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SECURING INDONESIA'S EXTRACTIVE INDUSTRIES THROUGH SOCIAL LICENSE TO OPERATE

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ABSTRACT

Public participation is one important factor in the extractive industry, especially to ensure that the development of new mining projects can begin successfully. Social License to Operate (SLO) is a contemporary concept that rapidly develops and is widely known as a method for building relationships between mining companies and the communities surrounding the mining project. This article attempts to introduce the concept of SLO and provide an initial overview of the implementation of SLO in the extractive industry in Indonesia. In addition, this article also examines the relationship between SLO and another similar concept, namely Environmental Impact Analysis (EIA). This article finds that although SLO and IEA have differences, the similarities between the two concepts could potentially be unified to cope with the shortcomings mutually. After analyzing the implementation of SLO in several mining projects in Indonesia and considering the issuance of Law No. 11 of 2020 concerning Job Creation, this article argues that the existence of SLO could be utilized as an alternative method to strengthen the relationship between community and mining companies, improve the quality of participation, and reduce community resistance to the development of extractive industry projects in Indonesia.

Keywords*: extractive industry; EIA; social license to operate; public participation.*

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INTRODUCTION

The mineral and coal mining industry are still playing an important role in Indonesia since it offers a significant contribution to the national economic growth. According to the data published by the Badan Pusat Statistik (BPS or Central Statistics Agency), the production of mineral and coal mining commodities during the year 2017-2019, were increased in almost all non-oil and non-gas commodities (coal, tin, iron sand, gold, bauxite, and nickel).[1] The production growth consequently contributes to a significant amount of national income, particularly from the non-tax state sector, 44.8 trillion rupiah in 2019 and decreased 34.6 trillion rupiah in 2020 due to many mining restrictions during the Covid-19 pandemic.[2]

From another point of view, mineral and coal mining production can also cause serious environmental problems, including pollution, water quality degradation, erosion, flooding, and other environmental problems that can bring a direct impact on the surrounding community. In addition, mineral and coal mining production which commencing without involving the surrounding community can also cause social and economic problems. The excessive exploitation of natural resources without integrating public voices in the project decision-making process not only can potentially harm the environment but also can attract opposition from the local community.

Campaigns to integrate public voices in the decision-making process related to the utilization of natural resources have been a serious concern of governments around the world. In the legal context, UNECE Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus Convention) 1998 has been considered as a landmark convention in regulating the process of public participation in environmental decision-making. Furthermore, besides the concept of public participation in the context of the Aarhus Convention 1998, the concept of Social License to Operate (SLO) has also emerged as an alternative concept to integrating public voices in a project decision-making, especially in the sector of mineral and coal mining.

METHOD

By using a normative juridical method and focusing on literature review as well as investigate secondary sources, this article attempts to examine the development of the Social License to Operate (SLO) as a concept and attempt to investigate the overlapping with the similar concept under the legal regime – public participation in environmental decision-making-particularly with the Environmental Impact Assessment (EIA). This article also provides a preliminary research of the SLO's implementation in Indonesia by investigating its practices in several of Indonesia's extractive projects.

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[1] Badan Pusat Statistik, Produksi Barang Tambang Mineral 2017-2019, available on https://www.bps.go.id/indicator/10/508/1/produksi-barang-tambang-mineral.html, accessed August 2, 2021.

[2] CNBC, PNBP Sektor Tambang Minerba Capai Rp 34,6 Triliun di 2020, available at https://www.cnbcindonesia.com/news/20210115190528-8-216437/pnbp-sektor-tambang-minerba-capai-rp-346-triliun-di-2020, accessed August 2, 2021.

DISCUSSION

Understanding the SLO

Despite the fact that the term 'social license' was introduced in 1818 by William Cunningham in his seminal work 'A World Without Souls', probably the most relevant terms of 'social license' which connected with this article appeared from a discussion between James Cooney and the representative of World Bank in late 1997.[3] In 1996, Placer Dome Inc. – a gold mining company based in Vancouver Canada – faced serious accusations from the Philippines government since they failed to handle the tailings dam and caused buried a village and polluted the river surrounding the mining.[4] As the Vice President of the Company, Cooney mentioned that a number of mining companies were spent a significant amount of money to cope with the resistance from the local community when they tried to start new projects or expand the existing projects. During the consultation with the World Bank, Coney described that the opposition of the local community to the mining projects was a major problem to obtain official permits from the government. Cooney also recognized the importance of company mitigation to acquired support from the local community and used metaphor 'social license' to describe the situation.[5] In early 1998, the World Bank used Coney metaphor on a conference on mining and community in Ecuador, from that time the term formally become a new paradigm in the world's mining industry.[6]

The conception of Social License to Operate (SLO) is postulated from the acknowledgement that the quality of the relationship between the local people surrounding the project and mining company is an important factor that can decide peaceful cohabitation or violent confrontation during the executing of the mining project.[7] Brugger highlighted that "natural resource extraction is a disruptive and inherently conflictual business".[8] It is very common that mining projects can affect and disturb various aspects of surrounding communities and can produce environmental damage, pollution, changing of visual landscape, and loss of community livelihood. The conditions may attract public opposition and disagreement. For the mining company, local people disagreement may cause a significant financial loss because of business interruptions on extractive production.[9] In order to reduce the risk of conflict and increase project stability, mining companies attempt to seek solutions and consent from the local communities through the various possible channel, one of them is through SLO.

Nowadays, with the wide application of SLO by multi companies around the world, SLO has become an object of multi-study and theoretical analysis.[10] A body of literature has developed which support the vital role of SLO in extractive projects. By utilizing the approach of grounded theory, Joyce and Thomson attempted to link the SLO with the idea of company reputation and

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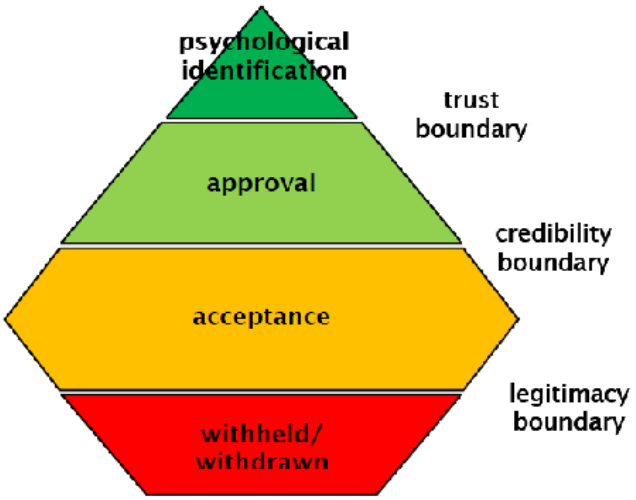
[3] See Robert G. Boutilier, "Concept and Emerging Ideas - Frequently asked questions about the social license to operate" *Impact Assessment and Project Appraisal* 4, No. 4, Vol. 32, 2014, p. 263.
[4] *Ibid.*
[5] *Ibid.*
[6] Jacqueline L. Nelsen, "Social License to Operate", Int J Mining Reclaim Environ, 2016, Vol. 20, p. 161-162.
[7] Fritz Brugger, "Getting a Social License, or: How to Catch the Elusive Ghost in Town?", *OGEL*, Vol. 1, 2020.
[8] *Ibid.*
[9] *Ibid.*
[10] *Op.Cit*. Boutilier, p 263-264.

social risk. They were proposed that gaining SLO required being perceived as legitimate.[11] Thomson and Joyce added other components to be considered to obtain legitimation from the local people which are trustworthiness and credibility as well as introduced the idea that there was a hierarchy among the people perceptions.

From a theoretical perspective, according to Thomson and Joyce, a mining company needs to obtain 'acceptance' – as the lowest level of social license – from the community to being seen as legitimate. Moreover, to obtain credibility, mining company needs to seek 'approval' as a higher level of social license from society.[12] In further research, Thomson and Boutilier added significant contributions by proposed another level of social license, after the mining company achieved trust from the local people. The highest level of social license according to Thomson and Boutilier is 'co-ownership', which later changed the label to 'psychological identification'.[13] Boutilier also described the relationship between local people and mining companies in a form of a pyramid which is today utilize by many countries in the world. The Boutilier's Pyramid served as a practical guidance to measure the relationship between the local community and the mining company, especially to describe the process of the relationship. The Boutilier Pyramid can also possibly to use as a guidance for communication and comprehensive tool to understand the stakeholder management.

Figure 1
Pyramid Model of the SLO proposed by Boutilier[14]



[11] Susan A. Joyce and Ian Thomson, "Earning a social licence to operate: Social acceptability and resource development in Latin America" *CIM Bulletin*, 2009, Vol. 93, p. 49-53.
[12] Susan A. Joyce and Ian Thomson, "The social licence to operate: what it is and why it seems so hard to obtain", Paper presented at Prospectors and Developers Association of Canada Annual Conference; Toronto, Canada, 2008.
[13] Robert G. Boutilier and Ian Thomson, "Modelling and measuring the SLO" Invited paper presented at: The Social Licence to Operate Seminar. Brisbane: Centre for Social Responsibility in Mining. University of Queensland, 2011.
[14] Source: https://www.researchgate.net/figure/The-pyramid-model-of-the-SLO-proposed-by-Thomson-Boutilier-2011-2_fig1_312948228

SLO concept has developed within a particular tradition of thinking that companies should integrate social and environmental concerns in their business operations and maintain their interaction with the community stakeholders voluntarily.[15] Corporate Social Responsibility (CSR) is probably the oldest and the most established concept within this area. Another related concept that draws attention to integrate community involvement and sustainable development besides CSR is Social Impact Assessment (SIA), Environmental Justice (EnvJ), and recently developed Energy Justice (EneJ).[16] SLO is thus a part of the broader landscape of emerging perspectives on business-community relations, social impacts of development, distributive energy, and environmental justice with a focus on procedural justice.[17]

Despite its widespread usage, there is still no international consensus on the definition of SLO in the literature. As mentioned by Bice and Moffat, "In many ways, the intangible nature of the term has been part of its appeal, and in some cases, it has been opportunistically used to serve the particular objectives and goals of companies, activists and governments".[18] In the context of mining, Owen and Kemp provide the definition of SLO as "a pragmatic calculation of what is required to minimize business risk and win the degree of community support required to avoid delay or disruption to company operations".[19]

The earliest use of SLO outside the mining sector were Gunningham, Kagan and Thornton, which study pulp and paper manufacturing and their response to the environmental issue. According to Gunningham, Kagan and Thornton, SLO is best understood as "the demands on and expectations for a business enterprise that emerge from neighborhoods, environmental groups, community members, and other elements of the surrounding civil society".[20] Furthermore, Gallois describe SLO as "an informal agreement that infers ongoing acceptance of an industrial or energy project by a local community and the stakeholders affected by it", this definition is related to the energy context.[21] Although several definitions were made from different contexts and perspectives, however in broadest terms, SLO tends to be regarded as "the ongoing acceptance or approval of an operation by those local community stakeholders who are affected by it and those stakeholders who can affect its profitability".[22]

Today we can perceive that the use of SLO has spread beyond mining. The implementation of SLO has been extended in other sectors rather than the mining industry, such as large

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[15] Claudia Brändle, Aleksandra Lis, Torsten Fleischer, Darrick Evensen, and Jessanne Mastop, *Prerequisites for a Social Licence to Operate in the (Shale) gas Industries*, M4ShaleGas Consortium 2016, p. 25.
[16] *Ibid.*
[17] *Ibid.*
[18] Sara Bice and Kieren Moffat, "Social license to operate and impact assessment" *Impact Assess. Project Appraisal*, No. 4, Vol, 32, 2014.
[19] John R. Owen and Deanna Kemp, "Social licence and mining: A critical perspective" *Resource Policy*, 2013, No. 1, Vol. 38, p 29-31.
[20] Neil Gunningham, Robert A. Kagan, Dorothy Thornton, "Social License and Environmental Protection: Why Businesses go beyond Compliance" *Law and Social Inquiry*, 2004, Vol. 29, p. 307-308.
[21] Cindy Gallois, Peta Ashworth, Joan Leach, Kieren Moffat, "The Language of Science and Social Licence to Operate" *Language Soc Psych*, No. 1, Vol. 36, 2017, p. 45.
[22] Kieren Moffat, Justine Lacey, Airong Zhang and Sina Leipold, "The social license to operate: a critical review" *Forestry,* 2016, p. 480.

infrastructure, energy, industrial projects, farming and agriculture, and the forestry sector.[23] In practice, major global corporations such as Unilever, Nestlé, and Motorola now will be considering SLO when they make their business decisions.[24] In sum, the concept of SLO, it therefore appears, is likely not only to endure but to spread.

There are several factors that may explain the rapidity of why related parties and corporations have embraced SLO. Bice and Moffat provided several reasons, *first* because the concept was introduced in the moment when the reputation of the extractive and mining industry was damage globally. On the other hand, the public became able to deliver their concerns through various emerging communication media and technology. The notion of SLO provides one single solution to cope with the broader issue of social and environment. The SLO provided rhetoric around which the industry could coalesce and seek legitimacy.[25]

Secondly, the approach of the SLO concept leverages a pseudo-regulatory which is more comfortable to utilize by the extractive and mining industry.[26] Other concepts related to SLO such as Corporate Social Responsibility (CSR) or Corporate Citizenship applying a similar approach which is softer but effective to build a relationship with the local people.[27]

Thirdly, and perhaps the most controversial, is because the SLO may provide extractive and mining industry companies with a 'grey' space in which to assert legitimacy or compliance from the local people without the enforceability of regulation or formalized boundaries. SLO can be used as a tool to build strong relations and provide effective communication with the local community as well as improve company reputation at the same time without a minimum-standard regulatory compliance burden or official auditing of activities to gain or maintain the SLO.[28]

Finally, SLO has been brought to the attention because despite this concept is easy to understand by the local community, SLO also may empower the community stakeholders to define and enforce their expectations for a project proponents' activities and behavior.[29]

The notion of SLO is now permeating through the rest of energy the sector and even to other parts of the economy sectors.[30] It is a fast-emerging principle in the energy law and policy

[23] Jędrzej Górski, "Social Licence to operate (SLO) in the Extractive and Energy Sectors" *OGEL*, Vol. 1, 2020. In another research, Martin Švec, Petr Boháček and Nikola Schmidt explore the theoretical applicability of the Social License to Operate (SLO) concept to the utilization of space resources. They discuss whether SLO can serve as an alternative source of legitimacy and may satisfy the vague requirements set forth by the Outer Space Treaty, see Martin Švec, Petr Boháček and Nikola Schmidt, "Utilization of Natural Resources in Outer Space: Social License to Operate as an Alternative Source of Both Legality and Legitimacy" *OGEL,* Vol. 1, 2020.

[24] Kathleen M. Wilburn and Ralph Wilburn, "Achieving social license to operate using stakeholder theory" *Journal of International Business Ethics*, 2011, No. 2, Vol. 4, p. 7.

[25] *Op. Cit.* Gunningham.

[26] *Op. Cit.* Owen and Kemp.

[27] Sara Bice, *Beyond the business case: A new institutional analysis of corporate social responsibility in the Australian mining industry*, in *Bice* and Moffat (n 16).

[28] *Op. Cit.* Owen and Kemp.

[29] *Op. Cit.* Bice and Moffat.

[30] Raphael J. Heffron and Daren McCauley, "The concept of energy justice across the disciplines" *Energy Policy*, Vol. 105, 2017, p. 661.

community.[31] In the near future, most of the energy infrastructure will likely need an SLO before conducting the projects.[32]

The Intersections Between Social License to Operate and Legal License to Operate: Tensions or Synergies

The concept of SLO is multifaceted, multidisciplinary, and non-legal concept which has been well explained mostly from political and sociological perspectives.[33] Within the legal perspectives, the concept which recognize the urgency to empowering and involving the community in a decision-making process that affects the quality of their lives and environment, has already existed under the concept of SLO which is embedded in the concept 'public participation in environmental decision-making'. Almost similar to SLO, this concept recognizes that public voices must be channeling and integrating with the decision-making process in order to address the environmental, social and economic issues of those affected by their outcome.[34]

The concept of public participation in environmental decision-making has been proliferated over the past few decades under the regimes of human rights and environmental law especially after the Aarhus Convention was signed in 1998. The Aarhus Convention 1998 is considered globally as a landmark environmental treaty and represents a significant step in the development of procedural environmental rights.[35] The Aarhus Convention 1998 also became a significant example of the legal consolidation of measures to enhance public participation concerning administrative decision-making, freedom of information and access to justice.[36] Moreover, according to the Aarhus Convention 1998, public has the right to participate in the three-level of strategic environmental decision-making, in project planning, policy-making, and legislative drafting and rule-making.

In the project level, probably the most dynamic type of public participation in contemporary environmental law practice occurs in Environmental Impact Assessment (EIA). Even though the EIA process differs from place to place, but it offers the potential as a deliberative tool to improve environmental decision-making through stakeholder and public opinion – and can manage potential social conflict at the same time.[37] In practice, there are several numbers of approaches and methods to channeling and integrating public aspirations, however, EIA is a formalized process that has had international and national consensus not only to embedded the

[31] *Ibid.*
[32] See Jason Prno and D. Scott Slocombe, "Exploring the origins of 'social license to operate' in the mining sector: perspectives from governance and sustainability theories" *Resource Policy*, 2012, Vol. 37, p. 346-357.
[33] Jędrzej Górski and Christine Trenorden, "Social License to Operate (SLO) in the Shale Sector: A Contextual Study of the European Union" *OGEL*, 2020, Vol. 1, p. 29.
[34] See Joel R. Carbonell and Juliann E. Allison, "Democracy and state environmental commitment to international environmental treaties" *Int Environ Agreements*, 2015, Vol. 15, p. 79-104.
[35] U.N. ECON. COMM'N OF EUR., *The Aarhus Convention: An Implementation Guide 2nd edition*, p.15-16.
[36] *Ibid.*
[37] *Op. Cit.* Heffron and McCauley, p 661.

public voices in the project decision but also for balance the protecting of environment preservation and pursuing the development.[38]

Since the desire of companies to integrate SLO in their business activities continues to grow and makes that EIA practitioners being invited to facilitate mining companies to monitor and evaluate their SLO,[39] it is crucial to examine the intersection between SLO and EIA. Therefore, as a part of an academic effort to understand SLO, this article attempts to examine the overlapping concept between SLO and EIA. For other practical reasons, as mentioned by Kuch, that "today reports also indicate that community members regularly assert that SLO may be withheld to describe the potential backlash on proponents whose negative impacts are not prevented or mitigated".[40] At the same time, governments around the world are beginning to use a once purely informal concept in formal instruments.[41]

In the area of theory, even though SLO and EIA can be approached from various different angles, but principally both concepts share similar objectives, to address community resistance and increase the success to the proposed project. From the SLO perspective, opposition from the community will not only hinder the development of the project, but also can cause substantial profit loss, and even destroy the company's reputation. Meanwhile, EIA is not only focusing to reduce community resistance but also trying to seek an effective mechanism to protect the environment and maintain its sustainability. If all efforts to integrating public voices in the decision-making and to mitigating the environmental damage in EIA processes have been calculated based on scientific measures, it is expected can reduce the community resistance.

Furthermore, both SLO and EIA believe that gain legitimacy, credibility, and trust from communities by mitigating the environmental, social, and economic impact is important, so the project can bring beneficial outcomes not only for the company but also for the local community and national development. Almost similar to SLO, the implementation of EIA is also supported by the theory on the community relation called 'a ladder of citizen participation' from Sherry R. Arnstein.[42] According to Arnstein, members of the public possess more power when they have a particular interest in matters directly affecting their lives and well-being, and gradually less power and influence as issues become more abstract and general.[43] Arnstein proposes a framework of eight rungs on a ladder in the three main categories: citizen power, tokenism and non-participation in order to measure degrees of citizen power.[44]

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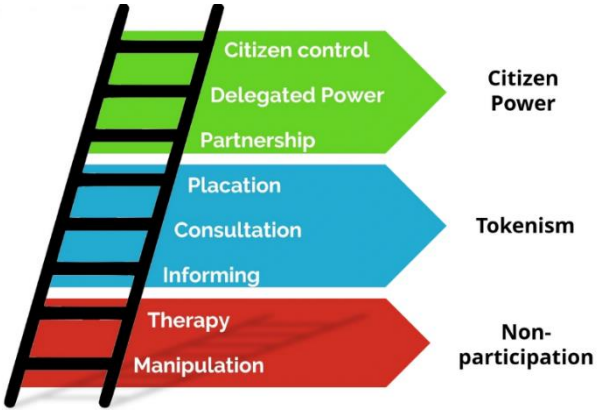
[38] *Ibid.*
[39] *Op. Cit.* Prno and Slocombe.
[40] Declan Kuch, Gary Ellem, Mark Bahnisch, and Stephen Webb, *Social License and Communications Report*, ACOLA ARC LASP Program Securing Australia's Future Project 2013.
[41] *Op. Cit.* Gunningham et al.
[42] Sherry R. Arnstein, "A Ladder of Citizen Participation" *JAPA*, 1969, p. 216-224.
[43] Ibid
[44] Ibid.

Figure 2
Sherry Arnstein's ladder of Citizen Participation[45]



To achieve the goals mentioned above, both SLO and EIA need a participatory approach in order to make engagement with the community and relevant stakeholders. According to Gunningham, SLO possesses several elements called 'procedural empowerment' which intersect with the legal notion as such right to access environmental information.[46] As Gunningham, observed that in the context of SLO: *First*, the legal license have a strong connection with the social license since the legal license often extends the reach and impact of the social license, either by directly empowering social licensors, or by giving them access to information, which they can then use to pressure company or project proponent, and; *Secondly,* laws requiring firm-wide disclosure of environmental information in order to empower the local communities.[47]

In addition, to create a good design of the procedural environment, Chilvers suggested that participation in SLO should contain seven effectiveness criteria.[48] To understand the intersection between the SLO and EIA, we can compare the criteria presented by Chilvers with EIA's guiding principles and core values for public participation.

[45] Source: https://curtiswitek.com/woodshed/f/a-ladder-of-citizen-participation?
[46] *Ibid.*
[47] *Ibid.*
[48] Jason Chilvers, "Deliberating Competence. Theoretical and Practitioner Perspectives on Effective Participatory Appraisal Practice" *Science, Technology, & Human Values*, 2008, No. 2, Vol. 36, p. 155-185.

Table 1

Comparison Between SLO and EIA

Effectiveness Criteria for SLO Participation[49]	Core values of EIA's public participation[50]
• be representative of all those interested and affected by a decision or action and remove unnecessary barriers to participation. • enable all interested stakeholders and impacted entities to enter the discourse and put forward their views in interactive deliberation that develops mutual understanding between participants. • provide sufficient resources (information, expertise, time) for effective participation. • be transparent to all those inside and outside of the process about objectives, boundaries, and how participation relates to decision making. • enhance social learning of all those involved, including participants, specialists, decision-makers, and wider institutions. • be conducted (managed and facilitated) in an independent and unbiased way; and • be cost-effective and timely.	• People should have a say in decisions about actions that affect their lives. • Public participation guarantee that local people voices will influence the decision. • The public participation process communicates the interests and meets the process needs of all participants. • The public participation process seeks out and facilitates the involvement of those potentially affected. • The public participation process involves participants in defining how they participate. • The public participation process communicates to participants how their input was, or was not, utilized. • The public participation guarantee that public should have access to environmental information which is substantially important to make the process more meaningful. • Involve the public in decisions about actions that affect their lives. • Promoting integrity and honesty and integrity during the process. • Promoting active and early public participation. • Embrace the local value or knowledge of the community. • Use various methods of effective communication. • The process is conducted within the formal institution. • Develop effective mechanisms and measurements to ensure public participation achieve the goals.

The participation approach designed in SLO and EIA draw similar principles. Both are embracing and recognizing access to information, transparency and accountability, fair deliberation, representativeness and inclusivity, education, and efficiency. From the comparison above, now we can understand why SLO gained initial appeal within the mining industry. The language of SLO is almost mirrored with the language of EIA but with several flexibilities.

However, even though in principles both concepts share similarities and reflect certain parallels, but in the practice, the two are different. The world 'License' in the SLO is not a License than can be given or obtained exactly like a legal License under the EIA regime. Indeed, in the SLO

[49] *Ibid.*

[50] James L. Creighton, "The Public Participation Handbook Making Better Decision Through Citizen Involvement", *Jossey-Bass*, 2005.

perspective, the developers might be inclined to meet various stakeholders' expectations going beyond regulatory requirements for several motives for example 1) a willingness to prevent conflict, or 2) a belief that downplaying such expectations would eventually lead to the adoption of stricter regulation.[51] However, it is a matter of risk management rather than regulation. Therefore, in this sense, SLO is contrasted to EIA because it cannot be granted by formal political, legal, or civil authorities as well as unwritten and intangible.

EIA is commonly mandated by law, designed to assist public officials to make decisions or issue a License, and take actions based on an understanding of environmental consequences.[52] The EIA thus represents traditional, one-directional, top-down science to policy advice. The final decision of public participation in the EIA process can take various forms, but basically, all of them take the form of a formal environmental license or agreement. In most cases, the agreement is some completed document, such as report findings, recommendations or agreements among parties. After the project proponent obtains the results of public participation from the EIA process, the next step is a decision or commitment to incorporate agreement or input into a decision or commitment. The agreement obtained as the final input of public participation can also sometimes change in law, regulation or policy.

Apart from the question that SLO is intangible, unwritten and cannot be formally granted, SLO would be beneficial to fill the gap in EIA processes, especially to enhancing the analysis result of the intangible factors in EIA, such as social identity, community wellbeing, company-community relations, representativeness, resilience, and community leadership. The SLO's advantages can be used to improve the shortcomings in EIA. As stated by Beierle and Cayford that

> "The EIA process mainly relies on techno-scientific tools for assessing objective and measurable risks. These tend to outmaneuver other knowledge traditions and the concerns raised by those who advocate for them, supporting the impression that decisions based on non-scientific knowledge production are biased".[53]

SLO can act to bridging and ensuring that the risk of socio-political challenges is considered, and since the company behaves according to its stakeholder's values, the conflict can be avoided.

In a practical example, one of the classic problems in EIA processes is the issue of representativeness. Public is anxious that there are no safeguards to guarantee that the opinion in EIA processes will be sought from a representative section of the community. In short, the non-representative input to decision-making can fail to provide opportunities for meaningful participation. SLO can play a strategic role to handle non-representative issues since SLO focus to understand the character of the community leadership, and even making an inventory of the relevant stakeholders related to the project. SLO can assure that all parties involved in the EIA process are influential and relevant stakeholders of the community. Embedded local values and

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[51] *Op. Cit*. Gunningham et al.

[52] Thomas C. Beierle and Jerry Cayford, *Democracy in Practice: Public Participation in Environmental Decisions*, RFF Press Book, Washington, 2002.

[53] Halvor Dannevig and Brigt Dale, "The Nussir case and the battle for legitimacy: Scientific assessments, defining power and political contestation" in Ingrid Bay-Larsen, Berit Skorstad, and Brigt Dale, *The Will to Drill Mining in Artic Communities*, Springer, 2018.

participation of the local community in the EIA process surely will produce a legitimate decision, less controversial, and can provide a solid basis for future operations of the mining projects.

Another interesting relation between SLO and EIA that can be examining is regarding the duration or timeline of the processes. Typically, EIA is a prerequisite document in order to get a legal license (environmental license) prior to starting any project. EIA is usually carried out before the project started and is considered complete if the proponent has carried out a number of activities and meets a number of requirements as mandated by law. It is possible that EIA can cause a time delay because before the project proponent obtains the EIA, the project cannot be started.

On the contrary, SLO seems not given one fixed point in time with a developer then either having a social License or not. Instead, it is comprising ongoing acceptance or approval from the stakeholders or local community who can affect the profitability of the company. For that reason, SLO is way more flexible since SLO can be seen as an institution where the 'rules' are build based on negotiation between the local community and company throughout the project lifecycle (such as energy or mining project lifecycle).[54] Clearly, this shows that SLO is seen as more of a continuum process rather than a single action or document, that very much relies on the relations between the relevant parties involved.

Regarding the time context, SLO potentially covers the weakness of EIA, especially when the controversy occurs after the EIA processes have been carried out and the result officially issued. In practice, environmental problems in a project may occur not only in the initial phase of project development but also during the running phase of the project. SLO can reduce the level of conflict and controversy when the community no longer has formal channels to convey their concerns or aspirations if the project turns out to be problematic in the future. SLO can assist the developer as a 'social buffer' so that the community around the project does not want frontally opposite while the developer can focus on solving the occurring environmental problem. However, it is important to note that extending the time duration may also place the community at increased risk of "consultation fatigue".[55]

SLO in Indonesia: Challenges and Opportunities

As a concept to maintain a relationship between the company and the local community, the implementation of SLO is relatively new in Indonesia. Within the Indonesian context, probably the best way to investigate how is the implementation of SLO could be initiated by examining the closest concept to SLO, Social Corporate Responsibility (CSR). CSR is 'near of kin' to SLO since both concepts – in theory and practice – share similarities and embrace the necessity for companies to integrate social and environmental concerns in their business operations and interactions with their stakeholders as well as to ensure that their activities create a positive impact. However, CSR has previously existed and is recognized under Indonesia's positive law.

[54] Op. Cit. Prno and Slocombe.
[55] See Can you legislate a social license to operate? Available at <https://theconversation.com/can-you-legislate-a-social-licence-to-operate-10948>

Factually, CSR and community development in Indonesia have been legally mandated by Law No. 40 Year 2007 concerning Limited Liability Companies (Law No. 40/2007). As provided by article 74, "companies doing business in the field of and/or in relation to natural resources must put into practice environmental and **social responsibility**". In addition, Law No. 40/2007 has also governed that companies are required to allocate certain budgets for environmental and social responsibility as a cost of the company performance with due attention to decency and fairness. Sanctions will be made to companies for violating that such obligations. Further provisions under this law are regulated by Government Regulation No. 47 Year 2012 on Limited Liability Companies Social and Environmental Responsibility.

The implementation of CSR in extractive industries is also governed on a sectoral basis. Within Indonesia's positive law, the notion of CSR is embedded in various regulations, such as:

1. Law No. 25 Year 2007 on Investment
   Investment law inserts an article that regulates CSR. Article 15 (b) states that "Every investor is obliged to: **carry out corporate social responsibility**." This law also provides a definition of CSR on its elucidation section. Under this law, CSR is an inherent responsibility for the investment company to always create harmonious, balanced, and in accordance with the environment, values, norms, and culture of the local community.
2. Law No. 22 Year 2001 on Oil and Gas
   The Oil and Gas Law does not explicitly regulate CSR. However, there is one article which implicitly alludes to CSR, in particular under the Article 11 paragraph (3) letter p, "Cooperation Contracts as referred to in paragraph (1) must contain at least the main provisions, namely: **development of the surrounding community and guarantee of the rights of indigenous peoples**."
3. Law No. 21 Year 2014 on Geothermal
   The Geothermal Law also has an article that regulates CSR. This law mentions the terms CSR and community development at the same time. Article 65 paragraph (2) letter b states that: "In implementing Geothermal management, the community has the right to: get benefits from Geothermal exploitation activities through **the company's obligation to fulfil corporate social responsibility and / or develop the surrounding community**."
4. Law No. 4 Year 2009 on Mineral and Coal Mining
   Law on mineral and coal mining does not mention CSR explicitly but use the term community development and empowerment programs. Article 108 paragraph (1) of this law states that "Holders of IUP (Mining Business Permit) and IUPK (Special Mining Business Permit) are **obliged to prepare community development and empowerment programs**." Article 1 point 28 of the law defines community empowerment as "an effort to improve the capacity of the community, both individually and collectively, so that their life level will be better."

Zooming to the extractive industry sector, we can investigate the existence of SLO in Indonesia's CSR, particularly through the Program Community Development and Empowerment

(Program Pengembangan dan Pemberdayaan Masyarakat or PPM) as mandated by Law No Year 2009 on Mineral and Coal Mining. The regulation regarding PPM in the mining sector specifically regulated by the Minister of Energy and Mineral Resources Regulation No. 41 Year 2016 concerning Community Development and Empowerment in Mineral and Coal Mining Business Activities (revoked by Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 25 Year 2018 concerning Mineral and Coal Mining Business Activities). Furthermore, this regulation specifically elaborates through the Minister of Energy and Mineral Resources Decree No. 1824 K/30/MEM/2018 concerning Guidelines for the Implementation of Community Development and Empowerment. This decree governed two important documents: the Blueprint Preparation Guidelines and the PPM Master Plan Preparation Guidelines.

The Minister of Energy and Mineral Resources Decree No. 1824 K/30/MEM/2018 governed that the PPM Master Plan must be in line with Blueprint that has been prepared by the Regional Government at the Provincial and District or City level. On condition when the regional government does not have the Blueprint, the PPM Master Plan should be harmonious with the long-term or mid-term development planning (RPJP/RPJM) and regional spatial planning (RTRW) at the regional level.

Moreover, the PPM Master Plan must also create based on the results of social mapping. Under the Minister of Energy and Mineral Resources Decree No. 1824 K/30/MEM/201, social mapping is mandatory in order to get an initial picture of the condition of the surrounding community before the mining project begins. At the very least, social mapping should provide a complete picture of health and education from the local community, socio-cultural and environmental conditions, infrastructure, conditions of economic and community institutions.

Mandated by the law, mining companies are required to design a number of programs that bring advantages to the local community through PPM program. The Minister of Energy and Mineral Resources Decree No. 1824 K/30/MEM/201 specified eight main programs that should be formulated by the company in the PPM Master Plan document. These programs encompass education, health, level income or employment, economic independence, socio-culture, environment, formation of community institutions, and infrastructure. The programs should be preparing and conducting from the operation phase of the mining until its closing phase.

To provide practical examples of how PPM which is embedded in the CSR program bring positive impacts on the relationship between the company and community, this article delivers an example of the activities from two mining companies in Indonesia that seriously carrying out PPM in their mining business activities. Both companies were chosen in this study since their PPM programs as a part of CSR performance were rewarded at the regional level (ASEAN).

1. Southeast Sulawesi Nickel Mining Business Unit

Southeast Sulawesi Nickel Mining Business Unit is a company that focuses on nickel production, from upstream to downstream activities, including exploration, mine planning, mine production, minerals processing, and marketing in the area of Southeast Sulawesi. Southeast

Sulawesi Nickel Mining Business Unit manages 6,232 hectares of mining area covered by four (4) Production Operation Mining Permits located in Pomalaa, Kolaka District of the Southeast Sulawesi Province of Indonesia. Southeast Sulawesi Nickel Mining Business Unit is a part of PT ANTAM (Persero) Tbk business unit, which is 65% owned by the Government of Indonesia and 35% publicly owned.[56]

In order to contribute to social and community development surrounding the mining area, Southeast Sulawesi Nickel Mining Business Unit has been implementing initiatives to promoting and supporting the creation of new local businesses, improving education and health services and supporting a socio-cultural program. The involvement of community members and stakeholder involvement is mandatory in every decision regarding the formulation of the community programs by the company. In the health sector, Southeast Sulawesi Nickel Mining Business Unit has been conducting various health programs, including the establishment of public health facilities by providing additional medical equipment for local health centers, and optimizing the quality of public health through the provision of clean water and build sanitation or toilets.[57]

Furthermore, Southeast Sulawesi Nickel Mining Business Unit has also concerned with establishing education projects for the local community, by providing scholarships for the university students and developing a Community Learning Centre to facilitate the learning process outside classrooms/schools. Specific assistance has also been provided to the Bajau community, indigenous minorities around its mining area who live in small boats with fishing as the main source of livelihood. This included the construction of classrooms for 315 Bajau children so they can get access to education in a better quality of learning environment.[58]

Southeast Sulawesi Nickel Mining Business Unit bring a positive impact on regional development in various sectors and has become a pioneer in the development of the Southeast Sulawesi region.[59] The surrounding community has greatly benefited from the CSR programs provided by the company since the programs answer their basic needs such as health and education which cannot be fulfilled completely by the local government.[60]

2. PT. Amman Mineral Nusa Tenggara

PT. Amman Mineral Nusa Tenggara operates the Batu Hijau Project, a single large-scale open-pit mine with porphyry copper-gold deposit, located in the Island of Sumbawa in the West Sumbawa Regency in Indonesia. The company's final product is a copper concentrate (comprises two-thirds of the value of the mine), which also contains payable gold and silver minerals. PT. Amman Mineral Nusa Tenggara, formerly PT Newmont Nusa Tenggara, is a company owned by

[56] ASEAN, *Sustainable Minerals Development: Best Practices in ASEAN* (ASEAN Secretariat 2017) 6-7.
[57] *Ibid.*
[58] *Ibid.*
[59] See CSR Antam Pioner Pembangunan Daerah, available on <https://sultra.antaranews.com/berita/296447/csr-antam-sultra-pioner-pembangunan-daerah>
[60] See 50 Tahun CSR Antam Membawa Dampak Positif, available on <https://sultrakini.com/berita/50-tahun-csr-antam-membawa-dampak-positif>

Indonesian stakeholders following its acquisition by PT Amman Mineral International in November 2016. [61]

According to the locals, the presence of the Batu Hijau mine project has brought very significant benefits to the local community. Direct benefits are including fiscal revenues for the locals, infrastructures development, and various capacity building and socio-cultural programs for the community. Indirect benefits are including community accessibility improvement, public services improvement, and the expansion of government administration.

PT. Amman Mineral Nusa Tenggara has been creating and implementing CSR programs to improve the quality of life and bring prosperity for the community surrounding the mining project through the following programs:[62]

1. Health: build the community health centers, child and maternal health care, and supply clean water;
2. Education: provide scholarships for all education levels, provide books and computers for schools and libraries, and building of new schools and renovation of existing schools; and
3. Livelihood: coaching for farmers, funds for micro and small-business initiatives (US$ 553,000 in 2016) for rice and corn intensification program, build irrigation dams, coaching for marketing and promoting: local handicraft, food, and drink products, promoting local tourism, traditional markets renovation, public road improvements, and supply of electric power and piped water into the Tongo village.

Within two years of its implementation, PT. Amman Mineral Nusa Tenggara has developed 15 types of business commodities ranging from agribusinesses such as chicken farming, bee cultivation, catfish, shrimp, and seaweed, and empowering Micro and Small Enterprises (MSEs) such as palm sugar, corn noodles, oil as well as revitalize the Jelenga Beach as a tourist destination. To meet the capital needs of small businesses, non-bank financial institutions have also been developed in the form of cooperative (economic enterprise).[63] The synergy between PT. Amman Mineral Nusa Tenggara and the community has not only brought this company to be awarded in the CSR forum at the national and global levels but further from the company get support from the local community and can continue to run.[64]

From the two practical examples above, trust and social license were given by the community to project developers as a result of the proper and robust design of the CSR program. The fact that Southeast Sulawesi Nickel Mining Business Unit and PT. Amman Mineral Nusa Tenggara are still operating without any interference from the community has become valid proves that these companies have successfully obtained a social license from the community.

From another point of view, the existence of SLO can also be an alternative way to strengthen government policies that have decided to simplify a number of licenses in order to

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[61] *Op. Cit.* ASEAN.
[62] *Ibid.*
[63] Amman Mineral Raih Dua Penghargaan di Ajang Global CSR Awards 2019 <https://www.dunia-energi.com/amman-mineral-raih-dua-penghargaan-di-ajang-global-csr-awards-2019/>
[64] *Ibid.*

boost investment. Under the current legal regime, the Government of Indonesia has decided to simplify many licenses through the implementation of Law No. 11 Year 2020 concerning job creation. As a result, although EIA is still recognized as a part of the environmental license, especially for high-risk projects, the changes in the law have made the scope of the community involved in EIA assessments became narrower. According to the previous regulation, the community involved in the EIA assessment are including the community affected by the activity/business; Environmentalists; and Communities who are affected by all forms of decisions in the EIA process. With the simplification of business licensing in accordance with Law No. 11/2021 and Government Regulation No. 5 of 2021 concerning the Implementation of Risk-Based Business Licensing, the public involved in the EIA assessment are only those who are directly affected. This change of regulation, on the one hand, has encouraged the investment to grow, but on the other hand, it can become a problem due to the lack of community participation in decision making before the project start. In this case, SLO can be an alternative method to address the local community involvement so that the opposition to the project can be reduced.

Even though at this present SLO is still unfamiliar and not yet commonly practiced in Indonesia's industrial sector, it is possible that soon SLO will become one of the important concepts in managing relations between companies and communities. SLO can be a useful tool to make the company shared responsibility alongside the government to develop strong and sustainable communities. It is also possible that shortly, most of the extractive industry in Indonesia will need SLO before they are commencing a new start-up project. In addition, it is potentially very shortly that the role of SLO is also linked to EIA through regulation.

CONCLUSION

Even though SLO is a relatively new concept, SLO has been recognized as a concept to obtain legitimation from the stakeholders and local community in a development project. The involvement of key persons through SLO has been assisting the developer to realize the project base on mutual relationships between the company and community. Within the legal perspective, a similar concept has previously existed through 'public participation in environmental decision-making', primarily through EIA on a project scale. However, despite the comprehensive of its application, EIA has been criticized as a manifestation of a linear science to policy model. SLO can play a strategic role to handle shortcomings in EIA since SLO focus to community base of knowledge in designing policy model. This article investigates the similarities as well as the differences between SLO and EIA. Apart from the tension between SLO and EIA, both concepts can work together as complementarities to cope with the shortcomings of both concepts.

Zooming to the Indonesian context, SLO is a relatively new concept. It was very difficult to find a practice or academic writing on SLO. However, as an attempt to see how the impact of social license on a project, this article tries to look at the pattern of relationships between industry and community through the concept of PPM and CSR. From the examples presented, it can be seen that social licenses are obtained from the community through activities that have a positive impact

on the communities around the project. By getting community members convinced through several CSR programs, the developer has done a significant job in securing an SLO from important local stakeholders and ensure that the project can be running successfully.

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