Juridical Review on the Limitation of Banking Credit in the National Mining Sector

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Abstract. This study examines the juridical limits on bank credit in the Indonesian mining sector. This study's methodology is a sort of normative legal research. The restrictions imposed by the Financial Services Authority (OJK) were due to the decline in coal commodity prices, so the OJK referred to the rules contained in Bank Indonesia Regulations. The lending made by the bank should be analyzed first by the bank, using the 5C, 5P, and 3R analysis. The implementation of restrictions on lending to investors in the mining sector that the Indonesian government has implemented has been considered quite effective because it can still increase capital investment in the mining sector from foreigners and make a very positive contribution to the state treasury. Foreign investors or foreign investments are indeed very profitable for Indonesia, in addition to absorbing local workers and the transfer of technology.

Keywords: Credit Limitation, Banking Credit, National Mining.

1 Introduction

Mineral and other mining materials are extracted from the soil through the type of activity known as mining. Mineral resources are abundant in Indonesia. Minerals include coal, oil, natural gas, copper, gold, silver, and other elements. As a result, mining is a significant economic sector in Indonesia.

Various parties are needed to support the current national development as a source of funding for or as a means of financing national economic development. As a result, one of its duties as a financial institution is to channel funds in the form of credit, which is essential to achieving national economic development.

One of the banking business fields supporting national economic development is the credit business sector. The peovision of funds or claims based on a loan or agreement between a bank and another entity that mandates the borrower repay the debt after a specific amount of time with interest is known as credit [1]. The provision of funds or claims based on a loan or agreement between a bank and another entity that mandates the borrowe repay the debt after a specific amount of time with interest is known as credit [2]. One type of credit that has become a concern in the community today is investment credit, especially credit in the mining sector.

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The banking sector's involvement cannot be ruled out because bank credit in the mining sector will greatly assist the production process. The capital needed by the mining sector is obtained from credit applications submitted to the bank. Article 1 paragraph (11) of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking, hereinafter referred to as the Banking Law, states that the definition of credit is "*The provision of money or equivalent claims, based on an agreement or loan agreement between a bank and another party which requires the borrower to repay his debt after a certain period of time with flower giving*."

The granting of credit to prospective customers or debtors goes through the credit application process and considers the principle of prudence. This precautionary principle uses the 5C analysis (The Five C's of Credit Analysis), namely character, capacity, capital, collateral, and economic conditions. Credit analysis is conducted to convince the bank that the customer can be trusted. Giving credit without prior analysis will be very dangerous for the bank. In this case, the customer can provide fictitious data easily, so the credit is not worthy of being given [3, 4].

In granting this credit, banks apply restrictions on lending. Bank Indonesia, as the central bank in Indonesia, may stipulate the regulation on the Maximum Lending Limit (hereinafter abbreviated as BMPK/ *Batas Maksimum Pemberian Kredit*) as legal lending limit [5]. Bank Indonesia regulates the maximum limit for commercial bank lending in Bank Indonesia Regulation (hereinafter PBI// *Peraturan Bank Indonesia*).) No. 8/13/PBI/2006 concerning Amendment to Bank Indonesia Regulation No. 7/3/PBI/2005 concerning the Maximum Limit for Commercial Bank Loans. This limitation is given to individual borrowers and groups of borrowers."

Bank Indonesia is authorized to set a maximum credit limit for each guarantor or group of borrowers, including "companies in the same group in accordance with the Banking Law. The existence of this BMPK creates restrictions for those who will apply for credit in large amounts. The restrictions imposed by the banking sector were caused by the large number of bad loans. To that end, the Financial Services Authority (hereinafter OJK/ *Otoritas Jasa Keuangan*), urges banks to limit lending, especially in lending to the mining sector [6]. This limitation is because the OJK noted that until March 2014, the portion of mining and quarrying credit was Rp. 3,334 trillion or only 3.58 percent of the total credit. In addition, the level of non-performing loans in this sector is also quite large, which increased by 72 percent to Rp 2.3 trillion [7].

Government Regulation No. 1 of 2014 concerning the Second Amendment to Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities which is a follow-up and implementing regulations of Law No. 4 of 2009 concerning Mineral and Coal, hereinafter referred to as the Mining Law. Among other things, the regulation control regarding the prohibition on export of raw materials from mining products. The Minerba Law aims to ensure that non-renewable natural resources (SDA) that affect many people's livelihoods are managed under state control in order for them to significantly boost the country's economy.

The policy "The government with the existence of a Bank Indonesia Regulation, hereinafter referred to as PBI concerning the BMPK, makes domestic investors, hereinafter referred to as domestic investment, make investors think again if they will apply for credit to the banking sector. In addition, to follow up the mandate of the Minerba Law, particularly related to mineral processing and refining activities, the government has issued a Government Regulation, hereinafter referred to as PP (*Peraturan Pemerintah*) 1 of 2014, concerning the Second Amendment to Government Regulation No. 23 of 2010 concerning the

Implementation of Mineral and Coal Mining Business Activities. One of the objectives of the PP is to oblige mining companies to commit to building a smelter. In order to continue building smelters, large capital is required. One of this capital is obtained from bank capital loans."

This causes another impact if there is a limitation on lending to the mining sector by decreasing "tax revenues and non-tax revenues from the natural resources sector. Credit restrictions by Bank Indonesia aim to safeguard banking finances when facing bad loans. Still, it should be noted that credit in the mining sector will assist the natural resource management process managed by domestic investors to impact the country's economic progress [8].

This is reinforced by data from the National Central Statistics Agency that investment in mining in 2020 is US$ 1,718, with construction costs or project costs only amounting to US$ 606 (https://www.bps.go.id). Based on this, this can potentially advance the country's economy through the mining sector. However, credit disbursement by banks in Indonesia will be analyzed using a mechanism determined by Bank Indonesia. In practice, the banking sector does not always provide credit to the mining sector because it is assessed that the risks faced by banks will be high. In addition, it is also due to the declining price of coal commodities. Therefore, the Financial Services Authority (OJK), concerning the policy of Bank Indonesia, urges banks to limit lending, especially lending to the mining sector with a Maximum Lending Limit (BMPK).

In this paper, the author will discuss the "Juridical Review on the Limitation of Banking Credit in the National Mining Sector," with the formulation of the problem as follows:

1. What is the regulation of credit restrictions in the mining sector in Indonesia?

2. What are the restrictions on lending to investors in the mining sector in Indonesia?

2 Methods

The research's approach method is normative judicial. Normative judicial research is the study of laws, research findings, and works from the legal community through the use of secondary data from libraries [9]. The descriptive-analytical research design used to create this law describes the relevant laws, rules, and practices for enforcing positive law in relation to the issues addressed by the research.

3 Discussion

3.1 Regulation of Restrictions on Loans in the Mining Sector

The granting of credit to the mining sector in terms of the purpose of the credit is to increase business or production, or investment. For example, credit for building factories that will later produce goods, agricultural credit for producing agricultural products, or mining credit for producing goods (products) from mining or other industries. The types of mining businesses financed are usually long-term, such as gold, oil, mining, and so on.

It can be determined that the systems and conditions used by banks to disburse mining credit differ little from bank to bank; the only real distinction is in the requirements and assessment standards established by banks with their respective considerations while taking the competitive element into account. On the other hand, credit categorization causes credit to have several positions, each with different uses. These differences cause the public (community) to decide which credit to choose according to what is needed in the form of need that will be used [10, 11].

The maximum percentage of provision of funds set for: a) Bank capital for providing funds to related parties; and b) core capital of the bank for the provision of funds to other thank related parties, is known as the Maximum Lending Limit (BMPK). Bank Indonesia (BI), as the central bank, has issued this regulation. The BPMK stipulates the limits on lending made by banks to customers who will apply for credit, either individually or in the form of groups [12, 13].

The mining sector is one of the many criteria for classifying bank lending. Provision of Credit in the Mining Sector is included in the economic sector credit, namely credit for the mining sector. Additionally, the provision of credit to the mining industry is also classified according to the use for which it will be put, particularly investment credit and working capital credit. However, because the mining industry in Indonesia is a critical sector that requires the government's full attention through capital distribution, regulations on the sector have been relaxed. Maximizing financing is a practical measure to encourage investment growth in the mining industry [14, 15].

Additionally, lending money to the mining industry is the primary operation of banks that involves risks that could have an impact on the balance sheet of the bank is the granting of credit. When a bank acts as an intermediary and receives the majority of its funding from the government, it provides credit , the provision of bank credit is largely limited by the provisions of laws and regulations of BI Law No. 7 of 1992, in conjunction with Law No. 10 of 1998 concerning Banking (hereinafter referred to as the Banking Law), has mandated that banks always adhere to the principle of prudence in carrying out their business activities, including in providing credit. In addition, BI, as the banking authority, also stipulates bank lending regulations.

In the implementation of lending, the bank does not only apply the 5C principles but also uses another prudential principle called the 5P principle, namely [16]:

1. Party
2. Purpose
3. Payment
4. Profitability
5. Protection

In addition to the principles of providing 5C and 5P credit, credit assessment by banks can be carried out through the 3R principles, namely:

1. The results obtained (Return)
2. Repayment (Repayment)
3. Ability to bear the risk (Risk Bearing Ability)

The process of granting credit plays an important role, meaning that the granting of credit creates a legal relationship with all juridical consequences that can cause losses to the bank as a creditor if basic things are neglected.

Mining sector credit is also included in the classification of credit based on the purpose of its use; the mining sector requires investment credit and also working capital credit to expand or increase production and operations depending on the needs of the company.

The mining sector is also included in the classification of credit based on the purpose of its use, namely investment credit, and working capital credit. The purpose of its use is credit categorization which causes several positions, each with different uses.

The mining sector is one sector that has different characteristics; the provision of this facility is also different, where the mining sector provides an increase in the level of the country's economy. Giving credit to the mining sector is the right step because mining is included in the productive sector, which can generate and increase national income. The existence of credit to the mining sector is expected to harmonize the development of the mining sector and the banking sector.

Theoretically, the mining business is aimed at the welfare of the community. Therefore, mining workers should cooperate with the surrounding community. One of the forms is by employing the surrounding community in the surrounding mining business, thus helping the economic life of the surrounding community.

3.2 Implementing Credit Limitations on Investment in the Mining Sector in Indonesia

The credit limitation referred to here is a credit limitation in a quantitative sense, which relates to the maximum credit limit) to be granted. Credit restrictions can also affect the size of trade receivables. The higher the credit limit, the greater the embedded trade receivables, and the lower the credit limit, the smaller the embedded receivables [17]. This restriction is absolutely necessary to control credit to avoid bad loans and the settlement of bad loans. Giving credit to a bank must adhere to the principle of "taking the as little risk as possible." The risk in question is the risk of the possibility of credit that cannot be repaid by the debtor [9, 10, 18].

The concretization of the implementation of restrictions on lending to investors in the mining sector at Bank Mandiri so far is described in the description below:

1. Implementation of Mining Business Credit Limitations

   Credit restrictions on the mining sector occur because the banking sector sees it as a sector with a high risk, not only in terms of its workers' health and safety risks. In the current mining sector, prices decline, especially for coal, which poses a big risk due to declining commodity prices. One of the things that make our mining sector weaken. In this case, OJK urges banks to limit lending to the mining sector.
   Based on Article 1 No. 2 of PBI No. 7/3/PBI/2005 and strengthened by OJK Decision No. 32/POJK.03/2018 No. 2, the BMPK is the maximum amount of funds that can be provided for bank capital. One of the causes of bank business failure as stated in the explanation of Article 1 No. 2 of PBI No. 7/3/PBI/2005.
   OJK Decision No. 32/POJK.03/2018 No. 2 states:
   Maximum Lending Limit, hereinafter abbreviated as BMPK, is the maximum percentage of provision of funds determined for:

a. Bank capital for the provision of funds to related parties; or

b. core capital (tier 1) Bank for the provision of funds to other than related parties.

2. Determination of the Maximum Limit for Loans

   The determination of the BMPK or Legal Lending Limit is actually to regulate the banking credit portfolio so that it does not accumulate in one group or individual in providing credit because credit concentration in certain groups or individuals will carry a very large risk for the bank. Therefore, BI determines that the provision of credit to customers must be distinguished between parties related to the bank and other parties who are not related. The parties related to the bank are the borrowers and/or groups of borrowers who are related to the bank.

The restrictions on lending that have been carried out by BI above are very ineffective with developments in the mining sector. The mining sector is a good means to invest because it is a long-term investment despite high risks. Domestic investors realize that Indonesia has enormous potential in the mining sector because the mining products produced are very large. However, these investors did not have enough capital, so they asked for credit assistance from the banks. Unfortunately, the banking sector also cannot provide it easily, because there is a PBI that has regulated it.

The existence of restrictions on lending to the mining sector is because in addition to the price of mining commodities, especially coal, which tends to decline and there is no recovery point so that it is vulnerable to risk, the slowdown in credit in the mining sector has also triggered the regulation of credit restrictions in the sector.

The current BMPK rules, unless there are changes in the future, are that debtors who are not related to the bank can be given a credit of a maximum of 20 percent of the bank's capital. Debtors related to the bank such as shareholders of 10 percent or more and their families, commissioners and their families, directors and their families and companies related to banks, related to shareholders, related to commissioners, related to directors and related to bank employees, can be given credit a maximum of 10 percent of the bank's capital. Shareholders under 10 percent are declared unrelated to the bank.

Bank Indonesia in fostering banks is not yet in an independent position, weakening law enforcement. As a result, there is no clear legal mechanism to take action against violations of the BMPK, apart from conventional methods and penalties for bank health and taking action against bankers listed on the list of despicable people. However, in line with Article 63 of the OJK Decision No. 32/POJK.03/2018.

Bank Indonesia in order to supervise the improvement of banking infrastructures such as preparation for the implementation of LPS (*Lembaga Penjamin Simpanan*) and fit and proper, improvement of banking regulations such as fit and proper, bank status, BMPK, credit restructuring, assessment of earning assets, short-term funding, Islamic banks, monthly reports, and others -other, strengthening bank supervision such as special supervision imposed on banks whose CAR (Capital Adequacy Ratio) is below 4 percent and non-performing loans or Non-Performing Loans or NPLs of more than 35 percent, provisions concerning Frozen Banks for Business Activities or BBKU (*Bank Beku Kegiatan Usaha*), investigations of banking crimes such as establishing a special work unit, namely the Banking Investigation Special Unit or UKIP (*Unit Khusus Investigasi Perbankan*) whose work is submitted to law enforcement.

3.3 Implementation of Mining Business Credit Limitation in accordance with the Law of the Financial Services Authority

As stated in Article 33 Paragraph (3) of the 1945 Constitution, which is a reference for processing Indonesia's natural resources for the maximum benefit of the people's prosperity, the control of natural resources by the state, including in the mining sector, cannot be separated from the purpose of control, namely in order to realize the greatest prosperity of the people [19]. However, OJK also advises that although mining is a strategic effort to increase the country’s foreign exchange, credit assistance for mining investment must adhere to banking prudence.

OJK urges banks to limit lending to the mining sector. OJK considers that the mining sector has a very big risk if banks continue to provide credit to the mining sector. The OJK did not make this restriction without basis. Still, the OJK made the call because BI had issued PBI No. 8/13/PBI/2006 concerning Amendments to Bank Indonesia Regulation No. 7/3/PBI/2005 concerning the Maximum Limit for Commercial Bank Loans (BMPK). As a result of the PBI, OJK took steps to urge banks to restrict lending to the mining sector based on the PBI regarding the BMPK.

One of the industrial sectors that significantly benefits Indonesia is the mining industry, which boosts export revenue, regional growth, economic activity, and creates new job opportunities and revenue streams for the national and regional budgets. The government creates plans for the wise use of natural resources. [20, 21]. This is more aimed at entrepreneurs who want to invest in the mining sector. There are 4 (four) conditions that must be met by the investors, namely [22, 23]:

1. Investors must pay attention to poor communities around mining areas in the form of providing CSR funds;
2. Investors absorb more labor, especially those who live in mining areas;
3. Investors can provide higher income to the state than that obtained by the company. This is because the managed natural resources belong to the state so that the results can later be used for the welfare of the Indonesian people;
4. Investors are required to maintain the balance and environmental sustainability of the mining area.

The mining sector, as the main producer of foreign exchange and energy resources, plays an important role in efforts to achieve the development market. With increasing development activities in all sectors, the need for foreign exchange and energy resources to implement development is expected to be even greater.

Seeing the potential of the mining sector, which tends to increase to develop, there is great hope. However, these developments must align with regional and regional developments. Because if mining developments are not in line with regional and regional development, then spontaneously, it can be said that something is wrong.

The growth of investment above is still legally in accordance with the provisions of Government Regulation No. 1 of 2014 concerning the Second Amendment to Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities, Article 97, which explains that "foreign capital holding IUP (*Izin Usaha Pertambangan*/Mining Business License) and IUPK (*Izin Usaha Pertambangan Khusus*/Special Mining Business License) after 5 (five) years from the time of production, they are obliged to divest their shares, so that their shares are at least 20% (twenty percent) owned by Indonesian participants.”

Currently, in the mining sector, the number of local investors in the capital market is minimal compared to Indonesia’s total population. In addition, people are still reluctant to invest due to a lack of knowledge and insight about instruments in the capital market.

The effectiveness of credit restrictions on investment in the mining sector is still considered capable of contributing positively to improving the mining climate. This phenomenon is Indonesia’s achieving the highest investment growth since 2016. The data on the increase in investment every year from the beginning of 2016 to 2020 shows that the graph continues to increase. Starting from 149.1 trillion rupiahs in 2016, it has increased to 384.9

trillion rupiahs in 2020 and continues to increase every year until 2020, exceeding 100 percent.

Investors essentially understand the potential and state of a country that will be used as a place for investments. This regulatory framework relates to laws that facilitate market liberalization, uniformity of international agreements, ownership factors, and other things. Many factors encourage foreign investors to invest in Indonesia.

So far, domestic investors or domestic investment in Indonesia do not want to do high-risk businesses, such as exploiting untapped natural resources and opening up new lands, so foreign investors' presence will greatly support businesses in this field. The advantages gained by the presence of foreign investors are the procurement of state infrastructure, the establishment of new industries, the use of new sources, and the opening of new areas, which will open up a new trend, namely increasing employment opportunities. In addition, technology transfer causes the local workforce to become more skilled, thereby increasing marginal productivity and increasing overall real wages. All this shows that foreign capital tends to increase productivity, performance, and national income.

4 Conclusion

Regulations regarding restrictions on lending are regulated in Bank Indonesia Regulation No. 8/13/PBI/2006 concerning Amendments to Bank Indonesia Regulation No. 7/3/PBI/2005 concerning the Maximum Limit for Commercial Bank Loans (BMPK). Article 11 paragraphs (1), (2), (3), and (4) of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking, the provisions of the BMPK can be divided into 2 (two) types, namely 30% (thirty percent) for groups and 10% (ten percent) for individuals. The restrictions imposed by the Financial Services Authority (OJK) were due to the decline in coal commodity prices, so the OJK referred to the rules contained in Bank Indonesia Regulations (PBI). The terms for granting credit to the mining sector are almost the same as those for ordinary credit, but some conditions differentiate them from granting credit. Credit disbursement by the bank should be analyzed first, using the 5C, 5P, and 3R analysis. These principles are used to analyze whether it is appropriate to be given credit later. The lending to the mining sector at each bank is slightly different, depending on the policies of each bank. The mining sector requires large funds, so one of the right ways is to apply for credit to the mining sector. 2). The implementation of restrictions on lending to investors in the mining sector that the Indonesian government has implemented is quite adequate because it can still increase capital investment in the mining sector from abroad and can make a very positive contribution to the state treasury. Foreign investors or foreign investments are indeed very profitable for Indonesia, in addition to absorbing local workers and the transfer of technology.

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