Budapest International Research and Critics Institute-Journal (BIRCI-Journal)
Humanities and Social Sciences
ISSN 2615-3076 Online)
ISSN 2615-1715 (Print)
www.bircu-journal.com/index.php/birci
Budapest Institute

Legal Certainty Special Mining Business License (Study: IUPK as a Continuation of Contract of Work and Work Agreement for Coal Mining Exploitation in the Minerba Law)

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Abstract
After the promulgation of Law Number 3 of 2020 many people highlighted the addition of Article 169A which explains the guarantee of extension through special mining business license (IUPK) for holders of the contract of work (KK) and work agreement for coal mining exploitation (PKP2B) which will expire. However on the other hand this Article also creates unrest for KK and PKP2B holders because the granting of extensions through the IUPK is not automatically granted but with considerations that have been explained in the law. The formulation of the problem raised in this study is about the legal certainty of granting IUPK and legal protection for KK and PKP2B holders if the application for extension through IUPK is rejected by the Ministry of Energy and Mineral Resources. This study uses a normative juridical research method namely through a literature study with a statutory approach. The results indicate that there was no legal certainty from the IUPK as a Continuation of Contract/Agreement Operations and no legal protection for KK and PKP2B holders if the extension through IUPK is rejected by the relevant Minister. The provisions regarding these rules in the current Minerba Law must be explained more clearly in the Government Regulation regarding Minerba in order to provide legal certainty and protection for mining business actors.

Keywords
mineral and coal; business license; mining

I. Introduction

Natural resources (SDA) are everything that comes from nature that can be used to meet the needs of human life. It includes not only biotic components, such as animals, plants, and microorganisms, but also abiotic components, such as petroleum, natural gas, various types of metals, water, and soil[1] Minerals and coal contained in the mining jurisdiction of Indonesia are non-renewable natural resources as gifts from God Almighty who have an important role in fulfilling the lives of many people. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia explains that "earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." The formulation of the constitution shows that the state has sovereignty over its natural resources, including mineral and coal wealth. [2] The role of the government in setting regulations and policies is needed to maintain rights and increase state profits given the great interest of mining business actors, both foreign and domestic, to take advantage of Indonesia's natural wealth in the mining sector. From the point of view of entrepreneurs and investors, both expect friendly and friendly regulations in the sense that they can maintain a conducive investment climate. Because investment in mining is a large-scale investment and

the timeframe for profiting from this sector is years, entrepreneurs and investors need certainty in every regulation of the mineral and coal mining sector itself. In this case, the government as regulator plays a key role. Ideally, the regulations made can provide business certainty for entrepreneurs and investors

After the enactment of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (UU Minerba), this law is often referred to as the "law of controversy" as a result of the emergence of various responses, ranging from pros and cons given by various elements of society. One of them is related to the addition of Article 169A which relates to providing flexibility for holders of contracts of work (KK) and coal mining concessions (PKP2B) which will expire, in the form of changes to special mining business permits (IUPK) without auction, guarantees for extensions, and the area that does not need to be collapsed.

Law is the most important instrument in order to maintain order in the life of the nation and state. It is impossible without law, there will be order and discipline in the social strata. Justice, usefulness, and legal certainty are the three main objectives in the formation of a law (Rahardjo, 2006). Immigration Law itself is an integration of several parts of the law that form usefulness in the form of functions and purposes in the field of immigration. (Elsarinda, L. et al. 2021)

In legal science, civil law is all the legal rules that regulate legal relations between one person and another in social life. [3] Civil law has a very close relationship with a contract or agreement. Based on the principle of freedom of contract as regulated in Article 1338 of the Civil Code, the parties to the contract are free to enter into an agreement, regardless of content, and in any form. However, the principle of freedom of contract still must not violate the terms of the validity of the agreement as regulated in Article 1320 of the Civil Code. In addition to the principle of freedom of contract, the principle of legal certainty or pacta sunt servanda is also a fundamental principle in a contract or agreement. Article 1388 paragraph (1) of the Civil Code states that a legally made agreement applies as law for its makers. Where third parties or judges may not intervene in the substance of the contract made by the parties. This provision also applies to contracts or agreements made in the mining sector between entrepreneurs or investors and the government.

One of the objectives of the Minerba Law is to provide legal certainty for all groups, especially the mineral and coal mining business actors. However, in reality, the author considers that the phrase "provided a guarantee" in the addition of Article 169A of the Minerba Law for KK and PKP2B holders to obtain an extension to IUPK as a continuation of contract/agreement operations by considering efforts to increase state revenue creates a blurring of norms that causes no legal certainty for KK and PKP2B holders to obtain an extension through the IUPK itself. The Directorate General of Mineral and Coal (Ditjen Minerba) of the Ministry of Energy and Mineral Resources (ESDM) explained that the phrase "provided a guarantee" in Article 169A does not directly cause KK and PKP2B holders to get extensions through IUPK, because in addition to considering efforts to increase state revenues, The central government in this case is the Ministry of Energy and Mineral Resources is also considering optimizing the potential for mineral and coal reserves and the company's track record of performance.[4] As regulated in Article 169B of the Minerba Law, the relevant Minister has the authority to refuse an extension through an IUPK based on the aforementioned considerations. So, KK and PKP2B holders are not automatically granted an extension through an IUPK, but there is still the possibility that the application for extension is rejected. As was the case with PT Arutmin Indonesia, the mining company's PKP2B will end on November 1, 2020, but so far the government has not provided certainty for the extension of operations because a Government Regulation (PP) is still being drafted on the

Implementation of Mineral and Coal Mining Business Activities. Special Staff of the Minister of Energy and Mineral Resources for Mineral and Coal Governance, Irwandy Arif, said that in line with the preparation of the PP as an implementing rule of the Minerba Law, the Directorate General of Mineral and Coal at the Ministry of Energy and Mineral Resources is still in the process of verifying the area of the Arutmin mine.[5]

This is what underlies the author to carry out a research entitled Legal Certainty for the Granting of Special Mining Business Permits/IUPK (Study: IUPK as Continuation of Contracts of Work and Coal Mining Concession Work Agreements in the Minerba Law) which will discuss how the legal certainty of granting IUPK as a continuation of Coal and PKP2B in theLaw Minerba and how is the legal protection for KK and PKP2B holders if the application for extension through the IUPK is rejected by the Minister of Energy and Mineral Resources.

II. Research Methods

The type of research in this research is normative juridical research. Normative juridical research is a legal research both pure and applied, which is carried out by a legal researcher to examine a norm such as in the fields of justice, legal certainty, order, expediency, legal efficiency, legal authority, as well as legal norms and doctrines. Which underlies the application of these elements into the legal field of a procedural and substantive nature.[6] In this study, the problem approach used is the statutory approach (thestatue approach). Statue Approach is an approach taken by reviewing all laws and regulations related to the research to be studied. This statutory approach will open up opportunities for researchers to study whether there is consistency and conformity between one law and another.[7] Sources of data used in normative legal research are secondary data consisting of 3 (three) sources of legal materials, namely: a.) primary legal materials; b.) secondary legal materials; and c.) tertiary legal materials. The way of collecting data in this research islibrary research. Library Research is a way of collecting data by collecting relevant information based on the topic or problem that is the object of research. This information can be obtained from books, scientific works, theses, dissertations, encyclopedias, internet, and other sources. Normative juridical research with secondary data types uses a qualitative approach, because normative legal research never gives exactly the same results (repetitive), and the legal norms sought by legal research have a "definite" character, not a "probability" character.[8] Meanwhile, to analyze legal materials, it is done by means of content analysis which is intended to describe the characteristics of the content and draw inferences from the content. As well as using descriptive writing techniques, to explain in detail and systematically the problem solving.

III. Result and Discussion

3.1. Legal Certainty of IUPK as Continuation of Contract of Work and Coal Mining Concession Work Agreement

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a state of law. Aristotle argues that the notion of a rule of law arises from a policy that has a small state territory, such as a city and has a small population, unlike today's countries which have a large area and a large population (vlakte staat). In the policy, all state affairs are carried out by deliberation (ecclesia) , where all citizens participate in state administration affairs and the state of law is a state that stands above the law which guarantees justice for its citizens Gustav Radburch put forward the theory of three legal values, namely justice, expediency, and legal certainty. Of the three legal values proposed

by Gustav Radburch, legal certainty is one of the important substances in the enforcement of the law itself. Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. It is clear in the sense that it does not cause doubt (multi-interpretation) and logical in the sense that it becomes a norm system with other norms so that it does not clash or cause norm conflicts. Legal certainty can be interpreted as the clarity of norms so that it can be used as a guide for people who are subject to this regulation The presence of Law Number 4 of 2009 (UU 4/2009) concerning Mineral and Coal Mining which replaced Law Number 11 of 1967 (UU11/1967) concerning the Basic Mining Provisions replacing the contract regime into a permit regime, namely in the form of a permit mining business (IUP) currently in force. Licensing is one form of implementing the regulatory and controlling functions that are owned by the government against activities carried out by the community Article 1 point 7 of Law 4/2009 explains that an IUP is a permit to conduct a mining business. Law 4/2009 adopts several forms of licensing, namel.

1) Mining Business Permit (IUP) in Article 1 point 7 is a business permit to carry out mining carried out by the Minister, Governor, Regent, in accordance with their authority which includes:
   a. Exploration IUP in Article 1 point 8 is a business permit granted to carry out the stages of general investigation, exploration, and feasibility studies activities;
   b. Mining Business License (IUP) for Production Operation in Article 1 point 9 is a business license granted after the implementation of an Exploration IUP is completed to carry out the stages of production operation activities.
2) People's Mining Permit (IPR)
   Article 1 point 10 is a permit to carry out mining business in a small-mining area scale with a limited area and investment.
3) Special Mining Business Permit (IUPK)

Article 1 point 11 is a permit to carry out a mining business in the area of a mining business permit special. The IUPK consists of two stages: a. Exploration IUPK as referred to in Article 1 point 12 is a business permit granted to carry out the stages of general investigation, exploration, and feasibility studies activities in the area of special mining business permits; Production Operation as referred to in Article 1 number 13 is a business license granted after the completion of the Exploration IUPK implementation to carry out the stages of production operation activities in thebusiness permit area special mining. The transitional provision in Article 169 of Law 4/2009 stipulates that the existing contract of work (KK) and coal mining concession (PKP2B) prior to the enactment of this law will remain in effect until the expiration of the contract/agreement and the provisions contained in the KK article and PKP2B is adjusted no later than 1 (one) year since Law 4/2009 was ratified, except for state revenues. The exception to state revenue is an effort to increase state revenue.

Since 2015, the Draft Law on Mineral and Coal Mining (Minerba) has been prepared by the House of Representatives (DPR). In January 2020, in a plenary session of the DPR, the Minerba Bill was decided as abill carry-over that was included in the Priority Prolegnas. This was conveyed directly by the Director General of Mineral and Coal at that time, Ir. Bambang Gatot Ariyono, MM, on April 29, 2020 through a Public Discussion: Revision of the Minerba Law as an Effort to Improve National Mining Governance which was broadcast live through theaccount of the YouTube Directorate General of Mineral and Coal. Related to the continuation of KK and PKP2B operations to provide legal certainty. Finally, in May 2020, Law Number 3 of 2020 (UU Minerba) was passed into law as an amendment to Law 4/2009. As we all know, one of the objectives of the enactment of the Minerba Law is to provide

legal certainty for all parties, especially for mining business actors. However, after the law was enacted, so many polemics arose from various circles of society regarding the addition of articles in the current Minerba Law. In fact, this law also received a request for a Judicial Review (JR) to be reviewed formally and materially to the Constitutional Court. One of the articles that has become a public spotlight is the addition of Article 169A regarding the transitional provisions which use the phrase "guaranteed" for KK and PKP2B holders to obtain an extension through an IUPK as a continuation of the operation of the Contract/agreement without an auction and the area that does not need to be reduced. However, it turns out that the phrase "provided a guarantee" does not necessarily mean that the extension through the IUPK is given to KK and PKP2B holders whose validity period is about to expire, because the granting of the extension is given through consideration of efforts to increase state revenues as described in the provisions of Article 169A, which reads: (1) KK and PKP2B as referred to in Article 169 are guaranteed an extension into IUPK as Continuation of Operation Contract/Agreement after fulfilling the requirements with the following provisions: Contracts/agreements that have not yet obtained an extension are guaranteed to get 2 (two) extensions in the form of IUPK asContinuation of Operations Each contract/agreement is for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the KK or PKP2B by considering efforts to increase state revenues. b. Contracts/agreements that have obtained the first extension are guaranteed to be given a second extension in the form of an IUPK as a Continuation of Contract/Agreement Operations for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the first extension of KK or PKP2B by considering efforts to increase state revenues. Contrary to the provisions of Article 169A which explains that KK and PKP2B will be given an extension guarantee through an IUPK as a continuation of operations

3.2. Legal Protection for KK and PKP2B Holders who's Application for Extension Was Rejected by the Minister of Energy and Mineral Resources According to

Satjipto Raharjo, legal protection is an effort to organize various interests in society so that there are no clashes between interests and can enjoy all the rights granted by law. The definition of legal protection is all efforts made consciously by every person as well as government and private institutions aimed at securing, controlling and fulfilling the welfare of life in accordance with existing human rights as regulated in Law Number 39 of 1999 concerning Human Rights. A protection can be said to be legal protection if it contains the following elements:

1. There is protection from the government for its citizens;
2. Guarantee of legal certainty;
3. Regarding the rights of citizens; and
4. There are penalties for those who violate it.

The state is obliged to serve every citizen and resident to fulfill their basic rights and needs in the context of public services which is the mandate of the 1945 Constitution. Article 28 paragraphs (1) of the 1945 Constitution explain that, "everyone has the right to fair recognition, guarantees, protection, and legal certainty as well as equal recognition before the law". The law protects one's interests by allocating power to him to act in the context of his Interests in a measurable manner. Interest is the target of rights because rights contain elements of protection and recognition. The state is obliged to serve every citizen and resident to fulfill their basic rights and needs in the context of public services which is the mandate of the 1945 Constitution. Philipus M. Hadjon is of the opinion that the principles of legal protection for the people in Indonesia are the principles of recognition and protection of human dignity which are sourced from on Pancasila and the law which is also based on

Pancasila. The essence of legal protection for KK and PKP2B holders based on Article 169A of the Minerba Law is a protection that provides guarantees for KK and PKP2B holders that they will get an extension through an IUPK in accordance with the provisions of the law. The Minerba Law does not provide legal protection for KK and PKP2B because the law does not provide legal certainty guarantees for regulations regarding transitional provisions. While in the Minerba Law there is Article 169A which explains that it will guarantee an extension through an IUPK and Article 169B which explains that the Minister can reject the application for an extension, the Minerba Law does not further stipulate legal remedies that can be taken by KK and PKP2B holders whose applications for extension are guaranteed against the refusal given by the relevant Minister. In fact, this is a right that must be obtained based on the mandate of the law itself which provides an extension guarantee. Setiono argues that legal protection is an act or effort to protect the community from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as human beings. This makes KK and PKP2B holders whose application for extension is guaranteed by the Minerba Law not have legal protection if later there is a rejection of the extension granted by the relevant Minister.

License in the Context of State Administrative Law

By quoting the opinion of James Hart, 59 that the concept of state administrative law is a law that regulates the legal relationship between state administration and citizens which he calls the law of external administration, the regulation of mining business in Indonesia is included in the area of State Administrative Law.

Mining law regulates the legal relationship between state administration and community members in mining management, where community members who will carry out mining activities must first obtain permission from the government. Likewise, citing the opinion Gaudemet, 60 that the state administrative law is the law governing publicadministration, then in the mining business also includes arrangements in the field of public administration, as commodity mining the public interest (public) as mandated in Article 33 of the Constitution 1945.

Legal actions of the state administrative apparatus can produce a legal product in the form of determination (beschikking) and regulation (regeling). Mining permits issued by the state administrative apparatus are included in the category of legal actions from the state administrative apparatus which are stipulating (beschikking). 61 In general we know two forms of consent, which is a license that is both civil and permissions that are public. A civil permit is granted by one person to another party and a public permit is granted by an authorized government official to a particular party who requests it. Based on Article 15 paragraph (1) of Law Number 11 of 1967, Mining Authorization is granted by an authorized official, so that in the concept of state administrative law, Mining Authorization is a form of public permit. The official's obtainwewenangdarisuatu laws62 given to the officer, so he has the legitimate authority to take a specific policy in the run position. But on the other hand, with the existence of the law, it is a tool to protect its citizens against arbitrary actions from an unfair government.63 this may happen because government officials have the authority to make decisions unilaterally without seeking approval from third parties, so that arbitrary actions can occur. This is where state administrative law functions as legitimacy for government actions, and also substantively provides protection to the public from possible government actions that exceed their authority.64Administrative Law as stated by Peter Leyland and Terry Woods,65 which says that the State Administrative Law has a control function, so that the state administration does not abuse its power and exceed the limits of its power. So in principle the scope of state administrative law lies in the functions and duties of

the government as the holder of executive authority. From the point of view of the concept, then the permit is a form of implementation of the control function owned by the government in carrying out government power. This means that the various permits issued in mining management should actually be able to control the exploitation of natural resources so that they really have the greatest benefit for the prosperity of the people.

Based on the licensing theory from Van Der Pot that the Government's intervention in organizing bestuurszorg to realize Welfarestate, can be done in various forms of licensing, namely:

a. Vergunning (Permit): a decision given to an activity based on laws and regulations that require certain procedures for the implementation of the activity in question. In general, the said activity is not prohibited, but procedurally requires administrative procedures, without permission the activity thereof is prohibited.
b. Dispensatie (dispensation): a decision that frees the applicant from the prohibition of the law which generally rejects the activity in question.
c. Concessie (Concession): a permit granted to an activity that is generally related to the interests of the public and the people, which in normal circumstances should be managed by the State Administration in relation to bestuurszorg. However, its implementation is given to the private sector, BUMN, BUMD with great authority; therefore it is necessary to attach an agreement regarding the rights and obligations of the recipient of the permit. Looking at the various forms of licensing as stated by Van der Pot, which one would be more suitable to be applied to mining activities in Indonesia? If we refer to Article 33 of the 1945 Constitution, it is clear that the objects to be managed are those in the public interest. Where the granting of the permit gives great authority to the recipient of the permit, which greatly impacts the prosperity of the people. Even if we look at theories related to the nature of the public interest of an object, there is a classification of the public interest. The theory as put forward by Anthony I. Ogus says that the form of a public permit depends on the object being applied for. There are several categories of goods having the nature of public interest, namely: (a) Public Goods and (b) Public Ownership. The definition of public goods is that the object has the nature of public interest, because on the object there is no ownership right. Thus, public goods must be accessible to anyone, for example transportation facilities, school facilities and so on. Therefore, it must be controlled by the Government so that there is no monopoly in its utilization. This is related to Article 33 paragraph (2) of the 1945 Constitution. The second form is Public Ownership where in the nature of the public interest it also has the nature of public ownership, which means that it contains the meaning of property rights of all the people or property rights of the nation. Thus, the permission granted for objects that are included in the public ownership category will have a large impact on authority, therefore it is necessary to explain the rights and obligations that are made in an agreement. This is related to Article 33 paragraph (3) of the 1945 Constitution which mandates that the earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people.

From the explanation above, it appears that permits related to activities related to public goods and public ownership both has the nature of public interest. Thus both need to be regulated with a permit issued by a Public Official (Government) with the aim of controlling so that activities can be accessed by the whole community (for public goods) and used for the greatest benefit of the people's prosperity (for public ownership). Referring to various licensing theories and public interest as stated above, it is appropriate that the more appropriate form of licensing used in mining management is the “Concessie” form. This is because, natural resources are included in the category of Public Ownership objects, where

ownership is in the hands of the people. Looking at Law Number 4 of 2009, the form of licensing is included in the ZIN nomenclature or what is called vergunning. What is appropriate is that the proper form of licensing is a concession accompanied by an agreement on the rights and obligations of the recipient of the permit, so that it can be controlled and in accordance with the meaning of Article 33 of the 1945 Constitution, namely for the greatest prosperity of the people. We are indeed traumatized by the form of mining concessions that were granted during the Dutch East Indies government, where the granting of concessions was accompanied by the granting of very large rights and powers, so that it was very detrimental. However, we should not do that because the actual concession is good and appropriate, which will be limited by the agreement that accompanies the permit.

3.3. Special Analysis of Law No. 4 of 2009 Concerning Mineral

Article 1 point 29, Article 6, Article 7 paragraph (1) letter b and letter c regarding the Determination of Unclear Territories and Boundaries/Different Mapping Systems between Sectors

In the provisions of Law Number 4 of 2009 concerning Mineral and Coal, mining areas include areas that have mineral and or coal potential and are not bound by government administrative boundaries which are part of the national spatial layout. Thus, the mining area boundary is an area that is not limited both in terms of governmentadministrative boundaries, spatial boundaries, and is not limited to being in a forest area, as long as it has mineral and or coal potential and has mineral and or coal potential.

In accordance with Law Number 24 of 1992 concerning Spatial Planning, the allocation of land in each Province and Regency is carried out by determining the spatial use of land in the area. Spatial planning is determined through technical studies and analysis of needs from various sectors in the region. However, the final outcome is often determined by consensus among the sectors concerned.

The complexity and ambiguity of spatial planning at the provincial and district/city levels can have implications for the uncertainty of land allocation in these areas which in turn can hamper national development in general. In the forestry sector, spatial planning uncertainty greatly hampers the government's efforts to optimize the function of forests and their ecosystems as an economic driver and supporter of life.

To ensure legal certainty over forest areas, in 1980 in each province an agreement was made between land use agencies in the area coordinated by the Governor and Regent which resulted in what was called the Forest Use Agreement (TGHK).

TGHK as a result of the agreement, in every province throughout Indonesia it has been confirmed by a Decree of the Minister of Forestry (formerly the Minister of Agriculture) regarding the designation of forest areas in each province along with map attachments, as well as some delineation of boundaries in the field and further determination of forest areas by Decree Minister of Forestry.

The Decree of the Minister of Forestry regarding the designation of forest areas in each province has outlined the functions of forests ranging from Conservation Forest Areas (Nature Reserve Areas and Nature Conservation Areas), Protected Forest Areas and Production Forest Areas.

In a further development with the enactment of Law Number 24 of 1992 concerning Spatial Planning, the forest area as a result of the agreement in each of these provinces (TGHK) has been harmonized with the Provincial Spatial Planning (RTRWP), based on the results of the integration, every province throughout Indonesia forest areas have been re-appointed, except for Central Kalimantan Province and Riau Province.

In the framework of following up on Article 78 paragraph (4) of Law Number 26 of 2007 concerning Spatial Planning, which regulates that all provincial, district/city regulations must be compiled or adjusted, each province/city has processed the proposed revision of the regional spatial plan province. The proposed revision of the provincial spatial plan mostly contains the substance of changes to the allocation of forest areas, namely changes from forest areas to non-forest areas, as well as the substance of changes in the function of forest areas, with fairly wide area coverage. The forest area which is proposed to be changed by the region is mostly directed toactivities plantation development, settlements and the development of expansion areas/cities.

Thus, both mining areas, government administrative areas, and forest areas have their boundaries and have their own mapping, so there are different mapping systems between sectors.

IV. Conclusion

After the promulgation of Law Number 3 of 2020 many people highlighted the addition of Article 169A which explains the guarantee of extension through special mining business license (IUPK) for holders of the contract of work (KK) and work agreement for coal mining exploitation (PKP2B) which will expire. However on the other hand this Article also creates unrest for KK and PKP2B holders because the granting of extensions through the IUPK is not automatically granted but with considerations that have been explained in the law. The formulation of the problem raised in this study is about the legal certainty of granting IUPK and legal protection for KK and PKP2B holders if the application for extension through IUPK is rejected by the Ministry of Energy and Mineral Resources. This study uses a normative juridical research method namely through a literature study with a statutory approach. The results indicate that there was no legal certainty from the IUPK as a Continuation of Contract/Agreement Operations and no legal protection for KK and PKP2B holders if the extension through IUPK is rejected by the relevant Minister. The provisions regarding these rules in the current Minerba Law must be explained more clearly in the Government Regulation regarding Minerba in order to provide legal certainty and protection for mining business actors.

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