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Implementation of Sustainable Development Principles in Mineral and Coal Mining Policy

Syofiarti

Program Doktor Ilmu Hukum Fakultas Hukum Universitas Andalas, Padang, Indonesia

Takdir Rahmadi

Program Doktor Ilmu Hukum Fakultas Hukum Universitas Andalas, Padang, Indonesia

Kurnia Warman

Program Doktor Ilmu Hukum Fakultas Hukum Universitas Andalas, Padang, Indonesia

Azmi Fendri

Program Doktor Ilmu Hukum Fakultas Hukum Universitas Andalas, Padang, Indonesia

Abstract--The concept of sustainable development is one of the principles where development is carried out not only to meet the needs of current generations but also future generations. The most strategic natural resource management activities in Indonesia, namely mining, are not only intended for the benefit of current generations but also for generations to come. The enactment of Mineral and Coal Mining Act Number 4 of 2009 accommodates mining activities. However, the fact that exploration and exploitation activities carried out cause problems to the environment, namely the emergence of environmental pollution and destruction. This can certainly cause losses not only for the present but also to have an impact on the future. In its implementation also found the fact that there is still a lack of understanding of the importance of sustainable management of mineral resources in addition to weak law enforcement.

Keywords--coal mining policy, mineral, sustainable development principles.

Introduction

The exploration and the exploitation of natural resources in Indonesia are vested to the state as mandated by Article 33 paragraph (3) of the 1945 Constitution which reads the earth, water, and natural wealth contained therein is controlled by the state and used for the greater prosperity of the people. The government as a representation of the State is given the right to manage (the right to manage) natural resource wealth to be enjoyed by the people fairly and equally. Furthermore, the prosperity of the people in the spirit and ideals of the end of the Welfare State must be realized by the State and the Government of Indonesia. Therefore, natural resource management is one of the instruments to achieve (Sutedi, 2012; Abdurrahman, 2003; Anastasiou, 2012). Mining and the environment are like two sides of different currencies. On the one hand, mining activities contribute significantly to state revenues, but on the other hand, these activities cause problems to the environment.

Any activity that raises environmental issues has been regulated in the Environmental Act Number 32 of 2009 (hereinafter cited as Environmental Act), this law is an umbrella provision for the management of natural resources, one of the objectives is to realize sustainable development. Based on article 1 paragraph 3 of Environmental Act Number 32 of 2009, sustainable development is a conscious and planned effort that combines environmental, social, and economic aspects into development strategies to ensure the integrity of the environment as well as the safety, ability, welfare, and quality of life of current and future generations.

Mining activities have a direct impact on the environment. Therefore, such activities can be carried out if the requirements of the environmental feasibility documents are fulfilled. Nevertheless, the mining activities still leave many environmental problems in reality. This happens so because the principle of sustainable development mandated by the law is not carried out properly. The fact that lots of Mining Business Licences that are still nuisance (not clear and clean / NCC), results in a condition where mining exploitation activities no longer pay attention to sustainable development principle. As a result, the areas located around the exploitation activities are impacted by environmental damage (Maledo & Edhere, 2021).

The principles of sustainable development that are important to be reviewed are (1) Preventive Action, which is a principle that requires the government to conduct preventive measures, (2) cost internalization that requires the government to make regulations on the cost of preventing environmental pollution or also called The polluter pays principle, and (3) The principle of democracy and public participation that demands the implementation of environmental democracy by making policies that affect the quality of the environment by paying attention to the needs of the community.

Based on what is stated above, this research is focused to see how these three principles of sustainable development are accommodated in mineral and coal mining policies. The research would like to examine (1) how the principles of sustainable development in mineral and coal mining policy (2) What is the

concept of sustainable development principle that should be applied in mineral and coal mining policy?

Method

This research is a normative legal study. It, therefore, examines the principles of sustainable development in mineral and coal mining policy (Dewey, 1914; Samuel, 2016; Michaels, 2006). This research uses the statutory approach (Phillippi & Lauderdale, 2018; Marshall et al., 2013; Bengtsson, 2016; Adhabi & Anozie, 2017; Reay, 2014). It requires secondary data derived from "legal materials" obtained primarily from various legal materials, both primary legal materials (applicable laws and regulations related to mining), secondary (literature explaining primary legal materials), as well as tertiary (law dictionary, encyclopedia, and others).

Discussion

Sustainable development principles in mineral and coal mining policy Preventive action is a principle that requires the government to take precautions

Mining activities include those that have a significant impact on the environment. Therefore, mining activities are obliged to prepare Environmental Impact Analysis (EIA) as a prerequisite requirement to obtain an environmental permit. With the issuance of Presidential Regulation Number 91 of 2017 concerning the Acceleration of Business Implementation, the government continues its effort to simplify the licensing process in Indonesia. The presence of Online Single Submission (OSS) is a platform provided by the government to get the license in an integrated manner and applies to all ministries, institutions, and local governments throughout Indonesia. So far, it is conducted through one door integrated licensing.

The OSS system reverses the previous licensing process, which specifies that an operational or business permit can be issued after some other permits such as environmental permits, Environmental Impact Analysis (EIA), and so forth are obtained by the proponent of the business. However, under the OSS system, an operational or business permit can be issued by the government if the proponent of the business has had a Business Number (Single Business Number) whereas Environmental Impact Analysis (EIA) may be completed gradually later on. Thus, it can be concluded that the Presidential Regulation No. 91 of 2017 sets forth the obligation to write Environmental Impact Analysis (EIA) after the issuance of Business Number (Single Business Number). This will certainly weaken the Environmental Impact Analysis position which is used as a basis for the decision-making process (Hilson & Murck, 2000; Kopacz et al., 2017).

The Presidential Regulation No. 91 of 2017 is contrary to the Environmental Act which puts Environmental Impact Analysis (EIA) as the most important instrument to prevent pollution and degradation of the environment, including from mining activities. Thus Environmental Impact Analysis (EIA) functions as a prerequisite condition for an operational license. However, under The Presidential

Regulation No. 91 of 2017, Environmental Impact Analysis (EIA) can be installed after the business license is issued. Therefore, Environmental Impact Analysis (EIA) does not function as a pollution preventive measure. Besides, the issuance of a business permit without obliging Environmental Impact Analysis (EIA) violates the Environmental Act, by which the permit-issuing officer can be imposed criminal sanctions under Articles 109, 110, and 111 of the Environmental Act. The simplification of licensing procedure created by the Presidential Regulation Number 91 of 2017 causes the acceleration and expansion of mining activities. This will certainly increase the environmental impact on the communities located around the mine sites.

The emergence of Regulation of the Minister of Forestry and Environment Number P24/MENLHK/SETJEN/KUM.1/7/2018 concerning Exceptions to The Obligation to Prepare EIA for Businesses and/or Activities Located in Districts/Cities of which Detailed Spatial Plans are in Place again raises the issue because activities that have an important impact can be excluded from the obligation to prepare Environmental Impact Analysis (EIA) if the region already has a Detailed Spatial Plan which has been decided through Strategic Environmental Study. Thus, the Strategic Environmental Study a Detailed Spatial Plan are considered as a substitute for Environmental Impact Analysis (EIA), guaranteeing the prevention of pollution and environmental destruction will not be met. Based on what is stated above, preventive action principles that require the government to take preventive measures as part of the principle of sustainable development will not be met (Goodland & Ledec, 1987; Dubiński, 2013).

Cost internalization

Simply, the polluters pay principle is intended that every perpetrator of activities/businesses that cause pollution must pay for the impacts that occur. Therefore, if mining operation has caused pollution and degradation of the environment, the perpetrator must restore the condition of the environment by his/her expenses. Article 99 of the Mineral and Coal-Mining Act Number 4 of 2009 confirms that every holder of Mining Business Licences and Special Mining Business License is obliged to submit a reclamation and post-mining plan at the time of applying for a Production Operations License or Special Production Operations. The implementation of reclamation and post-mining is carried out following the designation of land, which is included in the land use agreement between the holders of license with land rights owners.

Article 100 of the Mineral and Coal-Mining Act Number 4 of 2009 confirms that every holder of Mining Business License and Special Mining Business License is obliged to deposit reclamation and post-mining guarantee funds. Ministers, governors, or regents/mayors may assign third parties to reclamation and post-mining with guarantee funds provided by mining business licenses and Special Mining Business License holders. Reclamation and post-mining are further regulated Government Regulations Number 78 of 2010 on reclamation and post-mining. Article 30 and article 37 state that reclamation and post-mining guarantees are placed on government banks in the form of time deposits. This provision is also further regulated in the Decree of the Minister of Energy and Mineral Resources Number 7 of 2014 concerning the implementation of

reclamation and post-mining in Mineral and Coal Mining Business Activities (Gudmundsson & Höjer, 1996; Franks et al., 2011).

But the reality is that there is still low compliance with the placement of reclamation and post-mining funds by mining companies. This has the potential to cause a burden on the state budget and can have an impact on the financial losses of the State. In the absence of placement of reclamation and post-mining guarantee funds, the mining business licenses should be Non-Clean and Clear (NCC) status which automatically activities must stop until the existence of CNC status or precisely the mining business licenses must be revoked. Also, the reclamation guarantee deposited by the mining company to the government is misinterpreted by the company that feels it is already responsible for reclamation with the granting of the security deposit.

On the other hand, some arrangements seem to conflict with the internalization obligations of environmental costs. For example, in the rules about land/rocks that are also unedited at the time of mining that is not subject to production dues. Soil or rocks are also undated it will be subject to production dues if utilized. Thus, the company is made easier to do excavation to get mineral materials/coal because the soil/rocks that are not used will be thrown away because it is not charged dues. Thus the principle of cost internalization has been regulated in the mining policy only the implementation of which does not run by the mandated necessity (Dontala et al., 2015; Qi et al., 2019).

Principles of democracy and public participation

The principle of democracy and public participation demands the implementation of environmental democracy by making policies that affect the quality of the environment by paying attention to the needs of the community, which has not been regulated in detail in the Mineral and Coal-Mining Act. There is no community participation and even violations of basic community rights in the determination of mining areas. This lack of community involvement resulted in frequent conflicts in the determination of mining areas.

Therefore, in 2010 Walhi conducted a judicial review of Article 10 letter b of the Mineral and Coal-Mining Act Number 4 of 2009 to the Constitutional Court against provisions in the Mineral and Coal-Mining Act relating to community participation in establishing mining areas. Based on the decision of the Constitutional Court Number 32/PUU-VIII/2010, the article in the Mineral and Coal-Mining Act related to the determination of mining areas from 'mandatory attention to the community' changed to 'obliged to protect, respect and fulfill the interests of the community whose territory and land will be incorporated into the mining area and affected communities.

In terms of rights protection and community empowerment, the Mineral and Coal-Mining Act affirms that new mining activities can be carried out if there is already approval from land rights holders. Without approval, mining activities cannot be implemented Other rules state that communities directly affected by mining businesses, entitled to proper compensation due to mistakes in mining activities,

and file a lawsuit to the court. This rule, in any case, opens up more space on the aspects of community supervision on mining activities.

While in terms of community empowerment around mining, the rules are not much different from similar laws such as the holders of exploration and production operations mining business licenses is obliged to create a community development and empowerment program (as stipulated in Article 108 paragraph (1) of the Mineral and Coal-Mining Act, then paragraph (2) states the preparation of programs and plans as referred to in paragraph (1) consulted to the Government, local government, and the community.

Some of the rules in the Mineral and Coal-Mining Act briefly regulate public access to information about mineral and coal mining planning policies. The process of determining the mining area is carried out with due regard to the opinions of various parties including the community. The principle of transparency is also applied at the time of determination of people's mining areas. The people's mining area plan was publicly announced. Related to access to information, the Mineral and Coal-Mining Act also regulates how people access information and give opinions. But there have been no further arrangements for public access to such information. Therefore, there needs to be a complaints mechanism that makes it easier for the public to submit their complaints, as well as sanctions for parties that prevent the public from obtaining information and participating (Liu et al., 2016; Yu, 2017).

In the case of planning, there is no arrangement regarding guarantees and the right of the community to give consent or objection to utilization planning. In the process of determining the mining area, people's opinions are considered but there is no guarantee whether expressing that opinion is a right, where, when, and in what form is the opinion given? What follow-up if objections have been submitted by the community on the determination of mining areas? Also, the provisions of Article 162 of the Mineral and Coal-Mining Act ignore the rights of citizens. Citizens are not allowed to refuse. When citizens try to defend their rights, then it is considered to hinder or hinder mining activities are punished for a maximum of 1 year and a maximum fine of Rp100 million. Surely the same can happen for anyone who seeks to stop the activities of companies that have polluted or damaged the environment. This article opens up opportunities for governments, corporations, and law enforcement to silence and even criminalize citizens.

As stated earlier, the issuance of OSS Government Regulation seems only profitable for mining investment and business certainty, while community involvement in the mining business plan becomes limited. Thus there is no room for communities directly affected by mining activities, and also eliminates the role of other communities such as environmentalists (Non Governmental Organization / NGOs) to conduct monitoring.

Sustainable development principles that should be applied in mineral and coal mining policy

Some of the mining cases that occur in Indonesia are the fact that the management of mining businesses carried out by the government so far is not based on the sustainability of the ecosystem or the mining business itself. So that if the mining commodity in the exploration has run out, then the former mining activities land will be abandoned immediately. Therefore, the principles of sustainable development in the future are:

- Preventive Action Principles; The resulting policy instruments must be synchronized and harmonized between relevant regulations and other sectoral regulations so that mining activities are not only enjoyed by current generations but can also be enjoyed by future generations. In addition, prevention of the impact of mining activities in the form of pollution and environmental destruction can be anticipated.
- Cost internalization; which requires the government to make regulations on the inclusion of environmental pollution prevention costs. This principle emphasizes the economic rather than the legal aspects. Therefore, in the future, it is necessary to make improvements in the aspects of licensing through the enforcement of strict regulatory standards. Accelerate the process of transferring reclamation and post-mining security funds and crack down firmly on Mining Business Licences that have not placed reclamation and post-mining guarantee funds. For the function of control and supervision of the implementation of reclamation and post-mining can be carried out properly, it is necessary to increase the number of mine inspectors.
- Principles of democracy and public participation that demand the implementation of environmental democracy by making policies concerning the needs of the community. Community participation and involvement are not only in the process of implementing activities but also in terms of planning and development of the implementation of the program, including enjoying the results of the implementation of the program. Therefore, in future mining activities, there must be strengthening of the form of community participation in mining activities, so that strong regulations and policies, and rules of community involvement will be able to anticipate the occurrence of conflict in the community.

Conclusion

In practice what is mandated in Article 33 paragraph (3) and paragraph (4) of the 1945 Constitution is far from expected because there has been a lot of damage to natural resources, which turns out to be the main problem of natural resources (and the environment) that occurred so far precisely triggered by the issue of Law and Policy on Natural Resources itself. From some mining cases that occur in Indonesia is the fact that the management of mining businesses carried out by the government so far is not based on the sustainability of the ecosystem or the mining business itself, therefore it is necessary to change and synchronize to mining regulations and policies, and there needs to be a harmonization with other sectoral regulations.

Sustainable Development Principles that should be applied in Mineral and Coal Mining Policy; For (1) Preventive Action is a principle that requires the government to conduct preventive measures, In this case, the resulting policy instrument there must be synchronization and harmonization with related regulations and other sectoral regulations. (2) Cost internalization (Contaminant Paying Principle); improvement in the licensing aspect through the enforcement of strict regulatory standards. Accelerate the process of transferring reclamation and post-mining security funds and crack down firmly on Mining Business Licences that have not placed reclamation and post-mining guarantee funds. (3) Principles of democracy and public participation; Future mining activities must strengthen the form of community participation in mining activities so that strong regulations and policies, and rules of community engagement will be able to anticipate the occurrence of conflict in the community.

For what is stated above, the mining policy going forward should apply the principle of sustainable development referring to the Stockholm Declaration of 1972. Continued mining development requires commitment from both the central and local governments. This commitment is carried out consistently by stakeholders as a first step in laying the basic framework of targeted development without damaging the surrounding environment.

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