

Juridical Review of Mastering and Utilization of Land Rights Based on Land Letters (Skt) Connected with Mining Business Licenses (Iup) Based on Law of Number 4 the Year 2009 Regarding Mineral and Coal Mining

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Abstract

Minerals and coal as one of Indonesia's natural resources are used for the greatest prosperity of the people so that the state controls it. Based on Law No. 4 of 2009 on Mineral and Coal Mining, state control within the scope of business can be delegated to other parties within the Indonesian mining legal territory, one of them is the existence of an IUP. IUP serves to carry out mining business activities. IUP holders are not holders of land rights, and holders of land rights do not automatically become holders of IUP. Land held by IUP holders can not be directly utilized. Mining business activities carried out gradually and timed long enough. As a result, an impression of neglect of the land and invite other parties to make land grabs. One of them uses Land Certificate. The purpose of this first study is to know the legal power of Land Certificate in terms of control of land rights. Second, to know the legal protection for IUP holders due to the issuance of Land Certificate. Thirdly, to know the legal certainty of ownership of mineral

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and coal resources in Mining Permit Areas (WIUP) due to issued Land Certificate. The results showed that the Land Certificate is just a certificate of physical control over land, especially in WIUP, so it has a weak legal force as proof of control over land rights. Unlike the case when land ownership using certificates. IUP granted by the government to mining entrepreneurs is a form of legal protection in the implementation of mineral and coal mining business activities. The issuance of Land Certificate for land tenure in WIUP cannot distort the existing IUP first. Land certificates are indeed possible to control the land surface, but not to control the mineral resources and coal in the bowels of the earth.

Keywords: Land Certificate, Land Rights Control, Mining Business License

Introduction

Indonesia is a country endowed with abundant natural resources as national wealth. The regulation on natural resources is regulated in the 1945 Constitution in Article 33 paragraph (3) stating that:

“The earth and the water and the natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people.”

One of Indonesia’s natural resources is mineral and coal. Minerals and coal as natural resources, controlled by the state and controlled by the government. State control contains the authority to regulate, manage (control) and supervise the management or exploitation of minerals and coal, and contains an obligation to use as much as possible for the welfare and interests of the people.

The control of the state within the scope of business (concession rights) within the legal territory of mineral and coal mining is regulated in Law No. 4 of 2009 on Mineral and Coal Mining. The concession rights may be delegated to business entities, cooperatives or individuals within the territory of Indonesian mining law in the presence of licenses. One of the permits to be discussed is the Mining Business License to be hereinafter abbreviated as IUP. IUP is divided into 2 (two) namely Exploration IUP and Production Operation IUP. IUP in addition to functioning for permission to carry out mining business, IUP has issued aims for the first step can be done mining construction.

When mining construction phase is done, of course, have to get certainty about the right of land. Because mining business activities

are mineral and coal management activities contained in the soil. The right to land is required for the interest of mining business activities. Then related to the utilization of land rights in which contained minerals or minerals, can cause problems because the holder of IUP is not the holder of land rights. Similarly, holders of land rights do not automatically become holders of IUP for minerals and coal contained therein. The result is that the land controlled by the IUP holders cannot be directly utilized.¹ This is because mining business activities are done in stages starting from the exploration stage to production operation stage. In addition to gradual, mining business activities also require a long period.

The period for each Exploration IUP and Production Operation IUP has a long-term of validity. The problem is the validity period of IUP starting from IUP Exploration, and Production Operation IUP and extension can be up to 60 (sixty) years. Therefore, the control of land rights by IUP holders is possible up to 40 (forty) years, unless the IUP holder gradually also returns to the state after the mining materials are extracted/processed.^{3,4,5,6} Due to a long tenure in the absence of mining activities, the impression of neglecting the land and inviting other parties to conduct land grabs within the Mining Permit Territory (WIUP).

There is a problem of land grabbing conducted on the basis of Land Certificate, hereinafter referred to as SKT issued by the village head (*kelurahan*). This SKT confirms the history of the land. The purpose of the issuance of SKT is to facilitate the control of land rights. Based on this SKT will be used for registration of land rights to the National Land Agency (BPN) or the District Land Agency. The village head as part of the government apparatus at the lowest level has the authority to make a letter affirming or strengthening a person's physical control over a plot of land in his territory.^{7,8,9,10}

Through this case, there is uncertainty about legal certainty and protection of IUP holders. The impact is on the side of society demanding compensation because they base their ownership of land rights with SKT. In the side of IUP holders, they are forced to pay compensation for the demands of the local community.

Licensing of coal mining business in Indonesia

SKT (Land Information Letter) is a written evidence under the hand that the evidentiary power is not as strong as the authentic deed, but

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because the SKT is the letters categorized as the basis of the right or juridical data on the land as a condition of the completeness of the requirements of the land rights application as stipulated in the provisions of the land legislation, then the SKT is a very important document in the process of issuing a certificate of land rights.

Based on the interview result of the writer with Mrs. Tini Sumartini and Mr. Iwan Y. Adyaksa as the Analyst and Staff of Land Rights Application and Land Registration in the National Land Agency of West Java Regional Office he mentioned that SKT is one of the supporting data in the implementation of land titling certification so that SKT must be completed as a condition of land registration especially for first land registration. Furthermore, he mentioned to issue SKT, Village Head / Village Head who wants to issue SKT hence there are conditions such as follows: ¹¹

- a. The subject of SKT physically controls the land, the land tenure is done with a minimum period of 20 (twenty) years and knows about the land boundary mark
- b. The land is cultivated by the subject of SKT, for example, farming and others;
- c. Routine pay taxes or village fees on the land;
- d. Residents around the land area know that the subject of the SKT is really working on the land concerned (minimum 2 (two) people).

In Law No. 4 of 2009 on Mining of Minerals and Coal is determined the types of the mining business. From this understanding it can be concluded that the mining business of excavation materials are divided into 8 (eight) kinds:

- a. A general inquiry is a stage of mining activity to determine regional geological conditions and indications of mineralization.
- b. Exploration is the stage of mining business activities to obtain detailed and thorough information about the location, shape, dimensions, distribution, quality, and measurable resources of minerals, as well as information on the social and environmental environment.
- c. Production operations shall be the stages of mining business activities which include construction, mining, processing, refining, including transportation and sales, as well as environmental impact control facilities in accordance with the results of the feasibility study.

- d. Construction is a mining business activity to undertake the construction of all production operation facilities, including the control of environmental impacts.
- e. Mining is part of mining business activities to produce minerals and/or coal and associated minerals.
- f. Processing and refining is a mining business activity to improve the quality of minerals and/or coal and to utilize and obtain minerals.
- g. Transportation is a mining business activity to remove minerals and/or coal from mining and/or processing and refining areas until the delivery site.
- h. Sales is a mining business activity to sell the proceeds of mineral or coal mining.

IUP according to Article 1 number 7 of Law Number 4 the Year 2009 is a license to carry out mining business. IUP is divided into 2 (two) namely Exploration IUP and Production Operation IUP:

- a. Exploration IUP is a permit granted for general investigation activities, exploration, and feasibility studies within the framework of mining.¹² Exploration IUP is provided on request from business entities, cooperatives, and individuals who have obtained Mining Permit Areas (WIUP). In the case of exploration activities and feasibility study activities, holders of exploration IUPs obtaining mined or uncultivated coal shall report to the IUP. Article 42 of Law No. 4 of 2009 concerning Mineral and Coal Mining regulates the period of Exploration IUP, on average when the total length of the Exploration IUP can reach 20 years along with its extension.
- b. Production Operation IUP is a permit granted for construction, mining, processing, and purification activities, as well as transportation and sale in the framework of mining.¹³ This type of IUP is provided to enterprises, cooperatives or individuals as an increase from exploration activities. Article 47 of Law Number 4 the Year 2009 regarding Mineral and Coal Mining regulates the period of IUP Exploration which if accumulated reaches 60 years along with its extension.

Land Tenure Analysis Based on SKT Connected to Mining Business License (IUP) Based on Law Number 4 the Year 2009 on Mineral and Coal Mining

Based on its position the land is divided into 2 (two), namely land that has been certified and land that has not certified. The certified land is

land that has rights and has been registered in the land office. Land that is not certified is the reverse of land certified; this land has not been registered to the land office so that this land has not owned the right to land which is indicated by a certificate of land rights and the status of the land is still state land or customary land. Usually, the state land that has been carried out by the local community has proof of rights right in the form of SKT.

SKT is a certificate indicating the control of a person or a party to the plot of the land concerned. SKT is written evidence made under the hands of a party performed before and published by the Village Head. SKT is based on official reports of land inspection and public figures' statements, then reinforced by the *Camat* containing information on the verification of indigenous land rights that have not been registered, in respect of which the land will be transferred or will be appealed for their rights. Thus, this SKT is used for land that has not been registered as information that someone controls the land physically.

As regulated in Article 39 paragraph (1) letter b of Government Regulation Number 24 of 1997 concerning Land Registry which reads PPAT refuses to issue a deed if the land has not been registered yet, it is not submitted:

1. a certificate of right or certificate of Village Head that states that the person controls the plot; and
2. a certificate stating that the parcel of land concerned has not been certified from the Land Office, or for land located in a region far from the Land Office office, from the right holder concerned with being upheld by the village chief;

Through the explanation of Article 39 paragraph (1) point b, it can be seen that the Land Deed Officer (PPAT) will refuse to make the deed of land which has not been registered if it is not submitted by SKT made by the village head. From here it can be said that in addition as evidence for the registration of land for the first time, SKT was used as one of the evidence of land tenure to later made the PPAT deed.

In mining business activities, it is known as Mining Business License (IUP), Special Mining Business License (IUPK) and Mining Business License (IUPR). All such licenses constitute a form of protection and provision of legal certainty for the holder of each permit based on its mining sector. Permits are required for parties to conduct mining operations to clarify ownership or land management rights. As holders of IUPs for both exploration and production operations, under this

IUP they have rights and obligations. Here the author will discuss the rights of holders of IUP because of its relationship with the protection of the law.

The rights of IUP holders are listed consecutively in Articles 90, 91 and 92 of Law No. 4 of 2009 on Mineral and Coal Mining. In addition to the article above, pursuant to Article 94 of Law No. 4 of 2009 concerning Mineral and Coal Mining states that IUP and IUPK holders are guaranteed their right to conduct mining business in accordance with the provisions of the legislation. However, in practice, in the minerals and coal mining business sector there are still many problems that accompany one of them concerning the utilization of land for mineral and coal mining business activities.

Utilization of land for mining business activities is described clearly in Chapter XVIII starting from Article 134 to Article 138 of Law Number 4 the Year 2009 regarding Mineral and Coal Mining. It should be remembered that the IUP is not proof of control over land rights for the interests of mineral and coal mining business activities. One of the problems of land use is the issue of land rights acquisition carried out by the community around WIUP based on SKT issued by the Village Head.

Tenure of land rights with SKT here which is based on bad faith with other words occupies a plot of land without a legal title (*legal rechts titel*).¹⁴ The right of title herein is contained in Article 16 of Law Number 5 of 1960 on Basic Agrarian Basic Regulations, or land rights regulated by customary law such as a land lien, passenger rights, profit sharing rights, and other rights of a temporary nature because these rights will be regulated by law. According to the opinion of the author, excluding the rights to the land stated in Law Number 5 of 1960 on the Basic Regulation of Agrarian Principles, the control or ownership of the land with other rights base is inconsistent and unlawful of its legal force. Anticipation step is through land acquisition to obtain the right to land in accordance with the law.

Tenure of land rights by a party in the WIUP with the use of the right of HCS shall have no legal effect whatsoever. Therefore, IUP which has been owned by mining and coal mining entrepreneurs as a permit to conduct mining business activities, cannot be distorted by its legal force to exercise physical control over a plot of land, especially in WIUP. This is because the IUP is a permit which clarifies the ownership and rights of land management within the Indonesian mining area.

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Referring to Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia juncto Article 4 of Law No. 4 of 2009 concerning Mineral and Coal Mining that in this case mineral resources and coal as one of Indonesia's national assets are controlled by the state for the welfare of the people. However, if a party has obtained IUP from the government to conduct mineral and coal mining business activities under Article 92 of Law No. 4 of 2009 on Mineral and Coal Mining that the IUP holder is entitled to have minerals, including their associated minerals, or coal has been produced if it has fulfilled the exploration or production contribution dues, except for radioactive follow-up minerals.

The ownership of mineral and coal resources by IUP holders is not without limits, the power and sovereignty of the state remain a major right in the ownership of mineral and coal resources. Holders of IUP or mineral and coal mining entrepreneurs after the expiration of the IUP shall return the land and the excavated material contained therein to the state gradually. A SKT issued by the Village Head is indeed possible to be used as the basis for the right to control the land physically. If the IUP is to conduct mining business activities, the IUP holders have legal grounds for ownership of mineral and coal resources processing proceeds. Another case with the holder of SKT, this certificate can be used as the basis of the right of control over a plot of land, but SKT in any legislation cannot be used as evidence to obtain the right to have natural resources both on the surface and in the bowels of the earth.

Even for someone who pocketed the right to the strongest land that property can not necessarily have the mineral resources and coal that is in the bowels of the earth, especially for someone who only has a basic tenure of land with SKT. Referring to the exposure of the above authors, if a party has legally pocketed an IUP in a mining business activity, then at least it has legal grounds for ownership of mineral and coal processing proceeds as set forth in Law No. 4 of 2009 on Mineral and Coal Mining. Although it is not absolute ownership and merely ownership with the right to produce and sell mineral and coal processed products, it must remain oriented to the principle of benefit and principle of partisanship to the state interests referred to in Article 2 of Law Number 4 the Year 2009 concerning Mining of Minerals and Coal. The control of land rights with the issuance of Land Certificate by the Village Head / Head of the Village should not result in legal certainty regarding the ownership of mineral and coal resources.

Conclusion

SKT is a certificate confirming the mastery and history of a plot of land. SKT is not the right to show ownership of a plot of land. Law No. 5 of 1960 on the Basic Regulations on Agrarian Principles has explicitly stated that the ownership of land rights can only be proven by the certificate of land right from the local land office.

IUP is one form of protection provided by the government to mineral and coal mining entrepreneurs. Article 94 of Law Number 4 the Year 2009 regarding Mineral and Coal Mining states that IUP and IUPK holders are guaranteed their right to conduct mining business in accordance with the provisions of laws and regulations. The issuance of SKT by the Village Head / Village Head for the control and utilization of land can not deviate from IUP.

Mineral and coal resources shall be national assets so that they are controlled by the state for the welfare of the people based on Article 33 Paragraph (3) of the 1945 Constitution of the State of the Republic of Indonesia. However, the rights of its exploitation can be transferred through a license, one of which is IUP, ownership of production can be transferred to IUP holders pursuant to Article 92 of Law Number 4 the Year 2009 regarding Mineral and Coal Mining. The ownership of this production until the term of the IUP expires, then returns to the state. SKT is not a proof of ownership of mineral and coal resources. This is because the SKT is only possible to master the plot of land does not include the resources that exist in the bowels of the earth. Therefore, the issuance of SKT in this WIUP does not affect the ownership of mineral and coal resources.

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Notes

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