

The Justice System in Indonesia with the Application of the Green Constitution in Mining Dispute Resolution

Adimas Ardhiyoko, Jamal Wiwoho, Yudho Taruno Muryanto
Universitas Sebelas Maret
Surakarta, Indonesia
dimas210979@gmail.com

Abstract- Natural wealth is one of the important capitals in the development of a nation and state, therefore it must be utilized optimally for the benefit of the nation and state. Indonesia has a variety of natural resources, both renewable and non-renewable natural resources. From Sabang to Merauke, it is full of abundant natural wealth, clear rivers, diverse forest products, abundant marine wealth, fertile soil and full of minerals and precious metals such as gold, silver, copper and the like. With a variety of natural resources owned by our country, it is not surprising that from upstream and downstream, from remote rural areas to urban areas, there are various types of industries, both small, large and even international, which are owned by the private sector, government or foreigners, which are growing rapidly. of course this is very good for the economic development of the country with the many taxes and levies that will be obtained by the state. Mining activities are an integral part of the economic development of any country endowed with mineral resources. This is due to the income it generates, the job opportunities it creates for residents, and the foreign exchange that comes from importing the mining products. The surrounding communities or local communities where these minerals are found will benefit from the investment opportunities, jobs, royalties paid to them. However, on the other hand, the community will also experience negative effects such as suffering from pollution, land degradation, deforestation, and increasing sufferers of a disease, especially respiratory and skin diseases. However, the rapid development of industry and development must still uphold the norms of nature conservation. Do not let the massive industrial development in Indonesia not cause environmental damage, therefore there is a need for an eco friendly arrangement or constitution (green constitution) to preserve nature.

Keywords-Green Constitution, Mining.

I. INTRODUCTION

Mining in Indonesia began centuries ago. However, commercial mining only started during the Dutch colonial era, beginning with coal mining in Pengaron-East Kalimantan (1849) and tin mining on Bilitun Island (1850). While modern gold mining began in 1899 in Bengkulu-Sumatra. At the beginning of the 20th century, gold mining began to be carried out in other locations on the island of Sumatra. In 1928, the Dutch began mining Bauxite on Bintan Island and in 1935 began mining for nickel in Pomalaa-Sulawesi. After World War II (1950-1966), Indonesia's mining production decreased. It wasn't

until 1967 that the Indonesian government formulated a contract of work (COW). The first KK was given to PT. Freeport Sulfur (now PT. Freeport Indonesia). Some definitions of mining include according to the Big Indonesian Dictionary (KKBI, 1990), the meaning of mining is to dig (take) mining goods from the ground, meanwhile, according to Supramono, mining is an activity carried out by digging into the ground (earth) to get something in the form of mining products, and according to Law Number 4 of 2009 what is meant by a People's Mining Permit (IPR) is a permit to carry out a mining business in a mining area within a people's mining area with a limited area and investment.

In general, the mining business is an effort to carry out exploration, exploitation, production, refining, and sale of earth products. While mining activities can be defined as a stage of activity that begins with general investigation, exploration, feasibility studies, construction, mining (including if there is processing and refining), transportation/sales and ends with post-mining land rehabilitation. Based on Law Number 4 of 2009 concerning Mineral and Coal Mining, there are four principles that apply to mineral and coal mining, namely:

a. Benefit, Fairness and Balance

The principle of benefit in mining is a principle that shows that mining must be able to provide the maximum profit and benefit for increasing the prosperity and welfare of the people. The principle of justice is that mining must be able to provide equal opportunities and opportunities proportionally to all citizens without any exceptions. While the principle of balance is that in carrying out mining activities, it is obligatory to pay attention to other fields, especially those directly related to the impact.

This principle states that mining activities are oriented to the interests of the state. Although in carrying out mining business using foreign capital, foreign workers, and foreign plans, the activities and results are only for the national interest. The participatory principle is the principle that requires that in carrying out mining activities, community participation is needed for policy formulation, management, monitoring, and supervision of its implementation. The principle of transparency is openness in the implementation of mining activities, it is hoped that the wider community can obtain correct, clear

and honest information. On the other hand, the community can provide input to the government. While the principle of accountability is that mining activities are carried out in the right ways so that they can be accounted for to the state and society. The principle of sustainability and environmental insight is the principle that in a planned manner integrates economic, environmental, and socio-cultural dimensions in the overall mineral and coal mining business to realize present and future prosperity.

II. RESEARCH METHOD

The type of research used in this study was an empirical legal research or non-doctrinal legal research. Legal research was conducted to produce new arguments, theories or concepts as prescriptions in solving problems at hand. Legal research is a scientific activity, which is based on certain methods, systematics and thoughts, which aims to study one or several certain legal phenomena, by analyzing them. The sample is part of the number and characteristics of the population. The research sample was taken using purposive sampling technique with criteria the category of the high leg hand-eye coordination group was students who fall into the 27% highest score and The category of low leg hand-eye coordination group was students who were included in the lowest 27% score [5].

III. FINDINGS AND DISCUSSION

1. *Mining Case Dispute Conditions in Indonesia.*

Every mining activity will almost certainly have an impact on the environment, both positive and negative. The positive impacts of mining activities include increasing job opportunities, increasing the economic wheels of other sectors and sub-sectors in the vicinity, and increasing state and regional income in the form of taxes, levies or royalties. However, mining activities that are not insightful or do not consider the balance and carrying capacity of the environment and are not managed properly can have a negative impact on the environment.

These negative impacts include the occurrence of land movements that can cost both property and life, loss of water catchment areas in hilly areas, damage to landscapes, puddles into rivers whose impact can reach downstream, increasing the intensity of erosion in hilly areas, roads the vehicles transporting mining materials are damaged, disrupting groundwater conditions, and creating large puddles filled with water, especially when digging in the plains, as well as affecting the social life of the people around the mining site. Therefore, to avoid these negative impacts, mining management that is environmentally sound is an absolute must.

One of them is the case of PT Selatnasik Indokwarsa (SI) and PT Simbang Pesak Indokwarsa (SPI) in the Supreme Court decision No. 499 K/Pdt/2012 dated August 16, 2012 is one example of Environmental Destruction carried out by a private company that obtained an official mining permit but in practice is

abused. As a result, causing environmental damage at the mining site to the forest area in the permit area, a fine of Rp. 32 billion was imposed for mining sand and damaging the environment, including destroying nature reserve forests such as Pelawan trees, Karemunting trees, Harendong Forest trees, Seru trees and other types.

In general, mining dispute resolution can be carried out through 2 (two) processes. The oldest dispute resolution process is through the litigation process in court, then the dispute resolution process develops through cooperation (cooperative) outside the court. The litigation process results in an agreement that has not been able to embrace common interests, tends to cause new problems, is slow to resolve, requires expensive costs, is unresponsive, and creates hostility between the disputing parties. On the other hand, through an out-of-court process, a "win-win solution" agreement is made, the confidentiality of the parties' disputes is guaranteed, delays caused by procedural and administrative matters are avoided, the problem is resolved comprehensively in togetherness, and still maintains good relations. The only advantage of this non-litigation process is its confidentiality, because the trial process and even the results of the decision are not published.

Dispute resolution out of court is generally referred to as Alternative Dispute Resolution. Alternative dispute resolution, namely the settlement of disputes outside the court, has developed for a long time in the east and then received the same response in the west, although for different reasons. Alternative dispute resolution in the east is based on reasons to maintain harmony, where every dispute is resolved amicably. Courts are not the right place for business people to settle their disputes who always maintain good relations.,

To resolve disputes or mining cases, apart from being able to use judicial media, it can be done by making rules that are more pro-environmental conservation or commonly referred to as green constitutions, or can be made by making preventive rules such as limiting the age of miners which is applied in the country - African countries such as Congo, Zambia, or South Africa. This minimum age restriction is based on the fact that when the miners are of mature age, it is hoped that the miners will not be careless and do environmental damage in mining activities.

2. *Green Constitution.*

The progress and prosperity of a country and a nation is a goal that is highly coveted by all countries in the world, including the Indonesian nation. After independence on August 17, 1945, Indonesia began to build itself so that it could stand on an equal footing with other countries in the world. Economic development then continues in other fields such as fisheries, trade and even industry. In the end, in the 1980s, we could say that we were a nation that was ready to take off towards becoming a developed country. In the era of 1990, a lot of foreign investment entered Indonesia which encouraged the development of the industrial sector which caused the

level of welfare of the Indonesian people to increase drastically. Of course this is something that is both exciting and makes us concerned.

With increased development will change the living conditions of local people, the higher the economy of a country, the higher the purchasing power and level of consumption, this of course also has negative consequences, including environmental damage and destruction due to industrial activities, mass consumption, modern lifestyles, and the emergence of human greed to obtain greater profits, of course raises concerns and awareness that the preservation of nature is threatened, so urgent regulations on nature are needed.

Nowadays, concepts appear in various fields related to the awareness of the importance of the environment. These concepts include, for example, green economy, green technology, green entrepreneurship, green innovation, green marketing, green building, green architecture, green city, green mining, green party, green politics, and others. Even though they are in different fields, there is one basic similarity, namely that all of these essentially emphasize the importance of the environmental aspect (green) which has become a major issue with the increasing environmental damage such as deforestation, pollution, the extinction of flora and fauna, melting of polar ice and fears that it will end. non-renewable natural resources.

However, these green concepts are poorly understood by the world community, especially business people. One of the concepts about green that is still very rarely understood and not widely understood either by the public or even law scholars, is the concept of the green constitution. The concept of green constitution is a new phenomenon among practitioners and academics who are concerned with environmental issues, including among legal and constitutional experts.

Professor Jimly Asshiddiqie through his book entitled *Green Constitution: Green Shades of the 1945 Constitution of the Republic of Indonesia*, explained that in principle, green constitution is the application of environmental law norms or rules into the constitution or legal products aimed at protecting the environment. life. Thus, the importance of the principle of sustainable development that is environmentally sound and the protection of the environment has a strong footing in the legislation. On that basis, the green constitution then tries to introduce and emphasize the importance of environmental conservation.

In Indonesia, the green constitution is reflected in the 1945 Constitution of the Republic of Indonesia. Article 28H Paragraph (1) and Article 33 Paragraph (4) of the 1945 Constitution are the basis for the green constitution. Thus, the norms of environmental protection in Indonesia actually have a strong footing. However, there are still not many public policy makers and the wider community in the country who know and understand this. That is why efforts are needed to disseminate knowledge and

understanding of the green constitution and its importance for business conditions in Indonesia.

In addition, the green constitution is also related to the right of every citizen to obtain health which is a human right, while the concept of human rights is also reflected in the concept of democracy with the principle of sustainable development (sustainable development) and environmental insight. These things provide the constitutional basis for a Green Constitution

A clear example of the importance of implementing a green constitution is Tesla's electric car investment in Indonesia. The company owned by Elon Musk, who is one of the richest people in the world, was initially very interested in opening an electric car factory, on the basis that Indonesia has a large population which means it is a very potential market and has the largest nickel mine. in the world are the two main things that make Tesla interested in opening a factory in Indonesia. But even though there have been intense discussions, the results say otherwise, Tesla's investment in Indonesia was cancel and switch to India, of course this is a big loss for the Indonesian government.

3. Criticism And Advice On The Law In Indonesia.

Today's rapid technological progress, of course, in addition to having positive things also has a negative side, one of which is cultural and social changes in society. One of the real social changes is an increase in consumption patterns in line with increasing prosperity. An increase in consumption means an increase in production which automatically uses more raw goods, which if not controlled can cause natural damage and the depletion of natural resources.

The state as a bulwark and protector of its people must be sensitive and responsive to issues or social changes that develop in the community, especially those involving the interests of the community at large, but this is often ignored, so that it often creates new problems that should be prevented if sensitive to it. Therefore, I outline some criticisms of law makers and law enforcers such as courts, including:

- a. Technology is advancing and developing rapidly, so it is only natural that the rule of law in our country is also developing rapidly. Unfortunately, to make a product of the rule of law often takes a long time and costs a lot of money so that there is a legal vacuum which of course is very inappropriate.
- b. The government is less sensitive to developing issues, often decision makers underestimate new ideas and think that they are unreasonable or incompatible with our country, so this is often seen as foam in the ocean.
- c. With the increase in the economy, of course there will be an increase in production which means an increase in the use of natural resources and natural damage such as water and air pollution. One way to overcome this is by making regulations that are more environmentally friendly, namely the existence of a

green constitution. However, until now there are not many legal products that are more concerned with the preservation of nature.

- d. Often the elements of business and political interests play a more important role in making legal regulations than the elements of their benefits for the community, so that what happens is that the rule of law is felt to be unequal and only benefits one party.

To respond to the criticism above, there are several suggestions that can be used, including:

- a. The government as a law maker must be more concerned with changes in society and any issues, even if they are as small as possible. Because every little thing, if not noticed, may result in losses for the country and the nation in the future.
- b. To overcome the increasingly severe environmental damage, it is natural for the government to be proactive in taking preventive measures, one of which is by making more rules and legal products that are more environmentally friendly or green constitution, especially legal products related to industry.
- c. In line with the green constitution concept, if you want to make a new legal rule, the state must involve people who are competent in their fields, for example, environmental law experts, administrative law experts, constitutional law experts, ecosystem experts, or experts others who are really competent in their fields..

IV. CONCLUSION

The conclusions in this study were: Mining activities are an integral part of the economic development of any country endowed with mineral resources. This is due to the income it generates, the job opportunities it creates for residents, and the foreign exchange that comes from importing the mining products. The surrounding communities or local communities where these minerals are found will benefit from the investment opportunities, jobs, royalties paid to them. However, on the other hand, the community will also experience negative effects such as suffering from pollution, land degradation, deforestation, and increasing sufferers of a disease, especially respiratory and skin diseases. However, the rapid development of industry and development must still uphold the norms of nature conservation. Do not let the massive industrial development in Indonesia not cause environmental damage, therefore there is a need for an eco friendly arrangement or constitution (green constitution) to preserve nature.

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