

Legal Analysis of Post-Mining Forest Rehabilitation and Reclamation

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Abstract

Forests are land areas that are dominated by trees. It also contains a variety of flora and fauna that need to be protected sustainably. Indonesia is included in the top ten largest forests in the world. However, this position is in danger of declining as deforestation activities continue to occur due to commercialization and industrialization. The forest area is now being used as a mining area to dredge the produce. However, the absence of accountability from the regulator has made the company leave the former mine with holes in it. This study uses a descriptive study method with a qualitative approach. The result is that there are regulations that regulate permits in forest use, but there are also regulations that require miners to return through post-mining rehabilitation and reclamation. However, regulations issued through the Ministry of Energy and Mineral Resources have become a gap for miners to not be obliged to carry out reclamation and rehabilitation. It is then feared that it could cause an ecological disaster and loss of life. Besides that, it also threatens the existence of other forests because of regulations from the ministry so that its area is shrinking.

Keywords

forest; mining; regulation; rehabilitation; reclamation



I. Introduction

Indonesia is a country that has abundant natural resources, ranging from agricultural products to marine products, making it an attraction for foreign countries. It doesn't stop there, this country also keeps a rich diversity of customs and cultures followed by its very beautiful natural charm. Of course this is very proud of this nation. In addition to natural wealth and social diversity, this country is also part of one of the lungs of the earth. Indonesia's forests are one of the largest in the world, even now the archipelago's forests, which are spread across Kalimantan, Sumatra, Sulawesi, to Papua are ranked eighth with a total area of 933,442 km². There are many types of plants that can live in Indonesia, considering that a country with a tropical climate is also supported by an adequate supply of water and sunlight throughout the day.

However, over time, Indonesia's natural wealth is so tempting by offering very high economic value. Like Indonesia's mining products are so abundant underground. It's just that the potential of this mine is in the middle of the forest so that this triggers deforestation and triggers mining activities that damage the forest structure. Many forests must be victims, including the forest in East Kalimantan. Not infrequently also found ex-mining land left a hole. Many residents and most of the children were victims of the water that pooled in the ex-mining pit which was so deep. It's sad how the company doesn't have full responsibility after dredging the wealth like coal there. Life is not worth the smell of Rupiah.

The government's concrete steps to enforce regulations on ex-mining are of course continuously being carried out. In Government Regulation (PP) Number 78 of 2010 concerning Reclamation and Post Mining, it is emphasized that holders of Exploration Mining Business Permits (IUP) and Exploration Special Mining Business Permits (IUPK) are required to carry out reclamation and post-mining activities. As a company that operates on state land, especially Indonesia, of course the company is obliged to obey the laws and regulations that apply in this country. However, this is still not able to motivate mining companies to complete their obligations after extracting wealth so that they can be considered as destroyers of nature. The high cost of purchasing reclamation, rehabilitation and reforestation materials is one of the main factors influencing entrepreneurs to be reluctant to do so.

Furthermore, this study seeks to see the violation of the company's obligations to the state from the legal aspect. Then, what is the reason behind the government's lack of firmness in taking action against the perpetrators of forest destroyers after enjoying the produce of their land and what are the impacts on the local people. Then is there an accountability measure in the form of compensation for affected residents around the mine or victims of ex-mines.

II. Research Methods

This study uses descriptive research methods with a qualitative approach. According to Sugiyono (2010:9), this research is placed as a key instrument whose data collection techniques are combined and data analysis is inductive. The sources of supporting data that support this research are obtained from news from credible media, books, and journals that are relevant to the topic in this study. The purpose of the research is to find out how laws, especially in the forestry sector, can save Indonesian forests from mining activities and also provide protection for the fauna and flora in them as well as local residents who are affected by forest destruction (irresponsible mining companies).

III. Results and Discussion

The rampant irresponsible actions of the miners have made the surrounding community furious. Besides those who do not get anything from mining activities, these activities also leave holes and wounds in the hearts of the people. Not a few of their family members had to die in the former mine. The lack of government attention is also one of the problems being faced. It is possible that the economic value brought by the mine is large. It can even become one of the main sources of income not only for areas where mining operations are located but also for foreign exchange through export activities.

Carrying out mining activities is legal, considering that the utilization and management of mining products are used for the benefit of the state or the welfare of the community. As long as it follows the rules and carries a permit. However, they also need to be responsible for what has been obtained from the produce, such as restoring the original function of the place as before, such as a forest area. Nature has sacrificed more than the mining products and has an impact that is far larger in scope than the nominal mine. Starting from ecological impacts such as natural disasters in the form of floods, landslides, and more severe is climate change.

In fact, even life seems worthless than the nominal obtained from the produce of the earth. This is seen from how they do not provide any compensation or responsibility to the community or victims except for promises. In fact, the surrounding community actually did

not get anything, only the dregs they got. It's really sad how the condition of the people who live around the mine. Due to unqualified qualifications, they do not get a strategic place in the company. They even seem to be considered as pebbles that can disrupt the company's operations, because there are many complaints or rejections from the community or who can be called victims.

The management of Indonesia's natural wealth has actually been regulated in the 1945 Constitution of the Republic of Indonesia, Article 33 paragraph (3) confirms that the Earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Unfortunately, this article still applies to a small part of the community, or the majority of the elite, both businessmen and politicians. Deforestation or land clearing for the benefit of the nation is not actually a problem. However, the problem is how forests that become commercial or mining areas, and so on, are not exchanged for land with other forests. In fact, if it can run in a balanced and hand in hand, the forests in Indonesia can certainly be saved.

It is not easy to protect forests in Indonesia, given the vast land area, starting with illegal forest fires by businessmen for industrial purposes, so that the state has to bear the consequences from health problems to a reduced percentage of forest area. In addition, the potential for mining is also one of the factors that deforestation occurs considering the economic value contained by the forest. Unsustainable use of wood from forests also makes the forest denuded and vulnerable to ecological disasters. Forest is an ecosystem unit in the form of an expanse of land with biological resources which is dominated by the selection and environmental fauna community that cannot be separated from one another.

A Forest area is a certain area determined by the government to maintain its existence so that it is maintained. Destruction of forests, whether through illegal burning, use of areas without a permit, and others, will be subject to criminal penalties in accordance with applicable law. Judging from the statement, it is true that the use of forests, especially in mining, can obtain permits from the government as long as it is for the benefit of all parties. However, the regulations that supervise these permits still tend to be weak and escape government supervision. Permits in forest utilization have been regulated in Articles 26 to 33 of the Forestry Law. The law also emphasizes that mining permits are regulated in Article 38.

However, this permit in the field deviates from what is regulated in the law. Protected forest areas that should be protected by the state must be sacrificed for mining purposes. Whereas Article 38 paragraph (4) confirms that in protected forest areas it is prohibited to carry out mining in an open pattern. But back again to the interests of the wider economy and society, the rules must be sacrificed. Problems then arise when the trustees who have consumed the product in the area, do not fulfill their responsibilities in restoring the function of the forest, the holes are left gaping, not even a few have formed a lake so that it becomes a disaster threat for the surrounding community.

In Articles 40 to 45 of the Forestry Law, it is clearly explained how damaged forests must be rehabilitated. Mining pits are also required to be reclaimed. This is intended to minimize the impact caused by the results of natural damage such as ecological disasters and drowning victims. The government should pay more attention to the problems caused by companies that are reluctant to take responsibility. It can be seen that no party has been penalized for the absence of reclamation of the mining pit.

In fact, the rules regarding post-mining activities such as reclamation have been regulated in Law Number 4 of 2009 concerning Mineral and Coal Mining, as well as in Government Regulation Number 78 of 2010 concerning Post Mining Reclamation and in the Government Regulation it is also stipulated that the time limit is no later than 30

calendar days since the absence of mining activities. operations in the mining area. However, the clarity of this regulation is still considered to be less firm, even in the East Kalimantan area, there is still a gaping hole whose utilization period has been completed for a long time without any reclamation action. However, the issuance of the Minister of Energy and Mineral Resources Regulation No. 7 of 2014 concerning the Implementation of Reclamation and Post-mining in Mineral and Coal Mining Business Activities, has become a gap for entrepreneurs to circumvent the applicable legal regulations on it in order to save the budget.

In the ESDM Ministerial Regulation, it is stated that reclamation can be carried out in other forms such as tourism, water resources, or cultivation. The word "water source" is then used as a reference or a strong reason for them not to do reclamation and just let the hole flood. In fact, water from ex-mining excavations contains heavy metals which are very dangerous for health. In addition, utilization for tourism seems ambiguous, if it is for green tourism, of course, it is not a problem. However, if it is not related to forestry, it is the same as this regulation really becomes the basis for protecting entrepreneurs from providing more budget for rehabilitating forests that have been damaged to be used for their contents.

This Ministerial Regulation may be intended so that mining companies are not harmed because they have to incur large costs to restore the function of ex-mining forests. However, this still has a long and deep impact. Mining soil is quite difficult to grow trees because of the rock layers. The land reclamation step is indeed the most appropriate way to restore the green area again while providing security and comfort for the residents so that no one else has to die in vain.

So, the imposition of sanctions for the mining company is considered the right step and the government must also act decisively considering that there is no accountability on the part of the mine to meet the legal elements to be punished, such as forest destruction and human rights violations as regulated in the Forestry Law and Human Rights Law. . It can be concluded that this post-mining regulation has not been fully implemented, this is due to the weak supervision carried out by the government in taking action against miners and this is reinforced by the absence of an operational budget that supports local governments to form officers to oversee mining activities in their region.

In Indonesia, economic interests still have a large portion to develop the country, while protecting forests is still something that must be put aside. However, if you can create a sustainable economic system, you can certainly strengthen the forest bases in the archipelago without destroying them. Or in this case, the deforestation process must be balanced with forest improvement or rehabilitation and the percentage must also be balanced, or even greater than the previous deforestation. This of course will keep the forest ecosystem to survive. Firmness in supervision and enforcement of regulations also needs to be done if the government takes sides with the community, especially around the mining area. In addition, education in the formation and improvement of the quality of human resources is also necessary considering that some communities around the mining area do not have sufficient qualifications to become part of the company.

IV. Conclusion

The existence of forests in Indonesia is currently experiencing the threat of deforestation. Industrial growth that is not matched by rehabilitation has contributed to the reduction of forest area. One of the cases that has not received much attention is the rehabilitation of post-mining forest areas. There are former mining areas that leave gaping holes, some of which are even flooded. The hole has also resulted in casualties so its existence is worrying. The company is considered irresponsible in conducting reclamation and restoring post-mining forest functions. The lack of strict enforcement of regulations is the reason besides the high cost of reclamation.

The existence of a Minister of Energy and Mineral Resources Regulation is also a reference that reclamation activities are not mandatory. The government must pay attention to these problems so that the industry goes hand in hand with sustainability, especially the existence of forests. Supervision also needs to be carried out so that mining companies no longer neglect their responsibilities by destroying forests but not carrying out rehabilitation so that they can cause ecological disasters and casualties.

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