

Perlindungan hukum bagi pemegang izin usaha pertambangan operasi produksi (IUP-OP) yang telah melakukan kewajibannya menurut ketentuan pasal 137 undang-undang Nomor 4 tahun 2009 tentang mineral dan batubara = Legal protection for holders of izin usaha pertambangan operasi produksi (IUP-OP) which has been carrying out its obligations under article 137 of law no 4 year 2009 on mineral and coal

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Abstrak

[Pertambangan merupakan bidang usaha yang sedang diminati oleh para investor saat ini. Akan tetapi usaha pertambangan memiliki tingkat resiko tinggi (high risk), memerlukan modal besar (high cost) dan menggunakan teknologi modern (modern technology) selain itu kegiatan pertambangan juga memiliki kewajiban-kewajiban berupa Penerimaan Negara Bukan Pajak yang harus dipenuhi kepada Negara. Dan setelah kewajiban kepada Negara dipenuhi, masih ada satu kewajiban yang tidak kalah pentingnya yaitu menyelesaikan sebagian atau seluruh hak atas tanah dalam Wilayah Izin Usaha Pertambangan (WIUP) untuk kegiatan usahanya dengan pemegang hak tanah sebagaimana ditetapkan dalam Pasal 135 Undang-Undang Nomor 4 Tahun 2009 tentang Mineral dan Batubara. Kewajiban inilah yang menjadi puncak permasalahannya, karena pengusaha tambang yang telah selesai melakukan seluruh kewajibannya dan kemudian hendak mengajukan hak atas tanah menurut ketentuan Pasal 137 Undang-Undang Nomor 4 Tahun 2009 tentang Mineral dan Batubara tertunda oleh karena penunjukan kawasan hutan yang tidak berujung pada suatu kepastian antara Pemerintah Pusat dan Pemerintah Daerah sehingga mengakibatkan seluruh aktivitas di kantor pertanahan tidak berjalan semestinya karena tidak diketahuinya kawasan mana yang diperbolehkan untuk diberikan Hak atas Tanah dan kawasan mana yang tidak diperbolehkan. Oleh karena proses pendaftaran tanah untuk mendapatkan Sertipikat tidak dapat dipenuhi, maka Pemegang Izin Usaha Pertambangan Operasi Produksi (IUP-OP) hanya berbekal dengan Surat Pernyataan Pelepasan Hak dari Penguasa Tanah sebagai tanda bukti penguasaannya. Surat tersebut dapat digunakan sebagai alat pembuktian walaupun tidak kuat seperti halnya Sertipikat. Selain itu juga perlindungan hukum diberikan kepada pemegang IUP-OP oleh karena izin-izin terkait lainnya untuk mendukung kegiatan operasional tambangnya sudah diterbitkan oleh instansi pemerintah yang sebelumnya telah diperoleh melalui prosedur yang benar yang telah ditetapkan dalam peraturan perundang-undangan. Hasil penelitian ini bersifat preskriptif analitis karena penulis ingin menjelaskan dan memberikan solusi atau jalan keluar bagi pemegang IUP-OP menghadapi gugatan dari pihak lain. Dan diharapkan kedepannya adanya suatu hubungan kerja yang baik antara Pemerintah Pusat dan Pemerintah Daerah dalam menetapkan suatu aturan sebelum diberlakukan demi menghindari timbulnya permasalahan-permasalahan yang dapat merugikan pihak pengusaha tambang dan Negara.

.....Mining is the business fields that are in demand by investors today. However, mining has a high risk level, require large capital and using modern technology, and there is still have obligations in the form of tax state revenue that must be met to the State. And having fulfilled the obligation to the State, there is another obligation that still need to be fulfilled by completing some or all of the rights in land acquisition in the

Wilayah Izin Usaha Pertambangan (WIUP) for its business activities with the holders of land rights as defined in Article 135 of Law No. 4 of 2009 on Mineral and Coal. That Obligation becomes the peak of mining problem, because mining entrepreneurs who have completed all of its obligations and then want to apply for the right to land pursuant to Article 137 of Law No. 4 of 2009 on Mineral and Coal was delayed because of the designation of forest areas do not lead to a certainty between the Central Government and Local Government, which had caused resulting in the entire activity in the land office does not run properly because of the uncertainty where the area is allowed to be given Right for the Land and which one is not allowed. Therefore, land registration processing to obtain Certificates can not be met, then holders of Izin Usaha Pertambangan Operasi Produksi (IUP-OP) with only a Statement of Waiver of Sovereign Land as proof of mastery. The letter still can be used as verification tool, although not as strong as Certificate. In addition, the legal protection given to holders of IUP-OP therefore permits related to support its mining operations has been issued by the government that previously had been obtained through the correct procedures stipulated in the legislation. The Results of this research was prescriptive analytical because the authors wanted to explain and provide a solution or a way out for the holder of IUP-OP facing a lawsuit from the other party. Future existence of a good working relationship between the Central Government and Local Government was expected in establishing a new rule before coming into effect in order to avoid the problems that could be rised and harm the mining operation and the State; Mining is the business fields that are in demand by investors today. However, mining has a high risk level, require large capital and using modern technology, and there is still have obligations in the form of tax state revenue that must be met to the State. And having fulfilled the obligation to the State, there is another obligation that still need to be fulfilled by completing some or all of the rights in land acquisition in the Wilayah Izin Usaha Pertambangan (WIUP) for its business activities with the holders of land rights as defined in Article 135 of Law No. 4 of 2009 on Mineral and Coal. That Obligation becomes the peak of mining problem, because mining entrepreneurs who have completed all of its obligations and then want to apply for the right to land pursuant to Article 137 of Law No. 4 of 2009 on Mineral and Coal was delayed because of the designation of forest areas do not lead to a certainty between the Central Government and Local Government, which had caused resulting in the entire activity in the land office does not run properly because of the uncertainty where the area is allowed to be given Right for the Land and which one is not allowed. Therefore, land registration processing to obtain Certificates can not be met, then holders of Izin Usaha Pertambangan Operasi Produksi (IUP-OP) with only a Statement of Waiver of Sovereign Land as proof of mastery. The letter still can be used as verification tool, although not as strong as Certificate. In addition, the legal protection given to holders of IUP-OP therefore permits related to support its mining operations has been issued by the government that previously had been obtained through the correct procedures stipulated in the legislation. The Results of this research was prescriptive analytical because the authors wanted to explain and provide a solution or a way out for the holder of IUP-OP facing a lawsuit from the other party. Future existence of a good working relationship between the Central Government and Local Government was expected in establishing a new rule before coming into effect in order to avoid the problems that could be rised and harm the mining operation and the State., Mining is the business fields that are in demand by investors today. However, mining has a high risk level, require large capital and using modern technology, and there is still have obligations in the form of tax state revenue that must be met to the State. And having fulfilled the obligation to the State, there is another obligation that still need to be fulfilled by completing some or all of the rights in land acquisition in the Wilayah Izin Usaha

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