

An Analysis of the Legal Protection of Mineral and Coal Mining Activities in Indonesia which Impacts the Climate Around Mining Areas

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Abstract

The right to life and the right to welfare are two human rights that are often violated because of problems that hinder their protection and settlement in mining areas. Disputes arise when mining companies operate in an area, leading to social discord. How are mining permits issued in Indonesia? is the question posed at the heart of this thesis. and How does the law protect local residents from harm in mining areas? Philosophical strategies and enactment of moral laws are used in this research. Permits to operate mining companies in Indonesian territory are granted through a Mining Concession Work Agreement (PKP2B). Mining Business Permits (IUP), People's Business Permits (IUR), and Special Mining Business Permits (IUPK) are the three types of mining permits available in Indonesia. So that local communities and mining companies can work together and supervise each other, preemptive legal protection in the form of granting rights to local communities to manage and employ minerals and coal as well as the obligation to protect the ecosystem. Mining companies must be aware of their rights over natural resources, including dues, land payments, and reimbursement for the direct impacts of mining, even though an oppressive form of legal protection is that mining must be carried out on customary lands of indigenous peoples.

Keywords: Protection Law, Mineral and Coal Mining and society.



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INTRODUCTION

Ecosystem degradation caused by human exploration of the oceans, continents and atmosphere is a major issue on a worldwide scale. Ecosystems have deteriorated due to the wasteful exploitation of fossil fuels and the desire to gain convenience at the expense of biodiversity (Abdurahman, 2002). Natural ingredients in Indonesia are very abundant. The forest is one of the most extensive in the world, and its natural wealth and stunning landscapes have a huge impact on human life (Fauzi, 2010).

Due to its mineral and lignite wealth, Indonesia's mining industry provides significant opportunities for the country's development. The mining industry can sell its products in local and international markets. Based on Article 33 paragraph 1 of the 1945 Constitution, the government has the authority to regulate industries that are important for the welfare of the nation and affect the lives of many people. In accordance with paragraph 2 of the 1945 Constitution, the state regulates all extraction and use of natural resources for the benefit of national unity and the interests of the people, especially shared wealth. This article will form the basis of constitutional provisions relating to the country's economic and social welfare.

Coal extraction is an important part of the country's economy, and as such, its government is tasked with maximizing the welfare of the people it serves in accordance with the law. Government control and supervision of the management and utilization of mining is carried out through the issuance of mining business permits (IUP) during the period of regional sovereignty, as stipulated in the PEMDA Law to advance the economy. Therefore, the state, as the highest body, issues Mining Business Permits (IUP) to business entities, groups, and

communities so that they can participate in resource extraction and administration and coal mining. For example, the number of IUPs that cause the conversion of forest land into mining land, thus destroying forest ecosystems and the post-mining environment, even though the magnitude of the contents of the application for Mining Business Permits, and the Regional Government itself in the exploitation and management of mining must be in direct proportion to community welfare (Suderajat, 2013).

Non-CnC IUPs are problematic IUPs that are not in accordance with laws and regulations, such as not meeting administrative requirements, technical requirements, financial requirements, or environmental requirements, and based on IUP arrangements carried out by the Ministry of Energy and Mineral Resources, totaling 4,532 IUPs or 42.14% of the total existing IUPs are non-CnC IUPs. As a result, efforts to maximize public good through resource extraction and coal are hampered both in terms of administration and utilization.

According to previous research (Lita & Nasution, 2013), it is the duty of the government, especially local governments, to oversee mining management on indigenous peoples' lands, ensure that mining companies comply with established regulations and protect local communities. Through research conducted by (Apriliani, 2017), it was found that sand mining activities in Cimareme Village had caused environmental damage; the community gets protection from the company in the form of compensation; the impacts caused by mining companies are air pollution, noise due to workers' activities, and damage to the main road of Cimareme Village; and the settlement of this dispute stalled because the government did not intervene in mediating the conflict.

Sand mining is carried out in violation of the law, including Garut Regional Regulation No. 15 concerning Mining and Law no. 32 and 4 of 2009. Communities are forced to accept a contaminated environment because the government is too afraid to act decisively in regulating mining operations and conducting supervision. Based on the foregoing, this study examines mining licensing regulations in Indonesia and the legal protection afforded to communities living around mines.

RESEARCH METHODS

The standard orientation of the study. This type of literature research, which is also known as normative legal research, is carried out by examining documents such as laws and regulations, court decisions, legal theories, and even the views of scholars. Practical legal analysis of the application of laws to combat mining-related pollution. Both legislative and philosophical strategies are used. To theoretically allow new ideas and then develop them, the method must first reconcile pre-existing laws and views, and then relate them back to other rules. This research relies on the following legal sources.

1. Basic Legal Sources. The main sources of law used in this analysis are: UURI, Mining, Mineral and Coal and Related Activities Law (UU No. Government Procedure Law (UU No. 30 of 2014).
2. Additional Resources in Law. Library materials, such as books, articles from experts, magazines and other scientific works, as well as secondary legal materials that provide background information, are examples of secondary legal materials.

RESEARCH RESULTS AND DISCUSSION

On the one hand, from an economic and development perspective, mineral and coal mining activities make a major contribution to the State, on the other hand, negative impacts as a consequence of the benefits received such as harming the nature of sustainable and environment-based national development as outlined in Pancasila and the 1945 Constitution

as the philosophy of the nation (Good Sustainable Development). The behavior of the mining business which tends to be transcendent places mineral and coal mining activities in an existence that is at risk of damaging the environment. The Minerba Law is indeed considered to be more loaded with resource used oriented law or focusing on aspects of resource utilization and the environment so that it lacks a pro-ecological legal content. The presence of the Minerba Law provides room for movement in the context of exploiting mineral wealth, although it regulates important aspects in the stages of mining activities, but very little mentions the element of environmental protection.

From the point of view of the principle of state responsibility in relation to the material and implementation of Law no. 4/2009 concerning Mineral and Coal Mining, in environmental management, the government has the function of making regulations, enforcing environmental laws, and carrying out real management actions. In a strong rule of law system, law normatively has autonomous power and as a mirror and institution that has a different concept from various norms that determine the interests of society in the economic and environmental dimensions.

The government is considered as the party most responsible for wise management of natural resources and the implementation of effective sustainable development, where the government has the authority to grant permits and control over development activities or businesses that have the potential to cause damage to life or degradation of natural resources in their utilization. Then Law no. 4 of 2009 concerning Mineral and Coal Mining places the management of coal minerals by belittling environmental aspects or giving the impression that they only prioritize economic aspects, even though the principles of sustainability and environmental insight are principles that deliberately integrate economic, environmental and socio-cultural dimensions in the overall management of mining minerals and coal to realize present and future prosperity.

Environmental Relations with Mining Activities

The purpose of preserving and managing the environment, including forest management, belongs to everyone on earth. However, this goal will not be achieved without the implementation of accountability, good administration, and community involvement in it. The conversion of forest functions must be carried out carefully because, as stated in Article 19 paragraph (1) of the Forestry Law, "changes in the designation and function of forest areas are determined by the government based on the results of an integrated study." Given the magnitude, extent, and strategic changes in this forest area, these changes must be determined by the government and approved by the People's Representative Council (DPR). Changes in natural conditions, such as climate change, ecological disturbances, and water system disturbances, as well as social impacts on society have significant implications for the livelihoods of present and future generations (Nashriany, 2020).

The current and future prosperity and standard of living of society depend heavily on the effective management of the environment, including natural resources. To ensure ecologically proper growth, environmental stewardship is based on the concept of maintaining functional harmony and balance in the natural world. Ecosystems are an integral part of human existence. Nature is very important for human survival. Human survival depends on various resources provided by nature (Efendi, 2014). Environmental management requires an integrated approach to the conservation of natural resources and ecological processes. Environmental management is an organized and coordinated effort to protect ecosystems from waste and other forms of degradation. The expansion of the mining industry is one sign of the ongoing urbanization process, but the mining industry itself is responsible for significant tree loss in many cases (Nashriany, 2020).

Trees are an enduring natural resource, but they can be destroyed through indiscriminate logging, fires, and other forms of land clearing for mining. In addition, there is the issue of protection forests being used for mining operations, which is illegal under the current forestry law and contravenes performance and quality standards by converting protection forests into production forests for financial gain. Damage to forest areas is caused by various things, including the illegal reclassification of protected forests used for mining. However, open pit mining is not allowed and mining in general is not prohibited.

In open pit mining, the topsoil is removed from the surrounding ore below. Waste from the mining area is excavated and transported before the actual extraction can begin. Mine pits are the holes that remain after all the mined products have been cleaned, or more precisely, the mining operations that allowed the formation of the mined pits. In reality, open pit mining is widely practiced, with adverse impacts on the surrounding environment, including the destruction of forest areas due to the felling of trees to clear land for mining, as well as flooding, landslides, and erosion. Mining land disputes, where the interests of the mining business are pitted against the interests of the general public, are a clear example of the failure of environmental and natural resource management. In fact, many regions are now the main suppliers of mining rights as well as people's mining permits. The mining industry is used for fiscal purposes.

Mining transforms landscapes and can lead to violations if permits are issued without meeting environmental, technical, regulatory, abuse of authority, and financial requirements. Conflicts with regional spatial plans and forest areas can also arise when these permits overlap. The role of the state in handling natural resources includes policy making, management, regulation, management, and supervision (Nashriany, 2020). These roles are clarified in the consideration of the Constitutional Court as follows:

1. The management function (*bestuursdaad*) by the state is carried out by the government with the authority to issue and revoke licensing (*vergunning*), license (*licentie*) and concession (*concessie*) facilities.
2. The regulatory function by the state (*regelandaad*) is carried out through legislative authority by the DPR together with the government, and regulation by the government (executive).
3. The management function (*beheersdaad*) is carried out through a share ownership mechanism or through direct involvement in the management of State-Owned Enterprises or State-Owned Legal Entities as institutional instruments used by the state government in utilizing its control over these sources of wealth to be used for the greatest extent possible people's prosperity.

Licensing Agreement in Indonesia

These regulations have protected all parties so that there are no disputes between local residents and local residents or between local residents and the government; this includes the mining industry, which now has to operate in every possible area with abundant natural resources. Certain parties seek permits as part of their efforts to implement projects for commercial or national economic gain. The permit itself is a document, such as a waiver or restriction waiver, that turns something that should be undesirable into something that is desirable. It is difficult to grant permits to everyone, so permits can be refused if the application does not meet the requirements or there are restrictions on the requirements set by the government (Hayati, 2015).

Licensing is one of the methods used by the state to exercise its regulatory authority over private sector actions for the public interest (Sutedi, 2011). For the purpose of administering a viable public interest project, usually managed by a government, exceptions to certain acts in

registration, advice, and accreditation serve as the primary standard known as licensing. The lack of activities that are not in accordance with their designation in the area is also anticipated to have a negative impact on the local population. There are several supervisory functions that need to be considered to ensure that permits and implementation in the field when the project is carried out are in accordance with the regulations and permits themselves. The function of this organization is also to prevent future conflicts by overseeing the implementation of activities in the form of any initiatives directly related to society and natural resources in terms of social welfare.

The purpose of this measure is to ensure that the special activities licensing procedure is always under strict management. Apart from functioning as a functional measure in preventing other specific activities beyond that, the purpose of this regulation lies in activities that are directly related to natural resources in certain areas, with the community always prioritizing the results of these natural resources. This is achieved through a systematic approach to management which ensures the approval of each project subject to strict constraints.

Of course there are permits that must be fulfilled and maintained systematically, in addition to general investigation, exploration and feasibility study activities where this is an IUP-Exploration which is intended as a special activity granted by the Minister for regional business actors in the context of reaping natural resources what's inside. As a result of the nature of the IUP-Operation, special supervision is needed on the permits that have been agreed upon, and there is always control from both the party carrying out the activity and the surrounding community after ongoing activities or projects that involve regional natural resources. This includes construction activities, mining processes/projects, processing and management, transportation, and sales. Article 36 of Minerba Law No.4 of 2009 details the designation of IUP in its various stages.

Legal Protection for Communities in Mining Areas

Communities in mining areas need legal protection because everyone has inherent rights that must be protected from internal and external threats, including those posed by the Indonesian government. In particular, one that is important is the protection of the human rights of citizens and serves as a guideline for all kinds of activities. Central to this subject is the idea that the purpose of law is to protect the rights of all members of society by avoiding disputes caused by direct or indirect harm to those rights (Raharjo, 2000).

Humans and the things that satisfy their needs are "social topics" that law seeks to protect. As human needs and the level of competition increase rapidly from year to year, existing standards are constantly evolving to keep up. All human actions, including those involving the main focus of this discussion, namely natural resources, require stricter regulatory penalties. In general, there are two types of legal protection available to citizens:

1. Protection through preventive laws and regulations. Taken literally, this means that the law, in protecting an act that will one day be discussed, does so before the conflict actually arises and creates detrimental effects such as flagrant violations or overstepping boundaries beyond human rights.
2. Security through Coercive Legislation. According to Setiono's (2004) case study on rule of law, when a conflict that goes beyond the limits of human standards has been produced by humans or the parties involved, then the law in its defense becomes something oppressive (Setiono, 2004).

Therefore, law as a rule is very strong in producing reciprocal effects, such as fines, imprisonment, punishment, and other consequences, between the subject and the target of the law in order to process conflicts and ensure that they do not recur in every field of human

activity. Given what has been said so far, any private entity planning to deal with natural resources within a country must first obtain permission from the state and then undertake studies and authorization from the local government to do so. Because all natural resources have an impact on the surrounding community, people in the country have the right to wealth as a consequence of these resources. The existing rules cover both interpretations, particularly in Article 33 of the 1945 Constitution. (3).

Mineral and coal extraction are common examples of activities in Indonesia that are closely related to the use of natural resources. A specific entity, usually a large business partner who has been vetted by the government and given the necessary permits to carry out the procedure, is responsible for doing so. Commodity harvesting is not the same as handling and managing natural resources; rather, the latter requires regulation to preserve state assets, which are sometimes even referred to as world assets, for the benefit of all local people. In a just world, local communities, especially indigenous peoples, will benefit from any mineral and/or coal extraction project activities in areas where natural resource purification takes place.

The Minerba Law explicitly regulates ore and/or coal mining systems, and there are principles and objectives that need to be emphasized in its management. To understand ore and coal extraction, consider the following:

1. Use; fair distribution; balance; long live
2. Respect national laws and the best interests of every citizen at all times
3. Involvement, and ideally having a level of intelligence or an environmental perspective, so that no one carelessly cultivates natural resources.
4. Bearing in mind that natural resources are natural resources that are mostly non-renewable, handling them requires careful consideration from all sectors of society, including the government, and strict regulations. This demands transparency and responsibility. Its utilization is for the good of the country and the nation as a whole, not just for the benefit of just one person.

Indigenous peoples on the island of Borneo are highly vulnerable to the negative impacts of mineral and coal extraction operations, which threaten their way of life and wealth. There has not been sufficient emphasis on processing or administration that directly affects indigenous peoples, despite the fact that regulations have been issued that supposedly govern these actions (eg, the Agrarian Law, Forestry Law No. 41 of 1999, function of the Natural Resources Law). The government must take firm action to re-monitor these activities, whereby communities in and around Kalimantan must be protected, their natural resources developed, and economic benefits shared fairly.

CONCLUSION

Permits are required in the mining industry for any future or past mining operations involving natural resources or involving more than one party, such as mineral or coal mining. In other words, to avoid friction between pre-existing activities and project impacts, everyone in society, including the government, must adapt to mining operations. It is almost certain that fraud will occur from various parties to enrich themselves, and this is especially the case if mineral and coal mining activities are carried out illegally, without a mining company permit. Permits are a form of coercion by the central or state government against regional governments, with one example being the Minister of Home Affairs Regulation No. 20 of 2008.

There are several different stages in mineral and coal mining activities/projects in the implementation of environmental management at the location where the project will be implemented: The IUP stage in the form of Exploration is intended as an observation of

certainty and public and/or feasibility studies which is given a time period of 8 years; the second stage is the IUP in the form of a production operation which is intended because the implementation has been carried out and there is a need for control; and the final stage is the IUP in the form of closure, in which the project must be closed. The presence of mineral and coal extraction activities, which fully benefit many parties, including the nation and its people, is a benchmark as a country that has abundant natural wealth potential. However, there are always parties whose lives are adversely affected by mineral and coal mining projects because things such as project debris make it difficult for workers to make a living. Communities do not have much influence after a mining project is completed with government approval because the country's economy depends on the success of the mining business. There is an urgent need to strengthen the rule of law to protect those harmed by the destructive nature of coal and mineral extraction operations, which will ultimately benefit everyone involved.

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