

POLITICS OF LAW OF NATURAL RESOURCES MANAGEMENT OF COAL MINING SECTOR TO GIVE ADDED VALUE FOR NATIONAL ECONOMIC GROWTH

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ABSTRACT

The purpose of this study is to analyse the factors that influence the politics of law of natural resource management in the coal mining sector today, and analyse the politics of law of natural resource management in the coal mining sector in order to provide added value for national economic growth. Method of this research is Empirical Juridical. The empirical juridical method in this study reviews, observes, and analyses the problems that become the object of research, namely the politics of law reconstruction of natural resource management in the coal mining sector in order to provide added value for national economic growth based on the value of justice. The results of this study are the factors that influence the politics of law of natural resource management of the coal mining sector in order to provide added value for national economic growth include institutions and apparatus, legal services and weaknesses in terms of legal culture in which community participation has not yet become a structured pattern in making various policies and issuing permits. The politics of law of natural resource management of the coal mining sector in order to provide added value for national economic growth is by changing the legal norms in the Mineral and Coal Mining Law, especially in the provisions of Article 102, Article 103 paragraph (2) and Article 104 paragraph (1) to continue to carry out domestic processing and refining. Based on fair legal certainty, these provisions are aimed at the right of the people to obtain prosperity or welfare from the natural wealth of this nation and even legislators can predict the state income received with the provisions made at that time.

Keywords: Politics of law; Natural Resources; Coal; Economy;

INTRODUCTION

Indonesia is an archipelagic country consisting of 17,508 islands and has land area of about 2 million km². Indonesia's territory stretches along the equator from 95° east longitude to 141° east longitude (about 5000 km) and 6° north latitude to 11 south latitude. With these characteristics, Indonesia can be considered as a maritime continent consisting of many islands.¹

Environmental problems are not domestic problems only, but has become a global problem, this happens because environmental context, between the source or cause and effect caused cannot be localized with a certain demarcation.² Especially the use of summer natural resources. Natural resource management is inseparable from the influence of politics of law. Therefore politics of law can be interpreted as a legal policy direction to be achieved in the management of natural resources for the realization of a sustainable environment and avoiding environmental damage due to mismanagement in the context of development. The word politics means *beleid* or policy.³ The definition of politics of law is defined as a series of concepts and principles that become the outline and basis of plans in the implementation of a job, leadership and ways of acting in the legal field.⁴ Politics of law is also interpreted as a policy from the state through state agencies that are authorized to establish the desired regulations, which are expected to be used to express what is contained in society and to achieve what is aspired to.⁵

Legal politics is related to where the law will be taken, especially the management of natural resources. The legal politics and legal ideals of the Pancasila state have been determined by the founding fathers. The provisions of the legal politics, among others, are contained in Article 33 of the 1945 Constitution.⁶

In the context of the politics of law of natural resource management in Indonesia, the reconstruction of politics of law based on local wisdom and customary law in the future is a strategic step that must be taken for the creation of better policies in the field of natural resource management law. This can be realized through regional autonomy that is responsive and accommodating to local wisdom and the recognition of the rights of local communities in Indonesia. Concretely, this can be done through the formation and implementation of regional regulations (Perda) and reviving customary law, including customary rights which have been neglected and do not receive proportional recognition in the national legal system.⁷

In order to realize a government that is able to form good laws, which respect, and recognizes and accommodates the access, interests, rights, and wisdom of indigenous peoples, the ideology of legal pluralism (legal pluralism) must be adopted in the development of politics of law of regional autonomy by providing space for the principles of justice, democracy, participation,

¹ Zuhail, *Visi Iptek Memasuki Milenium III*, Cet. 1, (Jakarta: Universitas Indonesia, 2000), pg. 17

² Bambang Tri Bawono, Anis Mashdurohatun, Enforcement Of Criminal Law In The Field Of Illegal Logging For Environmental Sustainability And Effort Troubleshooting, *Jurnal Hukum* Vol XXVI, No. 2, Agustus 2011. pp.590-611.

³ Wojowasito, *Kamus Umum Belanda Indonesia*, (Jakarta, iktiar baru van hoeve, 1997), . 123

⁴ Imam Syaukani dan Ahsih Thohari, *Dasar dasar politik hukum*, (Jakarta: Rajawali, 2012), pg. 22

⁵ Sudarto, *Hukum pidana dan perkembangan masyarakat*, sinar baru, bandung, 1983, pg 20.

⁶ Jimly Asshiddiqie, *Konstitusi Ekonomi*, (Jakarta: Penerbit Buku Kompas, 2010), pg. 281

⁷ Fathullah, "Regional Autonomy and Strengthening of Community Law", *Kompas*, Monday, July 3, 2000

transparency, respect, and recognition of local wisdom as reflected in the knowledge system, institutions, and various traditions that actually live and develop in indigenous communities in managing natural resources and the environment in Indonesia.⁸

Law Number 4 of 2009 mandates the construction of domestic processing and refining facilities (smelters) no later than five years from the date of promulgation. This means that the smelter must be realized. The government is inconsistent in implementing Article 102 and Article 103 of the Law of Minerals and Mines. As for Article 102: "Mining Business License (IUP) and Mining Business Special License (IUPK) holders are obliged to increase the added value of mineral and/or coal resources in the implementation of mining, processing and refining, as well as utilization of minerals and coal". Whereas Article 103 reads: (1) Holders of Mining Business License (IUP) and Mining Business Special License (IUPK) for Production Operation are required to process and purify mining products domestically. (2) Holders of IUP and IUPK as referred to in paragraph (1) may process and purify mining products from other IUP and IUPK holders. (3) Further provisions regarding the increase in mining value as referred to in Article 102 as well as processing and refining as referred to in paragraph (2) shall be regulated by a government regulation.

Mining Business License (IUP) and Mining Business Special License (IUPK) holders are required to guarantee the application of environmental quality standards and standards in accordance with the characteristics of a region. The holders of Mining Business License (IUP) and Mining Business Special License (IUPK) are also obliged to maintain the preservation of the function and carrying capacity of the water resources concerned in accordance with the provisions of laws and regulations.

Article 103 of the Minerals and Mines Law stipulates that holder of IUP and IUPK Production Operations are required to process and purify mining products domestically. In this case, the holder may cooperate with business entities, cooperatives, or individuals who have obtained an Mining Business License (IUP) and Mining Business Special License (IUPK) for processing and purification issued by the Minister, governor, regent/mayor in accordance with their respective authorities.

Based on the above background, this research will examine in more depth the factors that influence the politics of law of natural resource management in the coal mining sector today, and the management of natural resources in the coal mining sector in order to provide added value for national economic growth.

RESEARCH METHOD

The research method used is Empirical Juridical.⁹This research is descriptive analytical because it provides data that is as accurate as possible about humans, conditions or other symptoms.¹⁰ Sources and types of data in this study, namely primary data taken from research in interviews and secondary data taken from field research.¹¹The collection technique used in this research is literature study, observation and interviews.

RESEARCH RESULTS AND DISCUSSION

Indonesia as a country with abundant natural resources, such as the wealth of biological and animal natural resources found in the forest, besides there are also coal, gold, silver, copper, oil and natural gas and others. The natural wealth is spread in various regions, from Sabang to Merauke. This wealth is one of the things that the world can be proud of. However, not all-natural resource wealth can be fully enjoyed by all Indonesian people. There are natural resources that cannot be renewed, such as coal mining minerals, that if there are continuous and massive exploitation, it will eventually run out.

Natural resource management is inseparable from the influence of politics of law. Therefore, politics of law can be interpreted as the direction of legal policies to be achieved in the management of natural resources for the realization of a sustainable environment and avoiding environmental damage due to mismanagement in the context of development. The word politics means *beleid* or policy.¹² The definition of politics of law is defined as a series of concepts and principles that become the outline and basis of plans in the implementation of a work, leadership and ways of acting in the legal field.¹³ Politics of law is also interpreted as a policy from the state through state agencies that are authorized to establish the desired regulations, which are expected to be used to express what is contained in society and to achieve what is aspired to.¹⁴

As we know, minerals and coal contained in the mining jurisdiction of Indonesia as a gift from God Almighty, have an important role in meeting the needs of many people's lives. Therefore, the management of mineral and coal mining must be controlled by the state in order to provide real added value to the national economy in an effort to achieve prosperity and welfare of the people in a just manner. Mineral and coal mining business activities have an important role in national economic growth and sustainable regional development.¹⁵ For this reason, mining management must be carried out wisely and wisely, so that there is a balance and sustainability.

The concept of control by the state characterizes that the Republic of Indonesia is a form of welfare state, in which the responsibility of the government is to create prosperity for its people. The consequence of this model is that the state "controls" all activities related to the earth, water, and the natural resources contained therein. The meaning of "control by the state" undergoes an adjustment in meaning along with the changes and challenges in the current era of globalization. The concept of control by the state has led to various forms of mining "company" in Indonesia. What form is appropriate to use in mining operations, it must be

⁸ I Nyoman Nurjaya, Towards Indigenous People-Based Natural Resource Management: Legal Anthropology Perspective, Paper presented at a national seminar on the Existence of Customary Law and Politics of law in Indonesia. Center for the Development of Environmental Law and Natural Resources, Faculty of Law, Universitas Brawijaya. Malang, July 26, 2004

⁹ Ediwarman "Monograf Metodologi Penelitian Hukum (Panduan Penulisan Tesis dan Disertasi)" Medan, 2014, pp. 96.

¹⁰ Soerjono Soekanto, Pengantar Penelitian Hukum, (Jakarta: UI Press, 1981), pg. 12.

¹¹ Anis Mashdurohatun, Yuris Tri Naili, Teguh Prasetyo, Amin Purnawan, "Regulating The Management Of Private Higher Education Based On The Values Of Justice", Journal Of Legal, Ethical And Regulatory Issues; Vol. 24, Iss. 5, (2021): 1-9.

¹² Wojowasito, kamus umum belanda Indonesia, Jakarta, iktiar baru van hoeve, 1997.

¹³ Imam Syaukani dan Ahsih Thohari, Dasar dasar politik hukum, rajawali, Jakarta, 2012, pg. 22

¹⁴ Sudarto, Hukum pidana dan perkembangan masyarakat, sinar baru, Bandung, 1983, pg 20.

¹⁵ Republic of Indonesia, Law Number 4 Year 2009 concerning "Mineral and Coal Mining", State Gazette of the Republic of Indonesia Year 2009 Number 4 and Supplementary Gazette

in the corridor of understanding the concept of state control. The meaning of the concept of control by the state gives birth to the authority of the Government to act "manage" and "regulate".¹⁶

Mining operations in a number of regions in Indonesia do not pay attention to regulations and licensing instruments in the environmental sector through Law no. 32 of 2009 concerning Environmental Protection and Management which became the general environmental law of Law no. 4 of 2009 concerning Mineral and Coal Mining and in practice there is an unclear relationship between the central government and the regions through Law no. 23 of 2014 concerning Regional Government. Around 70 percent of environmental damage in Indonesia is caused by mining operations. This extractive industry easily tampers with and circumvents various rules that conflict with its interests, including Law Number 32 of 2009 concerning Environmental Management and Protection (PPLH).¹⁷ Several strategic issues in the Mineral and Coal Mining Law are a form of contract of work to accommodate the interests of large mining investments.

A study conducted by Arief Hidayat and Adji Samekto stated that the drive for regional autonomy related to economic calculation pushes as more dominant than value environmental service pushes as public goods, regional investment and regional mining were considered more important because they generated taxes, user charges, but there was no calculation for environmental benefits or services. Environmental protection is not included in the cost of production, so that neglecting environmental rights and justice can lead to complex social conflicts. In addition, the facts revealed that the mining permit process was hampered by political reasons and the high dominance of regional government power.¹⁸

Mineral and coal management is carried out jointly by the government, local governments and business actors, indicating that there is no longer a monopoly on mining management by the central government. In addition, business entities and cooperatives, including individuals or local communities are also given the opportunity to conduct mining businesses in accordance with the regulated permits. Although in practice there are often obstacles, such as lengthy licensing bureaucratization, extortion by unscrupulous persons to overlapping policies between related sectors.

Mining regulations are currently in the process of being changed, should be adjusted to the decisions of the constitutional court, and Law Number 23 of 2014 concerning Regional Government in the context of licensing. The spirit of regional autonomy is seen so dominant in the current mining regulations, the provincial government takes over the authority of the district/city government to issue mining permits based on Law Number 23 of 2014. This provision is actually still semi-centralized, because the provincial government is the representative of the central government which essentially has a coordinating function with regencies/cities and as a representative of the central government. In the mining sector, regencies/cities do not have the authority to issue all forms of permits, except for environmental licensing instruments, however, in the field of taxation that must be imposed by mining investors, regencies/cities are still in charge of taxation.

Mining businesses must also provide economic and social benefits, as well as accelerate regional development and encourage community/small and medium-sized business economic activities as well as encourage the growth of mining supporting industries. In order to ensure sustainable development, mining must be carried out by taking into account the principles of the environment, transparency, and community participation.

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According to the author, environmental policies at the national level which constitutionally contain the principle of sustainable development, coupled with the complexity of the arrangement of environmental law in Law no. 32 of 2009 and a number of sectoral laws in the environmental sector should be translated by stakeholders at the regional level, both the forestry service, mining service, city planning service and tourism office as a holistic environmental unit. All aspects of economic activity in a number of sectors should have a complete understanding of the function of environmental conservation and regulation of environmental law. Substantially, many environmental sectoral regulations are integrated into sustainable development. In this context, environmental institutions in the region and their regional work tools have limited capacity and quantity, compared to the amount of pollution or damage to the regional environment. Progressive law puts the human factor as a measure of success in enforcing administrative environmental laws at the regional level. All regional apparatus of the city or district government that handles environmental issues or legal institutions in the environmental sector have sensitivity to the surrounding environment, especially the forestry sector and the industrial sector. In addition, the basis of normative provisions is not the only study material to enforce environmental law through permits, it is also involved in the legal culture of the surrounding community and the economic, social and cultural rights of indigenous or local communities who still hold tightly to the values of the local community. local wisdom or local wisdom.

In the context of law in reality (law in action), the spirit of decentralization which delegates authority on environmental issues to local governments, especially at the city or district level, is not balanced with the shared commitment (political will) of stakeholders to protect and preserve the environment. what happens is inequality. Local governments have a harmonious relationship with investors and entrepreneurs in order to increase regional investment.

¹⁶Danialsyah, Anis Mashdurohatun, Reconstruction of Mediation in Environmental Disputes Settlement Based on Pancasila Justice, Journal Of Law And Political Sciences, Volume 24, Issue 3, 2020, pp.123-138.

¹⁷See: <https://regional.kompas.com/read/2012/09/28/17313375/70.Persen.Kerusakan.Lingkungan.hasil.Operasi.Tambang>, accessed on March 23, 2021

¹⁸Arief Hidayat dan Adji Samekto, *Kajian Kritis Penegakan Hukum Lingkungan di Era Otonomi Daerah, Cet. I*, Semarang: Diponegoro University Publishing Agency, 2007, p.113.

¹⁹Nandang Sudrajat, *Teori dan Praktik Pertambangan Indonesia Menurut Hukum*, Yogyakarta: Pustaka Yustisia, 2010, pg. 62

The study in Article 33 of the 1945 Constitution of the Republic of Indonesia is the basis for mining management which aims to create justice. However, justice in Article 33 of the 1945 Constitution of the Republic of Indonesia is more motivated by economic justice than ecological justice. So that based on Article 28H of the 1945 Constitution of the Republic of Indonesia which states that "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to place a good and healthy living environment and the right to obtain health services" it is understood that the right to the environment good and healthy is part of human rights in addition to other human rights.²⁰

The state as the holder of management rights based on Article 33 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia must take sides with the interests of the nation. The ideology of the state's alignment with the interests of the nation is further emphasized in Article 2 of the Mineral and Mines Law which states that:

"Mineral and/or coal mining is managed based on:

1. Benefit, fairness, and balance;
2. Partisanship with the interests of the nation;
3. Participation, transparency, and accountability;
4. Sustainable and environmentally friendly."

Although the principle of partiality of the state to the interests of the nation has been written in the Mineral and Mines Law, the explanation of the law does not explain the meaning and nature of the principle of partiality to the interests of the nation. So that the meaning and essence of the principle of partiality of the state to the interests of the nation is not clear. The weakness of the Mineba Law is that it does not yet have an umbrella law as a supervisor that clarifies the state's alignment with the interests of the nation. In the preamble to the Mining Law, there is no law that is used as an umbrella act in supervising the implementation of the Mineral and Mines Law.

The purpose of the Mineral and Mines Law is to provide real added value to national economic growth and sustainable national development. In Article 5 paragraphs (1) and (2) of the Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 1 of 2014 concerning Increasing the Added Value of Minerals through Domestic Mineral Processing and Purification Activities, it is obligatory to have mining products management and refining activities before they are exported. This results in economic, social and cultural benefits. This article of Mineral and Mines Law aims to provide added value to mining products which have been exported in a raw state so that the export value is low. Almost all mining companies operating in Indonesia do not yet have a place for processing and refining mining materials called smelters. So that since January 2014 there have been layoffs by mining companies, because the mining companies cannot export.²¹

The category of community legal culture discussed relates to the role of the community in supervising mining activities. In analyzing and evaluating this matter, it is seen from three aspects, namely aspects of public understanding, public information, as well as law enforcement and aspects of community participation.

- Aspects of community understanding.

The Mineral and Mines Law regulates many things regarding the rights and participation of the community in the mining sector, but these are not yet widely known by the people living around the mining area. This happens because the socialization activities that have been carried out so far have not been well targeted to raise public awareness about the advantages and disadvantages of having mining into their lives.

- Aspects of community information.

Mining activities ranging from general investigations, feasibility studies, exploration, exploitation, reclamation and post-mining activities are not well informed by the government and business actors, so many protests arise when the community is not informed and asked for their opinion and approval. In addition, there is no desk available at the government or local government specifically to provide information in an open and balanced manner and handle complaints experienced by the community due to the presence of mining activities in their area of life.

- Aspects of law enforcement and aspects of community participation.

Article 145 paragraph (1) and paragraph (2) of the Mineral and Mines Law states that people who are directly affected by mining business activities are entitled to: (a) Obtain appropriate compensation due to errors in the exploitation of mining activities in accordance with the provisions of the legislation; and (b) File a lawsuit to the court against losses due to mining concessions that violate the provisions. Furthermore, the provisions regarding the protection of the community are determined based on the provisions of the legislation. These provisions are normatively very important to protect the rights of the community. However, without operational regulations, the protection provisions will not have a real impact on the protection of community rights. In addition, there are no provisions in the Mineral and Mines Law that guarantee safety, security, and protection from being criminalized for people who fight for their rights that are violated due to mining activities. This provision is very important to avoid various forms of violence that often occur against those who reject mining because it will have an impact on their lives.²²

There are no further arrangements regarding the mechanism that must be made so that state or government administrators apply the principles of participatory, transparency and accountability in the context of mining Natural Resources management. What happened then was interpreted differently in an effort to apply these principles. This raises public opinion or conclusion that the government does not implement the principles of participatory management, transparency and accountability. This is reflected in the many problems related to land that are in direct contact with the people. At this point the root of the problem is licensing.

²⁰ Anis Mashdurohaturun, Hayan Ul Haq, And Sony Zulhuda, (2017) Social Function Reconstruction of Intellectual Property Rights (IPR) Based On Justice Values. International Journal of Law Reconstruction, 1 (1), pp. 141-160

²¹ Business News, www.businessnews.co.id., Assessing the Impact of the Implementation of the Mineral and Mines Law, accessed on March 23, 2021

²² <http://lipsus.kompas.com/topikpilihanlist/3767/1/pembunuhan.salim.kancil>

Full authority to certain officials in accordance with the authority to give permits, it actually causes many problems faced by the people. As the number of permits increases, conflicts from year to year also increase.

In 2013, the number of conflicts that occurred increased sharply compared to previous years. Throughout 2013, there were 369 cases with a conflict area of 1,281,660.09 hectares involving 139,874 families (KK). It was a sharp increase of 2 in the previous year, in 2012 the number of conflicts occurred as many as 198 cases or an increase of 386.36%. The extent of conflicts that occur in the paragraph above, generally comes from land-based sectors or industries. There are 3 top industries that contribute the most to conflict, namely mining, large-scale plantations and forestry. Specifically for the mining sector, 2013 Final Report. Consortium for Agrarian Reform (KPA).

The politics of law of natural resource management in the coal mining sector in order to provide added value for national economic growth based on the value of justice, namely that the Mineral and Mines Law has ordered that the provisions of Article 102, Article 103 paragraph (2) and Article 104 paragraph (1) to continue to implement domestic processing and refining. With the eyes of fair legal certainty, these provisions are aimed at the right of the people to obtain prosperity or welfare from the natural wealth of this nation and even legislators can predict the state income received with the provisions made at that time. However, the existence of Article 10 paragraph (2) and Article 10 paragraph (3) of the Minister of Energy and Mineral Resources No. 5 of 2017 is against the principle of legal certainty.

CONCLUSION

Factors that influence the politics of law of natural resource management in the coal mining sector, politics of law of natural resource management in the coal mining sector in order to provide added value for national economic growth, including those related to institutions and apparatus, legal services and weaknesses in terms of legal culture in which community participation that has not yet become a structured pattern in making various policies and issuing permits. The politics of law of natural resource management in the coal mining sector in order to provide added value for national economic growth is by changing the legal norms in the Mineral and Coal Mining Law, especially in the provisions of Article 102, Article 103 paragraph (2) and Article 104 paragraph (1) to keep carrying out domestic processing and refining. With the eyes of fair legal certainty, these provisions are aimed at the right of the people to obtain prosperity or welfare from the natural wealth of this nation and even legislators can predict the state income received with the provisions made at that time.

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