

## Problems of Ex-Mining Land Reclamation Obligations in Positive Law in Indonesia

**Mas Subagyo Eko Prasetyo**

Universitas Nasional Jakarta, Indonesia  
[massubagyoekoprasetyo@yahoo.co.id](mailto:massubagyoekoprasetyo@yahoo.co.id)

### Abstract

*This study aims to know: 1. How is the regulation of ex-mining land reclamation obligations under positive law in Indonesia? 2. What is the problem with setting the obligation for reclamation of ex-mining land in positive law in Indonesia?. The type of research carried out in this research is normative legal research, which is a scientific research procedure carried out to find the truth based on scientific logic from the normative side. Normative research is a process of finding laws, legal principles, and legal doctrines, in order to answer the legal issues faced. This normative legal research is carried out to produce new arguments, theories or concepts as prescriptions in solving problems at hand. The initial step carried out by research in the implementation of this normative research is to conduct research on the existing laws and regulations in Indonesia and the collection of materials is carried out through a literature study in the form of books, journals and so on to study the sources or written materials used can be used as material in writing this research. To answer the problem, the collection of legal materials is carried out by identifying and taking an inventory of the positive legal rules that apply in Indonesia, researching library materials such as books, scientific journals, and research reports, and other sources of legal materials relevant to the issues raised research will be conducted. The analysis of legal materials used in this research is to use a descriptive method, which is a method that focuses and focuses on problem solving, presentation, interpretation, and analysis so that it is expected to produce conclusions based on legal materials that can be accounted for.*

### Keywords

reclamation obligations; positive law; ex-mining land



## I. Introduction

Humans are one of the elements of the environment, behavior carried out by humans can affect the environment, including the welfare of humans and other living creatures. On the other hand, humans are also influenced by their environment, so that there is a reciprocal relationship between humans and their environment. Human behavior affects the environment both positively and negatively. One of the human behaviors that have an impact on the environment is the utilization and management of other resources in the mining sector.

Mining activities carried out by humans will have an impact on the environment, regardless of whether it is positive or negative. An example of the positive impact caused is the existence of foreign exchange earnings for the state, as a source of regional original income, opening up employment opportunities for communities around mining areas and many others. However, mining cannot be separated from the negative impacts that are harmful to the safety and health of the people around the mining area, environmental damage, the threat of landslides, ex-mining holes that contain toxic materials.

---

Indonesia is a country that is rich in mining materials, including coal. The Ministry of Energy and Mineral Resources (ESDM) reports that coal production in Indonesia will reach 606.22 million tons in 2021. This number is an increase of 7.2% compared to data in 2020 which was only 565.69 million tons.

Mining materials or minerals, including coal, are controlled by the state. The right of state control means that the state is authorized to regulate, manage and supervise the management of mining materials and has the obligation to use the results of these mining materials for the greatest benefit of the people.

The 1945 Constitution of the Republic of Indonesia (UUD NRI) in Article 33 Paragraph (2) states that the production branches which are important to the State and which affect the livelihood of many people are controlled by the State. Furthermore, Article 33 Paragraph (3) states that the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. Mining of minerals and coal as natural wealth contained in the earth of Indonesia which is non-renewable and involves the livelihood of many people makes the management of mineral and coal mining must be controlled by the State. The management of mineral and coal mining must be carried out with the principles of being optimal, efficient, transparent, sustainable, environmentally friendly, and providing justice for the prosperity of the people.

The history of the regulation of mineral and coal mining activities is divided into 4 (four) phases, namely the colonial era, the old order phase, the new order phase and the reform phase. In the colonial phase, *Indische Mijn Wet* was published in 1899 and did not undergo many significant changes until Indonesia's independence. In the *Indische Mijn Wet* 1899, Article 5 and Article 5A state that there are 2 (two) types of legal relationships to carry out mining and coal business activities, namely concessions and contracts.

During the Old Order era, the legal basis for mineral and coal mining used Article 33 paragraph (3) of the 1945 Constitution (UUD) and Article 38 paragraph (1) of the 1950 Provisional Constitution (UUDS), Letter of the House of Representatives of the Republic of Indonesia ( DPR RI) No.Ag.1446/RM/DPRRI/1951, Law Number 58 of 1958 concerning Foreign Investment which regulates the relationship between the state and the private sector and the nationalist spirit is upheld by the State, Law Number 10 of 1959 concerning Cancellation of Mining Rights, Law Number 37 Prp. 1960 concerning Mining.

Furthermore, during the New Order Government, the legal basis used to regulate mineral and coal mining was Article 33 paragraph (3) of the 1945 Constitution, TAP MPRS No. XXIII-MPRS/1966, Law Number 1 of 1967 concerning Foreign Investment, Law Number 11 of 1967 concerning Basic Mining Provisions (UU 11/1967).

During the Reformation period, slowly but surely, mining became an attractive and sensitive sector for the public. Interesting because it has a significant contribution to State Revenue and is highlighted when world commodity prices soar, but it is also a sensitive issue due to its impact on the environment and human rights and is considered to have not provided maximum benefits for all stakeholders. Since the end of the New Order era, Law 11/1967 is considered no longer able to accommodate the challenges and dynamics of the world of mineral and coal mining in the country.

Facing increasing challenges in mineral and coal mining business activities as well as responding to various sensitive issues, on December 16, 2008 the DPR and the President agreed that the Draft Law on Mineral and Coal Mining was legal and became Law Number 4 of 2009 concerning Mineral and Coal Mining (UU 4/2009). After 11 (eleven) years being enforced in Indonesia as a regulation for the implementation of business activities in the mineral and coal mining sector on June 10, 2020 with the approval of the President and the

DPR RI, Law 4/2009 was amended by Law of the Republic of Indonesia Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (UU 3/2020).

As mentioned above, one of the negative impacts of mineral and coal mining business activities is changes in environmental conditions. To minimize or eliminate these negative impacts, the government in the existing regulations requires mineral and coal mining business actors to carry out reclamation. Despite the fact that the existence of these regulations has not provided a maximum contribution. This is evidenced by the large number of ex-mining lands that are allowed to become giant ponds.

Mineral and coal mining in Indonesia is carried out using the open pit mining method, causing tremendous ecological damage, including damage to forest vegetation, flora and fauna and soil layers. The chairman of the Indonesian Reclamation and Energy Association (ARMI) explained that there are still many mining business actors who are not responsible for leaving mining pits that are no longer being exploited and have a negative impact on the environment. For example, ex-coal mining land in some areas continues to mine up to hundreds of thousands of hectares and becomes unproductive land. The ex-coal mining area reaches hundreds of thousands of hectares located in Sumatra and Kalimantan and cannot be used economically. The film *Sexy Killer* notes that there are at least 3500 ex-coal mining pits in East Kalimantan or at least 8 million hectares of post-mining land that has not been reclaimed. One of the consequences of not reclaiming the ex-coal mine pits in the 2011-2018 period was that 32 people died. Nationally, in the 2014-2018 period, 115 people died from drowning in ex-mining pits.

The many negative impacts arising from mineral and coal mining business activities need serious attention so that in this paper the author focuses on the problem of the obligations of mineral and coal mining business actors to carry out reclamation of ex-mining land in positive law in Indonesia.

### **Formulation of the Problem**

1. How is the regulation of ex-mining land reclamation obligations under positive law in Indonesia?
2. What is the problem with setting the obligation for reclamation of ex-mining land in positive law in Indonesia?

## **II. Research Method**

The type of research carried out in this research is normative legal research, which is a scientific research procedure carried out to find the truth based on scientific logic from the normative side. Normative research is a process of finding laws, legal principles, and legal doctrines, in order to answer the legal issues faced. This normative legal research is carried out to produce new arguments, theories or concepts as prescriptions in solving problems at hand.

The initial step carried out by research in the implementation of this normative research is to conduct research on the existing laws and regulations in Indonesia and the collection of materials is carried out through a literature study in the form of books, journals and so on to study the sources or written materials used can be used as material in writing this research.

To answer the problem, the collection of legal materials is carried out by identifying and taking an inventory of the positive legal rules that apply in Indonesia, researching library materials such as books, scientific journals, and research reports, and other sources of legal materials relevant to the issues raised research will be conducted.

The analysis of legal materials used in this research is to use a descriptive method, which is a method that focuses and focuses on problem solving, presentation, interpretation, and analysis so that it is expected to produce conclusions based on legal materials that can be accounted for.

### **III. Results and Discussion**

#### **3.1 Regulation of Reclamation of Ex-Mining Land Reclamation Obligations in Positive Law in Indonesia**

State involvement in the mineral and coal mining sector is carried out in 3 (three) aspects including: (1) Regulatory Aspects; (2) Business Aspects; and (3) Supervision Aspect. The regulatory aspect is an absolute right owned by the State which should not be given to the private sector and is the most important thing so that it must be played by the State. The role of the State in the regulatory aspect aims to determine and regulate the institutional structure and patterns of relations between the government, the actors of mineral and coal mining activities and the people as a whole. The need for laws and regulations governing mineral and coal mining business activities as well as environmental management is needed in order to create balance and harmony between development and the environment.

The basis for forming legislation in the field of mineral and coal mining as well as the environment is Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which in general states that all natural resources in Indonesia's land and water are controlled by the State and should be used for the welfare of the people. Based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the State must regulate its management.

The economic condition of the population is a condition that describes human life that has economic score (Shah et al, 2020). Mining is an activity carried out with temporary land use so that it only lasts as long as valuable ore/material is still available to be mined or still has economic value to be cultivated. If the ore/material reserves in the land have been exhausted, the mine will be closed. The definition of mining according to the law is part or all of the stages of activities in the framework, management and exploitation of minerals and coal which include general investigation, exploration, feasibility studies, construction, mining, management and/or refining or development and or utilization, transportation and sale, and post-mining activities.

According to Sukandarrumidi, the commonly known mining techniques are as follows:

- a. Open pit mining is a mining system carried out on the surface of the earth/soil or in its implementation directly adjacent to the free air;
- b. Underground mining is a mining system in which all activities are not directly related to the air;
- c. Underwater mining is a mining system carried out on mineral deposits that are entirely below the water surface.

In Indonesia, especially on the islands of Sumatra and Kalimantan, mineral and coal mining business activities are generally carried out by open-pit mining. According to Sukandarrumidi, the stages carried out in carrying out open-pit mining are as follows:

1. Stripping the overburden is carried out if there is overburden and plants on top of the excavated material;
2. The part of the land that has been peeled off is transferred to a landfill to be reused during the reclamation of ex-mining land;
3. Mining activities are carried out which include the process of unloading, loading, transporting and stockpiling;
4. The method of dismantling mining material from its parent material depends on the hardness of the material. If it is soft enough, it is done with manual tools such as hoes, hooks and so on or mechanical tools such as excavators. If it is harder, it can be done with a ripper. For very hard minerals, blasting is done.
5. The next activity is loading, transporting and then ending with stockpiling at the processing unit.

It is generally known that mineral and coal mining business activities can cause irreversible damages and pollution. This can be interpreted if an area is opened for mineral and coal mining business activities, then the area can be damaged forever. Seeing such conditions, after the mineral and brick mining business activities are completed, apart from closing the mine, it must also be accompanied by the restoration of the former mining area.

Efforts to reclaim ex-mining land consist of:

- a. Efforts to carry out recontouring/regarding/resloping of ex-mining pits and construction of drainage channels to create an area with a stable slope.
- b. Carry out top soil spreading as a condition for plant growth media, to improve soil so that it can be used as a planting medium.
- c. Replanting land (revegetation) with fast growing plants, local plants and introduced forestry plants.

After the above steps, it is also necessary to plan the development of food crops, plantation crops or industrial forest plants if the previous planning allows for that. Then the post-mining land function can be converted into agricultural land for food crops through the stages of recovery, improvement, and maintenance of land functions.

Law 3/2020 requires IUP and IUPK holders to carry out ex-mining land reclamation activities as stated in Article 99 paragraph (1) in conjunction with Article 39 which states that mineral and coal mining business actors must have a reclamation and post-mining plan before applying for an IUP and IUPK. Furthermore, Article 100 of Law 3/2020 regulates the obligations of IUP and IUPK holders to provide reclamation and post-mining guarantee funds. According to 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 (EMR Regulation 7/2014), Article 1 number 1 in outline states that reclamation is an activity carried out throughout the stages of the activity mining business carried out in an effort to organize, restore,

Government Regulation Number 78 of 2010 concerning Reclamation and Post Mining (PP 78/2010) Article 4 paragraph (1) states that the principles that must be met to carry out reclamation of ex-mining land are as follows:

1. Protection of the quality of surface water, ground water, sea water and soil as well as air based on quality standards and standard criteria for environmental damage in accordance with the provisions of laws and regulations;

2. Protection and restoration of biodiversity;
3. Guarantee the stability and safety of overburden piles, tailings ponds, ex-mining land and other man-made structures;
4. Utilization of ex-mining land in accordance with its designation;
5. Pay attention to local social and cultural values; and
6. Protection of groundwater quality in accordance with the provisions of laws and regulations.

The regulation regarding the reclamation of ex-mining land is also regulated in ESDM Regulation 7/2014 in Article 4 which outlines that the holder of an Exploration Mining Business Permit (IUP) and an Exploration Special Mining Business Permit (IUPK) must prepare a reclamation plan at the exploration stage before carrying out exploration activities based on the reference from the Environmental Document that has been approved by the competent agency in accordance with the applicable laws and regulations in the field of environmental protection and management.

Mineral and coal mining business actors are responsible for ex-mining land in a structured and planned manner since the IUP or IUPK provisions are made. The plan is made so that mineral and coal mining business actors are fully responsible for the polluted ex-mining land due to exploration activities, both those that pollute water, soil and air. This is as stated in Article 54 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH) which states that "everyone who pollutes and/or destroys the environment is obliged to restore environmental functions" . Based on the article, each person can be defined as an individual or a legal entity (legal entity or not).

The principles that must be met in ex-mining land reclamation activities are as follows:

- a. Planned: mineral and coal mining business actors are required to prepare reclamation and post-mining plans in accordance with feasibility studies and environmental documents that have obtained approval from the relevant agencies in accordance with applicable laws and regulations;
- b. Systematic: the implementation is in accordance with what is stipulated in the provisions related to mining;
- c. Sustainable: the implementation of reclamation and post-mining activities will continue even though mining activities have been closed until the ecosystem returns to being good and beneficial for the community around the mine.

Law enforcement consists of preventive law enforcement and repressive law enforcement. Judging from the dispute resolution instruments in mineral and coal mining business activities, there are 3 (three) types of law enforcement, namely as follows:

1. Administrative Law, used using administrative legal instruments;
2. Civil law, carried out by parties who feel aggrieved either individually, in groups, in society or in the state; and
3. Criminal Law, carried out on behalf of the Prosecutor as a public prosecutor.

Dispute resolution through administrative legal instruments is carried out at the preventive and repressive levels. Preventive action is carried out in the form of supervision and control of an activity in a mining dispute. An example of law enforcement for mining administration is the provisions of Article 35 paragraph (1), paragraph (2), and paragraph (3) of Law 3/2020 which in outline stipulates that the Minister in carrying out his authority

can supervise mineral and coal mining business activities carried out by business actors who have obtained IUP, IUPK, IPR, SIPB, Transportation and Sales Permit or IUJP, which are related to environmental protection and management and ex-mining land reclamation.

Repressive measures taken at the administrative legal level are the authority of the Minister to give administrative sanctions in stages to mineral and coal mining business actors who violate established rules such as not implementing environmental quality standards, damaging environmental sustainability, not submitting reclamation and post-mining plans, does not provide reclamation and post-mining guarantee funds. In Article 151 paragraph (2) of Law 3/2020 there is an addition to the administration of fines which were not previously regulated in Law 4/2009. The amount of the administrative fine is not stated in Law 3/2020, but it will be further regulated in a Government Regulation. Judging from these rules, the administrative sanctions in Law 3/2020 are in the form of:

- a. Written warning;
- b. Fine;
- c. Temporary suspension of part or all of Exploration activities or Production Operations; and/or
- d. Revocation of IUP, IUPK, IPR, SIPB or IUP for Sales.

In addition, Article 50 of PP 78/2010 stipulates that the administrative sanctions given in case of violation are as follows:

1. Written warning;
2. Temporary suspension of activities;
3. Revocation of IUP, IUPK or IPR (does not eliminate reclamation and post-mining obligations).

The use of civil law instruments in mining disputes is mostly related to environmental damage carried out by mineral and coal mining business actors. Civil law is used as a request for compensation by community members who are affected by environmental damage to polluters, in this case the perpetrators of mineral and coal mining business activities. Article 145 paragraph (1) of Law 3/2020 states that local communities who are negatively affected by mineral and coal mining business activities have the right to:

- a. Obtain appropriate compensation as a result of wrongful actions/companies of mineral and coal mining business activities as regulated in laws and regulations; and/or
- b. File a lawsuit through the court for losses on mineral and coal mining business activities which clearly violate the provisions of the laws and regulations governing this matter.

There is no more detailed explanation of what is meant by consequences which are mistakes made by mineral and coal mining business actors. The possibility of these errors in the form of human errors, work implementation errors, and/or planning errors that result in losses for the local community who are within the range of the impact of the error. For example, water, air, dust and soil pollution as a result of mineral and coal mining activities.

Mining dispute resolution with civil law instruments can be done inside and outside the court such as mediation. The pattern of dispute resolution outside the court is a fast settlement method to find a solution. In terms of contracts between the Government and mineral and coal mining business actors, it can be settled through court or out of court through arbitration.

The settlement of mining disputes with criminal law instruments granted to individuals or mining companies is regulated in Article 161B of Law 3/2020 which states that:

1. Any person whose IUP or IUPK is revoked or terminated and does not carry out activities:
  - a) Reclamation and/or post-mining; and/or
  - b) Placement of the reclamation guarantee fund and/or post-mining guarantee fund, shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000,000, - (one hundred billion rupiah).
2. In addition to the criminal sanctions as referred to above, former IUP or IUPK holders may be subject to additional penalties in the form of payment of funds for the implementation of their Reclamation and/or post-mining obligations.

In the Criminal Code (KUHP) in Article 10 which regulates additional penalties in the form of revocation of certain rights, confiscation of certain goods and announcement of judge's decisions. This was then re-arranged in Article 164 of Law 3/2020 to be as follows:

- a. confiscation of goods used in committing a crime;
- b. Deprivation of money profits obtained from criminal acts; and/or
- c. The obligation to pay costs incurred as a result of a criminal act.

In principle, criminal law is an ultimum remedium effort that will only be applied if other legal instruments are unable to solve the problem.

In general, the criminal provisions in Law 3/2020 include:

1. Increasing the amount of the threat of fines;
2. The addition of new criminal acts;
3. Maintaining the article on criminalization of society; and
4. Elimination of criminal acts for officials

There are bad sides and good sides to the changes to Law 4/2009 with Law 3/2020, including the emphasis on corporate criminal subjects with the addition of the amount of criminal fines from the original Rp. 10,000,000,000, - (ten billion rupiah) (UU 4/2009) to Rp. 100,000,000,000, - (one hundred billion rupiah). In addition, there is also a reduction in imprisonment as regulated in Article 158, Article 159, Article 160 of Law 3/2020. This is in line with the opinion of experts who state that the appropriate punishment for corporations is to impose fines (monetary/financial). Furthermore, Article 161 A of Law 3/2020 prohibits the transfer of IUP and stipulates it as a criminal act (not in Law 4/2009).

### **3.2 Problems with Regulation of Post-Mining Reclamation Obligations in Positive Law in Indonesia**

One of the most important things that is regulated in laws and regulations related to mineral and coal mining is that the placement of reclamation guarantee funds does not make mineral and coal mining business actors not obliged to carry out reclamation activities. These guarantees are carried out in every process of mineral and coal mining activities, namely:

- a. Exploration stage: reclamation guarantees are placed at the beginning of the implementation by determining the cost of reclamation of exploration land then stated in the Exploration Plan and Budget (RKAB).
- b. Production stage: reclamation guarantees must be made every 5 (five) years or according to the age of the mine. If the mine production age is less than 5 (five) years,



the placement of the reclamation guarantee is stated in the annual Work Plan and Cost Budget (RKAB).

The Director General (Dirjen) on behalf of the Minister or Governor has the authority to disburse reclamation guarantee funds after previously evaluating the exploration stage reclamation implementation report submitted by mineral and coal mining business actors once a year.

In principle, permission is the granting of approval by the government and something that is actually not allowed as a form of coercion for those who take advantage of objects that are public and constitute the life of many people. The problem arises when the number of mining permits that have been granted approval by the government has caused many legal problems. One of the things that often happens is the lack of compliance of mineral and coal mining business actors to place guarantee funds and carry out reclamation and carry out post-mining activities. Data from the Ministry of Energy and Mineral Resources shows that as many as 40% of IUP holders have not placed reclamation guarantees and about 86% of these IUP holders have not placed post-mining guarantees.

Initially, reclamation and post-mining were carried out by the Regional Government (Pemda) and also the community in the mining area. However, due to limited human resources and inadequate funding for reclamation and post-mining, the government reviewed and established policies governing reclamation and post-mining.

After the enactment of PP 78/2010 and Law 3/2020, there was a conflict in the regulation of reclamation and post-mining responsibilities that must be carried out by mineral and coal mining business actors. PP 78/2010 states that the responsibility for reclamation and post-mining does not disappear even though the mineral and coal mining business actors have paid the post-mining reclamation guarantee fund. It is further regulated that if the mineral and coal mining business actors do not carry out reclamation and post-mining activities, they will be subject to administrative sanctions. On the other hand, Law 3/2020 is not explicitly stated, and provides concessions for mineral and coal mining business actors not to carry out reclamation and/or post-mining. In Law 3/2020, mineral and coal mining business actors who do not carry out reclamation in accordance with the plan approved by the competent authority, the minister, governor or mayor/regent may determine and assign the responsibility to other parties to carry out reclamation and/or post-reclamation activities mine. The conflict between Law 3/2020 and PP 78/2020 creates conflicts in its implementation in the field and makes it difficult to apply sanctions to mineral and coal mining business actors who do not carry out reclamation and/or post-mining activities. the governor or mayor/regent may determine and assign the responsibility to other parties to carry out reclamation and/or post-mining activities. The conflict between Law 3/2020 and PP 78/2020 creates conflicts in its implementation in the field and makes it difficult to apply sanctions to mineral and coal mining business actors who do not carry out reclamation and/or post-mining activities. the governor or mayor/regent may determine and assign the responsibility to other parties to carry out reclamation and/or post-mining activities. The conflict between Law 3/2020 and PP 78/2020 creates conflicts in its implementation in the field and makes it difficult to apply sanctions to mineral and coal mining business actors who do not carry out reclamation and/or post-mining activities.

In PP 78/2010 and 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 (Permen ESDM 7/2014) have regulated aspects of environmental protection. However, it is considered not sufficient to regulate

clearly and in detail the legal requirements for reclamation of ex-mining land. The existing regulations are considered to be more accommodating for holders of IUP, IUPK and other mining permits not to carry out reclamation.

There is a rule that changes the reclamation/revegetation obligation to another area of use without any reclamation/revegetation, causing confusion/vagueness of the purpose of the reclamation, which is intended so that the ex-mining land can function as it should before. The existence of requirements for the designation of post-mining land areas due to the consequences of the inability and lack of seriousness of mineral and coal mining business actors to conduct closure (reclamation) of ex-mining land is a justification for mineral and coal mining business actors who have permits not to carry out reclamation and post-mining activities mine.

A further deviation is in the Minister of Energy and Mineral Resources Regulation 7/2014, which obscures the legal status of the obligation to carry out reclamation activities. The allocation of reclamation funds has become unclear and is used as funds for the development of tourism activities or water supply activities. This is interpreted by mineral and coal mining business actors that these activities are carried out in an effort to "place the activities of using ex-mining land according to its designation" including as a tourism place so that the required reclamation activities are not carried out and are replaced with tourism development activities.

These contradictory regulations have become a gap for mineral and coal mining business actors to be "naughty" and not carry out their obligations to carry out reclamation and/or post-mining activities. In addition to Article 99 of Law 3/2020, it provides concessions for coal mining business actors to carry out reclamation and post-mining activities in accordance with the needs or land use. Furthermore, paragraph (4) of the same article states that the holder of an IUP or IUPK is obligated to hand over land that has been reclaimed and/or post-mined to the rightful party based on ministerial regulations as regulated in the applicable laws and regulations.

1. Fulfill the balance between land to be cleared and land that has been reclaimed; and
2. Manage the final ex-mining pit with the widest limit in accordance with the provisions of the legislation.

Article 99 of Law 3/2020 clearly provides concessions for mineral and coal mining business actors not to cover all ex-mining land holes.

#### **IV. Conclusion**

Based on the discussion above, the authors can conclude that firmness is needed in imposing sanctions on regulatory customers regarding the obligation to carry out reclamation and/or post-mining activities including the placement of guarantee funds to provide a deterrent effect. The application of criminal law sanctions as an *ultimum remedium* as well as the increase in the amount of criminal sanctions in fines are expected to be more effective in efforts to enforce the obligations of mineral and coal mining business actors to carry out mineral and coal mining business activities. The regulatory conflict between Law 3/2020 and PP 78/2020 makes it difficult to impose sanctions on mineral and coal mining business actors who do not carry out their obligations in carrying out reclamation and/post-mining activities.

## References

- Abrar. (1999). Hak Penguasaan Negara Atas Pertambangan Berdasarkan Undang-Undang Dasar 1945, Disertasi, Bandung: Universitas Padjajaran.
- Arief Barda Nawawi, Perkembangan Sistem Pidana di Indonesia, Bahan Penataran Nasional Hukum Pidana dan Kriminologi XI-2005, Kerjasama FH UBAYA, Forum Pemantau Pemberantasan Korupsi dan ASPEK HUPIKI, di Hyat Hotel Surabaya, Tanggal 14-16 Maret 2005.
- Ayu Linanda & Hudali Mukti. (2016). Kewajiban Perusahaan Pertambangan Dalam Melaksanakan Reklamasi dan Pasca Tambang di Kota Samarinda. YURISKA : Jurnal Ilmiah Hukum.
- Bandi Hermawan. (2011). Peningkatan Kualitas Lahan Bekas Tambang melalui Revegetasi dan Kesesuaiannya sebagai Lahan Pertanian Tanaman Pangan. Prosiding Seminar Nasional Budidaya Pertanian, Urgensi dan Strategi Pengendalian Alih Fungsi Lahan Pertanian. Bengkulu.
- Daud Silalahi. (2001). Hukum Lingkungan Dalam Sistem Penegakan Hukum Lingkungan Indonesia Edisi Ketiga, PT. Alumni, Bandung.
- Harun M. Husein. (1995). Lingkungan Hidup (Masalah, Pengelolaan dan Penegakan Hukumnya), Jakarta: Bumi Aksara.
- Marzuki, Peter Mahmud. 2011. Penelitian Hukum, Edisi I, Cetakan 7. Jakarta: Kencana.
- Muhamad Muhdar. (2015). Aspek Hukum Reklamasi Pertambangan Batubara pada Kawasan Hutan Kalimantan. Mimbar Hukum. Volume 27.
- Patiung dalam Satria Oktorina, Kebijakan Reklamasi dan Revegetasi Lahan Bekas Penambangan (Studi Kasus Penambangan Batubara Indonesia), AL-ARD: Jurnal Teknik Lingkungan, Volume 3 Nomor 1 –Agustus 2017 I.
- Pebrianto Eko Wicaksono, Kadin Bentuk Asosiasi Reklamasi Tambang. Dalam <https://bisnis.liputan6.com/read/2338704/kadin-bentuk-asosiasi-reklamasi-tambang>, diakses 17 Februari 2022.
- Shah, M. M., et al. (2020). The Development Impact of PT. Medco E & P Malaka on Economic Aspects in East Aceh Regency. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*. Volume 3, No 1, Page: 276-286
- Suharno. Bekas Tambang Jadi Kebun Kelapa Sawit. Hortus Archipelago. Volume 6. (Jakarta: FP2SB, 2013), hlm 18.
- Sukandarrumidi. (1999). Bahan Galian Industri, Yogyakarta: Gadjah Mada University Press.
- Tri Hayati. (2015). Era Baru Hukum Pertambangan di Bawah Rezim UU No. 4 Tahun 2009. Yayasan Pustaka Obor Indonesia: Jakarta.
- Vika Azkiya Dihni, Produksi Batu Bara Indonesia Naik 7,2% pada 2021, <https://databoks.katadata.co.id/datapublish/2022/01/05/produksi-batu-bara-indonesia-naik-72-pada-2021#:~:text=Kementerian%20Energi%20dan%20Sumber%20Daya,sebesar%20565%2C69%20juta%20ton.,> diakses 16 Februari 2022.
- Zulkifli, Sexy Killers, Film yang Mengungkap Sisi Lain Penambangan Batubara di Kalimantan Timur, [www.kompasiana.com](http://www.kompasiana.com), diakses pada 17 Februari 2022.