THE PROBLEMS IN MINERAL AND COAL MINING REGULATIONS PERSPECTIVES POLITICAL LAW AND RESPONSIVE LAW

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ABSTRACT

Minerals and coal are two elements of natural wealth owned by the Indonesian people and managed according to the country's economic system as regulated in Article 33 of the 1945 Constitution of the Republic of Indonesia. This paper examines the criticism of the birth of mineral and coal mining legal products amid the Corona Virus Pandemic Disease (Covid-19) that is deadly and afflicts most countries in the world including Indonesia, namely Law Number 3 of 2020 on Amendments to Law Number 4 of 2009 on Mineral and Coal Mining thus the regulations of mineral and coal mining creates problems. The approach method was used a socio legal approach. The results of the study show that problems that arise in the regulations of mineral and coal mining in terms from the political law and responsive law perspectives due to two factors between: (1) Contrary with establishment of legislation principles related discussion the draft Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. (2) Contrary with responsive law because participations of community low in establishment the draft Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

Key Words: mineral and coal mining; regulations; responsive law; political law.

INTRODUCTION

In United State of Republik Indonesia (NKRI), there are national ideals and goals that need to be realized in a sustainable manner, which are contained in the Preamble of the 1945 Constitution of the Republic of Indonesia which mention that To form an Indonesian State Government which to protect the entire Indonesian nation and all the blood of Indonesia and to promote public welfare, to educate the nation's life, and to participate in implementing world order based on independence, eternal peace and social justice. According to author, the Preamble to the 1945 Constitution of the Republic of Indonesia implies that one of the national ideals and goals of the Indonesian nation is
the realization of a just and prosperous community life in which to make it happen the state needs to manage natural wealth considering that this nation has abundant natural wealth. The natural wealth contained in the bowels of the earth, for example, are minerals and coal.

Indonesia is a country that is rich in natural resources. Natural resources (both renewable and non-renewable) are essential resources for human survival. The loss or reduction in the availability of these resources will have a profound impact on the survival of mankind. The abundance of Indonesia's natural resources also caused the Indonesian State to be colonized for centuries by the Dutch and occupied for three and a half years by the Japan. One of the natural resources that is owned is coal mineral, which is included in the nonrenewable resource category (Risal, Paranoan, & Djaja, 2017).

Minerals and coal are natural resources. Natural resources in Indonesia, philosophically were controlled and managed by the state as Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia states that the land, water and natural resources contained therein are controlled by the state and used to the maximum extent for the prosperity of the people. According to author, the Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia implies that natural resources are controlled and managed by the state aimed at creating welfare and prosperity for all people through mineral and coal management.

According to Wirjono Prodjodikoro, a rule of law is a state in which there are state equipment, especially tools from the government in its actions against citizens and all the practices in relations to it should not be arbitrary, but must pay attention to regulations, and law, and all people in social relations must comply with the regulations of law (Faizal, 2017).

Indonesia is a constitutional state as stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic which mention that Indonesia is a constitutional state. The author views that Indonesia as a rule of law adheres to a civil law system with law codification (written law) and is systematically compiled called legislation. Legislation has legal force that is binding for state
administrators and the people and aims to regulate the life of the community, nation and state. Mineral and coal mining needs to be regulated in statutory regulations so as not to cause violations in the exploitation of mineral and coal mining and prevent abuse of state power. The laws and regulations in the mineral and coal mining sector are formed through a political law process involving three elements, namely: the legislative body, the executive branch, and the community.

The legislations in the post-reformation mineral and coal mining scope Law Number 4 of 2009 concerning Mineral and Coal Mining as Article 1 number 1 of Law Number 4 of 2009 coal states that mining is part or all of the stages of activity in the framework of research, management and exploitation of minerals or coal which include general investigations, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, as well as post-mining activities.

There are many writings that examine the politics of mineral and coal law, but most of them analyzed Law Number 4 of 2009, while what is studied and also becomes novelty in this paper is about criticism of the issuance of mineral and coal mining legal products in the midst of Corona Virus Disease (Covid-19) pandemic which is deadly and impactful to the most countries in the world including Indonesia. In this case, on May 12, 2020, the legislative and the government issued a draft Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining and on June 10, 2020, the Government was passed it into Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Legalization of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining was caused problems, both from the political law and responsive law perspectives. After legalized by the President, the law has triggered rejections from the community, especially those working in the field of mineral and coal mining. Therefore, it can be concluded that there are problems with the regulation of mineral and coal mining and this need to be studied and analyzed through of political law and responsive law perspectives.
Based on the ideas that have been explained, the problem was formulated what’s the problems that arise in the regulation of mineral and coal mining can be viewed from the political law and responsive law perspectives?

RESEARCH METHODS

The approach method was used a socio legal approach. According to Bambang Sunggono, in the socio legal approach was focused on examining public compliance with legal norms with the aim of measuring whether or not a regulations or material law is applicable (Benuf & Azhar, 2020). This socio legal approach focus on the study and analysis of the political configuration in political law perspective and participations of community in responsive law perspective related with establishment of draft Law on Amendments to Law Number 4 of 2009 which was legalized into Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009. From a political law perspective, establishment of Draft Law on Amendments to Law Number 4 of 2009 through a mechanism regulated in Law Number 12 of 2011 concerning Establishment of Legislations meanwhile in a responsive law perspective, participations of community is the main principle in establishment of draft Law on Amendments to Law Number 4 of 2009 which should not be ignored.

DISCUSSIONS AND ANALYSIS OF RESULTS

1) Relationship between Legal Politics and Responsive Law

In study political law, on it is generally the first question that arises is what the study of political law is law study? If yes, what is the object of study and the scope of political law? According to Abdul Latif and Hasbi Ali have such a question can be answered from both a theoretical point of view as well as a philosophical point of view. Political law is part of science a law that examines the changes that must be made in applicable law in order to comply demands of
community life; with thus the politics law discusses the direction of development a law system; political law builds up ius constitutendum of ius constitutum (Anggoro, 2019).

What is the meaning of political law? According to Soedarto, political law is state of policy by state agencies which was authorized establish rules desired and will be used for expressing which contained in community and for achieve which told. According to Satjipto Rahardjo, political law is choosing of activity and means will be used for achieve specific of social and laws goals in community (Sarip, 2018). According to Padmo Wahjono, political law is the basic policy that determines the direction, form and content of the law to be formed. According to Teuku Mohammad Radhie, political law is a statement of the will of the state authorities regarding the laws that apply in their territory and regarding the direction of development of the law that is built (Astomo, 2014). According to Mahfud, political law is formal policy line about laws which will be applied with made new laws or changed old laws for achieve state goals (Wibawa, 2016; Tripa, 2019).

What is the meaning of responsif law? Nonet and Selznick qualify the law into 3 groups which are the stages of evolution in the relationship between law and social order and political order. Third categories of laws are (1) repressive law, (2) autonomous law and (3) responsive law. In principle, repressive law recognizes the law and the state as two inseparable things. The enforcement of repressive laws cannot be separated from integration which near between law and political. Form of most near integration is there a direct subordination from law institutions to in power elites. Autonomous law is referred to as rule of law. Autonomous law focuses on regulation and this causes autonomous law to tend to narrow the scope of legally relevant facts, thus separating thinking from social reality. The result is legalism, which is a tendency to rely on legal authority at the expense of solving problems at the practical level. Responsive law is results-oriented, on goals to be achieved outside the law. In responsive law, the legal order is negotiated, not won through subordination. The hallmark of responsive law is looking for the implied values contained in
regulations and policies. In this responsive law model, they express their disapproval of doctrines which they perceive as standardized and inflexible interpretations (Soenyono, 2011).

According to author, responsive law discusses about interaction between law and community lifes. Social life of the community are very dynamics meaning much experience changes appropriate with knowledge and technology progress so that the law also responding quickly dynamics of social life the community. The law must accommodate wish or aspirations of community without discrimination so that it was hoped that law can create justice. According to author on political law perspective, the political configurations and law products of character was related to one another. According to Mahfud, political law theory explains the pattern of relationships between political configurations and law products by state institutions of power. Law is a political product leading to the determination of the hypothesis that specific political configurations will be resulting also specific law product of characters. Democratic political configurations will be resulting responsive or autonomous law product characters, while an authoritarian (non-democratic) political configurations will be resulting conservative/orthodox or oppressive law product characters (Astomo, 2014).

Law is a political products so that the character of each law products will be very much determined or colored by considerations of the power or political configuration that produce it. This is based on the fact that every legal product is a political decision so that law can be seen as a crystallization of political thoughts that interact among politicians. Although from the "das sollen" perspective there is a view that politics must be subject to legal provisions, but from the "das sein" perspective, the law is in fact determined by the political configuration that gave birth to it (Faizal, 2017).

According to Nonet and Selznick, democratic and authoritarian concepts are identified based on three indicators, namely the party system and the role of representative bodies, the role of the executive, and the freedom of the press, while the responsive/autonomous law concept is identified based on the process of making law, granting legal functions, and the authority to interpret the law.
Based on these indicators, Mahfud MD describes them in a conceptual sense as follows: 1) The configuration of democratic politics is a configuration that opens up opportunities for the maximum potential of the people to play an active role in determining state policy. In such configuration, the government is more of a “committee” which must carry out the will of its people, which is formulated democratically, the people’s representative bodies and political parties function proportionally and are more decisive in the making of state policy, while the press can carry out its functions freely without the risk of being banned. 2) An authoritarian political configuration is a configuration that places the government in a very dominant position with an interventionist nature in determining and implementing state policies so that the potential and aspirations of the people are not proportionally aggregated and articulated. Even with the very dominant role of the government, the people's representative bodies and political parties do not function properly and are more of a justification tool (rubberstamp) against the will of the government, while the press does not have freedom and is always under government control and the risk of getting banned. 3) Responsive/autonomous law products are law products whose character reflects the fulfillment of the demands of both individuals and various social groups in society so that they are more able to reflect a sense of justice in society. The responsive law making process openly invites the participation and aspirations of the community, and judicial institutions, the law is given a function as an implementing tool for the will of the community, while the formulation is usually sufficiently detailed so that it is not open to interpretation based on the will and vision of the government itself. 4) Conservative/orthodox law products are law products whose characters reflect the political vision of those in power, so that their creation does not invite the participation and aspirations of the people seriously. If such a procedure exists, it is usually more of a formality. In such a product, law is usually assigned a function with an instrumentalist positivist character or a tool for the implementation of ideology and government programs. The formulation of the legal material is
usually only basic in nature so that it can be interpreted by the government according to its own vision with various implementing legislations (Hadi, 2015).

According to author, the relationship between political law and responsive law can also be seen from relationship between law and power aspects. The relationship between law and power can be seen in two ways, namely: First, examining the concept of sanctions. The existence of behavior that does not comply with legal rules causes sanctions to enforce these legal rules, because sanctions are a form of violence, so their use requires juridical legitimacy (legal justification) in order to make them legal violence. Second, examining the concept of constitutional enforcement. The development of an orderly system of legal rules in a country is regulated by the law itself, which is usually stated in the constitution of the country concerned. The enforcement of the constitution, including the enforcement of correct procedures in law enforcement, assumes the use of force. This means that the law itself must get protection for the sake of enforcement, namely power. Another pattern of relationship between law and power is that law is not the same as power. That is, law and power are two separate things, but there is a close relationship between them. The relationship can be in the form of a dominative relationship and a reciprocal relationship (reciprocal). There are three forms of manifestation of the relationship between law and power in this context, namely: First, the law is subject to power. That is, law is not only a subordination of power, but also often a means of power, in other words, power has the supremacy of law. Therefore, the legal definitions put forward by experts place the law under the control of power. Second, power is subject to law. That is, power is under the laws and laws that determine the existence of power. In legal thinking, the submission of power to the law is a basic concept in the administration of the state administration. This concept is formulated in terms of the supremacy of law. The supremacy of law means that law is the highest rules for regulating of community, nation and state lifes. The law as highest rules appears in the concept of basic state norms (staatsfundamentalnorm) or grundnorm according to Hans Kelsen’s thought. In addition, the rule of law also means that the use
of power to carry out the life of the state administration and the wheels of government must be based on the rule of law. Without a legal basis, power has no legality. Third, there is a reciprocal (symbiotic) relationship between law and power. In this case, the relationship between law and power is not dominant in which one is dominant or determines the other, but the relationship of influence is functional, meaning that the relationship is seen from the point of view of certain functions and can be carried out between the two (Safriani, 2017).

Based on the description regarding to the relationship between political law and responsive law, according to author, relationship between the two being seen from the political configurations which was reflected in the political attitudes of the legislative (law makers) and the executive in the establishment of law. Authoritarian political configurations will be resulting authoritarian or populistic law products because the law product characters of the prioritizes benefit of the authorities and overrides benefit of the publics, if otherwise democratic political configurations will be resulting democratic law products because the law product characters prioritizes benefit of the publics and overrides personal or groups benefits.

In connection with the existence of responsive law, responsive law creates a balance between the interests of law makers and the interests of community in the establishment of law so as to be able to realize law products that are democratic and fair for the community itself. Community participations in the establishment of legislations was juridis guaranteed and protected in Article 96 paragraph (1) of Law Number 12 of 2011 which mention that the community have the right to provide input orally and/or in writing in the establishment of legislations.

The relationship between political law and responsive law related to mineral and coal mining regulation can be seen in establishment of legislations (law products) aimed at regulating minerals and coal mining aspect. The process of establishment of legislations in the mineral and coal mining scopes should involve participations of community because in this responsive law perspective, participations of community is more important in establishment of legislations. Law in the mineral
and coal mining scopes as a legislation process in a political law perspective must be able to accommodate various social responses related to mineral and coal mining management for the sake of welfare and prosperity for all communities.

2) The Development of Regulations of Mineral and Coal Mining in Indonesia Political Law Perspective

Based on the definition of political law explained by several experts, according to the author, the political law of mineral and coal mining is an official state policy to establish, implement, and enforce a law product that aims to regulate mineral and coal mining in order to realize national ideals and goals, namely realizing social welfare for all Indonesian people. The law products are legislations such as Law, Government of Regulations, President of Regulations, Minister of Regulations, Regional of Regulations, until the Villages of Regulations.

After Indonesia’s independence, the leaders formulated the management of the mining sector which was the embodiment of an independent and sovereign state. After going through a long debate, a mining management regulation was issued with the Government Regulation in Lieu of Law (Perpu) Number 37 of 1960 which specifically regulates the mining sector. After the issuance of Government Regulation in Lieu of Law (Perpu) Number 37 of 1960, the Government of the Republic of Indonesia also issued a Government Regulation in Lieu of Law (Perpu) Number 44 of 1960 which specifically regulates Oil and Gas. In its development, Government Regulation in Lieu of Law (Perpu) Number 37 of 1960 later became Law Number 37 Prp. 1960 on mining, which is the first national product of regulation in the mining field. The Mining Law of 1960 allows the government to attract foreign capital to develop exploration and exploitation activities in mining businesses in Indonesia (Muryati, Heryanti, & Astanti, 2017).

Some of the main things regulated in the Government Regulations includes: a) In Law Number 37 Prp. In 1960, the concession system as in Indische Mijnwet 1899 was eliminated. And
the authorities in mining business activities are the state (through state companies) and/or regions (through regional companies). b) The implementation of mining business carried out by State Companies or by State Companies together with Regional Companies is for strategic mining materials. Then the mining activities of vital minerals are carried out by State or Regional Companies, as well as by private entities or individuals conducting joint business with State or Regional Companies. The business entity must be an Indonesian legal entity with specified conditions. Minerals that are not strategic and vital are regulated by the Provincial Government. Based on these provisions, foreign companies cannot directly carry out mining business activities in Indonesia, even for non-strategic minerals and/or non-vital minerals. c) Mining exploitation of strategic and vital minerals can only be carried out after obtaining a Mining Permit. d) State revenue through Law Number 37 Prp. 1960 was obtained from levies on defined fees, exploration and/or exploitation fees and/or other payments related to the granting of mining permit. e) There is no regulation regarding the Contract of Work (Contract of Work), but Law Number 44 Prp. 1960 concerning Oil and Gas Mining has regulated it. Basically, the principle of state sovereignty adopted in Law Number 37 Prp. 1960 was the same as what was in Indische Mijnwet 1899. However, there were significant changes, among others, regarding the change from a concession system to a mining exploitation system in which mining business activities were carried out by the state or region. If a private business entity is going to perform mining business activities, it will be carried out through joint ventures with the state or region (Muryati, Heryanti, & Astanti, 2017).

In developments next along with political developments and changes in government regimes also resulted in changes to legislation in the mining sector. After the enactment of Law Number 37 Prp. In 1960 during the tenure of President Soekarno (Old Order), then the Law Number 11 of 1967 concerning Basic Provisions of Mining which was signed by President Soeharto in Jakarta on December 2, 1967. Several main matters regulated in Law Number 11 1967, among others include: a) The state controls all minerals (mineral and coal resources) that are in the jurisdiction of
Indonesian mining. b) There is a classification of minerals, namely strategic minerals, vital minerals, non-strategic and non-vital materials. c) The mining of strategic minerals is carried out by a government agency appointed by the minister or state company. In addition, private businesses that have met the requirements as Indonesian Legal Entities can carry out strategic mining with the consideration that it will economically be more profitable. If the amount is very small, then mining exploitation can be carried out through community mining. d) Mining operations can also be carried out by other parties as contractors (contract of work). e) If the mineral that is used as the object in the mining operation is strategic mining material and is in the form of foreign investment, then the contract of work executed by the government will become effective after obtaining the approval of the legislative (DPR). f) Mining operations can be carried out by mining executors after obtaining Mining Authorization/Permit, except for work contracts/work agreements. Mining Permit can be granted in the form of: 1) Mining Assignment Decree (given to government agencies covering general investigations and exploration). 2) People's Mining Permit Decree (given to local people to carry out mining business activities on a small scale). 3) Decree of Mining Authority (given to State Companies, Regional Companies, Private Business Entities to carry out mining business activities as stated in Article 14 of Law Number 11 of 1967. g) State revenue is obtained from fixed fees, exploration fees and/or exploitation and / or other payments related to the concerned mining permit. In the case of a work agreement/work contract, the contractor is obliged to pay. h) Arrangements regarding dispute resolution, one of which can be resolved at the International Center for Settlement of Disputes (ICSID) forum, but if ICSID cannot resolve the dispute, the dispute can be brought to another arbitration body. i) Specifically regarding the work contract for coal mining exploitation, it is regulated in Government Regulation Number 75 of 1996 concerning the Main Provisions for the Mineral and Coal Mining Exploitation Work Agreement (PKP2B). j) There was a significant change from the substance of Law Number 37 Prp. 1960 in Law Number 11 of 1967 concerning the entry of foreign investment into Indonesia and the existence of regulations regarding work contracts.
which are also related to Law Number 1 of 1967 concerning Foreign Investment (Muryati, Heryanti, & Astanti, 2017).

After the collapse of the Orde Baru regime and the beginning of Reformasi Era in 1999, there was no change in the legal politics of mineral and coal mining. Yet later in 2009, Law Number 11 of 1967 concerning Basic Provisions of Mining was changed to Law Number 4 of 2009 concerning Mining Mineral and Coal. Some of the main things regulated in Law Number 4 of 2009 includes: a) Mining Business Permits. After the promulgation of Law Number 4 of 2009, one of the significant implications of this is the integration of the acquisition of rights to mining business activities under one roof, and divided into 3 (three) rooms, namely Mining Business Permits (IUP), Community Mining Permits (IPR), and Special Mining Business Permits (IUPK). Thus, the acquisition system arranged in the previous regulations, including the Concession System, Mining Concession (KP), Mineral and Coal Mining Exploitation (PKP2B), and Contract of Work (KK) is no longer valid except as regulated in the transitional provisions of Law Number 4 of 2009. b) Foreign investment. Indonesia has become a member of the World Trade Organization (WTO). The implication of this fact is that the foreign investment door must be opened "as wide" as possible. Law Number 4 of 2009 accommodates this fact in several of its provisions, including tax relief and facilities provided by the government. c) State and Regional Revenue. In Law Number 4 of 2009, the regulations regarding state and regional revenue are divided into 2 (two), namely tax revenue and non-tax revenue. Thus the regulation of state and regional revenues is firmer than the previous mining law. d) Dispute Resolution in the Mining Sector. In Law Number 4 of 2009, there was further clarification regarding the dispute settlement forum in the mining sector, namely the existence of arrangements regarding dispute resolution that must be carried out in Indonesia, either through arbitration or court (Muryati, Heryanti, & Astanti, 2017).

Law Number 4 of 2009 concerning Mineral and Coal Mining underwent changes in 2020. The political law process gave birth to law products in the mineral and coal mining scope, namely Law
Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral Mining And Coal. The emergence of Law Number 3 of 2020 as a law product that changes all the substances of Law Number 4 of 2009 concerning Mineral and Coal Mining to date has caused a polemic in its ratification amid the global Covid-19 Pandemic, in which all countries including Indonesia themselves focus on tackling the Covid-19 Pandemic in various policies. Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining is the subject of discussion in this paper.

3) The Problems in Mineral and Coal Mining Regulations Political Law and Responsive Law Perspectives

According to author, establishment the Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining viewed from a political law perspective seen from the political configurations reflected in the political attitude of the Parliament (DPR) as the lawmaker. The political configurations of the nine political parties factions led to interaction and political factions (pressure) in the DPR. The political interaction between the factions was carried out by means of political lobbying which were felt to be beneficial to their political interests. A concrete example of the deliberation process of the Draft Law concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining in the 2015-2020 timeframe. The Draft Law on Amendments to Law Number 4 of 2009 has been included in the National Legislation Program (Prolegnas) since 2015 years which has gone through various stages as stipulated in Law Number 12 of 2011. Invitation for more details can be seen in the table below:

Table 1. Stages in establishment of the draft Law concerning Amendments to Law Number 4 of 2009

| No | Stages     | Times           | Subject                               |
|----|------------|-----------------|---------------------------------------|
| 1. | Planning   | The National Legislation Program 2015-2019 | Drafts of Law Initiative of DPR       |
| 2. | Formulation| 2015-2018 years | 1. Receiving input from various parties including: |
National Land Agency/BPN, Local Government, Universities, NGOs (WALHI, BLH, Indonesian Nickel Association/ANI, Indonesian Mining Services Association/ASPIINDO), and Companies (PT.MIFA Bersaudara in Nagan Raya District, Aceh Province, PT. Newmont)

2. Form a Working Committee (Panja) Commission VII which is tasked with harmonizing, unifying, and consolidating the conception of the Drafts of Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining

3. The DPR Commission VII Work Committee (Panja) submits its work report through the DPR Baleg Plenary Meeting and it is agreed that the Drafts of Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining can be submitted as the Drafts of Law Initiative of DPR

3. Discussions 2018-2020 years (Members of the DPR for the 2014-2019 Periods and the 2019-2024 Periods)

1. The DPR Plenary Meeting stipulates the Drafts of Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining as the Drafts of Law Initiative of DPR

2. The President appoints a Deputy Government (Minister of Energy and Mineral Resources, Minister of Home Affairs, Minister of Finance, Minister of Industry, Minister of Law and Human Rights) for a joint working meeting with Commission VII DPR to discuss the Drafts of Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining

3. Transition of the discussion of the Drafts of Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining from Members of the DPR for the 2014-2019 Periods to the 2019-2024 Periods (carry over)

4. At the time of the Carry Over, Commission VII continued a working meeting related to the discussion of the Drafts of Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining by forming a new Working Committee (Panja)

5. The Working Committee (Panja) Commission VII together with the Government consolidated the continuation of the discussion of the Drafts of Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining to be harmonized with the Drafts of Law Work Creation

6. The Working Committee (Panja) Commission VII holds a meeting with the Government with the
agenda of submitting the harmonization results of the Drafts of Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining with the Drafts of Law Work Creation

7. Commission VII conducts a work meeting on the first level talks by hearing the opinions of nine political parties factions, the results of which are eight factions (PDI-P, Golkar, Gerindra, Nasdem, PKB, PKS, PAN, PPP) agreeing to discuss the Plenary Meeting and one faction disagreeing (Demokrat)

8. The DPR Plenary Session, eight political party factions approved the enactment of a Drafts of Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining into Law

Sumber: Parliament (DPR) Indonesian Republic since 2015-2020 years.

Based on the table above, the author observes that political configurations is very dynamic at the stage of the deliberation process of the Draft Law concerning Amendments to Law Number 4 of 2009. This can be seen from the transition period of members of the DPR for the 2014-2019 periods to the 2019-2024 periods (carry over). Politically, Commission VII of DPR has consolidated with the Government to continue discussing the Draft Law on Amendments to Law Number 4 of 2009 by harmonizing it with the Draft Law on Work Creation which is also included in the DPR Proglenas. The further development of the dynamics of the political configurations was that on 12 May 2020 the Government together with the DPR were getting more intense, especially at the DPR Plenary Session where nine political parties factions clashed with each other to argue for various interests in the discussion of the Draft Law on Amendments to Law Number 4 of 2009. Finally resulted in a decision in the DPR Plenary Session in which eight political parties factions approved the Draft Law on Amendments to Law Number 4 of 2009 which was enacted become Law includes: Faction of Demokrasi Indonesia Perjuangan Party (PDIP), Golongan Karya Party (Golkar), Gerakan Indonesia Raya Party (Gerindra), Nasional Demokrat Party (Nasdem), Kebangkitan Bangsa Party (PKB), Keadilan Sejahtera Party (PKS), Amanat Nasional Party (PAN), and Partai Persatuan Pembangunan Party (PPP). While one faction rejected the Demokrat Party (Demokrat). On June 10,
2020 the President ratified it into the Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mining.

The political stance of the Demokrat Party Faction who refuses to approve the Draft Law on Amendments to Law Number 4 of 2009 into Law reflects that law product in the mineral and coal sector causes problems until it was passed into The Law Number 3 2020 concerning Amendments to Law Number 4 of 2009. The problems in the Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining includes:

**a. Contrary with Establishment of Legislation Principles**

Indonesia as a constitutional state is obliged to carry out the development of national law in a planned, integrated and sustainable manner in a national law system that guarantees the protection of the rights and obligations of all Indonesian people based on the 1945 Constitution of the Republic of Indonesia. To fulfill the people’s needs of good legislations, made regulations about establishment of legislations was done in a definite and standardized manner and in a method that binds all institutions authorized to established legislations. In established of legislations should be done based on good establishment legislations of principles and content of legislations principle (Mustarin, Hukum, Alanuddin, 2017).

Establishment of legislation principles on Article 5 Law Number 12 of 2011 which mention that in establishment of legislations must be carried out based on good establishment of legislation of principles covers: a) Explicit of purpose. b) Appropriate institutions or officials. c) Consistent between types, hierarchies and contents. d) Can be implemented. e) Beneficial. f) Words Clarity. g) Openness. This seven principles then were mentioned on Explanation Article 5 Law Number 12 of 2011 that: 1) Explicit of purpose is that every establishment of legislations must have clear objectives to be achieved. 2) Appropriate institutions or officials is each type of legislations must be made by an authorized institutions or officials. 3) Consistent between types, hierarchies and contents in establishment of legislations must be notice really which appropriate contents consistent with types
and hierarchies of legislations. 4) Can be implemented was each establishment of legislations must take into account the effectiveness of these legislations in community well philosophically, sociologically, and juridically. 5) Beneficial is each legislation was made because really needed and beneficial in arrange the community, nation and state lifes. 6) Words Clarity is each legislation must be comply technic requirements of legislations, systematics, words or terms of choice, and law languages which clear and easy was understood so that don’t create interpretations various in implementation. 7) Openness is in the establishment of regulation start from planning, drafting, discussion, ratification or arrangement, and enactment which transparent and open characters.

The author analyzes Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 in a political law perspective causing problems because it contradicts with the good establishment of legislation principles was mentioned on Article 5 Law Number 12 of 2011. First, contrary with institutional or appropriate forming officials principle. According to author, in establishment of legislations must involve state institutions that have the authority to form laws and regulations. Facts of the violations that occurred in discussions of the Draft Law on Amendments to Law Number 4 of 2009 was not involving (ignoring) the role of Dewan Perwakilan Daerah (DPD) in discussions of the Draft Law on Amendments to Law Number 4 of 2009 remember that mineral and coal mining was related to natural resource management. This violation is contrary with Article 65 paragraph (2) Law Number 12 of 2011 mention that those relating to regional autonomy, central and regional relations, formation, expansion and merger of regions, management of natural resources and other economic resources and the balance between central and regional finances, carried out by involving the DPD. Second, contrary with conformity between types, hierarchy, and content as well as the togetherness principles. According to author, the principle of conformity between types, hierarchy, and content material requires the discussion of each content material (article by article) of legislations to include a Problem Inventory List (DIM). According to author, in togetherness of principle, the stipulation of a draft law is carried out by making decisions based
on deliberation to reach consensus between the lawmakers and government. Facts of the violations that occurred in discussions of the Draft Law on Amendments to Law Number 4 of 2009 between:

1) The members of the DPR for the 2014-2019 periods until the end period have never discussed DIM of the Draft Law on Amendments to Law Number 4 of 2009 remember this is Drafts of Law Initiative of DPR. 2) Out of syncron DIM of the Draft Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining between related Ministries (Government Representatives). 3) Submission of mini opinions was not carried out. This violations is contrary with Article 68 paragraph (1) Law Number 12 of 2011 concerning Establishment of Legislations mention that Level I Discussion was done with the following activities: introduction to deliberation, discussion of the inventory of problems, and submission of opinions.

Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 in a responsif law perspective also causing problems because it contrary with good establishment of legislation principles was mentioned on Article 5 Law Number 12 of 2011. First, contrary with openness (transparency) and humanity principles. According to author, it’s very appropriate if openness (transparency) principle was connected participations of community in establishment of legislations. Every the draft of legislations was made by lawmakers must be open (transparency) with convey to the community so that community know and give constructive input and criticism therefore, able creating aspirational and participative (democratic) of legislations. According to author, in humanity principle every citizen have right (HAM) which was protected constitutionally by the 1945 Constitution of the Republic of Indonesia an example of the right to express an opinion. The communities are giving constructive input and criticism every content (article) on the draft of legislations. Facts of the violations that occurred in discussions of the Draft Law on Amendments to Law Number 4 of 2009 was closed or not transparency so that community cannot access and give constructive input and criticism. According to Pusat Studi Hukum Energi Dan Pertambangan (PUSHEP) that discussion of the Draft Law Minerba was done with closed. The discussion of Draft
Law Minerba whose closed on principle, it’s violates openness of principle. The discussion of Draft Law Minerba was done with closed of course this implicated the public participations of absence and related stakeholders. This fact eliminates the opportunity for community groups to convey their aspirations and provide input related to the mining management that actually occurs in the regions. Meanwhile, on the other hand, several community groups and higher education institutions that submitted requests for hearings tended to be ignored. This violation is contrary with Law Number 12 of 2011 between: Article 16 mention that Planning for drafting a law was done in the Prolegnas. Article 17 mention that The Prolegnas as referred to in Article 16 was the priority scale of the establishment law program in order to realizing a national law system. Article 18, letter h mention that in the drafting of the Prolegnas, the drafting of a list the Draft Law was based on the aspirations and law need of the communities. Article 96 Law Number 12 of 2011 mention as follows: (1) the community have right give input orally and/or in writing in the establishment of legislations. (2) input orally and/or in writing as referred to in paragraph (1) can be done through: public hearings, work visiting, socialization, seminars, workshops and/or discussions. (3) The community as referred to in paragraph (1) is an individual or group of peoples who have an interest in the substance the draft of legislations. (4) to facilitate the community in give input orally and/or in writing as referred to in paragraph (1), every the draft of legislations must be easily accessible by community. Second, contrary with justice principle. According to author, the essence of law is for humans don’t humans for law, which means that law was made must be give justice for all mankind. Legislations as law products was expected give justice for the community remember legislations are binding (regulating). Facts of the violations that occurred substance of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 don’t giving justice for the community which have interests with mineral and coal mining. According to Pradama Rupang as the Coordinator of the East Kalimantan Mining Advocacy Network (JATAM), the new Minerba Law also closes the people’s veto power. Because there is not a single article that provides room for people’s participation. Not
only that, in the Minerba Law, there are also a number of articles that open up opportunities for criminalization of community who refuse to mine. Third, contrary with balance and harmony principles. According to author, every establishment of legislations must be create balance and harmony between interests of lawmaker and community. The lawmaker don’t only to prioritize interests of politic but harmful interests of community so that to create the legislations which is not in accordance with hopes and desires of community. Facts of the violations that occurred in discussions of the Draft Law on Amendments to Law Number 4 of 2009 was closed (no transparency) so that interests of community whose related to mineral and coal mining were not good accommodated. According to Antonius Aditantyo Nugroho (Researcher of the Indonesian Center for Environmental Law’s Division of Forest and Land Management) that the content of articles in the revision of Law Number 4 of 2009 only sided with coal mining companies. Moreover, the law ignores the interests of the community in mining areas and environmental sustainability. From the start, the DPR was considered not transparent in the deliberations of the Draft Law Minerba. The lack participations of community has resulted in the content of the regulations that is more accommodating for the interests of business actors. According to Antonius in the mining sector, it is very important to accommodate the interests of the community in the working area, such as pollution, environmental damage, and land security. This violations contrary with Article 96 Law Number 12 of 2011 mention as follows: (1) the community have right give input orally and/or in writing in the establishment of legislations. (2) input orally and/or in writing as referred to in paragraph (1) can be done through: public hearings, work visiting, socialization, seminars, workshops and/or discussions. (3) The community as referred to in paragraph (1) is an individual or group of peoples who have an interest in the substance the draft of legislations. (4) to facilitate the community in give input orally and/or in writing as referred to in paragraph (1), every the draft of legislations must be easily accessible by community.
b. Contrary with Responsive Law Theory

The author views the responsive law theory brought by Philippe Nonet and Philippe Selznick is explaining that responsive law prioritizes the existence of community participations in establishment of law with other words responsive law products was born from the main principle that is there aspirations of community. Responsive law products certain prioritize openness of principle to accept social changes that occur in lifes of community for realization just laws. According to author, The Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining in responsive law theory perspective causing problems because its establishment very urgent so that participations of community is very low. According to the Center for Energy and Mining Law Studies (PUSHEP) that discussion the Draft Law Minerba was done with closed. The discussion of Draft Law Minerba on principle violates the openness of principle. The discussion was done with closed would have implication for the absence of public participations and related stakeholders. This fact eliminates the opportunity for community groups to express their aspirations and provide input regarding the mining governance conditions that actually occur in the regions. Meanwhile, on the other hand, several community groups and higher education institutions that submitted requests for hearings tended to be ignored. Therefore participations of community low in establishment the Draft Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining can be categorized as repressive or autonomous law products (no responsive) because it ignores participations of community.

CONCLUSIONS

Based on the descriptions explained earlier, it was concluded problems that arise in the regulations of mineral and coal mining in terms from the political law and responsive law perspectives due to two factors between: 1) Contrary with establishment of legislation principles related discussion the Draft Law on Amendments to Law Number 4 of 2009 concerning Mineral
and Coal Mining. 2) Contrary with responsive law because participations of community low in establishment the Draft Law on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

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