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Conflict of norms in Indonesia's sustainable development policy: Mineral and coal mining sector

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Abstract. This study aims to identify the conflict of norms in the mineral and coal sectors particularly after issuing Law No. 3 of 2020. The type of this research is normative-legal research, which analyses the contents of some relevant Indonesian Law and some principles of law on Mineral and Coal. The data are qualified as the primary legal materials and collected through study documents. They are then analysed qualitatively. The main findings show that there is norm conflict post Law No. 3 of 2020 on the Amendment to Law No. 4 of 2009 on Mineral and Coal is enacted. The norm conflict can be seen in Indonesian sustainable development policy and law, such as Indonesian sustainable development the Law No. 16 of 2016 concerning Ratification of the Paris Agreement to the UNFCCC, The Presidential Regulation of No. 59 of 2017 concerning the Implementation of Achieving the Sustainable Development Goals, and the Low Carbon Development concept. Both the national policy and the Law will have significant effects on Indonesian commitment to reduce GHGs by 2030 to 29% with business as usual and to 41% with international supports. Relation of it with climate change issues is both the national policy and the law only accommodate the interests of coal industry players. but not the interests of the people in the mining areas and indigenous peoples. It means that the accommodation of mineral and coal industries' interests will threaten the environment, as it is known that they are one of the worst contributors to GHGs in the world.

1. Introduction

The level of Indonesia's national greenhouse gas (GHG) emissions based on the First Biennial Report to the UNFCCC in 2016 was 1,453 GtCO₂e in measurements taken in 2012, which is dominated by the forestry sector including peatland fires which reach 47.8%, and the energy sector is 34.9% of the total national GHG emissions [1]. In the year 2018, the level of GHG emissions in Indonesia increased in number, 1,637 GtCO₂e, with significant contributions from the sectors of waste reached 36.8% or equal to 602, 18 GtCO₂e, and the energy sector reached 36.4% or equal to 595, 67 GtCO₂e [2].

As one of the countries that have ratified the Paris Agreement, Indonesia is committed to reducing GHG emissions by 29% in 2030 with Business as Usual, and 41% with international cooperation using an emission baseline in 2010. This emission reduction is carried out in various sectors, such as energy, waste, industry, agriculture, and forestry [1]. In addition, the National Planning and Development



Agency (BAPPENAS) issued a policy in the form of a Low Carbon Development (PRK) initiative which was carried out by integrating climate action into the national development agenda. It is projected to be able to reduce Indonesia's GHG emissions by up to 43 % by 2030 [3], which is 2% higher than the 41% target entered in Indonesia's first Nationally Determined Contribution (NDC).

In early 2020, Indonesia has renewed the Law on Mineral and Coal through Law No. 3 of 2020 on the Amendment to Law No. 4 of 2009 on Mineral and Coal [4]. According to the Indonesian Center for Environmental Law (ICEL), the revision of the Law on Mineral and Coal can weaken environmental protection with the centralization of authority that occurs, and weakening it from the upstream, namely in the planning stages of zoning to downstream in sub-optimal supervision and law enforcement. This is considered inseparable from the hasty and closed formulation which not only hinders public participation but also has a significant effect on the quality of substances that are considered neglecting adequate environmental protection [5]. It is also resistance from community groups who are members of the coalition #Indonesian clean (Bersihkan Indonesia), which convened the people to reject the new law and state invalid [6]. The new law only accommodates the interests of mining entrepreneurs and ignores the interests of the communities around the mine, as well as the indigenous people.

Regarding the new Law on Mineral and Coal discussion as mentioned above, it is indicated that there is a conflict of norms in Indonesia's sustainable development policy post the new Mineral and Coal is enacted. The focus of this article is to identify whether the revision of Mineral and Coal Law has correlated with Indonesia's commitment to reduce GHG emissions and has not created norms conflict with some Indonesian policy and law.

2. Research methods

This research is normative. The data used is the primary legal materials obtained from the relevant regulations. In addition to primary legal materials, the analysis is also complemented by secondary legal materials obtained from various related literature. The legal materials are then analyzed descriptively to unravel the norm conflicts that occur.

3. Results and discussion

Post the Law No. 3 of 2020 on Mineral and Coal enacted, it has been identified that it is against some Indonesian policy and law, as follows:

3.1. Sustainable development agenda

The 2030 Agenda for Sustainable Development is perhaps the most comprehensive, far-reaching, and demanding international agreement ever made to date [7]. It consists of 17 objectives, 169 targets, and 230 indicators with the principle of "no one will be left behind". Since the adoption of the 2030 Agenda, several international instruments have been created on various aspects and fields to support the achievement of the 17 SDGs in the agenda. Indonesia is among the UN member states that have praised the 2030 Agenda for Sustainable Development and has made several preparations for the implementation of the SDGs since its early stages, namely aligning the 2015-2019 National Medium-Term Development Plan (RPJMN) with the concepts feed into the SDGs [8].

3.2. Ratification of the Paris Agreement

At the 21st Conference of Parties of UNFCCC or the Conference of Parties 21 (COP21 / CMP11), countries parties to the UNFCCC approved and adopted Paris Agreement [9]. An important milestone for fighting climate change and for accelerating and intensifying the actions and investments needed for a sustainable low-carbon future.

The Paris Agreement entered into force on November 4, 2016. To date, 189 of the 197 Parties to the UNFCCC have ratified the Agreement [10]. As a form of commitment to addressing the issue of climate change, the Indonesian Government signed the Paris Agreement on the first occasion on 22 April 2016 in New York and has ratified it through Law No. 16 of 2016 concerning the Ratification of the Paris Agreement to the UNFCCC. Indonesia has a strong interest in ratifying the Paris Agreement because

the Indonesian Constitution mandate that “everyone has the right to a good and healthy environment”, as stated in Article 28 H of the 1945 Constitution [11].

The central element for implementing the Paris Agreement is the Nationally Determined Contributions (NDCs) of each party which is an integral part of the ratification document. NDCs are national climate plans to highlight climate action, including targets, policies, and climate-related measures that governments want to implement in response to climate change [12]. Indonesia's NDCs itself covers both mitigation and adaptation aspects. In the first session [1], Indonesia's NDCs target is to reduce emissions by setting an unconditional reduction target of 29% and a conditional reduction target of up to 41% from the business as usual scenario by 2030. It will be achieved through several sectors, including forestry, energy and transportation, industrial processes and product use, solid waste, and agriculture [13,14].

3.3. The Presidential Regulation No. 59 of 2017 on the implementation of sustainable development goals

The Presidential Regulation of No. 59 of 2017 concerning the Implementation of Achieving the Sustainable Development Goals (Perpres-TPB) is a follow-up to the global sustainable development agreement as stated in the Transforming Our World: The 2030 Agenda for Sustainable Development. The Perpres-TPB mandates to achieve the TPB / SDGs target, namely TPB / SDGs Roadmap [15], TPB / SDGs National Action Plan (RAN), and Provincial TPB / SDGs Regional Action Plans (RAD).

Through the Perpres - TPB, national targets for the 2017-2019 period are set which are aligned with the 2015-2019 RPJMN [14]. These national targets are then used as guidelines in the preparation, implementation, monitoring, and evaluation of the RAN-TPB by the central government and RAD TPB by local governments as well as a reference for various stakeholders who will plan, implement and monitor and evaluate the TPB [15]. In order to achieve the stipulated national targets, the Ministry for National Development Planning / Head of the National Development Planning Agency prepares and determines the TPB National Roadmap and the NAP TPB [15]. One of the important targets set by Perpres-TPB as contained in the 2015-2019 RPJMN is the use of energy which targets Indonesia's renewable energy mix to reach 10-16% by 2019 [15]. Furthermore, in its TPB Roadmap [10], Indonesia is targeting the renewable energy mix by 12.1% with a scenario of business-as-usual and 26.1% with a scenario intervention in 2030.

3.4. Low Carbon Development (PRK)

PRK is an initiative of BAPPENAS to integrate climate action into the national development agenda. This step explicitly aims to reduce GHG emissions into policy planning accompanied by various interventions to conserve and restore natural resources [3]. It is hoped that PRK policy can be integrated into the 2020–2024 RPJMN so that it is expected to support the achievement of the targets of Indonesia's Development Vision in the 2005-2025 RPJMN: In addition, PRK can also directly impact the global and national levels by reducing GHG emissions - up to 43% by 2030. This figure exceeds Indonesia's NDC target of 41% with international cooperation [3].

The source of electric energy, currently, is dominated by coal. In 2018, the power generation capacity reached 64.5 GW. The composition of it is dominated by fossil energy, especially coal (50%), natural gas (29%), oil (7%), while renewable energy (14%) [16]. To support the PRK, a maximum energy transition must be carried out to switch to renewable energy sources.

A more ambitious effort of the energy sector is needed to promote PRK. In the government's energy projection scenario, there are at least three scenarios in meeting the national electricity demand, called the BAU scenario, Sustainable Development, and PRK. In the power plant category with a scenario, the Electricity Supply Business Plan (RUPTL) is used. For the sustainable development scenario, the National Energy General Plan (RUEN) is used, which is equipped with a transfer of 10% from PLTU to PLT Biomass and 25% of luxury homes using solar rooftops. Meanwhile, the PRK scenario is carried out with a lower emission reduction compared to RUEN, which is complemented by a 30% transfer of

the PLTU capacity to Biomass PLT, and supported by 30% of luxury homes using solar rooftops [16]. Of course, the effort to implement PRK is more difficult than in other scenarios.

Some various key points in the new Law on Mineral and Coal substantively is counterproductive to promote PRK in Indonesia, as follows:

3.4.1. The massive exploitation of minerals and coal. The new Law on Mineral and Coal has the potential to trigger massive exploitation of Indonesian Minerals and Coal until it runs out without paying attention to future generations. In the new Law on Mineral and Coal, there is a spatial concept using the term Mining Legal Area (WHP) to regulate all land space, marine space including the Indonesian archipelago, land underwaters, and the continental shelf, designated as WHP. The designation of the entire territory of Indonesia as WHP could trigger increasingly massive exploitation. In ICEL analysis, it is explained that there is confusion in determining WHP if it is connected with Law No. 26 of 2007 concerning Spatial Planning [5].

The guarantee of license extension to the concession holders of the Contract of Work and PKP2B, has also generated polemic and has been sued to the Constitutional Court. This is because the guarantee provisions for an extension to IUPK as a continuation of the operation of the contract/ agreement as stipulated in article 169 A are considered to be contradicting to article 18 paragraph (2), article 27, and article 33 paragraph (2) and paragraph (3) of the Indonesian Constitution [14].

3.4.2. Ignoring post-mining issues of community and environmental rights. The massive increase in production from the first coal mining activities is in line with the social and ecological burdens placed on society. In 2018, it was recorded that the realization of coal production was above the target set, now production reached 557.77 million tons, while the 2018 production target was only 485 million tons. 78.5% of Indonesia's total coal production is exported and put then Indonesia as the largest thermal coal exporter in the world. However, this massive production and export are not followed by a commitment to be responsible for the post-mining environmental impact. In 2017, the KPK noted that 90% of 11.000 mining permit holders had not paid the reclamation guarantee fund as the obligations of the permit holder [17].

3.4.3. The barrier to renewable energy development. The new Law on Mineral and Coal can be categorized as a policy to support the Indonesian coal industry, such as loan guarantees, tax exemptions, the imposition of royalties and tax, and even indirect rates of a coal price that is sold to domestic power companies, which began in 2018. This step is contra-productive with efforts to transitioning Indonesia's electric energy which is dominated by coal to renewable energy [18].

The current overproduction of coal has an impact on the relatively cheap price of coal. With the availability of abundant energy sources in this context, it can make overconfident and then are reluctant to switch to renewable energy which seems expensive. Coal production which reached 557 million tons, with the export portion reaching 357 million tons or equal to 63% of the national production was evaluated by looking at the various impacts caused by coal mining activities which left various problems. The fact also happened is that domestic coal consumption reached 115 million tons, lower than the domestic consumption target of 121 million tons [16]. This should provide momentum for a switch to renewable energy sources.

4. Conclusion

Law No. 3 of 2020 on the Amendment to the Law No. 4 of 2009 on Mineral and Coal has created the norms conflict on Indonesian sustainable development policy and law. The conflict of norms can be seen in the Indonesian sustainable development agenda as stated in 2014-2019 RPJMN, the Law No. 16 of 2016 concerning Ratification of the Paris Agreement to the UNFCCC, The Presidential Regulation of No. 59 of 2017 concerning the Implementation of Achieving the Sustainable Development Goals, and PRK concept which aims to exceed the NDC target, with a high PRK scenario that can reduce GHG emissions by up to 43% in 2030 which will soon be integrated into the 2020-2024 RPJMN.

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