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A GROUP COMPANY RESTRICTION ON EXPANSION REGULATION IN MINING SECTOR IN INDONESIA

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ABSTRACT

The past ten years, coal mining industry in Indonesia develop very rapidly. Coal mining industry becomes the strong magnet for investors and coal companies who submitted for the Mining License (IUP) as a result from high demand of coal supply to be used as energy supplier in the future. The Government has set up the development project of 35.000MW power plant. in the Law No. 4 Year 2009 there is a regulation regarding the buoying of the company's expansion which related with the Maximum Area's Coverage of Mining License (IUP) given by the Government to the company as well as the time limit of the Mining License. Furthermore, in the Law No. 5 Year 1999 regarding Monopoly and Unfair Business Competition also mention the company's buoying. In their activities, companies are not allowed to do 3 things; forbidden covenant, forbidden activities, and dominant position. Meanwhile, the Law No. 40 Year 2017 regarding the Limited Liability and the Law No. 25 Year 2007 regarding Capital Investment do not regulate those issues. As the result, mining companies expand their business through the new company establishment, acquisition, merger, and joint venture. Of course those ways of company's expansion will lead to the implication of monopoly and unfair business competition, considering the increasing numbers of new companies. However, the total production form the top 5 coal mining group companies has not reach 75% of national production, thus, according to the Law no. 5 Year 1999 article 4 paragraph 2, the company's expansion do not implicate on the monopoly and unfair business competition.

Key words : Expansion Regulation, Expansion Practice, Fairness in Competition

Introduction

Economic development in the First Long-Term Development has produced a tremendous amount of progress with, among others, the improvement of the public welfare. The above mentioned development progress was motivated by development policies in various sectors, including economic development policy stipulated in the Broad Outlines of the Nation's Direction and the Five Year Development Plan, and various kinds of other economic policies. Although there has been a lot of progress achieved during the First Long Term Development which was shown by high economic growth, there are still many challenges or problems, along with the tendency of economic globalization and the dynamics and development of private business since the early 1990's.

In reality, business opportunities created during the past three decades have not been able to empower and enable the whole population to participate in the development of various economic sectors. The development of private business during that period on one hand was marred by all kinds of inefficient Government policies that caused market distortion. On the other hand, the development of private business in reality occurred mostly due to the condition of unfair business competition. The above phenomena was developed and supported by a close relationship between the decision makers and entrepreneurs, either directly and indirectly, making the condition much worse. The implementation of national economy has not been quite in accordance with the mandate under Article 33 of the 1945 Constitution, and tends to be very monopolistic (Elucidation of The Law of The Republic of Indonesia No. 5 of 1999 Concerning The Ban on Monopolistic Practices and Unfair Business Competition).

The entrepreneurs who have been close to the ruling elite acquired excessive privileges that created a social gap. The emergence of conglomeracy and a small group of strong entrepreneurs without being supported by a spirit of true entrepreneurship was one of the factors that caused the economic stamina to become very fragile and unable to compete. Considering the aforementioned situation and conditions, we are obligated to observe and restructure business activities in Indonesia, so that the business world may grow and develop in a fair and proper manner, thus creating a fair business competition climate, and prevent centralization of economic power against an individual or certain groups in the form of, among others, monopolistic practices and unfair business competition which cause damage to the public and which are in contradiction with the goals of social justice (Elucidation of The Law of The Republic of Indonesia No. 5 of 1999).

In general, the materials of this Law Concerning the Ban on Monopolistic Practices and Unfair Business Competition has 6 (six) provisions consisting of :

1. Prohibited Contracts;
2. Prohibited Activities;
3. Dominant Position;
4. Business Competition Supervisory Commission;
5. Legal Enforcement;
6. Other Provisions.

The Law of The Republic of Indonesia No. 5 of 1999 Concerning The Ban on Monopolistic Practices and Unfair Business Competition based on Pancasila and the 1945 Constitution and based on economic democracy by observing the balance between interest of the entrepreneurs and interests of the public with the intention to: protect the public interest and consumers; create conducive business competition by creating a healthy business competition; and create effectiveness and efficiency in business activities in order to promote national economic efficiency as one of the means to improve the public welfare.

Dynamics of the development of group companies especially those engaged in the coal sector, there are only a handful of group companies that control the national coal production. Such conditions can not be allowed to continue to continue because there will be a great inefficiency, thus harming the business competition climate. Monopolistic practices and unfair business competition are assumed to be risky, given the business expansion of group companies through its subsidiaries in the coal mining sector is still ongoing until now. Therefore, a legal product is required that can prevent or minimize the mastery of production and marketing of coal by a particular group or group.

In article 1 the Law of The Republic of Indonesia No. 5 of 1999 Concerning The Ban On Monopolistic Practices and Unfair Business Competition, monopoly is the control of production and/or marketing of certain goods and/or use of services by one entrepreneur or a group of entrepreneurs, monopolistic practices is the centralization of economic power by one or more entrepreneurs causing the control of production and/or marketing of certain goods and/or services, resulting in an unfair business competition and can cause damage to the public interests. Unfair business competition is the competition among entrepreneurs in conducting their production activities and/or in marketing goods and/or services, conducted in a manner which is unfair or contradictory to the law or hampering business competition.

It should be emphasized that as long as the company does its business activities are not contradictory to the prevailing laws, the business actor does not violate the regulation of monopoly practice and unfair business competition. This is stated in Article 50 paragraph a of the Law of The Republic of Indonesia No. 5 of 1999 Concerning The Ban On Monopolistic Practices and Unfair Business Competition, stating that: Exempted from the provisions of this law are : actions and/or contracts with the intention to implement the existing law.

The coal mining sector is vulnerable to monopolistic practices and unhealthy business competition, both in the area of ownership, share ownership and marketing of coal. The phenomenon that occurs in the mining sector is currently the mastery by companies in the form of groups. Indonesia does not yet have a legislation that regulates specifically about group companies. The corporate governance framework incorporated in the group companies still uses a single company approach. Therefore, until now there has been no juridical recognition of the group companies (Sulistiowati, 2010).

Departing from the absence of legislation governing the group company, making the authors raised the topic or discussion about the existence of group companies, especially in the coal mining sector. The existence of group companies in the coal mining sector becomes important and a serious concern by the authors considering the expansion of these companies continue to occur until now, on the other hand there is no specific rules governing the company group. The continuing expansion of the group companies in the coal mining sector has caused the writer to fear that monopoly practices and unfair business competition will occur. Therefore, the authors will analyze and analyze the expansion of the group companies in the coal mining sector based on the laws and regulations, among others: the Constitution of the Republic of Indonesia Year 1945, The Law of The Republic of Indonesia Number 4 of 2009 Concerning Mineral and Coal Mining, the Law of The Republic of Indonesia No. 5 of 1999 Concerning The Ban On Monopolistic Practices and Unfair Business Competition.

Research Problems

Based on the background of the study, the writer has formulated the research problems as follows : What is the regulation of limiting the expansion of group companies in the coal mining sector?

Research Methods

Based on the features of legal research, Soekarno (1986;10) categorizes it into three types, namely:

1 Exploratory research is conducted if knowledge about a phenomenon that will be investigated is none or still lacking;
2 Descriptive study is done to provide accurate data about people, circumstances, or other symptoms;
3 Explanatory research is research that is intended to test specific hypotheses.

Viewing from the objectives, legal research is divided into two categories (Soekarno & Mamudji, 2003;14) they are:

1) The literature research is done by researching library materials or secondary data.
2) The empirical or sociological legal research is conducted primarily by examining primary data.

Based on the category of the types of research, this research employed descriptive design that is intended to provide a clear picture of a country's reasons to issue a travel warning to a state in the perspective of international law. The objective of the present research is normative law, of which the data were obtained through the study of documents or literature by examining library materials, such as: books, international conventions, international agreements, papers, journals, articles, newspapers as well as internet sites related to the object under study.

Research is a scientific activity that is related to the analysis and construction done methodically, systematically and consistently. Methodological means in accordance with a method or a certain way, systematic is based on a system, while consistent means

the absence of contradictory things within a certain framework. (Soerjono Soekanto, 2012). This research is descriptive research that provides the data as accurately as possible about the Regulation Of Expansion Restriction Of Group Company In Mining Sector In Indonesia and this research is a normative research is legal research done by researching library materials or secondary data. The data were analyzed qualitatively is this analysis want to find the truth based on the value or quality of data obtained through the process: collecting the data, the data were then grouped according to the object, the data that have been classified was then outlined and explained, then data described further in the evaluation using legal provisions that apply to see conformity or vice versa and then compared, and establish conclusions and ius constituendum.

Understanding the Company
The Law of The Republic of Indonesia Number 40 of 2007 Concerning Limited Liability Companies, explained that :

> *"Limited Liability Company" (hereinafter called a "Company") means a legal entity which constitutes an alliance of capital established pursuant to a contract in order to carry on business activities with an authorised capital all of which is divided into shares and which fulfils the requirements stipulated in this Act and its implementing regulations.*

Article 2 of The Law of The Republic of Indonesia Number 40 of 2007 Concerning Limited Liability Companies also explained that:

> *Companies must have a purpose and objective and business activities which do not conflict with the provisions of legislative regulations, public order, and/or morality.*

This implies that no matter what kind of business, the company may not engage in activities that violate the laws and regulations. In addition, for companies that run their business in the field of natural resources, the company has the obligation of social responsibility and environment. This is explained in Chapter V Environmental and Social Responsibility, Article 74 Law of The Republic of Indonesia Number 40 of 2007 Concerning Limited Liability Companies, that :

(1) Companies doing business in the field of and/or in relation to natural resources must put into practice Environmental and Social Responsibility.
(2) The Environmental and Social Responsibility contemplated in paragraph (1) constitutes an obligation of the Company which shall be budgeted for and calculated as a cost of the Company performance of which shall be with due attention to decency and fairness.
(3) Companies who do not put their obligation into practice as contemplated in paragraph (1) shall be liable to sanctions in accordance with the provisions of legislative regulations.
(4) Further provisions regarding Environmental and Social Responsibility shall be stipulated by Government Regulation.

Company Expansion
The company must make a breakthrough in order to maintain its continuity through business development investment or more commonly known as corporate expansion. Expansion is a manifestation of the desire to maintain the existence of the company in the long term. The company was not established with a view to stop after earning a temporary profit. Expansion is done to provide growth for the company. Expansion is to enlarge the company either by establishing a new business with new products or products that already exist elsewhere or also increase the production of goods that have been produced.

Companies that want to maintain their survival must be sensitive to opportunities and threats. It is intended as part of efforts to achieve a better corporate life by meeting the needs of consumers. Bambang Riyanto explained in the context of expansion, there are two main motives underlying a company to expand, namely economic motives and psychological motives (Riyanto, 1999).

Group Company
Group companies have an increasingly important role in business activities in Indonesia. Group companies become the most widely chosen business entities in Indonesia. Group companies are an arrangement of companies that are juridically independent and one with another is an economic entity led by the parent company (Emmy Pangaribuan Simanjuntak; 2008).

Accroding to wikipedia, a corporate group or group of companies is a collection of parent and subsidiary corporations that function as a single economic entity through a common source of control. The concept of a gorup is frequently used in tax law, accounting and (less frequently) company law to attribute the rights and duties of one member of the group to another or the whole (http://en.wikipedia.org/wiki/Corporate_ group).

National Institute of Statistics and Economic Studies, A group of companies is an economic entity formed of a set of companies which are either companies controlled by the same company, or the controlling company itself. Controlling a company means having the power to appoint the majority of its directors. The control of company A by company B may be direct (company B directly holds the majority of voting rights on the management board of company A) or indirect (B controls intermediate companies C, D or E, etc, which it can ask to vote the same way on the management board of A, thereby obtaining a majority of rights) (National Institute of Statistics and Economic Studies).

The South African Institute of Chartered Accountants (SAICA), group company is a group of companies as two or more companies that share a holding company or subsidiary relationship. A holding company in relation to the subsidiary is defined as a juristic person or undertaking that controls a subsidiary. Therefore the determination of whether a company is a holding company depends on one of the following:

1. The ability of the holding company to directly or indirectly exercise, or control the exercise of, a majority of the general voting rights at a general meeting, or
2. The right to appoint or elect, or control the appointment or election of, directors of that company who would control a majority of the votes at a board meeting, or
3. All the general voting rights associated with issued securities of the company are held or controlled by persons contemplated in (1) and (2) (The South African Institute of Chartered Accountants (SAICA).

Understanding Monopoly
Article 1 paragraphs a and b Law No. 5 Year 1999 describes the definition of monopoly and monopoly practice Law of The Republic of Indonesia No.5 of 1999 Concerning The Ban on Monopolistic Practices and Unfair Business Competition. Chapter I General Provisions Article 1. In this Law, that which is intended by:

1. Monopoly is the control of production and/or marketing of certain goods and/or use of services by one entrepreneur or a group of entrepreneurs.
2. Monopolistic practices is the centralization of economic power by one or more entrepreneurs causing the control of production and/or marketing of certain goods and/or services, resulting in an unfair business competition and can cause damage to the public interests.

In chapter III Prohibited Contracts Part One Oligopoly Article 4 Law of The Republic of Indonesia No.5 of 1999 Concerning The Ban on Monopolistic Practices and Unfair Business Competition :

(1) Entrepreneurs are prohibited from making any contracts with other entrepreneurs with the intention to jointly control the production and/or the marketing of goods and services that can cause monopolistic practices and/or unfair business competition.

(2) Any entrepreneur can be suspected or considered as jointly controlling production and/or marketing of goods and/or services, as referred to under Paragraph (1) of this article, if two or three entrepreneurs or groups of entrepreneurs own more than 75% (seventy five percent) of the market share of one type of certain goods or services.

In chapter IV Banned Activities Part One Monopoly Article 17, Explained that :

(1) Entrepreneurs are prohibited from controlling any production and/or marketing of goods and/or services that can cause monopolistic practices and/or unfair business competition.

(2) Entrepreneurs can be suspected or considered as controlling production and/or marketing or goods and/or services as referred to under Paragraph (1) of this article if: the said goods and/or services do not have substitutions at that time; or it cause so ther entrepreneurs to not beabletoenter business competitionfor the same type of goods and/or services; or one entrepreneur or one group of entrepreneurs controls more than 50% (fifty percent) of the marketing share of one type of certain goods or services.

Restrictions on Expansion of Group Companies Reviewed From The Law of The Republic of Indonesia Number 40 of 2007 Concerning Limited Liability Companies

The phenomenon of the existence of companies that join and tied to each other in a group grows in the last decade both nationally and internationally. Law no. 40 of 2007 on Limited Liability Company does not explicitly regulate the limitation of expansion or establishment of a company. Brief Law No. 40 Year 2007 specially in Article 16 explains that companies may not use names which : have been lawfully used by another Company or are in principle the same as the name of another Company; conflict with public order and/or morality; are the same as or similar to names of state institutions, government institutions, or international institutions, except with the permission of those concerned; are not in accordance with the purpose and objective and business activities or merely show the purpose and objective of the Company without its own name; have the meaning Company, legal entity, or civil association. The name of the Company must be preceded by the phrase "*Perseroan Terbatas*" (Limited Liability Company) or the abbreviation "PT". In the case of a Public Company, apart from the provisions contemplated in paragraph (2) being applicable, the abbreviation "Tbk" must be added at the end of the Company's name. Further provisions regarding the procedures for the use of Company names shall be stipulated by Government Regulation.

The Law of The Republic of Indonesia Number 40 of 2007 Concerning Limited Liability Companies, explains that : "Merger" means a legal action taken by one or more Companies to merge with another existing Company with the result that the assets and liabilities of the merging Companies pass by operation of law to the surviving Company and thereafter the merging Companies' status as legal entities ceases by operation of law.

Further Article 1 point 10 explains below : "Consolidation" means a legal action taken by two or more Companies to consolidate themselves by means of establishing a new Company which by operation law obtains the assets and liabilities of the consolidating Companies and the consolidating Companies' status as legal entities ceases by operation of law. Article 1 point 11 also explains that : "Acquisition" means a legal action taken by a legal entity or individual person to acquire shares in a Company resulting in the passing of control of the Company. In addition, article 1 point 12 explains that: "Demerger" means a legal action taken by a Company to demerge its businesses resulting in all of the assets and liabilities of the Company passing by operation of law to 2 (two) or more Companies or a part of the assets and liabilities of the Company passing by operation of law to 1 (one) or more Companies.

Discussions on mergers, consolidations, acquisitions and segregation are described in Chapter VIII Mergers, Consolidations, Acquisitions, And Demergers of Law no. 40 of 2007, article 122 explains that:

(1) Mergers and Consolidations shall cause the merging or consolidating Company to expire by operation of law.
(2) The expiry of the Company contemplated in paragraph (1) shall occur without any prior liquidation.
(3) In the event of the expiry of the Company contemplated in paragraph (2),
    a. the assets and liabilities of the merging or consolidating Company shall pass in law to the surviving Company or the consolidated Company;
    b. shareholders of the merging or consolidating Company shall by operation of law become shareholders of the surviving or consolidated Company;
    c. the merging or consolidated Company shall expire by operation of law as from when the Merger or Consolidation comes into effect.

In the case of merger, the directors of the Company that will merge and accept the Merger shall draw up the proposed Merger. The design of the merger contains several points, among others (Article 123, The Law of The Republic of Indonesia Number 40 of 2007 Concerning Limited Liability Companies) :
(1) The Board of Directors of the merging Company and surviving Company shall compile a draft Merger.
(2) The draft Merger contemplated in paragraph (1) must contain at least:
    a) the name and domicile of each Company in the Merger;
    b) the reasons and explanations of the Board of Directors of the Companies in the Merger and the Merger requirements;
    c) procedures for the valuation and conversion of shares in the merging Company into shares of the surviving Company;
    d) the draft for any amendment of the articles of association of the surviving Company;
    e) the financial reports contemplated in Article 66 paragraph (2) subparagraph a covering the last 3 (three) financial years from each of the Companies in the Merger;
    f) the plans for continuing or terminating the business activities of the Companies in the Merger;
    g) a pro forma balance sheet of the surviving Company in accordance with accounting principles generally applied in Indonesia;
    h) method of settlement of the status, rights and obligations of the members of the Board of Directors, Board of Commissioners and employees of the merging Company;
    i) method of settlement of the rights and obligations of the merging Company against third parties;
    j) method of settlement of the rights of shareholders who do not agree to the Merger of the Companies;
    k) names of the members of the Board of Directors and Board of Commissioners and the wages, honoraria, and allowances for members of the Board of Directors and Board of Commissioners of the surviving Company;
    l) estimated period for implementation of the Merger;
    m) report on the circumstances, development and results achieved of each of the Companies in the Merger;
    n) main activities of each Company in the Merger and changes which occurred in the current financial year; and
    o) details of problems arising during the current financial year which affected the activities of the Companies in the Merger.

In the case of a company consolidation, any provision contained in Article 123 shall also be made, in accordance with Article 124 explaining that : the provisions contemplated in Article 123 shall mutatis mutandis also apply to consolidating Companies.

Meanwhile, the acquisition of a company is described in Article 125, namely :
(1) Acquisitions shall be done by means of acquisition of shares already issued and/or to be issued by the Company via the Company's Board of Directors or directly through the shareholders.
(2) Acquisitions may be done by legal entities or by individuals.
(3) The acquisitions contemplated in paragraph (1) are acquisitions of shares which cause the passing of control over the Company.
(4) Acquisitions by legal entities in the form of a Company [*sic*], the Board of Directors before performing the legal action of acquisition must be based on [*sic*] a GMS resolution which fulfils the quorum and provisions on conditions for adoption of a GMS resolution as contemplated in Article 89.
(5) In the event that the Acquisition is performed through the Board of Directors, the acquiring party must present its intention of performing an Acquisition to the Board of Directors of the Company to be acquired.
(6) The Board of Directors of the Company to be acquired and the acquiring Company with the approval of their respective Boards of Commissioners shall compile a draft Acquisition containing at least:
    a. name and domicile of the acquiring Company and the Company to be acquired;
    b. the reasons and explanations of the Board of Directors of the acquiring Company and the Board of Directors to be acquired;
    c. the financial reports contemplated in Article 66 paragraph (2) subparagraph a for the most recent financial year of the acquiring Company and the Company to be acquired;
    d. procedures for valuation and conversion of shares of the Company to be acquired into exchange shares if payment for the acquisition is to be made by shares;
    e. the number of shares to be acquired;
    f. preparation of funding;

g. pro forma consolidated balance sheet of the acquiring Company after the Acquisition compiled in accordance with accounting principles generally applied in Indonesia;
h. method of settlement of rights of shareholders who do not agree to the Acquisition;
i. method of settlement of the status, rights and obligations of members of the Board of Directors, Board of Commissioners, and employees of the Company to be acquired;
j. estimate of the period of implementation of the Acquisition, including the period for granting a power of attorney from the shareholders to the Company's Board of Directors to assign shares;
k. draft of any amendment of the articles of association of the Company resulting from the Acquisition.

(7) In the event of shares being acquired directly from shareholders, the provisions contemplated in paragraphs (5) and (6) shall not apply.
(8) The acquisition of shares contemplated in paragraph (7) must be subject to the provisions of the articles of association of the Company to be acquired concerning the transfer of rights over shares and contracts made by the Company with other parties.

Implementation of mergers, consolidations, acquisitions, or segregation will be successful if it meets certain conditions. The provision is contained in Article 127 that :

(1) GMS resolutions regarding Mergers, Consolidations, Acquisitions, or Demergers shall be valid if adopted in accordance with the provisions of Article 87 paragraph (1) and Article 89.
(2) The Boards of Directors of Companies in Mergers, Consolidations, Acquisitions, or Demergers must publish an abstract of the draft in at least 1 (one) Newspaper and publish it in writing to the employees of the Company in the Merger, Consolidation, Acquisition, or Demerger no later than 30 (thirty) days before the invitations to the GMS.
(3) The publication contemplated in paragraph (2) must also contain notice that interested parties may obtain the draft Merger, Consolidation, Acquisition, or Demerger at the Company's office as from the date of its publication to the date on which the GMS is convened.
(4) Creditors may submit objections to the Company within a period of not more than 14 (fourteen) days after the publication contemplated in paragraph (2) with regard to the Merger, Consolidation, Acquisition, or Demerger in accordance with the draft.
(5) If within the period contemplated in paragraph (4) no creditors have submitted any objection, the creditors will be deemed to have approved the Merger, Consolidation, Acquisition, or Demerger.
(6) In the event that a creditor's objection as contemplated in paragraph (4) cannot be resolved by the Board of Directors as of the date on which the GMS is convened, the objection must be presented in the GMS in order to find a resolution.
(7) Until the resolution contemplated in paragraph (6) is achieved, the Merger, Consolidation, Acquisition, or Demerger cannot be performed.
(8) The provisions contemplated in paragraphs (2), (4), (5), (6), and (7) shall apply mutatis mutandis to publication in the context of Acquisition of shares directly from shareholders in the Company as contemplated in Article 125.

Meanwhile, separation can be done in 2 ways. This is stated in Article 135, namely :

(1) Demergers may be carried out by means of:
a pure Demerger; or
a partial Demerger.
(2) A pure merger as contemplated in paragraph (1) subparagraph a causes all of the assets and liabilities of the Company to pass by operation of law to 2 (two) or more other transferee Companies and the Company demerging its business expires by operation of law.
(3) A partial Demerger as contemplated in paragraph (1) subparagraph b causes part of the assets and liabilities of the Company to pass by operation of law to one or more other transferee Companies but the demerging Company remains in existence.

Restrictions on Expansion of Group Companies Reviewed From Law of The Republic of Indonesia Number 4 of 2009 Concerning Mineral And Coal Mining.

That minerals and coal contained within mining jurisdiction of Indonesia are nonrenewable natural riches God Almighty has granted, and have important roles in meeting the life of many people; therefore, the management thereof is subject to control by the State to bring real added value to the national economy in efforts to arrive at public welfare and prosperity in a just manner. That mineral and coal mining business activities that constitute mining business activities other than geothermal, petroleum and natural gas, and ground water have important roles in bringing continuously real added value to the national economic growth and development in regions.

Article 33 section (3) of the 1945 Constitution asserts that the land, the waters, and the natural riches contained therein shall be controlled by the state and exploited in the greatest prosperity of the people. Given minerals and coal as natural riches contained in the land are nonrenewable natural resources, the management thereof needs to be optimally conducted in efficient, transparent, sustainable, environmentally-sound, and just manners in order to reap the continuous benefits in the greatest prosperity of the people. In article 1 Law of The Republic of Indonesia Number 4 of 2009 Concerning Mineral And Coal Mining. In this Law: "Mining"means a part or all of stages of research, management and business of minerals and coal, which include general surveys, explorations, feasibility studies, construction, mines, processing and refining/smelting, transportation and sale as well as postmining activities. "Mineral"means any naturally occurring inorganic compound that has a definite chemical composition

and specific physical properties as well as an ordered crystal structure, or a combination thereof that forms rock [ore], either separated or embedded. “Coal” means any sedimentary organic carbon compound that is formed naturally from the remains of plants. “Mineral Mining” mean sanyminingof mineral assemblages in the form of ores or rocks other than geothermal, petroleum and natural gas as well as ground water.

“Coal Mining”means any mining of carbon sediments found in the earth, including solid bitumen, peat, and asphalt rocks. “Mining Zone,”here in after called a “WP,” means a zone that has potential minerals and/or coal and is not bound by governmental administrative boundaries as part of the national spatial planning. “Mining Area,” hereinafter called a “WUP,” means a part of a Mining Zone that already has data, potential, and/or information about geology available. “Mining Permit Area,”here in after called a “WIUP,” means an area that is authorized to an IUP holder. “Small-Scale Mining Area,” here in after called a “WPR,” means a part of a Mining Zone where small-scale mining activities are carried out. “State Reserve Area,” hereinafter called a “WPN” means a part of Mining Zone that is reserved in the interest of national strategy. “Special Mining Area,” hereinafter called a “WUPK,” means a part of a State Reserve Area that may be commercialized.

In chapter V Mining Zones Part One General Article 9, Mining Zones as part of the national spatial planning shall be a foundation on which mining activities are determined. Mining Zones as intended by section (1) shall be determined by the Government upon coordination with the regional governments and consultation with the House of Representatives of the Republic of Indonesia. Article 10 : Mining Zones as intended by Article 9 section (2) shall be determined:

a. In transparent, participatory, and responsible manners;
b. Integratedly with due regard to the opinions of the relevant government agencies, the public, and in consideration of ecological, economic, and socio-cultural aspects as well as environmental-soundness; and
c. With due regard to regional aspirations.

In article 11 that : the Government and regional governments must conduct mining surveys and research in preparation for Mining Zones. Article 12 Ancillary provisions on boundaries, size, and mechanisms of determination of Mining Zones as intended by Article 9, Article 10, and Article 11 shall be governed by regulation of the government. Article 13 Mining Zones shall include: a. Mining Areas ; b. Small-Scale Mining Areas; and c. State Reserve Areas. Mining Areas Article 14, that :

(1) Mining Areas shall be determined by the Government upon coordination with the regional governments, and shall be delivered in writing to the House of Representatives of the Republic of Indonesia.
(2) Coordination as intended by section (1) shall be made with the regional governments concerned under data and information possessed by the Government and regional governments.

In article 15, that : The Government may delegate its partial authority in the determination of Mining Areas as intended by Article 14 section (1) to the provincial governments under provisions of laws and regulations. Authority that is delegated shall be authority to determine nonmetal mineral and rock Mining Areas within one district/city or overlapping the districts/cities. Article 17 : size and boundaries of metal mineral and coal Mining Permit Areas shall be determined by the Government in coordination with the regional governments under the criteria adopted by the Government, “Size” means maximum size and minimum size. Boundaries shall be determined on an expertise basis that is accepted by all parties. Article 18 that : the criteria under which 1 (one) or several Mining Permit Areas within 1 (one) Mining Area are determined shall be as follows :

a. geographical locations;
b. conservation principles;
c. carrying capacity of environmental conservation;
d. optimization of mineral and/or coal resources; and
e. rate of population density.

Article 34, Mining Business shall be grouped into: a. mineral mining; and
b. coal mining. Mineral mining as intended by section (1) point (a) shall be classified into: a. radioactive mineral mining; *“Radioactive mineral mining” means mining as governed by laws and regulations in the field of nuclear energy.* b. metal mineral mining; *Metal mineral mining in this provision shall include associated minerals.* c. nonmetal mineral mining; and d. rock mining. In article 35 that : mining business as intended by Article 34 shall be conducted in the form of : Mining Permits; Small-Scale Mining Permits; and Special Mining Permits.

In Article 36 that A Mining Permit (IUP) shall include two stages:

a. an Exploration Mining Permit shall include the activities of general surveys, explorations, and feasibility studies;
b. a Production Operation Mining Permit shall include the activities of construction, mines, processing and refining/smelting as well as transportation and sale. Exploration Mining Permit holders and Production Operation Mining holders may carry out part or all of activities as intended by section (1).

In article 37, Mining Permits shall be granted by : a. the regents/mayors, where the Mining Permit Area is in one district/city; b. the governors, where the Mining Permit Area overlaps the boundaries of districts/cities in one province upon recommendation of the local regent/mayor under provisions of laws and regulations; and c. the Minister, where the Mining Permit Area overlaps the boundaries of provinces upon recommendationofthegovernorsandthe local regents/mayors under provisions of laws and regulations. Article 39 an Exploration Mining Permit as intended by Article 36 section (1) point (a) must state at least the following terms:

a. name of company;
b. location and size of area;
c. general spatial planning;

d. commitmentdeposits; *Commitment deposits in this provision shall include environmental management fees with respect to exploration activities.*
e. investment capital;
f. extended period of stage of activity;
g. rights and obligations of Mining Permit holders
h. validity period of stage of activity;
i. line of business authorized;
j. development and empowerment plans for community of mining areas;
k. taxation;
l. settlement of disputes;
m. dead rents and exploration royalties; and
n. environmental impact assessment (amdal).

Exploration IUP shall contain provisions at least, article 39 (2) A Production Operation Mining Permit as intended by

Article 36 section (1) point (b) must state at least the following terms:

a) name of company;
b) size of area;
c) mine locations;
d) processing and refining/smelting locations;
e) transportation and sale;
f) investment capital;
g) validity period of Mining Permits;
h) period of stage of activity;
i) solutions to land problems;
j) the environment, including reclamations and postmining;
k) reclamation and postmining deposit funds;
l) extension of Mining Permits;
m) rights and obligations of Mining Permit holders
n) developmentandempowermentplans for community of mining areas;
o) taxation;
p) nontax state revenues that include dead rents and production royalties;
q) settlement of disputes;
r) occupational safety and health;
s) mineral or coal conservation;
t) use of domestic goods, services and technology;
u) application of good mining economic and technical principles;
v) fostering of Indonesian workers;
w) management of data on minerals or coal; and
x) mastery, development, and application of mineral or coal mining technology.

In Article 37 Mining Permits shall be granted by : a. the regents/mayors, where the Mining Permit Area is in one district/city; b. the governors, where the Mining Permit Area overlaps the boundaries of districts/cities in one province upon recommendation of the local regent/mayor under provisions of laws and regulations; and c. the Minister, where the Mining Permit Area overlaps the boundaries of provinces upon recommendationofthegovernorsandthe local regents/mayors under provisions of laws and regulations.

In article 38 Mining Permits shall be granted to: a. entities; *Entities in this provision shall include state-owned entities and region-owned entities.* b. cooperatives; and c. soleproprietorships.

The extent of WIUP provided by the government to business entities, cooperatives and individuals for IUP holders is as follows, Article 61 : Coal Exploration Mining Permit holders shall be authorized a Mining Permit Area with a size of at least 5,000 (five thousand) hectares and at most 50,000 (fifty thousand) hectares. An area to which a coal Exploration Mining Permit has been authorized shall allow a Mining Permit to be granted to other party to commercialize different minerals found. Where different minerals are found in a Mining Permit Area either vertically or horizontally, other parties may commercialize those minerals. A Mining Permit as intended by section (2) shall be granted upon consideration of opinions of the first Mining Permit holder.

Exploration Mining Permits in article 42, A metal mineral Exploration Mining Permit may be granted for a period of at most 8 (eight) years. An 8 (eight)-year period shall include 1 (one) year of general surveys, 3 (three) years of explorations, extendable to 1 (one) year 2 (two) times respectively, as well as 1 (one) year of feasibility studies, extendable to 1 (one) year 1 (one) time. (2) A nonmetal mineral Exploration Mining Permit may be granted for a period of at most 3 (three) years, and for certain-typed nonmetal minerals may be granted for a period of at most 7 (seven) years. A 3 (three)-year period shall include 1 (one) year of general surveys, 1 (one) year of explorations, and 1 (one) year of feasibility studies.

Certain-typed nonmetal minerals shall include, inter alia, limestones for cement industry, diamonds, and precious stones. A 7 (seven)-year period shall include 1 (one) year of general surveys, 3 (three) years of explorations, extendable to 1 (one) year 1 (one) time, as well as 1 (one) year of feasibility studies, extendable to 1 (one) year 1 (one) time. (3) A rock Exploration Mining

Permit may be granted for a period of at most 3 (three) years. A 3 (three)-year period shall include 1 (one) year of general surveys, 1 (one) year of explorations, and 1 (one) year of feasibility studies.
(4) A coal Exploration Mining Permit may be granted for a period of at most 7 (seven) years. A 7 (seven)-year period shall include 1 (one) year of general surveys, 2 (two) years of explorations, extendable to 1 (one) year 2 (two) times respectively, as well as 2 (two) years of feasibility studies.

Restrictions on Expansion of Group Companies Reviewed From Law of The Republic of Indonesia Number 25 of 2007 Concerning Investments

One of the goals of establishing state governance is to further public welfare. This mandate has been set forth, inter alia, in Article 33 of the 1945 Constitution of the State of the Republic of Indonesia, and is a constitutional mandate that underlies the making of all economic laws and regulations. The Constitution has mandated that national economic development must be founded on the democratic principle that is capable of realizing the sovereignty of the Indonesian economy. A link between economic development and people's economic actors has been affirmed by Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVI/MPR/1998 concernign Economic Policy in the Context of Economic Democracy as substantive legal authority. Therefore, enhancement of investments in micro, small and medium enterprises, and cooperatives is made a part of major policies of investments (General Elucidation, Law of The Republic of Indonesia Number 25 of 2007 Concerning Investments).

In connection therewith, investments must be made a part of the conduct of national economy and be positioned in an effort to increase the national economic growth, to create job opportunities, to improve sustainable economic development, to improve the capacity and capability of national technology, to foster people's economic development, as well as to realize public welfare, in a competitive economic system.

The purposes of the conduct of investments are only reachable if supporting factors that obstruct investment climate can be contained through, inter alia, improving coordination among agencies of the Central Government and regions, establishment of efficient bureaucracy, certainty of the investment law, highly-competitive economic costs, conducive business climate in labor, and business security. With the improvement of such various supporting factors, it is hoped that realization of investments will be better-situated in a significant manner .

Key issues that are faced by investors to start a business in Indonesia have been addressed by this Law in which there is regulation on validation and permission, and further, regulation on one-stop integrated services. With this system, it is greatly hoped that the integrated services at the central and in regions can create simplified licensing and speedy administration. In addition to investment services in regions, the Investment Coordinating Board is assigned to coordinate the implementation of investment policies. The Investment Coordinating Board is led by a head that is responsible directly to the President. Detailed major duties and functions of the Investment Coordinating Board are basically to strengthen the board's roles to contain obstacles to investments, to improve certainty of granting facilities to investors, and to reinforce the investors' roles. The improvement of investors' roles must remain within the corridor of the national development policies that are planned by stages, namely, by having due regard to the macroeconomic stability and economic balance among regions, sectors, business actors, and community groups; by supporting the roles of national business; as well as by addressing the code of principles of good corporate governance (General Elucidation, Law of The Republic of Indonesia Number 25 of 2007 Concerning Investments).

Investment facilities are granted by taking into account the levels of economic competitiveness and the state's financial condition, and should be more promoting by comparison with facilities granted by other countries. The importance of certainty of these investment facilities has encouraged more specific regulation on the forms of fiscal facility, land title facility, immigration facility, and import permission facility. In addition, the granting of these investment facilities is also made in an effort to bolster worker absorption, a link of economic development and people's economic actors, export orientation and more beneficial incentives to investors that use domestic production capital goods or machines or equipment, as well as facilities associated with locations of investments in less- developed areas and in limited-infrastructure areas to be regulated more thoroughly by provisions of laws and regulations (General Elucidation, Law of The Republic of Indonesia Number 25 of 2007 Concerning Investments).

An investor's rights, obligations, and responsibilities are regulated specifically to give legal certainty, to affirm investors' obligations to apply the code of principle of sound corporate governance, to respect the community's cultural traditions, and to fulfill corporate social responsibility. Regulation on responsibilities of investors is necessary in order to encourage fair business competition climate, to broaden responsibility for the environment, and to address worker rights and obligations, as well as to make an effort to urge investors to comply with laws and regulations.

The world economy is marked with tight competition among countries, thus pushing investment policies to create competitiveness of the national economy in order to encourage the integration of Indonesian economy into global economy. The world economy is also rife with trade blocks, common markets, and free trade treaties founded on the synergy of interest among the parties or countries to treaties. Indonesia's participation in diverse international cooperation with respect to investments, whether bilateral, regional or multilateral (World Trade Organization/WTO) has also posed various consequences to be faced and complied with (General Elucidation, Law of The Republic of Indonesia Number 25 of 2007 Concerning Investments).

Anyone who invests is called an investor. Investor is an individual or business entity that carries out investments which may be domestic investors and foreign investors. In the Law of The Republic of Indonesia Number 25 of 2007 Concerning Investments,

"Investor" means an invidual or a business entity that makes an investment, who may be a domestic investor and a foreign investor. "Domestic investor" means an Indonesian national, an Indonesian business entity, the state of the Republic of Indonesia, or a region that makes an investment in the territory of the state of the Republic of Indonesia. "Foreign investor" means a foreign national, a foreign business entity, and/or a foreign government that makes an investment in the territory of the state of the Republic of Indonesia.

Investments shall be conducted based on the principles of (Article 3):

a. legal certainty; "Principle of legal certainty" is the principle that the rule- of-law state lays down law and provisions of laws and regulations as the foundation of any investment policy and measure;
b. transparency; "Principle of transparency" is the principle of receptiveness to the public right to have access to true, honest, and nondiscriminatory information on investment activities;
c. accountability, "Principle of accountability" is the principle that provides every activity and end result of the conduct of investments must be accountable to the public or people as the holder of the supreme sovereignty in accordance with provisions of laws and regulations;
d. equitable and nondiscriminatory treatment against country of origin. "Principle of equitable and nondiscriminatory treatment against country of origin" is the principle of a nondiscriminatory service treatment between domestic investors and foreign investors, or between investors of one foreign country and investors of another foreign country based on provisions of laws and regulations.
e. togetherness; "Principle of togetherness" is the principle that which all investors are encouraged to take on their business roles together in the realization of public welfare.
f. efficiency in justice; "Principle of efficiency in justice" is the principle that underlies the conduct of investments by taking primacy of efficiency in justice in order to realize just, conducive and competitive business climate.
g. sustainability; "Principle of sustainability" is the principle that in a planned manner seeks a continuous development process through investments to ensure welfare and progress in all aspects of life, both in the present day and the future.
h. environmentally-sound; "Environmentally-sound principle" is the principle in which an investment is made by having due regard to and accentuating the environmental protection and conservation.
i. independence; "Principle of independence" is the principle in which an investment is made by taking primacy to the potentials of nation and state by not being unreceptive to the inflows of foreign capital in order to realize the economic growth.
j. balanced advancement and national economic unity; "Principle of balanced advancement and national economic unity" is the principle that seeks maintenance of a balance of economic advancement among regions within the national economic unity.

The Government shall adopt major investment policies (Article 4):

a. to encourage creation of conducive national business climate for investments in order to strengthen the competitiveness of the national economy; and
b. to expedite the increase of investments.

In the adoption of major policies as intended by section (1) the Government shall : a. accord equitable treatment to domestic investors and foreign investors with due regard to the national interest; "equitable treatment" is that the Government does not discriminate treatment against investors having invested in Indonesia, unless provided otherwise by provisions of laws and regulations. b. ensure the legal certainty, business certainty, and business safety for investors starting from the licensing process to termination of investment activities in accordance with provisions of laws and regulations. c. give opportunities to the enhancement of and give protection to micro, small and medium enterprises, and cooperatives. (3) Major investment policies as intended by section (1) and section (2) shall be reflected in a General Plan for Investments.

Forms Of Business Entity And Domicile (article 5) : (1) Domestic investments may be made in the form of a business entity in the form of a legal entity, nonlegal entity or sole proprietorship in accordance with provisions of laws and regulations. (2) Foreign investments must be in the form of a limited liability company under Indonesian law, and domiciled within the territory of the state of the Republic of Indonesia, unless provided otherwise by law. (3) Domestic and foreign investors who make an investment in the form of a limited liability company shall: subscribe for shares at the time the limited liability company is established; purchase shares; and take another method in accordance with provisions of laws and regulations.

In carrying out its activities, the Government shall give equal treatment to all investors who come from any country that engages in investment activities in Indonesia in accordance with the provisions of legislation. This treat, however, does not apply to investors of a Contracting State who have privileged rights under an agreement with Indonesia. Treatment Against Investments (article 6) : (1) The Government shall accord equitable treatment to all investors of any countries that carry out investment activities in Indonesia in accordance with provisions of laws and regulations. (2) Treatment as intended by section (1) shall not apply to investors of a country that has acquired privileges by virtue of a treaty with Indonesia. "Privilege" is, inter alia, a privilege related to customs units, free trade zones, common markets, monetary units, institutions of a similar kind, and bilateral, regional, or multilateral agreements between the Government of Indonesia and the government of a foreign country concerning particular privileges in the conduct of investments.

In terms of labor, there are several things that must be considered for the role of investors, namely (article 10) :

(1) In addressing their labor need, investment companies must give precedence to Indonesian- national workers.
(2) Investment companies shall be authorized to engage foreign-national experts for specified office and expertise in accordance with provisions of laws and regulations.

(3) Investment companies must improve the competency of Indonesian-national workers through job training in accordance with provisions of laws and regulations.
(4) Investment companies that employ foreign workers must conduct training and transfer technology to Indonesian-national workers in accordance with provisions of laws and regulations.

In Article 14, law concerning investments, Rights, Obligations, and Responsibilities of Investors, every investor shall be entitled to enjoy : a. certainties of right, law, and protection; "Certainty of right" means the Government ensures investors have access to rights provided that the investors have fulfilled specified obligations. "Certainty of law" means the Government ensures to place law and provisions of laws and regulations as the basic foundations in every measure and policy for investors. "Certainty of protection" means the Government ensures investors have access to protection when carrying out investment activities. b. transparent information about business sectors engaged; c. right to services; and d. various forms of simplified facility consistent with provisions of laws and regulations.

Every investor shall have obligations (article 15) : to apply the principle of good corporate governance; to implement corporate social responsibility, corporate social responsibility means a responsibility mounted in every investment company to keep creating relationship which is in harmony, in balance and suitable to the local community's neighborhood, values, norms, and culture; to make a report on investment activities and submit it to the Investment Coordinating Board, An investment report that contains an update of investments and obstacles an investor faces is submitted periodically to the Investment Coordinating Board and the regional government responsible for the field of investment; to respect the cultural traditions of the community around the location of investment business activities; and to comply with all provisions of laws and regulations

In article 16 the Law of The Republic of Indonesia Number 25 of 2007 Concerning Investments, every investor shall be responsible :

a. to ensure the capital availability derived from sources not against provisions of laws and regulations;
b. to assume and settle any obligation and damage in accordance with provisions of laws and regulations if an investor ends or leaves or abandons his/her business activities in a unilateral manner;
c. to create fair competition business climate, to prevent monopolistic practices, and other matters that are detrimental to the state;
d. to keep the environment sustainable;
e. to create workers' safety, health, amenity, and welfare; and
f. to comply with all provisions of laws and regulations.

In carrying out its business activities, the government provides facilities to investors who make investments. Investment facilities are granted to capital investments that engage in business expansion or that engage in new capital investments. For investments that obtain such government facilities, at least must meet one of the following criteria (article 18, Law of The Republic of Indonesia Number 25 of 2007 Concerning Investments) :

1. The Government shall grant facilities to investors who make investments;
2. Investment facilities as intended by section (1) may be granted to an investment:
   a. that expands its business; or
   b. that makes a new investment.
3. An investment to receive facilities as intended by section (2) shall be an investment that meets at least one of the following criteria:
   a. absorbs many workers;
   b. falls under a high priority scale;
   c. is engaged in infrastructure constructions;
   d. transfers technology;
   e. is engaged in a pioneer industry; "Pioneer industry" is an industry that has wide-ranging links, gives added values and high externality, introduces new technology, as well as has strategic values for the national economy.
   f. is located in a remote area, a less-developed area, a contiguous area, or another area deemed needy;
   g. keeps the environment sustainable;
   h. conducts research, development, and innovation activities;
   i. is in partnership with micro, small and medium enterprises or cooperatives; or
   j. is engaged in an industry that uses domestically-produced capital goods or machines or equipment.

Conclusions

The restrictions on expansion of group companies in the coal mining sector that are used as referrals are some of the laws related to mining activities. These regulations :

Law of The Republic of Indonesia Number 40 of 2007 Concerning Limited Liability Companies. Law No. 40 of 2007 on Limited Liability Company does not explicitly regulate the limitation of expansion or establishment of a company. In brief, Law No. 40 of 2007, particularly in Article 16, only explains that the Company may not use the name that has been used legitimately by another Company or the same in essence with another Company name. In other words, the Company is not allowed to use the same name as an existing company, but if it is used the name of another company is allowed and how many companies formed are not limited. On the other hand, Law No. 40 of 2007 regulates or explains the formation of the group companies themselves.

The Law of The Republic of Indonesia Number 4 of 2009 Concerning Mineral and Coal Mining. Law no. 4 of 2009 concerning Mineral and Coal Mining and its derivative regulations emphasizes restrictions on the mining sector in 2 (two) matters, namely the limitation of the area and the period of Mining Business License (IUP).

Law of The Republic of Indonesia Number 25 of 2007 Concerning Investments. Law No. 25/2007 concerning investment places emphasis on company restrictions on 3 (three) types of business sectors further stipulated in Regulation of the President of the Republic of Indonesia No. 44 of 2016 on List of Closed Business Fields and Open Business Fields with Requirements In The Field Capital investment. The three types of business fields are Closed Business Fields for Investment; Open Business Field With Requirements; Reserved or Partnership with Micro, Small and Medium Enterprises and Cooperatives (UMKMK); Open Business Field With Specific Requirements. After the authors have observed, Attachment of Presidential Regulation of the Republic of Indonesia No. 44 of 2016 on the List of Closed Business Fields and Opened Business Fields with Requirements in the Field of Investment above especially in the Energy and Mineral Resources subdivision does not regulate the ownership of capital (domestic or foreign) In the coal mining sector. The type of business field in the Energy and Mineral Resources sub-section only regulates restrictions on foreign capital ownership in the oil and gas and electricity sectors.

The Law of The Republic of Indonesia No. 5 of 1999 Concerning The Ban On Monopolistic Practices and Unfair Business Competition. Law No. 5/1999 does not impose limits on companies to expand their business in ways that are used in accordance with prevailing laws and regulations. Such expansion is permitted as long as it is not denied by 3 (three) things, namely: making banned agreements, conducting activities that are prohibited, and performing dominant position.

Suggestions

As an energy commodity that is of strategic value to the national interest, there should be a legislation regulating specifically the group companies in the coal mining business. Specifically, which regulates the limitation of land area or the maximum number of business licenses that can be owned by one business entity and one group of companies. Thus, coal mining operations are not only controlled by a group of companies with large capital capital.

To avoid any inefficiency in the management of natural resources, especially minerals and coal, it is necessary to make the business activities not centered on one or two business actors.

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