

LEGAL PROTECTION OF COMMUNITY RIGHTS REGARDING POST-MINING LAND REHABILITATION

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Abstract

Mining can have a negative impact on the community's environment. Therefore, it is necessary to protect the rights of communities affected by mining activities. This article discusses the protection of community rights regarding post-mining land rehabilitation according to the Mining Law. Protection can be carried out in accordance with the Mining Law. In the context of protecting people's rights regarding the environment, the government and society both have obligations. Efforts to protect people's rights to the environment provide the benefit of maintaining the natural ecosystem of the environment.

Keywords: Legal Protection, Community Rights, Land Rehabilitation, Mining.

Introduction

Mining is part or all of the activity stages in the framework of the management and exploitation of 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.¹ Mining activities have two impacts on Indonesian society, the first is that it has a positive impact on the country's economic prosperity, and the second is that it has a negative impact on people's rights, namely giving rise to various complex problems and broad impacts, both environmentally, socially and economically.

Mining activities have a big influence on the environment and the lives of communities around the mining area. Land damage is one of the impacts of mining activities. After mining activities end, mining companies have an obligation to carry out land rehabilitation, returning the land to a condition close to its original state or converting it in accordance with the approved reclamation plan.

In practice, many companies carry out land rehabilitation in accordance with the mandate of the Mining Law. This failure not only harms the environment, but also has a direct impact on communities living around ex-mining areas. Communities often have to face various problems, such as loss of productive land, water and soil pollution, and a decrease in quality of life due to environmental damage.

¹ Hudriyah Mundzir, Sri Hudiari, & Shohib Muslim. (2016). Politik Hukum Pengelolaan Pertambangan Mineral Dan Batubara Dengan Pendekatan Economic Analysis Of Law, *Prosiding SENTIA*, 8.16-22, h. 22.

The community's right to a good and healthy living environment is recognized in various legal instruments, both at the national and international levels. However, legal protection of these rights is often weak, especially in the context of post-mining land rehabilitation. Lack of law enforcement, weak supervision, and company non-compliance with reclamation obligations are some of the factors that cause community rights to not be fulfilled.

Based on this background, it shows the need for a more in-depth study regarding the legal protection of community rights regarding post-mining land rehabilitation. This study is important to understand how existing regulations are implemented to protect people's rights. This research also aims to provide legal protection for communities affected by mining activities, especially land rehabilitation. The method used in this research is a normative juridical legal research method. Next, use a statutory regulation approach and a concept approach.

RESULTS AND DISCUSSION

Mining Activities Regarding Post-Mining Land Rehabilitation in Mining Law Regulations in Indonesia

Indonesia is a country rich in natural resources. Mining activities are complex and very complicated business activities, full of risks, are long-term business activities, involve high technology, are capital intensive, and require regulatory rules issued by several sectors. The legal basis for mining activities is Law Number 4 of 2009 concerning Mineral and Coal Mining, which was subsequently amended to become Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

Based on Article 1 of the Mining Law, it states that mining is part or all of the stages of activities in the context of the management and exploitation of 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. In mining activities there are minerals and coal.

Mining Activities talk about the management and exploitation of minerals or coal which includes general investigations, exploration, feasibility studies, construction, mining, processing and/or refining or development and/or utilization, transportation and sales, as well as post-mining activities. Article 9 of the Mining Law Mining Areas are part of the national spatial planning which is the basis for determining mining activities. Mining areas are determined by the Government after coordinating with regional governments and consulting with the People's Representative Council of the Republic of Indonesia. The Mining Area consists of:

- a. WUP;
- b. WPR; and
- c. WPN.

In the Mining Business there are two groups, namely Mineral Mining and Coal Mining. Mineral Mining is the mining of a collection of minerals in the form of ore or rock, excluding geothermal, oil and gas, and ground water. Meanwhile, coal mining is the mining of carbon deposits found in the earth, including solid bitumen, peat and asphalt rock.

Minerals and coal as non-renewable natural resources are national wealth controlled by the state for the greatest welfare of the people. Control of minerals and coal by the state is carried out by the Government and/or regional governments. In mining activities there are mining businesses which are regulated in the Mining Law. Mining Business is given to:

- a. Individual
- b. Business entity
- c. Cooperative

Mining businesses have an important role in providing added value to national income and regional development related to global demand for coal as an alternative energy source to meet energy needs in line with the increasing price of petroleum fuel.² The Mining Law regulates post-mining activities. Article 1 point 27 of the Mining Law states that post-mining activities, hereinafter referred to as post-mining, are planned, systematic and ongoing activities after the end of some or all mining business activities to restore natural environmental functions and social functions according to local conditions throughout the mining area. Mining activities have a significant impact on the environment, especially related to land degradation. After mining operations end, exploited land often experiences serious damage, such as loss of vegetation, erosion, and soil and water pollution. To overcome this impact, post-mining activities, especially land rehabilitation, are an obligation that must be carried out by mining companies.

Post-mining land rehabilitation aims to restore the condition of damaged land so that it can function ecologically, economically and socially. This includes measures such as replanting vegetation, soil stabilization, and restoring water quality and degraded ecosystems. Rehabilitation activities are not only important to restore the environment but also to ensure that the land can be reused by local communities, whether for agriculture, forestry or other beneficial purposes.

Post-mining land rehabilitation is closely related to environmental ethics. In the Mining Law, companies have obligations, one of which is to comply with environmental carrying capacity tolerance limits. Article 96 of the Mining Law Companies have an obligation to implement good mining engineering principles. One of them is the management and monitoring of the mining environment, including reclamation and post-mining activities. Reclamation and post-mining activities are related to land rehabilitation.

Article 99 paragraph (2) of the Mining Law states that reclamation and post-mining activities are carried out in accordance with the post-mining land designation. The designation of post-mining land is included in the land use agreement between the IUP or IUPK holder and the land rights holder. The purpose of this regulation is that there must be a study of land use first before carrying out a mining business

Based on the explanation above, Mining Activities Regarding Post-Mining Land Rehabilitation in Mining Law Regulations in Indonesia are land rehabilitation activities whose focus is land to make efforts to restore or repair land that has been disturbed or damaged due to mining activities.

² Hemi Faradila. (2020). Izin Usaha Pertambangan Mineral Dan Batubara Dalam Kaitan Dengan Pengelolaan Dan Perlindungan Lingkungan Hidup(Fiqh Al-Bi'ah). Jurnal MUDARRISUNA,11 (3). 519-525.

The main goal is to restore the ecological, physical and chemical functions of the soil so that the land can again support life, both flora and fauna, as well as humans. Land rehabilitation tends to focus more on restoring ecological functions, such as stabilizing soil, restoring native vegetation, and improving water quality. This includes processes such as revegetation, soil stabilization, and water management. The expected results from land rehabilitation are expected to be able to re-support the original ecosystem or one that is close to the natural condition before mining. This process aims to maintain environmental balance and reduce negative impacts on biodiversity. Therefore, the Mining Law regulates post-mining activities so that land rehabilitation is included in post-mining activities in the mining law.

Legal Protection of Community Rights Regarding Post-Mining Land Rehabilitation

Human rights and the rule of law cannot be separated, in fact law is related to the idea of how justice and order can be realized. Thus, the recognition and inauguration of the rule of law is one of the aims of protecting human rights, meaning that individual rights and freedoms are recognized, respected and upheld.³

Community rights and human rights have a very close relationship, because community rights are basically the embodiment of human rights in a social, economic, cultural and environmental context. Legal basis for Human Rights Law Number 39 of 1999 concerning Human Rights. Article 1 number 1 of Law Number 39 of 1999 concerning Human Rights states that Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of the Almighty God and are His gifts that must be respected, upheld and protected by the state. , the law, the Government, and every person for the sake of honor and protection of human dignity. Article 3 of Law Number 39 of 1999 concerning Human Rights states:

(1) Everyone has the right to live, maintain life and improve their standard of living.

(2) Everyone has the right to peace, security, peace, happiness, physical and spiritual prosperity.

(3) Everyone has the right to a good and healthy living environment.

Everyone has the right to a good and healthy living environment. This is the basis of the Community's Rights to human rights, especially the environment. Social rights are rights related to basic human needs and related to social welfare, such as the rights to education, health, housing, employment, a healthy environment and security. Social rights are part of the basic needs and social welfare that must be guaranteed by the state to its citizens.

Article 71 Law Number 39 of 1999 concerning Human Rights The government is obliged and responsible for respecting, protecting, upholding and promoting human rights as regulated in this Law, other statutory regulations and international law concerning human rights accepted by the Republic of Indonesia.

Soil damage due to mining activities is a crucial environmental issue, considering its broad and long-term impact on ecosystems and human life. Soil is a vital component in the ecosystem, functioning as a growing medium for plants, water storage, and a place for various organisms to live. The impact of environmental damage due to mining is:

³ A. Mansyur Effendi, *Dimensi Dinamika Hak Asasi Manusia Dalam Hukum Nasional Dan Internasional* (Bogor: Ghalia Indonesia, 1993): 27.

1. Soil Degradation is a mining process that often results in significant soil damage, including stripping of the topsoil layer, soil contamination by chemicals, and structural changes to the soil. This causes a decrease in soil quality, reduces fertility, and increases vulnerability to erosion. This has an impact on reducing land productivity, loss of vegetation, and difficulties in rehabilitating ex-mining land.
2. Mining process water pollution causes surface and ground water due to the disposal of mining waste containing dangerous chemicals, such as heavy metals and acids. This process can also change the flow and quality of water sources. This results in damage to aquatic ecosystems, decreased water quality for human consumption, and disruption to aquatic life.
3. Ecosystem damage due to mining activities can destroy natural habitats, reduce biodiversity, and cause the loss of flora and fauna species. Deforestation and land destruction also affect the balance of the ecosystem. This results in a reduction in biodiversity, disruption of the food chain, and loss of habitat for endemic species.
4. Formation of Critical Land after mining activities are completed, the land left behind is often in the form of large holes, degraded land and land that cannot be utilized. Ex-mining land is often difficult to restore. The impact is: difficulties in land rehabilitation, potential danger to surrounding communities, and reduced use of land for other purposes.

Environmental damage due to mining is a serious issue that requires attention and effective action. These impacts not only affect the natural environment but also impact human health, community welfare and ecosystem sustainability. Therefore, it is important to implement environmentally friendly mining practices, carry out post-mining land rehabilitation, and develop policies and regulations that can minimize negative impacts and support sustainable development. With such a large impact on society, this causes violations of human rights.

Violation of human rights is any act of a person or group of people, including state officials, whether intentional or unintentional or negligent, limits, and/or revokes the human rights of a person or group of people guaranteed by this Law, and does not get, or is feared not to be. obtain fair and correct legal solutions, based on applicable legal mechanisms. With violations of human rights, legal protection is needed for society.

Satjito Rahardjo stated that legal protection is an effort to protect a person's interests by allocating a Human Rights authority to him to act in the context of his interests.⁴ According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship between values or rules which are manifested in attitudes and actions in creating order in social interactions between fellow humans.⁵

Legal protection is a universal concept of the rule of law. Philipus M. Hadjon believes that legal protection is an action to protect or provide assistance to legal subjects, using legal instruments. Legal protection consists of two forms of preventive legal protection and repressive legal protection, namely:

- a. Preventive Legal Protection which is basically preventive is defined as prevention. Preventive legal protection means a lot for government actions that are based on freedom of action because with preventive legal protection the government is encouraged to be careful in

⁴ Satjipto Rahardjo, *Sisi-Sisi Lain dari Hukum di Indonesia*, (Jakarta: Kompas, 2003), h. 121.

⁵ Muchsin, *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*, (Surakarta: Disertasi Fakultas Hukum, Universitas Sebelas Maret, 2003), h. 14.

making decisions. Forms of preventive legal protection are contained in statutory regulations to prevent violations from occurring and to provide limitations in carrying out obligations.

- b. Repressive Legal Protection functions to resolve disputes that have arisen as a result of violations. This protection is the final protection in the form of providing sanctions for violations that have been committed.

Preventive legal protection is contained in the mining law which protects the public to prevent environmental damage so it can be seen in Article 145 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining which regulates community protection, namely:

1. Communities directly affected by negative impacts from mining business activities have the right to:
 - a. obtain appropriate compensation due to errors in the operation of Mining activities in accordance with the provisions of statutory regulations; and/or
 - b. file a lawsuit through the court for losses resulting from mining operations that violate the provisions.
2. Provisions regarding the rights of communities directly affected by negative impacts from Mining Business activities as referred to in paragraph (1) are implemented in accordance with the provisions of statutory regulations.

Based on these regulations, people who have been harmed can obtain compensation and file a lawsuit in court regarding the losses they have received. Furthermore, in the Mineral and Coal Mining Law, the sanctions given are in the form of administrative sanctions and criminal sanctions. Preventive legal protection for land rehabilitation, namely post-mining activities, in article 99 of the Mining Law states that every IUP and IUPK holder is required to submit a reclamation plan and post-mining plan when applying for a Production Operation IUP or Production Operation IUPK. Implementation of reclamation and post-mining activities is carried out in accordance with post-mining land designation. Post-mining land designation is included in the land use agreement between the IUP or IUPK holder and the land right holder. This activity is an obligation of business actors related to post-mining activities. This activity is closely related to land rehabilitation and is therefore carried out based on mining laws.

There are administrative sanctions if you do not comply with article 99, namely the Minister, governor or regent/mayor in accordance with their authority has the right to impose administrative sanctions on IUP, IPR or IUPK holders for violations. Administrative sanctions in the form of:

- a. written warning;
- b. temporary suspension of part or all of exploration activities or production operations; and/or
- c. revocation of IUP, IPR, or IUPK.

Sanctions for business actors regarding post-mining activities do not have specific regulations. The rule is only when the business actor carries out his business. Regarding community rights, they are not specifically regulated in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining but are regulated in Law Number 39 of 1999 concerning Human Rights. .

The government is obliged and responsible for upholding, protecting and respecting human rights in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia and Law Number 39 of 1999. The government's obligations and responsibilities include the implementation of human rights in various sectors of national and state life. In the Mineral and Coal Mining Law, although it is not specifically regulated, the government has an obligation to protect and respect environmental rights.

Conclusion

Legal Protection of Community Rights regarding Post-Mining Land Rehabilitation, namely land rehabilitation during post-mining activities in article 99 of the Mining Law states that every IUP and IUPK holder is required to submit a reclamation plan and post-mining plan when applying for a Production Operation IUP or Production Operation IUPK. Implementation of reclamation and post-mining activities is carried out in accordance with post-mining land designation. Post-mining land designation is included in the land use agreement between the IUP or IUPK holder and the land right holder. This activity is an obligation of business actors related to post-mining activities. This activity is closely related to land rehabilitation and is therefore carried out based on mining laws.

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