

Reform on management Arrangements

by Farida Patittingi

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Research Paper

Reform on Management Arrangements of Mineral and Coal Mining Resources in Indonesia

Abdul LatiefBaky, Abrar Saleng, Farida Patittingi, Yunus Wahid

Graduate School ofHasamuddin University

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ABSTRACT:- Indonesia is an archipelago situated in a very strategic position, between two great continents, Asia and Australia as well as by two oceans; Indian and Pacific. The principle contained in this provision of the Constitution of the Republic of Indonesia 1945 implies a means as obligations of the Government, as the implementer of state policy for management and utilization of natural resources for the greatest prosperity of the people. The outcome of the research indicated that implementation of good governance in the natural resources management in Indonesia is still felt far from satisfactory results. Recently, the arrangement of natural resources is considered not grounded in the principles of sustainable development has led to increased poverty in Indonesia. To manage natural resources in Indonesia, the government actually has a very central role, it is in accordance with the Constitution of the Republic of Indonesia 1945 where the authority of State in managing natural resources through the government. In accordance with the constitutional mandate of that "legitimate" given the authority to manage natural resources and environmental in accordance with the constitutional mandate. To manage natural resources in Indonesia, the government actually has a very central role, it is in accordance with the Constitution of the Republic of Indonesia 1945 where the authority of State in managing natural resources through the government. In accordance with the constitutional mandate of that "legitimate" given the authority to manage natural resources and environmental in accordance with the constitutional mandate.

Keywords:- Law Reform, Management, Mineral and Coal Mining

I. INTRODUCTION

Indonesia is an archipelago situated in a very strategic position, between two great continents; Asia and Australia as well as by two oceans; Indian and Pacific. Such conditions added with the tropical position in the equator and forest area, Indonesia has a rich and abundant natural resources and invaluable, especially mineral resources and mining contained in its stomach. Associated with it, control, management and utilization of natural resources is always connected to the lofty ideals of the Indonesian people as mandated in the Preamble to the Constitution of the Republic of Indonesia (UUD NRI 1945): to protect all the people of Indonesia, and entire homeland of Indonesia, as well as to promote the general welfare, the intellectual life of the nation, and participate in the establishment of world order based on freedom, lasting peace, and social justice.

For more detailed affirmation of the Constitution, Article 33 paragraph (2) the Constitution of the Republic of Indonesia 1945 states that "the branches of production that are important and dominate the life of many controlled by the state." On paragraph (3) also states that "the earth and water and natural resources contained therein shall be controlled by the state and used for the greatest welfare of the people." While, paragraph (4) that the national economy shall be organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainable, environmentally sound, independence, and balancing progress and national economic unity."

The interpretation of the phrase "controlled by the state" is defined as part of the function to organizing and to managing. Moh. Hatta in 1977 ever tried to describe the intention of phrase controlled by the state of Article 33 the Constitution of the Republic of Indonesia 1945 states that controlled by the state under Article 33 does not mean that the state itself to be an entrepreneur, businessman or *ondernemer*. More precisely, said that the power of state contained in legislation which prohibits the suction of the weak people by others who have

capital.' Thus, every company that produces "public utilities" or other production branches such as the principal or the mining industry should be owned or controlled by the state.²

In the operational-technical level of mining management contained the term of Mining Authority (Kuasas Pertambangan "KP"). Mining authority is the license to conduct mining business into the government's job. KP contains public elements because it was given or set by the government with a decision (*beschikking*) and not authority by a regular treaty. KP is given by the government to legal entities/ individuals through a decree in the form of license (*vergunning*) either in the form of concessions that are generally based on the principle of *dominik beginsel* (domain/ state owned), accompanied by the authority may enter into agreements with other parties that are a combination between public and private, and KP.³

The principle contained in this provision of the Constitution of the Republic of Indonesia 1945 implies means as obligations of the Government, as the implementer of state policy for management and utilization of natural resources for the greatest prosperity of the people. It also means that the exploitation of natural resources should be implemented in a sustainable and optimum utilization for the benefit of the people. Thus, the government has a major role in optimizing the exploitation of natural resources. Exploitation of natural resources in its implementation should be applied taking into account economic, social, and environment as a main prerequisite to generate profits from natural resources while maintaining its balance.

In fact, in addition to social and environmental aspects, the utilization of natural resources must also consider the spatial design since this matter is blends with the environmental ecosystem. Incompatibility in management and utilization of natural resources, especially mining resources of mineral and coal ("minerba") in Indonesia not only has crashed into the rules and principles of good mining management but also has ignored environmental and spatial design aspects which has been set as regulated in Act 26 of 2007 concerning Spatial Planning (hereinafter referred to as "Act PR-2007")

These spatial and environmental aspects should be a prerequisite of mine management as it relates to the position of mine as consumable goods. Therefore, the principle of mine resource utilization must also meet the principle of sustainability where the idolization is done on the mine must consider the future of our children. Therefore, in Article 14 of Act No. 32 of 2009 concerning the Protection and Environment Management (hereinafter referred as "Act PPLH-2009") instructs the need to make the Strategic Environmental Assessment ("SEA") as an instrument of prevention of pollution and/or environmental damage.

The goal of sustainability management is also in accordance with the principles in the Constitution of the Republic of Indonesia 1945 which mandates that the utilization of natural resources as natural capital and commodities for the nation for the welfare of the people through a policy of domestic needs (*domestic market obligation*), increased exports and foreign exchange income, as well as the expansion of business opportunities and employment can be realized.

Although Indonesia has the potential of mining and oil and gas resources are large, but the policy conditions of investment is relatively low compared with other countries that producing other mining and oil and gas resources. According to a survey conducted by the Fraser Institute in 2010/2011, the position of Indonesia to the index of mining resources prospect is ranked sixth out of 64 regions in the world. But, the position of Indonesia is very low for the policy potential index, which ranks last three which are located just above the Democratic Republic of Congo and Zimbabwe," even based on this survey; the mining policy potential index is very bad as depicted in Figure I below.

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¹ Mohamad Hatta, *Cita-cita Koperasi Dalam Pasa/ 33 UUD 1945*, A Speech on Cooperation Days on 12 July 1977, in Sri Edi Swasono, Fauzie Ridjal, *Mohammad Hatta: Demokrasi Kita, Bebas Aktif Ekonomi Masa Depan*, (Jakarta: UT Press, 1992), page. 225

² Mohammad Hatta, *Ekonomi Terpimpin*, (Jakarta: Penerbit Mutiara, 1979), pages. 53-54

³ Salim H.S, *Hukum Pertambangan di Indonesia*, (Jakarta Raja Grafindo Persada 2005), page. 263

⁴ Harian Merdeka, *Iklim investasi pertambangan Indonesia terburuk sejagat*, 11 March 2013

"Corresponding Author: Abdul LatiefBaky

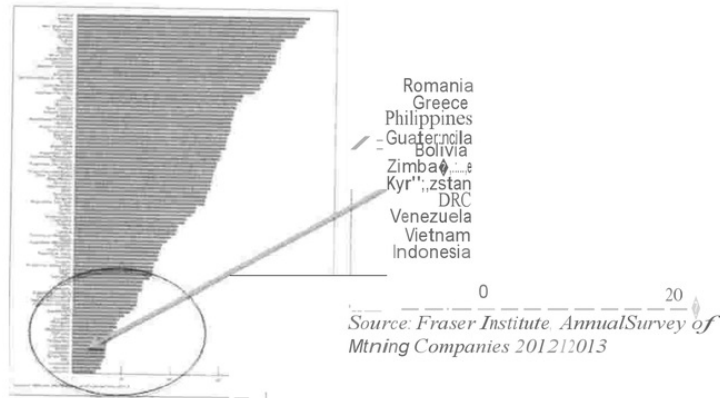


Figure 1. World Mining Policy Potential Index

The position of Indonesia on a survey conducted by the Fraser Institute, the mining investors tend to be not-interested in investing in Indonesia. Although, the Ministry of Energy and Mineral until February 2014 noted that there are 4,471 Mining Business License (MBL) of metallic minerals, coal MBL 3,922, non-metallic and rocks MBL 2,525, 75 Coal Mining Agreement and 41 Mineral Mining Agreement.

In reality, there are still many problems related to the mining in Indonesia, which leads to the assumption that the Act PMB-2009 cannot be implemented as the expected goals under Article 33 the Constitution of the Republic of Indonesia 1945. Regarding the mineral management based on Act PMB 2009, the central government which is a representation of the state is the holder of mining rights. However, to manage the business of mining, its authority can be delegated to another party. In Act PMB 2009, the government was delegating authority to do mining business in the form of Mining Business License ("MBL") to businesses or cooperatives.

Therefore, there is no other way to be taken and one carried out in the search in addition to trying to explore the original meaning of the concepts contained in Article 33 the Constitution of the Republic of Indonesia 1945 as the main reference of settings and the implementation of mineral and coal management in Indonesia. The constitution should be the basis of all the settings and the implementation of state-life and society in Indonesia, which is why the tendency of inappropriate regulation formulation and resource management misuse, especially the mineral and coal resources should be evaluated by the Constitution of the Republic of Indonesia 1945 as the highest norm.

II. IDENTIFICATION OF THE ISSUE

The issue to be discussed in this paper is "How does the practice of rule in the mineral and coal mining resource utilization management in Indonesia? And how the ideal design of the mineral and coal mining resource utilization management for future?"

IV. RESULTS AND DISCUSSIONS

Not-controlled exploitation policies in the natural resources management and mineral and coal resources

The implementation of *good governance* in the natural resources management in Indonesia is still felt far from satisfactory results. Recently, the arrangement of natural resources is considered not grounded in the principles of sustainable development has led to increased poverty in Indonesia. In addition, distribution and utilization of natural resources are not evenly distributed also caused many people, including customary law communities become "spectators" in the utilization of natural resources in their around. Even, there are many practices which the community to witness the soil making their own environment, as happened in Mesuji between employers and society where employers through the local government wants to make the estate and grab the land of community that ended with a prolonged conflict.⁶

²⁷ Article 33 Act No. 4 of 2009 concerning Mineral and Coal

⁶ Okezone, "Kronologis Konflik Lahan Di Mesuji Versi Walhi," <<http://news.okezone.com/read/2011/12/16/337/543280/kronologis-konflik-lahan-di-mesuji-versi-walhi>>, accessed on 3 May 2015

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To manage natural resources in Indonesia, the government actually has a very central role, it is in accordance with the Constitution of the Republic of Indonesia 1945 where the authority of State in managing natural resources through the government. In accordance with the constitutional mandate of that "legitimate" given the authority to manage natural resources and environmental in accordance with the constitutional mandate. It is already clear that the government's role in managing natural resources is needed.

If the management of natural resources managed by the foreign, the government have the authority in terms of contractual agreements, which should have a contractual agreement management of natural resources does not harm its people and does not damage the environment. Natural resources actually have a dual role in human life, namely, as a sector of economy and as balancing the life system. Thus, the natural resources in Indonesia today are still the backbone of the national economy. It is also necessary to good manage the natural resource so that the management of natural resources should also look at environmental factors. Management of Indonesia's natural resources are controlled by foreigners, according to Kompas in 2012 of the total mining in Indonesia, Pertamina as the company that has the right to manage oil and gas only account for 30% of all mining.⁷ Management of natural resources are not partial to the Indonesian people themselves allegedly less disbelief government against the company that manages natural resources, especially mineral and coal.

The dominance of foreign companies that ruled the natural wealth of Indonesia from British Petroleum, ExxonMobil Oil, Conoco Indonesia, Phillips Oil Company to K-L⁹ causes the people of this country as cannot enjoy their own natural wealth. In fact, already described in the Constitution of the Republic of Indonesia in Article 33 where earth, water and natural resources contained therein shall be controlled by the state to the prosperity of their own community. But in reality this never happen the natural resources that we have given to foreigners by foreign investors who invest their shares in Indonesia.

From the New Order era to the present, the management of natural resources that we have much more controlled by foreigners, it is already evident from the many foreign companies that exist in Indonesia and ruled the strategic assets.⁸ There have been many examples of natural resources are controlled by foreigners as the largest gold mine in Indonesia which is controlled by Freeport and Newmont as well as many more foreign companies controlling natural resources in mining and oil and gas sectors. With the large number of natural resources controlled by the foreign, the of surrounding communities with poverty, it is pointed out that foreign companies that controlling natural resources in Indonesia prefer to choose employee from their own country as compared to utilizing the surrounding community.

Indonesia's natural resources are controlled by foreigners is not only the natural resources in mineral and oil and coal but the forestry and plantation is also very much, as well as oil palm plantation companies in Sumatera and Kalimantan as well as many foreign companies controlling natural resources in Indonesia, most of the HPH holder company like Weyerhaeuser and Georgia Pacific (US), Mitsui, Itoh, Sumitomo and Mitsubishi (Japan), plus Malaysia and others.⁹

If the government does not dare to review the system of employment contracts of foreign companies in Indonesia it is most likely descendants of this nation could not enjoy the natural resources that exist in their own country, and do not rule out the possibility that Indonesia is famous for its rich natural resources will become a failed state and poverty hit people of this country. It is therefore important for the government in addition to reviewing the employment contracts of foreign companies that dominate the natural resources both renewable and non-renewable, the government should have the initiative to develop the management process of natural resources that have been produced in Indonesia, particularly in the sectors of agricultural, fisheries and plantations.

In the management of mining occurred weak implementation of the principles of transparency, accountability and public participation in policy-making both at central and local level. Therefore, when viewed from the principles of good governance for a strategic economic resource management in Indonesia, the principles of transparency, accountability, participation and justice/law has not been applied correctly. The principles in question are as follows:

Transparency, in granting mining licenses should be followed by the openness in the form of easy access to information for the public on the process of granting mining licenses and also in view of the impact of

⁷ Liputan6, "Masuk Bisnis Petrokimia, Pertamina Yakin Kuasai Pasar Lokal," <<http://bisnis.liputan6.com/read/468173/masuk-bisims-petrokimia-pertamina-yakin-kuasai-pasar-lokal>>, accessed on 3 May 2015

⁸ Ricardi S. Adnan, *Potret Suram Bangsa: Gugatan dan Alternatif Disain Pembangunan*, (Depok: FISIP UI Press, 2006), page. 216

⁹ Ignatius Haryanto, *Reformasi Tanpa Perubahan: Kehutanan Indonesia Pasca Soeharto*, (Jakarta: Lembaga

*Corresponding Author: Abdul Latief Baky

Alam Tropika Indonesia, 1998), page. 10

granting the license. In the case of mining license the government is easier to granting the mining license for foreign investors with more promising reason of foreign investors.

Accountability, lack a sense of responsibility for foreign companies that manage a mining as an economic sector in Indonesia, this can be seen from the number of mine waste disposal is done by foreign companies, resulting in environmental pollution and others. In this case, the Indonesian country and society is feeling the effects of irresponsible mining management. In addition to feeling the effects of mining management, the future generations of this country have been harmed, in which natural resources should be used for the future of the nation had been ransacked foreign countries.

Participation, the lack of community involvement in the formation of public policy that will be implemented to the public. So that the people cannot participate in the decision-making concerning the lives of many people. This has been proven by Act PP 2001, have not provided a means for public participation in the making of various regulations. Act KPP 1967 and PMB 2009, does not provide an opportunity for the public to participate in policy-making in the field of mining.

The law does not take sides, the complexity of mining regulations in controlling mining companies. The regulations of central and local governments are often made not comprehensively by considering the interests of all parties. Many local regulations are also often overlapping with existing regulations, and not a few others are opposite to each other. In addition to the law enforcement for mining-sharing is still confusing; where a community in around the mining area does not get anything while the officials who get a share of the proceeds.

Mining as a source of national economy is not free of weaknesses and strengths. Where the mining sector like the horns of a dilemma, which brings advantages and disadvantages for a country. At first, everyone will feel happy when a land mine was opened in the region. They will hope that they will get a decent job, an increase in local budgets and economic improvement of society. But in the end the mining industry promoted early shows opacity of future generations to come the area. One by one of coal mining shows a catastrophe for its citizens, ranging from the pollutions of air, water, soil, flooding and landslides. Natural resource management must still prioritize the preservation of natural resources and the welfare of the people. The drafting of legislation and technical implementation (such as the contract of work) should be transparent.

IV. FOREIGN MASTERY FOR NATURAL RESOURCES

The issue of natural resource management in Indonesia which is also quite crucial is the amount of control by the foreign; it can be seen from the many foreign companies that manage mining sector both coals, gold, oil and gas.

The delegation of authority from the central and local does not necessarily change the sharing-profit policy in the natural resources management. There is still a lot of sharing-profit of natural resources in Indonesia in favor of the foreign state. The number of foreign countries that dominate Indonesia's natural resources became evident that the sharing-profit of management does not favor to the people, it is supported also by the amount of poverty in Indonesia. The decentralization policy-driven by government will also bring some consequences. The rich-regions in natural resources will be much enjoyed the benefits of sharing-profit. For example, mining-producing, forestry and fisheries, will now receive 80% of the profit, while the central government is only receiving the remainder, 20%. Oil-producing regions will receive 15% of all profit received from the exploitation of natural resources, while gas- regions received 30%.¹⁰

Indeed, the purpose of decentralization is for the welfare of people in the region, where the decentralization of local government given the authority to manage and shape its region in accordance with local wisdom. But that occurs are the political elite and local officials enriching themselves more than the welfare of people. Where the presence of flexibility in the management of natural resources, the regional elites could move at will think of society. As the case in Mesuji, where the foreign investors who will open the oil palm plantation is given license, while the land to be planted with oil palm is the land of surrounding community, and ended with conflicts that until now has not been resolved.

This is evidence that the political elite in this country is more concerned their stomach with the public. This is an implementation that occurred in this Republic, where the sharing-profit of natural resources cannot favor to the public. Another example is gold and copper mine in Papua, where PT. Freeport is the largest miner

¹⁰Marsuki, *Analisis Perekonomian Sulawesi Selatan dan Kawasan Timur Indonesia: Kebijakan Ekonomi, Ekonomi Kerakyatan, Perbankan, Kredit, Uang, Privatisasi, Usaha, Utang Luar Negeri, dan Ekonomi Sektoral*, (Gorontalo: Mitra Wacana Media, Pemprov. Sul-Sel, Pemprov. Gorontalo, dan Yayasan Massaile, 2005), page. 12

*Corresponding Author: Abdul LatiefBaky

of mineral resources that produce very large from the earth of Papua. But, in reality Papua province still lags far compared to others provinces that do not have abundant natural resources.¹¹

Today, based on the fact there has been a very disturbing development in the utilization of natural resources. With so many natural resources are exploited then there is an environmental damage and disasters, but it is also the future of nation could not enjoy the natural resources that we have. In terms of utilization of natural resources are abundant there are things to watch out where the powerlessness of the state to push the economical activity due to the natural resources have been exhausted, while technology-based alternative economic activities cannot be touched.

Due to the many natural resource exploitation that happens then Indonesia indirectly have felt the impact. Like the rich content of oil reserves that have been depleted so that Indonesia must import oil to meet domestic needs, while revenues from other natural resources has declined. This sort of thing is what is called a curse for developing countries with abundant natural resources, as stated by *Stiglitz*.¹²

The exploitation of foreign companies of natural resources in Indonesia would be very detrimental to the nation and the state, where the foreign exploitation of natural resources will lead to Indonesia at least three fundamental problems. *First*, the work-contract is likely to put Indonesia in a weak position, so that the results of sharing-profit for natural resources are largely moved to the foreign. Its implication is Indonesians receive waste as results from the exploitation process of natural resources such environmental damage. *Secondly*, there is always a place for perpetrators of natural resources exploitation to manipulate the results of operations were carried out due to lack of access for the government to conduct regular surveillance. *Third*, related to the ethical and constitutional aspects that natural resources serving the public must be owned and controlled by the government.¹³

The most crucial issue concerns the problem of this natural resources in Indonesia is actually not a scarce problem or not for these resources, nor on whether or not a problem considering the price of this natural resource in the world. Included also, is not a difficult problem or not to get it. However, it all just comes down to the economic policy decisions of the resource management itself. Management of natural resources in Indonesia is siding with the political elites and capitalism in comparison with the interests of Indonesian people. But ironically, many decision makers do not understand the position and knowledge of the existence of natural resources.¹⁴

The utilization of natural resources must remain grounded in the principles of community-based development. This will be reflected in the implementation of *good governance*. Management of natural resources both the central and local governments full authority, so for the future must be careful in determining the cooperation with foreign investors. Natural resources in Indonesia should be aligned to the prosperity and welfare of people, improving the local economy, as well as the welfare of Indonesian people themselves.

Indonesia is a fortunate country to have a wealth of natural resources are "large", both resources are not renewable and may be renewable. In this context it does not use the word "abundant" because the word "large" is relative. Meanwhile, the word "abundant" as endless or unlimited. For example, Indonesian coal resources of 104 billion tonnes and reserves of 21 billion tons. Based on data from BP Statistical Review 2010, only 0.5 percent of Indonesian reserves of the world reserves. Meanwhile, in assuming there are 21 billion tons all calculated as mineable reserves so the amount is not to 2.5 percent.¹⁵ The potential of mineral and coal are distributed in various islands in Indonesia. Due to the considerable economic potential it has long mineral and coal resources has become a mainstay of economic development.

A wealth of mineral and coal resources that exist in countries such as in Europe and the United States are generally used for their own needs or used as needed for long-term reserve where its market mechanisms rely on the political even political lines when necessary.¹⁶ Another pattern that is also interesting to learn is

¹¹ Sendius Wonda, *Jeritan Bangsa Rakyat Papua Barat Mencari Keadilan*, (Yogyakarta: Galang Press, 2009), pg. 6

¹² Alan Greenspan, *Abad Prahara: Rama'an Kehancuran Ekonomi Dunia Abad Ke-21*, Terjemahan Tome Beka, *The Age of Turbulance: Adventures In A New World* (Jakarta: Gramedia Pustaka Utama, 2008), page. 262

¹³ Moh. Mahfid MD, *Tantangan Pembangunan Di Indonesia: Beberapa Pandangan Kontemporer Dari Dunia Kampus*, (Yogyakarta: Uil Press, 1997), pages. 39-40

¹⁴ Hikmat Ramdan; Yusran; Dudung Darusman, *Pengelolaan Sumberdaya Alam dan Otonomi Daerah: Perspektif Kebijakan dan Valuasi Ekonomi*, (Bandung: Alqaprint Jatinangor, 2003), p. 51 and 83

¹⁵ Edi Prasodjo, "Kemana Arah Pemanfaatan Sumber Daya Mineral dan Batubara?", *Warta Mineral Batubara & Panas Bumi*, Ed. 17 - Agustus 2010, page. 4

¹⁶ Lincoln Palmer Bloomfield Ed., *Global Markets and National Interests: The New Geopolitics of Energy*

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Capital and Information, (Washington, DC: CSIS, 2002), page. 6

1 policies that are more conservative and protective. An example, China with the large resource, they apply a protective policy in the sense that the entire potential of natural or mineral and coal they are used entirely for domestic purposes. China is a very-rapidly developing country phenomenon and they are very aware that the potential of mineral and coal resources are basic capital, so sought entirely to drive the wheels of industry in their own country. It is a natural thing, because they must serve the people whose numbers are very large, are now more than 1.3 billion people.

Currently, Brazil, Russia, India and China are called as BRIC countries. As countries is forecast to increasingly its contribution to the world economy. Even in 2050 by Goldman Sachs's analysis will be strong and rich countries bear down the countries today such as the United States, Japan, Germany and France. By comparison, about fifty years ago, no one suspected that Japan and Germany would be a strong state and advanced as it is today.¹⁷

BRIC has done twice Summit, which on 16 June 2009 in Russia and 15 April 2010 in Brazil aims to assert their position in the world. Several key positions are proposed by BRIC including the reform of international financial institutions (IMF) to better accommodate the aspirations of developing countries, diversification of the international monetary system that does not focus on the US dollar, as well as a request that Brazil and India can further play a role in the United Nations (UN).¹⁸ These things as a part that needs to be examined in the context of the management of mineral and coal resources in Indonesia. It about time for shifting a management paradigm from exploitation to optimizing-benefit. And also the national interest as primer. Indonesia's population is quite large, which means requiring coal and mineral needs are also great to be one a consideration.

V. CONCLUSION

Management and utilization of mineral and coal resources requires revision of mineral and coal mining law be valid at this time, due to: a) the implications of local-autonomy that lead to confusion among investors, and there is even a rogue investors who use them; b) the overlapping authority between agencies; c) many of Indonesia's natural resources, especially mineral and coal resources are controlled by foreigners who do not side with the Indonesian people as the owner of own resources that was allegedly less disbelief of government against the company that manages natural resources, especially Minerba; d) shifting Minerba resource management practices in Indonesia from centralization to decentralization-deconcentration.

Ideal design of regulation policy of mining resource utilization management in Indonesia after the reform started from a policy study includes: *Policy Study* in the form of harmonization/rules synchronization, the absorb of public aspirations and prospects of mining arrangement *Management Policy* consisting of mining resource inventory, utilization and the preservation of mining resources *Investment Policy* consisting of the certainty of ownership, licensing proportionality, exploration professionalism, harmonization of relations with the community, synchronization of government role, harmony with the environment, promotion and marketing and firmness of Mineral and Coal Mining Policy in general, provide input on mining policy is still associated with the legislation, supervision, licensing, government promotion and others.

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¹⁷ B. Sujatha, *BRIC Economies: Opportunities and Chal/enges (Brazil Russia, India and China)*, (Hyderabad, India: ICFAI University Press, 2006), page 32

¹⁸ Cedric de Coning, Thomas Mandrup, Liselotte Odgaard, *The BRICS and Coexistence: An Ahermative Vision of World Order*, (Abingdon: Routledge, 2014), page 41

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