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Alternative Dispute Resolution in Mining Disputes with the Mechanism of Mediation

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ABSTRACT

In Article 33 of the constitution of the Republic of Indonesia Year 1945, the management and exertion needed protection and legal certainty both to the public as a common property over the excavated material, the entrepreneur as a manager, and the government as a regulator. Mining activities often cause disputes involving the government, employers mining (investors), and the community in the territory of the mining operations. Therefore, need to be pursued to resolve the dispute through the dispute settlement mechanism. Issues to be examined include the development of the regulation of business activities the mining sector in Indonesia and the dispute settlement mechanism in the field of mining in order to create legal certainty and justice. This paper discusses the completion of mining disputes by alternative dispute resolution in mining through the concept of mediation. Be aware that the development of the regulation of the activities of the mining business in Indonesia has existed since the reign of the Dutch east Indies with the entry into force of the Indische Mijnwet 1899, after the independent published a Regulation Number 37 of the 1960s about Mining, Regulation Number 44 of 1960 on Oil and Gas, LAW Number 37 of Prp. 1960 about Mining, later replaced by LAW No. 11 of 1967 about the Basic Provisions of Mining which is then lifted and the publication of LAW No. 4 Year 2009 on Mineral and Coal Mining. As for the dispute settlement mechanism of mining through a few options that include adjudications, non-adjudications, the court, arbitration, ADR, mediation and traditional institutions. In this discussion the author argues that the choice of dispute resolution through mediation is the right choice rather than the settlement of disputes in court. This is due to the mediation has several advantages such as the dispute resolution process is faster, the result of an agreement that is a "win-win solution", as well as the guarantee of the confidentiality of the dispute from the public spotlight. Based on these advantages, mediation is considered more appropriate to be applied in a contract dispute mining in Indonesia.

Keywords: Alternative Dispute Resolution, Mining, Mediation

INTRODUCTION

Mining is a sector that is receiving serious attention from the government, given the activities of the mining contributes large enough for the entry of foreign countries, it is seen by many licensing Power of the Mining area. On the other hand, with the increasing number of mining activities either involve both foreign and national, pose large-scale exploitation and result in pollution and damage to the environment. In addition, there are various problems, especially the use of land for mining activities, causing friction between mining businesses, local communities and local governments where mining business activities are carried out.

Further talking about the natural resources in Indonesia is not going to be endless. Resources of his own nature in general divided into two, namely natural resources renewable and natural resources that cannot be renewed. Natural resources-renewable resources where the amount and

quality of physical resources is changing all the time as well as the amount that we take now will affect or not affect the availability of the resources in the future (Nahib Irwadi, 2006). While natural resources that can not be renewed is a resource that is considered to have limited reserves, so the exploitation of these resources will deplete the reserves of the source and can not be renewed or spent (Nahib Irwadi, 2006).

Natural resources that cannot be renewed or also called with the resources be empty is a natural resource that does not have the ability of regeneration of the biological. Natural resources is formed through geological processes that require a very long time to be able to serve as a source of natural resources that are ready to be processed or used (Ma'rifah STRi salatun et al., 2011). Related natural resource which cannot be renewed closely associated with mining activities. The mining activity itself is the business of the utilization of natural resources. This activity is carried out on nature that has or contains reserves of minerals or other minerals.

This activity is very promising, don't be surprised if during this time the activity is always a concern from both the government and the community. In addition, mining activities also became the mainstay of the Government of the Republic of Indonesia to bring in foreign exchange, and for the county or City mining activities is one of the sources of Local Revenue (PAD) are used as a mainstay. Based on Law Number 11 Year 1967 on the Basic Provisions of Mining, classification of material mining/ quarrying in Indonesia is divided into three, namely group A in the form of excavated material is placed, the class of B in the form of group minerals is vital, and group C in the form of group of minerals that are not included in class A or B. Then in the Government Regulation No. 27 of 1980 regarding the Classification of Materials Minerals described in detail about the materials that are included in group A, B, and C. Group A is an important item for defense, security and strategic to ensure the economy of the country and most of it is only allowed to be owned by the government, for example petroleum, all types of coal, radioactive materials aluminum (bauxite), iron, and nickel mines. Group B is a group of vital minerals, which can ensure the livelihood of many people such as gold, silver, magnesium, and stone. Group C is a material that is not considered to directly affect the lives of many people, for example salt, sand, marble, limestone, and clay.

Please be aware of the activities of mining that is done very prone to the occurrence of the destruction of the environment that have an impact on the damage to the ecosystem and the environment around the mining area. On the other hand, mining activities are also very at risk to the social environment, so that the activity of mining interesting to study further because these activities often lead to conflict. Conflict is a situation where two or more parties faced on the difference in interest (Firdaus Asep Yunan et al., 2012).

Disputes arising in mining business activities should be predictable or try to avoid the onset of conflict either from the contract/ agreement made by the parties before the activity is carried out or when the implementation of the activity, so that the implementer can minimize the source of the dispute. However, in general, the emergence of such disputes is difficult to avoid, so efforts are needed to resolve the dispute.

Based on the description on the background of the research, it is necessary to do a study on the development of the regulation of business activities the mining sector in Indonesia and the dispute settlement mechanism in the field of mining with alternative dispute resolution with the concept of mediation.

LITERATURE REVIEW

Refer to the understanding of the mining law that gives the sense of a set of rules that aim to protect the interests associated with the coal mining industry and to minimize conflicts between mining

companies and give a general explanation to anyone who has the rights to conduct mining activities, it can be interpreted that the mining law focus the study on mining in general. While the material of the mine itself includes mineral and coal, geothermal, oil and gas, and groundwater.

In mining law, mining grouped into two kinds, namely: the Law of general mining, weighed about geothermal, oil and gas, mineral content, mineral and coal, as well as ground water as well as the mining law special, just set on mineral and coal mining.

Pursuant to Article 1 paragraph (8) of Law Number 4 Year 2009 on Mineral and Coal Mining understanding mining is part or all of the stages of the activities in the framework of the research, management and exploitation of minerals or coal, that includes general investigation, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, as well as the activities of the post-mining. As for understanding the mining business based on Article 1 (5) of Law Number 4 Year 2009 on Mineral and Coal Mining is an activity in the framework of the exploitation of minerals or coal. The activity was carried out to optimize the natural resources mining (minerals) that are contained in the earth Indonesia.

Classification of mining on the basis of Article 8 paragraph (1) of Law Number 4 Year 2009 on Mineral and Coal Mining include: mining, minerals radioactive; mining metallic minerals and coal; and the mining of non-metallic minerals and rocks. That the classification of mining business is necessary because it is related with the authority to grant permits and businesses. The implementation of the mining is done based on (1) the Assignment of the Mining Business; (2) Mining Permit; and (3) Permits Mining of the People. Mining is not only done by the government solely, but can also be carried out by business entities and individuals (Article 7 of Law No. 4 Year 2009 on Mineral and Coal Mining). To be able to run the mining business, business entities and individuals must meet the requirements of the technical, financial, expertise and administrative requirements.

1. Region Mining and Mining Permits

The management and operation of mining is based on the determination of the mining region, which is an integral part of the national space, as stated in Article 1 number (20) and Article 9 of Law No. 4 Year 2009 on Mineral and Coal Mining. With the determination of the mining region, is expected to be done planning the management and utilization of minerals, which integrated with development planning thoroughly, including socio-economic aspects in the event that the mining business is done.

While the determination of the scope of the mining region should pay attention to: the establishment of a mining region should be carried out after coordination with the Parliament, local government, the opinion of the relevant agencies and the community; as well as Carried out through a process that is transparent, participatory, and accountable; and Aspects of the social, cultural, economic, ecological, and environmentally sound.

Based on Article 13 of Law No. 4 of 2009 on Mineral and Coal Mining is regulated on the type of mining area: mining business area (WUP); WPR people's mining area); and state mining area.(WPN).

To determine the mining area is based on an objective measure and is based on scientific measures or criteria. The criteria include (1) the presence of indications of mineral carrier rock formations and / or coal carriers; (2) the potential of solid and / or liquid mining material resources (Article 2 Paragraph (2) government regulation Nomo R22 year 2010 on mining areas).

In the framework of the working of the law or the implementation of a regulation it is necessary a device that supports the nature of the force the rule of law, so that every person must carry it out. A rule that is implemented consistently will

give the authority of law and to provide legal certainty.

A device that is able to support the operation of law and is able to control the behavior of people or business entities (entrepreneurs) that are preventive is permission. Utrecht provide a classification of forms of permission, namely:

1. Dispensation, namely the decision of the administration that frees up a deed of power of a rule that rejects the act;
2. Permission, that is a decision of the State administration that allow a deed which is generally banned, but permitted and is concrete;
3. The concession is a deed that is important for the public, but private parties can participate with the terms of the government to intervene;

Permission is the legality of the individual, group, or business entity that issued by state officials to perform the activity or specific activity with must carry out the obligations as specified in the permit in question. When in actual recipient of the permission do not run the obligations, then the approver is authorized to impose the sanctions.

In connection with the business of mining, to obtain the legality of mining operations based on Law Number 4 Year 2009 was carried out in the form of the business license which includes the people mining right, mining permit, mining permit special. Different with the settings in the Law No. 11 of 1967 consists of a wide variety of forms, namely Mining Contract, Contract Work, PKP2B (the Covenant of Works Concessions Coal Mining) for mining coal, SIPD (Letter Mining Permit Area) for the minerals industry, and people mining to mine the people.

In practice, contract or permission of the management of mining in Indonesia is still diverse, due to the enactment of the various types of contracts or the permissions that are set before the entry into force of Law No. 4 Year 2009 on Mineral and Coal Mining. If observed, although the Law Number 4 Year 2009 on Mineral and Coal Mining been enacted since 2009 but the basis of the legality of the mining activities are applicable now still diverse, namely: the works Contract; the Agreement of utilization of coal mining; mining; People Mining; Mining Permit; Special Mining Business permit.

2. Dispute Resolution and Dispute Mining

The settlement of disputes that are effective is the dream of every party involved in a business activity. Therefore, the parties to the dispute are always trying to find a way of settling the dispute in order to always achieve the position of equilibrium and to survive. There are basically three ways of dispute settlement, namely:

a. Dispute resolution through the court, which is a pattern of dispute resolution that occurs between the parties who dispute, where the settlement of the dispute is resolved by the court and the decision is binding.
b. Dispute resolution through ADR (Alternative Dispute Resolution) or alternative Dispute Resolution (APS), which is a set of procedures or mechanisms that function to provide an alternative or choice of a way of dispute resolution through the form of APS / arbitration in order to obtain a final decision and bind the parties
c. Settlement of disputes through traditional institutions, is the completion of the dispute using the institution alive and thriving in the indigenous communities.

Sources of law that became the basis for the settlement of disputes, namely:

a. The provisions of international law, which is divided into 3 types, namely Bilateral Agreements, Multilateral Agreements and Regional Agreements;
b. National legal provisions, including Law No. 25 of 2007 on Investment; Law No. 30 of 1999 on arbitration and Alternative Dispute Resolution; Law No. 7 of 1994 on the ratification of WTO Agreement 1994, including its

Annex relating to the procedure for Dispute Resolution;

c. Mining works contract, coal mining concession works Agreement (PKP2B), which also regulating mechanism dispute settlement between contractors (investors) with the government;
d. Mining power of attorney, because it is not contractual, there are no provisions regarding specific mechanisms for dispute resolution related to the granting of mining power of attorney.
e. Mining disputes stem from problems arising from the existence of mining activities that include general investigation, exploration and exploitation of mining materials and result in conflict. Thus, referred to mining dispute.

The term of the dispute itself there has been no unity of views of experts and some experts use the term dispute, and there is also the use of the term conflicts include: Richard L. Abel deciphering the dispute(dispute) is:"a public statement about the demands tidaks l (inconsistent claim) against something of value" as well as Dean G.Pruitt and Jeffrey Z. Rubin put forward the definition of conflict as follows:"conflict is a perception of divergent interests (perceived divergent ceofinarest), or a belief that the aspirations of the parties to the conflict are not achieved simultaneously (simultaneously)".

The description above shows that the dispute is a conflict, dispute or dispute that occurs between the one party with the other party or between the one party with berbagaip ihak relating to something of value, whether it be money or objects.

Mining disputes stem from problems arising from the existence of mining activities that include general investigation, exploration and exploitation of mining materials and result in conflict. Thus the meaning of mining dispute is a dispute that occurs in the implementation of mining activities.

The existence of mining companies often leads to conflicts with the community around mining activities, because of the non-compliance of policies issued by the government. According to Salim HS, the types of disputes that occur in the implementation of mining activities are:

a. Dispute between indigenous people and threshold companies;
b. Environmental pollution dispute;
c. Land rights dispute;
d. Stock divestment dispute;
e. A program Community Development;
f. Territorial disputes of contract of work; and labor disputes.

MATERIAL AND METHOD

The method of approach to be used in this study is normative juridical approach. This approach was chosen considering that in order to achieve the research objectives/ research targets researchers refer to the legal norms contained in the legislation, Court decisions and legal norms that exist in the community and Mining legal instruments. The research approach to legislation is done by examining all legislation and regulations related to legal issues to be studied, namely the normative study of the regulation of mining business activities in relation to the settlement of mining disputes.

RESULTS AND DISCUSSION

1. State Power In Mining

One of the objectives of the establishment of the state of Indonesia based on the Preamble to the constitution of the Republic of Indonesia Year 1945 is to promote the general welfare. On the basis of these objectives, then the founding fathers felt the need to formulate the conditions governing the existence of the natural resources located on the territory of jurisdiction of Indonesia in the context of the life of the nation. To that end, the provisions of which govern natural resources then formulated in Article 33 paragraph (3) of the constitution of the Republic of Indonesia Year 1945, which confirms that: "the Earth and water and natural resources contained therein are

controlled by the state and used for the greatest prosperity of the people".

The notion of" controlled by the state", no official explanation is found, but one thing is agreed that controlled by the state is not the same as that owned by the state. This agreement is related to a form of reaction from the system or concept of domain used in the colonial period of the Dutch East Indies, known as the principle of domain and contains the notion of ownership (ownership). That the state is the owner of the land, therefore it has all the authority to carry out acts of ownership (eigensdaad).

To give the meaning or explanation of the mastery of the State relating to natural resources, especially mining, is not easy, given the mining activities on the one hand associated with the interests of the investment that prioritizes economic profit purposes only and on the other hand tied with a mastery of the Country is more priority to the interests and prosperity of the people. But more important here is that with the formulation of mastery by the State for natural resources, especially mining should be used as a legal instrument which gives certainty of the presence of the control of the country against the management in the field of mining.

The formulation of the rights of the state to control that better reflects the sovereignty of the state over the control of natural resources, in this case are the ingredients of the mine, must meet the minimum elements as follows:

a. Elements of state control of the direction, policy and appropriation or utilization of mining materials, especially minerals that concerns the lives of many people in order to maintain the stability of the defense, security, and the national economy.
b. Elements of a country setting, in the context of this State provides the rules be limitedly, which includes the right of the delegation of the management of a third party, the right of setting the allocation of the allotment of mining materials in order to support the industry sector strategic should be distributed in a fair and proportionate for the region, government and other areas.
c. Elements of the authority of the State which gives the authority to the State to take the results and benefits of the activities of mining economically for the benefit of the people in the form of royalties, taxes, levies and any rights to ownership of the stock automatically.
d. State protection element that provides an obligation to the state to supervise the implementation of mining operations, especially supervision and control in the aspects of a good and correct mining system, by prioritizing the principle of long-term benefits and environmental carrying capacity in the interests of sustainable development.

2. Regulation Of Mining Business Activities In Indonesia

Regulation of the management of mining in Indonesia, as well as the legal basis of other fields in general, which began since the Dutch East Indies government. Up to the Old Order government, mining management arrangements still use Dutch East Indies legal products that are directly adopted into Indonesian mining law. The development of the arrangement in the field of mining is as follows:

A. Indian Mijnwet 1899 (IM 1899)

In the Indische Mijnwet 1899 (IM 1899), it is known the provisions regarding mining activities, namely:

a. The management of the mineral is controlled by a permit issued by the Bureau of Mines or the Government of the Province;
b. Mining concessions granted based on applications submitted to the Governor-General;
c. Permission for the acquisition of concessions only dapatdiberikan to the people of the Netherlands (dutch subjects), the population of the Dutch east Indies, and the company is

registered in the Netherlands or in the Dutch east Indies;

d. There are settings regarding the obligation of payment (contributory) annual and other obligations such as taxes. There are also settings for royalty and has mining concessions.

In addition, there are provisions derived from several implementation regulations related to the protection of state rights and the development of the mining industry allowed by the Dutch East Indies government.

B. Law Number 37 Prp. In 1960 On Mining

After independence, the leaders then made a formulation of the arrangement of procedures for the management of the mining sector which is perwuju and as an independent and sovereign state. After going through a long debate, then set mining management regulations with the issuance of government regulations in lieu of law (Perpu) No. 37 of 1960 which regulates specifically the field of mining. After the issuance of Government Regulation in Lieu of Law (Perpu) No. 37 of 1960, the then government of the Republic of Indonesia issued also a Government Regulation in Lieu of Law (Perpu) No. 44-Year-old in 1960, which set up a special on Oil and Gas.

Government regulation in lieu of law (Perpu) number 37 of 1960 is basically an Indische Mijnwet 1899 (IM1899) in the Indonesian version. This means that the provisions contained in the government regulation in lieu of law (Perpu) number 37 of 1960 are the adoption of the provisions in the Indische Mijnwet 1899 (IM 1899) by simply replacing the authority only, for example: every word of the Queen and the Governor-General in the Indische Mijnwet 1899 (IM 1899), respectively replaced into national and government property only in the Perpu.

In its development, Government Regulation in Lieu of Law (Perpu) No. 37 in 1960 and then became Law Number 37 of Prp. 1960 about Mining, which is the product of the first national regulation in the field of mining. Mining law in 1960 that allow the government to attract foreign capital to develop the activities of exploration and exploitation in the mining business in Indonesia.

In Law Number 37 Of Prp. The 1960s is back in the adoption of the principle of State sovereignty over natural resources as contained in the laws and regulations in colonialism. This is reflected in Article 2, paragraph (1) of Law Number 37 of Prp. 1960, namely: "All excavated materials in, above and below the surface of the earth, in the territory of the mining law in Indonesia, which is the put-put or deposits-deposits of nature is a wealth of national and controlled by the state".

Some of the main things that is regulated in the Government Regulation in Lieu of Law, among others, include:

a. In Law Number 37 Of Prp. 1960, abolished the system of concessions as there is in the Indische Mijnwet 1899. As for the authorities in the activities of mining business is the state (through the State Company) and / or the area (through the Local Company).

b. The implementation of the mining activities are carried out by a State Enterprise or State Enterprises together the Company Area is for the excavated material is placed. Then the implementation of the activities of mining minerals vital carried out by a State Enterprise or Local Companies, as well as performed by the entity or individual private entities that conduct business along with the Company the Country or Regional Company. The business entity must be incorporated in Indonesia with the terms that have been determined. For excavated materials not included minerals of strategic and minerals vital governed by the Local Government Level I (the Provincial Government). Under these provisions, then the foreign company may not directly perform activities of mining companies, even for the excavated

material is non-strategic and / or minerals non-vital though.

c. A mining concession to the minerals of strategic and vital can only be done after obtaining the Power of Mining.
d. The revenue of the state through Law Number 37 of Prp. 1960s obtained from the levies to the defined contribution plan, contributions to the exploration and/or exploitation, and/or other payments associated with the granting of mining is concerned.
e. Yet there is a setting for Works Contract (Contract of Work), but in the Law Number 44 of Prp.1960 about Mining Oil and GasBumi have set it up.

The principle of state sovereignty adopted in Law No. 37 Prp. The year 1960 is the same as that of the Indische Mijnwet 1899. However, there are significant changes, among others, regarding the change from a concession system to a mining concession system in which mining business activities are carried out by the state or region. If a private business entity will conduct mining business activities, it is carried out through state or regional joint ventures.

C. Law No. 11 Of 1967 On The Basic Provisions Of Mining

In a further development along with the development of political and alternation of the regime, also resulting in changes to legislation in the field of mining. After the entry into force of Law No. 37 of Prp. 1960 during the reign of President Sukarno (the old order), then published Law No. 11Tahun1967 about the Basic Provisions of Mining signed by President Suharto in Jakarta on 2 December. r1967.

Settings in the Law No. 11 of 1967, among others, include:

a. That the State is the master of all minerals (mineral resources and coal) that exist in the region of the mining law in Indonesia;
b. There is a classification of minerals, namely minerals located, minerals vital, minerals non-strategic and non vital;
c. The implementation of mining minerals located implemented by the government agencies designated by the minister or state companies. The private businesses that have been qualified as a legal entity of Indonesia can carry out mining of the deposits placed with the consideration that from the economic side will be more profitable. If the amount is very small, then a mining concession can be done through artisanal mining.
d. The implementation of the mining can also be done to the other party as a contractor (contract of work).
e. If the excavated material is used as the object in the implementation of mining is excavated material is placed and shaped foreign investment, then the contract of work done by the government, a new force after the approval by Parliament
f. Mining can be done by implementing mining after obtaining the Power of Mining, except for the works contract/covenant of works.

D. Law Number 4 Year 2009 on Mineral and Coal Mining

At the end of 2008 the government passed a Law Number 4 Year 2009 on Mineral and Coal Mining (the Mining LAW). These laws clearly set regarding mineral and coal mining, it is stated in Article 34 paragraph (1) which states that the mining business consists of the mining of mineral and coal mining.

Some of the main things that is regulated in Law Number 4 Year 2009, among others, include:

a. Mining Business License. After the promulgation of Law No. 4 of 2009, one of the significant implications of its influence is the unification in the acquisition of rights to mining business activities under one roof, and is divided into 3 (three) rooms, namely mining business license (IUP), people's Mining License (IPR), and special mining business license (IUPK). Thus, the acquisition system in the previous

regulation, such as concession system, Mining Power(KP), mineral and Coal Mining Concession (PKP2B), and contract of work (KK) is no longer valid except as stipulated in the transitional provisions of Law No. 4 of 2009.

b. Foreign Investment. Indonesia has been a member of the World Trade Organization (WTO). The implications of these facts are the faucets foreign investment should be opened "like" as possible. Law Number 4 of 2009 to accommodate the fact that in some of its provisions, among others, regarding waivers and tax incentives given by the government.
c. Reception Countries and Regions. In Law Number 4 Year 2009, the settings for the receipt of state and the regions are divided into 2 (two) of the receipt of tax and non-tax revenue. Thus the reception setting of the country and the region more firmly than the legislation in the field of mining before.
d. Dispute settlement in the Field of P mining. In Law Number 4 Year 2009, more clarified about the forum of dispute settlement in the field of mining, namely with the regulation on the settlement of disputes that must be done in Indonesia, either through arbitration or court

E. Settlement of Disputes Mining In Order to Create Legal Certainty and Justice.

Settlement of Disputes Mining Based on Law Number 11 Year 1967 on the Basic Provisions of Mining.

Given the current still encountered the settings of the mining business based on Law Number 11 Year 1967 on the Basic Provisions of the Mining Contract Mining, Contract Work, PKP2B, as defined in Article 169 of Law Number 4 Year 2009 on Mineral and Coal Mining then in the settlement of disputes mining is also still use the mechanism as agreed upon by the parties. Of the various mechanisms that are available as a whole can be divided in two ways, namely the process of non adjudications and prosesa djudikasi outlined as follows:

1. The process of Non Adjudications, including negotiation, mediation, conciliation;
2. The Process Of Adjudications
   a. Litigation
   b. Arbitras

1) Court of arbitration permanent is one of the institutions of the media used for the settlement of Disputes between Countries peacefully, which in its development that the arbitration can also be used for the settlement of disputes between the State and the subject of law is not a State with nmengikuti pattern UNCITRAL Rules of Arbitration;
2) for disputes that occur between the host Country by foreign investors, the mechanism of arbitration to be taken based on the provisions of the ICSID Convention.
3) in respect of the dispute between the investor, the choice of the mechanism of settlement of disputes through arbitration depends on the parties in the agreement. There are two forms of arbitration may be chosen, namely the Arbitration of foreign and national Arbitration.

Based on Article 32 of Law Number 25 Year 2007 regarding Capital investment, in general means of dispute resolution that can be achieved if a dispute arises is as follows:

1. The settlement of disputes through consultation;
2. Through arbitration or alternative Dispute Resolution or court in accordance with the provisions of laws and regulations;
3. Disputes between the government and domestic investors are resolved through arbitration based on the agreement of the parties, while if the settlement of the dispute through arbitration is not agreed, the settlement of the dispute will be resolved through a court;

4. Disputes between governments and foreign investors will be resolved through international arbitration to be agreed upon by the parties.

1. The Settlement of Disputes Mining After the entry into force of Law No. 4 Year 2009 on Mineral and Coal Mining.

In its development after the birth of the laws and regulations governing mining, in particular Law No. 4 Year 2009 on Mineral and Coal Mining, the settlement of the dispute has been determined since the beginning through the provisions of Law No. 4 Year 2009 on Mineral and Coal Mining and is no longer grounded by agreement of the parties in the contract.

If observing the provisions on dispute settlement contained in Law Number 4 Year 2009 on Mineral and Coal Mining, there is only one article that Article 154 of which is set firmly on the settlement of the dispute. The terms of the settlement of the dispute may be said to be very common and include only the dispute between the government and investors, both domestic investors and foreign investors. While there was no explanation of the provisions of Article 154 of the. However, in addition to Article 154 of the unknown that Article 166 also arrange the settlement of the problem of environmental impact, although not specifically mentioned as a "dispute". The formulation of Article 166 of the Law Number 4 Year 2009 are as follows:

"Any matter arising out of the implementation of the IUP, the IPR, and IUPK-related environmental impact are resolved in accordance with the provisions of laws and regulations".

In Article 154 of Law No. 4 of 2009 on Mineral and coal mining, it is determined how to resolve disputes arising between business entities and the government in IUP, IPR or IUPK. There are two ways used to resolve disputes between IPR, IUP, and IUPK holders and IPR, IUP or IUPK providers, namely courts or domestic arbitration in accordance with the provisions of laws and regulations.

a) Settlement Of Disputes Through The Courts

Licensing is a state administrative decision because it meets the elements that, individually, final, and concrete. Settlement of disputes mining permit is a settlement of the dispute between the holder of the mining permit with the government. Given the mining business license is classified into a state administration decision, the settlement of mining business license disputes is done through the State Administrative Court (PTUN) based on Article 1 Number 10 of Law No. 51 of 2009 on the Second Amendment To Law No. 5 of 1986 on the State Administrative Court jo. Law No. 9 of 2004 on amendments to Law No. 5 of 1986 on Administrative Justice jo. Law No. 5 of 1986 ("UUPTUN"", namely:

"Administrative disputes are the disputes arising in the field of the administration of the Country between the person or body of civil law with the agency or official of the state administration, both at the center and the region, as a result of the issuance of the decision of the state administration, including disputes over staffing based on the laws and regulations that apply".

Settlement Of Disputes Through Arbitration.

In a business relationship or agreement, there is always the possibility of a dispute arising. Disputes that need to be anticipated are about how to implement the contents of the agreement as outlined in the clauses of the agreement or due to other things. Similarly, business activities in the field of mining, when a dispute arises bersum berdari granting permits in the mining sector, namely IPR, IUP, danIUPK then the settlement of disputes can be reached through the court, namely the State Administrative Court, in addition, based on Article 154 of Law No. 4 of 2009 on Mineral and coal mining, settlement of

disputes related to mining activity permits can also be resolved through arbitration.

Based on Article 1 paragraph 1 of Law Number 30 of 1999 on Arbitration and Alternative Dispute resolution, the notion of arbitrage is a way of settlement of a civil dispute outside the court that is based on the arbitration agreement made in writing by the parties to the dispute.

The object of the arbitration agreement (the agreement regarding the choice of dispute settlement through arbitration) based on Article 5 paragraph (1) of Law Number 30 of 1999 on Arbitration and Alternative Dispute resolution is a dispute in the field of trade and of the rights according to the law and the legislation is fully controlled by the parties to the dispute. More in Article 5 paragraph (2) of Law Number 30 of 1999 on Arbitration and Alternative Dispute resolution was formulated that the dispute cannot be resolved through arbitration is the dispute according to the laws and regulations can not be held peace.

Some formulations of the above, it can be explained that arbitration is actually just complete a civil dispute is not a dispute over administration of the Country. In addition, dispute that such permission does not include disputes that can be resolved through arbitration as provided in Article 5 paragraph (1) and (2) of Law Number 30 of 1999 on Arbitration and Alternative Dispute resolution. That permit is not an object of commerce, then the issuance of the permit due to the presence of the decision of the government of nature is one-sided. Therefore, the power on the licensing is on the one hand, in this case is the government, so it could not be referred to as the parties.

In the event of any lawsuit against the law which then resulted in the compensation of investors pertambanganyang have been harmed as a result of the loss of a permit or not the issuance of the permission of the officials of the State administration in the field of mining that is based on the implementation of the IUP, the IPR, and IUPK as the overall mining activities, then the dispute can be resolved through arbitration.

At the time of issuance of the permit that shaped the State administrative decision concerning mining, in clause not mentioned on dispute settlement mechanisms. Therefore, this can be achieved is by making an agreement for the settlement of disputes in an arbitration agreement after the occurrence of the dispute. With such actions, then there will be problems that could be a legal act performed between the government with the recipient of mining permits to make an agreement in the form of the arbitration agreement.

Settlement of Disputes Mining Based on Law Number 11 Year 1967 on the Basic Provisions of Mining.

ADR or alternative dispute resolution is a set of procedures or mechanisms that serve to give an alternative or a choice of a way of resolving a dispute through the form of APS/ arbitration in order to obtain a final and binding on the parties. As for the characteristics or the character of the mechanism of settlement of disputes through ADR (Alternative Dispute Resolution) includes:

1. Informality (not formal);
2. Application of equity (application of justice);
3. Direct participation and communication between the disputants (participation and direct communication of the parties).

Basically, the process of ADR is a process that is not formal compared to the court process. In some cases, the procedure of ADR is not rigid, it does not need any formal suit, there is no need for documentation of the length of the width, or do not need the proof. not formal this interesting and important to improve the access dispute resolution alternative for people who may be intimidated when participating in the formal system.

The principle of settlement of disputes through the mechanism of ADR is in the framework of the implementation of

the fairness of the parties through a third party, or negotiated between the parties to the dispute based on the principle of-the principle of similarity in certain cases. The participation of the parties directly in solving and designing the settlement of disputes or a direct dialogue between the parties to the dispute are the characteristics of ADR. In outline, the mechanism of ADR are categorized into four, namely negotiation, conciliation, mediation, and arbitration.

The mechanism of settlement of disputes through ADR indeed appropriate when applied to disputes arising under the legal relations of the agreement (the civil code), as the settings of the mining activities based on the Law Number 11 Year 1967 on the Basic Provisions of the Mining Contract Mining, Contract Work, PKP2B. However, with the enactment of Law Number 4 Year 2009 on Mineral and Coal Mining yangmengatur mining activities on the basis of permits that IUP, IPR, and IUPK, then the mechanism of settlement of disputes through ADR is not appropriate. This is because that the permissions included in the scope of the administration of the country, so for the settlement of disputes must go through the State administrative Court and arbitration proceedings as defined in Article 154 of the Law Number 4 Year 2009 on Mineral and Coal Mining.

Settlement Of Disputes Through Traditional Institutions.

Settlement of disputes through traditional institutions is a settlement of the dispute by using the institution alive and thriving in the indigenous communities. In general, in the community of customary law known institutions and values of local wisdom related to the settlement of disputes of the customs.

The mechanism of settlement of disputes through traditional institutions is usually chosen when the dispute is sourced from the utilization of the land for mining activities that intersect with the rights of indigenous peoples (indigenous lands) as well as the utilization of natural resources. Based on the results of research conducted by H. Salim upper case exploration activities by PT Newmont Nusa Tenggara in the Eagle of the Dodo, it can be argued that the structure of indigenous attempted to resolve the dispute between the Labangkar people with PT Newmont Nusa Tenggara.

b). Mediation As An Option For Mining Dispute Resolution

In terms of conflicts of the mining sector with other sectors such as conflicts in the arrangement and utilization of space, environmental conservation, and mining conflicts with the forestry sector in the use of protected forest land for mining activities. Causes of conflict with other sectors of the mining sector, between because:

a) difficulty in accommodating mining activities into spatial planning
b) often accused of being the 'culprit' of environmental damage
c) overlap of space utilization with forestry land

In a mining activity typically consists of several stages, namely the preparation phase, the exploitation and the last, which is an integral part, is the stage of the reclamation and rehabilitation of land after mining.

a) the Stage of Preparation
b) the Stage of Exploitation
c) the Stage of Reclamation

Dispute resolution can be done through 2 (two) processes. The oldest dispute resolution process through litigation in court, then developed the dispute resolution process through cooperation (cooperative) outside the court. The litigation process results in an adversarial agreement that has not been able to embrace common interests, tends to cause new problems, is slow in resolution, requires expensive costs, is not responsive, and generates hostility among the parties to the dispute. On the contrary through the process outside the court to produce an agreement that is a “win-win solution”, guaranteed the

confidentiality of the dispute the parties, avoided the delay is caused because of the procedural and administrative, resolve the issue in a comprehensive manner in togetherness, and still maintain a good relationship. The only advantages of non-litigation process are the nature of the secret, because the trial process and even the outcome of his decision is not published.

This out-of-court dispute resolution is commonly referred to as Alternative Dispute Resolution (APS) or Alternative Dispute Resolution (ADR). Some say that Alternative Dispute Resolution (ADR) is the third wave of business dispute resolution cycle. Settlement of business disputes in the era of globalization with the characteristic "moving quickly", demanding ways that "informal procedure and be put in motion quickly".

Alternative dispute resolution, i.e. the resolution of disputes outside the courts, has been developing since long in the east and then received the same in the west, although the reason is different. Alternative dispute resolution in the east is based on the reason to keep the harmony, in which every dispute be settled amicably. The court is not the right place for business people resolve their dispute which always maintain good relations. The court is naughty people who violate the order. The reason the culture led the negotiations, mediation, conciliation and arbitration growing in the east, especially among the nations that have roots to the teachings of Confucius. Alternative dispute resolution developed in the west, primarily for reasons of efficiency, to save time and cost. The lengthy court process, often tiring of the Court of First instance to the Supreme Court and takes a big expense.

In addition there are at least three other reasons why the business is like the settlement of disputes arising between them settled out of court, namely: First, the settlement of disputes in court is open, the business is like their dispute resolved closed, unknown to the public. Second, business people assume the judge is not necessarily an expert with regard to disputes arising, whereas in mediation, conciliation, and arbitration they can choose a mediator, conciliator or arbitrator to whom the experts. Third, the settlement of disputes in court will be looking for which party is wrong and what is right, while the verdict of the dispute settlement out of court will be achieved through compromise. The key of any success of settlement of disputes outside the court is the will of the two parties themselves to resolve disputes that arise between them. Will this joint is the most decisive.

The dispute was normal, natural, sometimes can not be avoided, because each of us is unique, has different interests and different values. When we view the dispute as a poor, we will continue to believe that the dispute is negative. Fear will help us in two ways. He will give a bunch of energy that we need to focus your mind for how to resolve disputes that arise and fears will also remind us that the opponent also feel the same fear as we feel. Finally, the approach of cooperation to end the dispute does not mean we are losers.

When disputes arise, first of all we have to do is take the time to think and focus the mind (focus) to the dispute. The extent to which the dispute arises because we feel treated unfairly, even though we have done everything possible to avoid it. The dispute has occurred, we must accept reality and see ourselves, the talent and strength that's in us, to resolve the dispute. The next step we have to open our eyes and hearts to seek as much as possible to resolve the dispute fairly. This step includes subsequent actions, meeting with the opposing party, drawing up planning. Finally, visualize the existing dispute and with the talent and intelligence that exists in us, find a way to solve it.

Abraham Lincoln, a century and a half ago, had said to avoid litigation. Although he said that litigation is still important and the right way to resolve disputes, where new legal discoveries are needed for an important matter, it can be abused in a society that claims its rights

through the courts. Such litigation costs time and money, not to mention the risk of losing and the feeling of pressure faced with a long process.

ADR as a way to resolve disputes has long been known in various beliefs and cultures. Various facts have shown that basically mediation is not a foreign method in an effort to resolve disputes in the community. It's just that the context of the approach and the way is more adapted to the local legal culture (legal culture). "People's attitudes toward law and the legal system-their beliefs, values, ideas and expectations. In other words, it is that part of the general culture which concerns the legal system". As in traditional Chinese society consciously, they receive the bonds of moral is due to the influence of social sanction rather than as imposed by law. Therefore, the clan, the guild and the leading group (gentry) to become an institution of the law that informally resolve the dispute between them. The head of the clan, guild and community leaders to be the referrer (the mediator) in the dispute-the dispute arising. Therefore, it is very reasonable that Chinese society tends to be reluctant to resolve their disputes before the courts, because harmonious relations, not conflicts, gain a high place in society.

The tradition of Japan along with China and East Asian countries other highly influenced by the philosophy of the Confucian temple, has a culture konsiliatori (conciliatory culture) in which the mediation or conciliation has long been recognized as a mechanism that is suitable to resolve the dispute. This is in line with the culture of Japan that emphasizes harmony, which in turn affects the attitude to the emphasis on mediation and consolidation, not litigation.

The history of the movement of Alternative Dispute Resolution begins when in 1976 the Chairman of the Supreme Court Warren Burger pioneered this idea at a conference in Saint Paul, Mennesota the United States. This idea was warmly welcomed by academics, practitioners and the community.

It is motivated by a variety of factors reform movement in the early 1970s, at which time many observers in the field of law and society academics began to feel the presence of serious concerns about the negative effects of increasing litigation in the court. Finally ABA (American Bar Association) to realize it, and then added the Committee on ADR in their organization followed by the influx of curriculum ADR in law schools in America and also at school of economics. Thus, the process of litigation is a last option to resolve disputes, previously conducted the negotiations between the parties to the dispute, either directly or by pointing to the power law, in order to produce an agreement that is beneficial to both parties. If the process of these negotiations do not produce an agreement, the parties shall submit to arbitration or court to resolve or decide.

For among the western society which litigous minded (a little bit litigants) the concept of ADR is a new innovation. Different with the people of the east, the approach ala ADR is a concept that considered the long-standing of their culture in the context of settlement of a conflict. So the possibility of thinking to include the concept of ADR in the legal system of the national will be easier. The people of the east heterogeneous already accustomed to take a decision or resolve a dispute by way of deliberation. Dialogue, deliberation and accommodating efforts towards the interests of all parties are actually the core of the concept of this ADR process. It is this concept that is then directed to be a way of resolving disputes but by using the principle of legality that is part of the legal system.

CONCLUSIONS

The development of the regulation of Business Activities the Field of Mining in Indonesia. The provisions governing the natural resources referred to in Article 33 paragraph (3) Constitution of the Republic of Indonesia year 1945. With the

formulation of mastery by the State for natural resources, especially mining then it can be used as a legal instrument which gives certainty of the presence of the control of the country against the management in the field of mining. The development of the regulation of mining business activities in Indonesia began with the enactment of the Indische Mijnwet 1899 (IM 1899) during the reign of the Dutch East Indies; after the independence of the then established rules of the management of the mining sector with the issuance of Government Regulation in Lieu of Law (Perpu) No. 37-Year-old in 1960, which set the special field of Mining, then the government of the Republic of Indonesia issued also a Government Regulation in Lieu of Law (Perpu) No. 44-Year-old in 1960, which set up a special on Oil and Gas, then the Government Regulation in Lieu of Law (Perpu) No. 37 of 1960 into Law Number 37 of Prp.1960 about Mining; then published Law No. 11 of 1967 on the basic provisions of mining, specifically on the contract of work on coal mining companies, regulated in Government Regulation No. 75 of 1996 on the basic provisions of the agreement of Mineral and coal mining companies (PKP2B); at the end of 2008 the government passed a Law Number 4 Year 2009 on Mineral and Coal Mining (the Mining LAW), a type of mining business according to the Law Number 4 Year 2009, is more simple compared with the type of mining permits regulated in Law No. 11 of 1967, which only consists of 3 (three) kinds of permits, as set out in Article 35 of Law No. 4 Year 2009.

Settings mining based on Law Number 11 Year 1967 as defined in Article 169 of Law Number 4 of 2009, then the dispute settlement mechanism pursued by the parties is through: the First Process Non Adjudications, namely negotiation, conciliation, and mediation; the Second Process Adjudications, namely litigation and arbitration. Traditional sett Sengketa Mining after the entry into force of Law No. 4 of 2009 provided for in Article 154, namely through the courts and through abitrase and the completion of another, such as through ADR and traditional institutions.

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