

Executive Summary of Rapid Assessment Report

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# Opportunity for Implementation of Mining License Transparency in Nusa Tenggara Barat Province



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# **Opportunity for Implementation of Mining License Transparency in Nusa Tenggara Barat Province**

*Executive Summary of Rapid Assessment Report*

## **Authors**

Johan Rahmatulloh

Rizky Ananda Wulan Sapta Rini

## **Reviewer**

Maryati Abdullah

## **Translator**

Reza Purba

## **Layout**

Kastari

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## **Yayasan Transparasi Sumber Daya Ekstraktif**

Jl. Tebet Timur Dalam VIII K No.12, Jakarta Selatan 12820, Indonesia

Website : [www.pwypindonesia.org](http://www.pwypindonesia.org) | E : [sekretariat@pwypindonesia.org](mailto:sekretariat@pwypindonesia.org)

## Introduction

Law of the Republic of Indonesia Number 14 of 2008 regarding Public Information Disclosure (*Keterbukaan Informasi Publik/KIP*) mandates the implementation of public information disclosure by any public bodies, both at central and local levels. Basically, all the public information is transparent, except for the excluded ones. Despite its entry into force in 2010, the implementation of public information disclosure is not yet optimum.

Based on evaluation conducted by Central Information Commission (KI) in 2018, of 460 public bodies, we can say that only 104 (equal to 22.61%) bodies have implemented the public information disclosure. At the same time, the other 77% is not deemed to have carried out the mandate of the KIP Law (Central Information Commission, 2019).

The extractive industry sector has been a non-transparent one. Despite transparency wave in this sector resulting in the revenue data and information disclosure, the license-related data and information remain difficult to access. In fact, the KIP Law explicitly states that any contract and license documents are open information.

On the other hand, some are of the opinion that the contract and license documents are confidential information which only accessible to the parties signing either the contract or the license by reasons of business competition or information abuse concern. Actually, in the context of extractive industry, the contract and license documents have always involved public resources, namely natural resources (SDA) in Indonesia the management of which is conducted by the government. Therefore, the public has the rights and

must understand the substance of the contract and license document in extractive industry sector.

Some cases have indicated good precedence in the effort for contract and license document transparency. But in practice, it is still uneasy for the people to obtain the aforementioned documents, without exception those in Nusa Tenggara Barat (NTB) Province which is one of the largest source of copper in Indonesia.

The performance of public information disclosure in NTB Province remains low. Based on the KI evaluation results in NTB Province conducted in 2018, average score of the implementation of public information disclosure by public body in NTB province is 46.96 merely, which means “not informative”. However, this score is higher than those in the 2017 score of 37.64 (KI of NTB Province, 2019).

Improvement must be continued by transparency innovation in the extractive industry sector (in the context of the NTB Province, it is the mining sector), particularly related to the license. It is believed that the transparency of contract and license documents is important to trace the revenue flow. Moreover, the mining sector has contributions to 19% of the regional economy in 2017 (BI, 2018).

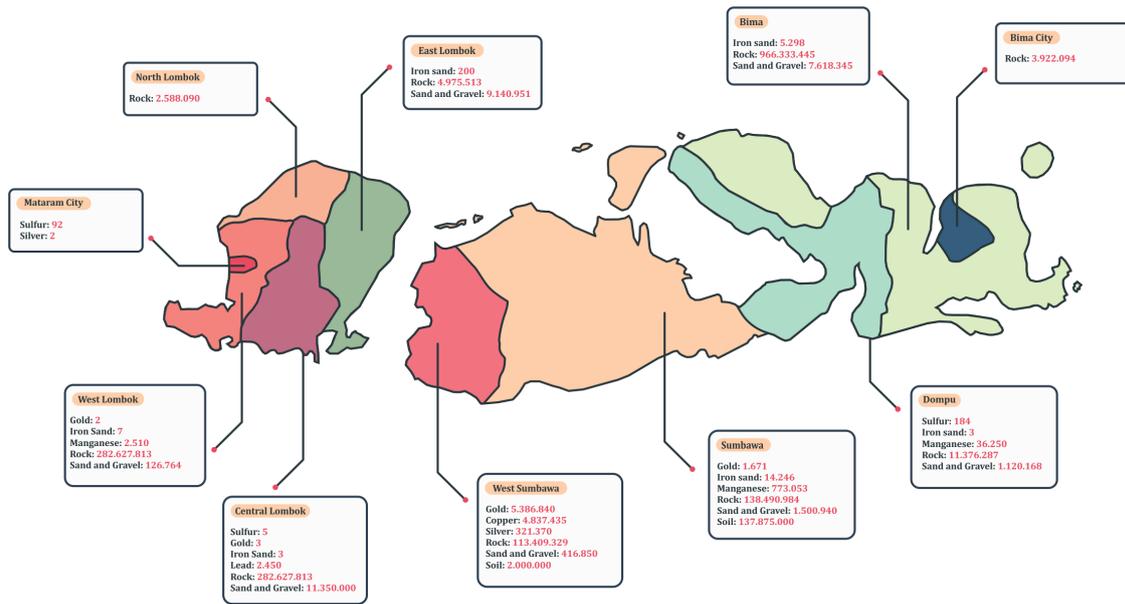
This report is aimed at identifying opportunities and challenges for the implementation of mining license transparency in NTB Province serving as the baseline to encourage the mining license transparency and the basis for preparing the mining license transparency policy in NTB.

## Mining Sector Portrait in Nusa Tenggara Barat Province

The Province of NTB has an abundant supply of metallic mineral and non-metallic mineral resources spreading across all the districts/cities. The largest potential of metallic mineral, partic-

ularly gold and copper, can be found in Sumba Barat District, while the largest potential of non-metallic mineral lies in Bima District (BPS NTB, 2018).

Figure 1. Mining Potential in NTB Province

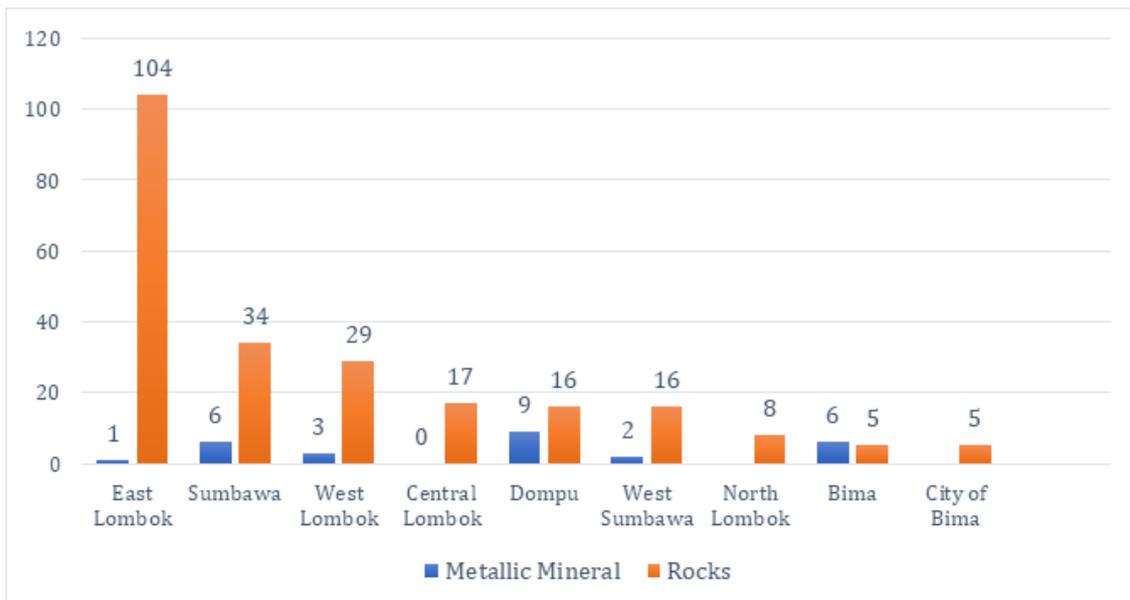


\*\*Data on metallic mineral potential in 2014 and data on rocks in 2015

Source: BPS NTB, 2018

There are at least 261 mining permits (*Izin Usaha Pertambangan/IUP*) in NTB consisting of 27 IUP metallic mineral and 234 IUP rocks. In addition, there is one Contract of Work (*Kontrak Karya/KK*)<sup>1</sup> on gold commodity in NTB (ESDM Office of NTB, 2019). Based on the number of license, total mining area in NTB has achieved more than 190.000 hectare or equal to 10% of total land area in NTB Province.

Figure 2. Distribution of Mining License in NTB Province



Source: ESDM Office NTB, 2019

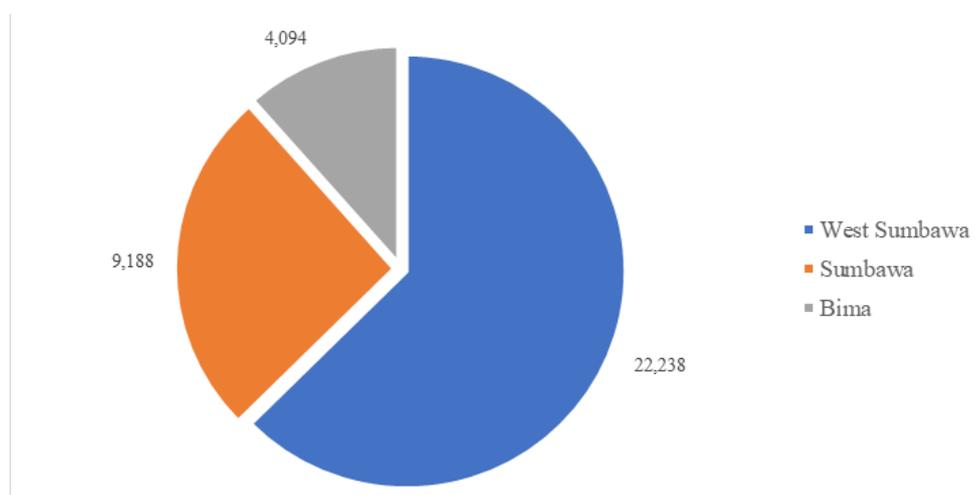
<sup>1</sup> Contract of Work/CoW (*Kontrak Karya/KK*) is an agreement between the Government of the Republic of Indonesia and Indonesian incorporated company for the purpose of foreign investment for carrying out mineral mining business activities. In accordance with Law 4/2009, CoW must be converted to Special IUP (IUP Khusus/IUPKO).

### Mining in Protection and Conservation Forest

Law Number 41 of 1999 regarding the Forestry stipulates that mining activities shall not be conducted in the protection and conservation forest areas. Forest areas can be used for mining activities provided that: (1) If within production forest area, mining activities can be conducted with open pit mining scheme; and or with underground mining scheme; at the same time (2) If within protected forest area, mining activities can only be conducted with underground mining scheme.

Coordination and Supervision of Anti-Corruption Agency (KPK) in mineral and coal mining sector reveals the abundant mining permits issued in the protection and conservation forest in NTB. There are 11 mining permits in the protection and conservation forest, whereby 10 of them are located in the protection forest covering 35,519 hectares of forest area and the remaining is located in the conservation forest with an area of 1,000 hectares (DG Mineral and Coal Mining, Ministry of Energy and Mineral Resource, 2017). This figure is equivalent to 18.6% of mining areas in NTB.

Figure 3. Metal-Minerals Concession in Protection Forest in NTB (in hectare)



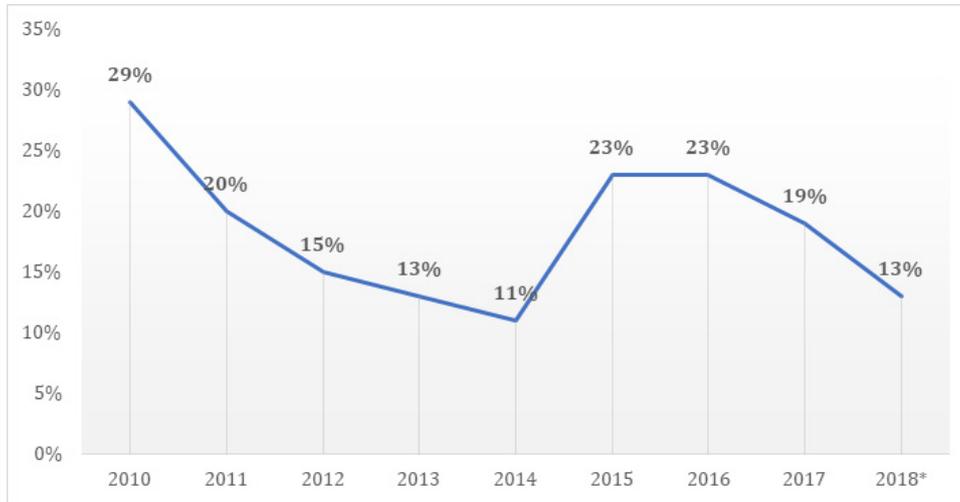
Source: Directorate General Mineral and Coal Mining, Ministry of Energy and Mineral Resource, 2017

### Mining and Economy of Nusa Tenggara Barat Province

Mining industry has played a pivotal role in the economy of NTB. However, its current contribution has increasingly diminished in line with increased contributions of other sectors, such as agricultural, forestry and fishery sectors which have achieved 25% in 2018 (up to the III quarter).

Moreover, the government of NTB Province is now persistently developing tourism sector. Despite the foregoing, the mining sector still gives substantial contributions to the economy at the district level. Let us say West Sumbawa District where 90% of the Gross Regional Domestic Product (*Produk Domestik Regional Bruto/PDRB*) comes from the mining sector in 2014 (Kontan, 2014).

Figure 4. Mining Sector Contributions to the Gross Regional Domestic Product of Nusa Tenggara Barat Province at Current Price



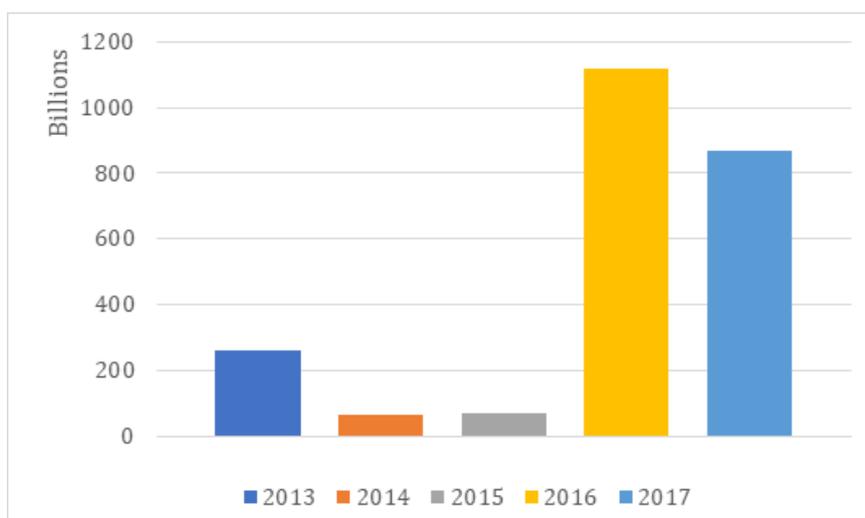
\*\*2018 only covers the I Quarter to III Quarter

Source: BPS NTB, 2019

Mining sector is also one of the regional revenues and budget source, mainly in the non-tax state revenues (PNBP) which furthermore will be shared to the provincial and district government through the revenue sharing mechanism (*dana bagi hasil/DBH*) scheme. Total DBH of NTB Province and district/city has ever achieved 1 trillion in 2016 which is the highest between 2013

and 2017. The district with highest DBH is West Sumbawa District which is the location of Batu Hijau copper mining that is used to be managed by Newmont, prior to its handover by Medco, an Indonesian national private company. The mining is currently managed by the Medco's subsidiary, namely PT Amman Mineral Nusa Tenggara (AMNT).

Figure 4. Mining Revenue Sharing Fund of Nusa Tenggara Barat Province



Source: PWYP Indonesia, 2019 (Processed based on LKPP and EITI Indonesia Report)

## Mining Impact on Nusa Tenggara Barat Province

The mining in NTB, mainly sand mining has caused a massive land damage. At least 200 to 250 hectares of land has damaged due to the rock mining (Antara, 2014). Not only that, the sand mining has been deemed to have impact on the shore shifting disturbing the fishermen activities.

At the same time, NTB Province is due in part to the rising issue of illegal gold mining (*Pertambangan Emas Tanpa Izin/PETI*). PETI is frequently found in Lombok Barat District, especially in Se-

kotong Sub-District and Lombok Tengah District in Gunung Prabu.

Illegal mining issue is closely related to massive environmental pollution and health-related impact it creates. Besides, PETI still adopts traditional mining technique using mercury and cyanide. The chemical substance waste is carried by river water and pollutes the river bank (DAS) to the ocean. Consequently, the villagers living in the vicinity of the river are under threat of disease. At the same time, the ocean ecosystem including coral reef, has come under threat as well.

## Mining License Institution in Nusa Tenggara Barat Province

Law Number 23 of 2014 regarding the Local Government mandates the distribution of authority in mineral and coal mining sector to be under the authority of the central and provincial governments. The authority on mining license held by

the district/city government has currently been withdrawn completely by the provincial government. Detailed authority of provincial government is presented in table 1.

Table 1. Provincial Government Authority related to the Mining License

Stipulation of mining permit area ( <i>wilayah izin usaha pertambangan/WIUP</i> ) of non-metallic mineral and rocks in 1 province and coastal area extending up to 12 miles
Issuance of metallic mineral and coal IUP for the purpose of Domestic Capital Investment ( <i>Pena-naman Modal Dalam negeri/PMDN</i> ) in WIUP located in 1 province including the coastal area extending up to 12 miles
Issuance of non-metallic mineral and rock IUP for the purpose of PMDN in the WIUP located in 1 province area extending up to 12 miles
Issuance of IUPR for metallic mineral, coal, non-metallic mineral and rock commodities within the people's mining area ( <i>wilayah pertambangan rakyat/WPR</i> )
Issuance of IUP OPK for processing and purification in the context of PMDN the mining commodity of which comes from 1 similar province
Issuance of mining service business license ( <i>izin usaha jasa pertambangan/IUJP</i> ) and statement of registration ( <i>surat keterangan terdaftar/SKT</i> ) for the purpose of PMDN the business activity of which is within 1 province

Source: Law 23/2014 regarding Regional Government

The delegation of authority is also followed by delegation of personnel, funding, facility and infrastructure as well as document (P3D). It is mandatory that the P3D process must be completed in a maximum of two years after the promulgation of Law on Local Government. However, the process has not been optimum, especially related to the delegation of mining license documents.

According to the Energy and Mineral Resources (ESDM) Office of NTB, it is not easy to ask for the mining license documents, including Decision (SK) on License and its supporting documents to the District government. Mastari, the Head of Mineral and Coal Mining Sector of the NTB Energy and Mineral Resources Office said that the NTB ESDM Office has not received several license-related documents.

The situation will certainly cause suboptimum governmental supervision due to the absence of critical documents. Consequently, the ESDM Office is unable to provide comprehensive public information related to the mining license.

### **One-Stop Integrated Service Policy**

One-Stop Integrated Service (*Pelayanan Terpadu Satu Pintu/PTSP*) is an integrated service in a unit of process ranging from the request stage

to the service product completion stage through one stop. The PTSP policy is provided for in Presidential Regulation (*Peraturan Presiden/Perpres*) number 97 of 2014 regarding the Implementation of One-Stop Integrated Service which subsequently was downgraded by the Governor of NTB to a Governor Regulation (*Peraturan Gubernur/Pergub*) number 61 of 2017 regarding Public Service Standards on License and Non-License Sectors.

The implementation of PTSP policy has resulted in the delegation of license authority, including in the mining sector, to an agency in charge of capital investment, namely the Capital Investment Coordinating Board (*Badan Koordinasi Penanaman Modal/BKPM*) at the central government level or the Capital Investment and One-Stop Integrated Service (*Penanaman Modal dan Pelayanan Terpadu Satu Pintu/PM-PTSP*) Office at the provincial level.

Despite the fact that the PM-PTSP Office in the PTSP scheme is authorized to issue a license, the ESDM Office still plays its role in such process by preparing technical considerations. The license will not be issued without technical considerations provided by the ESDM Office. At the same time, the PM-PTSP Office will make evaluation on the administrative compliance.

## **Public Information Disclosure Practices in Mining License Sector in Nusa Tenggara Barat Province**

The Provincial Government NTB issued Local Regulation (*Peraturan Daerah/Perda*) number 10 of 2015 regarding Public Information Services within the Local Government as a derivative of the KIP Law. On one hand, this Local Regulation indicates commitment of the NTB Government to implement KIP. However, different story has been found in reality.

The implementation of KIP can at least be viewed from the existence of its basic infrastructure which includes PPID<sup>2</sup>, Standard Operational Procedures (SOP) for Information Services and Public Information List (*Daftar Informasi Publik/DIP*). Furthermore, an analysis can be conducted

on the compliance and quality of the public information provided.

The analysis on such aspect, one can say that the implementation of KIP in the Regional Government Organization (*Organisasi Perangkat Daerah/OPD*) in charge of the mining license, namely the ESDM Office and PM-PTSP Office indicates a very low result.

In general, basic infrastructure on the implementation of KIP is available. Both the ESDM Office and PM-PTSP Office have owned PPID, SOP and DIP. The PM-PTSP Office of NTB has specifically included information on the license require-

<sup>2</sup> Information and Document Management Official (Pejabat Pengelola Informasi dan Dokumentasi/PPID) is an official responsible for the storing, documentation, provision and/or information services in any public body.

ments, license issued and report on the license administration in its DIP as periodical information. However, the information provided and accessible through the PM-PTSP Office website has only been limited to the summary of license issued.

At the same time, the ESDM Office NTB has included data on mining business license which in-

clude data on metallic mineral IUP, rock IUP, People's Mining Permit (*Izin Pertambangan Rakyat/ IPR*) and Contract of Work in its DIP as the information that must be provided at all times. Unfortunately, the contemplated DIP is the 2017 DIP and has not been updated up to the preparation of this report. In addition, type of information provided remains in hard copy data.

## Opportunities and Challenges for Mining License Transparency in Nusa Tenggara Barat

### Legal Umbrella of Mining License Transparency

The KIP Law explicitly reads that any contract and license document is an open information. This refers to article 11 paragraph (1) point e stating that any public body must provide document on agreement with third party. The derivative regulation of the KIP Law such as Regulation of KI number 1 of 2010 in article 13 paragraph (1) point underlines obligation to publish the agreement document.

Not only that, cases on the mining license information request in other areas have confirmed that the mining license information is an open information and the public is entitled to access the same.

However, some government officials consider that it is necessary to have clear legal umbrella which mandates the mining license document transparency. They are of the opinion that this is important to avoid any claim of a certain party.

### Inconsistent Implementation of KIP by OPD

KI NTB has conducted annual assessment on the implementation of KIP in public bodies. The assessment indicates inconsistent implementation of KIP by OPD.

As an illustration, in 2017 the ESDM Office achieved score 83.12. But in 2018, its score drastically dropped to 29.20. The representative of PPID

Assisting the ESDM Office of NTB explained that there was change of personnel composition affecting the performance of KIP.

Lower performance was also found in the PM-PTSP Office which achieved score 36.21 in 2017. In 2018, it did not participate in the assessment due to delayed submission of the assessment questionnaire.

Successful implementation of KIP depends more or less on individuals, namely PPID. PPID is often considered as an additional duty. At the same time, solid system has not been established. It is necessary to identify local champion having commitment to encouraging transparency innovation including the mining license-related innovation.

### Quality of Mining License Information

The information quality has been a critical issue in the effort for encouraging the mining license transparency in NTB Province. The mining license-related information included in the DIP of OPD remains low. Supporting documents obliged to be provided as mandated by Regulation on KI (Perki) regarding Public Information Service Standards (*Standar Layanan Informasi Publik/SLIP*), especially article 13 paragraph (1)<sup>3</sup>, are not included in the DIP of both OPD which have mining licensing authority at the provincial level, namely ESDM Office and PM-PTSP Office.

One of the most critical supporting documents of mining permit is environmental document,

3) Referring to Regulation on KI (Perki) regarding Public Information Service Standards (*Standar Layanan Informasi Publik/SLIP*), especially article 13 paragraph (1), any public body must at all times, provide public information which at least consists of: point e: agreement with any third party and the supporting documents thereof, point g: license requirements, license issued including the supporting document thereof and report on the administration of license provided.

either Environmental Management Efforts and Environmental Monitoring Efforts (*Upaya Pengelolaan Lingkungan-Upaya Pemantauan Lingkungan/UKL-UPL*) or Environmental Impact Assessment (*Analisis Mengenai Dampak Lingkungan/AMDAL*). The documents are in fact in the possession of above mentioned OPD, however the OPD argue that such information is not within their authority, but it belongs to authority of the Environment and Forestry (*Lingkungan Hidup dan Kehutanan/LHK*) Office in the provincial or district level, which issue an approval of environmental documents.

However, referring to KIP Law, public information is defined as information that is produced, stored, managed, sent or received by public bodies. It's important to take a note that public information is not limited to information that is produced, but also received. Therefore, on the regard of supporting documents of mining permit, ESDM and PM-PTSP Office are required to provide the documents if they have them. While today, information applicant still directed to other OPD to obtain the supporting documents of mining permit. For instance, environmental documents to LHK Office.

The issue of information quality could be seen also at the consistency between the information provided and those included in the DIP. Besides, considering the suboptimum P3D process, it is most likely that the ESDM Office does not have a certain document related to the mining license.

Room for improvement on the implementation of KIP in both OPD remains open, particularly with respect to inclusion of license-related data as provided for in Perki SLIP into DIP and provision of soft copy data. On the other hand, issues on the lack of facility, infrastructure and budget of PPID in both OPD are found and may hinder the improvement process.

### **Low Public Participation in Accessing Mining License Information**

Data on KI NTB indicate that there has been decrease in public information request in NTB in the last five years. In 2015, the request received was 55, but the figure was down to 22 in 2018. At the same time, in 2019 (until March), two requests were received.

No request for the mining license information is found among the aforementioned requests. Due to this, the OPD considers that it is not important to make public disclosure on the mining license information. However, it is also important to note that the absence of information request may indicate low public awareness of rights to information as well as information request mechanism which might be the consequences of poor socialization. In another hand, information access is the key to public participation in the policy making process, especially the one involved public resource, such as natural resources, including mining.

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Website : [www.pwypindonesia.org](http://www.pwypindonesia.org)

Email: [sekretariat@pwypindonesia.org](mailto:sekretariat@pwypindonesia.org)

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