

RESPONSIBILITY OF MINING COMPANIES FOR ENVIRONMENTAL RECOVERY IN INDONESIA

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ABSTRACT

Mining business is one of the business fields that became the government's main priority before and after the issuance of the Investment Law, both for foreign and domestic investors. These corporate activities contribute to the country's economic growth, but on the other hand, it is not uncommon for these corporations to carry out their corporate activities in violation of applicable legal provisions. Problems occur when mining companies leave environmental damage due to mining operations. In this case, there are no regulations governing accountability and sustainable development for ecological damage caused by mining companies whose mining business permits are revoked during production operations. Several factors cause companies not to carry out environmental restoration due to several Indonesian government systems. The legal method used is a statutory approach. The legal materials used are primary, secondary, and tertiary legal materials. Primary legal materials are regulatory documents that are binding and determined by the competent authorities. Secondary legal materials are all relevant readings such as books, seminars, legal journals, magazines, newspapers, scientific papers, and several sources from the internet related to the material being studied. Responsibility refers to the mandatory and detrimental legal consequences borne by the people for violating acts. Legal development means the renewal of the legal order. Stability efforts towards balance, welfare, and harmony will significantly depend on humans. This happens because humans are part of the very dominant environment in influencing the environment for the better, where humans and the environment will mutually influence each other. It includes three components: Components of legal substance, Components of legal institutions, Components of legal culture have the attitudes and behaviour of officials and community members concerning other elements in implementing legal community life. This study shows that legal reforms regarding corporations and Law of the Republic of Indonesia Number 3 of 2020 concerning Mineral and Coal Mining need to be carried out to realize environmental recovery in sustainable development. These overlapping regulations need to be changed so that each mining company can fulfill its obligations in environmental restoration.

Keywords: Corporate Responsibility, Mining, Sustainable Development.

INTRODUCTION

Indonesia is a developing country that has abundant natural resources. Therefore, many companies are interested in setting up a business. One of the businesses that utilize natural

resources is the mining business. Mining accounts for 5% of Indonesia's total Gross Domestic Product and a much larger share of the regional economy in several provinces (Devi & Prayogo, 2013). The mining business is one of the business areas that became the government's main priority before and after issuing the Investment Law, both for foreign and domestic investors. The government tries to direct and manage natural resources included in the mining business. The mining business includes petroleum, natural gas, coal, metals, tin, nickel, bauxite, iron sands, silver, and copper concentrates (Friederich & van Leeuwen, 2017; Suroto & Gunarto, 2018). The Indonesian Central Statistics Agency in 2020 showed the production of copper concentrate 2,273,456 tons, gold 65,890 kg, coal 565,640,928 tons, tin 65,127 tons, nickel ore 48,040,003 tons. Meanwhile, the number of directories of non-oil and gas mining companies in 2019 in Indonesia was 124 companies. The number of workers in the mining sector is 100,413 Indonesian citizens and 2,166 foreign workers (Statistik, 2021).

Several parties have debated the number of mining activities in Indonesia. These corporate activities contribute to the country's economic growth. However, some mining corporations violate the provisions of the applicable environmental law (Spiegel, 2012). The environment is the unity of space with all objects, forces, conditions, and living things, including humans and their behaviour, which affect nature itself, the continuity of life, and the welfare of humans and other living creatures (Hidayat et al., 2019).

The declining quality of the environment has threatened the survival of human life and other living creatures, so it is necessary to carry out severe and consistent environmental protection and management by all stakeholders (Sutton, 2004). The right to a good and healthy environment as regulated in Article 28 H of the Constitution the Republic of Indonesia (UUD 1945) carries legal implications. The state always provides environmental quality by the basic norms of the 1945 Constitution. Article 33 of the 1945 Constitution has mandated that "*Earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.*" The understanding of the greatest prosperity of the people shows that the people must accept the use of natural resources in Indonesia.

Law of the Republic of Indonesia, Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining Article 161B. (1) Anyone whose mining business license is revoked or expired and does not carry out: a. Reclamation and Post-mining, b. placement of the Reclamation guarantee fund and Post-mining guarantee fund, shall be punished with a maximum imprisonment of 5 years and a maximum fine of Rp. 100,000,000,000.00 (one hundred billion rupiah). (2) In addition to the criminal sanctions as referred to in paragraph (1), ex-mining business license holders may be subject to additional penalties in the form of payment of funds in the context of implementing their Reclamation and Post-mining obligations.

Problems occur when mining companies leave environmental damage due to mining operations. In this case, no regulation regulates accountability and sustainable development for ecological damage caused by mining companies whose mining business permits are revoked during production operations. Several factors cause companies to not carry out environmental restoration due to several Indonesian government systems. The current condition in Indonesia shows that local governments as sub-national divisions are still powerless based on the lack of laws that define their authority. Coordination between local and central government is not good enough, so it needs improvement. Overlapping authorizations in the central government are not delegated between several ministries, especially for environmental issues. As a result, some laws

overlap and even in contradictory ways. This is also exacerbated by the lack of communication between institutions because of the complicated bureaucracy (Dwiki, 2018).

In addition, problems also arise in Article 99 Paragraph (2) of Law no. 3 of 2020 provides concessions to companies which state that reclamation and post-mining activities must be carried out by the needs or designations of post-mining land. Then in Paragraph (4) of the Law above, business actors holding mining business licenses are obliged to hand over land that has been carried out for Reclamation and Post-mining to the appropriate party based on the Minister's regulation as also regulated by the provisions legislation (Umar & Hijriani, 2021).

In the Law, Paragraph (3) becomes *“In the implementation of Reclamation carried out throughout the Mining Business stage, the permit holder is obliged to (a) fulfil the balance between land to be cleared and land that has been reclaimed, and (b) managing the final ex-mining pit with the widest limit by the provisions of the legislation.”*

Article 99 means that companies are not obliged to cover all post-mining holes. The company is obliged to close the hole as wide as it has been regulated. However, there has been no derivative regulation of the new Mineral and Coal Law until now. The derivative regulation itself has the potential to contain a provision that mining pits do not have to be completely closed because Article 99 of the revised Mineral and Coal Law does not explicitly state that all mining pits must be reclaimed. There is only a phrase managing the final ex-mining pit with the most comprehensive limit under the provisions of the legislation. The 2030 Agenda for sustainable development will have an impact in the form of reforestation. Indeed this will significantly affect the situation on Earth. The depletion of my natural resources is increasing every day because humans only care about the economy of each individual. Currently, the ability to neutralize polluted materials is starting to decrease, and forest damage is getting worse every day. There is massive exploitation of mineral resources where the ecosystem in the sea is experiencing a massive decline due to environmental damage (Nisa & Suharno, 2020).

Sustainable development is the only option for Indonesia. There is a balance between prosperity and a sound and sustainable environment, as a country blessed with high natural conditions, rich in biodiversity, and abundant natural resources. Indonesia is one country that has adopted the Sustainable Development Goals into national development. The Indonesian government has done various ways in grounding (localizing) the global development agenda. The Sustainable Development Goals are a global development agenda agreed upon by countries globally for the benefit of humanity and planet earth until 2030. The Sustainable Development Goals include 17 Goals such as no poverty, no hunger, healthy and prosperous life, quality education, gender equality, water clean and proper sanitation, clean and affordable energy, decent work and economic growth, industry, innovation and infrastructure, reducing inequality, sustainable cities and settlements, responsible consumption and production, tackling climate change, ocean ecosystems, terrestrial ecosystems, peace, justice and strong institutions, partnerships to achieve goals (Halimatussadiyah, 2020; Kurniawan & Managi, 2018; Mulyana & Djajadiningrat, 2013).

The concept of the Indonesian legal order that should be developed is legal development based on the substantial values of Pancasila and the 1945 Constitution, including the values contained in a legal system by prioritizing the principle of populist or kinship. This principle emphasizes the rule of morals rather than the rule of law by the national legal order based on the values contained in the substance of Pancasila and the 1945 Constitution. The essential tool for

controlling environmental problems in a country is the right policies that are implemented and controlled correctly. Many mining areas in Indonesia have reached a late stage, with some having a post-closure stage, which requires strong regulations in the environmental sector to ensure reclamation and rehabilitation are carried out correctly.

METHODOLOGY

Research on Mining Corporate Responsibility for Revocation of Mining Business License in Environment Recovery in Indonesia uses normative legal methods. The approach used is statutory. A statutory approach is an approach using legislation and regulations. The legal materials used are primary, secondary, and tertiary legal materials. Primary legal materials are regulatory documents that are binding and determined by the competent authorities. Secondary legal materials are all relevant readings such as books, seminars, legal journals, magazines, newspapers, scientific papers, and several sources from the internet related to the material being studied. Meanwhile, tertiary legal materials contain concepts and information supporting primary legal materials and secondary legal materials, such as dictionaries and encyclopaedias.

RESULT AND DISCUSSION

Corporate Responsibility in Indonesia

The term corporation is an economic definition contained in Article 6 of the Commercial Code. However, if it is examined in a very comprehensive book of the Commercial Law, it does not make an official juridical formulation regarding the meaning of corporation. According to Hackston and Milner, Corporate social responsibility, often referred to as corporate social reporting, social accounting, social disclosure or corporate social responsibility, is the process of communicating the social and environmental impacts of an organization's economic activities on specific interest groups. And the community as a whole. According to Untung, the main reason social disclosure is carried out in corporate responsibility is so that investors can make the right decisions in making investment decisions.

Corporations in Criminal Law refer to the Criminal Code currently in force in Indonesia, so the meaning of corporation will not be found. The Indonesian Criminal Code only recognizes humans (*natuurlijk person*) as criminal law subjects. Accepting the corporation as a subject of criminal law brings a fundamental change in the view of criminal law, which initially only recognized humans as subjects of criminal law. Corporations are considered to have faults. It is sourced from the attribution of actions to the management or directors of the corporation in carrying out their functional duties. In addition, in its development, several theories of criminal responsibility have emerged that override the element of error. So that in this theory, the principle of "*no crime without error*" does not apply. These theories generally developed from Anglo-Saxon countries. Therefore, looking at criminal responsibility by linking it to the maxim. However, it is necessary to know to what extent this doctrine can deviate from the fundamental principles of this criminal law. The following are theories created to accommodate the possibility of imposing criminal responsibility and punishment on corporations. The discussion will only be

limited to four theories: identification theory, strict liability, vicarious liability, and functional *daderschap*.

The three theories mentioned are theories originating from Anglo-Saxon countries. Therefore, the theory sees criminal responsibility by linking it to the elements of *actus reus* and *mens rea*. While the last theory mentioned is a theory that comes from Continental European countries, especially in this paper, developed in the Netherlands. Some of the theories used are doctrines that already apply to other fields of law, such as vicarious liability and strict liability, which are doctrines adopted from the realm of civil law (Atalay, 2020). These theories are then used in imposing criminal responsibility and punishment on corporations.

Implications of Mining Activities in Indonesia

Indonesian mining provides a valuable product selling value with the support of many workers and supporting sectors. Indonesia is rich in mining areas which include: sand mines in the Bangka Belitung archipelago, oil, and natural gas mines, coal mines on the island of Kalimantan, gold mines in Papua, stone mines, asphalt mines, and other mineral mines. The emergence of mining industries in Indonesia has had positive and negative impacts on society and the country. The positive impact of the mining industry is to create jobs. Meanwhile, mining production can meet domestic and international market demand so that mining exports can increase the country's income and economic growth. The mining industry can also attract foreign investors to invest in Indonesia. On the other hand, the mining industry also has negative impacts, such as environmental damage. Areas that become mining areas will be eroded. In addition, waste from mining processing can also pollute the environment (Xu et al., 2021). Mining industry activities that use fossil fuels produce CO₂, which can cause greenhouse effects and global warming. As a result of this expansion, the expansion of the mine that narrows the community's business area can also cause flooding because the forest in the upstream area, which should be a water catchment area, has been completely cleared.

Restrictions on the Application of Legal Sanctions for Revocation of Mining Permits by Corporations

The obligation to comply with regulations in the mining sector is a legal consequence that every mining company must accept. Every company that has obtained a mining permit must plan environmental impacts related to reclamation and post-mining. However, the facts that occur in the field, many mining companies do not carry out post-mining reclamation or do reclamation improperly. Referring to Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, Provisions of Government Regulation Number 78 of 2010, and Regulation of the Minister of Energy and Mineral Resources Number 7 of 2014, there are several sanctions listed in it such as sanctions administrative, civil and criminal sanctions. However, applying these sanctions creates ambiguity, differences in views that give rise to conflicts regarding the responsibility for the implementation of reclamation and post-mining by mining companies. The provisions of the legal norms of criminal sanctions are considered the last means in enforcing the legal obligations of mining companies in carrying out reclamation and post-mining.

The Application of Civil Law Sanctions

Most people in Indonesia less favour the civil law process. Whereas according to the law, civil law enforcement is one of the instruments of the law enforcement process that regulates particular matters relating to civil disputes formally, they must go through civil court and use arbitration. The discussion of civil disputes in the mining sector is usually only related to civil disputes between community members and mining business actors.

Civil law in mining disputes is usually related to the settlement of the environment due to environmental damage carried out by mining business actors. The role of civil law, in this case, is as a request for compensation by community members who experience environmental pollution and damage to polluters, in this case.

The Application of Administrative Law Sanctions

The essential things in efforts to improve mineral and coal mining governance in Indonesia is how mining license holders comply with reclamation and post-mining activities. Law Number 3 of 2020 regulates by requiring mining business license holders to carry out reclamation and post-mining activities. In Article 99 paragraph (1), in conjunction with Article 39 of Law Number 3 of 2020, which regulates the reclamation and post-mining activities, it is obligatory to pocket. It fulfils the requirements before applying for a mining business permit. However, violations of the obligation to carry out reclamation and post-mining activities can only be followed by administrative sanctions in the form of written warnings, termination of activities, or revocation of permits. However, the imposition of administrative sanctions did not run optimally because mining activities had been completed, so it did not impact the compliance efforts of mining companies (Smith, 2015).

To improve compliance with the implementation of reclamation and post-mining activities, as regulated in Article 100 of Law Number 3 of 2020, it has been stipulated that permit holders are required to be able to provide reclamation and post-mining guarantee funds. The reclamation and post-mining guarantee funds should also be included in the permit to be issued. Then, in the setting of administrative sanctions as mentioned in

Law No. 3 of 2020 concerning the giver of sanctions and types of sanctions. The change in the imposition of sanctions takes the authority from the regional government to the central government, so as a consequence, the authority to impose sanctions can only be granted by the Minister. So that there will be no second-line enforcement if the local government does not impose sanctions as regulated in Article 151 of Law Number 3 of 2020. With the withdrawal of the authority to give these sanctions, it is difficult for disadvantaged citizens to access justice because to make and submit Reporting or complaints of community violations become distant, convoluted, which initially can be passed to the local government in their area to the Minister in the Central Government so that the community becomes limited. It is rather challenging to report or complain about violations in their territory.

Furthermore, in Article 151 Paragraph 2 of the Law on Mineral and Coal Mining, additional administrative sanctions for fines have not previously been regulated in Law no. 4 of 2009. It is just that the amount of the administrative fine has not been clearly stated in the Amendment to Law Number 3 of 2020; the administrative fine will be further regulated in

government regulation. Law enforcement is concerned with repressive law enforcement and preventive law enforcement, which is the prevention of law violations. Preventive actions include providing advice, information, education, and applying both administrative and criminal sanctions, which are part of the law enforcement process.

Referring to Law Number 3 of 2020, 2 (two) types of sanctions are regulated, such as administrative and criminal sanctions. Administrative sanctions are listed in Article 151 of Law Number 3 of 2020 concerning Amendments to Law Number 4 2009 states that: The administrative sanctions, as referred to in paragraph (1), are in the form of:

1. Written warning;
2. Fines;
3. Temporary suspension of part or all of the Exploration activities or Production Operations;
4. Revocation of License for Sale.

In addition to those stipulated in Law Number 3 of 2020, Government Regulation Number 78 of 2010 also contains provisions regarding administrative sanctions. Administrative sanctions are given if they violate one of the provisions in Article 50 Paragraph (2) "Administrative sanctions as referred to in paragraph (1) can be in the form of:

1. Written warning;
2. Temporary suspension of activities;
3. Revocation of Permit

The Application of Criminal Law Sanctions

The application of sanctions in criminal law to criminal disputes relating to the existence of a criminal act, criminal act, or criminal event in mining business activities. This dispute is related to the existence of criminal provisions in-laws and regulations in mineral and coal mining, both those regulated in law and other regulations, by allowing criminal provisions to be regulated in the legal instrument (Braithwaite, 2009; Simpson, 2003).

Legal sanctions can be given to individuals and mining companies as stipulated in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. The provisions of the legal norms of criminal sanctions are considered a means of last resort to enforce the legal obligations of mining companies to carry out reclamation and post-mining. The criminal sanctions referred to are based on Article 161B of Law Number 3 of 2020:

1. Any person whose mining business license is revoked or expired and does not carry out: Reclamation and Post-mining; Placement of the Reclamation guarantee fund and Post-mining guarantee fund shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000,000, - (one hundred billion rupiah).
2. In addition to the criminal sanctions as referred to in paragraph (1), former permit holders may be subject to additional penalties in the form of payment of funds in the context of carrying out their Reclamation and Post-mining obligations.

Law Number 3 of 2020 also adds offenses/criminal acts against reclamation and post-mining and placement of reclamation and post-mining guarantee funds when permits are revoked

or expire, which are not carried out by mining business actors (Article 161 B of Law Number 3 of 2020). The fact is that in the area around the mine, many mining pits have been left irresponsibly by the company, causing fatalities.

Legal System in Environmental Restoration to Achieve Sustainable Development

The proclamation of Indonesian independence on August 17, 1945, brought significant changes in all aspects of the life of the Indonesian people, including the implementation of the law. The 1945 Constitution of the Republic of Indonesia was ratified. Article 1 paragraph 3 states that the State of Indonesia is a state of law, a state in which all activities are carried out well. by the authorities or by citizens must be based on legal provisions and or legal rules.

The Importance of Law Enforcement to Realize Sustainable Development Law and sustainable development today has become one of the most important issues in the 21st-century era and become the most important issues that never stop being discussed (Chattaraj, 2017; Mensah, 2019). Like in a system, the two cannot be separated because they will need and bind each other. In general, law and sustainable development aim to provide a better quality of life so that humans can meet the basic needs of their previous lives to support various lives at a higher level (Hewison & Kuras, 2005).

The discourse on the concept of a constitutional state of Pancasila has long been discoursing in various academic and scientific forums that never end being discussed and debated. Everyone agrees that the conception of the Indonesian legal state is different from the conception of the rule of law. The conception of the Indonesian legal state has characteristics and characteristics that are based on the spirit and soul of the Indonesian nation is Pancasila (Wiratmadinata et al., 2020). For the Indonesian people, the values of Pancasila are even placed as a paradigm of legal culture. Pancasila has fundamental values that are universal and fixed (Herlambang, 2017). These values are arranged hierarchically and pyramidally, containing certain qualities. Indonesian people must achieve, which will be realized into a concrete reality in social life. Pancasila as the basis and ideology of the state and the philosophical basis of the nation and state so that any Content Material of the Legislation may not conflict with values. It is clear that the values of Pancasila must always underlie every behaviour of the Indonesian people.

A conscious and planned effort that integrates environmental, social, and economic aspects into a development strategy to ensure the integrity of the environment as well as the safety, capability, welfare, and quality of life of present and future generations under Article 1 paragraph 3 of Law Number 32 of 2009 concerning Environmental Protection and Management. Law enforcement in environmental issues is to realize sustainable development in the Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management. This is located in Part Two of Article 3 paragraph (9), which essentially states that there is protection and management of the environment as a forum for realizing sustainable development. In addition, vigorous law enforcement in new products will encourage people to make sustainable development discourses by having a total awareness effort so that environmental management and protection for sustainable development for the future can run as expected. Law Number 40 of 2007 concerning Limited Corporations, Article 74 regulates that limited liability companies whose business fields are related to natural resources are obliged to

carry out social and environmental obligations. Social and environmental responsibilities are company obligations that are budgeted and calculated as company costs (Sun et al., 2017).

Environmental restoration is handling contaminated land, which includes planning, implementation, evaluation, and monitoring activities to restore environmental functions caused by environmental pollution and environmental destruction (Burger, 2008). The efforts to restore environmental pollution to improve environmental quality restore environmental values, functions, and benefits, including efforts to prevent land damage, provide protection, and improve ecosystems (Rohr et al., 2016). In order to make the environment or its parts function again as before. The capacity of natural resources and the environment is actually in a state of exploitation and utilization with high intensity. Environmental pollution and ecological damage realize that the protection and rational use of resources are essential to achieve sustainable development (Herrick et al., 2019; Qin, 2014).

With the end of the Millennium Development Goals (MDGs) in 2015, Indonesia, together with other countries globally, is entering a new phase in implementing the global development agenda. The development agenda, which is much broader in scope and is a refinement of the MDGs development agenda, is explicitly depicted in the indicators it contains, such as social issues, human rights, access to resources, the environment, justice, and gender issues. The development agenda is known as the Sustainable Development Goals (SDGs). The Sustainable Development Goals cover the dimensions of social, economic, and environmental development that are comprehensive and interrelated. Efforts to achieve one dimension of development cannot be separated from other development dimensions to achieve a balance of achievements in the three dimensions of development (Santika et al., 2020).

Environmental constitutionality contributes to providing a balance between national development that utilizes natural resources with a balance in environmental conservation and various investments both nationally and regionally that have a direct impact on the environment (Hoessein et al., 2020).

CONCLUSION

Legal development is seen as an effort to change the legal order with conscious and directed planning by spurring the future based on observed trends. Legal development means the renewal of the legal order. Stability efforts towards balance, welfare, and harmony will significantly depend on humans. This happens because humans are part of the very dominant environment in influencing the environment for the better, where humans and the environment will mutually influence each other. It includes three components: Components of legal substance, Components of legal institutions, Components of legal culture have the attitudes and behaviour of officials and community members concerning other elements in implementing legal community life. Legal reforms regarding corporations and Law of the Republic of Indonesia, Number 3 of 2020 concerning Mineral and Coal Mining need to be carried out to achieve environmental restoration under sustainable development. The overlapping regulations need to be changed so that each mining company can fulfil its obligations in environmental restoration.

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