



Abuse of Power: Legalization of Illegal Mining in National Strategic Projects

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Abstract. Mining regulations stipulate that every mining activity must have a mining business permit. Without a permit, the activity is classified as illegal mining. Criminal sanctions are strictly regulated, but in the case of bauxite mining in Wadas Village, Central Java, under the pretext of using mining materials for a government project, namely for the construction of a reservoir, that mining does not require a mining permit as regulated in the mineral and coal mining law. National Strategic Projects (PSN) are projects implemented by the Government that have a strategic nature to increase growth and equal development to improve community welfare and regional development. Apparently, the National Strategic Project is only used as an excuse to deviate from applicable mining regulations. Research was done using a doctrinal approach to identify the occurrence of legalization of illegal mining and its implications for the state, society, and the environment. The research results show that the practice of legalizing illegal mining occurs in various modes or patterns, including weakening the law enforcement process for illegal mining, blurring the law enforcement process for fake mining permits, and allowing mining activities without permits under the pretext of national strategic projects. This means that in addition to the substance of the regulation of mining governance and law enforcement officials, there is an element of power on behalf of the government that dominantly gives rise to illegal mining. This policy has implications for potential state losses, environmental damage, taking away people's living space and citizen safety. From the perspective of legal theory, the act of legalization is clearly a form of abuse of power which is contrary to the essence of law. This effort to manipulate the law to legalize illegal mining is clearly a form of weakening the law.

Keywords: Abuse of Power, Legalization, Illegal Mining, Law.

1 Introduction

Power tends to corrupt, and absolute power corrupts absolutely. The adage clearly states that power is very close to corruption.[1] The authority possessed by power holders is very close to being misused. One way that can be done is to ensure that the rights owned

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A. Armansyah and U. B. Jaman (eds.), *Proceedings of the International Conference on Law, Public Policy, and Human Rights (ICLaPH 2023)*, Advances in Social Science, Education and Humanities Research 859,

https://doi.org/10.2991/978-2-38476-279-8_2

by all parties are fulfilled properly in accordance with existing laws and regulations and that the executor of power or authority does not cause a disadvantage to other parties.

Actions that are considered and should be suspected as abuse of power are often found in those holding authority, in this case the government which has authority based on the right to control the state as regulated in the Indonesian constitution, namely the 1945 Constitution. Some of these can be seen through development which is currently being widely promoted through various national strategic projects.

National Strategic Projects (PSN) are projects and/or programs implemented by the Central Government, Regional Government, and/or Business Entities which have a strategic nature for growth and equitable development in the context of efforts to create jobs and improve community welfare.[2] To accelerate the implementation of PSN to meet basic needs and improve community welfare, the Government considers it necessary to accelerate the implementation of PSN. In this regard, Government Regulation Number 3 of 2016 concerning the Acceleration of PSN Implementation and PP number 42 of 2021 concerning the Facilitation of National Strategic Projects. Through the label as PSN, a project gets preferential treatment in both licensing and non-licensing fields which is given to accelerate the planning, preparation, transaction, construction, and smooth operation control processes including financing mechanisms, because it is considered to have strategic value to realize growth and equitable development in Indonesia.[3]

One of the PSNs, which is a lighthouse project and will be the highest dam in Indonesia with a height of 169 meters,[4] is the construction of a Bener dam. To realize this project, at least 15.5 million cubic meters of andesite rock material is needed. Andesite rocks were taken in Wadas Village, which is around 12 km from the dam construction site with a mining area of 145 hectares.[5] Wadas Village itself is a village with hilly topography which also functions as a water catchment area that serves the water needs of village residents and the surrounding area.[6]

The polemic arose when the andesite mining activity was carried out. Some residents of Wadas Village reject the mining plan. Because it is feared that this will damage the 28 water sources of the village residents. Damage to water sources will result in damage to agricultural land and further loss of livelihoods for residents. It is also feared that the mining will make Wadas Village increasingly prone to landslides. Moreover, based on the Regional Regulations concerning Purworejo Regency Spatial Planning 2011-2031, Bener District, including Wadas Village, is part of an area prone to landslides.[7]

Regarding mining activities, Indonesia has regulations in the form of laws that specifically regulate mining activities, starting from Law Number 11 of 1967 concerning General Mining, which was then replaced by Law Number 4 of 2009 concerning Minerals and Coal and was most recently amended. with the enactment of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. In its provisions, every mining activity is required to have a Mining Business Permit (IUP). Without an IUP, the activity is classified as illegal mining activity. Criminal sanctions are strictly regulated in Article 158 of Law Number 4 of 2009 con-

cerning Minerals and Coal along with Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, which regulates that Every person who carries out mining activities without a permit will be punished with a maximum imprisonment of 10 (ten) years or a fine of 10 (ten) billion rupiah.

Criminal sanctions are strictly regulated, but in the case of bauxite mining in Wadas Village, Central Java Province under the pretext of using the mining material for a government project, namely for the construction of a reservoir, mining does not require a mining permit as regulated in the mineral and coal mining law. National strategic projects are used as an excuse for deviation from applicable mining regulations. In fact, dam building activities and mining activities are two activities that are regulated differently in the law. Dam construction is included in the public interest category which is regulated in the Law on land acquisition for the public interest, while mining activities are regulated in the Law on minerals and coal (Minerba). Combining two activities in the name of the general interest of a national strategic project is wrong considering that mining activities are not part of the public interest.[8]

The existence of mining activities without a licensing process for PSN clearly indicates abuse of authority in the control and management of natural resources, especially in extractive activities. This research examines how to identify the legalization of illegal mining and its implications for the state, society, and the environment.

2 Method

This research was conducted with doctrinal research to identify the legalization of illegal mining by policy makers and its implications, as well as how the law views the act of legalizing illegal mining, especially in national strategic projects. To explore the formulation of the problem, primary, secondary, and tertiary legal materials were collected. In addition, the author also uses a statutory approach, conceptual approach, and case approach in completing this paper.

3 Power in Natural Resource Management

Based on the Cambridge dictionary,[10] power is defined as "the ability to control people and events", this definition can be interpreted as the ability to control people or an activity, which is a fairly general or broad meaning. When using this meaning, a meaning that is separate from the word "state", it can be concluded that "power" was of course much earlier than "state". Events in the past, long before the birth of the country we know today, the activity of hunting animals in the middle of the wilderness, for example, both individually and especially in groups,[11] has indirectly implemented an action to control people and even activities, namely carrying out the hunting of the animals they work for. Power practices can of course occur in any circumstances, times, and events.

Montesquieu is one of the thinkers in the world of law who enriches the concept of statehood, namely *trias politica*, which is Montesquieu's phenomenal work, even though this concept is a development of John Locke, *Tris Politica* is a very popular concept, introducing the separation of state power, dividing it into three branches of power include i). Executive; ii). Legislative; and iii). Judicial.

Furthermore, several things that need to be underlined when talking about the state are the differences between the form of the state, form of government, and system of government. State forms are usually classified as i). Unitary state; and ii). Federal State, Unitary State is a form of state which usually has central and regional levels, all of which are integrated. The form of a federal state is a country that has states. Forms of government can be classified, among others, i). Monarchy; and ii) Republic, as we all know, a monarchical form of government is a government led by a king, where the king's leadership will be replaced by subsequent descendants.[18] The republican form is a government led and run by a President. Many countries with a republican form of government usually use a democratic system in terms of changing their leaders. The President will serve for a certain period and will be replaced by a new leader according to the choice of the people.[19] Next is the government system, which can be classified, among others, i). Presidential government system; and ii). The parliamentary system of government, presidential government is a system that entrusts the president as head of government, in other words it is the president who has the obligation to carry out state administration.[20] As for the parliamentary system, the role in organizing the government falls in the hands of the prime minister who also acts as the head of government of a country.

The form of the state, form of government, and the system of government that is currently running in a country. Indonesia itself is a country in the form of a unitary state, very firmly, straightforwardly, and firmly stated in the Indonesian constitution, stating that the Indonesian state is a country in the form of a unitary state. So that state administration, whether at the center of government or in the regions, is integrated with each other, even though there is a central government, but after the 1998 reform, the management of state administration today is no longer centralized and relies on only one authority.[21] The concept of regional autonomy then gives authority to all regions, whether at the provincial or district and city level throughout Indonesia, to have the authority to carry out the administration of their respective governments, which of course must run based on applicable laws and regulations.[21] In relation to natural resources, it is quite controversial, because there is a tug-of-war between the central and regional governments, where initially the regions were given the authority to grant permits to miners, and now it turns out that authority has been withdrawn back to the center. The placement of the authority to grant permits, regarding who is most appropriate to exercise this authority is still quite debatable, all parties have their own justifications. However, the main point is the practice of legalizing illegal mining which is widely carried out by the central government regime, under the pretext of a National Strategic Project, the government then clearly violates many regulations, especially the Mining Law, one of which is bauxite mining in Wadas Village which is currently being

highlighted by various groups, academics, practitioners, activists, and many community figures.

Seeing the phenomenon of state inroads into mining permit regulations is actually contrary to the spirit of power built by the state itself. As previously discussed, Indonesia has placed each branch of power in its place, executive, legislative and judicial, these three branches of power have their respective authorities. Theoretically, the legislature has the authority to form laws, but because the nature of the norms in the law are still very general, derivative regulations are needed to clarify the norms that are still general in the law, where these derivative regulations have several types, such as: Government Regulations, Presidential Regulations, Ministerial Regulations etc. where these regulations are made by the Executive or President and his cabinet. This phenomenon resulted in the birth of many derivative regulations from each law, even more derivative regulations than the law itself.[22] Government regulations are one of the derivative regulations made by the President and have given rise to many regulations related to National Strategic Projects which then violate many mining permit legalization norms. Gradually, the burden and authority to make regulations that should have been empowered by the legislative branch of power became heavier on the executive branch of power, in this case the President. Such overlapping practices certainly cannot be justified. The philosophy of the executive as a state administrator who implements laws was reduced after the executive took a lot of part in policies that should have been the legislative portion.

In his journal, B Auchter,[23] said that a simple definition of abuse of power is abusing a position of power to take unfair advantage of an individual, organization, or government. The definition as stated by Auchter can be interpreted as saying that the executive's practice in legalizing illegal mining by using its power excessively gives rise to many regulations, violates applicable legal norms, benefits corporations, and unfairly affects social and environmental impacts, is an abuse of authority shown by the government clearly to all Indonesian people. [24]

4 Legal Politics of Mining Governance in Indonesia

The manifestation of power in the management of natural resources is the presence of the state whose role and function are to ensure equitable use of natural resources. "Referring to the provisions of Article 33 paragraphs (2) and (3) of the 1945 Constitution, which regulates, production branches which are important for the State, and which affect people's livelihoods are mostly controlled by the state." In paragraph (3) the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

The role and function of the state in the "controlled by the state" clause can refer to Constitutional Court Decision Number 002/PUU-I/2003 dated 21 December 2004, that the meaning of "controlled by the state" must be interpreted to include the meaning of control by the state in a broad sense which originates and is derived from the concept of sovereignty of the Indonesian people over all sources of earth, water and natural

wealth contained therein, including the notion of public ownership by the people's collective of these sources of wealth. The collective people were constructed by the 1945 Constitution which gave the state a mandate to implement policies (beleid) and management actions (bestuursdaad); regulation (regelendaad); management (beheersdaad); and supervision (toezichhoudensdaad), for the purpose of maximizing the prosperity of the people.

In Constitutional Court Decision Number 002/PUU-I/2003 dated 21 December 2004, the management function (bestuursdaad) by the state is carried out by the government with its authority to issue and revoke permits (vergunning), licenses (licentie), and concessions (concessie). The regulatory function by the state (regelendaad) is carried out through legislative authority by the DPR together with the Government, and regulations by the government. The Management Function (beheersdaad) is carried out through share-holding mechanisms and/or through direct involvement in the management of State-Owned Enterprises or State-Owned Legal Entities as institutional instruments, through the state c.q. The government utilizes its control over these sources of wealth to be used for the greatest prosperity of the people. The function of supervision by the state (toezichhoudensdaad) is carried out by the state c.q. The government supervises and controls so that the implementation of control by the state over the sources of wealth referred to is truly carried out for the greatest prosperity of all the people.

In the context of mining activities, the Mineral and Coal Law defines as some or all stages of activities in the framework of the management and exploitation of minerals or coal which includes general investigations, exploration, feasibility studies, construction, mining, processing and/or refining or development and/or utilization, transportation, and sales, as well as post-mining activities. In detail, the Government's authority in the mining sector is regulated in the provisions of Article 6 of Law 4 of 2009 in conjunction with Law 3 of 2020 where its role and function include the interpretation of the right to control the state according to the Constitutional Court. Furthermore, the role and function of the state can be seen from the development of mining legal regulations which have changed from a contract regime to a licensing regime.

Legal Politics Mining management during the colonial period was provided in a concession scheme based on the provisions of the Indische mijn Wet. Under the terms of the concession, the concession holder has full rights to the mining area. After Indonesia's independence, Article 33 paragraph (3) of the 1945 Constitution mandated that mining natural wealth be controlled by the state with the condition that it ensure the greatest prosperity of the people. This provision became the basis for the regulation of Law 37 Prp of 1960, the concession was changed so that mining could be carried out if the mining authority was held in the spirit of nationalization. During the New Order era, through the provisions of Law 11 of 1967, Mining Authorization was granted in the form of a "contract" for mining minerals that fell into the vital and strategic category which fell under the authority of the minister. With the spirit of economic growth by opening foreign investment in the mining sector, through Law Number 1 of 1967 concerning Foreign Investment.

Mining operations using a contract regime in their implementation give rise to several problems, namely (1) weakened state control over mining operations, considering that the positions of the parties in the contract are equal, so that if full supervision is to be carried out it will be hampered if the clauses regarding supervision or obligations in question are not regulated in contract; (2) contracts are generally carried out in the long term so that if changes are required in the contract clauses without the agreement of the parties then no changes can be made, even if they are in the public interest. (3) Termination of the contract cannot be carried out while the contract is still running without the parties agreeing to terminate it; (4) State sovereignty over natural resources is limited to the clauses agreed in the contract.

The change from the contract regime to a licensing regime in the mineral and coal mining sector was marked by the promulgation of Law Number 4 of 2009 concerning Mineral and Coal Mining. In the provisions of Article 35 paragraph 2 (d) mining businesses are carried out through permits in the form of: IUP; IPR or IUPK; The option of changing to use a licensing regime has advantages compared to contract schemes in mining, namely (1) Licensing schemes place the state and mining business actors in the position of the state as a stronger permit giver (above), in contrast to contract schemes which place the state's position on an equal footing with mining business actors. . (2) the licensing scheme provides stronger supervisory authority to the state c.q. The government to carry out its functions over mining resources. (3) policy changes will be easier for business actors to follow because they are not limited to agreement clauses in contracts which cannot be changed without the parties' agreement. (4) State sovereignty is stronger over natural resources, because with the permit scheme control remains under state control. The transitional provisions require mining companies to convert their contracts into permits. The provisions of Law 3 of 2020 concerning the Revision of Law 4 of 2009, are regulations that revive the contract regime which was eliminated through Law 4 of 2009. In the provisions of Law 3 of 2020, mining schemes are carried out through a contract regime and a permit regime.

5 Licensing Functions in the Mineral and Coal Mining Sector and Their Urgency

Mining businesses in the provisions of Law 4 of 2009 in conjunction with Law 3 of 2020 Article 35 paragraph (1), are carried out based on Business Licensing from the Central Government. In the provisions of Article 35 (3), the permit in question can be in the form of an IUP (Mining Business Permit); IUPK (Special Mining Business Permit); IUPK (Special Mining Business Permit) as a continuation of Contract/Agreement Operations (Contract of Work (KK) for mineral mining and PKP2B for coal mining; IPR (People's Mining Permit); SIPB (Rock Mining Permit); Assignment Permit; Transport Permit and Sales; IUJP (Mining Services Business License) and IUP (Mining Business License) for Sales, as well as PKP2B. Rock Mining License, hereinafter referred to as SIPB, is a permit granted to carry out certain types of rock mining business activities or for certain purposes. (Article 1 (13a) Law 3 of 2020).

Licensing (*Vergunning*) according to Utrecht, when regulations are made that prohibit an act, it is still permitted as long as it is carried out in a manner determined for each concrete matter. Basically, the function of a permit is not only to allow legal actions to be carried out, but it also contains an element of not allowing an action. Apart from that, licensing includes a supervisory obligation.

The function of licensing in mining is not only to allow activities to extract and utilize mining materials to be carried out, but there is also an obligation to supervise the activities for which permits are granted. Licensing in mining activities is very important considering that mining materials and mining activities have unique characteristics: first, mining materials are natural resources that cannot be renewed, so their use needs to be ensured that they will bring benefits to the greatest prosperity of the people; secondly, mining will have a major impact on nature and the environment (water, air, land), social and ecological impacts, not only at the mining location, but also for other areas, considering that the impact of mining is widespread and sustainable. Third, mining has the potential to change the natural landscape and impact the surrounding nature as well as the environmental carrying capacity. Mining requires that it be carried out in accordance with regulated mining rules and regulations. Fourth, mining materials have economic value, so their management must be based on the precautionary principle for intra- and inter-generational justice. Fifth, risks in mining activities require mining technical planning, mining safety and environmental techniques that are in accordance with the conditions and situations as well as applicable feasibility standards. So that licensing in mining not only functions as a basis for the use of natural resources, but also as an instrument of control and supervision. This function is inherent in mining permits and is accumulative, regulating from the pre-mining, mining, to post-mining stages.

6 Illegal Mining Legalization Mode

The weakening of the law enforcement process against illegal mining can be seen in the practice of illegal mining in East Kalimantan Province which has been rampant since 2018. According to data from the East Kalimantan Mining Advocacy Network (Jatam) from 2018 to November 2022 there were 168 illegal coal mines operating and Jatam has recorded reporting illegal mining activities to the police, but there is still minimal action.[25] There was even a perpetrator who was a former member of the police and admitted that the actions he carried out involved the cooperation of various parties, including the involvement of security forces and high-ranking POLRI[26] officials. Apart from that, the alleged perpetrator of illegal coal mining in East Kalimantan stated that he had paid fees to various parties and refused to enforce the law by KPHP officers who wanted to control illegal mining activities.[26] This video confession was later denied, but the fact that this video was circulating shows that there were allegations of illegal mining in collaboration with village and regional political elites and law enforcement officials not only at the regional level but also at the central level. [27] This reality means that law enforcement against illegal mining is not taken seriously.

The fact that illegal mining has weak legal processes does not only occur in East Kalimantan, in Indonesia there are at least 2,741 illegal mining locations operating in 2021. Where East Java is the province with the most illegal mining locations, namely 649 locations, followed by West Java Province with 300 locations and 159 locations in East Nusa Tenggara. [28] The continued proliferation of illegal mining practices in Indonesia and the handling of illegal mining in East Kalimantan reinforces the negligence of law enforcement officials.

Eventually, the community became accustomed to illegal mining practices, which became known as corridor mining to refer to illegal mining activities. The operation of corridor mining, which seems to be approved by the government and accepted by the community, is what researchers call a normalization effort which is a mode for legalizing illegal mining activities.

The second mode is the blurring of law enforcement regarding fake mining permits. This is also a fact that is happening in East Kalimantan where 21 fake IUPs are currently unclear as to the law enforcement process. Since it emerged in 2022 and received attention from the Regional Representative Council (DPRD) of East Kalimantan Province, [29] until now law enforcement has remained unclear. Law enforcement officials were impressed for half a day to respond to reports of falsification of documents and signatures of the Governor of East Kalimantan. As the victim whose signature was allegedly forged, Isran Noor, Governor of East Kalimantan, was never questioned as a witness. This gave rise to suspicions that the case of alleged counterfeiting of 21 IUPs was deliberately stopped. [30]

The third mode is to allow illegal mining in the name of a national strategic project. This is like mining activities without permits in the Wadas area for the construction of a Bener dam as one of the PSN. Based on Presidential Regulation Number 109 of 2020, Bener Dam is one of the PSNs out of a total of 201 PSNs. [31] The dam is in Bener District, Puworejo Regency, Central Java, has a capacity of 100.94 cubic meters, irrigates 1,940 Ha of land, provides 1,500 liters of raw water per second, 6 Mega Watt Hydroelectric Power Plant (PLTA). Apart from that, it is also to reduce flooding, conservation, and tourism.

To support this, mining of andesite rock material was carried out in Wadas Village where the mining activity did not go through a licensing process, received resistance from the community and arrogance from the authorities. [32] The government emphasizes that andesite mining activities do not require permits because they are carried out by the government not for commercial purposes, but for the public interest, in this case the construction of dams. Apart from that, this mining activity has received recommendations from the Ministry of Energy and Mineral Resources. This government claim is clearly unfounded, for several reasons:

1. Public legal entities or government agencies are not authorized to carry out mining activities. Mining is an activity to produce Minerals and/or Coal and associated Minerals. (Article 1 (19) Law 3 of 2020).

2. The Ministry of Energy and Mineral Resources or the Director General of Mineral and Coal do not have the authority to provide recommendations for mining without a permit. It is very firmly regulated in the provisions of Article 35 of Law 4 of 2009 in conjunction with Law 3 of 2020, that mining must be carried out based on a business permit with a predetermined form of permit.

3. There are no mining schemes without permits for certain interests. It is very firmly regulated in the provisions of Article 35 of Law 4 of 2009 in conjunction with Law 3 of 2020, that mining must be carried out based on a business permit with a predetermined form of permit.

In mining regulations there is no distinction between mining for government interests or commercial interests. The differences that exist in mining are based on the mining commodity; mining area; and the status of the mining permit (IUP; IUPK; IUPK as a continuation of Contract/Agreement Operations; IPR; SIPB; Assignment Permit; Transport and Sales Permit; IUJP and IUP for Sales); as well as parties granted mining rights through mining permits.

Mining for the benefit of government projects is possible through a scheme of granting mining permits to State-Owned Enterprises or Regional-Owned Enterprises whose majority share ownership belongs to the state, so that the interests of government projects can still be fulfilled and mining legal provisions can be implemented properly. BUMN and BUMD that carry out mining still have the obligation to comply with the construction of mining law, that mining must be done with a permit.

Procurement of mining materials for government development, so far what has been going on is that the person responsible for government development/projects will procure materials in accordance with the provisions for procurement of goods in government projects, which are usually fulfilled by material providers, whether business entities, cooperatives, or individuals.

For example, development projects for the capital of the archipelago, including the construction of the Sepaku ring road, the construction of the Semoi dam in Sepaku, stone material obtained from the stone mining process in the Sulawesi region. Rock mining continues to follow the applicable mining licensing scheme. Because basically mining permits are embedded in the obligation to carry out the mining process in accordance with the provisions both from environmental, financial, and post-mining responsibility aspects.

The origin of the required rock material comes from the mining process carried out by miners based on permits in accordance with mining law provisions. Referring to the provisions of Article 35 of Law 3 of 2020, it requires permits which can be in the form of (IUP; IUPK; IUPK as a continuation of Contract/Agreement Operations; IPR; SIPB; Assignment Permit; Transport and Sales Permit; IUJP and IUP for Sales).

If the construction material is rock, it is regulated in the provisions of Article 59 of Law 4 of 2009 in conjunction with Law 3 of 2020, rock mining covering an area of 1,000 (one thousand) hectares is given a Rock Mining Business Permit (IUP). Article 57 determines: "Rock Mining Business Permit (WIUP) areas are granted to Business

Entities, Cooperatives, or individual companies by means of an area application to the Minister." Provisions of Article 58 (1) "IUP holders at the rock exploration activity stage are given a WIUP of a maximum area of 5,000 (five thousand) hectares. Based on Article 59, Rock Production Operation IUP holders are given a mining business permit area with a maximum area of 1,000 (one thousand) hectares.

Apart from that, it regulates the granting of permits in the form of SIPB (Rock Mining Permit), referring to the provisions of Article 86A-86H Law 3 of 2020, if the maximum area of the Mining Business Area is 50 hectares. Article 86A (1): SIPB is granted for the exploitation of certain types of rock mining or for certain purposes. Paragraph (2): SIPB can be given to: (a) Regional-owned business entities/village-owned business entities; (b) Private business entities for domestic investment (c) Cooperatives; or (d) sole proprietorship. SIPB is a Rock Mining Permit, a permit granted to carry out certain types of rock mining business activities or for certain purposes (Article 1(13a) Law 3 of 2020).

Based on the provisions of Law 3 of 2020, the procurement of mining materials must begin with the issuance of a SIPB issued by the minister (Article 86A (4)) based on the request of the parties specified in Article 86A (2), namely: Regional-owned business entities/village-owned business entities; Private business entities for domestic investment; Cooperative; or individual company. The applicant must fulfill administrative, technical, environmental, and financial requirements (Article 86 A paragraph 4). Apart from that, it must also include coordinates and the area of rock of certain types or for certain purposes requested (Article 86A paragraph 5).

7 Implications of Legalization of Illegal Mining in National Strategic Projects

National Strategic Projects (PSN) are projects and/or programs implemented by the Central Government, Regional Government, and/or Business Entities which have a strategic nature for growth and equitable development in the context of efforts to create jobs and improve community welfare.[32] In order to accelerate the implementation of PSN to meet basic needs and improve community welfare, the Government considers it necessary to accelerate the implementation of PSN. Regarding this policy, Government Regulation Number 3 of 2016 concerning the Acceleration of PSN Implementation was issued. Through the label as PSN, a project gets preferential treatment in both licensing and non-licensing fields which is given in order to accelerate the planning, preparation, transaction, construction and smooth operation control processes including financing mechanisms. Because it is considered to have strategic value in order to realize growth and equitable development in Indonesia.[33]

Like two sides of a knife, policies oriented towards regional development, such as the National Strategic Project, have a direct impact on the people living around the PSN. [33] One of them is the use of materials in the PSN construction process. The use of materials needed for development allows the opening of unlicensed mines (Illegal Mining) to supply materials for the continuity of the project. So, the impact of this

development activity can be positive and negative, in this subchapter we will analyze the impacts that arise in areas that are in direct contact with PSN.

The direct impact that occurs on mining is the physical impact. This physical impact is in the form of damage to the environmental ecosystem at the mining location.[34] Mining will have an impact on changes in land surface and ecological balance as well as environmental pollution with dust, smoke, liquid waste and other toxic substances. As in the case of the Bener Dam, which is part of the PSN, the impact of andesite mining as raw material for the PSN is at risk of disrupting 27 community water sources. Data obtained by Walhi (an environmental NGO) states that the mining will carry out drilling, dredging, and blasting with 5,300 tons to a depth of 40 meters. In other areas of Guntur Village, Bener District, people received impacts such as cracked houses and land, landslides covering plantations and blocking river access.[35] Thus, the benefits of building a reservoir are not commensurate with the costs of environmental and social damage caused by the construction.

Apart from physical impacts, social damage to the environmental ecosystem also occurs, usually in the form of conflicts between residents. Social conflict is a result of estrangement in social relations, where the community is divided into 2 groups, namely residents who support mining and residents who reject andesite mining for the PSN Bendungan Bener project. This creates polarization in society, where social interactions become colder, without caring or respecting each other.[36] This conflict spread to violent actions carried out by the police in securing measurements of the area where the andesite mine was located. This traumatized local residents. [37]

Illegal mining is carried out without procedures or instruments that should be in place to ensure environmental sustainability. Mining activities are carried out haphazardly without calculation, focusing on digging to make a profit without considering the environmental impacts caused by the excavation. In fact, every mining activity must be related to good safety standards for workers, including environmental and social issues. Illegal mining causes serious environmental damage, which has a negative impact on ecosystems and triggers natural disasters such as landslides and floods, as well as triggering social disasters or prolonged social conflicts.

In an economic context, illegal mining clearly has an impact on the country's economy. The government loses income that should be obtained from mining activities carried out through permits by paying taxes and royalties. State losses reach 60 trillion every year due to illegal mining in South Sumatra,[38] while in East Kalimantan state losses from illegal mining activities in 2018 were 1.3 T. [38] This was also agreed with by the President who expressed his view regarding illegal mining that if illegal exports, for example tin were still ongoing, bauxite was still available, coal was still available, then state revenues would be greatly reduced because of that.[39]

This means that the government also feels the impact of illegal mining on state revenues or finances, but again no firm steps have been taken to enforce the law against Illegal Mining, the Ismail Bolong case is just like an iceberg phenomenon due to the fact that illegal mining was also found at the IKN location (The New Capital of Indonesia), this is a general picture of illegal mining activities which stop when they are in

the spotlight, but then become active again when they are no longer a concern.[40] Even though it is clear that illegal mining perpetrators do not make a financial contribution to the state, on the contrary they cause huge losses which are borne by the state due to the damage caused.

More than that, illegal mining also creates tension and conflict between local communities who depend on their livelihoods in areas where illegal mining occurs. The wadas community in the dam project is truly representative enough to show how social conflict occurred in the PSN project and the state's perspective on this incident which weakened the state's condition. When there are arrests of residents, sieges, electricity blackouts, it is only said to be friction in society due to the pros and cons of mining activities. [41] The case, which has been ongoing since 2022, is still occurring and has resulted in people losing access to their living space.

Thus it is clear that illegal mining has very serious implications for the environment, economy and society. Preventive efforts and strict law enforcement are essential to address this problem and protect natural resources and economic and social sustainability.

8 Conclusion

The practice of legalizing illegal mining occurs in various modes or patterns ranging from weakening the law enforcement process against illegal mining, obscuring the law enforcement process against fake mining permits to the omission of unlicensed mining activities in the name of national strategic projects. This policy has implications for potential state losses, environmental damage, deprivation of people's living space and the safety of citizens. This legalization effort is clearly a form of legal weakening and a form of abuse of power that is contrary to the essence of law. In the perspective of legal theory, this legalization is clearly a form of abuse of power that weakens the law itself. This means that in addition to the regulatory substance regarding mining governance and law enforcement officials, there is an element of power on behalf of the government that is dominant in giving rise to illegal mining. Therefore, there must be an effort to look at the issue of Illegal Mining not only in the aspect of law enforcement but also in the conception of power and interpretation or meaning of mining governance.

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