



RECLAMATION AND POST-MINING AS AN OBLIGATION OF MINING BUSINESS ACTORS TO PROTECT THE COMMUNITY

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Abstract:

Coal is a natural resource contained in the earth, and is controlled by the state for the greatest prosperity of all Indonesian people. State control over coal is stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic Indonesia. Coal is a mining excavation that has great potential in contributing to state foreign exchange, and has an important meaning in improving the welfare of the community. Coal is a non-renewable natural resource, so its management must be based on the principle of caution, transparency and consideration of economic interests and the preservation of environmental functions in accordance with its designation. To realize this principle, mining management must be equipped with a mining business permit, which is attached to the obligation for mining business actors to carry out reclamation and post-mining as an effort to maintain environmental functions in accordance with its designation, and at the same time protect the community from the dangers of former mining excavations.

Keywords:

coal, law, mining, obligation

1. Introduction

Coal is a natural resource contained in the earth, and is controlled by the state for the greatest prosperity of all Indonesian people. State control over coal is stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic Indonesia. Coal is a mining excavation that has great potential in contributing to state foreign exchange, and has an important meaning in improving the welfare of the community. Therefore, coal mines must be managed properly and correctly according to the mandate of the constitution.

The state's limitations in funding, human resources, and so on, then the state's right to control coal is delegated to the government to regulate its use, utilization and allocation. This delegation is described in Article 2 paragraph (2) of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), which is formulated: "The state's right to control referred to in paragraph (1) of this article gives the authority to: a). regulate and organize the allocation, use, supply and maintenance of the earth, water and space; b). determine and regulate legal relationships between people and earth, water and space; c). determine and regulate legal relationships between people and legal acts concerning earth, water and space.

One of the government authorities stipulated in Article 2 paragraph (2) of the UUPA related to mining management was first regulated by Law Number 11 of 1967 concerning Mining. Over time, and the increasing complexity of mining problems, the mining law was adjusted to the development of needs in the management of coal mining. Law

Number 11 of 1967 was replaced in 2009 by Law Number 4 of 2009 concerning Mineral and Coal Mining, and in 2020, the law was amended by Law Number 3 of 2020 concerning Mineral and Coal Mining (hereinafter referred to as the Mining Law).

One of the substances regulated by the Mining Law is obligation of mining business permit holders to make plans and carry out reclamation and post-mining on ex-mining land. These provisions are regulated in Articles 96, 99, 100, and 101 of Law Number 4 in 2009. The reclamation and post-mining regulations in several articles simultaneously reflect the legal obligations of mining business actors to maintain environmental balance, as the will of government which has a mandate from the state to regulate the use, allocation, and utilization of natural resources, and at the same time as an effort to protect the interests of community.

The obligation to carry out reclamation and post-mining in practice is often ignored by mining business actors, so that many ex-mining excavations are left, which has a very detrimental effect on the community around the mining location. Ex-mining excavations that are not reclaimed and post-mining are very dangerous for the community, especially children who are victims of drowning and death. The Mining Advocacy Network (Jatam) stated that from January 2011 to May 2019, 34 children were recorded as having drowned in ex-mining holes in East Kalimantan. The legal issue is the use of sanctions for coal mining business permit holders who do not carry out the obligation to reclaim and post-mining ex-mining land based on the principle of justice.

2. Research of Method

This research is a normative legal research.

3. The Nature of Reclamation and Post-Mining Obligations

Reclamation and post-mining are one of the requirements in coal mining business permits. The essence of an obligation is the obligation to do something. In the concept of civil law, legal obligations can be made voluntarily, such as obligations arising from an agreement or contract, or a unilateral promise. Legal obligations can also arise from laws, such as the obligation to pay taxes, the obligation to provide for the husband's family, and also the obligation to carry out reclamation in mining business activities. If the obligation is not carried out, then the holder of the obligation must bear the risk not carrying out the legal obligation. Fulfillment of legal obligations is one manifestation of a person in obeying the law. In order to be able to obey legal obligations, a person must act with the awareness that he is carrying out actions that are required by law.

In Law Number 4 of 2009 concerning Mineral and Coal Mining, reclamation is defined as an activity carried out throughout the stages of mining efforts to organize, restore, and improve the quality by environment and ecosystem so that it can function again according to its designation. Reclamation is an activity that must be carried out by mining business actors throughout the production process regardless of the stages of mining activities. Reclamation is carried out from the beginning of production process as an effort to maintain the environment to continue and function as it should. Thus, reclamation is an ongoing and continuous activity as an effort to maintain the quality of the environment to continue to function according to its designation. While Post-mining is a planned, systematic, and ongoing activity after the end of some or all mining business activities by restore the function of natural environment and social functions according to local conditions throughout the mining area. Thus, between the two terminologies there are differences related the stages of implementing environmental function restoration activities carried out throughout production process, while post-mining is an environmental restoration activity carried out after mining activities end.

The regulatory norms for reclamation and post-mining have a mandatory character, or require that they be implemented by mining business actors holding IUP or IUPK. This requirement is reflected in several provisions, including in Article 99 paragraph (1) of Law Number 4 of 2009 concerning Mineral and Coal Mining, which is formulated: "IUP or IUPK holders are required to prepare and submit a Reclamation plan and/or Post-mining plan". Furthermore, Article 100 paragraph (1) of Law Number 4 of 2009 concerning Mineral and Coal Mining, which is formulated "IUP and IUPK holders are required to provide reclamation guarantee funds and post-mining guarantee funds". Article 2 of Government Regulation Number 78 of 2010 concerning Reclamation and Post-mining.

Norms in Law Number 4 of 2009 and Government Regulation Number 78 of 2010, with mandatory or mandatory phrases, so that if mining business actors do not carry out these obligations, they will be subject to legal sanctions

based on the Mining Law. The enactment of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Brick Mining, further emphasizes the use of the phrases reclamation and post-mining in relation to mining businesses. Law Number 3 of 2020 has perfected the legal basis for mining business activities, and at the same time emphasizes the obligation to carry out reclamation and post-mining for mining business actors. The affirmation of obligation to carry out reclamation and post-mining is determined in Article 96 of Law Number 3 of 2020, which is formulated: "In implementing good Mining engineering principles, IUP or IUPK holders are required to implement:

- a. Mining safety provisions;
- b. management and monitoring of the Mining environment, including Reclamation and/or Post-mining activities;
- c. Mineral and Coal conservation efforts; and
- d. management of mining waste from a Mining Business activity in solid, liquid, or gas form until it meets environmental quality standards before being released into the environmental media.

Furthermore, Article 99 stipulates the following:

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

The legal basis for reclamation and post-mining is also regulated in Government Regulation Number 78 of 2010, which emphasizes the importance of careful planning before mining activities begin. Planning is related to efforts to mitigate the impacts that may occur due to mining activities and efforts to prevent undesirable consequences. In addition, it is also regulated in the Regulation of the Minister of Energy and Mineral Resources Number 7 of 2020 concerning the Implementation of Reclamation and Post-Mining. This regulation is a technical guideline for the implementation of reclamation and post-mining, including procedures and technical standards that must be met by mining companies. This includes reporting requirements, monitoring, and maintenance of post-mining land.

In addition to the regulations as mentioned above, it can also be found in the Regulation of the Minister of Environment and Forestry Number P.16/MENLHK/SETJEN/SET.1/8/2020 concerning the Strategic Plan of the Ministry of Environment and also the Regulation of the Minister of Environment and Forestry Number 1 of 2022 concerning Amendments to the Regulation the Minister of Environment and Forestry P.16/MenLHK/Setjend/Set.1/8/2020 which are often associated with the management of environmental impacts from mining activities, including reclamation, and include requirements for environmental impact analysis (AMDAL) and obligations to mitigate environmental impacts. In addition to laws and regulations that apply nationally, they are also regulated in various regional regulations, because mining locations are usually in regions, so regions need to regulate various mining issues related to regional needs. For example, related to regional taxes, regional levies, or maybe also related to corporate social responsibility (CSR) for regions, Regional Retribution Regulations, Regional Taxes, and so on.

4. Reclamation and Post-Mining Fund Guarantee

One of the important aspects of the regulation of coal mining in Law Number 3 of 2020 is the provision that emphasizes the application of Article 100 of Law Number 4 of 2009 concerning Mineral and Coal Mining, which stipulates that: "IUP and IUPK holders are required to provide reclamation and post-mining guarantee funds. If the IUP and IUPK holders do not carry out reclamation and post-mining in accordance with the approved plan, the minister, governor, or regent/mayor in accordance with their authority may appoint a third party to carry out reclamation and post-mining with reclamation and post-mining guarantee funds.

The problem that may occur is if the mining permit and activities have expired, then the business actor does not carry out post-mining dam reclamation, is it possible for the business actor to abandon his obligations. Normatively, the business actor still has obligations even though the mining business permit has expired, and the government is obliged to collect the completion of these obligations as stipulated in the licensing requirements. In other words, even though the mining business permit has expired, it does not mean that the business actor no longer has any ties with the government. These ties remain, because the burden of obligations is not the government as the permit issuer, but the burden of the reclamation and post-mining obligations is the law, in this case the Mining Law and its implementing regulations. If these obligations are not carried out, the government can take legal action to sue and/or file a criminal lawsuit in court. With the expiration of the permit not eliminating the obligations of the mining

business actor as the holder of the business permit as well as the person responsible for the mining business activities still has the obligation to carry out reclamation and post-mining successfully forcing the mining business actor to carry out reclamation and post-mining with a success rate of 100%.

In this regard, Law Number 3 of 2020 is expected to resolve problems related to the neglect of reclamation and post-mining by mining business actors who often leave abandoned mining pits, so that environmental damage and pollution can be avoided. This condition is one of the objectives of the formation of Law Number 3 of 2020, which amends Law Number 4 of 2009, which is considered no longer capable of realizing better environmental management, especially ex-mining land.

5. Reclamation and Post-Mining in the Perspective of Legal Purpose Theory

Laws are formed with the aim of regulating and maintaining order, justice, and legal certainty, so that chaos can be controlled or at least prevented and overcome. The purpose of the state in forming laws is to create order in social interactions, so that security and order are maintained. Laws made by the authorities can sometimes be enforced by official state institutions or agencies that are authorized, so that if a violation occurs that results in losses for the community, certain legal actions can be taken as an effort to enforce the law.

The formation of Law Number 4 of 2009 concerning Mining as amended by Law Number 3 of 2020, also has a specific purpose and this purpose is stated in Article 3 of Law Number 4 of 2009 concerning Mineral and Coal Mining, which is formulated:

Furthermore, in Government Regulation Number 78 of 2010 concerning Reclamation and Post-Mining, the management of mining businesses must pay attention to the principles that include: a). protection of the quality of surface water, groundwater, seawater, and soil and air based on environmental quality standards or environmental damage criteria in accordance with the provisions of laws and regulations; b). protection and restoration of biodiversity; c). guarantee of the stability and security of rock embankments, tailing ponds, ex-mining land, and other artificial structures; d). utilization of ex-mining land in accordance with its designation; e). paying attention to local social and cultural values; and g). protection of groundwater quantity in accordance with the provisions of laws and regulations.

This goal is in line with John Stuart Mill's theory, that law is a reflection of human beings to reject and avenge the damage suffered, both by themselves and others. A person's sense of justice will rebel against damage, suffering, not only on the basis of individual interests, but more broadly than that to others who are equated with themselves, so that the essence of justice includes all moral requirements that are very essential for the welfare of humanity. According to John Stuart Mill, the standard of justice must be based on its usefulness. In line with Stuart Mill, Bentham stated "The aim of law is 'The greatest happiness for the greatest number'", that the purpose of law is to provide the greatest benefit and happiness to as many citizens as possible Bentham stated that.

In addition to aiming to achieve justice and benefits for the community, and be useful for the nation and state, the Mining Law also aims to guarantee legal certainty in the implementation of mineral and coal mining business activities. This objective is stated in Article 3 letter f of Law Number 4 of 2009 concerning Mineral and Coal Mining, which in the provisions emphasizes the achievement of mineral and coal resource management to realize utility and effectiveness, which means to realize happiness the community.

Considering the provisions of Article 3, then normatively the Mining Law has fulfilled the objectives of the law as explained by several theories. According to Hans Kelsen "Law is a coercive order of human behavior, it is the primary noun which stipulates the sanction" (law is a coercive order against human behavior, law is also a primary rule that determines sanctions). The hierarchy of legislation greatly determines how the order of law starts from top to bottom. However, efforts to achieve these goals are still hampered by the unclear norms or often referred to as vague norms. The unclear norms related to reclamation and post-mining can give rise to various interpretations. legal interpretation.

The unclear norms in the regulations for implementing reclamation and post-mining, cause unclear implementation of reclamation and post-mining, especially related to technical rules for implementing reclamation and post-mining. The unclear regulatory norms can be found, for example, in the provisions of Article 100 paragraph (2), which is formulated: "The Minister, governor, or regent/mayor in accordance with their authority may appoint a third party to carry out reclamation and post-mining with guarantee funds as referred to in paragraph (1).

In the norm of Article 100 paragraph (2) of Law Number 4 of 2009 concerning Mineral and Coal Mining, there is a phrase "may" appoint a third party to carry out reclamation. The phrase "may" is theoretically not an imperative or mandatory norm, but rather a facultative norm or optional norm. This means that the government can appoint or not appoint a third party to carry out reclamation and post-mining. In this case, the problem is related to the absence of norms used as a legal basis for the government in appointing a third party to carry out reclamation and post-mining of former coal mining excavations.

The appointment of a third party as the executor reclamation and post-mining certainly still leaves problems, in this case who is third party in question, whether approval must be requested from the mining business actor, or unilateral appointment by the government. If the appointment of the third party is done unilaterally, it is feared that it could cause problems related to the costs of reclamation and post-mining which are borne by the mining business actor. According to Article 100 paragraph (3), the appointment of a third party to carry out reclamation and post-mining is carried out if the mining business actor does not carry out reclamation or post-mining. The provisions of Article 100 paragraph (3) are formulated: "The provisions as referred to in paragraph (2) apply if the holder of an IUP or IUPK does not carry out reclamation and post-mining in accordance with the approved plan. So, the appointment of a third party can only be carried out if the mining business actor does not carry out reclamation or post-mining in accordance with the agreed plan.

6. Conclusion

Coal is a non-renewable natural resource, so its management must be based on the principle of caution, transparency and consideration of economic interests and the preservation of environmental functions in accordance with its designation. To realize this principle, mining management must be equipped with a mining business permit, which is attached to the obligation for mining business actors to carry out reclamation and post-mining as an effort to maintain environmental functions in accordance with its designation, and at the same time protect the community from the dangers of former mining excavations. To ensure that reclamation and post-mining are carried out, business actors must pay a reclamation and post-mining guarantee fund, the amount of which is determined by the government. If business actors do not carry out reclamation and post-mining as planned, the government can appoint a third party to carry out reclamation and post-mining at a cost from the reclamation and post-mining guarantee fund.

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