

Formulation Of Law Enforcement In Environmentally Inspected Sustainable Mining Governance In Indonesia

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ABSTRACT

The formulation of law enforcement in sustainable mining governance with an environmental perspective is an important matter in the Indonesian legal system. This form of law enforcement includes law enforcement through administrative law instrument. This is the issue of this article, using a normative analysis method. Administrative environmental law enforcement can be interpreted as the use or application of instruments and sanctions in administrative law, with the aim of forcing the target legal subjects to comply with environmental laws and regulations, so that it is hoped that environmental governance in Indonesia can run well. mining in Indonesia must pay attention to the principles of environmental preservation. This means that mining management that does not pay attention to environmental principles in Indonesia can be subject to administrative sanctions according to environmental norms in Indonesia.

Keywords: Law Enforcement, administrative law instrument, The Mining

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I. INTRODUCTION

Indonesia, constitutionally, has determined the use and utilization of mineral and coal natural resources, regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, "Earth and water and the natural resources contained therein are controlled by the state and used for the maximum prosperity of the people". Being controlled by the state means the state's right to control over natural assets, including minerals and coal. This provision places the Indonesian state as a public organization in a central position to determine who is entitled or not entitled to carry out a mining business, or in other words "every mining business actor in Indonesia, before carrying out mining activities, must first obtain mining concession rights from the Central Government or the Central Government. Provinces according to their authority¹.

State control over mining for the greatest possible prosperity of the people raises the obligation of the Indonesian state, namely that all forms of utilization of mining natural resources and the results obtained therein, natural wealth, must significantly increase the prosperity and welfare of society. Indonesia, should be able to guarantee all the rights of the people contained in and on the earth which can be produced directly or directly enjoyed by the people. Bagir Manan, that the state prevents any action from any party that will cause the people to not have the opportunity or to lose the rights contained in and on the earth².

In relation to Law Enforcement in Environmentally Friendly Sustainable Mining Governance in Indonesia. Law enforcement is the enforcement of environmental laws and mining laws. Enforcement of environmental law 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. Mining law has a very close relationship with environmental law because every mining business, whether it is related to mineral and coal mining or oil and gas mining, is required to maintain the continuity of the carrying capacity and carrying capacity of the environment. This is commonly referred to as the preservation of environmental functions.

Mining law as a field of legal science has various dimensions, one of which is in the environmental field because mining objects and activities are the environment (both biotic and abiotic). Mining law places environmental aspects as an important aspect because of the dynamics and changes to physical changes and the nature of the environment, so that special treatment is required for the environment, and it is hoped that the

¹Bagir Manan, in Franky ButarButar, *Environmental Law Enforcement in the Mining Sector*, Yuridika Journal Vol. 25 No. 2, May-August, Faculty of Law Airlangga University, Surabaya, 2010, page. 154

²Abrar Saleng, *Mining Law*, UII Press, Yogyakarta, 2004, p. viii

environment managed from mining activities will always have environmental functions and power that are maintained or possibly increased³.

The two fields of law (environmental law and mining law), how do we draw synergy between systems of environmental legal aspects and mining activities so that a comprehensive integration between these aspects results in an ideal blend so as to create a normative order that leads to the process of mining governance environmentally sustainable, effective and efficient. Regulations regarding the environment in the mining sector are one of a series of legal norms that contain legal mechanisms that mining business initiators and law enforcement must comply with. Integration and integration of the two legal norms (environmental law norms and mining law norms) in mining businesses and consistent enforcement of the law towards concrete events, this is what is meant by Environmentally Sustainable Mining Governance⁴.

Based on the theoretical and normative descriptions, legal problems arise with the existence of mineral and coal mining businesses, due to conflicts of interest between the preservation of environmental functions on the one hand and the mining business on the other; because mining activities and the environment are two things that cannot be separated. In fact, theoretically "there is no mining activity without environmental damage and pollution". Environmental conditions in almost all parts of the world, including Indonesia, are currently declining. In an ecosystem, each component has a function or a link in the chain that needs each other in achieving balance, if one of the components is disturbed the balance will also be disrupted. In a situation like this, if the disturbance has exceeded the carrying capacity where the resources in the ecosystem are no longer able to support the mining business. This means that damage has occurred or is known as environmental damage.

II. Research Method

Based on legal issues on the background of the problem, this study uses the type of "normative legal research". The approach used in this legal research is: a. Statutory approach, an approach to review both hierarchically and in terms of laws and regulations relating to law enforcement in environmentally sustainable mining governance; b. Case approach (Case approach), this approach is used to answer problems regarding the form of law enforcement in environmentally sound sustainable mining governance; and c. Conceptual approach (conceptual approach), is used to find solutions to research problems. In this case the form of law enforcement in sustainable mining governance with an environmental perspective.

III. Discussion

Supervision of Environmental Management in the Environmentally Friendly Sustainable Mining Business Sector

Monitoring is part of enforcing environmental laws and mining laws. In the implementation of sustainable mining governance with an environmental perspective, it is necessary to control efforts wisely in the use or exploitation of natural resources. This is a mandate from the provisions of Article 68 letter b and letter c of Law of 32 of 2009, that "everyone who carries out a business or activity is obliged to maintain the sustainability of environmental functions and comply with the provisions regarding environmental quality standards or standard criteria for environmental damage"⁵.

Continuous supervision in the field of environmental protection and management is very important as a strategic effort in the implementation of prevention and control of environmental pollution and damage. Environmental supervision is an activity that is carried out directly or indirectly by an Environmental Monitoring Official to determine the level of compliance of those in charge of a business and/or activity with the provisions of laws and regulations in the environmental sector; while the Environmental Monitoring Officials are civil servants who are in responsible agencies in the regions who meet certain requirements and are appointed by Governors, Regents and Mayors.

Supervision is carried out on activities that have environmental approvals as an effort to monitor compliance with approval requirements (permits) by agencies authorized to give environmental approvals. Compliance with the law is an intermediate goal of enforcing environmental law, namely to prevent and mitigate violations that impact or have the potential to impact the environment and human life⁶.

³Siti SundariRangkuti, *Environmental Law and National Environmental Policy*, Airlangga University Press, Print III, Surabaya, 2003, p. 430

⁴Franky ButarButar, *Loc. Cit.*,p. 155

⁵Article, *Regional Environmental Monitoring Officer*, accessed, 6 August 2022, p. 42.

⁶Siti SundariRangkuti, in Dahlia Kusuma Dewa, AlviSyahrin, Syamsul Arifin, and PendastarenTarigan, *Environmental Permits in Relation to Enforcement of Environmental Administration and Environmental Crime Based on Law of 32 of 2009 on Environmental Protection and Management*, USU Law Journal, Vol.II , No. 1 (January-2014), p. 125

Environmental supervision is an instrument for enforcing administrative environmental law; with the enactment of Law of 11 of 2020 Concerning Job Creation, there are 2 (two) changes which directly affect environmental monitoring. First, change the subject authorized to carry out supervision from definitive subjects, namely Ministers, Governors, and Regents or Mayors, to become broader subjects, namely the Central Government and Regional Governments in accordance with the provisions of the applicable laws and regulations. Second, remove "environmental permits" and "central or local government approvals", which are part of the prerequisites for issuing business permits.

A derivative of Law of 11 of 2020, further regulated in Government Regulation of the Republic of Indonesia of 22 of 2021 on the Implementation of Environmental Protection and Management, "gives the Minister, Governors, Regents and Mayors an obligation to supervise the compliance of those responsible for business and activities with the provisions stipulated in business permits or government approvals related to environmental approvals and laws and regulations in the field of environmental protection and management. The supervision is carried out based on the norms, standards, procedures and criteria set by the Minister."

This Indonesian Government Regulation of 22 of 2021 also stipulates: Ministers, Governors and Regents or Mayors can delegate supervisory authority to officials and technical agencies responsible for environmental protection and management. In terms of the implementation of supervision; Ministers, Governors and Regents or Mayors designate Environmental Monitoring Officials who are functional officials in accordance with the provisions of environmental laws and regulations.

The implementation of supervision by the Environmental Supervisory Officer is carried out by: a. direct supervision; and/or b. indirect supervision. Direct supervision is carried out by visiting the location of a business or activity by: a. regular, or b. incidental; while indirect supervision is carried out through a review of data reports from the person in charge of a business or activity and/or data from the Environmental Information System. Indirect monitoring results, indicating repeated violations or indicating the emergence of a serious threat to the environment, the Environmental Monitoring Officer immediately conducts direct supervision. In the event that a business or activity has created a serious threat to the environment, the Environmental Supervisory Officer will terminate certain violations; with the aim of preventing: a. The impact will be bigger and wider if the environmental pollution or environmental damage is not stopped immediately; and/or b. Bigger losses for the environment if environmental pollution or environmental damage is not stopped immediately.

The results of supervision carried out by PPLH are stated in the minutes of supervision and reports on the results of supervision. Minutes of supervision contain facts and findings of supervision results; while the report on the results of supervision states the compliance status of the business in the event that the conclusions of the supervision report are declared disobedient, PPLH provides recommendations for follow-up law enforcement which include: a. administration; b. civil; and c. criminal.

Arrangements for environmental supervision, in this Government Regulation of 22 of 2021, are also known and regulated as "Second Layer Supervisors", which were previously unknown and not regulated. Second layer supervisor, in this case "The Minister can supervise the compliance of those in charge of businesses and activities whose business permits or government approvals related to environmental approvals are issued by the Regional Governments; if a. The Minister considers that there has been a serious violation in the field of environmental protection and management based on the norms, standards, procedures and criteria stipulated by the Minister; and b. Governors and Regents or Mayors do not carry out supervision.

Supervision of Environmentally Friendly Mining Management

In the implementation of environmental management, supervision efforts from the government are needed so that the management and implementation of mining business activities can provide optimal benefits for the ongoing sustainable development. Supervision in the environmental sector is the government's responsibility which is realized through the role of the Mining Inspector. Mining inspectors are responsible for supervising mining business actors so that each of their activities is always accompanied by preventive measures against potential environmental damage. Through supervision, it can be ensured that the activities of every mining business actor are running in accordance with applicable regulations.

Supervision is needed not only as a form of implementing policies on mining activities for companies, but in a broader scope it is needed as a control function between government administrators in an effort to achieve efficient and accountable good governance. Supervision in mining management in Indonesia is regulated in Article 140 of Law of 3 of 2020, "The Minister supervises the implementation of mining business activities carried out by Holders of Permit".

Supervision is carried out by Mining Inspectors and Mining Supervision Officials carried out periodically and reports on the results of their supervision are submitted to the public in accordance with statutory provisions. The implementation of supervision over mining business activities as referred to in Article 140 of Law Number 3 of 2020, is regulated by or based on Government Regulation Number 55 of 2010 concerning Guidance and Supervision of the Management of Mineral and Coal Mining Businesses.

Supervision of the implementation of mining business activities is regulated in Article 16 of Government Regulation Number 55 of 2010, that Supervision is carried out on: a. mining technical; b. production and marketing; c. finance; d. mineral and coal data management; e. conservation of mineral and coal resources; f. mining safety; g. environmental management, reclamation and post-mining; h. utilization of domestic goods, services, technology, and engineering capabilities as well as building designs; i. mining technical manpower development; j. local community development and empowerment; and K. mastery, development, and application of mining technology.

Supervision as referred to in Article 16 of Government Regulation Number 55 of 2010; done through: a. evaluation of reports on plans and implementation of mining business activities from mining permit holders as a Continuation of License Contract Operations, as a Continuation of License Contract Operations, is carried out at least 1 (one) time a year.

Supervision by the Mining Inspector is carried out through: a. evaluation of periodic and/or occasional reports; b. periodic inspection or at any time; and c. assessment of the successful implementation of programs and activities. Under this supervision the Mining Inspector carries out inspection, investigation and testing activities. In carrying out inspection, investigation and testing activities, the Mining Inspector has the authority to: a. enter the place of mining business activity at any time; b. temporarily suspend part or all of the mineral and coal mining activities if the mining activities are deemed to endanger the safety of workers/mining workers, public safety, or cause pollution and/or environmental damage; and c. propose a temporary suspension as referred to in letter b to become a permanent cessation of mineral and coal mining activities to the Chief Mining Inspector.

Supervision by Officials appointed by the Minister, in this case by Mining Supervision Officials in accordance with their authority is carried out through: a. periodic or occasional inspection or integrated inspection; and/or b. verification and evaluation of reports from permit holders as Continuation of License Contract Operations. In carrying out supervision, the appointed official has the authority to enter the place of mining business activities at any time.

Thus, supervision is an important part of administrative law enforcement. Because supervision is preventive law enforcement aimed at preventing violations of administrative law norms. In essence, supervision is intended as a means of controlling activities that have received permit approval so that these activities do not deviate from regulations and can achieve the objectives of holding the permit.

IV. Closing

Formulation of Law Enforcement in Environmentally Friendly Sustainable Mining Governance, that supervision is an important part of administrative law enforcement, is preventive in nature aimed at preventing violations of administrative law norms (environmental and mining). Administrative environmental law enforcement can be interpreted as the use or application of instruments and sanctions in administrative law, with the aim of forcing the target legal subjects to comply with environmental laws and regulations. Enforcement of administrative sanctions against the management of business and/or mining activities with an environmental perspective can be carried out preventively, namely law enforcement efforts to prevent pollution and/or environmental damage due to mining activities; and repressively (administrative sanctions), in the form of law enforcement efforts to carry out administrative actions against business actors or activities that have violated environmental approvals and Mining Business Permits.

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