

Implementation of Environmental Law in Mineral and Coal Mining

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Abstract. Mining materials as natural resources that cannot be renewed and have limited quantities of course have very high economic value. The existence of this high economic value is a factor in the mining business becoming an industry, both by the government and the private sector. The application of Environmental Law to mineral and coal mining is very important, so as not to cause environmental problems. This research aims to see how environmental law is applied to mineral and coal mining. This research includes library research because the data used is mostly secondary data in the form of legal documents as well as reviewing empirical data in the field. The analysis used uses a qualitative approach. The results of this research are that mineral and coal mining needs to implement environmental law properly, to avoid wider environmental problems. The stages in implementing environmental law, starting from completing environmental impact analysis, issuing IUP, preparing mining road infrastructure and reclamation after mining.

Keywords: Implementation of Environmental Law, Mineral and coal miners, Environmental Impact Analysis, Concern for nature.

INTRODUCTION

The topic of mining in developing countries has been a hot issue from the past until now, from both positive and negative sides. In the book entitled *Escaping The Resource Curse*, edited by one of the world's economists, Joseph Stiglitz, it actually shows the huge losses for a country which gives developed countries the freedom to invest massively in this field.¹

One of the negative sides is that in Central Java, especially Pemalang Regency, in 2021 in one of the former sand mining areas the bodies of 2 minors were found.² This shows that mining entrepreneurs in Pemalang have not implemented Article 61 letter a number 3 which states that IUP holders are obliged to carry out management and monitoring of the mining environment, including reclamation and post-mining activities. As stated in Article 1 point 1 of the Mineral and Coal Law, mining is part or all of the stages of activities in the context of managing and exploiting minerals or coal which includes general investigation, exploration, feasibility studies, construction, mining, processing and/or refining or development and/or utilization, transportation. and sales, as well as post-mining activities.

Mining materials as natural resources that cannot be renewed and have limited quantities of course have very high economic value. This high economic value is a factor in the mining business becoming an industry, both by the government and the private sector. The existence of mining activities also has a negative impact, where mining activities are always

¹ Franky Butar-Butar, *Environmental Law Enforcement in the Mining Sector*, *Juridical Journal Vol 25 No 2*, 2010

² www.liputan6.com, quoted on June 19 2022, 14:38 WIB

synonymous with environmental damage and other problems. Work that is not in accordance with mining operational standards, ignorance of surrounding environmental problems, problems with local communities, and permits for mining activities are problems that are present in mining activities in an area.

Almost all mining in Indonesia does not comply with the legal regulations that apply in this country, including large mines even those that are licensed and supervised by the government. According to Greenpeace, around 70 percent of environmental damage in Indonesia is caused by mining. The number of mining permits that have been granted by the government reaches more than 10,000 permits and this does not include the Excavation C mining permit.³

Pemalang Regency itself has 29 active IUPs to date. The mining is in the form of andesti, sand, landfill, and sirtu (stone sand). Data about mining is shown in the table below

As a form of making legal instruments, the government issued Law Number 10 of 1959 concerning Cancellation of Mining Rights, replaced by Law Number 37 of 1960 concerning Mining, which was then replaced by Law Number 11 of 1967 concerning Mining Principles, which was then replaced by Law Number 3 of 2020 concerning Mineral and Coal Mining. One of the important formulations contained in the Mining Law is the obligation for IUP and IUPK holders to use mining roads in carrying out mining businesses.⁴

The provisions regarding mining roads are contained in Article 91 of Law Number 3 of 2020 concerning Mineral and Coal Mining which reads:

- (1) IUP and IUPK holders are required to use mining roads in carrying out mining business activities
- (2) Mining roads as intended in paragraph (1) can be built independently by IUP and IUPK holders or in collaboration with:
 - a. IUP or other IUPK holders who build mining roads; or
 - b. other parties who own roads that can be designated as mining roads, after fulfilling mining safety aspects.
- (3) In the event that mining roads as intended in paragraph (1) and paragraph (2) are not available, IUP and IUPK holders can utilize public facilities and infrastructure including public roads for mining purposes after complying with the provisions of statutory regulations.

³Laode M Syarif, et al, *Environmental Law Theory, Legislation and Case Studies*, Jakarta : USAID, 2010, p. 23

⁴ekonomi.bisnis.com. accessed on 15 May 2020, at 21.11 WIB

- (4) IUP and IUPK holders can provide access to the public to use mining roads after obtaining approval from the person responsible for mining safety aspects at the IUP and IUPK.
- (5) Further provisions regarding the implementation of obligations to use mining roads are regulated by or based on Government Regulations.

Furthermore, Article 173 of Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Activities also regulates mining routes which reads:

- (1) IUP and IUPK holders are required to use mining roads in carrying out mining business activities.
- (2) The browsing road as intended in paragraph (1) consists of:
 - a. Mining roads in mining areas or project areas that are used and traversed by the main equipment and production supporting equipment; And
 - b. Supporting roads provided for the transportation of goods or people in a mining area and/or project area supporting mining operations or providing mining facilities.
- (3) The mining road as intended in paragraph (1) can be built independently by IUP and IUPK or in collaboration with:
 - a. IUP and other IUPK holders who build mining roads; or
 - b. Other parties have roads that can be designated as mining roads, after fulfilling mining safety aspects.
- (4) In carrying out the cooperation as intended in paragraph (3), IUP and IUPK holders can enter into an agreement to designate a road as a mining road in accordance with the provisions of statutory regulations.
- (5) The agreement on the use of roads as mining roads as referred to in paragraph (4) continues to pay attention to the principles of justice, fairness and expediency.
- (6) In the event that mining roads as intended in paragraph (2) letter b are not available, IUP and IUPK holders can utilize public facilities and infrastructure including public roads for mining purposes after complying with the provisions of statutory regulations.

Provisions regarding the use of public roads are regulated in Article 75 of the Minister of Energy and Mineral Resources Regulation Number 7 of 2020 concerning Procedures for Granting Areas, Licensing and Reporting to Mineral and Coal Mining Business Activities which states that Production Operation IUP Holders are specifically for transportation and mandatory sales:

"Comply with the provisions of laws and regulations in the field of traffic and road transport when using public road facilities, including adhering to load capacity levels adjusted to road class, road density and risk of traffic accidents"

Provisions regarding the use of public roads for Production Operation IUP Holders have not been regulated in Pemalang Regency Regional Regulation Number 7 of 2011 concerning Mineral Mining Management and Central Java Governor Regulation Number 14 of 2016 concerning the Implementation of Services in the Energy and Mineral Resources Sector in Central Java Province.

Mining law has a very close relationship with environmental law because every mining business, especially mineral and coal mining, is required to maintain the continuity of the carrying capacity and capacity of the environment.⁵The view of Naughton and Larry L. Wolf, defines the environment as something related to all external factors of a biological and physical nature that can directly influence the life, growth, development and reproduction of organisms. Further interpreting that the environment should be distinguished from habitat, which in a broad sense shows the place where organisms are located and the environmental factors.

According to Siti Sundari Rangkuti's view, in the context of environmental law enforcement which involves three aspects of law (administrative, criminal and civil) environmental law enforcement officers certainly do not only include: judges, police, prosecutors/public prosecutors, and lawyers/legal advisors. In general, environmental law enforcement officers are categorized as: Police, Prosecutors, Judges, Officials/agencies with the authority to give permits, and legal advisors/lawyers.⁶

As stated in Article 1 point 1 of the Mineral and Coal Law, mining is part or all of the stages of activities in the context of managing and exploiting minerals or coal which includes general investigation, exploration, feasibility studies, construction, mining, processing and/or refining or development and/or utilization, transportation. and sales, as well as post-mining activities.

Mining materials as natural resources that cannot be renewed and have limited quantities of course have very high economic value. This high economic value is a factor in the mining business becoming an industry, both by the government and the private sector. The existence of mining activities also has a negative impact, where mining activities are always synonymous with environmental damage and other problems. Work that is not in accordance

⁵Moh Fadli, Mukhlis, and Mustafa Lutfi, *Environmental Law and Policy*, Malang : UB Press, 2016, p. 16

⁶Siti Sundari Rangkuti, *Environmental Law and National Environmental Policy*, Surabaya : Airlangga University Press, 2005, p. 209

with mining operational standards, ignorance of surrounding environmental problems, problems with local communities, and permits for mining activities are problems that are present in mining activities in an area.

Formulation Of The Problem

Based on the background description above, the problem formulation is How is environmental law applied to mineral and coal mining in Pematang Rejang?

RESEARCH METHODS

The nature of this research is library (library research). Library research is research carried out by examining library materials or secondary data. This research includes library research because the data used is mostly secondary data in the form of legal documents. The approach used in this research is philosophical. The philosophical approach in legal research is to examine law from an ideal perspective. This research uses a philosophical approach because the law studied is at an ideal level. The data source used in this research is secondary data. Secondary data is data obtained indirectly or provided by other parties.

Secondary data is used as the main reference which is available in written form in books, scientific journals or other written sources. Data collection techniques are carried out through conventional and online searches. Conventional literature searching is the activity of searching for library sources in data storage places. Meanwhile, online review is the activity of searching for library sources in cyberspace via the internet network. Conventional literature searches are carried out by searching for library materials in libraries, purchasing books, journals and attending scientific activities (seminars). Meanwhile, online searching is done by searching on the internet. The data analysis method used is qualitative. Qualitative data analysis is the process of organizing and sorting data into patterns, categories and basic units of description so that themes can be found which are presented in narrative form. This research uses qualitative data analysis because the data will be presented in a narrative-descriptive manner, not in numerical or numerical form.

DISCUSSION

Implementation of Environmental Law in Pematang Rejang

Siti Sundari Rangkuti stated that the substance of laws regarding environmental management must contain the principles of environmental policy to be stated in regulations containing the following legal norms:

1. *Abatement at the source*(countermeasures at the source)
2. *The best available technology*(BAT) = the reasonable principle (as low as reasonable and attainable)
3. *The polluter pays principle*(pollution pays principle)
4. *Stand still principle*(principle of intercept/block)
5. *Principle of regional differentiation*(principle of regional differences)
6. *Shifting the burden of proof = het beginsstel van de okering der bewijslast*(reverse burden of proof).⁷

Mining law is closely related to environmental law, because every mining business, whether related to general mining or oil and gas mining, is required to maintain the continuity of the carrying capacity and capacity of the environment. This is commonly referred to as preserving environmental functions (Article 1 number 5 UUPPLH). Mining law as a field of legal science has various dimensions, one of which is in the environmental field because the object of mining activities is the environment. In this case the environment in question is both biotic and abiotic. Mining law places the environmental aspect as an important aspect because there are dynamics and changes in the nature and physical changes of the environment so that special treatment is needed for the environment so that it is hoped that the environment managed as a result of mining activities will always have environmental functions and resources that are maintained or even possibly increased.

Environmental management is an integrated effort to preserve environmental functions which includes policies for structuring, utilizing, developing, maintaining, restoring, monitoring and controlling the environment. In environmental management, law, apart from functioning as protection and certainty for society (social control), is also a means of development (a tool of social engineering) with a role as an agent of development or agent of change. In its function as a means of development, law legitimizes policy instruments in environmental management, namely environmental Quality Standards, Environmental Impact Analysis (AMDAL), and environmental permits.

Permission (*vergunning*) is an approval from the authorities based on a law or government regulation to, under certain circumstances, deviate from the prohibitive provisions of the Legislative Regulations.⁸Furthermore, Spelled and Ten Berge explain that:⁹

⁷Radjikan, Law as a Public Policy Instrument in Coal Mining Business Licenses, Widya Publica Journal Vol 8 No 1, 2020. p 83

⁸Adrian Sutedi, Good Corporate Governance, Jakarta : Sinar Graphics, 2011, p. 167-168

⁹Y Sri Pudyatmoko, Licensing: problems and efforts to improve it, Jakarta: Grasindo, 2009, p. 7

Permit is an approval from the authorities based on a law or government regulation to comply with certain conditions under certain prohibitive provisions of statutory regulations (permit in the narrow sense). Based on what Spelt and Ten Berge said, permission can be understood to mean that a party cannot do something unless permitted. This means that the possibility for a person or party is closed unless permitted by the Government. In this way, the government binds its role in the activities carried out by the person or party concerned.

In accordance with the definition of the permit, the permit functions as a means of legal certainty for the permit holder to carry out activities that are prohibited in a statutory regulation. Apart from being a means of legal certainty, permits are used as a means for the government to control certain activities that can disturb the rights of other people or the environment. So permits are also instruments commonly used in the field of Administrative Law which are intended to influence citizens to follow recommended methods to achieve concrete goals.¹⁰

According to Siti Sundari Rangkuti, environmental law enforcement is closely related to the ability of the apparatus and compliance of citizens with applicable regulations, which cover three areas of law, namely administrative, criminal and civil. This is in line with the definition of environmental law enforcement put forward by Biezeveld:¹¹

Environmental law enforcement can be defined as the application of legal governmental powers to ensure compliance with environmental regulations by means of:

1. *Administrative supervision on compliance with environmental regulations (inspection) = mainly preventive activity;*
2. *Administrative measures or sanctions in case of non-compliance (= corrective activity);*
3. *Criminal investigation in cases of presumed offenses (= repressive activity);*
4. *Criminal means or sanctions in case of offence (= repressive activity); and*
5. *Civil action (law suit) in case of (threatening) non compliance (= preventive or corrective activity)*

From this, how do we draw synergy between the system of environmental legal aspects and mining activities so that comprehensive integration between these aspects produces an

¹⁰Tatik Sri Djatmami, Principles of Industrial Business Licensing in Indonesia, Dissertation, Surabaya: Airlangga University Doctoral Program, 2004, p. 1

¹¹Siti Sundari Rangkuti, Environmental Law and National Environmental Policy, Surabaya : Airlangga University Press, 2003, p. 214

ideal combination so as to create a normative order that leads to an accelerated process of development in the legal field that is effective and efficient. Environmental regulations in the mining sector are one of a series of legal norms that contain legal mechanisms that must be adhered to by business and/or activity initiators and their legal enforcement. The role of state apparatus as holders of active authority has an important role in the law enforcement process. State officials who are competent and have high integrity in law enforcement are expected to become active means of mobilization armed with applicable statutory norms so that in the future the environmental management system in the mining sector can be implemented consistently based on applicable statutory regulations.

Based on Article 71 paragraph (1) UUPH explains that ministers, governors, or regents/mayors in accordance with their authority are obliged to supervise the compliance of business and/or responsible persons. Activities based on provisions stipulated in laws and regulations in the field of environmental protection and management.

The first thing that prospective miners do before the Mining Business License (IUP) is issued is AMDAL (Environmental Impact Analysis). Based on the words of Article 1 number 25 of the Mineral and Coal Law, it explains that:

Environmental Impact Analysis, hereinafter referred to as Amdal, is a study of the major and important impacts of a planned business and/or activity on the environment which is necessary for the decision-making process regarding the implementation of the business and/or activity.

Furthermore, the implementation of this AMDAL is used as a prerequisite for decision making regarding business operations and/or activities and is included in Business Licensing, or approval from the Central Government or Regional Government.¹²

Based on interviews with the Pemalang Regency Environmental Service, several details were obtained regarding the application of the Environmental Impact Analysis law asfollowing:¹³

1. Scoping in the AMDAL process

Scoping is a process to discover or determine the important impacts or main problems of an activity on the environment. The scoping process is carried out from the beginning of the activity which is intended to determine the scope of the problem and identify hypothetical impacts related to the mine activity plan.

¹²Article 22 of Law Number 11 of 2020 concerning Job Creation

¹³Interview with Pemalang Regency DLKH Implementing Staff Mr. Jatmiko,

The initial step in identifying potential impacts is to compile a list of activity components as sources in the form of a simple test list (check list method). This is done using an interaction matrix between planned activities and environmental components.

The scoping method can help and improve the ability to estimate and determine the existence of significant impacts, provide a number of alternative project activities used to prepare AMDAL studies, identify matters that are ignored/important matters originating from government agencies or affected communities.

This scoping process begins with the AMDAL Activity document, hereinafter referred to as KA, until the end of the AMDAL study. This activity includes the preparation of KA, which is an institutional process involving parties outside the initiator, such as authorized agencies and prospective AMDAL compilers.

2. Results of the AMDAL scoping process

Hypothetical impact determination is intended to determine the type of hypothetical important impact with the degree of importance due to planned activities according to the scoping results and an informal approach is also carried out through the opinions of experts, community leaders around the mine planning, and also looking at similar activities in the surrounding area. The results of determining the hypothetical impact should at least contain:

- a. Air quality and dust;
- b. Noise intensity;
- c. Erosion;
- d. Smooth traffic;
- e. Accessibility between regions;
- f. Changes in land use;
- g. Reduced vegetation;
- h. Livelihood;
- i. Job opportunities for local residents;
- j. Community income;
- k. Social jealousy;
- l. Public perception;
- m. Risk of loss of livelihood and/or shelter'
- n. Comfort and tranquility; And
- o. Public health.

The hypothetical criteria above explain that a company operating in the mining sector in particular must pay more attention to these impacts because they will influence all ongoing activities, both by the community and the environment. The focus of this determination is on economic activities carried out by the surrounding community. By preventing the community from browsing, the community will have more freedom in carrying out their economic activities.

After the Environmental Impact Analysis (AMDAL) has been approved, the next process is granting IUPs to miners in the form of business entities, cooperatives or individual companies. The contents of the IUP itself contain at least as stated in Article 39 of the Minerba Law:

- a. Company profile;
- b. Location and area;
- c. Type of commodity cultivated;
- d. The obligation to guarantee the sincerity of exploration;
- e. Working capital;
- f. IUP validity period;
- g. Rights and obligations of IUP holders;
- h. Obligations to settle land rights;
- i. Extension of IUP;
- j. Obligation to pay state revenues and regional revenues, including fixed contribution obligations and production fees;
- k. Obligation to carry out reclamation and post-mining;
- l. Obligation to prepare environmental documents; And
- m. Obligation to carry out community development and empowerment around the WIUP.

One of the important points in an IUP is carrying out reclamation and post-mining. The rules regarding reclamation and post-mining are regulated in Article 99 and Article 100 of the Mineral and Coal Law which reads:

Article 99

- (1) IUP and IUPK holders are required to prepare and submit a reclamation plan and/or post-mining plan.
- (2) Reclamation and Post-mining implementation is carried out in accordance with the Post-mining land designation.

- (3) In the implementation of Reclamation carried out throughout the Mining Business stages, IUP or IUPK holders are required to:
 - a. Satisfy a balance between land to be cleared and land that has been reclaimed;
And
 - b. Carry out management of used holes. Final mine with the widest limits in accordance with statutory provisions.
- (4) IUP and IUPK holders are required to hand over land that has undergone Reclamation and/or Postmining to the entitled party through the Minister in accordance with the provisions of statutory regulations.

Article 100

- (1) IUP or IUPK holders are required to provide and place Reclamation guarantee funds and/or Post-mining guarantee funds.
- (2) The Minister can appoint a third party to carry out Reclamation and/or Post-mining with guarantee funds as intended in paragraph (1).
- (3) The provisions as intended in paragraph (2) apply if the IUP or IUPK holder does not carry out Reclamation and/or Post-mining in accordance with the approved plan.

Regarding the implementation of reclamation and post-mining guarantee laws, the Pemalang Regency Environmental Service Staff explained as follows:

1. Reclamation Guarantee

a. Exploration stage reclamation guarantee

Holders of Exploration IUP and Exploration IUPK are required to provide a Reclamation Guarantee for the Exploration stage in accordance with the determination of the amount. The Exploration stage Reclamation Guarantee is placed entirely at the beginning in accordance with the determination of the Exploration stage Reclamation costs and is contained in the Exploration work plan and budget. Placement of Reclamation Collateral for the Exploration stage is carried out no later than 30 (thirty) calendar days from the work plan and budget for the Exploration stage.

The Exploration stage Reclamation Guarantee is in the form of a Time Deposit placed in a Government bank in Indonesia in the name of the Director General or QQ governor holding the relevant Exploration IUP or Exploration IUPK with a guarantee period in accordance with the Exploration stage Reclamation schedule. Placing a Reclamation Guarantee in the Exploration stage does not eliminate the obligation of the Exploration IUP IUPK Exploration holder to carry out Reclamation. The lack of costs

to complete the Exploration stage of Reclamation from the guarantee that has been determined remains the responsibility of the holder of the Exploration IUP or Exploration IUPK.

The Director General on behalf of the Minister or Governor in accordance with his/her authority may order the holder of the Exploration IUP and Exploration IUPK to change the amount of the Reclamation guarantee for the Exploration stage if:

- 1) There has been a change to the exploration plan; or
- 2) The cost of implementing the exploration phase reclamation does not match the exploration phase reclamation plan.

b. Guarantee of reclamation of the production operation stage

Holders of Production Operation IUP and Production Operation IUPK are required to provide a Reclamation Guarantee for the Production Operation stage in accordance with the amount determined. The Reclamation Guarantee for the Production Operation stage for the first 5 (five) year period is placed in full for a period of 5 (five) years. In the event that the mine age is less than 5 (five) years, the Reclamation Guarantee for the Production Operation stage is in accordance with the mine age. The Reclamation Guarantee for the Production Operation stage for the next 5 (five) year period can be placed in full for a period of 5 (five) years or annually, based on the results of the performance evaluation.

The Director General on behalf of the Minister or governor in accordance with his authority in assessing the disbursement or release of Reclamation Guarantees at the Production Operation stage is obliged to evaluate the report on the implementation of Reclamation at the Production Operation stage and field inspection.

The results of the field inspection must be included in an official report containing an assessment of the success of the Reclamation in the Production Operation stage. The assessment for determining the amount of disbursement or release of Reclamation Guarantee for the Production Operation stage is determined as follows:

- 1) A maximum of 60% (sixty percent) of the amount of the Reclamation Guarantee for the Production Operations stage if land use management has been completed, which consists of:
 - a) Land management and backfilling of ex-mining land;
 - b) Root zone soil distribution; And

- c) Erosion and sedimentation control, in accordance with its designation as stipulated in the approved Reclamation Plan for the Production Operation stage.
- 2) A maximum of 80% (eighty percent) of the amount of the Reclamation Guarantee for the Production Operations stage if the revegetation activities and work have been completed, which consist of:
 - a) Cover crop planting (cover crop);
 - b) Planting plants grow quickly;
 - c) Planting local plants; and/or
 - d) Control of acid mine drainage, as stipulated in the approved Reclamation plan for the Production Operation stage.
- 3) 100% (one hundred percent) of the amount of the Reclamation Guarantee for the Production Operation stage after the Reclamation activities for the Production Operation stage have reached final completion, in accordance with the Reclamation Assessment Guidelines for the Production Operation Stage as stated in Matrix 17.
- 4) In the event that the assessment of the success of Reclamation in the Production Operations stage has not reached 100% (one hundred percent), the amount of disbursement value or
- 5) the release of Reclamation Guarantee for the Production Operation stage is adjusted to the results of the assessment in the field.
- 6) The remaining amount of the Reclamation Guarantee for the Production Operation stage which cannot be cashed out or released must be placed back as Reclamation Guarantee for the Production Operation stage.

CONCLUSION

Based on the discussion description, it can be concluded as follows:

1. The first thing that prospective miners do before the issuance of a Mining Business Permit (IUP) is an AMDAL (Environmental Impact Analysis). Local government.
2. As is known, the mining industry has high risks, one of the problems is infrastructure, especially mining roads. Infrastructure that does not meet its intended purpose is considered inadequate and is forced to travel through inappropriate routes, namely public roads commonly used by the general public. This causes the roads to easily suffer serious damage.

3. After carrying out the Environmental Impact Analysis, the next step is the issuance of IUP/IUPK to miners in the form of business entities, cooperatives or individual companies. One of the provisions contained in Article 39 of the Mining and Coal Law concerning IUP is the obligation to carry out reclamation and post-mining.

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