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Judicial Review of Business Permit Revocation for Bankrupt Mining Companies in Indonesia

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ABSTRACT: The Revocation of Mining Business License is an administrative measure ensuring compliance in the mining sector. Government Regulation 96 of 2021 allows direct imposition of this sanction, especially for companies declared bankrupt. However, complexities arise during asset settlement overseen by the curator, where a judge may order continued mining to increase bankrupt assets. To tackle these issues, a researcher conducted normative legal research, focusing on legislative aspects. This falls under normative juridical research, analyzing regulations regarding revoking licenses for bankrupt mining businesses. The findings shed light on the regulatory framework for license revocation, contrasting with provisions for business continuity in bankruptcy laws. The study underscores the necessity of aligning legal regulations with their implementation, especially concerning the revocation of mining business licenses. By analyzing how mining legislation interacts with bankruptcy laws, the research seeks to offer insights into enforcing legal measures in the mining sector. In essence, the findings illuminate the complexities of revoking mining licenses in bankruptcy scenarios. Through a thorough examination of pertinent legal frameworks, the study enhances comprehension of the legal landscape governing the mining industry and identifies avenues for regulatory enhancement.

KEYWORDS: Bankruptcy and Mining Sector, Government Regulation 96/2021, Mining Business License Revocation, Normative Legal Research, Regulatory Framework Enhancement.

I. INTRODUCTION

Indonesia's abundant natural resources, including minerals and coal, have historically played a vital role in generating significant state revenue, with non-tax state revenue (PNBP) from the non-oil and gas sector surpassing 70% in 2020. Given that minerals and coal are non-renewable, their management requires optimal and sustainable practices. Moreover, their utilization should aim at enhancing the welfare and prosperity of the people, aligning with the constitutional mandate of maximizing public welfare (Article 33, paragraph 3) and the national objectives outlined in the preamble of the 1945 Constitution. The mining and quarrying sector in Indonesia has been increasingly contributing to economic growth. Data from the Central Statistics Agency (BPS) shows that in 2022, this sector contributed 12.22% to national economic growth, marking a notable increase from its contributions in 2021 (8.98%) and 2020 (6.44%). Metal ore mining stands out as a sub-sector with significant growth potential, evidenced by its robust performance over the past three years. In 2020, it grew by 18.01%, followed by growth rates of 22.84% in 2021 and 20.26% in 2022.

By the end of the third quarter of 2023, the Ministry of Energy and Mineral Resources (ESDM) reported that Non-Tax State Revenue (PNBP) from the energy and mineral resources sector reached Rp224 trillion, nearly hitting the 2023 target of Rp225 trillion with a 99.90% achievement rate. Agung Pribadi, Head of the Bureau of Communication, Public Information Services, and Cooperation (KLIK) at the Ministry of ESDM, attributed this success to the revenue generated by the natural resources sector, notably the mineral and coal sub-sector (minerba), which surpassed the 2023 target by 155.93%.

Indonesia's mineral and coal mining (minerba) management is transitioning into a new phase as authority shifts from regional to central government control, now applied nationwide. This aligns with Law Number 3 of 2020, amending Law Number 4 of 2009 on Mineral and Coal Mining. Numerous significant alterations have been introduced, synchronized with the Omnibus Law on Job Creation. New provisions include:

1. Regulation related to the concept of Mining Jurisdiction Areas;
2. Changes in the authority to manage Minerals and Coal;
3. Obligations to develop Mineral and Coal Management Plans; efforts to conduct Investigation and Research for the preparation of Mining Business License Areas (WIUP);
4. Strengthening the role of State-Owned Enterprises (BUMN);

5. Re-regulation of licensing in Mineral and Coal exploitation, including new licensing concepts related to assistance for certain types or purposes, as well as licensing for small-scale mining;
6. Strengthening policies related to environmental management in mining activities, including the implementation of reclamation and post-mining activities;
7. Re-regulation related to policies for increasing the added value of Minerals and Coal (Downstreaming), Share Divestment, supervision and mentoring, land use, data and information, community empowerment, and continuity of operations for holders of CCA or PKP2B.

One of the pressing concerns commanding considerable government attention relates to licensing procedures. Despite the President's push for increased investment, hurdles persist in the licensing process. Challenges include overlapping regulations, a lack of synchronization between central and regional authorities, susceptibility to corruption, and prolonged and costly procedures. This issue is particularly prevalent in the mining sector, where government policies face scrutiny due to the sector's significance in attracting new investments. The Mining Law Number 4 of 2009 outlines regulations for granting Mining Business Licenses (IUP) and Special Mining Business Licenses (IUPK), providing rights for exploration and operational production activities. These licenses allow holders to utilize public infrastructure for mining purposes upon meeting legal requirements. License holders must fulfill administrative, technical, environmental, and financial criteria. Strong financial aspects are particularly emphasized to ensure the sustainability of mining activities and compliance with post-mining obligations. Given the high risks and costs associated with mining, meeting financial requirements is crucial for conducting mining business activities.

Law Number 3 of 2020 amending Law Number 4 of 2009 regarding Mineral and Coal Mining reflects significant changes in the management of the sector. Previously under regional authority, management is now centralized under the Central Government, aiming for consistency and efficiency nationwide. New provisions cover various aspects: establishing Mining Jurisdiction Areas, emphasizing Mineral and Coal Management Plans, and conducting Investigation and Research for Mining Business License Areas (WIUP). State-Owned Enterprises' role is bolstered, along with re-regulation of licensing for Mineral and Coal exploitation, introducing assistance mining and small-scale mining concepts. Policies on environmental management, including reclamation and post-mining activities, are also reinforced. These changes aim to enhance regulation, supervision, and sustainability in Indonesia's mineral and coal mining sector. The changes in regulations demonstrate a commitment to enhancing supervision, environmental protection, and maximizing the mining sector's contribution to the economy and society. However, implementing these new regulations presents several challenges, including law enforcement, coordination between central and regional governments, and ensuring compliance from industry players. While the updated framework offers a more comprehensive approach, sustained efforts are essential for effective and sustainable implementation.

The mining sector in Indonesia faces complex challenges, notably conflicts of interest between license holders and local communities. Exploitation often sparks disputes with indigenous or local groups feeling marginalized or unfairly impacted by mining activities. Such conflicts can lead to protests or legal actions, disrupting operations. Environmental issues are another significant challenge, with mining activities causing deforestation, water pollution, and soil degradation. These impacts have long-term ecological and health consequences for local communities. Despite existing regulations, effective enforcement and monitoring of environmental standards remain inadequate. Addressing these challenges requires collaborative efforts between stakeholders to ensure responsible and sustainable mining practices that benefit both the economy and local communities while safeguarding the environment. In addition, regulatory uncertainty poses a significant constraint in the mining sector. Policy changes or legal ambiguities can disrupt long-term planning and investment, deterring investors from committing to the industry's growth. Moreover, corruption and illegal levies are pervasive issues, depriving the state of rightful revenue and disadvantaging local communities.

Furthermore, inadequate infrastructure hampers mining sector development. Limited access to remote or isolated mining locations increases operational costs and impedes resource exploitation. These challenges necessitate a comprehensive and collaborative approach involving government, industry, and society to mitigate negative impacts and ensure the sector contributes sustainably to economic development and community welfare. Legal issues arise for mining companies holding mining business permits that are declared bankrupt by commercial courts. Bankruptcy signifies the company's inability to meet debt obligations, conflicting with mining laws requiring financial capability. Bankruptcy results in the public seizure of assets and appointment of a curator. It's often seen as a last resort. For example, in 2013, PT Dayaindo Resources International Tbk, a coal mining company, went bankrupt due to unpaid debts. PT United Coal Indonesia (UCI) faced a similar fate in 2015 after failing to execute a debt restructuring proposal. PT Bumi Merapi Energi (BME) in South Sumatra also faced bankruptcy lawsuits, potentially impacting investor relations and leading to asset seizure during litigation.

In practice, there's a deviation from Article 65 of Law Number 3 of 2020, which mandates fulfillment of administrative, technical, environmental, and financial requirements for mining activities. This deviation is evident in mining activities carried out by the curator of PT Banjar Intan Mandiri, declared bankrupt by the Surabaya Commercial Court. Despite bankruptcy, mining operations continue, conflicting with legal requirements. This situation raises concerns as it contradicts regulations, potentially leading to administrative sanctions like license revocation (as per Article 188 of Government Regulation Number 96 of 2021). Research on "Judicial Review of Business Permit Revocation for Bankrupt Mining Companies" aims to analyze legal aspects related to revoking mining licenses for bankrupt companies. It seeks to understand the legal framework governing license revocation amid corporate bankruptcy and explore legal and practical implications for mining companies.

In addition to identifying crucial issues in implementing regulations related to revoking mining business licenses in bankruptcy cases, research objectives may involve analyzing the legal framework, decision-making procedures, and factors influencing law interpretation and application. The research scope will encompass analyzing laws and regulations, case studies to observe practical application, and exploring consequences of bankruptcy rulings on mining companies. It may also review legal approaches from other jurisdictions for comparison. These objectives and scope aim to guide the research process, ensuring relevant outcomes for stakeholders in the mining sector and corporate law. By understanding legal aspects related to license revocation in corporate bankruptcy, the research can contribute to refining regulations and practices, addressing challenges in practice.

II. RESEARCH METHODS

The paper delves into the Juridical Review of Mining Business License Revocation Against Bankruptcy Court Decisions. It utilizes a normative juridical research method to investigate the issues. This approach involves analyzing regulations concerning sedimentation utilization alongside other legal regulations. By relying solely on library research and secondary data, the study qualifies as normative legal research or library research. It collects legal materials, including primary, secondary, and/or tertiary sources. The research is conducted meticulously, focusing intensively on regulations pertaining to mining and bankruptcy.

III. DISCUSSION

A. *Legal Certainty in Executing the Procedure for Revoking Mining Business Licenses Declared Bankrupt, Considering the Factors Influencing Such Legal Certainty, and Its Impact on Related Stakeholders, Such as the Government, Society, and Investors.*

The term "*kewenangan*" is often translated as "authority," "*gezag*," or "jurisdiction." It denotes formalized power over a specific group of people or governance area, derived from legislative authority and governmental power. This concept differs from "wewenang," also known as "competence" or "*bevoegdheid*," which pertains to a specific component or area. Kewenangan encompasses a collection of wewenang (*rechtsbevoegdheden*), representing the ability to perform public legal actions or engage in legal relations as granted by applicable laws. The imposition of administrative sanctions is a crucial enforcement effort to uphold legal provisions and ensure legal certainty. Without effective law enforcement, the implementation of legal regulations falls short. Law enforcement can take various forms, including criminal, civil, and administrative sanctions. The choice of sanctions depends on the scope of regulation, with the most effective and appropriate option selected. In some cases, law enforcement may not require any sanctions at all, as they are optional in legal regulations. The inclusion of sanctions in a legal regulation must align with the legal substance within that regulation. Sanctions that do not correspond to the substance will render the legal regulation ineffective or devoid of utility. This aligns with the principles that must be fulfilled in the formation of legal regulations, namely the principles of utility and effectiveness. This means that every legal regulation is created because it is genuinely needed and beneficial in regulating societal life.

The enforcement of mining law in Indonesia, both through administrative efforts and the imposition of criminal sanctions, includes sanctions outlined in Law Number 4 of 2009 jo Law Number 3 of 2020, divided into 2 types: Criminal sanctions and administrative sanctions. The regulations on administrative sanctions are governed by Law Number 4 of 2009 jo Law Number 3 of 2020, as stipulated in Article 36A, Article 41, Article 52 paragraph (4), Article 55 paragraph (4), Article 58 paragraph (4), Article 61 paragraph (4), Article 70, Article 70A, Article 71 paragraph (1), Article 74 paragraph (4), Article 74 paragraph (6), Article 86F, Article 86G letter b, Article 91 paragraph (1), Article 93A, Article 93C, Article 95, Article 96, Article 97, Article 98, Article 99 paragraph (1), paragraph (3), and paragraph (4), Article 100 paragraph (1), Article 101A, Article 102 paragraph (1), Article 103 paragraph (1), Article 105 paragraph (1) and paragraph (4), Article 106, Article 107, Article 108 paragraph (1) and paragraph (2), Article 110, Article 111 paragraph (1), Article 112 paragraph (1), Article 112A paragraph (1), Article 114 paragraph (2), Article 115 paragraph (2), Article 123, Article 123A paragraph (1) and paragraph (2), Article 124 paragraph (1), Article 125 paragraph (3), Article 126 paragraph (1), Article 128 paragraph (1), Article 729 paragraph (1), Article 130 paragraph (2), or Article 136 paragraph (1). Administrative sanctions include written warnings, fines, temporary suspension of some or all exploration or production activities, and revocation of IUP, IUPK, IPR, SIPB, or IUP for Sales.

According to Government Regulation Number 96 of 2021 regarding the Implementation of Mineral and Coal Mining Business Activities, administrative sanctions in the mining sector are categorized into stages: written warnings, activity suspension, and revocation. However, provisions also allow for direct revocation of business licenses without prior warning or suspension sanctions. In the context of law enforcement in the Indonesian mining sector, authority is a fundamental concept. It encompasses formal power over a group of people or a specific area of governance. Unlike competence, which applies to specific aspects or areas, authority is a collection of various competencies, also known as rechtsbevoegdhehen. In public law, this authority refers to the ability to take legal actions or act in accordance with applicable laws to conduct legal relationships.

In the context of enforcing mining laws, imposing administrative sanctions is crucial to ensuring legal certainty and the effectiveness of statutory regulations. These sanctions may include criminal, civil, and administrative penalties, selected based on their effectiveness and suitability within the scope of the relevant regulations. However, it's essential to recognize that imposing sanctions in statutory regulations is optional, and this choice must align with the existing legal substance. The inclusion of sanctions in legislation must adhere to the legal principles established within that regulation. Sanctions that do not align with the substance can diminish the regulation's effectiveness, contradicting the principles of utility and efficacy. Every legislative regulation should be created with a genuine purpose and utility in effectively governing societal life.

In Indonesian mining law, enforcement involves both administrative measures and the imposition of criminal sanctions, as stipulated in Law Number 4 of 2009 in conjunction with Law Number 3 of 2020. Administrative sanctions range from written warnings to activity suspension and revocation of mining business permits. However, provisions also allow for direct revocation of permits without warning or suspension stages. Government Regulation Number 96 of 2021 categorizes administrative sanctions into stages, yet provisions for direct permit revocation exist. This complexity underscores the diversity of law enforcement in the mining sector, necessitating comprehensive understanding.

B. The Determination of Business Continuity in the Mining Sector by the Commercial Court of Surabaya: Consistency with Legal Regulations and Implications for Environmental, Social, and Economic Aspects.

1. The Determination of Business Continuity in the Mining Sector by the Surabaya Commercial Court

The determination of business continuity in the mining sector by the Surabaya Commercial Court is a meticulous process requiring careful consideration and diligence. When dealing with financially distressed or bankrupt mining companies, supervising judges must conduct a thorough evaluation of various factors influencing business continuity. This entails analyzing the company's financial reports, operational performance, financial projections, and external factors impacting the mining industry. The goal is to make well-informed decisions based on a comprehensive understanding of the company's situation and prospects. The decisions made by the Surabaya Commercial Court regarding the continuity of business for mining companies have far-reaching implications for various stakeholders. These decisions not only determine the fate of the company itself but also impact the livelihoods of thousands of employees, the sustainability of investments, the trust of shareholders, and the overall stability of the mining industry. Therefore, the decision-making process should be conducted with utmost care and consideration, taking into account all relevant aspects. It's essential to weigh the potential consequences and assess the broader impact on the economy and society before reaching a decision. Determining the continuity of business for mining companies by the Surabaya Commercial Court is a complex undertaking, given the intricacies of the mining industry and its wide-ranging implications for social, economic, and environmental aspects. Therefore, maintaining consistency, accuracy, and fairness in the decision-making process is paramount. This ensures that decisions align with legal requirements, support the sustainability of the mining industry, and consider the interests of all stakeholders involved. It's essential to navigate these complexities diligently to promote stability and balance in the mining sector.

2. Consistency with Regulations

Analyzing the consistency of the Commercial Court of Surabaya's determinations regarding business continuity with statutory regulations is a crucial aspect of evaluating legal decisions. In the context of the mining industry, it's imperative to ensure that court decisions align with provisions established in the Mining Law and other implementing regulations. This involves a thorough understanding of bankruptcy procedures, restructuring, and financial protection as regulated by laws and relevant regulations. By ensuring alignment with legal frameworks, the court can uphold legal certainty and support the sustainable operation of mining companies within the boundaries of the law. The analysis of consistency with statutory regulations also entails a comprehensive understanding of the legal principles underpinning the legal process in the mining industry. This involves assessing principles of justice, transparency, and legal certainty in the court's decision-making process. Additionally, it's crucial to examine whether the judicial process has adhered to all procedural stages stipulated in statutory regulations, including the rights guaranteed to all parties involved in the legal process. By ensuring adherence to legal principles and procedural requirements, the court can uphold the integrity of the legal process and safeguard the rights of all stakeholders involved in mining industry disputes.

Additionally, the analysis of consistency with statutory regulations also involves assessing the alignment of court decisions with the objectives and principles mandated in the Mining Law. This encompasses ensuring that decisions not only meet formal legal requirements but also support the goals of protecting public interests, preserving the environment, and fostering sustainable development in the mining industry. By considering these broader objectives, the court can contribute to the promotion of responsible and ethical practices within the mining sector, thereby enhancing its long-term viability and societal benefits. By conducting a comprehensive analysis of the consistency of business sustainability determinations by the Surabaya Commercial Court with statutory regulations, it ensures that legal decisions meet standards of justice, sustainability, and legal certainty. This is crucial for upholding the integrity of the legal system and instilling confidence among all stakeholders involved in the mining industry, including companies, employees, government, and the wider community. By adhering to legal standards and promoting fairness and transparency, the court plays a vital role in fostering trust and stability within the mining sector, ultimately contributing to its long-term success and societal welfare.

3. Implications for Enviromental, Social, and Economic Aspects

Understanding the implications of business sustainability determination on environmental, social, and economic aspects is crucial for a comprehensive assessment. In the context of the mining industry, environmental impact often takes precedence due to its potential to cause adverse effects on ecosystems and environmental sustainability. The mining process can result in habitat destruction, water and air pollution, and soil degradation, all of which pose significant threats to biodiversity and environmental balance. Therefore, evaluating the sustainability of mining operations requires careful consideration of their environmental footprint and the potential long-term consequences on natural resources and ecosystems. In addition to environmental considerations, business sustainability determination also holds significant social implications. These encompass the welfare aspects of the local community, which rely on the continuity of mining company operations. This includes job availability, workers' rights, and the relationship between the company and the surrounding community. Stable social conditions and the welfare of the local community are crucial factors in ensuring the long-term sustainability of mining operations. Therefore, evaluating business sustainability involves assessing its social impacts and considering measures to promote community welfare and positive relationships between mining companies and local residents.

Additionally, it's crucial to consider the economic implications of determining the sustainability of mining company operations. Mining companies often serve as economic pillars in their operational areas, making significant contributions to both local and national economies. The economic implications encompass the company's contribution to regional income, its influence on the labor market, and the overall economic stability of the region. In many cases, the closure or cessation of mining company operations can have wide-ranging impacts on local livelihoods, regional economic growth, and overall national income. Therefore, evaluating business sustainability requires a thorough understanding of its economic ramifications and considering strategies to mitigate adverse effects on local economies and communities. By understanding the implications on environmental, social, and economic aspects, decision-makers can conduct a comprehensive evaluation of the consequences of determining the sustainability of mining company operations. This enables the identification of potential negative impacts and the exploration of suitable solutions or mitigations to reduce risks and maximize benefits for all stakeholders involved.

CONCLUSIONS

Legal certainty in revoking mining business licenses due to bankruptcy is crucial. The imposition of administrative sanctions as a law enforcement effort needs to be carefully considered, including the selection of sanctions that are in line with the existing legal substance. Understanding the factors influencing legal certainty is vital to enhance the effectiveness of law enforcement in the mining sector, while also considering its impact on the government, society, and investors. The determination of business continuity in mining by the Surabaya Commercial Court requires careful consideration and consistency with the law. Such decisions have significant implications for various parties and the industry as a whole. It is important to ensure consistency with regulations and to understand the implications for the environment, society, and economy. Therefore, court decisions must meet standards of justice, sustainability, and legal certainty.

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