

Mine Closure Implementation in South Kalimantan

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Abstract

South Kalimantan Province is an area rich in natural resources, especially in the mining sector, still needs attention from policy makers related to the impact that will be caused after the mining activities. Although South Kalimantan already has its own regional regulations regarding post-mining reclamation, obstacles to the implementation of the regulations themselves are still experienced problems.

Keywords: Implementation, reclamation, mine closure.

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INTRODUCTION

Article 28 H paragraph (1) of the 1945 Constitution the foundation in the field of environment in the constitution where the state has the obligation to provide guarantees to every citizen the right to obtain a good and healthy environment, and provide legal guarantees to citizens to utilize natural resources fairly. Environmentally sound development is an important requirement for every nation and state that wants the preservation of natural resources. Therefore, natural resources need to be maintained and maintained for the survival of human beings now, as well as for future generations.

This guarantee of legal protection for citizens is primarily motivated by the experience often found in the practice of natural resource management, which has a destructive tendency (damage), injustice, and threatens the function of environmental sustainability and sustainability itself. Uncontrolled management of natural resources, especially for industrial activities, especially mining, can lead to injustice in their use, which is feared to cause damage and disasters for their communities. So based on this, a legal protection for the citizens is needed.

South Kalimantan Province itself is an area rich in natural resources, where the mining sector still has great potential, this certainly requires serious attention from the parties concerned. The South Kalimantan Provincial Government has issued Regional Regulation Number 1 of 2013 concerning Mine Closure (post-mining reclamation), where this

regulation is intended as part of efforts to restore the quality of environmental carrying capacity, reclamation is a strategic step that needs to be done for the future of the community and the region, and therefore in its management it is necessary to pay attention to and preserve the function of the environmental components contained therein, and with this regulation further confirms the reclamation plan document must contain a range of completion times adjusted to the mine period, land use before and after mining, land clearing plans, reclamation program for disturbed land, which includes ex-mining land and land outside ex-mining both temporarily and permanently, success criteria by including standard indicators of success in land use planning, revegetation, civil works and final completion.

Environmental damage in South Kalimantan is currently considered alarming because it continues to increase, while land repairs or rehabilitation is less than optimal. The causes of damage include mining activities and plantation businesses with uncontrolled land clearing or compliance with the provisions of Law Number 32 Year 2009 concerning the Environment. The law itself has not yet regulated in detail the management of the environment in the area in accordance with its characteristics or uniqueness.

Data from the South Kalimantan Province Mining and Energy Office, South Kalimantan's coal production reached 149 million tons in 2012, a sharp increase from the previous year which only produced 128 million tons. This amount of production is recorded as the largest production of national coal production.

This increase on the one hand becomes a positive value for the addition of Local Own-Source Revenue (PAD), but on the other hand it becomes a problem for the region when coal continues to be dredged for the benefit of the mining business to cause environmental damage. The existence of coal is not in the bowels of the earth, but outside it, so that over time it will damage the environment because the soil continues to be dug up [1].

One of the most noticeable impacts is the extent of forest destruction due to the many holes that have been abandoned by mining companies without rehabilitation by mining companies. The reason given by the entrepreneurs is that the mining activity is still ongoing in the location so that no recovery has been carried out. There needs to be a commitment from entrepreneurs or mining companies to carry out post-mining reclamation, namely the activity of repairing or managing the use of land disturbed by mining business activities, so that it can function and be effective according to its designation. In the framework of legal certainty to prevent environmental damage, the South Kalimantan Government has stipulated Regional Regulation Number 1 of 2013 concerning Mine Closure (post-mining reclamation). Article 22 regulates that supervision of the implementation of reclamation and/or reclamation and post-mining is carried out by the Governor or Regent/Mayor in accordance with their authority. The problem is whether the South Kalimantan Provincial Regulation Number 1 of 2013 has sufficiently regulated technical, supervision and sanctions so as to overcome the lack of attention of mining entrepreneurs towards post-mining reclamation.

METHOD

In conducting this research, the type of research used is empirical legal research that focuses on field research (field research) to get primary data, besides it also requires library research (library research) that serves to complement and support the data obtained in the field. This library research also uses secondary data derived from 2 (two) legal materials used in this study, namely primary legal materials and secondary legal materials. If the type of data collected is secondary data as is the case in normative legal research, the document study is used as a data collection tool [2]. Based on primary data and secondary data collected the researcher will conduct an assessment and analysis so that specific objectives of this study can be found.

¹ <http://buana-kalimantan.blogspot.co.id/2013/10/kerusakan-lingkungan-kalsel-makin-parah.html>

² Maria SW Soemardjono. 1989. *Pedoman Pembuatan Usulan Penelitian*, Yogyakarta: Fakultas Hukum Universitas Gadjah Mada, pp. 23.

ANALYSIS AND DISCUSSION

a. Mine Closure Arrangement in South Kalimantan

Article 28 H paragraph (1) of the 1945 Constitution, constitutes the foundation in the field of environment in the constitution where the state has the obligation to provide guarantees to every citizen the right to obtain a good and healthy environment, and provide legal guarantees to citizens to utilize natural resources fairly. Environmentally sound development is an important requirement for every nation and state that wants the preservation of natural resources. Therefore, natural resources need to be maintained and maintained for the survival of human beings now, as well as for future generations. This guarantee of legal protection for citizens is primarily motivated by the experience often found in the practice of natural resource management, which has a destructive tendency (damage), injustice, and threatens the function of environmental sustainability and sustainability itself.

Uncontrolled management of natural resources, especially for industrial activities, especially mining, can lead to injustice in their use, which is feared to cause damage and disasters for their communities. So based on this, a legal protection for the citizens is needed. In the perspective of equitable natural resource management, legal protection is given to citizens and the environment. Protection of the environment is intended to provide a balance in its use, both natural resource users and people who do not enjoy the economic benefits of the utilization of these natural resources. Balance in providing legal protection is expected to be able to provide sustainable development in three frames, namely economic sustainability, ecological sustainability, and social sustainability [3]. In many cases, community economic activities are often marginalized when other parties' activities cause environmental damage and pollution. Where the carrying capacity of the environment is not able to provide a guarantee of continuity in community-based economic activities in the form of agriculture, plantations and others.

Mining activities are complex and very complicated, risk-laden, long-term business activities, involving high technology, capital-intensive, and regulatory regulations issued by several sectors. In addition, mining activities have a large environmental change, so it requires careful total planning from the initial stage to post-mining. When opening a mine, it must be understood how to close the mine. Mine rehabilitation/reclamation is progressive, according to the post-mining land use plan.

³ Hira Jamtani dan Indra Setiawan. 1993. *Ekologi Manusia Versus Ekonomi Pembangunan Pada PJPT II*. Jakarta: Komphalindo, pp. 30.

The former mining land reclamation program is a mandatory program that must be carried out by every company, both private and non-private, where the regulation of mining reclamation obligations has been set by Law No. 4 of 2009 article 96 and technically governed by Government Regulation No. 78 of 2010 article 2 paragraph 1 concerning Post Mining Reclamation. The obligation to carry out reclamation for ex-mining land has been running in several regions in Indonesia, one of which is South Kalimantan.

South Kalimantan Province itself is an area rich in natural resources, where the mining sector still has great potential; this certainly requires serious attention from the parties concerned. In general, the South Kalimantan Provincial Government has issued Regional Regulation No. 1 of 2013 concerning Post Mining Reclamation, where this regulation is intended as part of efforts to restore the quality of environmental carrying capacity, reclamation is a strategic step that needs to be done for the future of the community and the region, and therefore in its management it is necessary to pay attention to and preserve the function of the environmental components contained therein, and with this regulation, it is increasingly emphasized that the reclamation plan document must contain a timeframe of settlement that is adjusted to the mine period, land use before and after mining, opening plan land, a reclamation program for disturbed land, which includes ex-mining land and land outside ex-mining, both temporary and permanent, success criteria by including standard indicators of success in land use, revegetation, civil works and final completion.

South Kalimantan Province Regional Regulation Number 1 of 2013 concerning Post Mining Reclamation in South Kalimantan Province itself is an elaboration of Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba), Law Number 32 of 2009 concerning the Environment, which then followed up with Government Regulation Number 78 of 2010 concerning Reclamation and Post-mining, as part of the implementation of article 101 of Law Number 4 of 2009 concerning Minerals and Coal which states that:

"Further provisions regarding reclamation and post-mining as referred to in Article 99 and reclamation guarantee funds and post-mining guarantee funds as referred to in Article 100 are regulated by government regulations."

Where then the government regulation contains a number of provisions related to reclamation and post-mining, which were then followed by the issuance of South Kalimantan Province Regional Regulation No. 1 of 2013 concerning Post-Mining Reclamation in South Kalimantan Province.

Implementation of Post Mining Reclamation Arrangements in South Kalimantan

Natural resource management in the form of coal mines has a high risk of ecosystem changes that impact on the environment, the risk of environmental damage is even greater for coal mining conducted by open mining systems and methods, and in fact all coal mining businesses in South Kalimantan are carried out openly.

Mining entrepreneurs whose licenses are granted by the Center (PKP2B) or those granted by the Region (IUP) are basically obliged to carry out environmental studies before conducting exploration, exploitation or production operations. The environmental study is intended to conduct a study of environmental impacts that will occur both during the stages of activities (exploration, exploitation, and production operations), as well as post-mining environmental impacts.

Mining entrepreneurs have an obligation to carry out reclamation, which is an effort to restore the environment that has disturbed their ecosystem, and the obligation is marked by the need to deposit a sum of funds as collateral for reclamation.

Reclamation activities carried out after mining activities are considered complete and with reclamation it is expected that the ex-mining area can be restored and can then be reused for other activities both by the community and by the government.

The implementation of the reclamation is carried out optimally involving the surrounding community, universities and NGOs engaged in the environment and of course prioritized for local elements, so that all parties feel they have a shared responsibility for environmental improvement for the future of the next generation.

This regional regulation itself emphasizes that related to the reclamation plan documents must contain a range of completion times that are adjusted to the mining period, land use before and after mining, land clearing plan, reclamation program for disturbed land, which includes ex-mining land and land outside ex-mining both temporary or permanent, success criteria by including indicators of success standards for land use, revegetation, civil works and final completion.

Where the scope of the scope of regulation on reclamation and post-coal mining include the following: ^[4].

- a. Reclamation is aimed at the former coal mining area;

⁴ Pasal 2 Peraturan Daerah Provinsi Kalsel Nomor 1 Tahun 2013.

- b. Mining companies that are subject to reclamation obligations are mining companies whose permits have been granted by the Central Government and whose permits have been granted by the Regional Government and Regency / City Governments;
- c. Reclamation implementation;
- d. Reclamation financing;
- e. Community participation;
- f. Evaluation and supervision; and
- g. Coaching

In article 4 of this regional regulation it is stated that the implementation of the reclamation and post-coal mining obligations aims to:

- a. natural resource management is carried out with wisdom and responsibility;
- b. returning the ecosystem to its original state;
- c. rebuilding a healthy and productive productive environment;
- d. for the benefit of present and future generations; and
- e. safeguard local social and cultural values.

In general in South Kalimantan, based on research it was found that the implementation of the reclamation of ex-mining land in South Kalimantan was also not entirely successful, one of which was PT Arutmin Indonesia. The coal company has tried to implement mining principles that are environmentally sound, namely by carrying out post-mining reclamation activities. However, erosion that occurs on reclaimed land is still a major problem faced, especially in the conservation and rehabilitation of land. Where the level of erosion is found in the reclaimed land. The highest erosion occurred in Land Unit I of 39.11 tons/ha/year^[5].



Fig-1: PT Arutmin Indonesia's Post Mining Reclamation Activity

In addition, there is also PT Madhani Talatah Nusantara in Banjar District, South Kalimantan Province, which has not been fully successful in conducting reclamation. Research shows that reclamation carried out by PT Madhani Talatah

Nusantara was unsuccessful in the field of canopy closure (canopy closure at PT Madhani Talatah Nusantara was not planned, the canopy was left alone to grow in the form of shrubs) and erosion and sedimentation.⁶

⁵ Misbakhul Munir dan RR Diah Nugraheni Setyowati. *Kajian Reklamasi Pasca Tambang di Jambi, Bangka, dan Kalimantan Selatan*. 2017. *Jurnal Klorofil Volume 1 Nomor 1*, pp. 13.

⁶ *Ibid.*



Fig-2: Before Reclamation (a) and After Reclamation (b) by PT Madhani Talatah Nusantara

Based on some of the case studies mentioned above, reclamation carried out on ex-mining land is considered ineffective by several factors as follows: [7].

1. There is no participation from the community. Community participation in reclamation activities is very important, because with this participation, reclamation activities are expected to be successful. The expected community participation is in the form of the absence of the community conducting mining around the reclamation site during the reclamation process. Community empowerment is the responsibility of the company. Reclamation of post-mining land is a responsibility that arises because Law Number 4 of 2009 concerning Mineral and Coal requires the implementation of reclamation and post-mining for holders of IUP and IUPK. The authority granted by the law is given to the Government in the form of making regional regulations, granting permits for conducting reclamation, developing and empowering local communities in the mining business by paying attention to environmental sustainability, guidance and supervision. Such wide-ranging governmental authority needs to exist between mining companies, communities, NGOs and universities / research institutions.
2. Technological errors in reclaiming. The selection of appropriate technology needs to be done before reclaiming. Observation of mining conditions must be carried out first in order to find out the suitable technology for reclamation use in accordance with the conditions in the field so that the reclamation goes as planned and there are no losses of material or non-material losses.

Based on the provisions in the Regional Regulation of South Kalimantan Province Number 1 of 2013 concerning Post Mining Reclamation in South Kalimantan Province the holder of Exploration Mining Permit (IUP) has the obligation to carry out reclamation on land disturbed by the exploration activities. And Production Operation IUP holders are also required to

carry out reclamation and post-mining on land disturbed by mining activities[8].

Where in the provisions in Article 6 paragraphs (1) and (2) where the implementation of reclamation by Exploration IUP holders must meet the principles:

- a. mining environmental protection and management; and
- b. occupational Health and Safety

The implementation of reclamation and post-mining by the holder of Production Operation IUP must fulfill the following principles:

- a. mining environmental protection and management;
- b. occupational Health and Safety; and
- c. coal resource conservation.

The provisions of this regional regulation also stipulate that holders of Exploration IUPs before carrying out their activities are required to prepare a reclamation plan based on environmental documents in accordance with the provisions of the legislation in the field of environmental protection and management, the reclamation plan is also contained in the work plan and exploration budget[9].

The affirmation regarding the reclamation and post-mining documents is reaffirmed in article 9 paragraph (1) to (4) which states:

- 1) Holders of Exploration IUP who have completed the feasibility study activities submit a reclamation plan and post-mining to the Governor or Regent/Mayor in accordance with their authority to obtain approval.
- 2) The reclamation and post-mining plan documents as referred to in paragraph (1) shall be prepared based on the Environmental Management Plan Document that has been approved by the competent authority in accordance with the

⁸Pasal 5 ayat (1) dan (2) Peraturan Daerah Provinsi Kalsel Nomor 1 Tahun 2013.

⁹Pasal 8 ayat (1) dan (2) Peraturan Daerah Provinsi Kalsel Nomor 1 Tahun 2013.

⁷*Ibid*, pp. 14.

provisions of the legislation in the field of environmental protection and management.

- 3) The reclamation and post-mining plan documents as referred to in paragraph (2) must comply with:
 - a. the principle referred to in Article 6;
 - b. mining systems and methods based on feasibility studies;
 - c. specific conditions of the mining business permit area (IUP); and
 - d. the provisions of the legislation.
- (4) The approved reclamation and post-mining plan documents as referred to in paragraph (1) and are a requirement for the issuance of a Production Operation IUP shall be submitted together with the submission of an application for a Production Operation IUP.

Several other related documents are also regulated in this regulation, including the time and mechanism of its approval to the supervision and monitoring.

However, what is interesting to note is the post-mining guarantee and reclamation provisions, this is in view of the impact on the environment, which may be caused after the mining activities. Even though this regional regulation regulates reclamation and post-mining guarantees, where IUP holders must provide:^[10]

- a. Reclamation guarantee
- b. Reclamation and post-mining guarantees

The reclamation guarantee consists of:^[11]

- a. Reclamation guarantee for IUP Exploration
- b. Reclamation and post-mining guarantees for IUP Production Operations.

But the thing to remember is that the placement of reclamation guarantees does not eliminate the obligation of Exploration IUP holders to carry out their reclamation activities.

In the provisions of article 31 of this regional regulation, it is stated that if the results of the reclamation carried out by the Exploration IUP Holder by the Governor or Regent/Mayor are deemed not yet/does not meet the criteria of success, the Governor or Regent/Mayor in accordance with his authority may determine other parties to carry out the reclamation in part or in full using the reclamation guarantee fund referred to. This is done as part of efforts to provide guarantees so that the existing environment due to mining activities can be restored.

Article 33 of this regional regulation confirms that according to the evaluation results of the implementation of reclamation and post-mining does not meet the criteria for success, the Governor or Regent/Mayor in accordance with his authority can appoint a third party to carry out reclamation and post-mining activities in part or in full using reclamation and post-mining guarantees.

Then in article 37 verses (1) and (2) it is stated that:

1. If the reclamation guarantee fund is insufficient, then the lack of costs for completion of the reclamation is the responsibility of the IUP holder.
2. However, if there is an excess of reclamation guarantee funds from the costs required to complete the reclamation, the excess costs are returned to the IUP holder and can be disbursed after obtaining approval from the Governor or Regent/Mayor in accordance with the authority.

Because this reclamation guarantee is only in the form of collateral, the funds that have been deposited at the beginning can be withdrawn in accordance with the provisions in article 38 of this regulation. Where if according to the evaluation results of the implementation of the reclamation in accordance with planning documents and work plans, the IUP holder can submit an application for the disbursement of reclamation guarantee funds to the Governor or Regent/Mayor in accordance with their authority. This disbursement is carried out after obtaining approval from the Governor or Regent/Mayor. Although in the case of the reclamation fund, the IUP holder has a tendency to submit the reclamation fund as if he has carried out the reclamation and post-mining obligations. The guarantee regarding the implementation of the reclamation and post-mining activities is then what needs to be strengthened from the relevant laws and regulations, especially in terms of aspects of carrying out these obligations by the IUP holder.

Issues related to reclamation guarantees themselves in South Kalimantan Province have been complained of by related parties, because there are indications that companies have not carried out reclamation obligations, because they have paid the reclamation guarantees^[12].

The provisions regarding reclamation obligations, according to the researchers, should be evaluated by related parties, bearing in mind the importance of post-mining recovery activities.

So far the sanctions regulated in Regional Regulation No. 1 of 2013 concerning Post Coal Mining Reclamation in South Kalimantan Province are in the form of administrative sanctions, namely:

¹⁰Pasal 28 ayat (2) Peraturan Daerah Provinsi Kalsel Nomor 1 Tahun 2013

¹¹Pasal 28 ayat (2) Peraturan Daerah Provinsi Kalsel Nomor 1 Tahun 2013

¹² www.antarakalsel.com diakses tanggal 30 Juli 2017.

- a. written warning;
- b. temporary suspension of part or all of its mining activities; and / or revocation of IUP.

Imposing sanctions is an important part of a statutory regulation, sanctions are usually placed at the end of every regulation, in *cauda venenum* means that at the end of the rule of law there are sanctions, so sanctions are an instrument in law enforcement¹³ Providing appropriate sanctions is certainly expected to help in the process of law enforcement.

CONCLUSION

As part of the protection of the environment, provisions regarding post-mining reclamation are stipulated where South Kalimantan Province itself is issued Regional Regulation of South Kalimantan Province Number 1 of 2013 concerning Post-Mining Reclamation, as part of the follow-up to higher regulations.

Related to the implementation of South Kalimantan Provincial Regulation Number 1 of 2013 concerning Post Mining Reclamation in South Kalimantan Province, where there is a need for reaffirmation of reclamation and post-mining guarantees, including the need for sanction mechanisms for business/mining activities that do not carry out these obligations.

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¹³ Ridwan HR. 2011. *Hukum Administrasi Negara*. Jakarta: RajaGrafindo Persada, hlm 298.