

Kebijakan dan hukum penanaman modal asing di bidang Batubara di Indonesia kesesuaiannya dengan the WTO Agreement on Trade Related Investment Measures (TRIMS Agreement) = Policy and law of foreign direct investment in the coal fields in Indonesia in an accordance with the WTO Agreement on Trade Related Investment Measures

Sayidin Abdullah, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=20349386&lokasi=lokal>

Abstrak

Keikutsertaan Indonesia sebagai anggota World Trade Organization (WTO) membawa konsekuensi hukum tersendiri, berupa kewajiban untuk menyesuaikan peraturan perundang-undangan nasionalnya dengan kesepakatan-kesepakatan WTO, termasuk didalamnya yaitu Agreement on Trade Related Investment Measures (TRIMs) dan General Agreement on Trade in Services (GATS). Pembentukan peraturan nasional di bidang penanaman modal, serta pertambangan bidang batubara, selain tidak dibenarkan bertentangan dengan prinsip-prinsip perdagangan internasional yang terkait dengan penanaman modal yaitu National Treatment dan Most Favour Nations, juga tidak boleh bertentangan dengan prinsip demokrasi ekonomi dalam Pasal 33 UUD 1945. Oleh karena itu, untuk keperluan penyesuaian ini, perlu diteliti bagaimanakah kesesuaian prinsip-prinsip perdagangan internasional dengan prinsip perlakuan sama dalam ketentuan penanaman modal asing (PMA) di bidang pertambangan batubara, serta bagaimanakah pengaturan kebijakan dan hukum PMA bidang batubara diatur dalam peraturan perundang-undangan Indonesia.

Penelitian ini menggunakan metode penelitian normatif, yang bersifat deskriptifanalisis, analisa data dengan pendekatan bersifat kualitatif yaitu menguraikan dan menganalisa mengenai pengaturan hukum nasional penanaman modal asing di bidang batubara. Data yang digunakan adalah data sekunder dengan alat pengumpulan data berupa studi dokumen atau bahan pustaka, yang didukung dengan wawancara kepada narasumber pada Dirjen Pertambangan Batubara, BKPM dan PT. KPC Kutai Timur.

Berdasarkan hasil penelitian dapat disimpulkan bahwa di satu sisi Indonesia telah menyesuaikan pengaturan PMA dalam bidang batubara, yakni UU No. 25 Tahun 2007 tentang Penanaman Modal dan UU No. 4 Tahun 2009 tentang Mineral dan Batubara dengan prinsip-prinsip GATT/WTO mengenai national treatment dan most favour nations. Demikian pula penerapan demokrasi ekonomi dalam UU No. 4 Tahun 2009, ini telah diterapkan cukup baik melalui pengaturan kewajiban menjaga kedaulatan negara atas pengelolaan dan perusahaan sumber daya alam. Pemerintah sebagai badan publik sudah tidak lagi bersanding sejajar secara perdata dengan pelaku usaha di dalam kontrak pertambangan.

Namun di lain sisi, sesungguhnya UU tersebut telah bertentangan dengan prinsip demokrasi ekonomi, karena demokrasi ekonomi menghendaki terpenuhinya hak-hak dasar setiap individu tanpa kecuali, sedangkan ketentuan liberalisasi perdagangan WTO dilandasi oleh pemikiran kapitalisme membatasi hak-hak dasar individu dan hanya mereka yang mampu bersaing dapat menikmati keuntungan dari perdagangan internasional tersebut.

.....Indonesia's participation as a member of the World Trade Organization (WTO) legal consequences of its own, such as the obligation to adjust its national legislation with WTO agreements, including the Agreement on Trade Related Investment Measures (TRIMs) and the General Agreement on Trade in Services (GATS). Establishment of national regulations in the field of investment, as well as coal mining areas, besides not

justified contrary to the principles of international trade-related investment that National Treatment and Most Favour Nations, also must not conflict with the principles of economic democracy in Article 33 of the 1945 Constitution. Therefore, for the purposes of this adjustment, need to be investigated how the suitability of the principles of international trade with the principle of equal treatment in terms of foreign direct investment (FDI) in the mining of coal, and how policies and legal arrangements FDI coal fields stipulated in legislation Indonesia.

This study uses normative research, descriptive analysis, data analysis with a qualitative approach that describes and analyzes the law setting national foreign investment in the coal fields. The data used are secondary data by means of data collection in the form of study or reference documents, supported by interviews with speakers at the Directorate General of Coal Mining, the Investment Coordinating Agency (BKPM) and PT. KPC East Kutai.

Based on the results of this study concluded that on the one hand have to adjust the settings Indonesia FDI in the coal fields, namely Law No. 25 of 2007 on Investment and Law No. 4 of 2009 on Mineral and Coal with the principles of GATT / WTO on national treatment and most favor nations. Similarly, the application of economic democracy in Law No. 4 of 2009, it has been applied quite well through setting an obligation to maintain the sovereignty of the state over the management and utilization of natural resources. Government as a public entity is no longer a civil biting parallel with businesses in the mining contract.

But on the other hand, the Act actually been contrary to the principles of economic democracy, because democracy requires the fulfillment of the economic fundamental rights of every individual without exception, while the provisions of the WTO trade liberalization based on the ideas of capitalism restrict the basic rights of individuals and only those who are able to compete can enjoy the benefits of international trade provisions contained in the WTO.