

The Government Liability for Environmental Damage Caused by Mining

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Abstract. *Indonesia is rich in natural resources that can be utilized for development purposes and generate profits. One of the natural resources that can provide benefits is the mining sector. However, ironically, in addition to generating profits, mining businesses can also cause losses in the form of damage/pollution to the environment around the mine. This type of research is normative research that includes various approaches, research specifications, data collection methods, and data analysis techniques. In this study, a normative approach was used with the aim of analyzing various legal regulations related to mining cases in Indonesia, both those applicable nationally and regionally. The results of the study indicate that mining activities can damage the surrounding environment and deplete natural resources. Conflicts of interest between mining companies, the government, and indigenous peoples are another factor causing social unrest. As a result, adequate government regulations are needed to control mining activities, including operating permit requirements, environmental responsibility, and supervision. To ensure that the community can benefit from mining activities, the government must also focus on regional economic development and education initiatives.*

Keywords: *Damage; Environment; Government; Liability; Mining.*

1. Introduction

One form of natural wealth owned by Indonesia is the expansion of coastal areas that can be used for fisheries, fishing professions and the expansion of waters that can also be used as a means of livelihood for the community. In the current era of globalization, Indonesia has become a country that produces a lot of production from very abundant natural resources. Natural resources that have so far become export materials are a small part of the natural resources available in Indonesia. In addition to the various mining products contained in the bowels of

the earth, Indonesia also knows the sources of natural wealth that are in the sea, forestry and agriculture ¹.

Indonesia as a country based on law which refers to the philosophy of Pancasila, has very clear in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia in 1945, it was emphasized that the Republic of Indonesia is a country based on law. Therefore, all things and actions must be ensured in accordance with the provisions of applicable law. Likewise, strict rules governing environmental sustainability are very much needed, for example in regulations related to environmental and mining regulations².

Mining activities have had a huge impact on developing countries in the last decade. Mining business activities will potentially affect environmental changes on a large or small scale according to the technical activities ³. If a mining activity is not carried out properly, it can have a negative effect on the environment, for example, a very large threat to soil balance, the emergence of erosion and sedimentation, the emergence of landslides, the threat to flora and fauna, the threat to the health of the surrounding population and changes in the microclimate ⁴.

The purpose of building an Industrial Area, including mining, includes accelerating industrial growth in the region, providing convenience for industrial activities; encouraging industrial activities to be located in Industrial Areas, to increasing efforts to build environmentally friendly industries. However, economic development activities carried out by people or groups of people need to be assisted by the presence of natural resources in high totals, if they can have an effect on the environment and society, for example environmental pollution due to the use of hazardous and toxic materials ⁵. Legal certainty requires a strategy in efforts to build laws that are desired by the community and laws that are in favor of the community ⁶including those related to the legal bias towards the environment.

Mining companies are not only faced with responsibilities that are related to profit income, but must also observe social and environmental responsibilities. As stated in Article 74 of Law No. 40 of 2007 concerning Limited Liability Companies, with the aim of achieving sustainable economic development to improve the quality of life and the environment that is useful for the company itself, the surrounding community, and the community at its core ⁷. The purpose

¹ Margareta & Boediningsih, (2023)

² Henri & Nur Aksa, (2023)

³ Prayogo, (2018)

⁴ Phispal, (2013)

⁵ Sastro, (2012)

⁶ Rizki et al., (2022)

⁷ Marthin, Salinding, and Akim, "Implementasi Prinsip Corporate Social Responsibility (Csr) Berdasarkan Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas."

of this article is that all companies have social and environmental responsibilities to support the emergence of corporate bonds that are harmonious, appropriate, and based on the environment, values, rules and customs of the surrounding community. Based on Article 87 paragraph (1) of Law No. 32 of 2009 concerning Environmental Protection and Management (UUPLH) that "all business or activity managers who carry out unlawful actions including pollution or environmental damage that causes losses to other individuals or the environment must pay compensation or carry out special actions . In the real context, demands for mineral and coal mining permits, social responsibility, environmental protection and management (CSR) and the obligation to pay compensation to business owners (companies) who carry out illegal actions have not been implemented based on the provisions that have been determined in the legal policies, where there are many companies that oppose these provisions.

2. Research Methods

The normative research methodology ⁸of law in this study considers several things that are the focus of this study including various approaches, research specifications, data collection methods, and data analysis techniques. In this study, a normative approach is used with the aim of analyzing various legal regulations related to mining cases in Indonesia, both nationally and regionally. The legal guidelines that form the basis for the Indonesian mining industry will be studied using this method. The research objectives for this study will focus on the analysis of several laws, including "Law No. 4 of 2009 concerning Mineral and Coal Mining, Law No. 32 of 2009 concerning Environmental Protection and Management. In this study, secondary data obtained from legal sources such as laws, regulations, court decisions, and other official documents are used ⁹. The data collection methods used are literature review and document analysis. In this study, content analysis is used as a data analysis method with the intention of examining the information contained in legal documents related to mining cases in Indonesia. To find certain tendencies and themes in the legal documents analyzed, content analysis is used.

3. Results and Discussions

3.1. Liability of Mining Companies for Environmental Damage

The responsibility of mining companies for environmental damage is an important issue in the mining industry. Mining activities have caused negative impacts on the environment and natural resources utilized by indigenous communities. Therefore, mining companies must pay attention to their responsibility for environmental damage caused by mining activities.

⁸ Peter Machmud Marzuki, *Metode Penelitian Hukum*.

⁹ Gunawan, "Konflik Pertambangan Di Indonesia: Studi Kasus Tambang Emas Martabe Dan Upaya Meningkatkan Partisipasi Masyarakat Dan Penegakan Hukum Dalam Industri Pertambangan."

Mining companies have a responsibility to minimize the environmental impact of mining activities. This can be achieved by implementing good environmental governance principles, such as the principles of sustainability and environmental conservation. Mining companies must also pay attention to applicable rules and regulations related to the environment. In addition, mining companies must also provide fair and adequate compensation to indigenous peoples for environmental damage caused by mining activities. This compensation can be in the form of compensation for economic and environmental losses, as well as repair of damaged environments¹⁰.

Mining companies must also pay attention to rehabilitation and reconciliation efforts for damaged environments. This can be done by rehabilitating mining areas that have been excavated by replanting lost vegetation and maintaining the sustainability of flora and fauna in the area. Mining companies can also involve indigenous communities in environmental rehabilitation and reconciliation programs, so that indigenous communities can feel involved in the process of restoring damaged environments.

In carrying out their responsibilities for environmental damage, mining companies must pay attention to the principles of sustainability and environmental conservation. Mining companies must also comply with environmental rules and regulations, and provide fair and adequate compensation to indigenous peoples for environmental damage caused by mining activities. In addition, efforts to rehabilitate and reconcile damaged environments must also be given attention. Thus, mining companies can carry out their mining activities responsibly towards the environment and indigenous peoples.

The mining industry has become a major source of income for Indonesia, but it has also had a major impact on the environment and surrounding communities. One of the serious problems associated with the mining industry is the protection of indigenous peoples' rights. The government and mining companies often do not provide adequate protection for indigenous peoples as customary land owners. In Indonesia, regulations and laws have regulated the protection of indigenous peoples' rights, such as "Law No. 39 of 1999 concerning Human Rights and Law No. 12 of 2011 concerning the Establishment of Legislation". However, the implementation of these laws still faces major challenges, such as weak law enforcement and inadequate protection for indigenous peoples from the government and companies.

Environmental problems caused by the mining industry have also been regulated in various regulations and laws, "such as Law No. 32 of 2009 concerning Environmental Protection and Management". However, the implementation of

¹⁰ Gunawan.

this law still faces various challenges, such as weak supervision and law enforcement.¹¹ Therefore, the development of the mining industry in Indonesia must prioritize the protection of indigenous peoples' rights and the environment as the main focus. Cooperation is needed between the government and companies to ensure that mining activities are carried out with due regard to the rights of indigenous peoples and the environment. Such protection must be provided in an adequate manner, such as providing fair and transparent compensation, and involving indigenous peoples and local communities in decision-making related to mining activities.

Although there are various regulations and laws that regulate, the development of the mining industry in Indonesia still has a major impact on the surrounding community and environment, including in terms of protecting the rights of indigenous peoples and the environment, the implementation of the law still faces major challenges in terms of law enforcement and supervision. Therefore, describing these problems in the sub-chapter to ensure that mining activities are carried out by paying attention to the rights of indigenous peoples and the environment that are fair and transparent. In addition, involving indigenous and local communities in decision-making related to mining activities also needs to be done to increase community participation in decision-making¹².

The mining industry has a major impact on the environment and surrounding communities. Therefore, it is important to prioritize environmental protection and indigenous peoples' rights in mining activities. In Indonesia, regulations on mining and the environment are regulated in several laws, such as "Law No. 4 of 2009 concerning Mineral and Coal Mining and Law No. 32 of 2009 concerning Environmental Protection and Management".

Law No. 4 of 2009, known as the "Mineral and Coal Mining Law," regulates the governance and supervision of mining activities in Indonesia. This includes the responsibilities and duties of mining business permit (IUP) holders to carry out mining activities responsibly towards the environment and surrounding communities. In addition, "Law No. 32 of 2009 concerning Environmental Protection and Management" also regulates environmental protection in mining business activities. In this case, IUP holders are required to implement good environmental management practices and monitor the impact of mining operations on the environment. In addition, it should also be noted that several regulations in the mining sector, such as Mining Business Permits (IUP), are often granted easily without considering environmental and social factors. This indicates a lack of adequate supervision and law enforcement in the mining industry in Indonesia. Therefore, it is important to improve environmental

¹¹ Rasidi and Boediningsih, "Ulil+Albab+Ameliya."

¹² Gunawan, (2023)

protection and the rights of indigenous peoples by improving the implementation of mining and environmental laws.

To improve environmental protection and indigenous peoples' rights, improvements are needed in the implementation of mining and environmental laws. The government and mining companies must pay attention to social and environmental factors in every mining activity carried out. In addition, strict and effective law enforcement is also needed to prevent violations in the mining industry. In the theoretical framework, the concept of sustainability in the mining industry is important to consider. This concept emphasizes the importance of maintaining a balance between mining activities and the environment and surrounding communities, and ensuring that these activities can be sustainable in the long term. Therefore, the implementation of the concept of sustainability in mining activities can help improve environmental protection and the rights of indigenous peoples. The implementation of the concept of sustainability in mining activities is a

an approach that emphasizes the importance of maintaining a balance between mining activities and the environment and surrounding communities. This concept is based on the principle that mining activities must be carried out responsibly and sustainably so as not to damage the environment and endanger public health ¹³. The concept of sustainability in mining includes several aspects, including ¹⁴:

1. Environmental impact considerations: Mining companies must consider the environmental impacts of mining activities, such as damage to land, water and air, as well as biodiversity. Companies need to plan effective mitigation measures to reduce negative impacts on the environment.
2. Community involvement: Mining companies must involve local communities in mining activities and provide opportunities for communities to express their opinions regarding these activities. This is important to ensure that communities feel involved in mining activities and have access to information about the environmental and social impacts of these activities.
3. Environmental restoration and rehabilitation: Mining companies are required to restore and rehabilitate the environment damaged by mining activities. These actions include safely stopping mining operations and restoring the condition of land, water and natural ecosystems.
4. Safety and health: Mining companies need to ensure the safety and health of their employees and the surrounding community. This includes

¹³ (Kalangi, 2018)

¹⁴ (Gunawan, 2023)

providing personal protective equipment and training on the risks associated with mining activities.

The implementation of the sustainability concept in the mining industry in Indonesia must be carried out seriously so that negative impacts on the environment and surrounding communities can be minimized. The government and mining companies must pay attention to environmental and social factors in every mining activity and enforce the law firmly and effectively. Thus, the mining industry can become more sustainable and provide benefits to society and the environment in the long term.

3.2. Prevention and Mitigation of Environmental Damage in the Mining Sector

Environmental damage control in mining business activities has caused losses compared to benefits for the general public. Therefore, it is necessary to immediately take strategic, integrated, and coordinated steps nationally by forming a Coordination Team for Handling Illegal Mining, Misuse of Fuel Oil, and Destruction of Electrical Installations and Theft of Electricity with a Presidential Decree¹⁵.

In order to ensure the smooth implementation of the operational tasks of the Response Team in the regions, a "Regional Implementation Team is formed by the Governor and Regent or Mayor as the person fully responsible for the implementation of regional autonomy including law enforcement in the regions according to their respective scopes of authority." As regulated in the Decree of the President of the Republic of Indonesia Number 25 of 2001 Article 5 concerning the Coordination Team for Handling Unlicensed Mining, Misuse of Fuel Oil and Destruction of Electrical Installations and Theft of Electricity.

Related to the Prevention and Mitigation of environmental damage caused by mining business activities in the Republic of Indonesia Law No. 32 of 2009 concerning Environmental Protection and Management. Article 53 regulates as follows:

- (1) Every person who pollutes and/or damages the environment is obliged to take measures to control the pollution and/or damage to the environment.
- (2) Prevention of environmental pollution and/or damage as referred to in paragraph (1) is carried out by:
 - a. providing information warnings about environmental pollution and/or damage to the public;
 - b. isolation of environmental pollution and/or damage;
 - c. stopping sources of pollution and/or environmental damage; and/or
 - d. other ways that are in line with developments in science and technology.

¹⁵ (Maryani, 2013)

(3) Further provisions regarding procedures for dealing with environmental pollution and/or damage as referred to in paragraph (1) are regulated in Government Regulations.

Not only mitigation but also recovery in the condition of improving environmental resources also needs to be considered, so that mining business activities have responsibility for the sustainability of the environment and natural resources and ecosystems in the community area around mining business activities because they are the ones who get the impact of the damage, so that in terms of recovery which is regulated in the Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management.

4. Conclusions

Mining companies also have a major responsibility to protect the environment and provide fair compensation to indigenous peoples when their communities are harmed by mining activities. Mining companies must consider the social and economic factors in the areas where they operate as well as business-related factors, such as creating jobs and improving local infrastructure. Companies should work to engage indigenous people in dialogue and find solutions to problems that benefit all parties to reduce social conflict. By taking these actions, mining companies can improve their standing in society and be more beneficial to local communities. Mining operations often violate indigenous peoples' rights, damage the environment, and deplete natural resources. Conflicts of interest between mining companies, the government, and indigenous peoples are another factor causing social unrest. As a result, adequate government regulations are needed to control mining activities, including operating permit requirements, environmental responsibility, and supervision. To ensure that communities can benefit from mining activities, the government must also focus on local economic development and education initiatives.

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