

## THE ACCESS TO JUSTICE IN SYNERGIZING PAYMENT OBLIGATIONS OF SPECIAL MINING BUSINESS LICENSE HOLDERS WITH TAX COMPLIANCE IN INDONESIA

Yudha Pramana  
Udayana University, Denpasar, Indonesia  
[yudhapramana97@gmail.com](mailto:yudhapramana97@gmail.com)

Anis Wahyu Hermawan  
Open University, Jakarta, Indonesia  
[aniswahyu524@gmail.com](mailto:aniswahyu524@gmail.com)

Leo B. Barus  
Central Tapanuli Regency Government, North Sumatera, Indonesia  
[barusleob@gmail.com](mailto:barusleob@gmail.com)

### **Abstract**

*The obligations of the Special Mining Business License (IUPK) holders to the Government are only given without the active participation of the DGT and the central and local governments to test IUPK compliance as taxpayers. These obligations have the potential to ignore Article 33 and Article 23A of the 1945 Constitution. Based on the normative juridical study using the access to justice and the sustainable development approach, two conclusions are drawn. First, the enactment of several regulations shows that the IUPK's obligation to pay 4% to the Central Government and 6% to the Regional Government from net profits is only given, based on financial reports that have been audited by a public accountant. Second, Article 129 of the Minerba Law, Article 4 (1), Article 6 (1), and Article 9 (1) of the Income Tax Law, as well as Article 15 (3) of PP No. 37 of 2018 must be implemented through monitoring, evaluation, and regular audits of net profits before taxable income on the actual self-assessment reporting conducted by IUPK. It is proposed to make joint audit rules in testing compliance with good mining practice and IUPK obligations, as well as compliance of filling and actual payment of taxes owed.*

**Keywords:** *Compliance; Justice; Obligations; Sustainable; Tax.*

### **A. INTRODUCTION**

The Constitution has mandated that the management, control and exploitation of natural resources, including mining and mineral resources, be used for the maximum benefit of the people, as stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) that "Earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people." Therefore, all political policy instruments in the form of laws and regulations and implementing regulations for all management and utilization of mineral

resources,<sup>1</sup> especially mining and coal, must effectively encourage development that creates community welfare, improves the economy, while maintaining environmental balance.

Mineral resources management in Indonesia must carry out the mandate of Article 33 paragraph (3) of the 1945 Constitution and the collection of taxes and other coercive levies must be in accordance with Article 23A of the 1945 Constitution. However, in reality, the existing policies are only pursuing growth which results in massive exploitation of resources without regard to people's rights to live sustainably. Its utilization is also not yet fully utilized for the prosperity of the people<sup>2</sup> through compliance with the payment of obligations regulated by law, such as taxes and Non-Tax State Revenue (PNBP).<sup>3</sup> One of the facts is the findings of the Indonesian Corruption Watch (ICW) related to tax avoidance in the coal sector. For example, the value of underreported or unreasonably reported coal export transactions during the 2006-2016 period has reached USD27.06 billion. This has an impact on state losses, both from the obligation of coal companies for income taxes and royalties which are indicated at Rp. 133.6 trillion. In fact, out of 6,001 taxpayers in the mineral and coal mining sector, only 967 taxpayers participated in the tax amnesty in 2016-2017, with a total ransom value of only around Rp. 221.71 billion..<sup>4</sup>

Meanwhile, PNBP from coal mining is based on the audit results of the Supreme Audit Agency (BPK) in 2016 and 2017, which were recorded at Rp. 15.76 trillion and Rp. 23.76 trillion, respectively. For the 2017 audit, BPK made several important notes. It was stated that debt collection was not carried out in accordance with the provisions, there was no for fine mechanism for late payments, disorderly issuance and recording of the first, second and third invoices worth Rp.3.47 trillion, underpaid royalties/fixed fees and a fine of Rp.181, 32 billion and US\$669.86 thousand, potential underpayment/obligatory payments have not been paid a fixed fee of US\$5.65 million, potential loss/WB is not subject to a fine of US\$203.37 thousand. The findings also reveal the weak role of the Government's Internal Controlling Apparatus in overseeing the PNBP management process, Unconnected IUP (Mining Business License) data, Coal Mining Concession Work Agreements, KK (Work Contract) with obligations that have been

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1 Rintis N. Pramugar, A. Hidayat, A. Syakhroza, and Benny R.P. Sinaga, Supervision Reconstruction of the Ministry of Energy and Mineral Resources in Corruption Prevention of Indonesia's Mining Sectors, *Test Engineering and Management*, Vol. 83, 2020, page. 12017-12030.

2 Nanik Trihastuti, *Hukum Kontrak Karya Pola Kerjasama Perusahaan Pertambangan di Indonesia*, Setara Press, Malang, 2013, page.12.

3 Henry Dianto P. Sinaga, Rintis N. Pramugar, and Aditya Wirawan, 2020, Reconstruction Of Criminal Provisions For Non-Tax State Revenue: A Case Study In The Mining Sector In Indonesia, *Ayer Journal*, Vol. 27, No. 3, 2020, page. 141 – 154

4 ICW, *Batubara dan Ancaman Korupsi*, 2018, [https://antikorupsi.org/sites/default/files/diskusi\\_batubara\\_dan\\_korupsi\\_10\\_juli\\_2018\\_icw.pdf](https://antikorupsi.org/sites/default/files/diskusi_batubara_dan_korupsi_10_juli_2018_icw.pdf), accessed on 10 Agustus 2021.

implemented, PNB rates in KK are smaller compared to IUPs, and the weak calculation of the volume of mineral and coal commodities.<sup>5</sup>

Of course, this problem must not continue to occur in Indonesia, considering that mineral resources in Indonesia must be used as much as possible for the benefit of the people. This requires increasing tax compliance of taxpayers in the coal mining sector by synergizing the Taxation Law with Act No. 3 of 2020 concerning Amendments to Act No. 4 of 2009 concerning Mineral and Coal Mining (Minerba Law) which has formulated the obligations of holders of Special Mining Business License (IUPK) of a certain percentage of net profits to the Central Government and Regional Governments. Thus, if the IUPK holders, as well as taxpayers, have properly paid their obligations to the State, the gap in people's welfare will be minimized.

There is a need for handling beyond formal-legislative thinking in providing new space to facilitate the public<sup>6</sup> and tax authorities in achieving access to justice to improve the welfare of all Indonesian people in terms of sustainable coal management. Efforts to maintain the sustainable use of coal as one of the natural resources in Indonesia, as the Common Property or Communal Property regime seeks to fight for guarantees of the ability of resources<sup>7</sup> to provide services in a sustainable manner for all parties who depend on these resources, must be an important concern of the government in preventing the occurrence of massive exploitation of coal resources, which are the amount of mineral and coal production that often exceeds the set target. This has happened as the Performance Report of the Directorate General of Mineral and Coal for Fiscal Year 2017 stated that the amount of mineral and coal production experienced an increase in production from the predetermined target.<sup>8</sup> Thus, this legal study seeks to answer 2 (two) formulations of the problems that arise. First, how is the regulation of IUPK obligations paid to the central government and local governments in Indonesia today. Second, how ideally is the synergy of tax compliance arrangements and payment of IUPK obligations in Indonesia in the future.

Both of these problem formulations are important and urgent to answer considering the scarcity of studies related to access to justice in synergizing mining management with tax compliance in Indonesia. Whereas, the correct payment of taxes and IUPK obligations to the state, central government and local governments is very useful in optimizing people's welfare and minimizing the occurrence of coal mining exploitation. Indeed,

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5 Supreme Audit Agency, *Audit Result Report of the Supreme Audit Agency on Central Government Financial Statements for Fiscal Year of 2017*, Supreme Audit Agency, Jakarta, 2017

6 Henry D.P. Sinaga, and A.H. Bolifaar, *Blockchain Adoption for Plea Bargaining of Corporate Crime in Indonesia*, ICBC20: Proceedings of the 2nd International Conference on Blockchain Technology, 2020, page.115—119,

7 C.J.N Gibbs and D.W. Bromley, *Institutional Arrangements for Management of Rural Resources; Common Property Regime*, Belhaven Press, London, 1989

8 Directorate General of Mineral and Coal, *Performance Accountability Report of Government Agencies for Fiscal Year 2017*, Directorate General of Mineral and Coal, Jakarta, 2017

there had been several previous studies related to access to justice or tax compliance in Indonesia, such as the study conducted by Sinaga, Bolifaar, and Hermawan. However, these studies only partially examine tax compliance and access to justice, and have not comprehensively analyzed and discussed the importance of access to justice in synergizing mining management with tax compliance in Indonesia.

Study of Sinaga study was only related to improving the competitiveness of mining companies through the Boston Consulting Group Matrix strategy due to the existence of several problems in mining, including mining exploitation that violates regulations, the rise of artisanal mining without permits, artisanal mining that ignores reclamation of funds damaging the environment and fluctuations in market prices.<sup>9</sup> Thus, it can be said that the novelty of this study compared to Sinaga's study is an attempt to produce a legal concept that can synergize the payment of IUPK obligations with tax compliance in Indonesia. Then, the access to justice study conducted by Bolifaar is still only related to plea bargaining in tax crimes, as Bolifaar concluded that the ideal of access to justice in handling tax criminal challenges in Indonesia is reflected in the state's right to obtain recovery for the losses it has suffered, the right to maintain its sovereignty in taxes, the right to prevent and resolve conflicts that are repeated from the rise of tax crimes, and the right to guarantee order and equality in voluntary compliance in tax.<sup>10</sup> Thus, the novelty of this study compared to the Bolifaar study can be seen from the efforts of this study to produce a legal concept that synergizes the Tax Law with Minerba Law in improving tax compliance of IUPK holders due to the IUPK's obligation to pay 4% of net profits to the Central Government and 6% of net profits to the Regional Government. Furthermore, Hermawan conducted a normative juridical study of tax compliance for construction services in Indonesia through the synergy of the KUP Law, the Income Tax Law, the VAT Law, and the Construction Services Law in narrowing the space for fictitious subcontractors or loan-use companies, and litigation and non-litigation disputes in the construction services sector.<sup>11</sup> Thus, the novelty of this study lies in the use of access to justice of tax in improving tax compliance of the IUPK holders in Indonesia, as the principle of justice can be interpreted that the regulation of taxation is to uphold the balance of rights and obligations of each party involved.<sup>12</sup>

## B. RESEARCH METHODS

This study uses a normative juridical approach. Soetandyo underlined that the normative juridical method is also called the doctrinal method,

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- 9 Benny R. P. Sinaga, Considering Boston Consulting Group's Matrix in Strengthening Competitiveness and Good Governance in Indonesia: A Literature Review Perspective, *Journal of Governance and Administrative Issues*, Vol. 1, No. 1, 2022, page. 19-25.
  - 10 Andhy H. Bolifaar, Access to Justice of Plea Bargaining in Addressing the Challenge of Tax Crime in Indonesia, *Scientium Law Review*, Vol. 1, No. 1, 2022, page. 1-12.
  - 11 Anis W. Hermawan, Improving Tax Compliance of the Construction Sector in Indonesia: A Juridical Perspective, *Scientia Business Law Review*, Vol. 1, No. 1, 2022, page. 1-6.
  - 12 Anis W. Hermawan, Voluntary Disclosure Program In Taxation And Its Certificates: A Philosophical Perspective, *Journal of Tax Law and Policy*. Vol. 1, No. 2, 2022, page. 63-70.

which is a research on law that is developed and conceptualized on the basis of the doctrine adopted by the concept maker and/or developer.<sup>13</sup>

Normative juridical research includes research on legal principles, legal vertical and horizontal synchronization, legal history and legal comparisons<sup>14</sup>, so this research uses secondary data. The legal materials consist of primary legal materials, secondary legal materials, and tertiary legal materials, in answering the existing problems.

Primary legal materials are legal materials that have authority and are binding, such as the 1945 Constitution, the Minerba Law, Act No. 36 of 2008 on the fourth amendment to Act No. 7 of 1983 on Income Tax (PPH Law), Government Regulation (PP) Number 37 of 2018 on Treatment of Taxes and/or Non-Tax State Revenue in the Mineral Mining Business Sector, and various kinds of laws and regulations related to state finances, mining minerals and coal, and the formation of laws and regulations. Secondary legal materials are legal materials that provide explanations for primary legal materials, such as text books, legal expert opinions, articles, seminar results, research results, financial reports, and audit reports. Meanwhile, tertiary legal materials are legal materials that provide instructions and explanations of primary legal materials and secondary legal materials, such as legal dictionaries, encyclopedias, internet sources from appropriate and adequate pages, as well as other tertiary legal materials.<sup>15</sup>

## C. RESULT AND DISCUSSION

### 1. Coal Management as a Sustainable Resource in Indonesia

Coal is one of the natural resources. Basically, the word "resource" is very closely related to sustainable development, as has been stated in various dictionaries by several experts. The Oxford Dictionary of Geography defines resources as something that has economic value or can meet human needs.<sup>16</sup> Economics defines it as a scarce input that can generate benefits either through the production process or not, in the form of goods and services.<sup>17</sup> In Webster's New World College Dictionary, the definition of resources broadly includes three meanings: the ability to fulfill or handle something, a source of supply, support and help; and means that are the result of one's abilities or thoughts.<sup>18</sup> The narrower definition of "resources", which refers to certain disciplines (biology and ecology), refers to the word "natural

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13 Soetandyo Wignjosoebroto, *Ragam-Ragam Penelitian Hukum*, in Irianto, S., & Shidarta (eds.), *Metode Penelitian Hukum: Konstelasi dan Refleksi*, Yayasan Pustaka Obor, Jakarta, 2013, page. 121-141.

14 Marzuki, Peter M., *Penelitian Hukum*, Prenada Media Group, Jakarta, 2008

15 S. Soekanto, and S. Mamudji, *Penelitian Hukum Normatif*, PT. Rajagrafindo Persada, Jakarta, 2007

16 S. Mayhew, *Oxford Dictionary of Geography, 2nd Edition*, Oxford University Press, Oxford, 1997

17 G. Bannock, R.E. Baxter, and E. Davis, *The Penguin Dictionary of Economics*, Penguin Books, 1992

18 Webster's New World College Dictionary 4th ed, Willey Publishing Inc, Ohio, 2008

resources",<sup>19</sup> which means all production factors or production inputs that are mobilized in a production process or in an economy activity. (eg capital, human labor, energy, water, minerals, etc.)<sup>20</sup> or the provision of goods and services<sup>21</sup> to produce output<sup>22</sup> in the form of assets to fulfill human satisfaction and utility.<sup>23</sup> The definition of "resources" in this narrow sense is in line with the definition put forward by Sumardjono *et al.* which refers to four important points: related to usefulness, means to achieve goals, utility with or through production activities.<sup>24</sup>

The close relationship between resources and natural sustainability shows that the management of coal mining even to obtain state revenue, must still pay attention to "good mining practice", which includes the concept of sustainable development. Meanwhile, sustainable development according to the "Brundtland Report"<sup>25</sup> is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".<sup>26</sup> Thus, the concept of sustainable development is synonymous with integration that balances economic development, environmental quality, and social justice,<sup>27</sup> taking into account nature's ability to renew its condition. It is true that increasing the amount of coal production from the target that has been set brings benefits to the country. However, on the other hand, it reduces access to natural resources for future generations. Thus, coal management can contribute to state revenue when it includes the principles of justice, democracy, and the principle of sustainability in meeting the needs and desires of all people in the world (by not destroying resources, damaging the environment, and maintaining the ability of resources to remain in the future).<sup>28</sup> This sustainable principle is able to ensure the sustainability of the functions and benefits of natural coal resources, both for the state and society in a balanced and proportionate manner, as well as benefits for present and future generations in a sustainable manner.

19 C.J.N Gibbs and D.W. Bromley.

20 J.A. Katili, *Sumber Daya Alam untuk Pembangunan Nasional*, Ghalia Indonesia, Jakarta, 1983

21 E. Rustiadi, S. Saefulhakim, and DR.Panuju, *Perencanaan dan Pengembangan Wilayah*, Institut Pertanian Bogor, Bogor, 2008

22 C. Pass, and B. Lowes, translated by Rumapea, T. and P.Haloho, 1994, *Dictionary of Economics*, Penerbit Erlangga, Jakarta, 1988

23 A.P.L. Grima and F.Berkes., *Natural Resources : Acces, Right to use and Management in Berkes, F. (ed) Common Property Resources : Ecology and Community-based Suistainable Development*, Belhaven Press, London, 1989

24 Maria S.W. Sumardjono, Nurhasan Ismail, Ernani Rustiadi, and Abdullah Aman Damai, *Pengaturan Sumber Daya Alam Di Indonesia Antara yang Tersurat dan Tersirat (Kajian Kritis Undang-Undang Terkait Penataan Ruang dan Sumber Daya Alam)*, Gajah Mada University Press, Yogyakarta, 2011

25 Peter P. Rogers, Kazi F. Jalal, and John A Boyd, *An Introduction to Sustainable Development*, EarthScan Glen Educational Foundation, Inc, UK, 2008,

26 United Nations, 1987, *Our Common Future : Chapter 2 : Towards Sustainable Development.*

27 Peter P.Rogers, *Ibid.*

28 Michael Common and Sigrid Stagl, *Ecological Economics An Introduction*, Cambridge University Press, New York, 2005

## 2. Access to Justice in the Sustainable Use of Coal

It is necessary to strengthen justice in reforming and synergizing tax laws and regulations in mining, which specifically shows that moral considerations are very important in realizing justice in every legal action of stakeholders in an effort to place legal actions based on appropriateness. This means that in terms of IUPK obligations in the mineral and coal sector (Minerba), fairness can be one of the important solutions in providing legal certainty regarding the recovery of financial losses as well as injustices and irregularities received by the state and or regions due to complicated financial transactions (either intentional or unintentional) committed by certain legal entities in the form of corporations.<sup>29</sup> Fairness is expected to reach up to the access to justice approach, as Bedner and Vel summarize the essence of the Access to Justice approach to justice which focuses on justice seekers who are poor and marginalized.<sup>30</sup>

Furthermore, Bedner suggests the need to understand why there is access to justice, before taking an access to justice approach in reforming the law that is pro to the people, especially marginal groups and those who are in a disadvantaged position. According to Bedner, the facts that lead to the need for access to justice are: (a) individuals or groups, especially the poor and marginalized; (b) experiencing injustice; (c) have the ability; (d) have their complaints heard; (e) and obtain appropriate treatment of their complaints; (f) may be state or non-state institutions; (g) resulting in recovery from injustices experienced; (h) based on the principles or rules of state law, religious law or customary law; and (i) in accordance with the concept of the rule of law.<sup>31</sup> In fact, this access to justice shows that access to justice is basically a process: the framework for analyzing access to justice departs from the perspective of the 'poor and marginalized' and analyzes the choices they make 'through the law' in order to get the justice they want.<sup>32</sup>

The principle of access to justice must be the basis for accountable and effective state institutions related to state revenues to increase the people economic welfare, maintain the sustainability of the community's social life, maintain the quality of the environment as well as inclusive development and the implementation of governance that is able to maintain an increase in the quality of life from one generation to the next,<sup>33</sup> which is carried out through the principle of inclusiveness

29 Henry D.P. Sinaga, A. Wirawan, and Rintis N. Pramugar, Reconstruction of Corporate Criminal Liability in Indonesia, *International Journal of Advanced Science and Technology*, Vol. 29, No. 8, 2020, page. 1231-1240,

30 A. Bedner, and J. Vel, 'Sebuah Kerangka Analisis untuk Penelitian Empiris dalam Bidang Akses Terhadap Keadilan', in Irianto, S., et al. *Kajian Sosio-Legal*, Pustaka Larasan, Denpasar 2012, page. 81.

31 A.W. Bedner, Suatu Pendekatan Elementer Terhadap Negara Hukum, in Irianto, S., et al. *Kajian Sosio-Legal*, Pustaka Larasan, Denpasar, 2012, page. 53, 87-88.

32 A.W. Bedner.

33 Nura Oktavia, Wirasandi, dan Yuniarsih Sawaliyah, Dimensi Pembangunan Berkelanjutan dalam Mencegah Dampak Perceraian Terhadap Psikologi Anak: Studi Kasus Di Kecamatan Lenek, *Journal of Sustainable Development Issues*, Vol. 1, No. 1, 2022, page. 19-28.

economic development, environmental quality, and social justice<sup>34</sup> in coal management. The implementation of access to justice will lead to a truly efficient coal management process for fair and sustainable tax and non-tax revenues, given the need to be aware of the cause of the inaccessibility of justice, which is inequality.<sup>35</sup> The chain of access to justice is based on the Regulation of the Minister of Energy and Mineral Resources No. 26 of 2018 which mandates the Mining Inspector (who has the authority to enter the location of mining business activities at any time, temporarily suspend part or all of the activities, or permanently stop mining activities if it is deemed to endanger the safety of mining workers/workers, public safety, or cause pollution and/or environmental damage) to supervise the implementation of good mining technical principles through evaluation, inspection, investigation, and testing. Access to justice carried out by the Mining Inspector will become data, information, and reports for the Directorate General of Taxation in calculating actual income and costs in accordance with the Income Tax Law.

### **3. IUPK Obligations and Tax Compliance in Administrative Law Perspective**

The Mineral and Coal Law (Minerba) and the Tax Law are included in the field of administrative law. Administrative law is the form of rules, regulations, orders, and decisions made by state administrative institutions in determining how state power carries out efforts to fulfill tasks, or how the state should behave in carrying out its duties,<sup>36</sup> and at the same time carrying out its duties regulatory powers and duties of such agencies.<sup>37</sup> This shows that in the Tax Law and the Minerba Law, it is the government who is the legal subject or advocate of the rights and obligations to take various kinds of actions, both real actions and legal actions. In this case, real actions do not cause legal consequences, while legal actions give rise to rights and obligations. Legal action should show that ideally every government legal relationship that can lead to legal consequences must be based on applicable laws and regulations and must not contain defects (mistakes, fraud, coercion, etc.) that can lead to invalid legal consequences. This should also be carried out by the government (both the central government and the government) for the payment obligations that must be carried out by the IUPK. This is because IUPK, in accordance with Article 1 point (11) of the Minerba Law, has been defined as a permit to carry out mining business in a special mining business permit area. Furthermore, in Article 129 of the

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34 Syahrul Faidzin, Peran dan Fungsi Keluarga dalam Membangun Kepribadian Remaja yang Baik dan Berkelanjutan di Indonesia: Suatu Tinjauan Literatur, *Journal of Sustainable Development Issues*, Vol. 1, No. 1, 2022, page. 1-13.

35 Fatos Selita, Improving Access to Justice: Community-based Solutions, *Asian Journal of Legal Education*, Vol. 6, No. 1-2, 2019, page. 83-90

36 K. Pudjosewojo, Pengantar Ilmu Hukum dan Tata Hukum Indonesia, Balai Pustaka, Jakarta 1990

37 Bryan Garner, *Black's Law Dictionary*, St. Paul, 1990

Law, Minerba emphasizes the existence of payment obligations that must be carried out by IUPK holders, as formulated as follows.

*(1) The IUPK holder at the Production Operation stage for Metal Mineral and Coal Mining is required to pay 4% to the Central Government and 6% to the Regional Government of the net profit since production. (2) The share of the Regional Government as referred to in paragraph (1) is regulated as follows: a. The provincial government gets a share of 1.5%; b. The regional government of the producing regency/city gets a share of 2.5%; c. The regional governments of other regencies/cities within the same province receive a share of 2%. (3) Further provisions regarding the calculation, reporting, and payment of the share of the Central Government and Regional Governments shall be regulated by or based on a Government Regulation.*

Further rules of Article 129 of the Minerba Law concerning the “net profit” of IUPK holders have been formulated by the government in Article 15 paragraph (3) of PP No. 37 of 2018 which states that the net profit for Production Operation IUPK holders is net profit after deducting Corporate Income Tax (PPh) for Production Operation IUPK holders, which is a change in the form of Mining Business from a Contract of Work (KK) whose contract has not expired every year since production based on financial statements that have been audited by a public accounting firm.

The obligation of IUPK Holders for Metal Mineral and Coal Mining to pay 4% to the Central Government and 6% to the Regional Government of the net profit since production should be in line with the tax obligations that must be fulfilled by the IUPK as a Taxpayer. The legal obligations of government institutions, including the active role of the DGT, should test the actual reporting compliance of the net profits of IUPK holders in ascertaining whether or not there are losses arising from accrued obligations to the state, considering that there are still many differences between the financial reporting of liability payers (which generally use a self-assessment system, namely calculating, calculating, paying, and self-reporting) with applicable laws and regulations, such as tax laws and regulations,<sup>38</sup> and the lack regulations regarding the accountability of the parties involved in it.<sup>39</sup>

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38 Henry D.P. Sinaga, and Benny R.P. Sinaga, *Rekonstruksi Model-Model Pertanggungjawaban di Bidang Perpajakan dan Kepabeanaan*, PT. Kanisius, Yogyakarta, 2018

39 Priyambudi, and Henry D.P. Sinaga, Prosecutorial Discretion in Tackling the Cryptocurrency Crime in Indonesia, *Webology*, Vol. 18, No. 2, 2021, page. 68-87.

#### 4. Ideal Arrangement in Synergizing Tax Compliance and Payment of IUPK Obligations in Indonesia

The obligation to a legal subject emphasizes that every legally competent person must be responsible for his actions or actions.<sup>40</sup> This legal obligation can be seen in the contractual relationship between a legal entity and its employees in the work environment, including the obligation to keep books in accordance with the applicable laws and regulations. A legal entity usually publishes effective guidelines and controls for its employees<sup>41</sup> based on standard operating procedures (SOPs), organizational structures, and manual flow charts.<sup>42</sup>

Every legal obligation must be accounted for fairly. Therefore, the principles of transparency, participation, and accountability are very much needed as a basis.<sup>43</sup> The principles of transparency, participation, and accountability, will monitor and evaluate the actual net benefits of the IUPK holders' self-assessment reports. Transparency, participation, and accountability are expected to be able to realize legal reforms that are pro to the people as the holders of sovereignty in Article 33 paragraph (3) of the 1945 Constitution. Thus, testing the compliance of the IUPK holders must involve a Team of Experts Calculating and joint compliance testing with relevant government agencies, in this case the DGT. The team must be truly capable, independent, and objective in providing information and opinions, as well as putting them in an accountable report.<sup>44</sup> Particularly in the mineral and coal sector, transparency and accountability on licensing, exploration, contracting, extraction, revenue generation, and allocation of natural resource revenues, will result in the design of government institutional mechanisms responsible for the extraction and allocation/use of revenues, as effective coverage can be carried out through better data collection, reporting, and analysis, a stronger focus on the allocation and use of government spending derived from natural resources wealth, and a better understanding of the importance of incentives and sanctions to ensure effective impact.<sup>45</sup>

40 Henry D.P. Sinaga, Pengaturan Pertanggungjawaban Mutlak Wajib Pajak di Indonesia dalam Perspektif Keadilan dan Kemanfaatan Umum, *Jurnal Hukum & Pembangunan*, Vol. 49, No. 3, 2019, page. 517-546.

41 M.G. Faure *et al.*, *Law and Economics of Environmental Crime: A Survey*, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.549.9704&rep=rep1&type=pdf> accessed on 26 June 2020.

42 Henry D.P. Sinaga, The Criminal Liability Of Corporate Taxpayer in the Perspective of Tax Law Reform in Indonesia, *Mimbar Hukum*, Vol. 29, No. 3, 2017, page. 542–557

43 Rintis N. Pramugar, and Reny Y. Sinaga, E-Government in Optimizing Non-Tax Revenue of the Mining Sector in Indonesia, *Journal of Accounting and Finance*, Vol. 5, No. 1, 2021, page. 36-44

44 Henry D.P. Sinaga, Loss ( of Revenue ) of State Within Taxation Crimes in Indonesia, *Mimbar Hukum*, Vol. 28, No. 1, 2018, page. 141–155

45 A.M. Acosta, The Impact and Effectiveness of Accountability and Transparency Initiatives: The Governance of Natural Resources, *Development Policy Review*, Vol. 31, No. 1, 2013, page. s89-s105.

In the context of enforcing Mineral and Coal Law and Tax Law, the Government through related public officials is given discretion to make decisions based on their own opinions while still paying attention to the legal corridors that limit them, which is the original purpose of the law which is basically to create a sense of justice in the community. This also shows that the implementation of the law on Article 129 of the Minerba Law is not just an automatic machine of laws and procedures, namely if the IUPK holders have paid 4% to the Central Government and 6% to the Regional Government of the net profit since production, it seems as if their obligation the law has been fulfilled. The relevant public officials should carry out the legal instruments attached to them to provide a sense of justice to the community by taking into account the logic of social reasonableness and the logic of justice.<sup>46</sup>

Whether or not there are losses arising from obligations that have been paid by IUPK holders through a self-assessment system, public officials must ensure that there are losses. Because if it is not used for the greatest prosperity of the people, exploitation of mineral resources controlled by the state is the neglect of administrative legal actions and the neglect of the existence of legal instruments, all of which are inherent as legal obligations that must be carried out by the relevant public officials. It is clear that the occurrence of such negligence has opposed the enforcement of Article 1 point 15 of Act No. 15 of 2006 concerning the Supreme Audit Agency (BPK Law) and Article 1 number 22 of Act No. 1 of 2004 concerning the State Treasury (Treasury Law) which defines the sentence State Loss or Regional Loss as a shortage of money, securities, and goods, which are real and definite in amount as a result of unlawful acts, either intentionally or negligently. In addition, it can be said that the payment of obligations of IUPK holders based on net profit after deducting Corporate Income Tax based on financial reports that have been audited by a public accounting firm is still limited to fulfilling obligations that are self-assessment, where in calculating the net profit there is a recording of costs and income which are not in accordance with the application of calculation standards based on other laws and regulations but are adequate as a reference, such as the Income Tax Law.

Income Tax Law as the comparison for calculating the state and/or regional losses in fulfilling the obligations of IUPK holders fulfills the aspect of fairness, bearing in mind that there are formulations of Article 4 paragraph (1), Article 6 paragraph (1), and Article 9 paragraph (1) of the Income Tax Law and the formulation of Article 12 paragraph (3) of Act No. 6 of 1983 concerning General Provisions and Tax Procedures as has been last amended by Act No. 7 of 2021 concerning Harmonization of Tax Regulations (KUP Law). Article 4 paragraph (1) of the Income Tax Law confirm that the object of income tax is any additional economic capability received or obtained by the taxpayer, whether originating from Indonesia or from outside Indonesia, which can

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46 Satjipto Rahardjo, *Membedah Hukum Progresif*, Kompas Media Nusantara, Jakarta, 2008

be used for consumption or to increase the wealth of the Taxpayer concerned, in any name and in any form. Article 6 paragraph (1) of the Income Tax Law stipulates the calculation of net profit which is the basis of Taxable Income for resident Taxpayers and permanent establishments must be determined based on "gross income less costs to obtain, collect and maintain income". Article 9 paragraph (1) of the Income Tax Law formulates costs that should not be allowed in calculating net income as the basis for determining the amount of Taxable Income for domestic Taxpayers and permanent establishments as follows. Distribution of profit in whatever name or form, such as dividends, expenses charged or incurred for the personal benefit of shareholders, partners or members formation or accumulation of reserves, except: among others: reserves for cost of reclamation in general mining; insurance premiums for health, accident, life, dual purpose, and education insurance which are paid by an individual Taxpayer, except those paid by an employer where premiums is treated as income of the Taxpayer; consideration or remuneration related to employment or services given in the form of a benefit in kind, except provision of food and beverages for employees or consideration or remuneration given in the form of a benefit in kind in certain regions and in connection with employment as stipulated by or based on the Minister of Finance Regulation; excessive compensation paid to shareholders or other associated parties as a consideration for work performed; gifts, aid or donations, and inheritances except donations and zakat received by an Amil Zakat Board or other amil zakat institutions established or approved by the government or compulsory religious donation for the followers of religions acknowledged by the Government, received by religious institutions established and approved by the Government, which are stipulated by or based on a Government Regulation; income tax; cost incurred for the personal benefit of a Taxpayer or his dependents; salary paid to a member of an association, firm, or limited partnership the capital of which does not consist of stocks; administrative penalty in the form of interest, fines, and surcharges, as well as criminal penalty in the form of fines imposed pursuant to the tax laws. Meanwhile, Article 12 paragraph (3) of the KUP Law emphasizes that even if the taxpayer has paid and reported the tax payable, the Director General of Taxes determines the amount of tax payable if based on evidence the tax return (SPT) is incorrect.

The provisions in Article 4 paragraph (1), Article 6 paragraph (1), and Article 9 paragraph (1) of the Income Tax Law and the evaluation, inspection, investigation and testing authority possessed by the Mining Inspector as referred to in the Regulation of the Minister of Energy and Resources Mineral Number 26 of 2018 are the legitimate and valid<sup>47</sup> access to justice approach for the Central Government and Regional Governments in calculating the net profit (including income and costs) of

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47 Leo B. Barus, On Tax Obligatory and Taxpayer and Its Implications, *Journal of Tax Law and Policy*, Vol. 1, No. 1, 2022, page. 1–10.

metal mineral and coal mining properly and correctly<sup>48</sup> considering that tax revenue and PNBP are as much as possible for prosperity people. The synergy of these Laws must be done considering the prevailing challenges:

- a. The complexity of financial transactions (whether intentional or unintentional) that occur in the metal mineral and coal mining industry, if solely based on financial reports that have been audited by a public accounting firm, considering that there are still ongoing scandals of fraudulent financial reporting both internationally and nationally, including certain corporations on the stock exchange (such as the cases of Enron, Waste Management, WorldCom, and Lehman Brothers).<sup>49</sup>
- b. The results of the BPK's audit on PNBP from coal mining in 2016 and 2017 found the underpayment of royalties / fixed fees and fines.
- c. In the event that metal mineral and coal mining are Multinational Enterprises (MNE), related party transactions must be investigated in order to minimize the possibility of efforts to transfer resources and avoid taxes between parties that have the special relationship.<sup>50</sup>

Findings that have the potential to overlook the "calculation of true net profit" must be addressed through the synergy of Article 4 paragraph (1), Article 6 paragraph (1), and Article 9 paragraph (1) of the Income Tax Law with the authority to evaluate, inspect, investigate and Mining Inspector testing. The synergy will fulfill the fairness aspect as well as provides access to the central government and local governments regarding the self-assessment of fulfilling the obligations of the IUPK holders, must be followed up with legal instruments that are included in state administrative law, such as regulations, decisions, statutes, circulars, and also instructions. Then, if from the results of the calculation of the net profit against the obligations of the IUPK holders, there is an underpayment to the central government and local governments, an assessment letter must be made. The letter must also include a calculation of interest and/or fines.

Those fairness and access to justice aspects must be implemented through routine joint audit (per fiscal year) considering that payments made by IUPK Holders are from net profits per fiscal year and also reporting of Annual Income Tax Returns for Taxpayers is based on the income tax rate that applies to Taxable Income for one financial year. The joint audit between the DGT and the Financial and Development Supervisory Agency (BPKP), the Ministry of Energy and Mineral

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48 Ryan S. Alam and Henry D. P. Sinaga, Beyond Positivism Tradition in Tackling Corruption in Indonesia: Developing the Law with Makrifat Dimension, *Journal of Accounting Issues*, Vol. 1, No. 1, page. 7-19.

49 Yudha Pramana and Anis W. Hermawan, Addressing the Financial Reporting Fraud: A Rational Choice Theory Perspective, *The Scientia Journal of Social and Legal Studies*, Vol. 1, No. 2, 2022, page. 77–104.

50 Yudha Pramana, Legal Reconstruction on Domestic Related Party Transactions, *Journal of Tax Law and Policy*, Vol. 1, No. 1 2022, page. 24–41.

Resources and the Regional Government is an effective solution for the state and IUPK Holders considering that the object of the audit is the same, namely net profit or in PPh terminology can be referred to as Taxable Income.

#### **D. CONCLUSION**

This research resulted in two main conclusions. First, currently, the regulation of IUPK obligations paid to the central government and local governments in Indonesia is only regulated in Article 129 of the Minerba Law and Article 15 paragraph (3) of PP No. 37 of 2018. These articles only formulate the fulfillment of the IUPK obligation to pay 4% to the Central Government and 6% to the Regional Government from net profits based on financial reports that have been audited by a public accounting firm. This ignores the constitutional rights of the people as regulated in Article 23A and Article 33 paragraph (3) of the 1945 Constitution, where proper access to justice through the active role of tax authorities, central and local governments must be provided through periodic joint audits. Second, ideally, the synergy of tax compliance arrangements and payment of IUPK obligations in sustainable coal management must comply with the principles of *lex scripta, lex certa and lex stricta*, which are based on the principles of transparency, participation, and accountability between state institutions with an interest in state revenues in monitoring and evaluating the actual net benefits of self-assessment reporting carried out by IUPK as well as taxpayers and at the same time to restore injustice experienced by the state when the production of IUPK exceeds the target of Ministry of Energy and Mineral Resources. It is recommended that there is always a routine audit report of the Joint Government Team (such as the Directorate General of Taxes, the Financial and Development Supervisory Agency, the Ministry of Energy and Mineral Resources and the Regional Government) in calculating net profit before PPh or also known as taxable income, as stipulated in Article 129 of the Minerba Law, Article 4 paragraph (1), Article 6 paragraph (1), and Article 9 paragraph (1) of the Income Tax Law, as well as Article 15 paragraph (3) of PP. 37 of 2018.

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