

Mining Corporate Responsibility for Environmental Recovery

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ABSTRACT--- *The role and control of natural resource management lies in the State as the head of the organization of State power. Looking at the potential wealth of natural resources possessed, the quality of human resources has become one of the important and decisive actors in the natural resource management. This research is a normative-legal research using a statute, case, historical, comparative and conceptual approaches. The results show that There is no other choice for the natural resources management by the government both central or regional besides the implementation of the concept of sustainable development. Environmental priorities are prioritized as priorities that must be prioritized if want to conduct development itself. Certainly, the implementation of the concept of sustainable development leads to the realization of a balance between prosperity and environment are good and sustainable. As a result, both policies, plans and/or programs must be spirited by the obligation to preserve environmental functions and realize sustainable development goals.*

Keywords--- *Mining; Corporate Responsibility; Environmental Law; Environmental Recovery*

I. INTRODUCTION

The affirmation of Indonesia as a country with abundant natural resource wealth is based on the potential of natural resources both biological and non-biological. In the utilization of these natural resources, the State' role as a regulator must be the main actor in maintaining the sustainability of ecosystems and sustainable development remains in line with the mandate outlined by the constitution (Irwansyah, 2017).

Conceptually, the role and control of natural resource management lies in the State as the head of the organization of State power. Based on Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that branches of production which are important for the State and which control the livelihoods of the public are objects of public interest (Hayati, 2015). Thus, there are no ownership rights other than the State, because the object is a *public goods* which must be accessible and utilized for the prosperity of the people.

Looking at the potential wealth of natural resources possessed, the quality of human resources has become one of the important and decisive actors in the natural resource management (*interdependence*). Human resources are development agents who can actively empower the potential of natural resources towards a more productive direction. But on the contrary, humans can also exploit natural resources in excess without negating its negative impacts.

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The Government of Indonesia both at the central and regional levels needs to fully understand the completeness of legal instruments in regulating and managing natural resource management. Also, this is a big responsibility for the State and local government to manage nature in order to realize the welfare of people, as the goal of State as a welfare state. The ideology of welfare state becomes the basis for the position and function of the government (*bestuursfunctie*) in supporting government administration (Marilang, 2012).

Considering Indonesia as an agrarian country, the majority of its population sees that nature is also a source of livelihood for the people to continue their lives and fulfill their daily needs. Therefore, at least 3 (three) main aspects of natural resource management are needed: *the first*, controlling and utilizing socio-economic resources for the public benefit; *the second*, ensuring the distribution of wealth fairly and equally; and *the third*, providing social protection for every citizen.

The principle of sustainable development has strengthened the position of the importance of environmental factors in the implementation of development so that any policies towards development where the State, government and society can no longer ignore environmental factors for the future. If seen from the concepts developed both institutional and strategy and substance, then clearly and definitively, environmental priorities are prioritized as priorities that must be prioritized if want to make development. A progress towards the mindset of the previous development concept and strategy which emphasizes the aspect of development by ignoring the environment itself.

Based on the construction of the concept, the implementation of the concept of sustainable development certainly leads to the realization of a balance between the prosperity and environment that is good and sustainable. As a consequence, both development policies, plans and/or programs must be spirited by the obligation to preserve environmental functions and realize sustainable development goals.

II. METHODOLOGY

This research is a normative-legal research using a statute, case, historical, comparative and conceptual approaches (Marzuki, 2009). Its data will be provided from primary and secondary legal materials. The primary legal materials resulted from some relevant laws and legislation. Those legal material collected are analysed descriptively related to the problems and prescriptively.

III. RESULTS

Strategy for Environmental Recovery: Problems and Actual Challenges

The environmental recovery from pollution and damage to environmental functions is closely related to investment and mining activities. Development as part of State policy for the welfare of the people is performed by continuously utilizing natural resources. Meanwhile, the available natural resources are very limited and uneven in quantity and quality, while the demand for natural resources is increasing as a result of increased development to meet the increasing needs of the population. Such development activities carry the risk of pollution and damage to environmental functions.

At the practical level, the ideality as expected to be far from expectations. It is evidenced by the implementation of mining which is contradictory to the use of various types of chemicals, radioactive substances and damaging

natural resources. Based on investigation by Tempo (2019) in the period of 2017-2019 that environmental damage due to tailings management for mining has been included in the calculation through an Environmental Impact Assessment or EIA. One of them is the potential for environmental damage due to mining waste or tailings. In accordance with the findings of the Supreme Audit Agency released in 2017, the amount of environmental losses reached Rp. 185 trillion. In addition, based on the Ministry of Environment and Forestry records per January, it showed that only 6.808 hectares of land had been reclaimed as of last year. While, the ex-mining land in Indonesia reached 557 thousand hectares. This shows that improving mining governance is still far from adequate.

Environmental damage that comes from natural resource activities that are done excessively and unenvironmentally-sound has an impact on the loss of access to livelihoods. In addition, this condition also leads to the occurrence and even increasing trends of natural disasters. Still warm in memory of the flash floods that hit North Sulawesi, almost all areas of North Sulawesi, including the cities of Manado, Minahasa, Tomohon, South Minahasa, North Minahasa, Bolaang Mongondow, and Sangihe were hit by flash floods and landslides. The height of floods on the banks of the river even reached six meters due to the water from Minahasa (Liputan 6, 2019). According to the Walhi (2018), flash floods are caused by a combination of natural and anthropogenic factors or pollution caused by human activity. As well mining activities, transportation, and burning waste. This combination triggers massive floods and landslides. The potential for local government oversight can also be seen from the large number of regional heads who stumble with legal problems due to natural resource management activities. The commitment of the government to overcome the problem of inequality and environmental crises due to mining activities has not been accompanied by efforts to restore the environment, social and cultural rights of the people that have been destroyed by the development model in the name of economic growth.

Now, the pragmatism mining patterns in excessive and approaches and goals dominated by momentary profits become a scourge as well as the main main of the damage and the inherent impact of the environment. Certainly, a systematic and integrated handling pattern is needed and supported by consistent supervision in ensuring that all mining businesses remain in the corridor determined by statutory provisions. Considering the essence of the environment is life that encompasses the order and values of life in it.

Various issues of mining activities that are less environmentally-sound and the deterioration of the quality of the mining environment need to be considered to ensure a balance between meeting human needs and environmental sustainability and ensuring a conducive investment climate for large-scale mining investors. Mining waste management that has been performed by mining companies has not been able to overcome the degradation of the quality of the bio-physical environment and social problems, even though some mining activities have been oriented towards clean industries that are environmentally-sound. Changes in the environment around the mine can occur at any time, so that effective waste management is an indicator of mining sustainability.

The interests of mining and environmental preservation are like two sides of a coin. On the one side, the mining is needed for development, but on the other side the environment is damaged by mining activities that do not apply technology together with good environmental management.

There are 2 (two) terms that refer to accountability in the legal dictionary, namely *liability* and *responsibility*. *Liability* is a broad legal term that designates almost all the characteristics of risk or responsibility, to be certain, it depend or may include all actual or potential characters of rights and obligations such as losses, threats, crime, costs or conditions that create the duty to do the law. *Responsibility* means something that can be accounted for by

an obligation, and includes decisions, skills and abilities including liabilities responsible for the law implemented. In the meaning and practical use, the term *liability* refers to legal accountability, that is accountability due to mistakes made by legal subjects, while the term *responsibility* refers to political accountability (Ridwan, 2006).

A traditional law sees the relationship between a conduct and its effect and it is not having the psychological qualifications of an individual actions that have been anticipated or performed with the intention of causing an effect or irrelevant. The modern law techniques require a distinction between cases when an individual action has been planned and intended for certain effects of the act, and cases when an individual action have adverse effects that are not anticipated or desired by the perpetrators. An idea of individuality fairness that a sanction must be imposed on an individual action, only if the adverse effects of the act have been anticipated by the actor and if his/her desire harm the other individual with the act. An effect which is considered detrimental by lawmakers may be caused intentionally by an individual but not with the intent of harming others.

The principle of giving sanctions to individual actions, simply because as a result of the action has been planned, and with evil intent by individuals is not fully accepted by modern law (Raik *et al.*, 2008). According to the law, individuals are not only held responsible if an effect objectively harmful has been inflicted with evil intent by their actions, but also if the consequences of the act have been intended, even without wrong intentions, or if the effect occurred without the intention or planned by the individual offender. However, the sanctions may differ in different cases.

The sanction is marked by the fact that actions as offenses with psychological qualifications. According to Asshiddiqie and Safa'at (2006), a certain mental state of the criminal, that he anticipates or desires a harmful effect (called *mens rea*) is an element of offense. This element is referred to as a fault (in a broader sense called *dolus* or *culpa*). When sanctions are imposed only on offenses with psychological qualifications, this is called responsibility based on fault or culpability. In modern law other forms of wrongdoing are also known without intent or planning, namely negligence. Negligence or omission is an offense of omission, and accountability for negligence is more than absolute accountability than culpability.

In this context, Corporate Social Responsibility (CSR) is not a relatively new thing in a business world, the literature reveals that the evolution of the concept itself has been going on for decades. On the other hand, the term CSR also changes in line with the development of the business world, political and social development and human rights. In addition, the term of CSR is also influenced by the impact of globalization and the development of information technology and all of that will reflect an understanding of CSR in the local context (Untung, 2007).

CSR as an idea, the companies are no longer faced with responsibilities that based on a *single bottom line*, namely corporate value which is reflected in its financial condition only. But corporate responsibility must be based on *triple bottom lines*. Here, the other bottom lines besides financial are social and environmental. Because financial condition alone is not enough to guarantee the company value to grow sustainably. The sustainability of the company will only be guaranteed if the company pays attention to the social and environmental dimensions (Aspan and Yunus, 2019). It has become a fact of how the resistance of the surrounding community, in various places and times emerge in the surface against companies that were considered not to pay attention to social, economic and environmental aspects of their lives.

IV. CONCLUSION

There is no other choice for the natural resources' management by the government both central or regional besides the implementation of the concept of sustainable development. Environmental priorities are prioritized as priorities that must be prioritized if want to conduct development itself. Certainly, the implementation of the concept of sustainable development leads to the realization of a balance between prosperity and environment are good and sustainable. As a result, both policies, plans and/or programs must be spirited by the obligation to preserve environmental functions and realize sustainable development goals.

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