



Legal Protection of Community Social Rights Related to Mining Activities

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Abstract

Mining can have a negative impact on the social rights of communities. Therefore, it is necessary to protect the social rights of communities affected by mining activities. This article discusses the protection of community social rights related to mining based on Law no. 4 of 2009 concerning Mineral and Coal Mining. Protection can be carried out through planning, monitoring and community participation mechanisms in mining activities. In the context of protecting the social rights of the community, it is important to involve the community in the decision-making process and guarantee the community's right to participate in mining activities. Efforts to protect the social rights of the community will ensure that mining activities not only provide economic benefits, but also pay attention to the social welfare of the community and environmental sustainability.

Keywords: *Mining; Community Social Rights; Legal Protection*

Introduction

Natural resources are Indonesia's natural wealth. Article 33 paragraph (3) of the 1945 Constitution states that land and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. The state in this case has an important role in terms of natural wealth in Indonesia. Furthermore, Article 33 paragraph (2) states that the branches of production which are important for the state and which affect the livelihood of the public are controlled by the state. Mining has an important investment in the Indonesian economy. Therefore the government has several mining companies operating in Indonesia, namely:

1. PT Aneka Tambang Tbk (ANTAM)
2. PT Timah Tbk
3. PT Freeport Indonesia

Mining is part or all of the stages of activity in the framework of managing and exploiting minerals or coal which includes general investigation, exploration, feasibility studies, construction, mining, processing and/or refining/development and/or utilization, transportation and sales, as well as post-mining activities.¹ In 2020 the Government of Indonesia issued Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining which is a revision of the old Mining Law. Mining itself is a line of business which because of the nature of its activities basically always has an impact on the natural environment.²

The State of Indonesia is a state of law, this is regulated in the Constitution of the Unitary State of the Republic of Indonesia. In the economic field, increasing people's prosperity that is more evenly distributed is the general goal of development. In achieving this target, various supporting facilities are needed, including a legal order that encourages, mobilizes, and controls various development activities in the economic sector. The Constitution of the Unitary State of the Republic of Indonesia Article 33 paragraph 1 The economy is structured as a joint venture based on the principle of kinship. The principle of kinship is all activities within the family scope that are intended for all family members and from all family members.³ Mining activities have had two impacts on Indonesian society, the first is to have a positive impact on the country's economic prosperity, and the second is to have a negative impact on people's social rights.

Minerals and coal contained in the mining jurisdiction of Indonesia are non-renewable natural resources as a gift from God Almighty who has an important role in fulfilling the lives of many people. Minerals are inorganic compounds that are formed in nature, which have certain physical and chemical properties as well as regular crystal arrangements or their combinations that form rocks, either in loose or solid form. Meanwhile, coal is a deposit of carbonaceous organic compounds that are formed naturally from the remains of plants.

Mineral Mining is Mining of a collection of Minerals in the form of ore or rock, excluding geothermal, oil and natural gas, as well as ground water. Furthermore, coal mining is the mining of carbon deposits contained in the earth, including solid bitumen, peat, and asphalt rock. Article 3 of Law Number 4 of 2009 concerning Mineral and Coal Mining states that in order to support sustainable national development, the objectives of mineral and coal management are:

- a. ensure the effectiveness of the implementation and control of mining business activities in an efficient, effective and competitive manner.
- b. ensure the benefits of mineral and coal mining in a sustainable and environmentally sound manner.
- c. ensure the availability of minerals and coal as raw materials and/or as a source of energy for domestic needs.
- d. support and develop national capabilities so that they are more able to compete at the national, regional and international levels.
- e. increasing the income of local, regional and state communities, as well as creating employment opportunities for the greatest welfare of the people; And
- f. ensure legal certainty in the implementation of mineral and coal mining business activities.

¹ Hudriyah Mundzir, Sri Hudiari, & Shohib Muslim. (2016). Politik Hukum Pengelolaan Pertambangan Mineral Dan Batubara Dengan Pendekatan Economic Analysis Of Law, Prosiding SENTIA, 8.16-22, h. 22.

² Luthfi Hidayat. (2017). Pengelolaan Lingkungan Areal Tambang Batubara (Studi Kasus Pengelolaan Air Asam Tambang (Acid Mining Drainage) Di Pt. Bumi Rantau Energi Kabupaten Tapin Kalimantan Selatan). Jurnal ADHUM, 7 (1). 44-52, h. 44.

³ Komang Ryan Krisna Satriadi, Ni Wayan Yulianita Dewi, Penerapan Asas Kekeluargaan Dalam Sistem Pengendalian Internal Pemberian Kredit Di Koperasi Kredit Swastiastu, JIMAT (Jurnal Ilmiah Mahasiswa Akuntansi) Universitas Pendidikan Ganesha, Vol : 11 No : 3 Tahun 2020, hlm 509-519

Conflict is basically something that is always there and difficult to separate in social life.⁴ Conflict means the perception of differences in interests (received divergence of interest) or a belief that the aspirations of the conflicting parties cannot be achieved simultaneously. Differences in interests here occur between the community and the government, the community and the company, and the community and the community. The social rights of the community need to be protected, the social rights of the community are not seen from which community benefits more, but all rights without exception must be protected.

The problems that occur in mining are that many social rights of the community are harmed, for example the right to get a job before there is mining activity the community does work, namely taking forest products, after the entry of mining the community is prohibited from entering the mining area, in fact before there is mining the community will live forest products and can last for generations. Based on the above background, the protection of community social rights associated with mining requires protection for the community. The method used in this study is a normative juridical research method. Furthermore, using the statutory regulation approach and the concept approach.

Results and Discussion

Legal Protection of Community Social Rights

Indonesia is a country rich in minerals (mines). The minerals include: gold, silver, copper, oil and natural gas, coal and others. The minerals are controlled by the state.⁵ Mining activities, namely regarding the management and exploitation of minerals or coal which includes general investigation, exploration, feasibility studies, construction, mining, processing and/or refining or development and/or utilization, transportation and sales, as well as post-mining activities.

Mining activity is a complex and very complicated business activity, full of risks, is a long-term business activity, involves high technology, is capital intensive, and requires regulations issued by several sectors. The authority to manage mineral and coal mining has undergone a shift where if referring to Article 6, Article 7 and Article 8 of Law Number 4 of 2009 concerning Mineral and Coal Mining, the management is divided into the authority of the central government, provincial regional governments, and district/city governments. However, after the birth of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, the authority to manage mining is actually centralized in which the authority lies with the central government.⁶

Mining business is carried out based on business permits from the central government in which business permits are carried out through the provision of business identification numbers, standard certificates and permits. Furthermore, regarding the permit itself, it consists of several aspects, starting from mining business permits, special mining business permits, IUPK as a Continuation of Contract/Agreement Operations, People's Mining Permits, Rock Mining Permits, assignment permits, Transportation and Sales Permits, Mining Service Business Permits, and IUP for Sales.

Mining business permits consist of two stages of activity namely, exploration which includes general investigation activities, exploration, and feasibility studies. As well as production operations which include Construction, Mining, Processing, Refining, Development or Utilization activities, as well

⁴ Irwandi, Endah R. Chotim, Analisis Konflik Antara Masyarakat, Pemerintah Dan Swasta (Studi Kasus di Dusun Sungai Samak, Desa Sungai Samak, Kecamatan Badau, Kabupaten Belitung), JISPO VOL. 7 No. 2 Edisi: Juli-Desember Tahun 2017, hlm 24-42

⁵ H. Salim HS, Hukum Pertambangan di Indonesia, Jakarta: Rajawali Pers, 2014, h. 1

⁶ Desman Diri Satriawan, Pengelolaan Usaha Pertambangan Mineral Dan Batubara Pasca Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja, Jurnal ESENSI HUKUM, Vol.3 No. 2 Bulan Desember Tahun 2021, hlm. 123-233

as Transportation and Sales. In its management, mining business permits are granted to Business Entities, Cooperatives, and Individual Companies.

The mining business has an important role to play in providing added value to national income and regional development related to global demand for coal as an alternative energy source to meet energy needs in line with rising prices of petroleum fuels.⁷ However, what cannot be ignored is that mining activities are the cause of environmental damage which results in a loss of the social rights of the community. Communities that are harmed are generally the people who live in the area around the mine. Because the social rights of the people are harmed, the need for legal protection is necessary.

Satjito Rahardjo stated that legal protection is an effort to protect someone's interests by allocating a human right of power to him to act in the framework of his interests.⁸ According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that are embodied in attitudes and actions in creating order in social life between fellow human beings.⁹

Legal protection is a universal concept of a rule of law. Philipus M. Hadjon argues that legal protection is an action to protect or provide assistance to legal subjects, by using legal instruments. Legal protection consists of two forms of preventive legal protection and repressive legal protection, namely:

- a. Preventive Legal Protection which is basically preventive is defined as prevention. Preventive legal protection is very significant for government actions based on freedom of action because with the existence of preventive legal protection, the government is encouraged to be careful in making decisions. The form of preventive legal protection is contained in statutory regulations to prevent the occurrence of a violation and to provide limitations in carrying out obligations.
- b. Repressive Legal Protection functions to resolve disputes that have arisen as a result of violations. This protection is the final protection in the form of imposing sanctions on violations that have been committed.

Preventive legal protection is contained in mining laws that protect the public. For prevention, this can be seen in Article 145 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining which regulates community protection, namely:

1. Communities who are directly negatively affected by Mining Business activities are entitled to:
 - a. obtain proper compensation as a result of mistakes in the exploitation of Mining activities in accordance with the provisions of the laws and regulations; and/or
 - b. file a lawsuit through the court against losses due to Mining exploitation that violates the provisions.
2. Provisions regarding the rights of people who are directly negatively affected by Mining Business activities as referred to in paragraph (1) are carried out in accordance with the provisions of laws and regulations.

Based on these regulations, people who have been harmed can obtain compensation and file lawsuits with the court regarding the losses they get. Furthermore, in the Mineral and Coal Mining Law, sanctions are given in the form of administrative sanctions and criminal sanctions. Administrative sanctions in the form of:

⁷ Hemi Faradila. (2020). Izin Usaha Pertambangan Mineral Dan Batubara Dalam Kaitan Dengan Pengelolaan Dan Perlindungan Lingkungan Hidup (Fiqh Al-Bi'ah). Jurnal MUDARRISUNA, 11 (3). 519-525.

⁸ Satjipro Rahardjo, Sisi-Sisi Lain dari Hukum di Indonesia, (Jakarta: Kompas, 2003), h. 121.

⁹ Muchsin, Perlindungan dan Kepastian Hukum bagi Investor di Indonesia, (Surakarta: Disertasi Fakultas Hukum, Universitas Sebelas Maret, 2003), h. 14.

- a. written warning;
- b. temporary suspension of part or all of exploration activities or production operations; and/or
- c. revocation of IUP, IPR, or IUP

Furthermore, criminal sanctions are regulated from article 158 to article 165 of the Mineral and Coal Mining Law. Repressive legal protection in resolving disputes between communities and mining activities regarding the consequences of shifting or loss of community social rights. Repressive protection is the final protection in the form of imposing sanctions on companies that violate it. This protection is carried out in court.

Regarding the social rights of the community, they are not specifically regulated in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. According to Satjipto Rahardjo, social rights are rights that guarantee everyone access to social welfare in an equitable and fair manner without discrimination, by upholding human values. Soerjono Soekanto stated that social rights are the right of everyone to obtain social protection and welfare, so that everyone feels safe and comfortable in carrying out their lives.

Mochtar Kusumaatmadja gave the view that social rights are the right to obtain protection from all kinds of threats, both from outside and from within society, as well as the right to obtain the necessities of life that are proper, both individually and collectively in society. Furthermore, Sutan Remy Sjahdeini gave the opinion that social rights are rights that are inherent in every individual as a member of society, which guarantee that everyone has equal opportunities to achieve social prosperity.

Social rights are rights related to basic human needs and related to social welfare, such as the rights to education, health, housing, employment, a healthy environment, and security. Social rights are part of human rights which concern basic needs and social welfare that must be guaranteed by the state to its citizens. Humans and human rights are two words that are difficult to separate. Since his birth on earth, humans are born with natural rights that are integral to their lives.

In Indonesia, protection of human rights is a protection that has been regulated in the 1945 Constitution of the Republic of Indonesia and its derivative law, namely Law Number 39 of 1999 concerning Human Rights.¹⁰ This means that human rights and the rule of law cannot be separated, instead thinking legally is related to the idea of how justice and order can be realized. Thus, one of the objectives of recognizing and strengthening a rule of law is to protect human rights, meaning that individual rights and freedoms are recognized, respected and upheld.¹¹

The author relates this to Law Number 39 of 1999 concerning Human Rights to protect the social rights of communities related to mining activities. Various types of basic rights in Law Number 39 of 1999 concerning Human Rights, namely:

1. The Right To Life
2. The right to have a family and continue the lineage
3. The right to self-development
4. The right to obtain justice
5. The right to personal freedom
6. The right to feel safe

¹⁰ Suharyono; Khalisah Hayatuddin; Muhamad Sadi Is, *Perlindungan Hukum Hak Asasi Manusia Dalam Memperoleh Hak Atas Tanah Di Indonesia (Legal Protection Of Human Rights In Obtaining Land Rights In Indonesia)*, JURNAL HAM Volume 13, Nomor 1, April 2022, hlm 15-28

¹¹ A. Mansyur Effendi, *Dimensi Dinamika Hak Asasi Manusia Dalam Hukum Nasional Dan Internasional (Bogor: Ghalia Indonesia, 1993): 27.*

7. The right to welfare
8. Right to Participate in Government
9. Women's rights
10. Children's rights

The government is obligated and responsible for upholding, protecting and respecting human rights in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia and Law Number 39 of 1999, the obligations and responsibilities of the government include the implementation of human rights in various sectors of national and state life.¹² In the Mineral and Coal Mining Law, even though it is not specifically regulated, the government has an obligation to protect and respect the social rights of the community.

Conclusion

Legal Protection The social rights of the community related to mining activities, namely that although the social rights of the community are not regulated specifically, the Indonesian government has an obligation to protect and respect the social rights of the community. Therefore, it is necessary to improve the law on mineral and coal mining by providing definite protection regarding the social rights of the Indonesian people.

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¹² Mukmin Muhammad, *Hak Asasi Manusia Dalam Hukum Positif Dengan Konsep Constitutional Importance*, *Meraja Journal* Vol. 1, No. 2, Juni 2018, hlm 31-38

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