

The Implementation of Non-Clear and Clean Mineral and Coal Mining Business License Revocation by the Governor of West Sumatera Based on the State Administration Court Decision Number 2 / P / Fp / 2017 / Ptun.Pdg.

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Abstract— In order to control Mining Business Permits, a policy was made regarding the evaluation and procedures for issuing Mining Business Permits and Clear and Clean (CnC) status which is regulated based on Ministerial Regulation Number 43 of 2015. However, even though there are provisions that regulate it, there are still problems. One of the case is in West Sumatra which was not revoked by the Governor of West Sumatra so that it was sued with a positive fictitious lawsuit by the Yayasan Lembaga Hukum Indonesia (YLBHI) which then created to a State Administrative decision Number 2 / P / FP / 2017 / PTUN.PDG. In this decree instructing the Governor to revoke 26 (twenty six) Non-CnC Mining Business Permits which are still active and have not expired. But in its implementation, the Governor of West Sumatra only revoked 21 (twenty one) of them. The method used in this study is normative legal research with the approach of laws and cases. The results of the study indicate that the Governor of West Sumatra is not in line with the General Principles of Good Governance and also does not promote sustainable development. Therefore the authors suggest better law enforcement and maximize existing environmental instruments to create sustainable development.

Keywords: *environmental law, sustainable development, mining license, non-clear and clean*

I. INTRODUCTION

The concept of mastership natural resources in Indonesia has never been separated from the provisions in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as "the Constitution"), where the state is given the authority to control natural resources for the greatest possible prosperity the people and provide the greatest possible benefit to the community which then becomes a philosophical and juridical foundation in the management of natural resources in Indonesia, including the mineral and coal resources contained therein.

After the Mining Act No. 4, 2009 came into effect, the previous permit, namely Mining Authority (hereinafter abbreviated as "KP"), later changed to Mining Business Permit (hereinafter abbreviated as "IUP"), both the Exploration IUP and the Production Operation IUP. The authority to adjust KP into this IUP is also given to regents / mayors and governors according to their authority as stipulated in PP 23/2010.

The Directorate General of Mineral and Coal issued a regulation concerning the announcement of CnC status and CnC certificates for non-metal mineral and rock IUPs in Circular Number 05.E / 30 / DJD / 2015 stating that in accordance with the provisions of Article 11 of Energy and Mineral Resources Ministerial Regulation Number 2 of 2013 concerning Supervision of the Implementation of Implemented Mining Management by the Provincial Government and Regency / City Government (hereinafter referred to as "ESDM Ministerial Regulation 2/2013") [1].

The exploitation of natural resources has the obligation to pay close attention to the principles of sustainable development, which are actually legally regulated in various kinds of legislation, both legislation in the natural resources sector and in other laws and regulations that become supplementary and guardian regulations in the field of natural resources, for example arrangements in the field of protection and management of the environment and regulations in the field of spatial planning [2].

Sustainable development, means that every development carried out by the government must consider environmental aspects [3]. Development itself is a long-term process that is carried out in a comprehensive and integrated manner to improve the welfare of the community from one generation to another, in a continuous and continuous period. The main aspect that needs to be considered from sustainable development is to take good benefits from the wealth of the earth by means of mining, but also must pay attention to the environment by carrying out environmental management carried out by IUP holders or can be called the mining actors themselves.

Mining activities that are not followed by proper environmental management and in accordance with existing regulations, are very possible to produce massive environmental damage, such as pollution of water resources, destruction of protected forests or production forests.

But in reality, there are still a lot of Non- CnC IUPs whose permits have not been revoked by the local Governor even though Article 18 of ESDM Regulation 43/2015 states if the results of evaluations carried out by the Director General or governor state that the holders of Production Operation IUP do not meet the technical and

environmental criteria as referred to in Article 5 paragraph (2) letter c number 2 or letter d shall be given an administrative sanction in the form of revocation of IUP by the Director General on behalf of the Minister of Energy and Mineral Resources or the governor in accordance with his authority.

Examples of cases raised in this study are Decision Number 2 / P / FP / 2017 / PTUN.PDG which is a decision on receipt of an application to obtain a decision and / or action by the Government Official, between the Indonesian Legal Aid Foundation (hereinafter abbreviated as "YLBHI").) against the Governor of West Sumatra to revoke 26 (twenty six) active Non CnC IUPs that have not expired in West Sumatra Province where the IUP does not have the environmental criteria referred to in Permen ESDM 43/2015.

Based on the problem above, the author will carry out thesis research with the title "The Implementation of Non-Clear and Clean Mineral and Coal Mining Business License Revocation By The Governor Of West Sumatera Based on The State Administration Court Decision Number 2 / P / FP / 2017 / PTUN.PDG

II. THE ACTIONS OF THE GOVERNOR OF WEST SUMATRA THAT DO NOT REVOKE NON-CLEAR AND CLEAN IUPS IN TERMS OF LEGISLATION REGULATIONS

A. *Mineral and Coal Mining Law No. 4, 2009*

Article 117 of the Minerba Law stipulates that IUP and IUPK expire because the IUP / IUPK is returned, revoked or expired. This revocation of IUP / IUPK must be carried out by the authorized party, which is regulated in the Minerba Law, which is regulated in Article 37 of the Minerba Law, which was later amended in the Appendix CC of the Regional Government Law, which essentially delegates mining affairs, where mining is now in the hands provincial government. The actions of the Governor of West Sumatra who did not revoke the Non-CnC IUP contradicted the Minerba Law and also contradicted the principle of the *contrarius actus* which states that the party authorized to revoke the decision is the same party authorized to issue it. The existence of IUPs those are still declared Non- CnC also means that the government is not in line with Chapter VIII of the Minerba Law which deals with the requirements for mining business licenses, which states that IUPs must meet administrative, technical, environmental and financial requirements.

A. *Regional Government Law No. 23, 2014*

The ratification of the Regional Government Law has resulted in changes in the location of the original authority regarding IUP and mining activities in the regency / city area within the authority of the regent / mayor, shifting to the authority of the provincial government, in this case the governor. Therefore, the supervisory function is within the authority of the Governor, as stated in Appendix 2 of the Regional Government Law which states that management of elements of management, in the form of money, man, method and material is carried out by the provincial government, along with the implementation of its management functions, such as planning, operating, actuating, and controlling.

The existence of this transfer of authority resulted in the Governor being authorized to revoke the IUP that was considered non-CnC based on the evaluation that had been carried out, and the results had been submitted to the Ministry of Energy and Mineral Resources. The revocation of the non-CnC IUP by the Governor of West Sumatra clearly violated the governor's authority by acting arbitrarily. In addition, in Article 407 the Regional Government Law also stipulates that since this law applies, all laws and regulations that are directly related to the Region must adjust and base their regulations on this Law, namely in this case the provisions concerning the distribution of authority under the Minerba Law, which also provides mining authority to districts / cities, adjusted to the Regional Government Law, by delegating such authority to the provincial government.

B. *Government Administration Law No. 30, 2014*

Abuse of authority is regulated in Article 17 and Article 18 of the AP Law, which in the provisions of this article divide the abuse of authority which includes exceeding authority, confusing authority, and acting arbitrarily, where one category of arbitrary acts is not carrying out court decisions legally binding. After the verdict was passed stating that the Governor of West Sumatra was ordered to revoke 26 (twenty six) Non-CnC IUPs but which finally revoked only 21 (twenty one) IUPs with the argument that 5

(five) of them had been declared CnC had made the Governor of West Sumatra do not implement the principle of legal certainty in the AAUPB. The five IUPs that were not revoked were PT Thomas Jaya Trecimplant Abadi which had been CnC with the announcement letter of CnC stage 16 in July 2015, PT Dharma Power Persada, PT Miranti Mas Pratama and PT Triple Eight Energy which had been CnC based on the announcement of the Ministry of Energy and Mineral Resources Minerba Director General 25th on August 11, 2017, and PT Wirapatriot Sakti which has been CnC based on the announcement of the 26th Director General of Minerba of the Ministry of Energy and Mineral Resources on October 5, 2017.

The execution of this decision by the Governor of West Sumatra when viewed from Article 17 and Article 18 of the AP Law is included in the act of abuse of authority in the category of acting arbitrarily. In the AP Law also regulates the deadline for revocation of decisions, namely in Article 53 of the AP Law regulates the positive fictitious decisions, namely the determination of decisions and / or actions must be carried out within 10 (ten) working days after the application is received by government agencies and / or officials, and if there are no actions for 10 (ten) working days, the application is deemed granted. In this case, LBH Padang has submitted a Letter Number 143 / SK-E / LBH-PDG / VII / 2017 dated July 31, 2017 concerning the Application for Revocation of Non- CnC IUPs in West Sumatra to the defendants who have been received on July 31, 2017. After the Verdict No. 2/ P / FP / 2017 / PTUN.PDG has been final and binding, Article 53 paragraph (6) applies which forces the Governor to carry out court decisions at the latest 5 (five days). But in practice, the Governor only revoked 21 (twenty one) of the 26 (twenty six) non-CnC IUPs that must be revoked, the Governor of West Sumatra did not dare to revoke the IUP that was not recommended to the Minister of Energy and Mineral Resources. Therefore, the Governor of West Sumatra neglected to exercise his authority.

- *Minister of Energy and Mineral Resources Regulation No. 43 of 2015 concerning Procedures for Evaluating the Issuance of Mineral and Coal Mining Business Licenses* PERMEN ESDM 43/2015 regulates the provision of

CnC standards, namely mining which has been evaluated by the Governor and has fulfilled 5 (five) criteria, namely financial criteria, regional criteria, environmental criteria, administrative criteria, and technical criteria. These criteria are reviewed from the initial requirements for establishing an IUP, and do not review the implementation of obligations carried out by IUP holders when mining activities are carried out. In evaluating the Governor, if the results obtained are that IUP does not meet the criteria, then the IUP is not recommended by the Governor to the Ministry of Energy and Mineral Resources. These non-recommended IUPs are called non-CnCs and must be revoked.

III. ACTIONS OF THE GOVERNOR OF WEST SUMATRA THAT DO NOT REVOKE NON-CLEARAND CLEAN IUPS FROM THE ASPECT OF GENERAL PRINCIPLES OF GOOD GOVERNANCE

The revocation of Non-CnC IUP which was not carried out by the Governor of West Sumatra, if reviewed through AAUPB, there were various kinds of violations, namely violating the following principles:

A. *The Principle of Benefit*

Economically, if it is seen actually the number of mining permits in one area turns out to be inversely proportional to the level of welfare in the region, for example in South Solok Regency, where there are the highest number of permits from all districts / cities in West Sumatra. But Solok is also ranked 2 (two) underdeveloped areas in West Sumatra after the Mentawai Islands Regency. That way, the actual existence of this IUP does not provide benefits to the surrounding community.

B. *The Principle of Public Interest*

As stated by Era Purnama Sari, as the former Chairperson of LBH Padang, stated that throughout 2016 alone, LBH Padang had recorded 43,390 people who were victims directly or indirectly related to activities in the mining sector. The report is about water pollution, criminalization, land compensation, abandonment of permits, CSR, and deforestation for mining activities.

This clearly shows that the interests and benefits of the community are generally ignored so that many people accept inconvenience and even losses.

Moreover in environmental management and monitoring, and conservation of natural resources. If seen in the Verdict number 2/P/FP/2017/ PTUN.PDG, in the witness statement Tomi Adam, who is the WALHI Investigator Team stated that the production operation of PT Thomas Jaya Trecimplant caused environmental damage.

C. *The Principle of Transparency*

Even the existence of mining permits cannot be separated from the principle of openness, which should have been communicated in advance with the surrounding community that there will be an opening of mining operations around it, but in Padang itself in this case, the information was not obtained by the community.

Even after being asked the West Sumatra Information Commission, the West Sumatra Information Commission even stated that the information was confidential information and not public information. Based on this, LBH Padang finally took up the West Sumatra Information Commission. Even the evidence contained in this trial is also evidence in the trial of LBH Padang v. Governor of West Sumatra. Which ultimately won the LBH Padang for the West Sumatra Information Commission.

In addition, as a derivative of the recognition of indigenous peoples and their traditional rights, in investment there should be a recommendation for permission from the local customary law community as a prerequisite for issuing permits. The agreement between indigenous peoples as customary owners and these investors should be facilitated by the Governor so that a fair agreement with investors can be created, namely with a balance of rights and obligations between the community and investors, which encourages transparency and accountability from the government and investors.

D. The Principle of Impartiality

Reviewed from the principle of impartiality, the Governor of West Sumatra seemed to side with the company more than the people themselves. This actually applies in general, which was stated by Wahyu A. Perdana as Campaign Manager of the National Executive Forum who stated that when the mine was opened and others, actually the people who were excluded and the community were not indicators of whether the permits overlapped or not.

E. The Principle of the Certainty of Law

The fact that after the verdict stated that the Governor of West Sumatra was ordered to revoke 26 (twenty six) Non-CnC IUPs, but which finally revoked only 21 (twenty one) IUPs with the argument that 5 (five) of them had been declared CnC to make the Governor of Sumatra The West has not implemented the principle of legal certainty in the AAUPB. The five IUPs that were not revoked were PT Thomas Jaya Trecimplant Abadi, PT Dharma Power Persada, PT Miranti Mas Pratama, and PT Triple Eight Energy, and PT Wirapatriot Sakti This decision must be carried out, and the status of the CnC ordered to be canceled must be canceled. If the revocation of the IUP of Non-CnC is stated to be fundamentally less strong, even though there is already a Ministerial Regulation that regulates it. And the Ministerial Regulation remains binding and must be implemented as long as there is no decision by the Supreme Court to revoke the Ministerial Regulation. Although the Clear and Clean vocabulary is not contained in the Minerba Act, and also not one of the reasons in the Minerba Law to revoke IUP, Ministerial Regulation Number 43 of 2015 is a technical and more detailed regulation of the Minerba Act, as well as a way to circumvent the legal vacuum.

If there is a court verdict that has been final and binding and the Governor does not fully implement the order though, where there are still 5 (five) Non-CnC IUPs that are not revoked, the Governor does not reflect legal uncertainty

IV. CONCLUSION

Based on the research above, the conclusions that can be conveyed are the actions of the Governor of West Sumatra who did not revoke the IUP of Non- CnC

cannot be justified based on laws and regulations and AAUPB. This is because the Governor of West Sumatra has injured several laws and regulations at once, namely the Minerba Law, the Pemda Law, the AP Law, and PERMEN ESDM 43/2015. In addition, the actions of the Governor of West Sumatra are also not in line with AAUPB, where in this case the Governor of West Sumatra has violated the principle of benefit, the principle of public interest, the principle of transparency, the principle of impartiality, and the principle of legal certainty. The non-CnC IUP was not revoked even though there were rules governing it, even there was a permanent legal ruling, namely Verdict Number 2 / P / FP / 2017 / PTUN.PDG., The Governor of West Sumatra has also misused the category of acting in an arbitrary manner pleasure.

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