



Legal Protection for Communities Affected by Nickel Mine Exploitation Amidst Increased Exploration for Electric Battery Needs

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Abstract- Climate change has encouraged using greener and environmentally friendly renewable energy. Lithium-ion batteries have become an important component in electric vehicles, energy storage, and portable electronic devices based on nickel. Therefore, there has been a rapid increase in the exploration and exploitation of nickel mines. However, the exploitation of nickel mines often presents serious impacts on the environment and society such as deforestation, water and soil pollution, and the emergence of conflicts with communities. Various criminal cases involving nickel mining have been investigated by law enforcers, but the criminal instruments imposed are limited to corporal punishment and fines paid and entered into the state, considered unable to restore the impacts caused, because the true victims are the community and the environment, but cannot be restored through existing legal instruments. It is necessary to have legal protection based on the recovery of the situation from the impact of mining crimes that prioritizes the community and the environment. Therefore, it is important to examine the application of the concept of restitution and compensation to sustain nickel mining exploration alongside its impacts. Effective restitution and compensation can help balance the economic benefits generated by nickel mining with fair compensation for affected communities, as well as efforts to mitigate environmental impacts. However, current positive legal provisions still limit restitution and compensation to be applied only in certain criminal offenses such as cases of gross human rights violations, terrorism, trafficking in persons, racial and ethnic discrimination, criminal acts related to children and other criminal offenses determined by the decision of the witness and victim protection agency (LPSK). This research proposes the concept of restitution and compensation in mining crimes. Through legal comparison, it is hoped that a better solution can be found to maintain a balance between the fulfillment of urgent electricity battery needs and the protection of the community and the environment affected by nickel mining exploitation.

Keywords- Electric Battery; Nickel Mine Exploitation; Restitution; Compensation.

I. INTRODUCTION

All energy systems around the world are undergoing a transformation from fossil fuels to low-carbon energy technologies. The goal of the global energy transition is to achieve zero greenhouse gas (GHG) emissions by 2050. This would limit global temperature rise to 1.5–2 degrees above pre-industrial levels. Caused by the COVID-19 pandemic and Russia's invasion of Ukraine, uncertainty in global energy markets makes energy system reform necessary to maintain security and price stability.[1]

Efforts are needed to prevent significant climate change. To promote environmental improvement and significant temperature rise, non-carbon energy must be substituted for fossil energy. Indonesia has many minerals, including coal, oil, natural gas, silver, gold, and

copper, and many nickel deposits. These minerals are owned and used for the prosperity of the Indonesian people. This is regulated in Article 33 Paragraph (3) of the 1945 Law of the Republic of Indonesia, which states that "the earth, water and natural resources contained therein shall be under the control of the state and shall be used for the greatest prosperity of the people"[2]

However, since the Omnibus Bill, the implementation of the law's mandate seems to have diminished as it no longer makes AMDAL the main requirement that must be met by business actors in issuing mining business licenses (IUP). As we know, AMDAL plays a very important role in ensuring that mining activities are sustainable and do not result in losses.[3]

It is paradoxical that while facilitating investment, the environment is being damaged by nickel mining activities. However, by considering the potential of other resources, management can be improved. Potential in agriculture, fisheries and plantations can also contribute significantly to PAD and economic growth. In addition, these potential resources do not have the impact on environmental damage that mining does. In some cases, government policies relating to mining activities do not pay attention to the completeness of the required documents of companies carrying out mining activities with the aim of promoting economic growth, which can cause environmental damage. Because mining activities have caused environmental damage, the government tends to be negligent.[4]

In addition to the need for positive legal provisions that allow restitution and compensation in environmental crimes, other instruments are also needed, namely parties or institutions that can represent the interests of the community and the public interest in filing restitution and compensation claims.[5] The scheme that can be proposed is to maximize the role of the State Attorney (JPN) to represent the public interest, namely the interests of the victim to the corporation in the case of being a victim of a criminal act of environmental damage caused by nickel mining in Indonesia.[6] The State Attorney has special powers from the Attorney General to act in civil and state administrative and constitutional cases, on behalf of the state, government, or public interest. The authority of the Prosecutor as a state lawyer to carry out legal interests both non-litigation efforts and litigation efforts in the form of filing a lawsuit in court.[7]

The success of law enforcers in uncovering and processing criminal cases related to nickel mining should be appreciated, but the criminal instruments imposed are limited to corporal punishment and fines paid and entered into the state and are considered unable to restore the impact caused by environmental damage due to the mining crime.[8] Legal instruments are still needed to bring justice to victims, in this case, the community and the environment. Because the true victims are the community and the environment but have not been able to be restored through existing legal instruments. It is necessary to have legal protection based on the restoration of the situation from the impact of mining crimes that prioritize the community and the environment. Therefore, it is important to apply the concept of restitution and compensation as a form of sustainability of nickel mining exploration along with the impacts it causes.[9]

II. RESEARCH METHOD

An empirical juridical approach is used in this research. The juridical approach (law is considered as a norm or *das sollen*) because this research problem is discussed with an empirical approach (law is considered as a social, cultural reality or *das sein*). Research specification: This is analytical descriptive research in which the author tries to explain the environmental criminal law policy to deal with the environmental impact of mining

activities.[10] Primary legal materials are obtained through literature study and secondary legal materials are obtained through the search of media institutions for the discussion of this research.[11] Furthermore, qualitative research was conducted to determine the research problem. This research investigates the possibility of the concept of a positive legal instrument that allows a person to request restitution and compensation for mining crimes. Through legal comparison, it is hoped that a better solution can be found to maintain a balance between the fulfillment of the urgent need for electric batteries and the protection of the community and the environment affected by nickel mining exploitation.

III. FINDING AND DISCUSSION

A. Legal Protection for the Environment and Sustainable Mining

ore environmentally friendly and environmentally friendly renewable energy has replaced fossil-based energy dramatically as a result of climate change. All countries, including Indonesia, support the use of electric vehicles. In addition, the government is actively encouraging the implementation of new regulations to accelerate the transition from fossil energy to green energy. Lithium-ion batteries are becoming very important for energy storage, electric vehicles, and portable electronic devices. Nickel, which serves as the main ingredient in electric batteries, is a very important ingredient in the production of lithium-ion batteries. As a result, exploration and exploitation of nickel mines has increased rapidly as a result of the growing demand.[12]

However, the exploitation of these nickel mines often affects the environment and surrounding communities. Deforestation, water and soil pollution, and conflicts with indigenous communities that depend on these natural resources can be caused by mining activities. With the exploitation of these nickel mines, local communities often lose access to land, water, and other natural resources necessary for survival, while environmental impacts may impact local ecosystems in the long term. In addition to advancing the economy through mining exploration, governments are responsible for the welfare of their people. They must also be mindful of the safety of citizens from the dangers posed by uncontrolled nickel mining.[13]

Environmental protection very important for nickel mining because of the human rights of every Indonesian citizen to have a healthy and safe environment. "Every person has the right to live in physical and spiritual prosperity, to live in and obtain a good and healthy environment, and has the right to obtain health services", according to Article 28H of the 1945 Constitution of the Republic of Indonesia. Therefore, the state, government, and all stakeholders involved in nickel mining activities must ensure that the environment remains safe basically, the purpose of mineral and coal mining is to promote the long-term growth of the nation, and as such, its management must be environmentally responsible.[14]

This is in line with Article 95 Paragraph (1) of Law No. 3 of 2020 on Mineral and Coal Mining, which states that "holders of IUP and IUPK are obliged to apply different mining engineering principles" and with the general explanation of Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH), which states that "the use of natural resources must be in harmony, harmonious, and balanced with environmental functions". Therefore, nickel mining activities must be envisioned to ensure that environmental functions are maintained.[15]

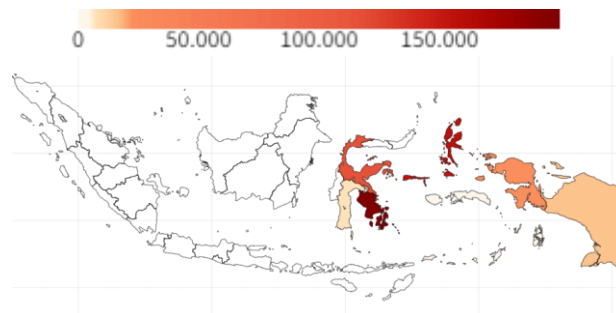
B. Trade vs. the Environment

While the European Union and the Indonesian government are locked in a dispute over nickel ore exports by restricting the entry of nickel from Indonesia in Europe, environmental

organizations warn that the government should not only focus on bans that tend to be beneficial from a trade perspective.[16]

Merah Joharsyah of the Mining Advocacy Network organization JATAM said that while Indonesia is prioritizing downstream industries in achieving the goal of electric car batteries, they are ignoring the environmental costs. According to him, the EU's goal is more about protecting the nickel supply for the trading community in Europe; before the nickel ore export ban two years ago, Indonesia was the world's largest nickel exporter. In 2021, Indonesia's nickel production will reach about 2.7 million metric tons, which is 37% of the world's total nickel production.[16]

Distribution of Nickel Mines in Indonesia (2022)



Source: Ministry ESDM

As information obtained from the Ministry of Energy and Mineral Resources (ESDM), the area of nickel mines in Indonesia is 520,877.07 ha. There are mines in seven provinces: Maluku, North Maluku, Papua, West Papua, South Sulawesi, Central Sulawesi, and Southeast Sulawesi. With an area of 198,624.66 ha, the largest nickel mine in Indonesia is in Southeast Sulawesi, which consists of Konawe Regency with a nickel mine covering 21,100 ha. Next are Central Sulawesi, with nickel mines covering 115,397.37 ha, and South Sulawesi, with nickel mines covering 198,624.66 ha. Papua also has nickel mines covering 16,470 ha, and West Papua has nickel mines covering 22,636 ha. Meanwhile, North Maluku is in the bottom position with nickel mines covering an area of 156,197.04 ha.

In the Minerba Law No. 4 of 2009, Article 2 states that "mineral and/or coal mining is managed based on; benefits, justice, and balance; partiality in the interests of the nation; participatory, transparency, accountability; sustainable and environmentally sound." This regulation has set an excellent standard for conducting mining exploration. Indonesia's nickel-based product exports generated only \$1 billion in the previous seven years, allowing the country to reap \$20.9 billion in profits in 2021. President Joko Widodo claims that if Indonesia follows this policy, Indonesia's GDP will reach \$3 trillion by 2030.[17]

The nickel industry causes a lot of environmental damage, such as increasing deforestation and the threat of water pollution in rivers, lakes and beaches. Both of these losses are very

important for the lives of indigenous peoples and local communities. Alongside coal and gold, nickel mining is one of the commodities taking over forest land in Indonesia. Currently, nickel mining corporations have received at least 693,246.72 hectares of forest cover in Indonesia. South Sulawesi province is one example of the results. Nickel mining caused the loss of at least 4,449.2 ha of rainforest in South Sulawesi.[18]

It exposed Lake Mahalona to mining mud, silted up the Pongkeru and Malili rivers, and polluted the Lampia river in South Sulawesi. The same thing also happened in the Bungku Coast, in Central Sulawesi Province, where mining mud caused siltation of the river and its coast, causing traditional fishermen to lose their income. Meanwhile, investment in nickel mining also occurred in North Maluku Province, which is one of Indonesia's archipelagic provinces with 1,474 islands. The process of acquiring and managing these investments has a negative impact on environmental quality, which in turn impacts the economic productivity of the community. Obi Island, which has an area of only 2500 km² and is located in North Maluku Province, has 5 Mining Business Licenses (IUP) with a total area of 10,769.53 hectares. With the increase in nickel mining, Kawasi village, one of the oldest villages on Obi Island, has lost its water source. The Toduku River, normally used by residents for drinking, bathing, playing, and washing clothes, is now full of nickel ore waste. Kawasi residents have to drink bottled water every day. In North Maluku, nickel mining has caused much deforestation. One district in North Maluku, Central Halmahera, has lost 16 thousand hectares of land to nickel mining in the last 15 years. In other words, one thousand hectares of natural forest are lost every year. In addition, nickel mining in North Maluku has caused serious marine pollution. As a result of this pollution, fishermen have lost their fishing grounds. Marine pollution due to nickel mining has led to a decline in the number of fishermen. Although the presence of nickel companies has opened up new economic opportunities, there have also been demographic changes that have created various environmental problems.[19]

C. Environmental Criminal Law Enforcement Policy in Mining Activities

Crimes or criminal offenses in the mining sector are contained in Article 158 to Article 165 of Law No. 4/2009, which consists of the following criminal offenses:

- a) The crime of conducting unlicensed mining;*
- b) Crime of submitting false information report data;*
- c) The crime of conducting exploration without rights;*
- d) Crime of obstructing mining business activities;*

This law does not distinguish between felony and misdemeanor offenses.

Legal subjects in the mining sector are persons, individuals, and business entities, or corporations. Criminal sanctions for individuals and corporations are regulated in the same Article. For corporations or legal entities, the fine is increased by 1/3, or one-third, of the maximum fine. Although this law explicitly regulates officials who have the authority to supervise and grant mining licenses, this authority is limited to the issuance of IUP, IPR, and IUPK. Criminal Sanctions: Offenders have two types of criminal penalties: cumulative and alternative. Cumulative penalties involve imprisonment and a fine at the same time. Alternative sentences choose either imprisonment or confinement.[20]

Criminal liability of legal entities or corporations: If a legal entity or business entity commits a criminal offense in the mining sector, the legal entity can be prosecuted in court. However, the punishment imposed on its management also involves imprisonment and

confinement. The various criminal laws mentioned above still do not cover the main problems caused by mining crimes and environmental damage, namely how the environment can be restored and how affected communities can live again. Therefore, new instruments are needed in environmental crimes in addition to fines and imprisonment. According to Becker, environment-related crimes should be considered economic-based crimes, where a person's decision to commit a crime is based on a benefit-cost analysis. If the expected benefits of a crime exceed the expected costs, then as a rational economic actor, a person will tend to commit a crime. Conversely, if the calculation of the benefit-cost of a crime.

According to Becker, this mechanism allows the application of rules that increase the expected cost of each person committing a crime by more than the expected gain. Thus, the government has two policy options specify a severe punishment with a small probability of arrest, and specify a lenient punishment with a high probability of arrest. The more severe the penalty, the greater the cost to the taxpayer. For fines, various resources are required to collect the fines.

D. Restitution and Compensation

Law enforcement has dealt with a number of criminal cases relating to nickel mining. However, criminal laws only impose corporate fines and penalties that are paid and go to the state and are not considered capable of repairing the environmental damage caused by mining violations. The Attorney General's Office is handling a corruption case of illegal nickel mining in Block Mandiodo, Southeast Sulawesi. A number of businessmen and state officials, including Ridwan Djamaluddin, Ministry of Energy and Mineral Resources of the Republic of Indonesia (ESDM), were named as suspects. Decisions made in this case contributed to the supervision of illegal mining activities on PT Antam Tbk's concession land. As a result, the state suffered a loss of Rp5.7 trillion.[3]

Injustices in nickel mining can lead to community social conflict and environmental impacts. One example is the case of the riots that occurred at PT Gunbuster Nickel Industry (GNI), which were caused by the differences that exist between foreign and local labor. Looking at data from the Mongabay website, the Ministry of Environment and Forestry Law Enforcement has brought 1,308 criminal and civil cases to court in recent years related to corporate and individual criminals. In addition, KLHK has conducted 1,854 forest prevention and security operations, with 706 forest area security recovery operations, and issued 2,446 administrative sanctions.[4]

As the above cases show, law enforcement relating to the consequences of nickel mining exploitation should consider the purpose of the law itself to restore the original state, not just the conviction and fine of the perpetrators. Because the community and the environment are actually the victims but have not been restored through current legal instruments. Therefore, legal protection that focuses on restoring the situation is needed to prevent the impact of mining crimes on society and the environment. Therefore, it is important to study how the government and companies carry out restitution and compensation as part of nickel mining exploration and the impacts it causes. An effective restitution and compensation system can balance the economic benefits of nickel mine exploration with fair compensation for affected communities and efforts to mitigate negative environmental impacts. However, the current law limits restitution and compensation to certain criminal offenses such as gross human rights violations, terrorism, racial and ethnic discrimination, child-related criminal acts, trafficking in persons, and other criminal offenses decided by the Witness and Victim Protection Agency (LPSK).

The development of the criminal justice system not only prioritizes the interests of perpetrators but also protects victims. Victims of certain crimes are entitled to restitution and compensation. These rights have been regulated in law, but the law has not yet established the procedure for resolving applications for the right to restitution and compensation. Therefore, the Supreme Court has issued Supreme Court Regulation No. 1 Year 2022 which explains how requests for restitution and compensation are processed.

Government Regulation Republic Indonesia No. 43/2017 on the Implementation of Restitution for Child Victims of Crime and Government Regulation No. 7/2018 as amended by Government Regulation No. 35/2020 on the Amendment to Government Regulation No. 7/2018 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims are some of the laws that regulate restitution and compensation. Furthermore, Perma 1 Year 2022 was issued on February 25, 2022, and published in the State Gazette on March 1, 2022.

Under the Supreme Court rules, which consist of 34 Articles and 8 Chapters, restitution and compensation can be requested for certain criminal offenses. According to Article 2 of the Perma, examples of restitution criminal offenses are gross human rights violations, terrorism, trafficking in persons, racial and ethnic discrimination, child-related criminal offenses, and other criminal offenses stipulated by LPSK Decree as mentioned in the provisions of laws and regulations. In the case of environmental crimes caused by nickel mining, it is clear that the community has more to lose than simply prosecuting the crime and imprisoning the perpetrator or corporation. Rather, it is more important to repair the environment and communities victimized by the damage caused by unlawful nickel mining.

During nickel mining, prosecutions have been brought against perpetrators of environmental damage caused by nickel mining. However, the fines actually go back to the state as non-tax money and are not always used to repair the environmental and community damage caused by mining or environmental crime. There is also a need for legal protection for communities and the environment as victims, with restitution and compensation to repair environmental impacts. Schemes that victims can apply to corporations and the state in cases where communities are victimized by environmental damage from nickel mining in Indonesia. Undoubtedly, this requires a strong legal basis that can be used to apply for such restitution and compensation.

IV. CONCLUSION

The conclusion of this research is to see how today, the nickel mining industry has a huge impact on economic growth and society. However, economic growth that has not considered its environmental impact has caused inequality and can even hinder economic growth itself. Government policy is one of the many factors that can cause environmental damage. To maintain the balance and sustainability of nature, the government must make policies by considering the ethical value of the environment. Because any exploitation of natural resources that do not consider environmental impacts can have a negative impact on both the environment and the needs of society. Therefore, the government must pay attention to policies ranging from administrative requirements to technical work that is oriented toward environmental ethics. This is done to ensure that the government's political agenda and mining exploration activities do not negatively impact the environment and result in a sustainable development program.

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