

Technium.

50/2023



The 7th International Conference on Social Sciences
Organized by Faculty of Social Science
and Law Manado State University

The Innovation Breakthrough
in Digital and Disruptive Era



Powered by



Reclamation Obligations for Permit Holders in the Mining Sector

Wartingsih^{1*}, Nunuk Nuswardani²

¹ Criminal Law Study, Faculty of Law, Universitas Trunojoyo Madura, Indonesia

² Administrative Law Study, Faculty of Law, Universitas Trunojoyo Madura, Indonesia

Abstract. The need for mineral materials for human life continues to increase. In order to realize the management of natural resources (mining materials) based on justice and sustainability, permits can be granted to companies. Of course, the issuance of permits includes supervision and law enforcement. One of the obligations of mining companies is to carry out reclamation. The Ministry of Energy and Mineral Resources is optimistic that the enactment of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining will be able to encourage more effective fulfillment of ex-mine reclamation obligations. However, in reality, the Mining Advocacy Network (Jatam) noted that in 2020 there were 3,092 mine pits that were not reclaimed in Indonesia. Article 161 B paragraph (1) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Minerba determines criminal penalties for companies that do not carry out reclamation. On the other hand, Minister of Energy and Mineral Resources Regulation No. 7 of 2014 concerning Reclamation and Post-mining Implementation in Mineral and Coal Mining Business Activities, allows ex-mining pits to be converted. The problem in this paper is that the 2 (two) provisions seem contradictory. This will be examined from the aspect of the formation of laws and regulations which is the embodiment of the pure legal theory of Hans Kelsen. Using a statutory approach and analyzed qualitatively.

* Corresponding author: te.effendi@trunojoyo.ac.id

1 Introduction

In Article 33 of the 1945 Constitution that all natural resources in Indonesia belong to the people while the state is only a trustee. Furthermore, in paragraph (4) it is explicitly stated: "The national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity. The state as the fiduciary holder, only the state can manage natural resources. In order to realize the principles of democracy and justice, people are also allowed to do business in the economic sector by utilizing the natural resources that exist in Indonesia, as long as they meet the permits and conditions set by the state.

The mining industry in Indonesia is regulated in several laws and regulations, including Law 4 of 2009 concerning Mineral and Coal Mining and its amendments through Law Number 3 of 2020, Government Regulation Number 78 of 2010 concerning Reclamation and Post-mining, Regulation of the Minister of Energy Resources and Minerals Number 7 of 2014 (Permen ESDM 2014) concerning Reclamation and Post-mining Implementation. It is hoped that several of these sector laws will carry out the mandate contained in Article 28 letter h of the 1945 Constitution and Law Number 32 of 2009 concerning the Protection and Management of the Environment, namely creating a good and healthy environment for the community.

The reality is that many companies leave former mine excavations without reclamation. Some of what was obtained is as follows: in Samarinda "Currently, there are 58 mining business permits (IUP) and five are in the form of PKP2B or Coal Mining Concession Work Agreements. The details are 38 permits (2005), 40 permits (2007), 76 permits (2009), and 63 permits (2012). There are only five inspectors. While the number of mine pits that have not been reclaimed is 150 [1]. A number of pits are scattered in Bangka (413), South Bangka (124), Central Bangka [208], West Bangka (244), and Pangkalpinang (32). It was stated that the pits were not only in ex-illegal mining locations, but also in the Kalimantan KP (Mining Authority). Timah Tbk. [2] The Mining Advocacy Network (Jatam) noted that in 2020 there were 3,092 mine pits that were not reclaimed in Kalimantan, including 814 of them in South Kalimantan [3]

Observing the many companies that neglect their reclamation obligations on the one hand while on the other hand the criminal threat is in Law Number 4 of 2009 in conjunction with Law Number 3 of 2020 concerning Minerals and Coal (UU Minerba) and Regulation of the Minister of Energy and Mineral Resources. The Regulation of the Minister of Energy and Mineral Resources provides an opportunity for the possibility of transferring functions to ex-mining land that has not been reclaimed or reclamation can be carried out by utilizing post-mining land, which can be

interpreted as negating the criminal threat contained in the Minerba Law. Based on this, the issue in this article is: are the provisions of the Regulation of the Minister of Energy and Mineral Resources appropriate when examined from the aspect of forming statutory regulations?

2 Analysis and Discussion

2.1 Law Number 4 of 2009 in conjunction with Law Number 3 of 2020 concerning Minerals and Coal

Theory has the ability to predictability, meaning that theory offers a way to find answers related to what truth can be revealed from a particular practical situation. Bakir's opinion is clarified again that theory for the Study of Law can be said to be a kind of "analytical knife" to dissect actual problematic phenomena in the field of law, whether juridical conflicts or actual legal cases [10]

Some of the theories in Law that are often used are pure legal theories. The Pure Theory of Law sees the legal order as a process of creating its own norms, starting from general norms to more concrete ones. In other words, law is only seen as units of positive legal order that are correlatively intertwined and hierarchical in nature, starting from the lowest unit up to the 'grundnorm' [11]. As a consequence of adopting the legality principle for Indonesia, several laws and regulations are the embodiment of the Pure Theory of Law.

Article 28 H of the 1945 Constitution explicitly states that everyone has the right to a good and healthy environment. This implies that the state is obliged to realize this right for every citizen. On the other hand, Kalimantan is a country that has natural resources in the form of oil, coal, natural gas, hydropower, geothermal, solar, wind, biofuel, biogas and other renewable energies. Meanwhile, coal is one of the primary energy sources with the highest percentage, besides oil and natural gas [12]. It should be remembered that Law Number 30 of 2007 concerning Energy contains a mandate that energy management policies in Kalimantan must be based on the principles of justice, sustainability and environmental awareness in order to create national energy independence and security (Article 1 point 25) [13]. Based on these principles, the state grants permission including supervision. The principles of reclamation activities are: (1) Reclamation must be considered as an integral part of mining activities; (2) Reclamation activities must be carried out as early as possible and do not have to wait for the entire mining process to be completed [14].

This can be seen, among others, by the Decree of the MPR Number III/MPR/2000 concerning Sources of Law and Order of Legislation. Article 2 TAP MPR Number III/MPR/2000 states that the order of laws and regulations is: 1) the 1945 Constitution; 2) Decree of the People's Consultative Assembly of the Republic of Indonesia; 3) Laws; 4) Government regulations in lieu

of laws or Perpu; 5) Government regulations. Presidential decree; 6) Regional regulations. [15]

Further implementation is set forth in Law Number 10 of 2004 as amended by Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (UU P3) Article 7 paragraph (1) (UU P3) [16] regulates the types and and The hierarchy of laws and regulations are as follows: (1) the 1945 Constitution of the Republic of Indonesia; (2) Decree of the People's Consultative Assembly; (3) Laws/government regulations in lieu of laws; (4) Government Regulations; (5) Presidential Regulation; (6) Provincial Regulations; and (7) Regency/City Regional Regulations. In paragraph (2) states that the legal force of Legislation is in accordance with the hierarchy referred to in paragraph (1).

The Regulation 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 analyzed based on Law P3, is a delegation regulation that expands the regulation regarding reclamation according to the characteristics possessed [7].

Reclamation can be done by: (1) land surface arrangement and backfilling of ex-mining land; (2) distribution of soil root zones; (3) erosion control and water management. In addition, by means of vegetation, namely: (1) planting cover crops (2) planting fast-growing plants; (3) planting local types of plants; and/or (4) control of acid mine drainage Several reviews regarding the successful implementation of reclamation of former coal mines have been able to restore the function of forests in providing value to forests for their ecological, economic and social functions (i.e. protecting watersheds, maintaining biodiversity, wildlife habitat, local livelihoods, and others) [17]

However, it was also found that regional regulations in the mining sector regulating reclamation are expected to have many weaknesses that can be exploited, especially prioritizing business interests rather than the safety of the people living in mining areas.[18] Currently, the government does not only issue permits but also supervises and enforces the law. Pradarma Rupang from the East Kalimantan Mining Network said that currently 70 percent of the mining pits have not been reclaimed by the Mining Business License (IUP) holders. This number is the majority of the total 1,735 mining holes in Indonesia today. [19]. Usually the permit holders reason that they will be used as tourist destinations.

3 Conclusion

Based on the analysis of several laws and regulations above, it can be concluded that the Minister of Energy and Mineral Resources Regulation Number 7 of 2017, seen from the norm for the formation of laws and regulations, does not negate the provisions of sanctions in the Minerba Law but expands the regulations. Permen ESDM is a delegation regulation. It will be critical if the post-mining land is left for years which

can harm both the environment and humans. If the land has the potential to become a tourist destination, it will be a problem if it does not have a permit for its operations.

References

- [1] Yustinus S. Hardjanto dan Rahmadi Rahmad, 2014, "Bencana Tambang di Samarinda" diunduh dari <https://www.mongabay.co.id/2014/08/31/fokus-liputan-bencana-tambang-di-samarinda/>
- [2] Taufik Wijaya, 2022, "Lubang Bekas Tambang Timah Dijadikan Lokasi Wisata, Benarkah?", diunduh dari <https://www.mongabay.co.id/2022/02/15/lubang-bekas-tambang-timah-dijadikan-lokasi-wisata-benarkah/>
- [3] Anisatul Umah, 2021, "Ribuan Lubang Tambang Tak Direklamasi? Begini Data ESDM" diunduh dari <https://www.cnbcindonesia.com/news/20210129141759-4-219673/ribuan-lubang-tambang-tak-direklamasi-begini-data-esdm>
- [4] Law Number 4 of 2009 Jo Law Number 3 of 2020 concerning Minerals and Coal
- [5] Rahmat Hidayatullah Sofyan etc, "Karakterisasi Fisik dan Kelembaban Tanah pada Berbagai Umur Reklamasi Lahan Bekas Tambang", *Buletin Tanah dan Lahan*, 1 (1) Januari 2017: 72-78
- [6] Regulation 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
- [7] Nurul Listiyani, "Strengthening Reclamation Obligation through Mining Law Reform: Indonesian Experience", *ResearchGate*, April 2023 Resources 12(5):56 DOI:10.3390/resources12050056
- [8] A'an Efendi dan Freddy Purnomo, 2022, *Hukum Administrasi*, Jakarta, Sinar Grafika.
- [9] Nunuk Nuswardani dan Wartiningih, 2016, *Hukum Pemanfaatan Bahan Tambang di Hutan Negara*, UTM Press.
- [10] Herman Bakir, 2005, *Kastil Teori Hukum*, Jakarta, Kompas.
- [11] Fathorrahman. "Peraturan Delegasi dalam Sistem Peraturan Perundang-undangan Indonesia". *Jurnal Rechtsens*, Vol. 7, No. 2, Desember 2018 diunduh dari <https://repository.unej.ac.id/handle/123456789/87867?show=full>
- [12] Meiliza Savitri dan Wahyudi Zahar, 2020, "Kebijakan Sektor Industri Pertambangan Indonesia dalam Revolusi Industri 4.0", *Prosiding Temu Profesi Tahunan PERHAPI* 1(1):833-846, DOI:10.36986/ptptp.v1i1.125 License CC BY-NC-SA 4.0
- [13] Law Number 30 of 2007 concerning Energy

- [14] Sarita Oktorina, “Kebijakan Reklamasi dan Revegetasi Lahan Bekas Tambang (Studi Kasus Tambang Batubara Indonesia) , *Al-Ard: Jurnal Teknik Lingkungan*, Vol.3 No.1 - Agustus 2017 (16-20).... No. 6
- [15] MPR Decree Number III / MPR / 2000 concerning the Source of Law and Order of Laws and Regulations.
- [16] Law Number 12 of 2011 concerning 12 of 2011 concerning the Establishment of Laws and Regulations
- [17] Pratiwi dkk, “Managing and Reforesting Degraded Post-Mining Landscape in Indonesia: A Review”, diunduh dari <https://www.mdpi.com/2073-445X/10/6/658doi:10.37200/IJPR/V24I8/PR280153>.
- [18] Haris Retno Susmiyati,” Legal Construction of Post-Mining Reclamation in Indonesia” *Advances in Biological Sciences Research*, volume 11 *Proceedings of the Joint Symposium on Tropical Studies (JSTS-19)* Atlantis-press.com/proceedings/jsts-19/125955338
- [19] Pradarma Rupang, 2019, “Jatam Sebut 70 Persen Lubang Tambang Belum Direklamasi” diunduh dari <https://tirto.id/jatam-sebut-70-persen-lubang-tambang-belum-direklamasi-dnkt>