mohammad Hatta stated that the meaning of control by the state means that the state is not a business actor, but the state is given the power to form regulations aimed at facilitating the economy accompanied by regulations that prohibit people with capital from exploiting weak people. Herdiansyah Hamzah argues that the legal politics of natural resources are the principles of natural resource management which are used as the official line of state policy regarding law, in the context of establishing and enforcing laws in the field of natural resources, in order to achieve the goal of the greatest prosperity of the people, as mandated by Article 33 paragraph (3) of the 1945 Constitution which states that, "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". Legal politics of natural resources in the sense of achieving the goal of the greatest prosperity of the people, is not only about the duties and responsibilities of the State in realizing prosperity for its citizens, but also ensuring that access, distribution, and benefits of natural resource management can be given to every head. citizens, without exception.

In addition, Rachmad Safa'at stated that today's natural resources have not only become "contested resources, but their control has become the arena of "contested paradigms", in which various answers have been proposed to be used. by policymakers and actors in the field.

Meanwhile, Soepomo had a different opinion from Mohammad Hatta. Soepomo argues that state control means that individuals are only allowed to engage in industries that are not classified as strategic industries and do not have a major influence on the lives of many people. Soepomo is of the opinion that if the state does not exercise control over strategic economic affairs, the economy will fall under the control of individuals so that the people will be oppressed.

Mining and industry are two interrelated sectors. Mining is an upstream process, namely the extraction of natural resources in the form of minerals and coal in the earth which is then continued by industry as a downstream process in the form of processing and utilizing these natural resources. The existence of mining products in the form of minerals and coal can be one of the benchmarks for the independence and progress of a nation. To achieve this progress, it is necessary to have good management of the use and utilization of mineral and coal wealth through development activities.

From an economic perspective, development activities are essentially human activities in exploring and processing natural resources as well as possible with the aim of improving the nation's standard of living (Sudjana, 2018). According to paragraphs 2 and 3 of Article 33 of the 1945 Constitution:

"Production branches which are important to the state and which affect the livelihood of the people are controlled by the state."

"Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

From the quote above, it illustrates that the government has an important role in regulating the use and utilization of important production branches, such as earth, water and other natural resources entirely for the public interest (Rizky Fitria, 2020). As a manifestation of this article, the Indonesian government enacted Law Number 30 of 2007 concerning Energy (Energy Law) and Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law).

The objectives of the Energy Law and the Minerba Law indicate that basically the government must implement policies that can guarantee national energy and coal needs. The level of coal consumption is expected to increase in line with the government's plan to increase electricity supply by implementing the national energy mix in 2025 (Rizky Fitria, 2020). The need for coal in the national energy mix program is estimated to reach 33 percent of the total energy demand. Given the huge potential for state revenue from the mining sector, strict regulation or regulation is needed for the protection of the use of mining goods in Indonesia (Haryadi, 2018). The Minerba Law in Article 5 paragraph (1) explains that for the national interest the government can establish a national policy of prioritizing minerals and/or coal for domestic interests. In order to control domestic coal production, the government establishes a Domestic Market Obligation (DMO) policy.

With the DMO policy, coal producers have an obligation to sell coal for domestic purposes. The government also sets a Coal Reference Price (HBA) policy related to domestic coal prices in order to control coal prices in the electricity sector .

Based on the Decree of the Minister of Energy and Mineral Resources No. 261 K/30/MEM/2019 concerning the Fulfillment of Domestic Coal Needs in 2020 (Kepmen ESDM No. 261/2019), related to the DMO policy for 2020 the Government sets a minimum percentage of DMO to Coal Mining Companies at 25% of the planned total coal

production in 2020 approved by the minister or governor in accordance with their authority.

The issuance of the coal DMO policy is an important reference for industries that use coal so that domestic coal needs are met. The coal DMO of 25% is basically a calculation of the current domestic coal demand which is adjusted to the total RKAB of all mining companies (David Pandu Alkanu, 2020). For companies that do not meet the 25% coal DMO, the government imposes sanctions as stated in the Minister of Energy and Mineral Resources Decree No. 261/2019, namely the obligation to pay compensation for a number of shortfalls in coal sales for domestic purposes.

The problems mentioned above have resulted in the DMO policy being judged not to have a strong legal basis. Therefore, this study aims to analyze government policies in implementing DMO for mining companies.

Mineral and Coal Mining as one of the natural resources as regulated in Law Number 4 of 2009 concerning Minerals and Coal as amended by several provisions of its articles in Law Number 3 of 2020 concerning amendments to Law Number 4 of 2009 concerning Minerals and coal became the main subject. In fact, this Law does not stand alone but is also related to further provisions including the Energy-related Law, the Electricity Law, the Investment Law, the Environmental Law and other derivative regulations.

The problem occurs when the government issues a policy package to secure national energy security which is usually remembered with the domestic market needs (Domestic Market Obligation) which is issued annually by the Minister of Energy and Mineral Resources (ESDM) in order to regulate the amount of domestic coal needs, benchmark prices, the supply scheme including the fines policy to be applied.

Therefore, the author wants to conduct a research entitled "The Effect of Domestic Market Obligation (DMO) Policy on Guaranteed Domestic Energy Supply Needs for Power Generation and National Coal-Using Industry".

II. Research Method

Methods The approach method used in this research is normative legal research, which is a study of secondary data. Normative legal research is also known as doctrinal legal research because the main focus of this research is on values, norms, and regulations in written form.

The method of collecting data from this research is the library method. The library method is a method that seeks to obtain data through literature studies originating from laws and regulations, books, official documents, and publications of previous research results. The research specification that will be used in this research is descriptive method research, which is a study that aims to provide an overview of a problem in a certain time and place.

III. Result and Discussion

3.1 On the Legal Basis of the Energy Sector That Affects Coal Management in Indonesia

Due to its strategic position, it is only natural for the government to issue a number of regulations aimed at controlling national coal management, so that before entering into the main problems and solutions that will be presented, we need to examine in depth what related regulations and how they affect coal management policies in Indonesia related regulations are as follows:

- a. Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, Article 5 paragraph 1:
"For the National Interest, the Central Government after consulting with the House of Representatives of the Republic of Indonesia established a national policy of prioritizing Mineral and/or Coal for domestic interests."
- b. Law Number 4 of 2009 concerning Mineral and Coal, Article 5:
"For the national interest, the Government after consulting with the House of Representatives of the Republic of Indonesia may establish a policy of prioritizing Mineral and/or Coal for domestic interests; Further provisions regarding the prioritization of minerals and/or coal for domestic purposes as referred to in paragraph (1) and control of production and exports as referred to in paragraphs (2) and (3) shall be regulated by a Government Regulation."
- c. Law Number 30 of 2007 concerning Energy, Article 3:
"One of the objectives of energy management is to provide energy sources from within the country to meet domestic energy needs"
- d. Government Regulation Number 8 of 2018 concerning the Fifth Amendment to Government Regulation Number 23 of 2010 concerning the Implementation of Minerba Mining Business Activities, Article 85 A, namely:
"In the context of fulfilling the need for coal for domestic purposes as referred to in Article 84 paragraph 1, the Minister shall determine the selling price himself".
- e. Government Regulation Number 23 of 2010 concerning the Implementation of Mining and Coal Business Activities, Article 92 states that:
"The Minister controls the sale of Mineral and Coal by holders of IUP OP Mineral or coal and IUPK OP Mineral or coal; Control of Sales of Mineral or Coal as referred to in paragraph (1) is carried out to:
 - i) *fulfill the supply of domestic mineral and coal needs,*
 - ii) *stability of Mineral and Coal prices**Further provisions regarding procedures for controlling sales of Mineral and Coal are regulated by a Ministerial Regulation."*
- f. Presidential Regulation Number 2 of 2006 concerning National Energy Policy, Article 2 letter b paragraph 3:
"The realization of the optimal (primary) energy mix in 2025, namely the role of coal for national energy consumption to be more than 33% (thirty three percent)."
- g. Minister of Energy and Mineral Resources Regulation Number 34 of 2009 concerning Prioritizing the supply of mineral and coal needs for domestic interests, Article 2:
"Mineral and coal mining business entities must prioritize the supply of mineral and coal needs for domestic interests".
- h. Minister of Energy and Mineral Resources Regulation Number 25/2018 concerning Mineral and Coal Mining Business, article 32:
"The minister controls the sale of minerals and coal to ensure the supply of mineral and coal needs to the country."
- i. Decree of the Minister of Energy and Mineral Resources Number 261 K/30/MEM/2019 concerning the Fulfillment of Domestic Coal Needs in 2020, First Dictum *"Stipulates the minimum percentage of coal sales for domestic purposes (DMO) to holders of Mining Business Permits for Coal Production Operations, Special Mining Operation Permits Coal Production, and Coal Mining Concession Work Agreements for the Production Operation stage are 25% of the planned 2020 total coal production approved by the minister or governor in accordance with their respective authorities."*

3.2 Conditions of the National Coal Industry

a. Balance of Coal Resources and Reserves

Preparation of the national coal balance is derived from the results of exploration activities carried out by the government and business entities. Based on data from the Center for Coal and Geothermal Mineral Resources (PSDMBP) of the Ministry of Energy and Mineral Resources, as of July 2020 Total Coal Resources reached 89.55 billion Tons in 519 locations throughout Indonesia while Total Reserves amounted to 24.76 billion tons with estimated reserves of 11.11 billion tons and proven reserves of 13.65 billion tons.

Total Coal Resources and Reserves are currently categorized into 2 (two), namely: Total Coal Reserves and Verified Total Resources. Verified coal resources and reserves are coal resources and reserves, total coal reserves and resources originating from government exploration activities (PSDMBP) and the results of *Competent Person* on business entity investigations. The balance of coal resources and reserves is updated monthly and released every 6 (six) months in January and July every year.

We need this information to see the position that coal reserves in Indonesia are currently running low, so it is only natural that the government focuses on mineral and coal management activities for the needs of the domestic industry, whether it will be used for power generation systems and/or other industries that use coal as a source of energy. source of energy. The government has been very precise in setting price benchmarks, forcing supply for power plants to every coal-producing company with the aim of controlling exports.

This indicates that the government's enthusiasm for overseeing the regulation of the energy sector, especially in the coal sector, has begun to lead to the fulfillment of domestic consumption, but of course there are many things that need to be criticized in this process, such as the unclear exact needs of domestic needs, this is influenced by changes in production, the ability to consume power plants and domestic industries that use coal, changes in coal prices that cannot be controlled by the government because they have to follow developments in world prices, conditions of political, economic and security stability that have not been properly maintained can also affect coal production. . Furthermore, a special discussion related to coal production will be described in detail with the aim of seeing whether the balance of coal reserves resources with the existing condition of coal production is adequate in the current conditions in maintaining domestic needs or is still in doubt so that in the policy-making stage there are no fatal errors. impact on the nation, state and society at large.

b. The Coal Production

The Ministry of Energy and Mineral Resources of the Republic of Indonesia has set a 2020 national coal production target of 550 million tons. Of this amount, mining companies are required to supply coal to the country or *Domestic Market Obligation* (DMO) of 155 million tons.

*Source, Presentation Material for the Indonesian Coal Mining Association



As of May 2020, the Ministry of Energy and Mineral Resources noted that the realization of coal production reached 228 million tons or 42% of the set plan, while the realization of coal use for domestic purposes (DMO) reached 53.55 million tons.

As of this writing, based on MODI Mineral and Coal data from the Ministry of Energy and Mineral Resources of the Directorate General of Mineral and Coal, the realization of coal until the 2nd week of December 2020 has reached 514.2 million (five hundred fourteen point two million tons). This realization has reached 93.49 percent (ninety-three-point forty-nine percent) of the target set this year, which is 550 (five hundred and fifty million tons).

Meanwhile, the realization of new coal exports reached 281.17 million tons or 71.18 percent of this year's export target which was set at 395 million tons. The realization of domestic *market obligation* (DMO) has only reached 108.45 million tons or 69.97 percent of this year's target. This year, the DMO fulfillment is planned to reach 155 million tons.

c. Indonesian Coal Market

If we refer to the obligation to determine the *Domestic Market Obligation* of 25% (twenty five percent), it means that the remaining 75% (seventy five percent) is intended for export (overseas) needs. This means that a number of countries that consume Indonesian coal have considerable control in determining prices, therefore it is time for this export destination to begin to be reduced by the way the government increases the domestic market through power plants and/or other industries that can develop.

d. Operational

Viewing from the operational side, and the existing regulations, the types of calories and the level of operational difficulty in Indonesia vary, the distribution of coal is mostly located in Kalimantan and Sumatra Island, while coal for domestic needs is mostly consumed in the islands of Java and Bali. This means that it requires a large additional cost only for the transportation component of coal management.

The impact of this operation on the Domestic Market Obligation policy is that the government does not regulate domestic needs regionally, for example coal from Kalimantan can be directed to Sumatra while coal in Sumatra is directed to Kalimantan,

Java and other areas. The thing that needs to be criticized here is that the government should immediately decide if an area has a steam power plant industry and/or other industries that consume coal, it is easier to cooperate so that it does not cause a high cost burden where the effect on electricity tariffs becomes more expensive and the resulting product industry will also be expensive because it must be converted to production costs.

e. Conservation

Conservation of minerals is essentially an effort to protect, repair and use minerals wisely which can provide high economic and social benefits, preserve environmental functions, and ensure sustainable development for the community.

In terms of conservation, this is also related to the *Domestic Market Obligation policy*, where the policy of an industry in a certain area that has mineral and coal reserves gets priority according to the existing coal calories. For example, in the Aceh area, there are low quality coal calories, so the government strives for the coal to be produced and develop electricity generators and/or other industries and adjust generating machines or *engineering* so that they can be utilized optimally. The goal is also to minimize production costs and create new industrial growth.

f. Multiplier Effect Economic

As has been discussed in the background, this coal has a high added value and becomes the livelihood of many people. Some of the positive impacts that can be felt apart from its main goal as the cheapest energy to produce electricity is the creation of jobs. Job opportunities are spread widely to the regions considering that the location of coal resources is mostly located in locations far from urban areas, so this provides opportunities for local residents.

Besides that, it can increase state revenue, through royalty payments, non-tax state revenues, the tax system, donations of *corporate social responsibility* (CSR) funds that can be directly felt.

Local economic growth where every company that is present in an area certainly needs a partner, this is what makes the presence of a mining company not only beneficial for one or two workers but also for other companies that can benefit their employees in a larger way as well.

Of course, Good *Mining Practices*, namely managing mining with good principles, paying attention to environmental and social impacts in a responsible manner, will provide great benefits for the presence of a mining company.

4.3. Challenges in Fulfilling Domestic Market Obligations

In carrying out efforts to fulfill this DMO, the company has a number of challenges that must be faced, including:

1) Differences in coal specifications

As is well known, currently Domestic Power Plants require a Calorie specification of Coal with an average quality above 4,200 GAR, where not all domestic coal producers can meet these specifications. Meanwhile, nationally, 80% of the DMO is allocated for the use of power plants.

2) Tender Competition Tender

requirements are a major factor in fulfilling domestic coal supply requirements, several obstacles such as competition between companies that have specifications according to PLN standards, inequality between coal producers who have just started production and

companies that have been in production for a long time, natural conditions, lack of supporting infrastructure and limited supply needs is a challenge in itself.

3) Oversupply

There are a number of companies that have fulfilled their coal supply of more than 25% into the country from their planned production, this can also limit other companies that are still trying to achieve 25% DMO absorption. The government also needs to adjust supply limits so that they are evenly distributed among other coal producers.

4) Quota Transfer Mechanism The

The solution of the quota transfer mechanism is considered inappropriate because it forces business actors to arrange agreements whose commercial value also has no impact on the state. Until now, the technical guidelines and the mechanism for transferring quotas have not been clearly regulated, so there could be potential for unhealthy practices and harm to certain parties.

With the issuance of the Minister of Energy and Mineral Resources No. 261 K/30/MEM/2019 concerning the Fulfillment of Domestic Coal Needs in 2020, the quota transfer solution for companies that do not meet the DMO has been abolished. The government will then formulate a fine policy which will be further regulated.

5) Limited Domestic Industry

There is still limited domestic industry, especially in certain areas which causes no demand for coal uptake. Meanwhile, the presence of coal companies is still expected to spur regional economic growth and increase state revenues.

IV. Conclusion

Based on the discussion that the author has conveyed, the author has several conclusions from the legal research that the author has done.

The spirit of supporting the National Energy policy through the use of coal for the benefit of domestic power plants and industries has become the support of all Indonesian coal producers. It is hoped that the determination of policies on quota restrictions and other consequences need to pay attention to the sustainability of coal producers who have different characteristics, ranging from calorie quality, internal conditions of each company and the challenges in each different area;

The government's enthusiasm in prioritizing coal for domestic needs has started well by changing a number of policies that are not well targeted, such as the imposition of fines for companies that do not meet specifications, requiring priority for domestic power plants and setting price limits that can be adjusted accordingly.

The target for the need for Domestic Market Bonds is set every year by looking at the development of the domestic industry.

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