

The Ownership of Minerals by Indonesia Law and Islamic Law

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Abstract: *This research is aimed to find out how to compare the ownership of minerals according to Indonesian state law and Islamic law. It is very important for the public to know how the legislative perspective or the Positive Law and Islamic Law regulate the ownership of minerals intended for The state also for the community, whether in the regulation of these two laws there are many significant differences or similarities between the substances set forth in the regulation. Seeking differences or similarities in these two rules is not fundamental and will change the enactment of the regulation but the formation of this regulation is aimed at no more unrest of mining land, also avoid illegal mining and prioritize its management in our own country, the country we love This is not more to foreign countries.*

Keyword: Indonesian Law, Islamic Law, Minerals Law

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I. INTRODUCTION

Indonesia is a country with abundant natural wealth. One area of the region that has the potential of metal mineral deposits (especially gold and silver) is also stored in coal mining area of 163,927 ha, sebaran location spanned in the five districts / cities: Southern Tapanuli District, North Tapanuli Regency, Kabupaten Tapanuli Tengah Mandailing Regency Christmas, precisely in South Tapanuli Regency, namely in District Batangtoru there is a huge gold and silver deposit. Mandailing Natal Regency, also in Padang Lawas district contains a very rich coal content. These areas are highly potential areas as mining areas, including Batang Lubu Sutam Subdistrict, Sosopan Subdistrict and Sosa Subdistrict in this area not only have gold content, coal also contains lead.

Article 1 paragraph (2) of Law no. 5 of 1960 Concerning the Basic Regulation of Agrarian Principles of 1960 State Gazette of the Republic of Indonesia No. 104. Supplement to the State Gazette of the Republic of Indonesia No. 2034 (hereinafter in this article shall be abbreviated as BAL No. 5 of 1960), states: All the earth, water and space, including the natural resources contained therein within the territory of the Republic of Indonesia, as natural resources are earth, water and space, The Indonesian nation and is a national treasure. Understanding the land according to Budi Harsono is "as for the earth's surface is called the land." "That" land "is" the surface of the earth ", then the right to the land is the right to use the land alone". The two understandings can be understood that having the right to land does not mean to have the contents of the land of the land, a person who owns the land can only use his land without having the wealth contained therein.

The natural wealth contained therein within the territory of the Republic of Indonesia, that is, things that are in the soil such as mineral materials (petroleum, gold, coal) and others, are specifically regulated by the law on mining ie -No. 4 of 2009 on Mineral and Coal Mining (in this article will be abbreviated as Law No. 4 Year 2009) and Law no. 23 of 2014 concerning Local Governments (in this article will be abbreviated to Law No. 23 of 2014), and Government Regulation no. 77 of 2014 On the third amendment to Government Regulation no. 23 of 2010 on the Implementation of Mineral and Coal Mining Business Activities (in this article will be abbreviated as Government Regulation No. 77 Year 2014).

Article 1 paragraph (2 and 3) of Law no. 4 Year 2009 states: Minerals are inorganic compounds formed in nature, which have certain physical and chemical properties as well as the regular crystal arrangement or combination that forms rocks, either in loose or solid form. Coal is a precipitate of organic carbonaceous compounds that form naturally from the rest of the vegetation. Article 1 paragraph (19): mining is part of mining business activities to produce minerals and / or coal and associated minerals. Opinions from WJS, Poerwadarminta, Mining goods are "goods from the ground such as: iron, tin, and so forth".

According to Prathama Raharja, various minerals based on their use to three kinds of groups: 1. Mining goods as a source of energy (energy), including petroleum and natural gas, coal, 2. Metal mineral mining items included here are: tin , Iron ore, biki copper, nickel ore, bauxite (aluminum seed), plumbun and zinc seeds. 3.

Industrial minerals (not Metal) ie minerals that can be used directly: sulfur, iodine, limestone, quartz sand, marble, caulin, diamond, other minerals such as: wolframite, foslat, asbestos, Granite, plaster, mica, chrome and rock salt.

Ibn Qudamah in his book *al-Mughni* declared the miner's goods:

“Everything that is removed from the soil created in the land (but) is not the land and the thing is valuable”

Understanding of the definition that: something that new things can be said minerals, if it meets the four elements: first, the object comes from the bowels of the earth, second, what is removed from the bowels of the earth it is formed by itself in the ground, third, Which is obtained from the bowels of the earth is clearly different from the soil and the fourth, the object has value or price in terms of economy.

The opinion of Muhammad Abu Zahrah in his book *al-Milkiyyah wa an-Nazariyyah al-aqd fiy as-Shari'at al-Islamiyyah* divides this type of miner to three parts: "the miner's goods are divided into three, first the hard quarry which is liquefied With fire and printed like gold, silver, iron, copper and otherwise the countrymen with earthen objects. Both hard and tough mining products and flame-like printing such as white chalk, litter, coal, diamonds and precious stones taken from the bowels of the earth. The three minerals are liquid like mercury and oil".

II. DISCUSSION

1. Ownership of Mining by Law

A. Ownership of Mining Goods According to UUPA No. 5 of 1960.

Article 2 paragraph (1) on the basis of the provisions of Article 33 paragraph (3) of the Constitution and matters as meant in Article 1 of earth, water and space, including the natural resources contained therein at the highest level controlled by State, as an organization of all people's power. Article 8 of BAL. 5 Year 1960 states: On the basis of the right of control of the state as referred to in Article 2 regulated the taking of natural wealth contained in the earth, water and space.

The right to "control" by the State of Indonesia is the right to control in the sense of not "owning" but the sense that the state as the power organization of the Indonesian nation and at the highest level is authorized or has the authority to regulate and administer its designation, use, stock and maintenance, The rights which may belong to that part of the earth, water and space. States may also determine and regulate the legal relationships between persons and legal acts that have to do with earth, water and space.

Understanding given by BAL. 5 of 1960 on the natural wealth contained in it: the natural wealth at the highest level controlled by the state and owned by the state is used to achieve the greatest prosperity of the people, in the sense of happiness, prosperity and independence in society and an independent Indonesian state of law, Sovereign, just and prosperous. UUPA no. 5 Year 1960 there is no detail about the arrangement of what is meant by the understanding of natural wealth contained in the earth, water and space. Here UUPA No. 5 Year 1960 has a role and serves as the basis for the formation of a law on mining that is Law no. 4 Year 2009.

B. Ownership of Mining Goods According to Law no. 4 Year 2009

According to Law no. 4 Year 2009 in consideration: that the minerals and coal contained in the territory of Indonesian mining law is a non-renewable natural resources as a gift of God Almighty who have an important role in fulfilling the livelihood of the people, therefore the management must be controlled by the state to give value Added significantly to the national economy in an effort to achieve prosperity and prosperity of the people in justice.

1) Government Owned Mining Goods

Based on the regulations governing the mining, it can be concluded that all mining in the territory of the Republic of Indonesia is under the authority or "controlled" or owned by the government. The reflection of government power in this case is that the government establishes a law on mining and its implementing regulations, namely Law no. 4 of 2009 and PP no. 77 The year 2014. The authority of the mineral and coal sub-sector is divided between the central government and the provincial government, where the authority for the issuance of mining business licenses within the framework of foreign investment becomes the authority of the central government. Article 1ayat (6 and 7) of Law no. 4 Year 2009 states: Mining business is an activity in the framework of mineral or coal exploitation covering stages of general investigation activities, exploration, feasibility study, construction, mining, processing and refining, transportation and sales, and post mining. Paragraph (7): a mining business permit, hereinafter referred to as IUP, is a license to carry out a mining business. Paragraph (29): the mining area, hereinafter referred to as WP, is an area which has mineral and / or coal potential and is not bound by any governmental administrative boundaries that are part of the national spatial plan. Paragraph (31) of mining business permit area, hereinafter referred to as WIUP is an area granted to holders of IUP. In connection with the enactment of Law no. 23 of 2014 and PP no. 77 of 2014, states as follows: 1). Subject to the provisions of Article 14 jo. Article 15 jo. Appendix to Law no. 23 of 2014, the

authority of mineral and coal sub-sector is divided between the central government and the provincial government, where the authority of issuance of mining business permit in the framework of foreign investment becomes the authority of the central government. 2). Based on the provisions of Article 112E PP No. 77 of 2014, governors or regents / mayors in accordance with their powers shall submit documents of exploration IUP, production operation IUP, IUP of special production operations for the transportation and sale, or IUP of special production operations for processing and / or purification in the framework of foreign investment already issued Prior to the enactment of this Regulation to renew its IUP by the minister in accordance with the provisions of legislation.

The government with its "right of control" shall have the right: a. Make the determination of national policy b. The drafting of legislation c. The establishment of national standards, guidelines and criteria, d. The establishment of a national mineral mining and coal licensing system. (Article 6 of Law No. 4 Year 2009). The state grants mining permit (IUP) to local or national companies and foreign investors for mining management in Indonesia. The issuance of mining business licenses for local or national companies is the authority of the provincial government, while the issuance of mining business licenses within the framework of foreign investment is the authority of the central government. Provision of government management licenses to local or national companies and foreign investors, by means of the "Contract of Work" agreement is a "profit sharing" system provided by local or national companies and foreign investors to the state. Liability for IUP holders to pay state revenues and regional revenues. The state in this case the government shall obtain, as the state income from tax revenue, customs duties and excise, as well as from non-tax revenues consisting of regular contributions, exploration contributions, production fees and compensation of information data. While regional revenue consists of local taxes and regional distribution as well as other revenues established by law. Besides every net profit generated by the company since its production, the government will get 4% (four percent) and local government 6% (six percent). Earnings gained by the state both through the central and regional governments are as state revenue aimed at the prosperity of the people of Indonesia.

In Mandailing Natal District, North Sumatra Provincial Government granted mining permit (IUP) to PT. Sorik Mas Mining, 75% (seventy five percent) of the shares are owned by Sihayo Limited and the remaining 25% (twenty five percent) is owned by PT Aneka Tambang. The company has been operating from 1998 until now, the mining concession (contract of work) in this region includes District of Nopan, Muara Sipongi Subdistrict and Ulu Pungkut Subdistrict with mining area of 24,300 Ha. PT. Sorik Mas Mining as the holder of IUP also controls 41,900 Ha, located in District Siabu, Bukit Melintang Subdistrict and North Panyabungan Subdistrict, area controlled by PT. Sorik Mas Mining is mostly located in Batang Gadis National Park (TNBG). The gold mining located in South Tapanuli District in Batangtoru Sub-district on the Martabe mining project site, holds a mining permit (IUP) held or managed by foreign investors, namely G. Resources Group Limited, Hongkong after the transfer of ownership from foreign investors, Agricoourt, Australia.

2) Mining Not Owned by Government

As is known all the existing mining on earth Indonesia is owned by the Unitary State of the Republic of Indonesia. This "controlled" statement authorizes the state to transfer the management of a mining company to another party. The state may grant mining permits, among others, to:

- a. Foreign investors
- b. Local or national companies, and
- c. Mining people

Article 1 Paragraph (10) of Law no. 4 Year 2009: People's mining permit, hereinafter referred to as IPR, is a permit to carry out mining business within a community mining area (WPR) with limited area and investment. Article 1 ayat (28): community empowerment is an effort to improve the ability of the community, individually or collectively, in order to better the level of life. Paragraph (32). The mining area of the people, hereinafter referred to as WPR, is part of the mining area (WP) where the people's mining business is conducted.

Mining goods can be found by anyone, especially for people who own a plot of land, then the problem arises how the status of ownership of mining products found in his own land ?. Does the mine belong to the absolute owner of the land or government entitled to take over or control the minerals for the welfare of the people? The regulation of mining laws in Indonesia expressly states that the owner of the mine is a government not a sole proprietorship, and the management of mined goods may be provided to other parties. The government will take over the right to land by compensating property rights to the community land if it contains natural resources such as minerals....

2. Ownership of Mining Goods According to Islamic Law.

The explanation of Al-Qur'an Al-Karim letter An-Nahl verse 65 explains:

"God sends down from the sky the waters (the rain) and with the water He revives the earth after its death. Verily in that are Signs for the hearing".

Islamic teachings recognize the validity of property rights of a person with the provision of ownership of such property in accordance with the teachings set by the Islamic Shari'a. Conversely, if the process of ownership is not in accordance with the provisions in force in Islam, then Islam will not recognize the validity of property that is in control of a person. The difference of opinion / opinion among scholars about the ownership of minerals according to Islamic Law, whether the mine can be owned by the landowner where the miner is found ?, or the mine belongs to and is managed by the state / government (Imam) to be utilized For the benefit and prosperity of the general public (ummah Islam).

a. Government Owned Mining Goods

As is known that in the bowels of this earth there are two kinds of property that can be found by humans, namely the goods of mine and treasure. According to the Maliki School, the mine on earth is owned by the government (Imam). As described in the following book of Mawahid al-Jalil:

"If the mine is found in a certain land (there is the owner of the land), then the law for the Imam (the commander), and no exclusiveness to the land conquers".

The same opinion in the book of Mudawwanah al-Kubro states that: if the conquered areas (through force) and in the conquered land are found minerals, the miner's goods must be handed over to sulthan / imam and the ownership or status of the miner's decision / The policy is determined by sulthan / Imam namely: "And the conquered areas (through the forces) in the conquered land are found minerals, then the minerals are handed over to the sulthan / imam ownership status, he who process them according to his will."

As in the opinion of the Maliki School, that property is in the form of minerals contained in the bowels of the earth and this is the property of the Imam / government to be managed for the benefit and prosperity of the people. The mine found in a person's land is not the private property of the landowner but the landowner must report to the Imam / government that in the land it contains contains minerals, and the Imam / government will take over the land by giving compensation in accordance with the rules applicable. If a miner is owned by a person personally by the landlord, then this may cause or trigger disputes, hostilities and seizure of land / land containing minerals among peoples. "... .. Because the fact that the minerals result in the emergence of hostility between fellow human beings".

b. Mining Goods Non owned by the Government

In contrast to the opinion expressed by the Maliki School, the Hanbali School states that: the minerals found in the bowels of the earth, it will belong to the landowner and not the government / Imam. As can be seen in the book of al-Mugni wa Syarh al-Kabir the following: "And frozen minerals are owned by the ownership of the land where the miner was found, because the mine items found are part of the earth / land (owned The landowner). So he (the goods) the same status as the land and the rocks that exist (in the bowels of the earth). For it is (the miner's) part of the land / garden (owned by the owner of the land itself) as well as the soil / dust and rocks". From the explanation put forward by the Hanbali School, it is asserted that with the ownership of the land / garden owned by the owner then at the same time the content and what is in the bowels of the earth will belong to the owner of the land / garden automatically just like the ownership of the objects Is on the ground like dust or rocks, and not the property of the Imam / government as the opinion of the Maliki School.

As Wahbah az-Zuhaili's opinion on the ownership status of minerals is: "whereas according to the Hanafi, Shafi'i, and Hambali Schools in a rowing opinion they claim that the mine is owned by the ownership of the land, has it, then it also has all parts of the land. So if the land is owned by a person, it means that the mine also belongs to him.

III. CONCLUSION

In the current national law, there are clear and detailed regulations governing mining and its implementing regulations, namely Law no. 4 of 2009 and PP no. 77 of 2014 set by the President of the Republic of Indonesia. As the explanation the author has previously explained, in Islamic Law the arrangement of the ownership status of minerals according to the scholars of the Maliki School, and the Hanafi, Shafi'i, and Hambali Schools have different views on the ownership of minerals. Statement from Maliki School, that government minerals (Imam) do not belong to the landowner. The views of the Hanafi, Shafi'i, and Hambali Schools firmly state that: with the ownership of the land / garden owned by the owner then at the same time the content and what is in the bowels of the earth will belong to the owner of the land / garden. Although in the view of Islamic law there are differences of opinion regarding the status of ownership of minerals in a country, but basically, when viewed from the perspective of Islamic law proposed by the Maliki School and the regulation on the national mining owned by the Indonesian Nation, namely Law no. 4 of 2009 and PP no. 77 Year 2014 has many similarities in the principles of its implementation. But the differences put forward by the Hanafi, Shafi'i, and Hambali Schools do not affect the regulation of mining in Indonesia.

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