



Sustainable Mining Development Based on Local Wisdom in West Kalimantan: Progressive Legal Perspective

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Abstract. Mining has become an important sector in the country's economy and contributes to economic growth and regional development. In West Kalimantan, mining companies are scattered in various districts such as Mempawah Regency, Landak Regency, Sanggau Regency, Kubu Raya Regency, Kayong Utara Regency, Ketapang Regency, and other regencies. Based on the large number of mining companies that are scattered over time, it can cause various problems. One of the most significant problems at this time is unsustainable mining management, which causes negative impacts on the environment, society, and socio-economic sustainability. This study utilizes a normative legal research approach that specializes in the analysis of laws and regulations, policies, and related legal documents relevant to mining development in West Kalimantan. A progressive legal approach is used to obtain a more holistic and justice-oriented perspective in developing sustainable mining by incorporating relevant local wisdom in West Kalimantan. Meanwhile, the conclusion of this research is to promote and ensure the relevance of various regulations, especially those related to mining, with an approach that involves all relevant parties in the planning, implementation, and supervision of mining activities. This way, balanced economic, social, and environmental sustainability can be achieved.

Keywords: Community Participation, Local Wisdom, Mining Policy, Progressive Law, Sustainable Mining.

1 Introduction

Sustainable Development or SDG's is a program formed by the United Nations organization in 2015 to overcome various problems that occur in the contemporary era like today. Meanwhile, there are 17 goals established by the United Nations institutions for global economic prosperity, inclusive justice, and access to human rights to be fulfilled [1]. The 17 Sustainable Development Goals (SDGs) encompass a range of objectives, including the eradication of poverty, the elimination of hunger, the promotion of health and well-being, the provision of quality education, the advancement of gender equality, the access to clean water and sanitation, the promotion of affordable

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and clean energy, the creation of decent work and economic growth, the development of industry, innovation, and infrastructure, the reduction of inequalities, the establishment of sustainable cities and settlements, the promotion of responsible consumption and production, the mitigation of climate change, the preservation of ocean and land ecosystems, the promotion of peace, justice, and resilient institutions, and the fostering of partnerships to achieve these goals.

Based on the SDG's Program, there are 5 fundamental dimensions or pillars: Community, Planet, Prosperity, Justice, and Partnership. These dimensions form the basis for forming the 17 SDG's goals and 169 targets to achieve by 2030 [2]. Apart from these dimensions, globally known dimensions include the social, economic, environmental, legal, and governance development dimensions.

The sustainable development program formulated by the international organization of the United Nations was then followed by Indonesia. The legal foundation for the implementation of Sustainable Development Goals (SDGs) in Indonesia is derived from Article 4, paragraph (1) of the 1945 Constitution. This provision grants the President, as the highest authority in the Indonesian government, the authority to establish legal measures aimed at promoting the well-being and safeguarding the interests of the Indonesian population. In accordance with the provisions stipulated in Article 4, paragraph (1) of the 1945 Constitution, the Presidential Regulation No. 59 of 2017 pertains to the execution of the Sustainable Development Goals. This regulation is also in alignment with the provisions outlined in Law No. 25 of 2004, which pertains to the National Development Planning System.

The implementation of sustainable development in Indonesia is often not in line with the existing reality, and this can be seen in several cases, such as poverty which is often found in rural areas [3], uneven development of public facilities [4], gender injustice [5] and marginalization of people with disabilities [6] and environmental problems resulting from development activities as well as by capital companies [7]. One of the essential problems of sustainable development programs in Indonesia related to environmental damage is the impact of the invasion of capital companies which are increasingly exploiting natural products by clearing land. Another problem that later occurred was the emergence of the Job Creation Law, or what is commonly referred to as the Omnibus Law, which abolished the principle of strict liability, which was feared to weaken oversight of the environmental sector [8].

The environmental damage that occurred in Indonesia can create opportunities for conflict between local communities and companies that carry out their business activities [9]. The impact of environmental damage often occurs in West Kalimantan Province. This can be found in several existing cases, such as industrial waste that pollutes rivers, land disputes between entrepreneurs and local communities, illegal gold mining, to mining by large companies that destroy natural ecosystems. What's more, several mining companies in West Kalimantan often have problems with permits between one district and another, which ultimately has an impact on creating conflicts between communities and communities as well as between communities and entrepreneurs.

Business activities that can cause damage to natural ecosystems and can create potential conflicts that ultimately violate the principles of human rights have been

regulated in Article 28I Paragraph 4 of the 1945 Constitution, which emphasizes that the state, in this case, is obliged to protect, fulfill and guarantee the implementation of human rights. As for the relationship between human rights and business, Article 33 of the 1945 Constitution can be interpreted in terms of the state's economy being regulated by the government with the aim of prosperity for the people with the principle of kinship, in other words, that business management in a country must take into account the impacts that will arise from these activities and business chains so that no human rights violations occur.

The relationship between human rights and business, apart from the 1945 Constitution, is also regulated in the guiding principles on business and people issued by the United Nations (UN) organization which aims to improve standards and practices related to business and human rights. Based on the UN guidelines related to human rights and business, 3 points form the basis of the framework: protection, respect, and restoration. The UN reference framework must be carried out without discrimination and vulnerable groups, especially local communities directly affected by business activities that damage the environment.

Local communities, especially those in West Kalimantan, have local wisdom or customs in managing the environment. Customs in West Kalimantan include Dayak, Malay, Chinese, Madurese, Bugis, and several other customs. In particular, the local wisdom that will be the focal point of this study is related to Dayak customs. This is because the mining sites where problems often occur are in forest or plantation areas where most indigenous people are Dayak.

This study is entitled Sustainable Mining Development Based on Local Wisdom in West Kalimantan: Progressive Legal Perspective. This study aims to provide a new perspective so that sustainable development based on local wisdom can be created, especially in mining activities in West Kalimantan studied based on Progressive Law. The research method used in this study is a normative method, with the main frame of reference for legal rules and regulations. It is analyzed using a juridical analysis method, which involves interpreting legal materials and conducting literature studies in accordance with the study. The inference method in this study is carried out deductively, which means that conclusions are drawn from things that are general and then become specific things.

2 Discussion

The Indonesia is a country with various natural resources. This can be seen from the abundance of plantation, marine, and mining products in Indonesia. The legislation pertaining to mining can be located in Article 33 of the 1945 Constitution, which provides a comprehensive mandate for branches of production deemed crucial for the state's economic support, with the overarching objective of promoting the welfare of the entire populace. According to Law No. 3 of 2020, which amends Law Number 4 of 2009 on Mineral and Coal Mining, mining encompasses various stages of activities involved in the management and exploitation of minerals or coal. These stages include general investigations, exploration, feasibility studies, construction, mining,

processing and/or refining, development and/or utilization, transportation, sales, and post-mining activities.

The predominant mining activity conducted in West Kalimantan Province is mostly focused on mineral extraction. The interpretation of mineral mining in Law no. 3 of 2020 pertains to the extraction of a variety of minerals in the form of ore or rock, with the exception of geothermal resources, oil, natural gas, and groundwater. As for mineral mining in West Kalimantan, the business activities carried out by mineral mining companies are divided into several districts, such as Sanggau Regency, Bengkayang Regency, Landak Regency, and Kayong Utara Regency [10].

Mining activity, also known as mining business, refers to the process of extracting minerals or coal from the Earth. This process encompasses various stages, including initial investigation, exploration, feasibility study, construction, mining, processing, refining, development, utilization, transportation, sales, and post-mining activities. Mining activities, especially in several districts in West Kalimantan, often cause potential environmental damage [11], which ultimately endangers the ecological environment around the mining business area [12]. In addition, the emergence of the Omnibus Law, which facilitates the climate and investment permits in Indonesia, has contributed to expanding the number of mining companies that have begun to open their business activities near local community lands.

Several mining cases, especially in West Kalimantan, have impacted environmental damage. Cases caused by mining activities, including farmers in Sandai Kiri Village, Ketapang Regency, were affected by mud due to bauxite mining activities carried out by mining companies near their plantation areas [13]. This is not in accordance with the provisions of Article 8A paragraph (2) point b of Law no. 3 of 2020, which in the management of mining business activities must pay attention to environmental sustainability.

The problems that occur from mining activities are not only from environmental damage, but another problem that often occurs is discrimination in labor recruitment in mining companies, which employ more foreign workers than local people. Cases of labor discrimination at mining companies in West Kalimantan can be seen in the case in Ketapang Regency, which occurred in 2020, where local people staged demonstrations asking for their rights as local people to be employed [14]. This issue of discrimination violates the principle of human rights, which explains that everyone has the right to have equal opportunities in the fields of education, health, and employment.

Based on the problems that occur, if it is studied according to the framework of the SDG's objectives, from several business mining activities that occur, there are discrepancies such as in the pillars of healthy and prosperous life where the local community environment is polluted from mining activities that occur, environmental damage that occurs can also have an impact on changes The climate that occurs, as well as the existence of discrimination related to hiring workers in a mining company can create a gap between local communities and foreign workers which creates a poverty chain in the mining business area . Furthermore, an examination was conducted to explore the correlation between business and human rights by applying the concepts of Sustainable Development Goals (SDGs). This study encompassed several

dimensions of the United Nations Guiding concepts on Business and Human Rights (UNGP on BHR). The UNGPs on Business and Human Rights encompass three fundamental pillars that guide the operations of businesses, namely Protection, Respect, and Recovery [15].

Protection in relation to human rights and business, especially in the mining business in West Kalimantan, can be interpreted through mining policies designed by the government that must be able to protect the rights of local communities. The rights that need to be protected include the right to life, the right to a healthy environment, customary or cultural rights, and other rights related to humans as individuals. Based on this, the government, in this case, the central and regional governments, must be able to contribute to policies that are deemed fair not only for mining entrepreneurs but also for local communities who live and reside around mining business locations.

Respect for human rights and business relations, especially in the mining business in West Kalimantan, can be interpreted that the mining business activities carried out are not solely aimed at making profits but must pay attention to aspects of environmental sustainability and in the chain of business activities do not violate the principle of human rights. This is also in accordance with Article 28H paragraph (1) of the 1945 Constitution, which means that every human being has the right to prosper and get a decent living environment. Furthermore, respect in relation to human rights and business must be able to reach out and respect the diversity of cultures or customs where the mining business activities take place.

Recovery in human rights and business relations, especially in the mining business in West Kalimantan, is a business from mining activities that have a negative impact on environmental sustainability to take responsibility. Recovery is not only carried out after the adverse effects of the mining business occur, but before mining activities are carried out, companies must stipulate environmentally friendly business provisions, such provisions as corporate social responsibility, permits related to the mining business, and so on [16]. Efforts to restore the environment affected by mining activities must be optimized by various parties, such as the government, mining business actors, and affected local communities.

In reality, sustainable development efforts in Indonesia are still experiencing problems in their implementation. Provisions related to investment in the Omnibuslaw law, which eventually paved the way for mining expansion, especially in West Kalimantan, seem to contradict the spirit of environmental management in the mining law. Based on several contradictory policies, this will result in an ineffective law enforcement process.

Ineffective law enforcement in mining activities will have many impacts that can trigger potential conflicts, including land disputes and natural resource struggles. Based on this, the concept of progressive law is used to uphold the law in a just manner and respond to the challenges that arise in this contemporary era. The concept of progressive law focuses on legal practice in the field and changes in relevant legal behavior in the sense that the law is not merely rigid.

In progressive law, the law must have meaning solely for justice and human welfare, and the law was created not for law but for humanity [17]. Based on this

progressive legal concept, mining problems in West Kalimantan can be resolved by local or customary methods in West Kalimantan. In particular, the settlement of mining problems can be carried out using the Dayak Kanayatn customary law.

In the 1945 constitution, recognition of indigenous peoples is contained in Article 18B paragraph (2), which means that the state recognizes indigenous peoples if their customs are still relevant to the applicable legal provisions and in accordance with the times. Other legal provisions that recognize the existence of indigenous peoples can be found in Law Number 48 of 2009 concerning Judicial Power. Based on this, the application of Dayak Kanayatn customary law still exists today. Dayak Kanayatn customary law is written down by customary heads and indigenous peoples in customary provisions called customary deliberations. The provisions of the customary deliberations result from discussions between traditional leaders and the indigenous Dayak Kanayatn community, so the results of these customary deliberations are a mutual agreement. Therefore, this collective agreement later became the reference direction for Dayak Kanayatn customary law.

As for the customary law of the Dayak Kanayatn, which is regulated in the provisions of customary deliberations, environmental issues have been regulated. This can be found in several articles in the customary meetings, such as Article 86, Provisions for the Kanayatn Customary Deliberation related to protection of palm trees, Article 81, Provisions for the Kanayatn Customary Deliberation related to pollution of water, and Article 80, Provisions for the Kanayatn Customary Deliberation related to forest burning. It needs to be understood that these customary law provisions existed even before the international organization of the United Nations stipulated sustainable development goals. These customary law provisions reflect the way of life of the Kanayatn Dayak people for hundreds of years, so in determining customary law, it is considered that it always reflects the times and developments.

Sanctions related to Dayak Kanayatn's customary law are in the form of paying customary fines. The process of granting customary fines is carried out by carrying out traditional ceremonies between the offenders, indigenous peoples, and traditional leaders. After the traditional ceremony, the sanctions for violators will be discussed in advance concerning the provisions of customary law to customary decisions. Sanctions related to environmental destruction in Dayak customary law refer to the provisions of the customary consultation [18], namely Siam Pahar Pangalabur Temenggung. The sanctions given in Siam Pahar Pangalabur Temenggung include 12 white plates, 5 parts of pork or 12.5 kilograms, 1 chicken, palantar (rice, eggs, silver coins, lamp, water in a glass, and flour), as well as the eyes of panyagahatn or the giving of sincere wages to the panyagahatn [19]. Panyagahatn, according to the custom of the Kanayatn Dayak community, is a traditional priest or a person who is believed to be a link between the ancestral realm and the human realm today.

Customary law with nuances of local wisdom is one Indonesian culture that must be proud of Customary law [20], usually considered very conservative, has a progressive side or is relevant to its era. This can be found in the customary law of the Dayak Kanayatn, which always processes with the times to answer sustainable development problems, especially those related to mining activities that damage the environment.

3 Conclusion

Regulations related to mining are regulated in Article 33 of the 1945 Constitution, which emphasizes the importance of the production branch for the state and people welfare. But in the process, mining activities in several areas in West Kalimantan often cause environmental damage that endangers the local ecosystem. Another problem of mining activities is discrimination in recruiting workers, where more foreign workers are employed than local people. This problem violates the principle of human rights, which guarantees equal opportunities for all individuals. In the context of sustainable development, mining activities that do not follow SDG's principles can cause environmental damage, climate change, and social inequality.

Based on the above, in overcoming environmental problems caused by mining activities, it is necessary to respect the principles of protection, respect, and restoration of human rights so that they become the main reference in mining activities. Protection can be achieved through mining policies that involve local communities and protect their rights, such as the right to life, a healthy environment, and customary or cultural rights. Respect for human rights means mining activities must consider environmental sustainability and not violate human rights principles. In addition, respect also includes respect for cultural diversity or local customs.

In aligning the principles of human rights and business as well as sustainable development goals, we can apply progressive legal concepts and recognition of customary laws, such as the customary law of the Dayak Kanayatn in West Kalimantan, which can be a solution in resolving conflicts and maintaining environmental sustainability. These customary laws have reflected the way of life of local people for hundreds of years and can provide relevant sanctions for environmental violations. The existence of progressive customary law is a cultural asset that needs to be appreciated and can respond to challenges in sustainable development.

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